TO: Chair and Members  
Public Works Committee  
WARD(S) AFFECTED: WARD 4  

COMMITTEE DATE: May 3, 2010  

SUBJECT/REPORT NO:  
Proposed Permanent Closure and Sale of Portions of Public Unassumed Alley Abutting 1594 Barton Street East, Hamilton (PW10046) - (Ward 4)  

SUBMITTED BY:  
Gerry Davis, CMA  
General Manager  
Public Works Department  

PREPARED BY:  
Marilyn Preston  
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RECOMMENDATION:  
(a) That portions of the public unassumed alley abutting 1594 Barton Street East, Hamilton, be permanently closed and transferred to the owners of 1594 Barton Street East and 290 Normanhurst Avenue, Hamilton, as shown on the attached Appendix “A” to Report PW10046, subject to the following conditions:  

(i) That the applicant makes an application to a District Court Judge, under Section 88 of the Registry Act, R.S.O. 1990, for an order to permanently close and purchase the subject lands;  

(ii) That the General Manager, Public Works or his designate sign the appropriate documentation confirming that no public funds have been expended on the lands to be closed;  

(iii) That the documentation regarding the application to the District Court Judge be prepared by the applicant, to the satisfaction of the City Solicitor;  

(iv) That the applicant register a reference plan under the Registry Act and that said plan be prepared by an Ontario Land Surveyor to the satisfaction of the Senior Project Manager, Survey/Technical Services and that the applicant deposit a reproducible copy of said plan with the Senior Project Manager, Survey/Technical Services;  

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(b) That provided the Judge's Order to permanently close the lands is granted:

(i) That the City Solicitor be authorized and directed to prepare the by-law to permanently close the highway;

(ii) That the appropriate by-law be introduced and enacted by Council;

(iii) That the Economic Development and Real Estate Division, Planning and Economic Development Department, be authorized and directed to sell this closed highway in accordance with the Procedural By-law for the Sale of Land, By-law No. 04-299;

(iv) That the City Solicitor be authorized and directed to register a certified copy of the by-law permanently closing the highway in the proper land registry office;

(v) That the by-law permanently closing the highway does not take effect until a certified copy of the by-law is registered in the proper land registry office;

(vi) That the Public Works Department publish a notice pursuant to Section 34 of the Municipal Act 2001, S.O. 2001, c. 25, as amended, of the City's intention to pass the by-law.

**EXECUTIVE SUMMARY**

An application has been submitted on behalf of Pioneer Petroleum, owner of 1594 Barton Street East in Hamilton, to close portions of the public unassumed alleys abutting the property to provide for landscaping/buffering. A portion of the alley also abuts 289 Tolton Avenue at the rear which is also owned by Pioneer Petroleum. As well, the north and rear property lines at 290 Normanhurst Avenue abut the alley and the owner has expressed an interest in purchasing half of the alley. The east/west portion of alleyway has provided access to the side entrance to 290 Normanhurst Avenue for the owner and his family in excess of fifty years. As the applicant has agreed to divide the portions of alley equally between Pioneer Petroleum and the owner of 290 Normanhurst Avenue, staff supports the permanent closure and sale of the lands. This will allow the owner of 290 Normanhurst to continue to have access to the side entrance of their house.

**Alternatives for Consideration - See Page 4**

**FINANCIAL / STAFFING / LEGAL IMPLICATIONS**

**Financial:** The applicant has paid a user fee of $1,800.99. The lands abutting 1594 Barton Street East and 289 Tolton Avenue, which are deemed commercial, will be transferred to the applicant at fair market value, as determined by the Economic Development and Real Estate Division. The lands abutting 290 Normanhurst Avenue will be transferred for one dollar,
in accordance with the City’s policy regarding the sale of public unassumed alleys abutting residential properties.

Staffing: An agreement to purchase the subject lands will be negotiated by the Economic Development and Real Estate Division.

Legal: The City Solicitor will prepare the by-law to permanently close the subject lands and will register this by-law in the Registry Office once Council has approved it. The City Solicitor will complete the transfer of the subject lands to the applicant pursuant to an agreement of purchase and sale or Offer to Purchase as negotiated by the Economic Development and Real Estate Division.

HISTORICAL BACKGROUND

The subject alley is designated public unassumed and is not maintained by the City. The current City policy is to not perform maintenance in public unassumed alleys.

The alley is currently a grassed area with low vegetation. The owner of 290 Normanhurst Avenue advises that the alleyway has provided access to the side entrance for the owner and his family in excess of fifty years. As such, if the lands are closed and sold, the owner of 290 Normanhurst Avenue would be interested in purchasing half of that portion of alley and the half of the portion at the rear of the property as well.

POLICY IMPLICATIONS

A by-law must be passed to permanently close the lands, in accordance with the Municipal Act. The process of closing the portions of alleys and transferring them to the applicant and the abutting neighbour fulfils the Public Works Business Plan goal of establishing “mutually beneficial charters with external customers.”

RELEVANT CONSULTATION

Seventy five (75) property owners within a 400 foot (121.9 metre) radius of 1594 Barton Street East were notified of the proposal. The owner of 290 Normanhurst Avenue, directly abutting the alley, was the only property owner who responded as “opposed” to the notice. However when the property owner understood that he could acquire half of the alley and continue to have access, he removed his opposition.

The following City staff were consulted on this application:

- Planning and Economic Development Department: Development Engineering, Building Services, Economic Development and Real Estate and Planning Divisions
ANALYSIS / RATIONALE FOR RECOMMENDATION

The option recommended in this report allows the applicant to use their portion of the alley to provide for landscaping/buffering as they requested. As well, the owner of 290 Normanhurst Avenue is able to continue to have access to the side entrance of their home. As the City has no future need for the alley, staff supports the transfer of half of the alley to each abutting owner.

ALTERNATIVES FOR CONSIDERATION

Pioneer Petroleum, the owner of 1594 Barton Street East in Hamilton, has submitted an application to close portions of the public unassumed alleys abutting the property to provide for landscaping/buffering. A portion of the alley abuts 289 Tolton Avenue which is also owned by Pioneer Petroleum. As well, the property at 290 Normanhurst Avenue abuts the subject lands on both sides and the owner has expressed an interest in purchasing half of each portion of alley. The east/west portion of alleyway has provided access to the side entrance to 290 Normanhurst Avenue for the owner and his family in excess of fifty years.

Alternatively, the application could be denied and the alley would remain City property. However, as the applicant intends to improve their portions of the alley and as the

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owner of 290 Normanhurst Avenue requires the alley to access the side entrance to the property, transferring the lands to private ownership is the preferred option.

CORPORATE STRATEGIC PLAN


Healthy Community

* Plan and manage the built environment

APPENDICES / SCHEDULES

Appendix ‘A’ - Location Plan
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