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# HALDIMAND COUNTY

## Report LSS-24-2023 Road Closure and Conveyance, of Part of Moray Street, Caledonia - Burchert



For Consideration by Council in Committee on October 31, 2023

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### OBJECTIVE:

To authorize staff to proceed with a road closure and conveyance request for part of Moray Street in Caledonia.

### RECOMMENDATIONS:

1. THAT Report LSS-24-2023 Road Closure and Conveyance of Part of Moray Street, Caledonia - Burchert be received;
2. AND THAT the subject road allowance, as shown in yellow on Attachment 1 to Report LSS-24-2023 and legally described as Part of PIN 38174-0075 being Part Lot 31 South Side Caithness Place Town of Caledonia; Part Moray Street Plan Town of Caledonia Part 1 on 18R993; further to be split out as Part 2 on Draft Reference Plan shown on Attachment 2; Haldimand County, be stopped up, closed and declared surplus to all County needs;
3. AND THAT the subject road allowance, as noted above, be sold to the abutting land owners, Douglas Burchert and Diane Burchert for a purchase price of \$2,632 plus HST plus costs of conveyance inclusive of all Haldimand County's legal fees;
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:** Megan Jamieson, CHRL, General Manager of Corporate & Social Services

**Approved:** Cathy Case, Chief Administrative Officer

### EXECUTIVE SUMMARY:

The County has received a request from Douglas Burchert and Diane Burchert (the Applicants) to close and convey a portion of Moray Street in Caledonia, as shown in yellow hashtags on Attachment 1. The Applicants recently purchased the abutting property shown in purple on Attachment 1 and municipally known as 405 Caithness Street East, Caledonia. It has been determined that the Applicants do not have clear title to the portion of Moray Street and they wish to correct this by acquiring the lands.

Staff are recommending to sell the approximate 0.12 acres of land to the Applicants, for the submitted purchase price plus HST and all costs of closure and conveyance, including Haldimand County's legal fees.

## **BACKGROUND:**

An application to close and convey a portion of Moray Street in Caledonia has been received by Douglas Burchert and Diane Burchert, who recently purchased the property at 405 Caithness Street East which abuts the subject lands. At the time of purchase, the Applicants lawyer identified that the Applicants land and portion of Moray Street (yellow and purple hashmarks) on the Map of Subject Lands (Attachment 2), was shown as a complete parcel on the Land Registry Parcel Map. Further investigation determined that this portion of Moray Street was not closed and conveyed to the abutting land owner, which has resulted in unclear title due to conflicting ownership. The Applicants wish to rectify the title by appropriately closing the road and acquiring it at fair market value.

In November of 2022, the previous owners of 405 Caithness Street East asked County staff questions about the subject property. At that time, they were in the process of selling the lands to the Applicants and had recently discovered that they did not own the full property. These situations are not uncommon, and often identified when a legal review is being completed as a result of a pending property transaction. Due to the timing of the inquiry, the Application to close and convey the road was submitted by the new property owners for the purpose of clearing title.

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 and qualified title. One such uncertainty is when a municipal road dissects or abuts a property, where the road has not been formally closed and conveyed to that property owner by the municipality; and when there may have been some historical intent to do so as determined by the Land Registry Office (LRO).

The County's solicitor completed a legal review of the records from the LRO and confirmed the likelihood of the original title and the requirement to clarify title. To correct the title issue, the County's solicitor indicated that if approved by Council, a road closing by-law needs to be registered with the LRO and then the lands can be conveyed. This is the standard practice that staff adhere to for any road closure and conveyance process.

As a result of the above, the Applicants have submitted an application to close and convey part of Moray Street, Caledonia. The subject lands, totaling approximately 0.12 acres, is located between the Grand River and the southerly boundary of the lands currently owned by the Applicants. If Council approves the request for road closure and conveyance, the subject lands will merge with the Applicants property and provide them with clear title. This same process occurred for the adjacent neighbour's property (397 Caithness Street East) in 2019.

## **ANALYSIS:**

Upon receipt of such request, staff circulated notice to County divisions: Public Works Operations; Facilities, Parks, Cemeteries & Forestry Operations; Building & Municipal Enforcement Services; Community Development & Partnerships; Economic Development & Tourism; Emergency Services; Engineering Services; Environmental Operations; and Planning & Development; as well as the necessary utility companies, the Grand River Conservation Authority (GRCA) and abutting landowners.

No concerns or objections were brought forward by County divisions or utilities; however the GRCA provided comments that are outlined below and which were shared with the Applicants.

- Grand River Conservation Authority Comments: The entire subject property is regulated by the GRCA under Ontario Regulation 150/06 - Development, Interference with Wetlands and Alterations to Shorelines and Watercourses Regulation. Any future development within the regulated area will require prior written approval from GRCA in the form of a permit pursuant to

Ontario Regulation 150/06. Unregulated activities, such as vegetation clearing and related activities, could potentially undermine steep slopes along the Grand River, which could increase the risk of erosion.

The Applicant has proposed a purchase price of \$2,632 plus HST which slightly exceeds the value calculated using the County's Vacant Land Value Chart. The Applicant received a realtor's opinion on the subject property that recommended the land be sold for \$2,632, which stated that the value is based upon the same land transaction for adjacent homeowner in 2019 plus accounting for market growth. Staff have reviewed this comment and concur with the opinion of value. A copy of the opinion is provided as Attachment 3. The Applicants have signed an acknowledgement which 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 0.12 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 abutting parcel already owned by the Applicants.

Council can always provide direction to staff that differs from the recommendation to sell. For example, should it be deemed prudent, Council could instead consider options such as countering the offer with specified parameters (normally discussed in closed session); offer the land through a public process such as listing it or by sealed bid; or not accept the offer at all. Due to the location of the landlocked subject lands being located between the Grand River and the applicants property as shown on Attachment1 and feedback received from the GRCA, the recommendation is to close the road and convey to the Applicants for their offered price plus HST plus all costs of conveyance including Haldimand County's legal fees.

## **FINANCIAL/LEGAL IMPLICATIONS:**

If sold, all costs associated with the property transactions will be borne by the purchaser(s) and 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.

If the property is not sold at this time, the property will remain the legal responsibility of the County. All costs incurred by the County to date are off-set through the non-refundable application fee.

## **STAKEHOLDER IMPACTS:**

Not applicable.

## **REPORT IMPACTS:**

Agreement: No

By-law: Yes

Budget Amendment: No

Policy: No

## **REFERENCES:**

None.

**ATTACHMENTS:**

1. Map of Subject Lands
2. Draft Reference Plan
3. Realtor's Opinion