



The Corporation of the Town of LaSalle

Date:	September 19, 2018	Report No:	CAO-01jm-2018
Directed To:	Members of Council	Attachments:	Correspondence from P. Weir
Department:	Administration		
Prepared By:	Kevin Miller Acting Clerk Allen Burgess Supervisor of Planning Christine Riley Town Solicitor Joe Milicia, CPA ,CA Chief Administrative Officer	Policy References:	None
Subject:	Closure and Sale of Alley		

Recommendation:

That Council either (a) Reaffirm the current practice with respect to alley closures and sales, or (b) direct Administration to provide a report outlining a process in which costs are reduced and/or subsidized by the tax base.

Report:

Background

The letter from Ms. Weir and others along Minto Avenue and Stuart Boulevard raised a number of issues, each of which require a separate response, as set out in the topics below. Attached to this report is the request from the residents residing at 1125 to 1195 Minto and 1175 Stuart, which abut an alley that is the subject of an alley closing request.

Liability

In a meeting with Mr. Miller, the residents indicated they were not satisfied with the reasons they had previously received from either he or Mrs. Riley on the potential "liability" as the reason for closing alleys.

There is no doubt that in the event any person is injured while on any land owned by the Town, including an unopened alley or street, the town would face a potential lawsuit for damages suffered by that person. Whether the injuries were caused due to the location of structures placed on the alley with or without permission, or by an unseen hole or sudden dip in the ground, the Town could be faced with having to defend a claim for damages.

Many of these unopened alleys and streets have been enclosed within the fences of adjacent property owners, and are being used on a regular basis as part of their backyard. While some residents have just used the alley as a landscaped area, many others have placed on the alley sheds on concrete bases, swimming pools, pool aprons and other similar structures.

The liability issue has become more of a concern in the recent past due to the increase in litigation faced by municipal and other public entities. In addition, since the County of Essex has obtained, and provided to the Town, aerial photos of the properties in the Town, and with the ability to overlay digital mapping onto those photos, the Town is becoming increasingly aware of the extent by which the Town-owned alleys are being used and occupied by ratepayers as part of their own private property. The Town is now in a position to determine, with some degree of accuracy, whether or not someone is using Town property for their own benefit, and the extent of that use.

In light of the number of unopened alleys and streets within the Town, Council has determined it would be appropriate to begin to take positive steps to address the use of these Town-owned lands by residents. As these alleys on the multitude of old subdivision plans registered in the 1910's and 1920's were never opened and used by the Town for municipal services, garbage pick-up, or for access to private garages, the Town has no need to maintain ownership of them. As a result, Councils over the years have taken steps to close parts of many alleys and to sell them to the adjacent landowners. This process has continued since at least the 1940's.

Current Process

The process followed to date for closing and selling an unopened street or alley has been based on a full cost recovery from the adjacent landowner. The Town has always taken the position that a ratepayer in the rural area should not have part of their taxes used to pay for the costs of closing and selling an alley to a homeowner in the urban area. This position was maintained whether the closure was done by a Court Order made with the consent of the affected property owners, or more recently by the passing of a By-law.

The steps being taken in the current process are as follows:

1. The applications filed by an interested property owner, together with the aerial photos, are reviewed by administration, to determine the extent of the alley that is to be closed.
2. A surveyor is contacted to provide an estimate of the cost of a Reference Plan, which is required now by the Province to describe the various portions of the alley that can be conveyed to the adjacent landowners.
3. An estimate is then prepared by the Town's lawyer of the legal and surveying cost to close and to convey the alley. The total estimated cost is then divided by the number of property owners affected, and a letter is sent to each owner advising them that the alley is going to be closed. Each owner is given the option of sharing in the cost of the closing and to buy their share of the alley to the centre line. They are also provided with an estimate of the purchase price of the alley and the registration costs. If they wish to participate, they are asked to pay their share of the closing costs now, with the purchase price and registration costs to be paid once the closing is completed. If they do not want to buy their share of the alley, they are required to remove any items they have on the alley, and to stop using the alley if they have been doing so.

4. If an adjacent property owner does not want to buy their share of the alley, the property owner behind them is then given the opportunity to buy the entire depth of the alley behind them. If that person does not want to buy the extra half of the alley, then both of these affected owners will receive a letter advising them that the Town will install a fence around that portion of the alley, and the land within that fence will be allowed to regenerate to its natural state.
5. Once it has been determined how many property owners wish to participate, and their payments have been received, the Reference Plan is ordered from the surveyor, and the By-law is prepared and presented to Council at a public meeting.
6. After the alley has been closed, each participating owner is notified of their respective purchase price, taxes and registration costs. Once those funds have been received, the Deed is prepared, is signed by both them and the Town, and then it is registered.

Cost Estimate in This Case

There are 14 properties that are adjacent to the alley concerned in this case. Of those properties, 3 of them appear to have taken possession of the entire 14-ft. depth of the alley within their backyard fence. Assuming that those 3 properties acquire ownership of that part of the alley already being used as part of their backyard, there are 3 property owners behind them that would not be given the opportunity to buy any part of the alley. That leaves only 11 property owners to share in the closing and surveying cost. Instead of increasing the cost to the remaining owners, the 3 owners who would get the full 14 ft. were charged for 2/14ths share of the closing and surveying costs, with the remaining 8 properties each paying a 1/14th share.

The estimated cost of the Reference plan was \$5,600.00 plus HST. The legal fee was \$2,000.00. With disbursements and HST, the total estimated cost was \$9,505.04. The 3 property owners who were to obtain the whole alley were asked to pay \$1,360.00 each, while the remaining 8 owners were asked to pay \$680.00 each.

In the event some of the property owners do not participate, then the location of these owners would have to be reviewed to determine if there could be some cost savings on the Reference Plan. The share of the costs to be paid by each of the participating owners may then be increased or decreased. Adjustments are made as required, to ensure that the closing and sale are completed on a full cost-recovery basis.

Financial Impacts of Alley Sales

The financial impact of the closure and sale of alleys is done on a cost recovery basis. There are effectively three financial parts to the alley closing and sale process – (1) costs associated to the reference plan, (2) costs associated to legal fees and disbursements and (3) costs associated to land costs.

The financial aspects of the reference plan, legal fees and disbursements are general fixed in nature with little ability by the Town to influence or reduce those costs. In the future, with the move towards an on-staff solicitor there may be an opportunity to reduce or eliminate the legal cost, however this would limit the opportunity to offset the cost of in-house legal.

The Town is in full control of the third financial aspect of the process with proceeds from the sale of municipally land going to fund the purchase of environmental sensitive lands through the Green Fund. However, should the land price be reduced or eliminated this would curtail the purchase of environmental sensitive lands unless other budget allocations are made.

Current request from residents on Minto/Stuart

Administration has met with these residents to explain the alley closing process and understand their concerns. At the conclusion of the meeting, the residents were informed that the Town is following the current practice of alley closures and that should they wish to have a different outcome they should submit their request in writing to Council.

Of the suggestions made in the correspondence Administration is not prepared to recommend any of the options are they would either expose the municipality to continued liability (residents using Town land) or would push cost onto the tax base (costs of legal, surveying to be covered by the Town) or the elimination of contributions to the Green Fund from the sale of municipally owned property.

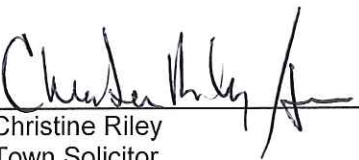

It would appear that the affected residents are unwilling to accept the current alley closing and sale practice and would like the municipality to ignore the use of municipality owned property and maintain the status quo. Otherwise, as an alternative they would like the municipality to assume some or all of the financial burden of closing and convening the alley to them.

Currently Administration is under direction from Council to proceed under the current practice. Should Council wish to change this, it is recommended that Council suspense all alley sales in process and direct Administration to prepare a report on the alternatives and impacts of a revised alley closing practice.

It should be noted that the feedback from residents has been "that there is no incentive under the current process to property owners to purchase the alley". In order to satisfy this concern it is anticipated that if a report from Administration is requested it would include a significant reduction in the costs to property owners (to provide the incentive) which would affect the overall budget and/or funds available in the Green Fund and may have ramifications when dealing with new developments. If Council is not prepare to consider and implement these impacts, it is recommended that the current practice endorsed and continue.

All of which is respectfully submitted.

Yours truly,


Kevin Miller
Acting Town Clerk
Christine Riley
Town Solicitor
Allen Burgess
Supervisor of Planning
Joe Milicia, CPA, CA
Chief Administrative Officer

Reviewed by:						
CAO	Finance	Council Services	Public Works	Development & Strategic Initiatives	Culture & Recreation	Fire Services

September 16, 2018

Mr. K. Miller
 CAO, Town of Lasalle

Re: Alley closing abutting 1125 to 1195 Minto and 1115 and 1175 Stuart (File 188-745)

Dear Mr. Miller,

Thank you for meeting with us in mid-August and explaining the Town's position. As you know we are not pleased with the Town's proposal. Thank you for indicating we can appear at the September 28, 2018 meeting. Please take this letter as an indication we would like to do so.

For the past two to twenty-three years homeowners have been caring for the property in this alley. At no time has the Town cared for it, nor have any objections been raised as to the homeowners assuming this responsibility. We have cared for this property in order to maintain the aesthetics of our neighbourhood and our own property. We now learn that one of our neighbours has approached the Town to purchase his share of the alley. There is no opposition to this. However, the Town has used this to initiate closure of the entire alley. At the meeting we attended with you we learned that should the Town close the alley it has no intention of caring for it, but rather to allow it to naturalize. It is difficult for us to understand how the use of the word "naturalize" allows the Town to violate its own bylaws (e.g., Clean Yard Bylaw 7480). So not only has the Town not cared for the land in the past, it will not care for it moving forward when homeowners may not have access to it. Most notably the proposal to purchase the alley has all costs downloaded to the homeowners with the Town assuming no financial responsibility. This is not an incentive to the homeowners who have cared for this land for many years; it is a disincentive. Another disturbing feature of the proposal is that the final cost of the purchase is unknown, as lots are offset, and the reference plan costs won't be determined until it is clear how many homeowners are interested. In summary, the Town has not cared for its property in the past, it is absolving itself of future care, and wants to assume none of the costs.

When we met it was suggested that you would be open to alternative proposals:

We would like the Town to consider the following options:

1. Allow the purchase of individual parcels by those who wish to purchase and leave the other parcels as they are. This would allow homeowners the opportunity to continue to care for the Town's property as is done now.
2. Reduce the cost of the property to \$1 per homeowner, with the homeowners paying their share of the reference plan, and the Town covering the legal fees. This acknowledges the substantial cost savings the Town has realized over all the years they have not cared for the property.
3. The Town credit homeowners who wish to purchase their parcel with a proportional share of the savings the Town would realize in not having to purchase materials or pay for labour to close the alley. The Town would cover the reference plan costs and legal costs.

These three proposals acknowledge that the Town has initiated this process and therefore was prepared regardless of the outcome to assume costs for legal fees and/or materials and labour to close the alley.

We look forward to attending council on the 28th.

Sincerely,

Patti Weir (1195 Minto Avenue; [REDACTED])

Phil & Kathy Baker (1185 Minto Avenue; [REDACTED])

Ed Hummeny (1175 Minto Avenue; [REDACTED])

Pat Leblanc (1165 Minto Avenue; [REDACTED])

John Fu (1155 Minto Avenue; [REDACTED])

Mike & Jan Kent (1135 Minto Avenue; [REDACTED])

Chance Chase (1165 Stuart Boulevard; [REDACTED])

Paul & Jen Greenhalf (1155 Stuart Boulevard; [REDACTED])