
HALDIMAND COUNTY

Report LSS-03-2023 Request to Purchase a Portion of Road Allowance – Farr Road, Dunnville



For Consideration by Council in Committee on February 7, 2023

OBJECTIVE:

To authorize staff to proceed with a road closure and conveyance of part of Farr Road in Dunnville.

RECOMMENDATIONS:

1. THAT Report LSS-03-2023 Request to Purchase a Portion of Road Allowance - Farr Road, Dunnville be received;
2. AND THAT the subject road allowance, as shown as Part 1 in yellow hashtags and Part 2 in pink hashtags on Attachment #1 to LSS-03-2023 and legally described as part of PIN 38126-0215, Road Allowance Between Lot 16 and Lot 17 Concession Broken Front and Concession 1 to Concession 2 Sherbrooke; also known as Farr Road; Haldimand County, be stopped up, closed and declared surplus to all County needs;
3. AND THAT the subject road allowance, as shown as Part 1 in yellow hashtags on Attachment #1 to LSS-03-2023 and legally described as part of PIN 38126-0215 Road Allowance Between Lot 16 and Lot 17 Concession Broken Front and Concession 1 to Concession 2 Sherbrooke; also known as Farr Road; Haldimand County, be sold to the abutting land owner, Ruth-Ann Nieuwesteeg, for the purchase price of \$900 plus HST plus costs of closure and conveyance;
4. AND THAT the subject road allowance, as shown as Part 2 in pink hashtags on Attachment #1 to LSS-03-2023 and legally described as part of PIN 38126-0215 Road Allowance Between Lot 16 and Lot 17 Concession Broken Front and Concession 1 to Concession 2 Sherbrooke; Also Known As Farr Road; Haldimand County, be sold to the abutting land owner, Jill Aileen Graham, for the purchase price of \$300 plus HST plus costs of closure and conveyance;
5. AND THAT public notice of the proposed closure and conveyances be given;
6. AND THAT a by-law be passed to authorize the closure and conveyances;
7. AND THAT the Mayor and Clerk be authorized to execute all necessary documents.

Prepared by: Melissa Lloyd, Property Coordinator

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

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

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

EXECUTIVE SUMMARY:

An unsolicited offer to purchase County owned lands, being a part of Farr Road, Dunnville, has been received. Staff have confirmed that the portion of unopened road allowance of Farr Road which has

been requested to purchase, is not required for municipal purposes and can be deemed surplus to the County's needs. A location map outlining Part 1 and Part 2, is included as Attachment #1.

BACKGROUND:

Ruth-Ann Nieuwesteeg is the owner of 2 Farr Road, Dunnville. Jill Aileen Graham is the owner of 27 Upper Mohawk Point Road, which abuts the Farr Road allowance.

A location map outlining Part 1 and Part 2, is included as Attachment #1. Ruth-Ann Nieuwesteeg has offered \$900 + HST for Part 1 which is approximately 0.12 acres. Jill Aileen Graham has offered \$300 + HST for Part 2 which is approximately 0.04 acres. The Applicants have signed an environmental acknowledgement and agreed to purchase the road allowances on an "as is" basis if the sale is approved; and confirmed that the road allowance will be merged as shown on Attachment #1 (green arrows) with their existing respective properties.

Ruth-Ann Nieuwesteeg, the original Applicant, had requested to purchase part of Farr Road. After purchasing her property in June 2021, she realized that her shed and stairs are located on the road allowance of Farr Road, Dunnville. Staff have been unable to determine when the shed and stairs were constructed as there are no building permits on file and per GIS imagery available, the shed and stairs existed pre-2006. Ms. Nieuwesteeg would like to retain the shed and stairs in order to maintain continued access to the water. Ms. Nieuwesteeg's neighbour, Jill Aileen Graham would also like to have legal access to the water. As agreed to by both parties, the Application was modified to submit as Co-Applicants in order to share the survey costs, if the sale is approved. The Applicants have agreed upon the portions to which they are applying to purchase; and as such, obtained a draft reference plan (Attachment #2) which identifies these portions as Part 1 and Part 2.

When a request to purchase road allowances is received, the Applicants are advised that the property, 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 \$4,000 per property. Appraisals are developed by certified appraisers and are based upon fact, using a variety of comparators, reviewing zoning and municipal bylaws, etc. In the case where the land is smaller in nature or not highly desirable in the open market, the County will often waive the requirement for a certified appraisal and request that the applicant obtains an opinion of value from a realtor, which is then compared to the County's Vacant Land Values Chart (VLVC) which was last updated in 2021 and verified in early 2022. The opinion of value is based upon the realtor's knowledge and comparisons of other properties that have sold in current market conditions. The Applicants obtained a letter of opinion from a realtor (Attachment #3) from which the offers have been based upon.

The VLVC is a tool that was implemented in 2015 with the assistance of different local realtors to aid in determining market values, for various property types; and for the different areas within the County. In reviewing the VLVC, it was determined that the proposed offers align with the VLVC for this type of property.

ANALYSIS:

Ruth-Ann Nieuwesteeg and Jill Aileen Graham (the Applicants) have submitted an Application and associated fee, along with their offer for each of the portions of land they would like to purchase. Applicant Nieuwesteeg is interested in purchasing Part 1 and Applicant Graham is interested in purchasing Part 2 as identified on the Location Map (Attachment #1).

In order to determine the feasibility of the sale of this property, if there is a municipal need for the lands, either in whole or in part, or if there are certain restrictions or provisions that should be placed on a proposed sale, staff seek feedback from County divisions including Public Works, Facilities and Parks, Building Controls & By-Law Enforcement, Community Development & Tourism, Emergency Services, Engineering Services, Environmental Services and Planning, utility companies and the applicable conservation authority.

During the feedback process which included an on-site inspection, the Roads Division and Engineering Services Division indicated concerns that a portion of the road allowance included in the Application, houses a drain and break wall to protect a travelled portion of Farr Road. Staff provided this feedback to the Applicants, specifically Ms. Nieuwesteeg, who modified her request to remove this portion of the road allowance and proportionally reduced her offered purchase price. The recommendation included in this report reflects the modified offer to purchase value and portion of the road allowance that Applicant Nieuwesteeg is now requesting to purchase.

As this property is along the lakeshore, Roads staff wanted to ensure that the Applicants were made aware that the current drainage along the municipal property cannot be impeded, that the current retaining wall along Farr Road will not be extended further to protect private property (if the sale is approved); and that shoreline erosion protection is private owner responsibility.

Erosion control naturally occurs along the Lake Erie shoreline. There is no legislative requirement for a municipality to install erosion control on its own lands, nor has it been the County's past practice to do so. Private property owners may install shoreline protection if approved through the relevant conservation authority. As per the comments received from the Niagara Peninsula Conservation Authority (NPCA) during the feedback process for this application, this particular property may be impacted by several identified hazards due to its proximity to Lake Erie. Any future development or site alterations, including grading or shoreline protection, must be circulated to the NPCA for review and approval prior to the commencement of the works on site. Work Permits from the NPCA would be required for any development or site alterations proposed in this area in the future. Staff have conveyed this information to the Applicants who have acknowledged that they understand.

Historically, Haldimand County Council has not supported selling waterfront property unless there are mitigating circumstances, such as a resident needing the land to install shoreline protection. Although the Applicants have not suggested that they will be installing shoreline protection, they have been made aware that if required, it will be their responsibility per the comments provided by Roads, Engineering and the NPCA.

Previously, there had been interest from the Applicants neighbourhood regarding this Application, although they are not abutting neighbours. Due to the level of interest, a courtesy notice was sent to the neighbours to provide notification of the offers to purchase. In response, staff received telephone calls from some of the neighbouring property owners with questions, including seeking to clarify the specific location of the portion of Farr Road that was included in the offer to purchase. Staff responded to the questions and the callers were satisfied with the response and provided no further comments or concerns.

Options

The following outlines the options available to Council in consideration of the request to purchase from the Applicants.

Applicant Nieuwesteeg (requesting to purchase Part 1, Attachment #1):

1. **Remain as status quo:** This is not a recommended option as the County remains exposed from an insurance perspective as the shed and stairs are on County property. For example, if a member of the public was using the stairs and fell causing injury, the County, as owner of the property, would be fully responsible to defend such a claim, with a potential for liability. Although

the stairs were not constructed by the County, they are on County property and the County owes a duty of care to users which includes documented inspections, preventative maintenance, repair, etc. Additionally, Ms. Nieuwesteeg is benefiting from the use of County owned land while the County receives no benefit of property tax income and continues to maintain liability exposure.

2. **Retain the property and order removal of shed and stairs:** Staff would work with the property owner to order the removal of the shed and stairs from County property. This is viable option; however, the County continues to receive no benefit of tax property revenue for land that staff have identified as no longer required for municipal purposes; and of which the Applicant would likely continue to utilize for waterfront access. This is not a recommended option unless Council does not wish to transfer this portion of property to the Applicant.
3. **Declare as surplus and sell Parts 1 and 2 to Applicant Nieuwesteeg:** Originally, Applicant Nieuwesteeg requested to purchase Parts 1 and 2. Subsequently, she spoke with her neighbour (Graham) and learned of interest by Graham to purchase Part 2.

Although the Nieuwesteeg stairs and shed were previously constructed on County property without approval, sale of Part 1 would proactively correct the encroachment with the change in ownership, thereby removing all liability from the County and enabling property tax revenue to be collected. Although the neighbour, Graham, is interested in purchasing Part 2 obtain private beach access, normally the County would not entertain selling waterfront property solely for this purpose due to the precedent it would set along the lakeshore. Therefore selling both Parts to Nieuwesteeg is an option for Council to consider. It should be noted, however, that in selling Part 2 to Nieuwesteeg, it doesn't change the private beach ownership for Graham but it will remove any public beach access they have, leading to the water.

4. **Declare as surplus and sell Part 1 to Applicant Nieuwesteeg and Part 2 to Applicant Graham:** This is what the applicants have requested. Staff support selling Part 1 to Applicant Nieuwesteeg as it will rectify the existing encroachment onto County property which is otherwise not necessary for municipal purposes. Selling Part 2 to Applicant Graham will allow continued access to the water for Graham. Although, as mentioned above, this may create a precedent for selling waterfront property to obtain private access, it should be noted that if Part 1 is sold to Nieuwesteeg, and Part 2 is NOT sold at all, it will create an orphaned piece of County owned land. Historically this is something the County attempts to avoid because there would be no legal access for the County to maintain its land. Therefore, if Council wishes to sell Part 1 to Nieuwesteeg, Part 2 must also be sold to one of the applicants to avoid creating a landlocked County parcel. Selling Part 2 does not impact access to the water for other neighbours.

Option 3 or Option 4 are viable options for Council to consider, however, staff recommend Option 4. Despite the potential precedent setting nature of this recommendation by selling a parcel to allow for private access, staff believe by giving water access to Graham, it will create consistent ownership with neighbouring property owners and is the best option under these specific circumstances.

Depending on the option selected by Council, part or all of Farr Road will continue to be an unopen road allowance and will retain waterfront access.

The value of the offer to purchase from the Applicants aligns with market conditions for best use and the Vacant Land Values Chart. The property will be sold as-is, where-is with all standard County conditions. Staff recommend that the above identified road allowance being Part 1 and Part 2 as shown on Attachment #1 be declared surplus to the needs of the municipality, in order to facilitate the sale as outlined in the recommendations.

FINANCIAL/LEGAL IMPLICATIONS:

All costs associated with the property transactions will be borne by the purchaser(s). If sold, the identified property would no longer be the legal responsibility or liability of the County. Subsequently, any proceeds from sale, if applicable, would be contributed to the Land Sales Reserve in accordance with County Policy.

STAKEHOLDER IMPACTS:

Not applicable.

REPORT IMPACTS:

Agreement: No

By-law: Yes

Budget Amendment: No

Policy: No

REFERENCES:

None.

ATTACHMENTS:

1. Map of the Subject Lands
2. Draft Reference Plan
3. Letters of Opinion from Realtor