



## The Corporation of the Town of LaSalle

<b>Date:</b>	April 9, 2019	<b>Report No:</b>	AD-02-2019
<b>Directed To:</b>	Members of Council	<b>Attachments:</b>	(A) Report Number CAO-01jm-2018
<b>Department:</b>	Administration		
<b>Prepared By:</b>	Domenic Dadalt Town Solicitor  Kevin Miller  Larry Silani Director of Strategic Initiatives  Joe Milicia, CPA ,CA Chief Administrative Officer	<b>Policy References:</b>	None
<b>Subject:</b>	Closure and Sale of Alleys		

### Recommendation:

That Council adopt **Option C – The “Program” Method**, and direct Administration to proceed with implementing and administering a policy and funding program<sup>1</sup> with regards to the closing and selling of an unopened street or alley as described. In the alternative, Council can provide direction to Administration to create a policy and funding program that best fits Council's wishes.

### Report:

#### Background

This Report is presented as a result of the direction from Council on September 25, 2018, wherein Administration was directed to provide a report outlining a process in which costs are reduced and/or subsidized by the tax base, including the breakdown of costs, with respect to the closing and selling of unopened streets or alleys. Specifically, this matter arose due to the proposed closing of an alley abutting 1125 to 1195 Minto Avenue and 1115 and 1175 Stuart Boulevard.

For the purposes of this Report, any reference to an “alley” will refer to both an alley and an unopened street.

The closing and selling of an alley has been dealt with a number of ways by the Town. Typically, the process 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 by the passing of a By-law.

As residents affected by the current alley closing process are unhappy with the costs personally incurred or with the fact that they do not see any good reason to close an alley, Administration has been tasked with providing alternatives and describing the impacts of revising the alley closing process. From there, Council shall provide a decision with respect to how Administration should proceed with alley closing requests.

Before reviewing the options, it should be noted that resident feedback has been “that there is no incentive under the current process to property owners to purchase the alley”. In order to satisfy this concern, a significant reduction in the costs to property owners (to provide the incentive) would be required, affecting the overall budget and/or funds available in the Green Fund and may have ramifications when dealing with new developments. Administration will not revisit in detail the issues raised in the Stuart and Minto alley closing, which were addressed in Report No. CAO-01jm-2018, dated September 19, 2018, attached as Schedule “A”. However, there are a number of critical factors identified in the 2018 report, such as cost to the landowner, cost to the municipality and municipal liability, which factors are considered when assessing each of the options presented below for Council’s consideration.

#### **Option A – The “Piece by Piece” Method**

##### **The Process:**

Using this method, if a resident requests to purchase an alley adjacent to his or her property, there will be review of the aerial photography and Town staff will determine whether or not the alley can be sold to the resident, as well as how much of the alley may be transferred. At this point, the resident will be responsible for having a Reference Plan prepared and paying the appropriate legal and land fees associated with the purchase.

##### **Anticipated Advantages:**

The advantages of this method are that the Town likely maintains full cost recovery, while the landowner can get what he or she wants relatively quickly, as there is no input required from abutting landowners.

##### **Anticipated Issues:**

There are a number of negative aspects with this approach. Firstly, the individual landowner applying for the alley purchase has to foot the bill for the application solely. With a simple Reference Plan costing approximately \$1500, legal fees, as well as land fees based on the Town’s prescribed rates, this could be seen as prohibitively expensive, especially in light of the fact that one of the complaints of the current system is the costs. Secondly, by closing and selling portions of an alley, it is possible that the Town could end up in a position where remnants of Town-owned land is completely landlocked and inaccessible without crossing through a resident’s private property, which is not be desirable for either party. Finally, there is a concern on the legal side with respect to liability that would remain with the Town for each portion of the alley that remains in the Town’s name. As summarized in the 2018 report, if someone were to be injured while on any land owned by the Town, the Town faces a potential lawsuit for damages suffered by that person. Even without taking into consideration the prohibitive costs to the resident, when assessing this procedure as the sole method of closing alleys from a legal perspective, Administration would not recommend this option.

### **Option B – The “Whole Alley” Method**

#### **The Process:**

This is the method that the Town has employed in recent years. The process is indicated in the attached 2018 report, but is recreated here:

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.
7. In order to accommodate the needs of property owners looking to acquire title to an alley expeditiously, the Town could allow the individual landowner to pursue Option A, while the Town proceeds with Option B. The landowner would be informed that proceeding in such a manner would not permit the landowner to take part in the cost-sharing afforded by pursuing the longer Option B approach.

#### Anticipated Advantages:

Provided that multiple residents can participate, there is the possibility of cost savings compared to Option A, as the costs can be split over a number of parties. These potential savings are dependent on the number of parties involved in the alley closing, but the costs of the Reference Plan and the legal fees can be split amongst all of the landowners partaking in the alley transfer. The liability of the Town and the creation of a checkerboard of Town-owned and privately-owned alley portions is also minimized as entire alleys can be transferred at one time. This procedure allows for an equitable solution to all residents in the alley, as each is treated in the same manner.

#### Anticipated Issues:

The time it takes to complete an alley closing and sale when there are numerous residents involved takes a much lengthier period of time, due to the notice requirements given to abutting landowners. The policy could be modified to be more restrictive in terms of the notice timing allowed to address this, but being too restrictive could end up punishing residents who are not otherwise available to respond to the notice in a timely manner for legitimate reasons.

There is also the issue of collaboration, wherein certain residents wish to participate in the alley purchasing process while others do not, creating a conflict amongst neighbours and leaving the Town's administration or council in the middle, ultimately having to side with one group over another. There may also be significant costs associated even after splitting the expenses amongst a group, which is seen as prohibitive – particularly by the residents who do not wish to participate in the alley closing and purchase in the first place. This is the case in the proposed closing of an alley abutting 1125 to 1195 Minto Avenue and 1115 and 1175 Stuart Boulevard, which is the driving force behind this Report.

With respect of the costs, Administration was directed to outline a process in which costs are reduced and/or subsidized by the tax base, including a breakdown of the costs. Administration has drafted a program based on this approach and applied it to the Minto and Stuart scenario. In the example of the Minto and Stuart alley closing, the Town's out-of-pocket disbursements per individual amounts to roughly \$900. This includes registering the deeds, getting a sheriff's certificate and getting a Reference Plan. This amount does not include any administrative fees or legal fees for Administrative staff time, nor does it include a cost for the land being transferred. In summary, if the Town charges anything below \$900 to a resident for an alley closing, the Town is subsidizing the individual. Any amount above \$900 can be split towards the legal / administrative costs and the land costs.

The fees paid for the land are part of what goes into the Town's "Green Fund", which is used to purchase natural or protected land. On a 70' alley, the land cost is likely between \$500 and \$750 alone, depending on whether or not the land is subject to an easement or not. If Council is looking for full cost recovery, it is not unreasonable to suggest another \$200-\$300 in legal fees per landowner as well. Once the fixed costs mentioned in the previous paragraph are added in, it becomes clear in the Minto and Stuart alley closing example that the average charge per landowner should be approximately \$1,800, if Council were to adopt a full cost recovery approach. The amount quoted at the time was \$1,550.

## **Option C – The “Program” Method**

### **The Process:**

The third option is adopting a method employed by other municipalities around Ontario in an effort to mitigate liability and provide a method to transfer portions of alley to appropriate residents in a manner that is cost-friendly to the residents. This can be achieved by creating a systematic alley-closing program with appropriate funding, whereby the Town administration chooses a certain number of alleys per year, closes them and transfers the appropriate pieces to each appropriate abutting landowner. The costs of the Reference Plans required would be paid for by the Town. Council can direct whether or not legal fees and land costs should be borne by the Town as well, allowing the residents to receive their respective portion of an alley for a nominal fee. Residents who apply for specific alley closings and transfers can be given priority as well, ensuring that requests can be done in a timely manner, with the Town moving onto other alleys only when there are no requested closings in queue. Should funding run out in a given year, Administration could default to Option A with the understanding that the Program would resume on that alley the next year. This way, a resident can decide if he or she wishes to have the alley transferred in a timely (yet costly) manner or wait for the Program to begin the alley.

### **Anticipated Advantages:**

The largest advantage, from a legal standpoint, is the eventual mitigation of risk. As alleys held in the Town's name are transferred to landowners, the risk of a lawsuit for damages for injuries suffered on said land disappears. Having a program in place can also assist in mitigating damages should a resident suffer an injury on Town land while still in the Town's name, as legal counsel could show to a court that a policy is in place to address the liability concerns. The other major advantage is the reduced cost to the residents, as the Town would cover the most substantial costs associated with the alley closing and transfer. This addresses some of the main concerns expressed in the Stuart and Minto alley closing, whereby cost would not be a factor for those opposed to the closing. The Program will also eliminate the concern of angering neighbours over an alley closing request, as the costs and work are handled by the Town. Prioritizing the closing of alleys requested by residents will also allow for closings to be done in a timely manner for residents, albeit likely slower than Option A. If Council directs a nominal fee be charged to residents under the Program, then there is the possibility of some minor cost recovery, although it will fall short of a full recovery.

### **Anticipated Issues:**

As the Program shifts costs from the individual residents over to the Town, there has to be appropriate budgeting in place to adequately fund the Program. The amount that can be budgeted for the Program will determine the length of time required for it to be completed, but this is very likely a multi-year program given the number of Town-owned alleys that should be transferred to residents. The length of the Program will be determined by the amount of funding and human resources provided to administer the Program.

### **Conclusion:**

While the Program method marks a definitive shift from the full cost recovery method that has been the Town's basis for closing and transferring alleys, the long-term mitigation of legal liability and the avoidance of landowner disputes make Option C the most attractive for Administration. Should Council agree with Administration's recommendation to select Option C, Administration proposes that for the remainder of 2019 the alleys currently in queue be closed using the Program method. This period of time will allow

Administration to gather information with respect to the timing and costs associated with administering the Program, and allow for an informed report in the 2020 budget.

All of which is respectfully submitted.

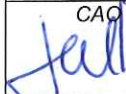
Yours truly,

  
Kevin Miller  
~~Deputy Clerk~~

  
Domenic Dadalt  
Town Solicitor

  
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Director of Strategic Initiatives

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Joe Milicia, CPA, CA  
Chief Administrative Officer

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



## The Corporation of the Town of LaSalle

<b>Date:</b>	September 19, 2018	<b>Report No:</b>	CAO-01jm-2018
<b>Directed To:</b>	Members of Council	<b>Attachments:</b>	Correspondence from P. Weir
<b>Department:</b>	Administration		
<b>Prepared By:</b>	Kevin Miller Acting Clerk  Allen Burgess Supervisor of Planning  Christine Riley Town Solicitor  Joe Milicia, CPA, CA Chief Administrative Officer	<b>Policy References:</b>	None
<b>Subject:</b>	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 1/14<sup>th</sup> 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.

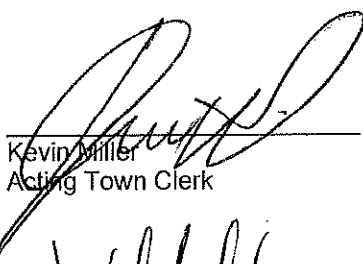
It would appear that the affected residents are unwilling to accept the current alley closing and sale practice and would like the municipality to ignore the use of municipality owned property and maintain the status quo. Otherwise, as an alternative they would like the municipality to assume some or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

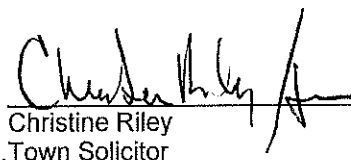
It should be noted that the feedback from residents has been "that there is no incentive under the current process to property owners to purchase the alley". In order to satisfy this concern it is anticipated that if a report from Administration is requested it would include a significant reduction in 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,



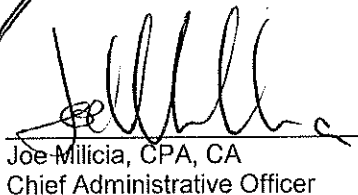
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Reviewed by:						
CAO	Finance	Council Services	Public Works	Development & Strategic Initiatives	Culture & Recreation	Fire Services