TO: Chair and Members
Public Works Committee

WARD(S) AFFECTED: WARD 2

COMMITTEE DATE: February 7, 2011

SUBJECT/REPORT NO:
Proposed Permanent Closure and Sale of a Portion of Public Unassumed Alley Abutting 130 Barton Street East, Hamilton (PW11012) - (Ward 2)

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

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RECOMMENDATION

(a) That a portion of the public unassumed alley abutting 130 Barton Street East, Hamilton, be permanently closed and transferred to the owner of 130 Barton Street, East and the owner of 256 Mary Street, Hamilton, 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;

(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 at fair market value and 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

Representatives of St. Stephen’s Parish, located at 130 Barton Street East, Hamilton, have made application to permanently close and purchase a portion of the public unassumed alley at the rear of the property. The Church is the owner of all properties abutting the alley except one property at 256 Mary Street. As the owner of 256 Mary Street is in favour of the closure and is interested in purchasing their half of the portion of alley abutting their property, Operations and Waste Management staff support the request.

Alternatives for Consideration - See Page 4

FINANCIAL / STAFFING / LEGAL IMPLICATIONS

Financial: The applicant has paid a user fee of $1,060.46. The lands abutting residential properties will be transferred for one dollar, in accordance with the City’s policy regarding the sale of public unassumed alleys abutting residential properties. The lands abutting the Church will be transferred at fair market value, as determined by the Economic Development and Real Estate Division.

Staffing: Agreements 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 and the owner of 256 Mary Street pursuant to an...
agreement of purchase and sale or Offer to Purchase as negotiated by the Economic Development and Real Estate Division.

HISTORICAL BACKGROUND

St. Stephen’s Hungarian Parish is the owner of 130 Barton Street East, Hamilton and several residential properties abutting the subject lands. The Church is requesting that the alley be closed to reduce acts of vandalism and increase security. As the only other property owner abutting the alley supports the closure and will purchase half of the portion of alley abutting their property, Operations and Waste Management staff are in favour of the proposal.

POLICY IMPLICATIONS

A by-law must be passed to permanently close the lands, in accordance with the Municipal Act.

The process of closing the portion of the alley and transferring it to the abutting land owners fulfils the Public Works Business Plan goal of establishing “mutually beneficial charters with external customers.”

RELEVANT CONSULTATION

Notice was circulated to 100 property owners within a 400’ (121.9m) of the subject alley. The results of the notification are as follows:

In favour: 7   Opposed: 2   No response: 91

The negative responses were received from the registered owner of two properties within the notification area. Although there were no comments included with the responses, staff has discussed the proposal by telephone with the objecting property owner. The opposition is based upon the fact that the respondent feels alleys belong to the public and should not be available for sale.

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
- Hamilton Emergency Services
- Corporate Services Department: Budgets and Finance Division
- Ward Councillor
- Mayor
Staff from Development Engineering are opposed to the closure as it will eliminate the westerly access to Mary Street for the residents adjacent to the remaining opened portion of the subject alley. No other negative comments were received from City staff. Notice was circulated to Public Utilities including Horizon Utilities, Union Gas and Bell. Both Union Gas and Bell will require easement protection from the abutting private property owners for services within the alley.

**ANALYSIS / RATIONALE FOR RECOMMENDATION**

All abutting property owners are in favour of the permanent closure and will purchase the portion abutting their properties. The City has no use for the subject lands.

**ALTERNATIVES FOR CONSIDERATION**

The alley could remain open, however, the City would not receive the proceeds from the sale of the lands and the property owners issues with security would not be resolved. Staff is of the opinion that the potential benefit of improved security is good rationale for the closure.

**CORPORATE STRATEGIC PLAN**


**Healthy Community**

- Plan and manage the built environment

**APPENDICES / SCHEDULES**

Appendix “A” - Location Map
LOCATION PLAN

PROPOSED CLOSURE OF UNASSUMED ALLEY AT

130 BARTON STREET EAST

LEGEND

SUBJECT LANDS

DATE: December 7, 2010
Not to Scale