SUBJECT: Section 30, Expropriations Act, City Purchase of 67-85 Seabreeze Crescent, Part 1 on Plan 62R-17990, Trillium Seabreeze Park, Trillium Neighbourhood (PED08304 / PW07104(a)) (Ward 11)

RECOMMENDATION:

(a) That a Property Purchase Agreement, pursuant to the provisions of Section 30 of the Ontario Expropriations Act, executed by the owners Christian Beier, in Trust et al, scheduled to close on or before December 16, 2008 for the vacant 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, known 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 PED08304 / PW07104(a) attached), be approved and completed and that the acquisition price of $660,000 and any administrative costs or expenses of the Real Estate Section and Legal Service Section be charged to Capital Budget Item 4400556521 – Trillium Seabreeze Park.
(b) That the initial compensation of $660,000 for the subject property outlined in Recommendation (a) above be subject to the following conditions:

i) Pursuant to the provisions of Section 30 of the Ontario *Expropriations Act*, the Owner(s) hereby consents to the acquisition of the herein described lands by the City of Hamilton. The City hereby consents to an application by the Owner(s) to the Ontario Municipal Board for the determination by the Board of the compensation which the Owner(s) would be entitled by the *Expropriations Act* if the land was expropriated. The City hereby agrees to pay to the Owner any compensation determined by the Board or in the event of an appeal, as determined by the Court of Appeal, in excess of the amount of compensation paid pursuant to the agreement herein. If the amount of compensation stated in this agreement exceeds the compensation awarded by the Ontario Municipal Board or Court of Appeal, the Owner(s) agrees to refund the difference to the City within 30 days of the decision of the Ontario Municipal Board or Court of Appeal, in excess of the amount of compensation paid pursuant to the agreement herein.

ii) The City further agrees to pay the statutory interest on any such additional compensation pursuant to Section 33 of the Ontario *Expropriations Act*.

iii) It is understood and agreed that the date of valuation of the subject lands for the Section 30 agreement and for any other valuation and compensation purposes under the *Expropriations Act* is deemed to be the date of the execution by the Owner(s) herein.

iv) It is understood and agreed that the execution of this Section 30 agreement does not dispense with a Hearing before the Board of Negotiation. The parties agree not to proceed to arbitration before the Ontario Municipal Board unless the City and the Owner(s) have both agreed to dispense with negotiations before the Board of Negotiation or negotiations before same do not result in a settlement of compensation. The above does not limit the parties from obtaining a final settlement of compensation prior to an application by the Owner(s) to the Ontario Municipal Board.

v) It is understood and agreed that the purchase price is Six Hundred and Sixty Thousand Dollars ($660,000.00) for the above mentioned lands together with and including any buildings or structures situated thereon and all permanent fixtures that may be attached thereto.

vi) It is understood and agreed that reasonable legal or other professional costs, relating to the expropriation, incurred subsequent to the execution of the agreement will be paid upon final settlement or adjudication of the Section 30 compensation.
Subject to any requirements under the terms of any existing mortgage(s) on the subject lands, the City shall pay Gowlings Law Office - Lee Pinelli in trust for the Owner(s) the sum of Six Hundred and Sixty Thousand Dollars ($660,000.00) on the closing of this transaction.

The City shall reimburse the Owner(s) his reasonable legal costs incurred in negotiating, settling the terms of, and closing this Section 30 agreement, subject to the City's right, within 30 days after receiving the Owner's account, to apply to have the account assessed in the event that the City does not agree with it. The Owner(s) agrees to execute a Consent, or other document, as may be required, for the Ontario Municipal Board to Order assessment of such costs, forthwith upon request by the City.

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

(e) That the sum of $15,000 be funded from Account No. 4400556521 and credited to Account No. 57880-3560150200 being the costs incurred for the provision of real estate services and that all future costs to settle the Expropriation be funded from and charged to Capital Budget No. 4400556521 – Trillium Seabreeze Park.

Scott Stewart, C.E.T.       Tim McCabe
General Manager          General Manager
Public Works             Planning and Economic Development
Department

**EXECUTIVE SUMMARY:**

This recommendation deals with the initial payment for the 2007 proposed City expropriation of the lands located at 67-85 Seabreeze, being the site of the future Trillium Neighbourhood Park, as required by the Urban Lakeshore Area Secondary Plan. The owners, Christian Beiers, in Trust et al are prepared to sell and provide vacant possession of the parklands for 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.

**BACKGROUND:**

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

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 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, Open Space Development and Park Planning staff in 2007 initiated a recommendation to City Council to commence the Expropriation process to obtain possession of the parklands.

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.

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 Open Space Development and Park Planning Section was kept apprised during the discussion with the owners. Staff supports this agreement as it represents a fair interim resolution and avoids additional costs to the Expropriation process.

**ANALYSIS/RATIONALE:**

The proposed Expropriation settlement to purchase the parkland is consistent with the approved Trillium Neighbourhood Plan and Secondary Plan.

The opportunity to acquire and secure this property based on an agreement with the owners Beiers et al, on an amicable legal basis, presents an opportune time to move forward with the early acquisition of the site.

**ALTERNATIVES FOR CONSIDERATION:**

In the event approval for the Section 30 settlement is not granted by Council, the City may be faced with a protracted expropriation to obtain the subject lands in order to accommodate the proposed Trillium Seabreeze Park. A full formal Expropriation process is an expensive, confrontational and time consuming process.

Council could choose not to approve this Section 30 settlement for the Expropriation to acquire the subject property for parkland. In this alternative, the park would take longer to be designed, completed and available for public use.

If it was determined that the Park was no longer required, then an amendment to the Secondary Plan would be required to re-designate the lands for other than park purposes. This option is not recommended as it contravenes the original intent of the Urban Lakeshore Area Secondary Plan.

**FINANCIAL/STAFFING/LEGAL IMPLICATIONS:**

**Financial:** Funding for the land purchase and ancillary costs is available from Account No. 4400556521.

**Staffing:** n/a.

**Legal:** Legal Services will be required to assist in the preparation of the necessary documents required to complete the transaction as set out herein. Staff from Legal Services and Real Estate would be involved to assist to negotiate a final settlement of this Expropriation.
POLICIES AFFECTING PROPOSAL:

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

Approval of this report does not alter or contravene established policies of the City of Hamilton.

RELEVANT CONSULTATION:

- Public Works Department, Open Space Development and Park Planning Section
- Planning and Economic Development Department, Real Estate Section
- Corporate Services Department, Legal Services Division

CITY STRATEGIC COMMITMENT:

By evaluating the “Triple Bottom Line”, (community, environment, economic implications) we can make choices that create value across all three bottom lines, moving us closer to our vision for a sustainable community, and Provincial interests.

Community Well-Being is enhanced. ☑ Yes  ☐ No
Providing lands to develop a lakefront park for the local community of the former City of Stoney Creek.

Environmental Well-Being is enhanced. ☑ Yes  ☐ No
Greenspace is maintained and expanded in the subject neighbourhood.

Economic Well-Being is enhanced. ☐ Yes  ☑ No

Does the option you are recommending create value across all three bottom lines? ☐ Yes  ☑ No

Do the options you are recommending make Hamilton a City of choice for high performance public servants? ☑ Yes  ☐ No

vdp
Attach. (1)
LOCATION PLAN

Section 30 Settlement of Beiers Expropriation
Part 1 on Plan 62R-17990
Part of 67-85 Seabreeze
former City of Stoney Creek
now in the
CITY OF HAMILTON

LEGEND

SUBJECT LAND

SCALE

DATE

NOT TO SCALE 2008-11-26

File #2001-027