TO: Chair & Members
Public Works Committee

WARD(S) AFFECTED: WARD 1

COMMITTEE DATE: April 19, 2010

SUBJECT/REPORT NO:
Proposed Permanent Closure and Sale of a Portion of Public Unassumed Alley Abutting 176 Locke Street North, Hamilton (PW10041) - (Ward 1)

SUBMITTED BY:
Beth Goodger
Acting General Manager
Public Works Department

PREPARED BY:
Marilyn Preston
(905) 546-2424, Extension 4298

SIGNATURE:

RECOMMENDATION

(a) That the public unassumed alley running east/west between 176 Locke Street North and 170 Locke Street North in Hamilton, be permanently closed and transferred to the owners of 176 Locke Street North and 170 Locke Street North in Hamilton, as shown on Appendix “B” attached to Report PW10041, 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 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 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 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;

(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

An application was received from the owner of 176 Locke Street North in Hamilton to permanently close and purchase a portion of the public unassumed alley abutting the property. The applicant’s property is pie shaped and the closure would straighten out the lot and allow the applicant to install a continuous fence.

Notice of the proposal was sent to property owners within a 400’ (121.9 m) radius of the neighbourhood. The owner of 170 Locke Street North, also abutting the subject alley, initially expressed opposition to the closure. However, when offered the option of purchase the remnant portion of the alley, the owner’s response was favourable.

As an uneven division of the alley is the only way to address the applicant’s issues, staff supports the division and sale of the alley, as shown on Appendix "B" attached to Report PW10041.

Alternatives for Consideration - See Page 4

FINANCIAL / STAFFING / LEGAL IMPLICATIONS

Financial: The owner of 176 Locke Street North, who submitted the application, has paid a user fee of $319.93. The lands will be transferred to the abutting owners for one dollar each, in accordance with the City’s policy regarding the sale of public unassumed alleys abutting residential properties.
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 abutting owners, 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 subject alley is designated public unassumed and it is currently overgrown and not maintained. The current City policy is to not perform maintenance in public unassumed alleys. Therefore, the permanent closure and transfer of the lands to private ownership will relieve the city of any future maintenance responsibilities and also resolve the applicant’s issues.

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 alley and transferring it to the applicant fulfills the Public Works Business Plan goal of establishing “mutually beneficial charters with external customers.”

RELEVANT CONSULTATION

Notice of the proposed closure and sale was sent to 114 property owners within a 400 foot (121.9 metre) radius of the alley. The results of the circulation were 6 opposed, 3 in favour and 105 did not respond.

Only one of those opposed to the closure abuts the subject alley. That owner has agreed to purchase the portion of alley that the owner of 176 Locke Street North does not require. Although both the east/west and intersecting north/south alley appear to be unused, the other property owners who are opposed would retain access to the rear of their properties via the north/south alley.

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
The Ward Councillor held a meeting on site with members of the neighbourhood to discuss the proposed closure and sale of the alley. The owner of 170 Locke Street North expressed his concerns regarding the closure and the impact it may have on access to the rear of the property. However, the intersecting alley running north/south is still accessible and the subject alley has not been maintained and does not appear to be used with any frequency.

Public Works Department staff met on site with the applicant and the Ward Councillor to discuss any options other than the division proposed in Appendix “B” attached to Report PW10041. It was determined that in order to resolve the applicant’s issues, the preferred option would be the one shown on Appendix “B” attached to Report PW10041.

Public utilities including Horizon Utilities, Bell and Union Gas were circulated for comments and no negative responses were received.

**ANALYSIS / RATIONALE FOR RECOMMENDATION**

After reviewing the only options which would resolve the applicant’s issues while not creating a remnant parcel, staff and the Ward Councillor have determined that the division of the alley, as shown on Appendix “B”, attached to Report PW10041, is the preferred option.

**ALTERNATIVES FOR CONSIDERATION**

The owner of 176 Locke Street North, Hamilton has made application to permanently close and purchase a portion of the public unassumed alley abutting the south side of the property, as outlined in Appendix “B” attached to Report PW10041. The applicant’s property is pie shaped and access to the rear garage is currently only possible by crossing over a portion of the alley that appears to be a paved driveway. The applicant also proposes to install a fence for security purposes.

The following options were presented to the owners abutting the subject lands:

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

Another alternative would be to divide the alley in equal portions and transfer half of the lands to each abutting owner. However, the applicant has requested the lands to be...
divided as in Appendix “B” attached to Report PW10041 in order to straighten out an irregular shaped lot. Dividing the lands equally would not resolve this issue.

As the above options would not resolve the applicant’s issue nor the issue of the remnant parcel, another option was presented. The owner of 170 Locke Street North was offered the right to purchase the remnant portion of alley that the applicant does not require. However, if the offer to purchase was declined it would result in the entire portion of alley being transferred to the owner of 176 Locke Street North. The decision of the owner of 170 Locke Street North has indicated his desire to proceed with the purchase of the remnant parcel.

**CORPORATE STRATEGIC PLAN**


**Healthy Community**

- Plan and manage the built environment

**APPENDICES / SCHEDULES**

Appendix “A” - Location Plan

Appendix “B” - Proposed Alley Division
Vision: To be the best place in Canada to raise a child, promote innovation, engage citizens and provide diverse economic opportunities.

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