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# HALDIMAND COUNTY

## Report LSS-03-2021 Road Closure and Conveyance of Part of Townline Road, Lowbanks



For Consideration by Council in Committee on February 9, 2021

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### OBJECTIVE:

To declare part of the road allowance known as Townline Road in Lowbanks as surplus to the County's needs and authorize staff to proceed with the road closure and conveyance process.

### RECOMMENDATIONS:

1. THAT Report LSS-03-2021 Road Closure and Conveyance of Part of Townline Road, Lowbanks be received;
2. AND THAT Part of PIN # 38100-0405(LT) being Part of the Road Allowance between the Township of Wainfleet and the Township of Moulton abutting Concession 1 from Lake Erie and Concession 2 from Lake Erie west of Centre line; Haldimand County, with an approximate location as shown on Attachment #1 to Report LSS-03-2021, be stopped up, closed and declared surplus to all County needs;
3. AND THAT Part of PIN # 38100-0405(LT) being Part of the Road Allowance between the Township of Wainfleet and the Township of Moulton abutting Concession 1 from Lake Erie and Concession 2 from Lake Erie west of Centre line; Haldimand County, with an approximate location as shown on Attachment #1 to Report LSS-03-2021, be sold to the abutting owner to the east, for a purchase price of \$1,700, plus HST and costs of the closure and conveyance conditional on an easement being registered for existing waterlines, if necessary, and that the purchaser obtains an approved application from the Niagara Peninsula Conservation Authority for the construction of a break wall for the purpose of shoreline protection;
4. AND THAT public notice of the proposed closure and conveyance be given;
5. AND THAT a by-law be presented for enactment to authorize the closure and conveyance;
6. AND THAT the Mayor and Clerk be authorized to execute all necessary documents.

**Prepared by:** Sandra Marsh, Property Coordinator

**Reviewed by:** Michelle Brandt, Supervisor, Risk Management & Legal Services

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

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

### EXECUTIVE SUMMARY:

A request was made by the owners of 13203 Lakeshore Road in Wainfleet to purchase the 33 foot road allowance adjacent to their property and owned by Haldimand County; identified by the yellow outline on Attachment #1. The subject property is a boundary road with the other half being owned by the Township of Wainfleet. The proposed purchase would be contingent on the Applicant's ability to also

purchase the abutting 33 foot road allowance from the Township of Wainfleet, identified by the black hash marks on Attachment #1. The road allowances would be added and merged with 13203 Lakeshore Road to become one parcel for the purpose of installing erosion control measures at the end of the road known as Townline Road and fronting on Lake Erie, with all costs borne by the applicant.

The County has identified this unopened road allowance as one that it could divest if a neighbouring owner was interested in acquiring it. The subject road allowance is not required by the County and is not suitable or maintained for public access to Lake Erie given the lack of parking, slope and natural erosion that is occurring. Staff are recommending that the County stop up and close the road, and divest the land to the abutting owner to the east for a purchase price of \$1,700 plus HST and costs of closure and conveyance to install shoreline protection to protect their property.

## **BACKGROUND:**

Erosion is a naturally occurring situation along the shores of Lake Erie and it has significantly impacted the southern most portion of the unopened road allowance known as Townline Road in Lowbanks, identified by the yellow outline on Attachment #1. The subject road allowance abuts the Township of Wainfleet road allowance, identified by the black hash marks on Attachment #1.

While there is no legislative requirement for a municipality to install erosion control on land it owns, nor has it been the County's past practice to do so, in recent years staff identified two road allowances along the Lake Erie shoreline that have been drastically affected by erosion, being Warnick Road and Dickhout Road, both in the Lowbanks area. In order to facilitate and allow property owners to install erosion control measures, Warnick Road was stopped up, closed and sold to neighbouring owners in 2016. The unopened portion of Dickhout Road was also stopped up, closed and sold to the neighbouring owners for the same rationale. When an individual landowner has requested a road closure and conveyance in order to install erosion control measures, the County has reviewed each individual request based on its own unique circumstances. Although the County has, in the past, authorized conveyances for nominal consideration due to severe erosion in the area and the significant costs associated with installing erosion control, it is not recommended in this particular situation. The applicant is a corporation and the Municipal Act does not allow selling or leasing property to a commercial entity for less than fair market value. To do so would be considered bonusing under the Municipal Act.

The original applicants were John and Gail Etling, who owned the cottage known as 13203 Lakeshore Road in Wainfleet. At the time the application was submitted, they asserted that in addition to the erosion that has occurred to the area fronting Lake Erie, recent storms have also contributed to damage to the cottage. For this reason, they were requesting to purchase the Haldimand County and Wainfleet Township road allowances to prevent and mitigate any future damage to their property with the intent of erecting shoreline protection. The Etlings have recently sold the property to Hube Hospitality Inc. (Thomas Newell). Mr. Newell has expressed an interest in continuing both the road closure and conveyance requests with Haldimand and Wainfleet in order to proceed with installing erosion control measures at the property. Mr. Newell has since demolished the cottage due to the extensive damage and may opt to construct a new structure within the existing cottage footprint; however, without having erosion control on the abutting County road allowance, the lands will continue to erode and exposure to water, as a result of storm surges, still exists.

Both Wainfleet and the County worked together to determine if the road allowances could be closed and conveyed to the abutting owner for the purpose of installing erosion control measures and prevent further damage to the property. Wainfleet staff presented this matter to its Council in a closed session on August 4, 2020; however, the road closure and conveyance was not authorized as requested, therefore the request to close and convey the Haldimand road allowance was put on hold at that time.

In November 2020, this area once again sustained severe storm damage and Wainfleet Council then authorized the road closure and conveyance request to Mr. Newell for an undisclosed price. Mr. Newell has now requested that the Haldimand road closure and conveyance application process continue.

The County road allowance had an encroachment agreement registered on title on January 18, 1999 (HC243633) with the abutting neighbour to the west (2966 Northshore Drive) to address the encroachment of a buried tank, well cap and two stone pillars. The registered encroachment agreement will remain on title regardless of whether the road allowance remains under the ownership of the County or if the road allowance is sold.

## **ANALYSIS:**

Hube Hospitality Inc. wishes to purchase part of a County road allowance and has submitted their request, together with the application fee in order to begin the process. Upon receipt of such a request and subsequent payment, staff circulate the request 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.

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 and the following Haldimand County Divisions: Building Controls & By-Law Enforcement, Community Development & Partnerships, Economic Development & Tourism, Emergency Services, Engineering Services, Environmental Services, Facilities, Parks, Cemeteries & Forestry Operations, Planning & Development, and Roads Operations. The Ministry of Natural Resources and Niagara Peninsula Conservation Authority (NPCA) were also advised. All comments received supported the closure; however, several property owners in the area requested deeded access/easements be given to them if the lands were sold in order to allow continued access to Lake Erie. A property owner on the north side of Lakeshore Road/Northshore Drive obtains water through this area and requested an easement to allow this to continue. If the waterlines are located on the Haldimand road allowance, an easement will need to be granted to allow the collection of water from Lake Erie to continue. Wainfleet has also agreed to allow for an easement if the waterlines are located on the Wainfleet road allowance. Engineering Services has reviewed the water line situation and supports the easement.

On March 12, 2020, the Township of Wainfleet held a public meeting in order to gather comments regarding the proposed closures and sales of the County and Wainfleet road allowances. Below is a summary of the comments from the public meeting as well as comments received directly by County staff:

*There are waterlines running through both the County and Wainfleet road allowances that service some properties on the north side of Lakeshore Road/Northshore Drive. The existing waterlines are used to obtain water from Lake Erie, run under Lakeshore Road/Northshore Drive, and some are used for existing farming operations. There were no easements or agreements registered on title regarding the waterlines, however the benefitting parties indicated the necessary permissions were obtained, however, no documentation could be located. The property owners using the existing water lines have requested permission to continue accessing water in this location and have requested an easement be granted to them if the lands are sold. There is also no documentation on title regarding the existence or permissions for the waterlines to run under the travelled municipal road (Lakeshore/Northshore).*

*Some area property owners are disappointed in the maintenance and lack of erosion control of both road allowances by the municipalities and feel they would be penalized by cutting off their access to Lake Erie if the road allowances would be sold.*

*The County sold some lands in the area through the tax sale process and it was believed these lands would be landlocked if the subject road allowances were closed. The tax sale property is underwater and does not actually abut the County road allowance.*

*Several property owners in the area indicated they use the subject road allowances for well water, swimming access and launching recreational water crafts and would like this access to the lake to continue in this location, even if the road allowances are sold. Some owners requested an access easement, however, it was noted that the high lake water levels may make access unsafe in this area.*

The owners of 2966 Northshore Drive, which is the property abutting the west side of the County road allowance, have not expressed any concern to staff of the possible closure and conveyance of this section of road, nor have they given any indication of their desire to purchase it.

As noted above, there were several neighbours who provided commentary and feedback. Specific to the water lines running through the road allowances, if the sale of said land is approved, County staff will register the necessary easement prior to the sale process and the easement will remain on title regardless of ownership. The costs to register the easement will be included within the closure and conveyance cost; for which Mr. Newell has agreed to. Wainfleet has also agreed to allow for an easement for the water lines that are located on the Wainfleet road allowance.

If the land is sold, public access to the waterfront cannot be guaranteed, especially if a break wall is constructed. The solicitor representing the original applicants had previously indicated it may be problematic to grant easements for access to other property owners due to liability and maintenance issues. As a result of a staff site inspection, access is considered unsafe due to high water levels, the degree of erosion and exposed water lines. As well, there is not sufficient space for safe onsite parking. Typically, if publicly-owned land is deemed surplus, it is to be sold for no less than the appraised value plus all costs of closure and conveyance. The purpose of the appraisal is to estimate the market value of the subject property based on the most probable “best use” at the time. No formal appraisal was obtained. Since the property is a small, undevelopable piece of land, staff have relied on the County’s Vacant Land Values Chart to determine the current market value. In accordance with the County’s Vacant Land Values Chart, the value of this 0.2 acre parcel of land is approximately \$1,700. Staff recommend sale of the land based on the following:

- this 33 foot wide road serves as an access to Lake Erie and borders a 33 foot wide road in Wainfleet, and is not suitable for public access;
- disposal of this property will eliminate the associated liability of these lands;
- there is no reasonable expectation that anyone other than the abutting landowner would be interested in purchasing the subject lands in order to install erosion control;
- the applicant has received a quote to construct the erosion control feature for shoreline protection which is quite substantial in cost, and has contacted the NPCA to obtain permit information and costs;
- installation of the erosion control could add additional protection to Lakeshore Road from storm surges; and
- acknowledgement of the costs associated with installing erosion control, as well as the fact that the abutting owner/applicant will be required to cover necessary legal and survey costs.

In consideration of the above, staff are recommending closing this 0.2 acre portion of road allowance, declaring the lands surplus and conveying the lands for a purchase price of \$1,700 plus HST on the condition that a permit is obtained from the applicable conservation authority, authorizing the installation of erosion control to protect the neighbouring properties. The sale will also be conditional on all necessary easements being registered on title. The usual land transaction provisions will apply,

including the “as is/where is” condition. The applicant(s) will be responsible for costs of the closure and conveyance, including legal and survey costs.

### **FINANCIAL/LEGAL IMPLICATIONS:**

The sale proceeds are minimal and will be transferred to the Land Sales Reserve. The application administration fee was paid in order to start the road closure and conveyance process.

The abutting property owner/applicant will be responsible for legal and survey costs related to this transaction, will be required to make all necessary applications and will obtain permits in order to install erosion control along Lake Erie once ownership of the property has been obtained.

### **STAKEHOLDER IMPACTS:**

Not applicable.

### **REPORT IMPACTS:**

Agreement: No

By-law: Yes

Budget Amendment: No

Policy: No

### **ATTACHMENTS:**

1. Map of the Subject Property