TO: Chair and Members
Public Works Committee

WARD AFFECTED: Ward 11

COMMITTEE DATE: September 20, 2010

SUBJECT/REPORT NO:
Agreement to Accept Compensation, Section 30, Expropriations Act, 67-85
Seabreeze Crescent, Part 1 on Plan 62R-17990, Trillium Seabreeze Park, Trillium
Neighbourhood (LS10015) (Ward 11)

SUBMITTED BY:
Peter A. Barkwell
City Solicitor
Legal Service

PREPARED BY:
Joanna Wice
(905) 546-2424, Ext. 4708

SIGNATURE:

RECOMMENDATION:

a) That a Full and Final Release (subject to receipt of an executed copy from the
property owners Christian Beier, in Trust et al), resulting from the provisions of
Section 30 of the Ontario Expropriations Act, for vacant residential lands known
as Lot 15 and parts of Lots 14 and 16 on Registered Plan 635; part of Lot 9,
Broken Front Concession in the former Geographic Township of Saltfleet, all
shown as Part 1 on Plan 62R-17990, being part of PIN 17362-0562, part of
Assessment Roll No. 250310002020000, comprising an area of 10,000 square
metres (2.47 acres), having a frontage of 123.303 metres (404.53 feet) along the
southern limit of Seabreeze Crescent, know municipally as 67-85 Seabreeze
Crescent, in the former City of Stoney Creek, now in the City of Hamilton (as
shown on Appendix “A” to Report LS10015 (attached), in the amount of
$1,350,000, be approved and completed.
b) That the final settlement payment of $690,000 (being the difference between the settlement amount and the original Section 30 payment of $660,000) be charged firstly to Capital Budget Item 4400556521–Trillium Seabreeze Park, secondly to Capital Budget Item 4401056008 –Parkland Acquisition Project and thirdly the required balance to Capital Budget Item 4401056521 – Trillium Seabreeze Neighbourhood Park and that, the City make a payment to Gowlings Law Office - Lee Pinelli in trust for the Owner(s) the sum of $690,000.00 on the closing of this Agreement.

That an amount of $38,000 as administrative compensation to the Real Estate Section for staff time on this transaction (negotiation and appraisal), and any Legal Service fees and disbursements, be charged to Capital Budget Item 4401056521 – Trillium Seabreeze Neighbourhood Park and credited to Account 57880-3560150200 (Property Purchases and Sales)

c) That the Mayor and Clerk be authorized and directed to execute all necessary documents in a form satisfactory to the City Solicitor.

**EXECUTIVE SUMMARY**

This recommendation deals with the final settlement and payout of an outstanding Section 30, Ontario Expropriations Act acquisition of lands for the parkland located at 67-85 Seabreeze Crescent in the former City of Stoney Creek, being the site of the future Seabreeze Neighbourhood Park, as required by the Urban Lakeshore Area Secondary Plan.

The City commenced expropriation procedures in 2007 to acquire the subject lands. The owners, Christian Beiers, in Trust et al in 2008 agreed to sell and provide vacant possession of these parklands and accept the City’s appraised value of $660,000, but would look for a final determination of compensation for this property from the Ontario Municipal Board or if possible from a negotiated settlement directly with the City. This report deals with that settlement.
FINANCIAL / STAFFING / LEGAL IMPLICATIONS (for Recommendation(s) only)

Financial: Funding for the expropriation settlement and ancillary costs is available from Account Numbers 4400556521 - Trillium Seabreeze Park and 4401056008 - Parkland Acquisition Project and 4401056521 Trillium Seabreeze Neighbourhood Park. Total balance of these three accounts amounts to approximately $820,000. The Parkland Acquisition Project account 4401056008 approved in the 2010 Capital Budget for parkland acquisition in the amount of $375,000 is being utilized as part of the acquisition funding in this report recommendation b).

Staffing: Operating impacts for the maintenance of the parkland site are identified in the 2011 Capital Budget.

Legal: Legal Services will be required to assist in the preparation of the necessary documents required to complete the transaction as set out herein.

HISTORICAL BACKGROUND (Chronology of events)

The information/recommendations contained within this report primarily affect Ward 11.

In 1992 the Stoney Creek City Council authorized Planning staff to proceed with the preparation of the Trillium Secondary and Neighbourhood Plans. The Trillium Neighbourhood is an integral component of the former City of Stoney Creek's housing strategy in compliance with the then Provincial Policy Statement “Land Use Planning for Housing”. Typically Neighbourhood Plans in the former City of Stoney Creek had a central school and park site. This configuration was achieved in the western half of the Trillium Neighbourhood, however this neighbourhood is long and narrow as it is located between the QEW and Lake Ontario and essentially follows the shoreline. As a result, former Stoney Creek Planning staff also recommended parkland be sited in the eastern half of the Trillium Neighbourhood.

The former Stoney Creek City Council approved the Trillium Neighbourhood Plan on July 11, 1995. The plan was also modified by City of Stoney Creek staff on August 28, 1995 and on January 14, 1997. The proposed size of the park was to be 2.0 hectares (5.0 acres). A development consultant representing the property owners in the area objected to the size of the park. Accordingly, the City of Stoney Creek Secondary Plan
for the Trillium Neighbourhood approved a 1.0 hectare (2.47 acres) park site to be situated on Seabreeze Crescent.

Following municipal amalgamation, City staff from Real Estate in 2001 was directed to negotiate with the property owners for the purchase of these lands for the proposed park. Over the years, numerous meetings were held and a number of offers to purchase were made. Unfortunately none of the City values offered were favourably received by the owners.

Given the number of years that had passed, the construction of new housing in the subject Trillium Neighbourhood and the continued disagreement on land values, Public Works Open Space Development and Park Planning staff (now Landscape Architectural Services) in 2007 initiated a recommendation to City Council to commence the Expropriation process to obtain possession of the property.

City Council on August 8, 2007 approved Report PW07104 being Item 7.2 of the Public Works section of the Committee of the Whole Report 07-024 authorizing the initiation of Expropriation proceedings to acquire the lands at 67-85 Seabreeze Crescent for the proposed parklands in the Trillium Neighbourhood of the former City of Stoney Creek.

In an effort to keep open communications, further meetings were held by City Legal and Real Estate staff with the owners and their lawyer (Lee Pinelli retained in early 2008) to explain the City’s position and to find some course to hopefully provide early public access to the lands while the Expropriation process continued.

As a means to expedite the Expropriation process and to allow the City early possession of the subject lands, the owners Christian Beiers, in Trust et al endorsed a Section 30 Agreement of the Ontario Expropriations Act. Under the provisions of Section 30 of the Act, the owners consent to the acquisition of the lands by the expropriating body, the City of Hamilton, at an amount considered market value by the City, but allows the owners to apply to the Ontario Municipal Board for the determination of the final compensation to which the owners are entitled to by the Expropriations Act. This section eliminates the need for the Hearing of Necessity, the registration of an Expropriation plan, the making of the Official Offer and the passing of the various By-laws required under the Expropriations Act. Most importantly, this mechanism provides the City vacant possession of the parklands many months or years earlier than would be possible if the normal Expropriation process had to be completed.

City Council on December 10, 2008 approved Item 5.4 of Public Works Committee Report 08-019 approving the Section 30 of the Expropriations Act acquisition of the subject lands for the appraised value of $660,000.
Staff from the Legal Services Section and Real Estate Section were involved in the negotiations and preparation of the Section 30 agreement. Staff from the Public Works Open Space Development and Park Planning Section (now Landscape Architectural Services) was kept apprised during the discussion with the owners. Staff supported this agreement as it represented a fair interim resolution and avoids additional costs to the Expropriation process.

Further meetings were held with the legal representative of the owners and their appraisal team, but an agreement as to value could not be reached. In order to aid the City and the owners, a request was made for the assistance of the Board of Negotiation from the office of the Ontario Municipal Board. After a number of meetings and review of updated appraisal reports, an agreement to an “all in” $1,350,000 settlement was obtained. This amount includes compensation for the negotiated market value of the lands acquired by the City which is approximately $1,125,000.00, compensation for statutory interest on the revised negotiated market value in the amount of $75,000.00 and compensation in the amount of $150,000.00 to the owner for legal and appraisal fees.

Staff from Legal Services and Real Estate support this Agreement as it represents a fair and reasonable settlement to this expropriation and avoids the risk of having to mount an expensive defence at the Ontario Municipal Board and to pay further amounts in legal, appraisal and planning fees, interest costs and staff time.

**POLICY IMPLICATIONS**

The City of Hamilton as an Expropriating Authority and as an Approving Authority under the *Expropriations Act* is required to attempt to resolve issues of value of the lands or interests acquired by the City under the *Expropriations Act*. The proposed settlement deals with this obligation of the City and does not require any changes to City policy.

**RELEVANT CONSULTATION**

- Legal Services, City Managers Office
- Ward Councillor
- Environment and Sustainable Infrastructure, Public Works
ANALYSIS / RATIONALE FOR RECOMMENDATION

The City of Hamilton as an Expropriating Authority and as an Approving Authority under the Expropriations Act is required to attempt to resolve issues of value of the lands or interests acquired by the City under the Expropriations Act.

The proposed Expropriation settlement for the parkland is consistent with the approved parkland needs of the Trillium Neighbourhood Plan and the Secondary Plan.

The recommended settlement amount net of costs (professional fees and interest), is halfway more or less, between the City’s appraised market value estimate (as of the effective valuation date) and the land owner’s appraised market value. The outcome of an OMB arbitration hearing is unknown and even if a decision were to be made by the OMB that was in the City’s favour, considerable additional monies would be required to cover the legal and appraisal fees necessary to prepare for and attend said OMB hearing. Therefore, the settlement recommended herein represents a reasonable and preferred solution from a business case perspective.

ALTERNATIVES FOR CONSIDERATION:

City staff could, if directed by Council, attempt to negotiate better financial terms than the agreed payout settlement; but any further delays could force the owners to request a formal OMB hearing and the City would risk the imposition of a larger monetary settlement and the corresponding legal, appraisal and planning consultant fees that would go with a hearing. This option is not recommended.

CORPORATE STRATEGIC PLAN (Linkage to Desired End Results)


Skilled, Innovative & Respectful Organization

- n/a
Financial Sustainability
- Delivery of municipal services and management capital assets/liabilities in a sustainable, innovative and cost effective manner.

Intergovernmental Relationships
- n/a

Growing Our Economy
- n/a

Social Development
- n/a

Environmental Stewardship
- Natural resources are protected and enhanced.

Healthy Community
- Plan and manage the built environment.

APPENDICES / SCHEDULES

Appendix “A” – Location Plan
Appendix “A” LS10015

LOCATION PLAN

Parkland
Seabreeze Cres.
Former City of Stoney Creek
Section 30 Settlement
Christian Beiers in Trust

LEGEND

SUBJECT LAND

SCALE
NOT TO SCALE

DATE
2010-09-22

REFERENCE FILE NO: