

The Corporation of the City of Kawartha Lakes
Council Report

Report Number RS2019-003

Date: January 22, 2019
Time: 2:00 p.m.
Place: Council Chambers

Ward Community Identifier: 6

Title: Proposed Surplus Declaration, Closure and Sale of a Portion of Shoreline Road Allowance Adjacent to 35 Rose Street, Fenelon

Author and Title: Laura Carnochan, Law Clerk – Realty Services

Recommendation:

That Report RS2019-003, Proposed Surplus Declaration, Closure and Sale of a Portion of Shoreline Road Allowance Adjacent to 35 Rose Street, Fenelon, be received; and

That this recommendation be brought forward to Council for consideration at the next Regular Council Meeting.

Department Head: _____

Financial/Legal/HR/Other: _____

Chief Administrative Officer: _____

Background:

The Land Management Committee received a request from the owner of 35 Rose Street, in the Geographic Township of Fenelon, City of Kawartha Lakes, to purchase the portion of shoreline road allowance that is adjacent to their property, which is legally described as part of Jessie Avenue on Plan 123, in the Geographic Township of Fenelon, City of Kawartha Lakes.

No previous sections of the road allowance legally described as Jessie Avenue on Plan 123, in the Geographic Township of Fenelon, City of Kawartha Lakes, have been stopped up and closed. In other words, this road allowance is not yet fragmented and thus is still able to develop in the future as a travelled road. The Land Management Committee felt that this land is unlikely to be used to develop a travelled road, as Jessie Avenue does not extend westerly past Pleasant Point Road. Further the subject road allowance has a significant number of encroachments located on it, being docks or boathouses associated with the adjoining properties. Therefore, the Land Management Committee felt that it would be appropriate for Council to stop-up and close the subject portion of road allowance and convey it into private ownership.

Public Notice advertising the potential surplus declaration and sale of the subject road allowance was completed by newspaper circulation in the Kawartha Lakes This Week on the 27th day of December, 2018 and the 3rd and 10th days of January, 2019. During this three week advertising period, notice was also posted on the City's website.

During the advertising period, the Realty Services division, the Clerks' Office, and the Ward Councillor, received a significant number of e-mails and calls outlining their concerns with Council proceeding with the proposed stop-up, closure, and sale of the subject property. According to several area residents, Jessie Avenue is well-used by the community as an unmaintained and unimproved walking trail or open space.

During this time, the Realty Services Division also received expressions of support for this sale from homeowners representing 3 properties that likewise border the road allowance. These homeowners expressed concern with the walking trail: trespassing, theft, lack of privacy, dogs off leash, failure of owners or the City to pick up after dogs, failure of the City to maintain the trail (hazardous trees, tree roots, and a steep 15 foot drop off adjacent to the trail). These homeowners also indicated that the road allowances leading to water that intersect with Jessie Avenue are not demarcated and are being used as side yards. Accordingly, persons accessing Jessie Avenue trespass to enter and exit it.

During this time, the Realty Services Division also received an expression of interest in the matter from a member of public, requesting additional time to consider the matter. This comment was in alignment with that of a seasonal resident, who asked that the matter return to Council in the summer months.

Appendix A is a general location map, Appendix B is an aerial photo, and Appendix C is a map.

The purpose of this report is to advance this issue to Council for its consideration, in light of the complexities and competing interests involved.

Rationale:

Shoreline road allowances exist on many lakes within the City of Kawartha Lakes. Although many of these allowances were never opened as public municipal roads, they remain public property. Recreational and residential property owners of "lakefront" property often do not own "their" lots right up to the water's edge. In many circumstances, such as this case, the adjacent private owner has encroached onto this space and utilized it as a lot addition.

At their meeting on October 10, 2018, the Land Management Committee determined that this portion of shoreline road allowance is not required for municipal road purposes and approved proceeding with presenting a proposal to Council to stop-up and close the subject portion of road allowance and authorize its sale to the abutting landowner.

As part of the City's disposition process per By-Law 2018-020, public notice of any proposed sale is completed for a three week period prior to the Committee of the Whole meeting at which the Staff Report will be presented. Public notice of this proposed sale was completed by newspaper circulation in the Kawartha Lakes This Week on the 27th day of December, 2018 and the 3rd and 10th days of January, 2019. During this three week advertising period, notice was also posted on the City's website. The purpose of this advertising is to determine if there is any public opposition to the sale.

The Realty Services division, the Clerks' Office, and the Ward Councillor received a significant number of e-mails and phone calls from area residents expressing either their concerns and opposition to the sale of subject property or their concerns with keeping the road allowance in its current condition.

Area residents advised that the subject portion of shoreline road allowance is utilized on a regular basis (mostly during the spring and summer months) as a walking path. The stop-up, closure and sale of the subject portion of shoreline road allowance would effectively split the road allowance into two separate

segments, with the section lying east of 35 Rose Street being accessible only from various access paths, as shown on Appendix D.

Other Alternatives Considered:

None. The recommended resolutions are provided in the alternative and are exhaustive.

That Report RS2019-003, Proposed Surplus Declaration, Closure and Sale of a Portion of Shoreline Road Allowance Adjacent to 35 Rose Street, Fenelon, be received; and

That Council declare the subject property, being the shoreline road allowance adjacent to 35 Rose Street, in the Geographic Township of Fenelon, City of Kawartha Lakes, be declared not surplus to municipal needs at this time.

OR

That Report RS2019-003, Proposed Surplus Declaration, Closure and Sale of a Portion of Shoreline Road Allowance Adjacent to 35 Rose Street, Fenelon, be received; and

That the subject property, being the shoreline road allowance adjacent to 35 Rose Street, in the Geographic Township of Fenelon, City of Kawartha Lakes, be declared surplus to municipal needs;

That Council support, in principle, the closure of the shoreline road allowance and sale to the adjoining owner in accordance with the provisions of By-Law 2018-020, as amended, and the Municipal Act, 2001 and subject to the parties entering into a conditional Agreement of Purchase and Sale;

That staff be directed to commence the process to stop up and close the said portion of shoreline road allowance;

That a by-law (with any amendments deemed necessary) to close the road and authorize its disposition shall be passed if appropriate; and

That the Mayor and Clerk be authorized to execute any documents to facilitate the road closing and conveyance of the lands.

Financial Impacts:

If Council proceeds with retaining the subject portion of road allowance, there should be no net financial impact to the City. Pursuant to the Encroachment By-law, the existing structures will need to be considered for license as part of Realty Services' proactive enforcement initiative scheduled to commence in 2020. The licensing fees are intended to offset the associated costs associated with staff time and with removals of non-compliant structures.

If Council decides to proceed with the closure and sale, the parties will be asked to enter into a conditional Agreement of Purchase and Sale with a non-refundable \$1,000.00 deposit to cover initial road closing costs. The price for a shoreline road allowance was established by By-Law 2018-020, as amended, and is set at \$23.00 per linear foot (based on a 66 foot width) for shoreline road allowances adjacent to a lake. All costs of the transaction, plus a \$1,500.00 fee to cover the City's staff time expenses will be paid for by the purchasers.

Relationship of Recommendation to the 2016-2019 Strategic Plan:

This report aligns with the strategic goal of "a healthy environment".

Consultations:

Land Management Committee
Land Registry Office
Planning - Maps

Attachments:

Appendix A – General Location Map



Appendix A - General
Location Map.pdf

Appendix B – Aerial Photo



Appendix B - Aerial
Photo.pdf

Appendix C – Map



Appendix C -
Map.pdf

Appendix D – Map (Jessie Avenue)



Appendix D - Map
(Jessie Avenue).pdf

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Department Head: Robyn Carlson

Department File: L06-18-RS034