
HALDIMAND COUNTY

Report CS-SS-04-2018 Road Closure and Conveyance, Part Road Allowance Between Concession 1 and 2, South of Talbot Road, North Cayuga

For Consideration by Council in Committee on January 16, 2018



OBJECTIVE:

To advise Council of a request to purchase part of the road allowance between Concessions 1 and 2, south of Talbot Road, in Cayuga.

RECOMMENDATIONS:

1. THAT Report CS-SS-04-2018 Road Closure and Conveyance, Part Road Allowance between Concession 1 and 2, South of Talbot Road, North Cayuga, be received;
2. AND THAT the application from Becki Moellgaard for the road closure and conveyance of PIN # 38226-0164(LT) being part of the road allowance Between Concessions 1 and 2, South of Talbot Road, between the westerly limit of Part 4 on 18R-5205 and the westerly limit of the Grand River; Haldimand County not be approved for the reasons outlined in Report CS-SS-04-2018.

Prepared by: Sandra Marsh, Property Coordinator

Reviewed by: Dana McLean, Risk Management and Insurance Coordinator

Respectfully submitted: Karen General, CPA, CGA, General Manager of Corporate Services

Approved: Donald G. Boyle, Chief Administrative Officer

EXECUTIVE SUMMARY:

The County has received a request to close and convey part of the road allowance between Concessions 1 and 2, South of Talbot Road, North Cayuga. The subject property is also informally referred to as Irish Line and Irish Lane Road, in Cayuga. Staff are recommending that the subject lands be retained by the municipality and not sold to the applicant. If Council agrees with the staff recommendation, the applicant has requested that the Road Closure and Conveyance application fee be refunded, which would require waiving of the "non-refundable" provision of the User Fee By-law.

BACKGROUND:

The County is in receipt of a request from Becki Moellgaard to purchase part of the road allowance between Concessions 1 and 2, South of Talbot Road, North Cayuga. The subject land, totaling approximately 0.48 acres, is an untraveled section of road that abuts the northerly boundary of the lands currently owned by Peter and Joanne Hogeterp, abuts the southerly boundary of the lands owned by Judy Lawry, and abuts the Grand River on the east boundary. A location map of the subject property is shown as Attachment #1.

In reviewing the road closure request, it was discovered that previous requests to close and convey this property have been presented to Council under report titles referencing Irish Line and Irish Lane Road. Below is a brief summary and outcome of the previous reports (CS-CL-13-2007, CS-CL-19-2008 and CS-CL-15-2009) that dealt with this property.

In 2003, the County received a request, from the Hogeterp's solicitor, for the closure and conveyance of the portion of Irish Line between River Road and the Grand River. The reason this request was submitted was to address public nuisance activities which were disturbing the abutting landowners. At the time of the request, this road allowance contained an old farm fence located diagonally across its entire width. Although staff initially recommended the closure and conveyance, it was later learned through circulation to the abutting landowners that some neighbours were using this road allowance as access to the Grand River. The Economic Development and Tourism Division did not support the sale, so as not to close public access to the river; therefore, no further action was taken at that time and the file was closed by staff.

In 2006, solicitors on behalf of two abutting landowners (Hogeterp and Lawry) once again initiated the request for closure and conveyance citing "continued trespass, littering, disrespect of privacy and nuisance caused by non-local users of this unopened road allowance". Staff advised the solicitors of the previous position taken by the Economic Development and Tourism Division of not supporting the closure and sale in order to maintain public access to the Grand River. The applicant requested that their request be presented to Council. At that time, Council determined that they would leave this road allowance in public ownership in order to continue as public access to the river.

In 2009, some neighbours requested the removal of the old fence on this road allowance, in order to assist in their use of the property as public access to the Grand River. It was determined that brush on this unopened road allowance was thicker along the fence line and should also be considered for removal. Staff were directed to conduct the maintenance work, including removal of the fence and some brush, since the property was remaining in public ownership in order to allow continued access to the Grand River.

ANALYSIS:

Ms. Moellgaard does not own any lands abutting the subject property and is aware the property is not currently developable as it does not meet the minimum lot frontage requirement. Although the property may also require other variances, Ms. Moellgaard was hoping to purchase a portion of the abutting property to the north, by way of a boundary adjustment, in order to make the property a viable lot to construct a new home. Being aware of the current development restriction, Ms. Moellgaard still provided the County with the non-refundable administration fee to start the road closure and conveyance process.

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, Grand River Conservation Authority 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 Operations, Planning & Development, and Roads Operations.

The Economic Development and Tourism Division indicated they concur with the previous staff position that this property should allow for public access to the Grand River and still do not support the road closure and conveyance request. This land is located along a cycling route, is one of the few parcels along this portion of the Grand River that is publically owned, and could be potentially developed as a future rest stop for cyclists and others wishing to access the river.

The Grand River Conservation Authority (GRCA) advised that the rear portion of the subject property is regulated floodplain and slope hazard and any new development in the area would require GRCA approval.

The Planning and Development Division provided the following comments:

The Subject lands are zoned agricultural and are partially impacted by the GRCA regulation limits. The GRCA should be consulted to determine actual flood line limits. The lands are of a size that they may be able to support development of a residence. Variances to address minimum frontage requirements and potentially other variances may be required. The purchaser should be satisfied that all required infrastructure can be located appropriately upon the site and consider all zoning regulations and building code requirements. The severance of additional agricultural lands (minor boundary adjustments) from lands to the north would be a challenge to support from a Provincial and local (Official Plan) policy standpoint. Such a severance could only be supported if there is a compelling and relevant legal or technical rationale for the inclusion to the subject lands to support development that does not serve to compromise the functionality or viability of the existing farm from which the lands are to be severed.

In reviewing the road closure request, staff, in keeping with the County's past practice, notified all abutting property owners of the expression of interest received, and the possible closure and conveyance. The abutting landowner to the south (Hogeterp) provided staff with a written objection to the closure and sale, which is included as Attachment #2.

For the reasons outlined in this report, staff do not recommend closure and conveyance of this unopened road allowance.

FINANCIAL/LEGAL IMPLICATIONS:

A request has been received from the applicant for a refund of the road closure and conveyance administration fee in the amount of \$1,106 if they are not allowed to purchase the subject lands. When an application is made for a road closure and conveyance, the applicant is advised that the fee is non-refundable and that there is no guarantee their application will be supported. The administration fee is to recover some of the costs of the processes undertaken by staff to deal with the request for the road closure given that the benefit of such a transaction is primarily to the applicant. If Council wishes to refund the fee to Ms. Moellgaard, a resolution will be required to waive the provisions of the User Fee By-law. This sets a precedent related to any other time a conveyance request is denied.

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 applicants will be required to bear all other costs of the closure including, but not limited to, applicable taxes, advertising, appraisal fees, legal and survey costs. If Council chooses to proceed with the closure and conveyance, a value for the subject lands will need to be determined as an appraisal was not undertaken given the staff recommendation to retain the lands.

STAKEHOLDER IMPACTS:

Planning and Development Division, Economic Development and Tourism Division and the Grand River Conservation Authority have provided information for this report.

REPORT IMPACTS:

Agreement: No

By-law: No

Budget Amendment: No

Policy: No

ATTACHMENTS:

1. Map of the Subject Lands
2. Letter from Peter & Joanne Hogeterp