
HALDIMAND COUNTY

Report LSS-02-2022 Road Closure and Conveyance, Part of Military Road, Dunnville



For Consideration by Council in Committee on September 20, 2022

OBJECTIVE:

To authorize staff to proceed with the road closure and conveyance request for part of Military Road in Dunnville.

RECOMMENDATIONS:

1. THAT Report LSS-02-2022 Road Closure and Conveyance, Part of Military Road, Dunnville be received;
2. AND THAT the subject road allowance legally described as PIN # 38124-0136 (LT) being Road Allowance Between Lot 12 and Lot 13 First Range from Grand River Moulton Between Part 2 & 3 HC63268 and Part 4 18R4194; Haldimand County (Lands), with an approximate location as shown as Attachment # 1 to Report LSS-02-2022, be stopped up, closed and declared surplus to all County needs;
3. AND THAT the Lands be sold to the abutting owner, 918965 Ontario Limited for the purchase price of \$2.00, plus HST, plus costs of the closure and conveyance;
4. AND THAT said conveyance be conditional upon an easement being registered for maintenance of an existing drain;
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.

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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 918965 Ontario Limited (Applicant) to close and convey part of Military Road in Dunnville. From Northshore Drive, Military Road runs parallel with the Applicants driveway with a portion of this road being in marshlands or under water, and a portion that is usable having been unknowingly incorporated into the Applicants driveway. Historically, the County has been utilizing the private driveway/Military Road to access the Maple Creek Drain, although no formal easement or authority has been granted to the County for use of the private driveway by the Applicant.

Staff have determined that ownership of Military Road is not required for municipal purposes and are recommending that it be deemed surplus to the County's needs and divested in accordance with the established process for road closures and conveyances, conditional on an easement being provided

over the lands to maintain access to the Maple Creek Municipal Drain. The Applicant has agreed that if the conveyance of Military Road is approved, it will be merged with the Applicants property and an easement in perpetuity over the driveway will be provided in favour of the County to enable continued access to the Maple Creek Municipal Drain.

BACKGROUND:

The County is in receipt of a request from 918965 Ontario Limited (which is wholly owned by Archie and Cheryl Merigold) to close and purchase part of Military Road in Dunnville. 918965 Ontario Limited (the Applicant) is the abutting land owner to the west of the subject lands at 1052 Northshore Drive and Archie and Cheryl Merigold own the abutting property to the east of the subject lands at 1056 Northshore Drive (Attachment #1).

After an onsite visit with Engineering and Property staff along with the Applicant and his solicitor; and with supplemental information provided by the surveyor, a large portion of Military Road which runs parallel to the length of the east side of the driveway is under water or in marshlands. The portion of usable or accessible land has been incorporated into the Applicants driveway for an undetermined amount of time. The County utilizes the road allowance and the Applicant's driveway, without any formal agreement in place, to access the municipal drain that runs through the subject lands. It is imperative for the County to maintain access to this drain for future maintenance requirements under the Drainage Act.

The Applicants solicitor has expressed that no road exists nor ever physically existed; and that this is an "untraveled road". It should be noted that unopened roads exist throughout Haldimand County and other municipalities. They often do not appear as a constructed road would appear. In some instances, unopened roads may not appear at all as a roadway, and to the eye, may blend in well with the surrounding landscape, however, they are legally considered roads or road allowance by way of a plan of subdivision, a Crown survey or by a road dedication by-law.

The Applicant has submitted an offer to close and convey the road allowance.

ANALYSIS:

Upon receipt of the prescribed County application fee from the Applicant, staff circulated notice to County divisions: Public Works, Facilities and Parks, Building and Municipal Enforcement Services Division, Community Development & Partnerships, Economic Development & Tourism, Emergency Services, Engineering Services, Environmental Services and Planning; as well as the Grand River Conservation Authority (GRCA) necessary utility companies.

Emergency Services comments: Emergency Services has no issues, as long as it does not affect their ability to respond.

Engineering comments: While the marshy conditions and environmental concerns limit the cleaning out of the length of the Maple Creek Municipal Drain (Drain) downstream of Northshore Drive, the County does monitor the crossings and culverts for blockages and beaver dams. The Drainage Act allows the municipality access to work along the drain to complete maintenance. Given the marshy nature, it would not be practical to access the culverts along the drain directly. Historically, the Applicant has provided access to the Drain using their private driveway; as a large portion of Military Road which is County-owned, is in the marsh or under water. If there is no easement agreement and the land was sold, the County would need to work with the new owner to arrange for access, which would not be guaranteed. An access easement in favour of the County is necessary to avoid future problems with municipal drain obligations.

Planning comments: Planning is not aware of any planning related matters regarding this road allowance.

In order to secure ongoing maintenance of the Drain, best practice is to secure an easement on title, in perpetuity, which will remain on title regardless of future ownership.

No concerns or objections were brought forward by other County divisions, the GRCA or utilities.

When a request to purchase a road allowance is received by staff, prior to proceeding, 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. 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. The County's past practice is to require the Applicants to pay for a certified appraisal to determine the value of the property. The cost to the Applicants of obtaining a certified appraisal is significant at approximately \$3,000 to \$3,500. Where it is expected that the sale of the lands would result in competing interests, it is advisable to obtain a certified appraisal or an opinion of value. However, in situations where the only party interested in acquiring the land would be the abutting land owners, staff feel that the County's Vacant Land Values Chart (VLVC) is a reasonable alternative to determine the estimated property value. Any Applicant who does not agree with the County's established property value has the option of obtaining an independent certified appraisal or opinion of value at their own cost, for Council's consideration.

In line with the aforementioned valuation process, the value of the subject lands has been applied with the following considerations:

- If sold, the road allowance will merge with abutting lands to the west owned by 918965 Ontario Limited.
- The Applicants have been using and maintaining a portion of the subject lands, with the other portion being in the marshland or under water and in the GRCA floodplain.
- The County has not maintained the lands as a roadway but has utilized a portion of the lands to access the Drain, although access using the private driveway is required as the usable portion of Military Road is not wide enough for vehicle or equipment access. To ensure future continued rights to access an easement will be required.
- Due to the fact that a portion of the subject lands are under water, there is no reasonable expectation that anyone other than the abutting landowners would be interested in purchasing the subject lands.
- Sale of the lands would transfer the County's risk and liability associated with ownership of this portion of the road allowance.
- All County property is sold as is/where is and the purchasers will sign an Acknowledgement confirming this.
- Typically when the County initiates a request for an easement, all costs associated with the easement would be borne by the County. This includes a survey in order to depict which parts of the property would be part of the easement. The cost of a survey is approximately \$5,000. In this case, the Applicant has agreed to pay for the survey and associated costs of easement (preparation and registration of easement agreement) in exchange for receiving the road allowance at nominal value. The agreement will be subject to County review, feedback and approval to ensure that the County's risk and potential for exposure are mitigated.

Based upon the County's (VLVC), the road allowance, being approximately 1.05 acres of land, would be calculated at an estimated value of \$7,875 - although this is based upon all of the land being usable. Approximately 30 to 50% of the road is in the marsh or under water (due to ebbs and flows of the water). An adjustment to the usable land value was made reducing it by 50% and bringing the value to

approximately \$4,000 based on the VLVC. The Applicant obtained an opinion of value from a Realtor (Attachment #2) valuing the land between \$4,500 to \$5,000 noting that Maple Creek divides the property, having extensive areas of seasonal wetness/flooding with the property in the GRCA identified floodplain. The opinion of value aligns closely with staff's calculation.

The Applicant has offered to purchase the subject lands for \$2 + HST, and agreed to pay for all costs for a survey, development of an easement agreement and all costs associated with closure and conveyance of the road; in exchange for an easement in perpetuity being registered on title in favour of Haldimand County, at no cost to the County.

The County requires an easement agreement over the entire driveway which includes the usable portion of Military Road that is being sold, to ensure continued access for drain maintenance. The driveway is 0.713 acres. To ensure that the County is not bonusing the Applicant if the land is sold at the \$2 nominal fee in exchange for the easement in perpetuity, staff applied the same methodology that has been used in the past for easements provided to other parties. Historically, the County has applied an easement compensation percentage of 50% of the estimated value of the easement lands utilizing the VLVC when no infrastructure is installed within the easement lands.

	Acres	Estimated Market Value	50% Market Value
Value of easement lands (usable portion of Military Road + Applicant's driveway)	0.713	\$5,347.50	\$2,673.75

To summarize, the usable land value the County would expect to receive for Military Road is approximately \$4,000. If the County was required to pay for an easement agreement it would be approximately \$2,675 plus costs of survey and legal fees (approx. \$6,000). This would result in a net loss for the County. However, the Applicant's offer is to purchase the road for a nominal fee of \$2.00 plus HST, to pay for the survey (approximately \$5,000), the legal costs associated with the easement (approximately \$1,000) and the legal costs associated with the closure and conveyance, in exchange for granting an easement in perpetuity at no cost. These costs exceed the value of the easement lands and associated costs that would otherwise be applicable to the County. This avoids a net loss situation for the County and avoids contravening the bonusing provisions of the Municipal Act.

Staff supports the Applicant's offer and recommends approval which will divest the County of a road no longer necessary and mainly unusable, while maintaining legal access to the Maple Creek Municipal Drain to ensure continued and uninterrupted access for maintenance purposes.

FINANCIAL/LEGAL IMPLICATIONS:

Staff will continue to work with the Applicant's lawyer to finalize the details of the easement agreement, and upon approval, it will be registered on title. All survey and legal costs will be borne by the Applicant.

Overall, the offer proposed by the Applicant is a reasonable offer that avoids contravening the bonusing provisions of the Municipal Act, therefore staff support accepting the offer to close and convey a portion of Military Road in exchange for the Applicant granting an easement in perpetuity over the required lands (road + driveway) to maintain permanent access and allow ongoing maintenance of the Maple Creek Municipal Drain.

Since there will not be any funds exchanged, there are no direct financial implications to the budget.

STAKEHOLDER IMPACTS:

Not applicable.

REPORT IMPACTS:

Agreement: Yes

By-law: Yes

Budget Amendment: No

Policy: No

ATTACHMENTS:

1. Map of the Subject Lands
2. Letter of Opinion