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# HALDIMAND COUNTY

## Report LSS-13-2019 Road Closure and Conveyance of Part of Tuscarora Street and King William Street, Caledonia

For Consideration by Council in Committee on June 18, 2019

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### OBJECTIVE:

To advise Council of a request to close and convey part of Tuscarora Street and King William Street, Caledonia.

### RECOMMENDATIONS:

1. THAT Report LSS-13-2019 Road Closure and Conveyance of Part of Tuscarora Street and King William Street, Caledonia be received;
2. AND THAT the application from James Hutton for the road closure and conveyance of PIN # 38155-0834(LT) Part of King William Street, Plan 51; Haldimand County and PIN # 38155-0139(LT) Tuscarora Street, Plan 51, between King William Street and Winniett Street, Haldimand County not be approved for the reasons outlined in Report LSS-13-2019.

**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:** Donald G. Boyle, Chief Administrative Officer

### EXECUTIVE SUMMARY:

The County has received a request to close and convey part of the road allowances known as Tuscarora Street and King William Street in Caledonia, together with the applicable road closure administration fee. Staff are recommending that the subject lands be retained by the municipality and not sold to the Applicant, in accordance with comments received from County divisions requiring the property to be retained for access purposes.

### BACKGROUND:

In 2010, the County approved the closure and conveyance of portions of King William Street in Caledonia, which were deemed hazard land, to various surrounding property owners, including James Hutton. The portions of King William Street were added to the surrounding property owners' abutting lands. This closure and conveyance was authorized by Council through Report CS-SS-26-2013 on August 27, 2013. At the time that the portion of King William Street was conveyed to Mr. Hutton, he did not advise as to any intended use for the lands other than joining it to his existing property.

The County is now in receipt of another road closure request from Mr. Hutton to purchase part of the road allowances known as Tuscarora Street and a different portion of King William Street in Caledonia, which lands are identified in yellow on Attachment #1. The subject land, totaling approximately 0.28 acres, is an untraveled section of road that abuts the northerly boundary of Winniett Street, abuts the

southerly boundary of the Old Methodist Cemetery, and abuts the most easterly boundary of the lands owned by the Applicant, James Hutton, and municipally known as 34 Kincardine Street, Caledonia.

Staff have determined that the subject lands are currently used by the public and County staff to access and maintain the cemetery property, respectively, and should be retained for municipal purposes. Staff previously advised Mr. Hutton that it is appropriate that the lands be retained for municipal purposes, and in response, Mr. Hutton presented staff, consecutively, with several different options to consider for servicing and access through a portion of the subject road allowances. These options included purchasing the most westerly 16 feet of the subject road allowances, possibly purchasing a 20 foot strip in the middle of the subject road allowances and creating a shared gravel driveway to access the cemetery and Mr. Hutton's property. Possible servicing and access easement options were also discussed. The lands identified on Attachment #1 is the final option that Mr. Hutton has submitted for consideration.

## **ANALYSIS:**

Mr. Hutton owns the abutting property, municipally known as 34 Kincardine Street, Caledonia which has road frontage on the east side of Kincardine Street. Mr. Hutton would like to develop the lands he currently owns, but has encountered restrictions regarding servicing and access to his property via Kincardine. The majority of his property is in the floodplain which would not support new development and only contains a small potential buildable area. Attachment #2 is a map provided by the Grand River Conservation Authority and identifies the area that has possible development potential. Sanitary servicing is not possible by gravity from Kincardine Street to the Applicant's property. The GRCA would permit a secondary access lane from Kincardine to the building area (this may require a retaining wall or switch back due to the steep slope), but the GRCA has stated they could not support this as the only driveway access to the property, therefore Mr. Hutton is requesting to have the subject lands closed and conveyed to him to allow for development of a single residential unit, with access from Winniett.

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 Capital & Asset Management, Facilities, Parks, Cemeteries & Forestry Operations, Planning & Development, Roads Operations and the Bereavement Authority of Ontario.

Hydro One, Rogers Cable and Bell Canada have advised that easements are required for existing infrastructure should Council approve the closure and sale request.

The Bereavement Authority of Ontario advised that the operator of a cemetery is not required to construct a paved road into a cemetery, however, must allow the public reasonable access to the cemetery. Closure and sale of the subject lands would leave the cemetery without legal access.

The County's Facilities Capital & Asset Management Division and the Facilities, Parks, Cemeteries & Forestry Operations Division confirmed a sale would land lock and restrict access to the cemetery for both the public and County staff. The cemetery is currently maintained by the County. The Divisions also noted that there is an established Canada Post super mailbox on the subject lands that services the surrounding area and would need to be relocated if the property were sold.

The Planning and Development Division provided comments, stating the County is obligated to maintain and provide access to a working cemetery; something that would be more difficult to achieve by the full or partial conveyance of the road allowance. They went on to say, the County's preference is that all development within urban boundaries be connected to full municipal services (water and

sanitary mains). The Official Plan does not allow complete private servicing within urban boundaries, however, does allow partial servicing in specific and unique cases. The Planning & Development Division is of the opinion that the provision of partial servicing may be possible by Mr. Hutton entering into an agreement with the County for an easement over the road allowance, still owned by the County. That said, Planning staff have concerns regarding the development ability of 34 Kincardine Street. The property Mr. Hutton currently owns, being 34 Kincardine Street, is designated as Floodway in the Official Plan, and zoned 'Hazard Land' in Zoning By-law 1-H 86. This is due to the possibility of flooding on the property, as well as concerns of slope stability in this location. The lands are also regulated by the Grand River Conservation Authority (GRCA) and any development would require review and approval by the GRCA, including all necessary permits. The Applicant would need to consult the relevant County Divisions to determine if there is a servicing approach that is acceptable to the Public Works Department.

As a result of the Planning comments, the option of providing an easement over Tuscarora to the Applicant's property was investigated further by staff, in particular the Environmental Services Division and the Engineering Services Division, to see if private servicing and a gravel driveway access could be extended along municipal road allowance. Providing an easement for private servicing in a road allowance for development of a single unit is not considered a best practice. Additionally, a private gravel driveway over an unopened municipal road, which is public property, is not something the County would consider. Several divisions could not support the Applicant's proposed approach. As a result, it was determined that the closure and conveyance of the road allowance cannot be supported, nor could an easement allowing private access or private infrastructure in the roadway.

In reviewing the road closure request, staff, in keeping with the County's past practice, notified all abutting property owners of the expression of interest received, and the possible closure and conveyance. Surrounding landowners (Maye, Carson and Fowler) have expressed concerns regarding the closure and sale of the subject land and oppose a sale to the Applicant.

For the reasons outlined in this report, staff do not recommend closure and conveyance of this unopened road allowance.

## **FINANCIAL/LEGAL IMPLICATIONS:**

The non-refundable road closure administration fee in the amount of \$1,151 has been received. When an application is made for a road closure and conveyance, the applicant is advised that the fee is non-refundable and that there is no guarantee their application will be supported. The administration fee is to recover some of the costs of the processes undertaken by staff to deal with the request for the road closure given that the benefit of such a transaction is primarily to the applicant.

## **STAKEHOLDER IMPACTS:**

Planning & Development, Building & Municipal Enforcement Services, Engineering Services, Environmental Operations, Facilities Capital & Asset Management, Facilities, Parks, Cemeteries & Forestry Operations, Water & Wastewater Engineering & Compliance and the Grand River Conservation Authority have provided information for this report.

## **REPORT IMPACTS:**

Agreement: Yes

By-law: Yes

Budget Amendment: No

Policy: No

## **ATTACHMENTS:**

1. Map of the Subject Lands
2. Potential Building Area