SUBJECT: Agreement to Accept Compensation - 1287302 Ontario Inc. (Satwant Madesha) Easement Expropriation of Part of 952 Queenston Road Parts 1, 2 and 3 on Expropriation Plan WE228019, (PW03119(b)) / (LS07001) / (PED07042) (Ward 9)

RECOMMENDATION:

(a) That an Agreement by the Owner to Accept Compensation, resulting from the expropriation of certain lands known as part of 952 Queenston Road (as shown on Appendix A attached to Report PW03119(b) / LS07001 / PED07042) in the former City of Stoney Creek, executed on December 4, 2006 by 1287302 Ontario Inc. (Satwant Madesha), scheduled to close on or before March 19, 2007, for the lands designated as Parts 1, 2 and 3 on Expropriation Plan WE228019, registered on April 22, 2004, also described as Parts 1 and 2 on Plan 62R-15649 and Part 1 on Plan 62R-16352, be approved and completed, and that the sum of $47,000 be paid to 1287302 Ontario Inc., and charged to Account Number 5160067054 (Sewage Pumping Station HC004 - Donn Avenue Replacement).
(b) That the sum of Forty-Seven Thousand Dollars ($47,000) resulting from the settlement of the expropriation of part of 952 Queenston Road be made to Jaskula, Sherk Law Office (Christopher B. Sherk) in Trust for 1287302 Ontario Inc. (Satwant Madesha) pending the completion of all of the terms and conditions of the Agreement by Owner to Accept Compensation.

(c) That the following conditions form part of the Agreement to Accept Compensation:

“It is understood and agreed that forming part of and as a condition of this Agreement by Owner to Accept Compensation document that the undersigned Owner will enter into and execute the Option to Purchase (Easement) agreement attached hereto as Schedule “C”, of the easement over Part 1 on Plan 62R-17574 for consideration in the amount of $2.00.

It is understood and agreed that the closing of the transaction by the City of Hamilton to purchase Part 1 on Plan 62R-17574 will be completed concurrently and contemporaneously with the closing of the Agreement by Owner to Accept Compensation for the City's expropriation of Parts 1, 2 and 3 on Expropriation Plan WE228019.

It is understood and agreed that forming part of and as a condition of this Agreement by Owner to Accept Compensation document that the City will release all interests and easement rights over Part 1 on Expropriation Plan WE228019, as shown as Part 1 on Plan 62R-16352, to the Owner. This release of interests will be completed concurrently and contemporaneously with the purchase by the City of Part 1 on Plan 62R-17574 from the Owner.”

(d) That an Option to Purchase (Easement) over certain lands known as part of 952 Queenston Road, described as Part 1 on Plan 62R-17574, designated as Part of Pin #17317-0052(LT) (as shown on Appendix B attached to Report PW03119(b) / LS07001 / PED07042) in the former City of Stoney Creek, executed on December 4, 2006 by 1287302 Ontario Inc. (Satwant Madesha), scheduled to close on or before March 19, 2007 be approved and completed and that the purchase price of $2, be charged to Account Number 5160067054 – Sewage Pumping Station HC004 - Donn Avenue Replacement.

(e) That the easement over Part 1 on Expropriation Plan WE228019 be declared surplus to the requirement of the City of Hamilton and be abandoned and released back to 1287302 Ontario Inc., who was served with the notice of expropriation, which Owner has agreed to take the land back pursuant to the terms and conditions set out in the Agreement by Owner to Accept Compensation and that this abandonment and release be made pursuant to the terms and condition set out in the Agreement by Owner to Accept Compensation and that the City Solicitor be directed to take all the necessary steps to abandon the lands described as Part 1 on Expropriation Plan WE228019 and more
EXECUTIVE SUMMARY:

The purpose of this report is to request City Council’s approval to confirm the full and final settlement of a long outstanding sewer easement expropriation of lands located at 952 Queenston Road, in the former City of Stoney Creek for $47,000. The terms of the settlement require the City to release an expropriated easement over the parking lot of the plaza and for the owners to grant an alternative access easement over other lands of the owners at no cost to the City.

BACKGROUND:

Committee of the Whole, on September 10, 2003, approved Item 22 of COW Report 3-024 authorizing the commencement of the expropriation of easements over Parts 1 and 2 on Plan 62R-15649 and Part 1 on Plan 62R-16352 for sanitary sewer and access purposes. City Council, on March 24, 2004, approved Item 7 of Public Works, Infrastructure and Environment Committee Report 04-008 authorizing the expropriation of easements over Parts 1, 2 and 3 on Expropriation Plan WE228019.

The subject property, known as the Scenic Square shopping mall, is located in the former City of Stoney Creek and is situated on the south side of Queenston Road, just west of Donn Avenue.
The easement rights were required over part of the lands at 952 Queenston Road to permit the extension of a sanitary sewer system and to permit access to these lands for construction and future maintenance purpose. The extension allowed for the elimination of the need for the existing pumping station HC004, located at Donn Avenue and Burwell Avenue, which had reached its life expectancy and was in need of major rehabilitation. Negotiations to purchase the required easements were not successful, therefore, to avoid a sanitary sewer failure and the corresponding major health concerns for residents in the area, staff requested Council’s approval for the expropriation of these lands to facilitate the sewer works.

Parts 2 and 3 on Expropriation Plan WE228019 were required for the easement to accommodate the sanitary sewer line extension. Due to the steep slope from the heavily travelled Queenston Road to the sewer location, Water and Waste Water staff did not consider this as a safe access point to complete the sewer project construction. The preferred solution to this problem resulted in securing the access easement over Part 1 on Expropriation Plan WE228019 located on the paved parking lot of the plaza. This would allow for machinery and workers to travel over the parking lot to gain entry to the southerly abutting City owned parklands and eventual access to the sewer line. This Part 1 easement would also provide future right of access for any maintenance and testing of the sewer line.

While the City provided access over the parking lot for the sewer construction by means of the expropriated Part 1, the contractor hired by the City to complete the sewer work determined that the least damaging route was, with the cooperation of the owners of the plaza, to bring in fill and build a small alternative access lane for his machinery from Queenston Road to the sewer worksite.

Real Estate staff had numerous meetings with the owners and with various lawyers acting for owners over the past several years to conclude the expropriation but all suggested resolutions met with no success or could not be completed.

The plaza owners were adamant that any agreement would require the City to abandon or release back to the owners the expropriated Part 1 easement interest in the parking lot or face damage claims for business losses, for injurious affection compensation for the balance of the plaza property and for claims from the tenants of the plaza. As the alternative entry route was in fact utilized for the completion of the sewer works and is still in place, the new access easement location is agreeable to Water and Waste Water staff. A locked vehicular gate from Queenston Road has been installed to allow entry to the lane for Public Works staff as and when required.

With a sense that the matter would eventually go to the Ontario Municipal Board if a compromise was not reached, it was finally concluded that the owners would agree to a full, final and all encompassing settlement amount of $47,000. The settlement would include, without limitation, the negotiated value of all easement land compensation, any business claims, any injurious claim to the lands not acquired, all statutory interest from the date of the expropriation, legal fees, appraisal fees, banking fees, owners time,
inconvenience and any and all other claims to compensation as set out in the Expropriations Act, as a full and final payment.

As terms of the settlement, the City would acquire, at no cost to the owners, an alternative access easement over Part 1 on Plan 62R-17574 being the location of the actual construction lane to the municipal sewer line. The City would, concurrent with this purchase for the new easement, release the now redundant expropriated easement interest on Part 1 on Expropriation Plan WE228019 back to the owner.

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

**ANALYSIS/RATIONALE:**

Approval of the terms of the Agreement will remove a long outstanding financial and legal claim against the City. City staff time would be freed up to pursue other legal and real estate matters and would avoid the risk of a larger monetary settlement imposed upon the City at the Ontario Municipal Board.

**ALTERNATIVES FOR CONSIDERATION:**

City staff could, if directed by Council, attempt to negotiate better financial terms than the agreed payout settlement of $47,000 and or the relocation of the parking lot access easement; but any further delays could force the owners to request an OMB hearing and the City would risk the imposition of a larger monetary settlement and the corresponding legal and appraisal fees that would go with a hearing. This option is not recommended.

**FINANCIAL/STAFFING/LEGAL IMPLICATIONS:**

**Financial:** Sufficient funds are available in Capital Budget Number 5160067054 – Sewage Pumping Station HC004 - Donn Avenue-Replacement to settle the expropriation.

**Staffing:** N/A.

**Legal:** Services of Legal Services will be required to finalize the Agreement and deal with registration of deeds, discharges, releases and notices on title.
POLICIES AFFECTING PROPOSAL:

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:

The following were consulted in the preparation of this report:

- Water and Waste Water Division, Public Works Department
- Legal Services, City Manager's Office

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
Public utility services and programs are delivered in an equitable, coordinated, efficient manner and accessible to all citizens. This settlement is the final step in the construction of a new sanitary sewage line to replace the old failing Donn Avenue pumping station with a new stable and reliable gravity sewer system.

Environmental Well-Being is enhanced.  ☑ Yes  ☐ No
Human health and safety are protected. The failing sanitary system, with the resulting possible backup of sewer wastes in the surrounding neighbourhoods, is being replaced with a new gravity sewer line. This financial settlement is the concluding phase of the project.

Economic Well-Being is enhanced.  ☑ Yes  ☐ No
The proposed recommendation avoids the risks of a higher settlement imposed on the City at the OMB.

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
Attachs. (2)
LOCATION PLAN

Expropriation of 952 Queenston Road
Former City of Stoney Creek
Part 1 over Plaza Parking Lot for Access
Parts 2, 3 for Sewer Pipeline

CITY OF HAMILTON

LEGEND

SUBJECT LAND

SCALE
NOT TO SCALE
DATE
2007-01-30
KEY MAP

LOCATION PLAN

Expropriation of 952 Queenston Road
Former City of Stoney Creek
Replacement Access Easement to be Purchased

CITY OF HAMILTON

LEGEND

SUBJECT LAND

SCALE

NOT TO SCALE

DATE

2007-01-30