TO: Mayor and Members
   General Issues Committee

WARD(S) AFFECTED: WARD 10

COMMITTEE DATE: January 10, 2011

SUBJECT/REPORT NO:
City of Hamilton Purchase of 11 Third Private Road, in the Former City of Stoney Creek, from Jennifer Harnest and Jason Harnest (PW11002/PED11004) (Ward 10)

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

Tim McCabe
   General Manager
   Planning and Economic Development Department

PREPARED BY:
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   (905) 546-2424, Extension 2331

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SIGNATURE:

RECOMMENDATIONS

(a) That an Option to Purchase, with an Authority to Enter, executed by Jennifer Harnest and Jason Harnest on November 17, 2010, being subject to a satisfactory environmental review, and scheduled to close on or before March 31, 2011 to purchase the lands and buildings described as Part of Lot 18, Broken Front Concession, in the former Township of Saltfleet, now in the City of Hamilton (as in Instrument 34615CD), with a frontage of 31.4 metres (103.0 feet) more or less along the westerly limit of Third Private Road, with a depth of 16.3 metres (53.5 feet) more or less, being all of PIN 17346-0056, and Assessment Roll
Number 251800304014400, known municipally as 11 Third Private Road, shown on Schedule “A” attached to Report PW11002 / PED11004, be approved and completed, at the purchase price of $380,000;

(b) That the purchase price of $380,000 be charged to Project ID 59259-4400856144 (Cherry Beach Land Acquisition and Parkland Development Account);

(c) That as consideration, the amount of $2 paid to the owners pursuant to the agreement, be deducted from the purchase price;

(d) That as a condition of the purchase of the property at 11 Third Private Road, the current owners, Jennifer Harnest and Jason Harnest, be allowed, but subject to a suitable municipal inspection of the home, a leaseback of the residence for a period of up to three (3) months at $950 per month, plus any applicable Harmonized Sales Tax, and all utilities and water/sewer charges, and any other user costs/charges to be paid by the Tenant, save for property taxes. That the lease income be credited to Project ID 4400856144 (Cherry Beach Land Acquisition and Parkland Development Account) and any administrative costs during the period of the lease be charged to Project ID 4400856144 (Cherry Beach Land Acquisition and Parkland Development Account);

(e) That the Mayor and Clerk be authorized and directed to execute any necessary documents, in a form satisfactory to the City Solicitor;

(f) That upon acquisition of the lands at 11 Third Private Road, the Director of Transportation, Energy and Facilities be authorized and directed to take all the necessary steps for the demolition of the subject buildings, and that the cost for the demolition and any additional expenses (Legal Services, Environmental Site Assessment, Permits, Designated Substance Studies, Abatement, and Contingency) in the amount of $60,000 be charged to Project ID 4400856144 (Cherry Beach Land Acquisition and Parkland Development Account); and

(g) That the costs incurred for the provision of Real Estate’s service in the amount of $10,000 (inclusive of an external appraisal) be credited to Account 45408-3560150200 (Property Purchases and Sales) and debited from Project ID 4400856144 (Cherry Beach Land Acquisition and Parkland Development Account).

EXECUTIVE SUMMARY

The former City of Stoney Creek and the new City of Hamilton have been acquiring lands in the Cherry Beach lakefront area for over 30 years in order to develop a neighbourhood lakefront park in accordance with the Lakeshore Neighbourhood Plan. This acquisition program was re-affirmed by City Council at its meeting of June 25, 2008 by the adoption of Item K (i), Private and Confidential, Public Works Committee Report 08-011, Purchase of Properties on Cherry Beach Road, Stoney Creek. This purchase recommendation is a follow up to this direction.
The Option to Purchase agreement includes an Authority to Enter for the City to complete environmental testing.

**Alternatives for Consideration - See Page 6**

**FINANCIAL / STAFFING / LEGAL IMPLICATIONS**

**Financial:**
There are sufficient monies in Project ID 4400856144 (Cherry Beach Land Acquisition and Parkland Development Account) to fund the costs identified in this report, broken down as follows:

<table>
<thead>
<tr>
<th>Item</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Purchase Cost 11 Third Private Rd.</td>
<td>$380,000</td>
</tr>
<tr>
<td>Real Estate Fee</td>
<td>$10,000</td>
</tr>
<tr>
<td>Environmental Site Assessment, Permits, Designated Substance Studies, Abatement, Demolition</td>
<td>$30,000</td>
</tr>
<tr>
<td><strong>Subtotal</strong></td>
<td><strong>$420,000</strong></td>
</tr>
<tr>
<td>Contingency</td>
<td>$30,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$450,000</strong></td>
</tr>
</tbody>
</table>

It is anticipated an additional $980,000 would be required to complete the acquisition of the three remaining residential property and private road owners in what has been deemed to be the “core” area of the park. Staff have requested funding in the 2011 Capital Budget submission for Project ID 4400856144 in the amount of $845,000 which would be augmented by the current WIP balance in that Project ID number.

Funding has also been requested in the 2011 Capital Budget submission for Project ID 5181155644 for the shoreline protection design ($150,000) and construction ($350,000) components in 2011 and a further $300,000 for construction in 2012. These construction estimates are preliminary as it was noted in 2007 by the coastal engineering firm Shoreplan that associated costs would be at least be between $1.3 million and $1.5 million.

Through the 2011 Capital Budget process the existing funding for Project ID 5181155644 (Cherry Beach 5 Year Review and Class EA) will be increased to include a component for shoreline protection study and initial construction funding for a total request of $500,000.

Operating costs of $28,000 to maintain the “core area” vacant lands are included in the 2011 Capital Budget submission for Project ID 4400856144 (Cherry Beach Land Acquisition and Parkland Development Account).

**Staffing:**
There is no staffing implication arising from this recommendation.
Legal:

Legal Services has assisted in the preparation of the Option to Purchase document and will be required to complete the purchase transaction.

With the acquisition of properties in the Cherry Beach area the City has an inherent ability to access the privately owned roadways.

**HISTORICAL BACKGROUND**

The information/recommendations contained within this report primarily affect Ward 10 with potential for City wide implications.

Prior to amalgamation, the former City of Stoney Creek initiated an acquisition program as early as the 1960s which continued to take place into the 1990s for a future waterfront park. The proposed parkland would have included the area from west of First Private Road to the eastern limits of the property holdings along Third Private Road, bounded by Lake Ontario to the north and Cherry Beach Road to the south. The residences in the Cherry Beach acquisition area are not serviced with municipal water, sanitary, or storm sewers.

The Stoney Creek Official Plan (Subsection A.7.2.5) authorizes the municipality to acquire lands for parkland uses to ensure an adequate level of open space, recreational services and facilities are provided as per the Recreation Master Plan. These acquisitions must be made in accordance with the provisions of Subsection F.8 of the Official Plan, which in part permits the acquisition of land given its availability on the open market. It was on this basis that the land acquisition programme was initiated during the 1990s and this acquisition is taking place under the same mandate.

The Lakeshore Neighbourhood Plan for Stoney Creek identifies waterfront parkland within the area described above. The Lakeshore Neighbourhood Plan is found in Appendix ‘B’ attached to Report PW11002 / PED11004.

An internal staff memo dated 1993 noted among other benefits to the municipality that a lakefront park at Cherry Beach would:

1) maximize and consolidate municipal lands in the area;
2) maximize the visibility and development of the potential park;
3) remove private dwellings which otherwise would remain on a private road indefinitely; and,
4) relieve environmental septic problems for existing homeowners and alleviate the necessity of providing additional municipal services.

Cherry Beach is an older lakefront area enclave, north of the Queen Elizabeth Way between Millen and Dewitt Roads. Zoning By-law 3692-92 approved by Stoney Creek Council on February 20, 1996 categorizes the subject property as being Neighbourhood Development “ND-1”. A site-specific zoning amendment restricts re-development of the subject and other lands in the Cherry Beach acquisition area. The entire Cherry Beach
acquisition area comprises approximately 9.15 acres (3.70 hectares). Presently, the City of Hamilton owns almost 7.50 acres (3.04 hectares) while the remaining 1.65 acres (0.67 hectares) is made up of eight privately held residential parcels and the privately owned roadway. Real Estate is currently negotiating with a few of the residential property and private road owners in what has been deemed to be the “core” of the park. It is anticipated further Option to Purchase Agreements will come forth in 2011.

The subject property at 11 Third Private Road consists of a 2,200 square foot updated two storey frame residence on the shores of Lake Ontario, protected by a concrete and boulder breakwater. (Earlier in 2010, the subject property was listed for sale with a local real estate broker at $419,000).

**POLICY IMPLICATIONS**

This recommendation is consistent with the Real Estate Management Portfolio Strategy Plan, as approved by City Council on November 24, 2004, to acquire property in support of municipal programs and needs. As the purchase price exceeds the $250,000 limit set by City Council under the Delegation of Authority approval process, authorization of City Council is required.

This recommendation is consistent with the Public Works Business Plan, Innovate Now: A Compass for Public Works to 2017 that will guide Public Works in achieving the City’s vision which is to be recognized as the centre of environmental and innovative excellence in Canada and an immediate priority identified as being a leader in ‘greening’ and stewardship in the City.

**RELEVANT CONSULTATION**

- Ward 10 Councillor
- Corporate Services, Legal Services Division
- Planning and Economic Development Department, Economic Development and Real Estate Division
- Public Works Department, Environment & Sustainable Infrastructure Division
- Public Works Department, Operations & Waste Management Division

**ANALYSIS / RATIONALE FOR RECOMMENDATION**

After a long period of discussions, the Real Estate Section negotiated a purchase price of $380,000 with the owners. This price is within the range of the estimated market value of an external Appraisal of the subject property.

To satisfy the requirements under the City’s Contaminated Sites Management Program, the purchase is conditional on the completion of a favourable Environmental Site Assessment prior to closing. The City has 30 days from the acceptance date of the Option in which to review the property and will recommend closing based on the results.
of the assessment. If favourable the residence will be purchased and demolished thereafter.

With the approval of this purchase, the City now requires the acquisition of only 3 more properties, including the private road portions, in what has been deemed to be the “core” of the park. Following this purchase, the City will place a priority to acquire properties 69-71 Cherry Beach Road, 7 Third Private Road and the private road portions, resulting in sufficient “core” acquisition to complete the 8.38 acres (3.40 hectares) lakefront neighbourhood park parcel (refer to The Cherry Beach Existing and Future Land Acquisition as found in Appendix ‘C’ attached to Report PW11002 / PED11004).

Although not the priority, in order to complete the acquisition program for the entire Cherry Beach lakefront park 5 additional properties in the Cherry Beach subject area in and around First Private Road would be required.

Consideration should be given to the shoreline protection of these properties along the lake as erosion rates along this reach of shoreline are among the highest of the south shore of Lake Ontario. Evidence of these rates are readily observed at the site location properties. Shoreplan, a coastal engineering firm, has completed an initial evaluation of the lake front properties along Cherry Beach Road. A review of published erosion rate data indicates an extreme erosion rate of approximately 1.0 metre/year and recommendations are for the construction of shoreline protection methods in this area. This has initiated the commencement of a detailed design study by the Infrastructure and Source Water Planning Section of the Environment & Sustainable Infrastructure Division.

**ALTERNATIVES FOR CONSIDERATION**

An alternative is not to purchase these lands. This is not recommended in light of the actions taken by the former City of Stoney Creek to proceed with the acquisition program in accordance with the Lakeshore Neighbourhood Plan for Stoney Creek for a neighbourhood waterfront park in this area. This municipal initiative was subsequently re-affirmed by Hamilton City Council at its meeting on June 25, 2008. Since that time Council has approved the acquisition of several properties in the Cherry Beach area and had approved funding in the Capital Budget for such acquisition in 2003-04, 2008-2010.

Delaying acquisition of this property will prohibit the City from mitigating shoreline protection at the risk of leaving the waterfront exposed to further erosion.

In the event that approval or funding of the Option to Purchase is not granted by Council at this time, the City may be faced with an expropriation in the future to acquire this property.
Vision: To be the best place in Canada to raise a child, promote innovation, engage citizens and provide diverse economic opportunities.

Values: Honest, Accountability, Innovation, Leadership, Respect, Excellence, Teamwork

CORPORATE STRATEGIC PLAN


Environmental Stewardship

• Natural Resources are protected and enhanced. Providing the lands required to move forward to develop a lakefront park for the general community of the City of Hamilton.
• Aspiring to the highest environmental standards. Removal of a residence with potential septic and sanitary concern near a water body. Staff will commence the planning for shoreline stabilization subject to the 2011 Capital Budget approval.
• Hamilton’s high-quality environmental amenities are maintained and enhanced. Waterfront access is an important environmental amenity, and the purchase of properties as they become available is a wise use of funds.

APPENDICES / SCHEDULES

Appendix “A” - Location Map
Appendix “B” - Lakeshore Neighbourhood Plan
Appendix “C” - Cherry Beach Existing and Future Land Acquisition
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