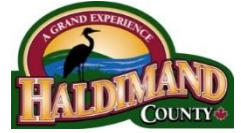

HALDIMAND COUNTY

Report LSS-02-2019 Road Closure and Conveyance of Market Avenue, Hagersville



For Consideration by Council in Committee on January 15, 2019

OBJECTIVE:

To authorize staff to proceed with the road closure and conveyance of Market Avenue in Hagersville.

RECOMMENDATIONS:

1. THAT Report LSS-02-2019 Road Closure and Conveyance of Market Avenue, Hagersville be received;
2. AND THAT the subject road allowance legally described as PIN # 38180-0131(LT), being Part of Lot 16, Range East of Plank Road Oneida, Part 2 on 18R-5264 (SRO), S/T 08295; Haldimand County, be closed, declared surplus and conveyed to the abutting owners 1964267 Ontario Inc. (Mohawk Gardens) for \$1.00, plus costs of the closure and conveyance, excluding survey fees, with the condition that the lands be added to the abutting lands.
3. AND THAT public notice of the proposed closure and conveyance be given;
4. AND THAT a By-law be passed to authorize the closure and conveyance;
5. AND THAT the Mayor and Clerk be authorized to execute all necessary documents.

Prepared by: Sandra Marsh, Property Coordinator

Reviewed by: Dana McLean, Supervisor, Risk Management & Legal Services

Respectfully submitted: Cathy Case, General Manager of Corporate & Social Services

Approved: Craig Manley, MCIP, RPP, Deputy Chief Administrative Officer

EXECUTIVE SUMMARY:

Market Avenue is currently being used as the entrance to Mohawk Garden Centre in Hagersville. Upon staff review, it has been determined that Market Avenue is not required to be retained by the County as it serves no other purpose other than access to the garden centre. In order to address ongoing historical issues, staff have initiated the road closure and conveyance process and have determined that this road allowance can be deemed surplus to the County's needs and divested in accordance with the established process for road closures and conveyances.

It is recommended that the County stop up and close the road, and divest the land to the abutting owner for a nominal fee.

BACKGROUND:

The subject land, legally known as Market Avenue, totalling approximately 0.17 acres, abut the lands currently owned by 1964267 Ontario Inc. (commonly known as Mohawk Gardens), which is municipally

known as 4670 Highway 6 South, Hagersville. A location map of the subject property is shown as Attachment #1.

In 2002, the former Town of Haldimand opened Market Avenue to allow a roadway off of Highway 6 to facilitate a legal entrance to the business in the absence of the Ministry of Transportation (MTO) support for an entrance directly off of Highway 6, without construction of a new turning lane. Market Avenue is considered a public highway under the Municipal Act and is owned by Haldimand County. Although Market Avenue is owned by the County, the County did not pay for the installation of the asphalt surface of the road which currently exists, and does not provide maintenance. The roadway is currently used by the public as an entrance to Mohawk Gardens. Additionally the roadway is currently occupied by Mohawk Gardens for landscape material storage and a fence that restricts access to the public roadway after business hours. A recent survey has confirmed that the existing fencing and gates are encroaching onto the MTO right-of-way and the subject lands.

The subject lands intersect with Highway 6 for which the MTO has jurisdiction. The MTO has confirmed that it does not object to the closure and conveyance of Market Avenue to Mohawk Gardens, provided certain conditions are met, one of which is the removal of any encroachments on the MTO right-of-way. If the road closure and conveyance is approved by Council, Mohawk Gardens will be required to obtain an MTO Entrance Permit Change of Ownership, which is necessary for providing Mohawk Gardens with legal access to Highway 6. Staff will assist Mohawk Gardens in obtaining this permit.

There are also several historical Planning issues that remain outstanding with respect to site plan non-compliance. These infractions will need to be resolved to legitimately allow for continued operation of the property, as intended at the time of the site plan application. Mohawk Gardens is currently working with Planning staff in this regard and has agreed that transfer of the subject lands will not be finalized until the Planning matters have been addressed.

ANALYSIS:

Typically, when a member of the public seeks to purchase a County road allowance, an application fee is required to begin the process, along with circulation to a wide variety of stakeholders to ensure that the property is not required and can be declared surplus to the needs of the municipality. Since the road closure and conveyance for Market Avenue in Hagersville is County initiated, no administration fee is applicable, but the normal circulation process is still a requirement. The road will need to be formally closed by bylaw if a transfer is to take place and would be required to follow the County's standard road closure process.

In order to determine the feasibility of closure of the subject road, staff circulated a "Road Closure Inquiry Form" to Hydro One, Union Gas, Bell Canada, Rogers Cable, Grand River Conservation Authority and the following Haldimand County Divisions: Building & Municipal Enforcement Services, Community Development & Partnerships, Economic Development & Tourism, Emergency Services, Engineering Services, Environmental Operations, Facilities, Parks, Cemeteries & Forestry Operations, Planning & Development, and Roads Operations. All comments received supported the closure with no easement requirements.

In reviewing the road closure request, staff, in keeping with the County's past practice, notified all abutting property owners of the possible closure and conveyance. Mohawk Gardens and the MTO are the only abutting landowners to the subject property. MTO has communicated to County staff that there are no fees required for the entrance permit as the change of ownership is the only reason for the permit and there would be no conditions to the permit unless there is a future change in use on the Mohawk Gardens site.

During a routine road closure and conveyance process, the applicants are advised that the land, if deemed surplus, will be sold for no less than the appraised value, plus all costs of closure and conveyance. This is a unique situation in that the County has initiated the road closure and conveyance process as a housekeeping matter to address an outstanding issue and remove the risk and liability to the County associated with what has become, more or less, private use of a public roadway.

When considering the closure and conveyance of this property, Council should keep in mind the following:

- If sold, the road allowance will merge with the abutting lands owned by the applicants;
- This road allowance is zoned “A” Agricultural and has minimal development potential due to its small size, making this land unsuitable for an open road in its current condition and undesirable to anyone other than an abutting owner;
- This road allowance only provides legal access to the abutting property, being Mohawk Garden Centre;
- Although this road allowance is owned by the County, the County did not pay for the installation of the existing asphalt surface of the road nor does it maintain it;
- Sale of this property would eliminate the County’s risk and liability associated with use of this portion of the road allowance;
- All County property will be sold as is/where is and the purchasers will sign an Acknowledgement confirming this.

Based on the above limitations, the fact that the roadway is not necessary for municipal purposes, and that a transfer will facilitate compliance with a number of other outstanding issues, staff are proposing transfer of the property to Mohawk Gardens for a nominal value of \$1.00. The transfer will also address historical unresolved Planning issues.

Mohawk Gardens will be responsible for their own conveyancing costs, all applications/permit costs and costs of removing fencing, gates and other encroachments that may be on the lands owned by MTO. If the closure and conveyance is approved, staff will assist Mohawk Gardens in the process of obtaining the MTO Entrance Permit/Change of Ownership. Mohawk Gardens is in agreement with the recommendations within this report should Council approve the conveyance of the land to them.

For the reasons outlined above, staff recommend closing this road allowance, declaring the lands surplus, conveying the property to the abutting landowners conditional on the property merging with the existing lands owned by Mohawk Gardens and that all of the costs of the closure and conveyance be borne by Mohawk Gardens.

If the closure and conveyance to the applicant is not approved, the existing encroachment onto County lands will need to be addressed. Staff does not recommend entering into an Encroachment Agreement with the applicants to address the location of the fencing and gates. Typically encroachments onto public roadways are not acceptable. It would require a formal agreement, registration on title, Mohawk Gardens to provide insurance to the municipality annually, and ongoing monitoring of the lands. In addition, the County retains its liability with regard to owning a public roadway. If a closure and conveyance is not supported by Council, staff recommends the encroachments be removed and relocated onto the private property.

FINANCIAL/LEGAL IMPLICATIONS:

All costs associated with the closing of the property transaction will be borne by the purchaser with the exception of a survey of the County roadway that has already been completed.

The purchaser will also be responsible for all costs related to the outstanding Planning matters that need to be completed.

If sold, the property would generate property tax revenue and would no longer be the responsibility or liability of the County.

In accordance with the County's Notification Policy, a proposed road closure and conveyance is to be advertised in the local newspaper prior to consideration of a By-law.

STAKEHOLDER IMPACTS:

Planning & Development and Engineering Services staff have provided information for this Report.

REPORT IMPACTS:

Agreement: No

By-law: Yes

Budget Amendment: No

Policy: No

ATTACHMENTS:

1. Map of the Subject Lands