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<th>TO: Chair and Members Public Works Committee</th>
<th>WARD(S) AFFECTED: WARD 1</th>
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<td>COMMITTEE DATE: October 15, 2012</td>
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<td>SUBJECT/REPORT NO:</td>
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<td>Permanent Closure and Sale of a Portion of Public Unassumed Alley Abutting 2 Thorndale Street North, Hamilton (PW12070) - (Ward 1)</td>
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<td>SUBMITTED BY: Gerry Davis, CMA General Manager Public Works Department</td>
<td>PREPARED BY: Marilyn Preston (905) 546-2424 Extension 4298</td>
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<td>SIGNATURE:</td>
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**RECOMMENDATION**

(a) That a portion of the public unassumed alley abutting the south side of 2 Thorndale Street North, Hamilton, be permanently closed and transferred to the owner of 2 Thorndale Street North, Hamilton, as shown on Appendix A, attached to Report PW12070, subject to the following conditions:

(i) That the applicant makes an application to the Ontario Superior Court of Justice, 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 Ontario Superior Court of Justice 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 Manager, Surveys and Technical Services Section and that the applicant deposit a reproducible copy of said plan with the Manager, Surveys and Technical Services Section;

(b) That provided the application to the Ontario Superior Court of Justice to permanently close the lands is approved:
SUBJECT: Permanent Closure and Sale of a Portion of Public Unassumed Alley Abutting 2 Thorndale Street North, Hamilton
(PW12070) - (Ward 1) - Page 2 of 5

(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 of the 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 for one dollar;

(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, upon confirmation from the Public Works Department that all applicable fees and costs associated with the application have been paid by the applicant;

(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 of the City’s intention to pass the by-law pursuant to City of Hamilton By-law 04-299 being a By-law to Establish Procedures, including the Giving of Notice to the Public, Governing the Sale of Land Owned by the City of Hamilton.

EXECUTIVE SUMMARY

The owner of 2 Thorndale Street North, Hamilton submitted an application to permanently close and purchase portions of public unassumed alley abutting the south side and rear of the property. The original request was to purchase the alley to fence and maintain the lands which are currently overgrown with vegetation and not maintained by the City. Staff does not oppose the closure of the section of alley at the south side of the property but have determined that the section of alley at the rear should remain open to allow access to that portion of alley from the Norfolk Street entrance of the alley.

The owner of the property abutting the alley on the south side at 1544 Main St. West has provided documentation confirming that they have no interest in purchasing any portion of the alley.

Therefore, staff does not oppose the permanent closure and sale of the portion of the alley abutting the south side of the property to the owner of 2 Thorndale Street North, Hamilton.

Alternatives for Consideration - See Page 5

FINANCIAL / STAFFING / LEGAL IMPLICATIONS

Financial: The lands will be transferred to the owner of 2 Thorndale Avenue North for the nominal fee of 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 owner of 2 Thorndale Avenue North, Hamilton, 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 owner of 2 Thorndale Street North, Hamilton, submitted an application to permanently close and purchase the overgrown, public unassumed alley abutting the south and east sides of the property. As closing the portion at the rear of the property would deny access to the public entering the alley from the Norfolk Street entrance, the applicant agreed to withdraw the request for that portion of alley. The current application is to permanently close and purchase only the lands to the south of 2 Thorndale Street North, Hamilton.

POLICY IMPLICATIONS

A by-law must be passed to permanently close the lands in accordance with the Municipal Act, 2001.

The recently supported Alleyway Management Program endeavours to address citizen inputs, interests and concerns while balancing the overall benefit to the local community. Staff considers this closure and sale advantageous to the surrounding area in terms of aesthetic improvements and security.

The closure of this alley supports the Strategic Plan objectives of enhancing overall sustainability and implementing processes to improve effectiveness and efficiency.

RELEVANT CONSULTATION

Notice of the proposed closure and sale was sent to 80 property owners within a 400 foot (121.9 metre) radius of the closure area as shown on Appendix B, attached to Report PW12070. There were 5 responses in support of the application, 3 opposed and 1 no comment.

The owner of another property which abuts the south side of the alley at the Norfolk Street entrance supports the application and expressed interest in purchasing a portion of the alley. Staff has determined that the alley which abuts this property should remain open.
The following negative responses were received:

One property owner, who was opposed to the application, stated that he had inquired about purchasing a portion of the alley a few years ago and was advised that an application would not be supported. Staff has no record of any previous applications pertaining to this portion of alley.

Another owner, who was opposed to the application, stated that they did not want to see any changes in the area and stated that the current level of maintenance of the alley is acceptable. The City does not currently maintain the alley.

The owner of 1 Norfolk Street North, which abuts the portion of alley at the rear of 2 Thorndale Street North, was opposed and interested in purchasing a portion of alley at the rear of that property. However, staff have determined that this portion of alley should remain open to ensure access to the portion of the alley connecting the rear alley to Norfolk Street.

The following City Departments and Divisions were consulted on this application:

- Planning and Economic Development Department: Development Engineering, Building Services, Economic Development and Real Estate and Planning
- Hamilton Emergency Services
- Corporate Services Department: Budgets and Finance Division
- Ward Councillor

Planning Division staff (Community Planning and Design Section) was initially opposed to the application because if the portion of alley at the rear of 2 Thorndale Street North was closed, the entire length of alley would be rendered inaccessible. Economic Development and Real Estate Division staff (Real Estate Section) was also opposed to the closure of the rear portion as it would create a landlocked parcel running behind the properties fronting Norfolk Street North and Thorndale Street North. However, the modification to the application to include only a portion of the alley addresses these concerns.

Public utilities including Horizon Utilities, Hydro One, Bell and Union Gas were circulated for comment. Bell will require an easement.

**ANALYSIS / RATIONALE FOR RECOMMENDATION**

As all objections received from the public, municipal staff and public utilities have been addressed in the revised plan and as the City does not maintain the lands, the application to close and transfer the entire portion of alley abutting the south side of 2 Thorndale Street North, Hamilton to the owner of 2 Thorndale Street North, Hamilton is not opposed by staff.
ALTERNATIVES FOR CONSIDERATION

The alternative would be that the application be denied and the alley would remain public unassumed. However, the City does not currently maintain this unassumed alley and transferring the lands to private ownership would relieve the City of any potential future maintenance costs.

CORPORATE STRATEGIC PLAN


Healthy Community

• Plan and manage the built environment

APPENDICES / SCHEDULES

Appendix A - Aerial Drawing
Appendix B - Location Plan
PROPOSED CLOSURE OF UNASSUMED ALLEY ABUTTING 2 THORNDALE STREET

Sketch By: MM

12-12-2011
LOCATION PLAN

PROPOSED CLOSURE OF UNASSUMED ALLEY AT

2 THORNDALE STREET

LEGEND

SUBJECT LANDS

DATE: December, 2011

REFERENCE FILE NO.: PW10