
HALDIMAND COUNTY

Report LSS-08-2022 Road Closure and Conveyance, Part of South Talbot Road, Dunnville



For Consideration by Council in Committee on April 19, 2022

OBJECTIVE:

To authorize staff to proceed with a road closure and conveyance request for part of South Talbot Road.

RECOMMENDATIONS:

1. THAT Report LSS-08-2022 Road Closure and Conveyance, Part of South Talbot Road, Dunnville be received;
2. AND THAT the subject road allowance, as shown in yellow on Attachment #1 to LSS-08-2022 and legally described as PIN 38218-0065; PT RDAL BTN CON 3 AND CON 4 S TALBOT RD NORTH CAYUGA PT 2 18R5966, S/T the interest of the Municipality; Haldimand County, be stopped up, closed and declared surplus to all County needs;
3. AND THAT the subject road allowance, as shown in yellow on Attachment #1 to LSS-08-2022 and legally described as PIN 38218-0065; PT RDAL BTN CON 3 AND CON 4 S TALBOT RD NORTH CAYUGA PT 2 18R5966, S/T the interest of the Municipality; Haldimand County, be sold to the abutting land owner, Summerhill Resorts Ltd. for a purchase price of \$15,862.50 plus HST plus costs of the closure and conveyance.
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: Melissa Lloyd, Property Coordinator

Reviewed by: Lori Friesen, Manager of Legal & Support Services

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

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

EXECUTIVE SUMMARY:

The County has received a request from Summerhill Resorts Ltd. to close and convey part of South Talbot Road which is legally described as being located in Dunnville, but has a mailing address of Cayuga. Staff have determined that these lands are not required for municipal purposes and can be deemed surplus to the County's needs and divested in accordance with the established process for road closures and conveyances. A location map of the subject property is shown as Attachment #1 and a copy of the offer is included as Attachment #2.

BACKGROUND:

In March 2021, staff received notification that Summerhill Resorts Ltd. (Summerhill), was in the process of purchasing the campground at 1019 Haldimand Road 17, Cayuga; and at that time, a discrepancy in title was discovered. Specifically, Part of South Talbot Road was in the name of Kimberly Murphy, with a notation in the legal description on the PIN which stated 'S/T (subject to) the interest of the Municipality'. A search into the history of this matter determined that the road allowance was never legitimately transferred to Murphy, the road had not been stopped up and closed, and therefore the County was still the lawful owner of the road allowance.

The legal firm acting on behalf of Summerhill is also the same firm that had acted for the prior transaction with Murphy, noted above. The firm has confirmed that the transfer of the road allowance to Murphy is, in fact, not valid.

There is no known evidence to support that a past request had ever been submitted to acquire these lands. After seeking independent legal confirmation, the County's lawyer concurred, that as there was no record on title of this road allowance ever being stopped up and closed; and in the absence of such evidence, The Corporation of Haldimand County remains the lawful owner of the road allowance.

It is not uncommon for situations like this to occur. During the Province's conversion from the land registry system to the land titles system in the 1990's, there were often times where title for particular parcels of real estate could not be guaranteed, meaning at the time of conversion there was some form of uncertainty affecting the lands and preventing the province from giving clear title. One such uncertainty is when a municipal road dissects a property but has not been formally closed and conveyed to that property owner by the municipality. Therefore, as per the Municipal Act, the road remains a public highway by definition, and remains in ownership, or "subject to the interest of" the municipality. These situations are often noticed when a subsequent transaction is about to take place and the legal review process is being completed. At that time the municipality is notified and if requested, it proceeds with the road closure and conveyance process to determine if the road can be closed by bylaw and then sold to the applicant.

As a result of the above, Summerhill Resorts Ltd., the confirmed legal owner of 1019 Haldimand Road 17, Cayuga, has submitted an offer to purchase part of South Talbot Road, Dunnville, (Attachment #2) which runs through a portion of their property as shown in Attachment #1. This offer will allow the road allowance to become part of the Summerhill property and provide clear title.

ANALYSIS:

Summerhill Resorts Ltd. (Applicant) has provided the County with a non-refundable administration fee of \$1,207.00 as well as a deposit of \$800.00. As demonstrated on the Location Map (Attachment #1), the previous owner and now the current owner have been utilizing this County owned road allowance for an unspecified period of time. Despite the amount of time the Applicant has used it, there is not a valid claim for adverse possession because a road that has not been closed by by-law cannot be claimed in that manner. The established process is for the County to consider the request to close the road and convey it to the owner for an appropriate value.

Upon receipt of such request, staff circulated notice to County divisions which included commentary from the offer letter that the requester is seeking to purchase the property to clear title: Public Works, Facilities and Parks, Building Controls & By-Law Enforcement, Community Development & Partnerships, Economic Development & Tourism, Emergency Services, Engineering Services, Environmental Services and Planning; as well as the necessary utility companies and abutting land owners.

No concerns or objections were brought forward by County divisions or utilities.

GRCA Comments: No concerns with the proposed sale but would like the purchaser to understand that part of the road allowance is a regulated GRCA area and the purchaser must consult with the GRCA if development is contemplated in that area. Staff have conveyed this information to the Applicant.

An inquiry was received from an abutting land owner about the road allowance but no concerns were received.

The Applicant has proposed a purchase price of \$15,862.50 plus HST, which slightly exceeds the value calculated using the County's Vacant Land Value Chart. The offer includes the standard clauses covering environmental acknowledgement and purchasing the property on an "as is – where is" basis. Staff recommend that the road be closed by bylaw and the lands, totalling approximately 1.41 acres, be sold to the abutting owner for the submitted purchase price plus HST and all costs of closure and conveyance. Once sold, the subject lands will merge with the two abutting parcels already owned by the Applicant.

FINANCIAL/LEGAL IMPLICATIONS:

If Council approves the closure and conveyance the net proceeds of the sale will be contributed to the Land Sales Reserve in accordance with the Disposal of Surplus Lands Policy 2002-06.

All costs associated with the property transactions will be borne by the Applicant. If sold, the road allowance would no longer be the legal 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:

Not applicable.

REPORT IMPACTS:

Agreement: No

By-law: Yes

Budget Amendment: No

Policy: No

ATTACHMENTS:

1. Map of the Subject Lands
2. Unsolicited Offer