

In the fourth step (Approval), which is triggered by the applicant's acceptance of the City's expectations, staff submits the first of two Corporate Reports to Council, requesting authority to remove the dedication of a redundant road/highway. Upon Council approval, the applicant is required to provide the appropriate plans and documents and the application fee to complete the road closure process. Subsequently, at step 5 (By-law stage) Council is requested to introduce a road closure By-law. In between Third and Fourth Readings of the By-law, Realty Services places the first of two public notices in the local newspaper for two consecutive weeks. The purpose of the notice is to advertise the "removal of highway" and to allow any affected parties to make representation to City Council. If the road closure is within 800 metres of a provincial highway, the Ministry of Transportation (MoT) is also notified as their approval is sought. Once the advertising process is complete and MoT's input has been provided, the By-law is presented to Council for Final Adoption. It is at this meeting that the public is invited to speak to the road closure. If no substantial reason to object to the road closure proposal arises, the By-law is finally adopted. The second notice is subsequently placed in the newspaper for two consecutive weeks advertising the sale and disposal of the road allowance.

In the Final Stage (Completion) of this process, and after satisfying the public notification requirements, the Engineering Department prepares a second report to City Council. This report advises that all of the statutory requirements have been met, and requests that Council now approve the disposal of the road allowance. Upon receipt of Council approval, Realty Services forwards the documentation to complete the road closure to the applicant's solicitor. Once executed and compensation is received, the documents and plans are registered at the Land Title Office and the file is completed. If the road closure is related to a development project, the road closure documents are filed concurrently with the development application documentation.

ISSUES RELATED TO ORIGINAL OWNER

The proposed policy revisions relate to the issue of defining who is the original owner, and whether that owner should provide compensation to the City for road closures.

Under Section 40(6) (b) of the Community Charter, by definition, an original owner is:

"the owner of the land at the time the plan was deposited **is** the owner of **all** parcels created by the plan."

The two operative words being "is" which means that owner must have remained the owner of those parcels since the time the road was created; and "all" which means they remain the owner of every parcel that created the road. Consequently, if the owner has sold any of the parcels created by the plan that also dedicated the road, that owner is no longer deemed the original owner.

Previously, under the Local Government Act when roads were owned by the Crown and municipalities were stewards of the local roads, the legislation provided for original owners to reclaim redundant roads without compensation. With the introduction of the Community Charter in 2004, the ownership of all roads, except provincially designated highways, was transferred to the respective municipalities. While local governments now own the roads, Section 40 (b) of the Community Charter prohibits them from closing

roads where original owners have remained owners of all parcels from which the road was created, without the consent of that original owner. Legal Services has recently determined that in the absence of specific reference to original owner's entitlement to reclaim redundant roads without compensation, a sale to an original owner, without market value compensation, would constitute a form of assistance and be contrary to Section 181 of the Local Government Act. The basis of this interpretation is that when the road was originally dedicated, the City and the original owner entered into some form of mutually acceptable agreement, typically through the development approval process. While the City benefited from the road dedication at that time, in exchange, the original owner also received some form of benefit or consideration from the City (e.g. rezoning, subdivision, development permit, etc.)

Another example of the Legal Services Division's concern regarding conferring a benefit when closing roads would be when the City purchases land for road purposes at market value. In this situation, if the City later deemed the road to be no longer necessary and the original owner had retained the original parcel, under the current policy the original owner could apply for a road closure and not be required to provide compensation.

CONCLUSION

The information and the attached flow chart concerning the Road, Lane & Walkway Closure process and the explanation on the "original" owner are to address those questions / concerns raised by Council at the January 15th meeting. The original Report R004, Road, Lane and Walkway Policy, is on the Regular Council agenda tonight for Council's consideration.

Paul Ham, P.Eng.
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Appendices

- I. Road Closure Process Flow Chart
- II. Section 40 of the Community Charter