



**City of Kingston
Report to Council
Report Number 16-182**

To:	Mayor and Members of City Council
From:	Cynthia Beach, Commissioner, Corporate & Strategic Initiatives
Resource Staff:	Peter Huigenbos, Manager, Real Estate & Land Development
Date of Meeting:	June 7, 2016
Subject:	Permanently Close a Portion of York Street, formerly Old Road, at 181 Pine Street

Executive Summary:

The City has received a request from the owner of 181 Pine Street to permanently close a portion of York Street, formerly known as Old Road, that runs through part of the residential lot located at 181 Pine Street. Sometime between 1873 and 1946, the subdivision was restructured altering the location of York Street to terminate at Pine Street. There is no documentation indicating that the road allowance was formally closed or that the municipality relinquished its interest in the land. The closure of this road allowance will correct a title defect to the lands at 181 Pine Street.

Recommendation:

That a by-law be presented to Council to permanently close the portion of highway over Part Lot 1 and 2, North of Pine Street and South of Stanley Street on Plan A-13, further identified as Parts 4, 5 and 6 on Reference Plan 13R-19774, City of Kingston, being a portion of PIN 36070-0054.

That Council declare surplus to municipal need and dispose of the City's interest in the portion of highway over Part Lot 1 and 2, North of Pine Street and South of Stanley Street on Plan A-13, further identified as Parts 4, 5 and 6 on Reference Plan 13R-19774, City of Kingston, being a portion of PIN 36070-0054.

June 7, 2016

Page 2 of 4

Authorizing Signatures:

ORIGINAL SIGNED BY COMMISSIONER

**Cynthia Beach, Commissioner,
Corporate & Strategic Initiatives**

ORIGINAL SIGNED BY CHIEF ADMINISTRATIVE OFFICER

Gerard Hunt, Chief Administrative Officer

Consultation with the following Members of the Corporate Management Team:

Lanie Hurdle, Community Services	Not required
Denis Leger, Transportation, Facilities & Emergency Services	Not required
Jim Keech, President and CEO, Utilities Kingston	Not required
Desiree Kennedy, Chief Financial Officer & City Treasurer	Not required

June 7, 2016

Page 3 of 4

Options/Discussion:

Since the implementation of the Land Titles Act in 1990 and the gradual elimination of the old registry system, the City has received an increase in requests from property owners who have discovered the existence of old road allowances affecting the title to their properties. This is particularly prevalent in the historic core of the City where new lots were created to fit changing street patterns. Portions of lots on old registered plans were re-described using metes and bounds descriptions and often included parts of roads from the original plans that were no longer required. Under the old land registration system, this imperfect title was acceptable but it is not under the new Land Titles system. In the absence of a by-law to close the roads or other actions such as a judge's order, the roads are still subject to the interest of the municipality. This defect in title prevents the land from being registered under the Land Titles Act, and as a result can impact a property owner's ability to sell the land, mortgage it or obtain title insurance. The only way for the property owner to obtain clear title to their property is to make a request to the municipality to close the road and convey the interest to them. This report addresses the issue as it relates to 181 and 183 Pine Street (Exhibit A).

In 1855, Plan A-13 established Old Road, now known as York Street, which originally crossed Pine Street and continued northeast rather than ending at Pine Street as it currently does today (Exhibit B). After 1873, new plans were deposited in the area of Plan A-13 which changed the street layout causing York Street to terminate at Pine Street. There is no evidence that the portion of Old Road that travelled beyond Pine Street was formally closed by by-law or any other method available at the time. In the absence of any such specific action, Old Road is still identified as a municipally owned road on a registered plan and remains subject to the interest of the municipality.

The remnants of Old Road currently pass through two residential lots, 181 and 183 Pine Street. During the private sale of 181 Pine Street to its current registered owner, it was discovered that the road was never formally closed and that the City still held an interest in the portion of the old road allowance. The issue was confirmed by registration of a new reference plan for 181 Pine and the portion of 183 Pine subject to a shared driveway.

The houses on the lots are believed to have been built circa 1946. Although the properties have been conveyed several times since construction, there is no documentation demonstrating the closure and conveyance of the underlying road allowance known as Old Road. It is for these reasons that the owner of 181 Pine Street has requested that the City stop up and close the portion of Old Road that runs through his property and a portion of the shared driveway at 183 Pine.

Only the portion of 183 Pine Street subject to the shared driveway easement has been surveyed. The owner of 183 Pine Street has been contacted and is aware of the current title defect. At this time, the owner of 183 Pine Street has indicated to the City disinterest in completing a survey and acknowledges that the road allowance will remain a burden to the property's title. The owner of 183 Pine Street has, however, given written consent to the City for the road allowance to be closed over his portion of driveway and conveyed to him. The costs of the transfer for both parties shall be borne by the owner of 181 Pine Street.

June 7, 2016

Page 4 of 4

Staff has consulted with internal departments to verify that the road allowance is not required for municipal purposes. Staff recommends that the portion of road allowance identified as Parts 4, 5 and 6 on Registered Plan 13R-19774 be permanently closed in accordance with the draft by-law attached as Exhibit C. In addition, staff proposes that Parts 4, 5, and 6 be declared surplus to municipal need and the municipality's interest in the land be conveyed to the respective property owners to satisfy the Land Titles Act.

Existing Policy/By-Law:

Section 34 of the Municipal Act requires that roads can only be closed with the approval and registration of a by-law on title. In addition, the City's "Policy on the Disposition of Real Property" requires that prior to selling land, including closed road allowances, Council must declare the property surplus to municipal need.

Notice Provisions:

The City's Public Notice Policy requires that notice be published two weeks in advance of the proposed meeting date in which Council considers the closure of a road allowance and the declaration of said property as surplus to municipal need. The advertisement for closing the road and declaring surplus was published on May 24, 2016 on the City's public notice webpage.

Accessibility Considerations:

None

Financial Considerations:

The owner of 181 Pine Street will be compensating the City for the legal and administrative fees involved in transferring the land. A legal survey has already been completed by the owner at no expense to the City.

Contacts:

Peter Huigenbos, Manager, Real Estate & Land Development 613-546-4291 x 3148

Other City of Kingston Staff Consulted:

Susan Nicholson, Director of Legal Services and City Solicitor

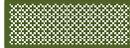
Exhibits Attached:

Exhibit A – Location Map

Exhibit B – Registered Plan A-13

Exhibit C – By-Law



-  181 and 183 Pine Street
-  Road allowance to be closed
-  Trajectory of Old Road/York Street
-  Portion of road allowance not included in proposed by-law

By-Law Number 2016-XX

A By-Law to Permanently Close a Portion of Highway over Part Lot 1 and 2, North of Pine Street and South of Stanley Street on Plan A-13, Further Described as Parts 4, 5 and 6 on Reference Plan 13R-19774, City of Kingston, being part of PIN 36070-0054

XXXXXXXX

Passed: Meeting date, 2016

Whereas Section 9 and 11 of the *Municipal Act, 2001*, S.O. 2001, c.25, permits municipalities to pass by-laws in respect of highways when the highway is under the jurisdiction of Council and the sale of land;

And whereas the Council of the Corporation of the City of Kingston deems it necessary to pass a by-law to permanently close and convey part of a highway;

And whereas public notice of Council's intention to permanently close a portion of highway over Part Lot 1 and 2, North of Pine Street and South of Stanley Street on Plan A-13, further described as Parts 4, 5 and 6 on Reference Plan 13R-19774, City of Kingston, being part of PIN 36070-0054, was published on May 24, 2016 on the City of Kingston's public notices webpage in accordance with the City of Kingston's "Public Notice Policy";

Therefore be it resolved that the Council of the Corporation of the City of Kingston hereby enacts as follows:

1. The portion of highway over Part Lot 1 and 2, North of Pine Street and South of Stanley Street on Plan A-13, further described as Parts 4, 5 and 6 on Reference Plan 13R-19774, City of Kingston, being part of PIN 36070-0054, shall be permanently closed.
2. This By-Law shall come into force and take effect on the date of its passing.

Given First and Second Readings June 7, 2016

Given Third Reading and Passed Month xx, 2016

John Bolognone
City Clerk

Bryan Paterson
Mayor