



**City of Kingston
Report to Council
Report Number 19-129**

To: Mayor and Members of Council
From: Peter Huigenbos, Acting Commissioner, Community Services
Resource Staff: Same
Date of Meeting: May 8, 2019
Subject: Declare Surplus and Transfer Lands - 31 Weller Avenue

Executive Summary:

In 1991 an error was made during a land transfer process, resulting in the entirety of 31 Weller Avenue being transferred to City ownership when only a portion of the property that had been found to be within the road allowance was intended to be transferred.

In order to return title of the property to the correct owners, St. Matthews United Church, the City must obtain a new legal survey of the property, declare the property as surplus, and have the Mayor and City Clerk execute an agreement to transfer the property.

Recommendation:

That Council declare surplus to municipal need and transfer the property known municipally as 31 Weller Avenue back to St. Matthews United Church, as depicted on the sketch in Exhibit A attached to Report Number 19-129; and

That Council authorize the Mayor and Clerk to execute all necessary agreements as may be required to affect the transfer of title of 31 Weller Avenue to St. Matthews United Church, to the satisfaction of the Director of Legal Services.

May 8, 2019

Page 2 of 4

Authorizing Signatures:

ORIGINAL SIGNED BY COMMISSIONER

**Peter Huigenbos, Acting Commissioner,
Community Services**

ORIGINAL SIGNED BY CHIEF ADMINISTRATIVE OFFICER

**Lanie Hurdle, Acting Chief Administrative
Officer**

Consultation with the following Members of the Corporate Management Team:

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| Gary Dyke, Commissioner, Corporate Enterprise Services | Not required |
| Jim Keech, President & CEO, Utilities Kingston | Not required |
| Desirée Kennedy, Chief Financial Officer & City Treasurer | Not required |
| Sheila Kidd, Commissioner, Transportation & Public Works | Not required |

May 8, 2019

Page 3 of 4

Options/Discussion:

The City's Legal Services Department was contacted by a local real estate lawyer with concerns that incorrect ownership of the property at 31 Weller Avenue had been registered on title. The property contains St. Matthews United Church, and the church group had begun exploring options with respect to the property when the title issue was discovered.

Staff performed a review of files related to the property and found correspondence in a legal file prepared in 1991 regarding a portion of the church property being within the limit of the Weller Avenue road allowance. An agreement was made to have this portion of land transferred to the City. The lands to be transferred to the City were described within the agreement using a written metes and bounds description. Unfortunately, the final deed registered on title included both the lands owned by the church and the lands within the Weller Avenue road allowance. The error in the legal description of the lands on the transfer was not identified by any of the involved parties and this resulted in the City becoming the registered owner of the whole parcel of land, including St. Matthews United Church.

The lands should never have been in the name of the Corporation of the City of Kingston and are therefore recommended to be declared surplus and transferred back to St. Matthews United Church.

The land the City intended to receive was described using a metes and bounds description which is no longer acceptable for use by the Land Registry Office; therefore, a new survey is required to complete the transfer.

Existing Policy/By-Law:

The City's Disposition of Real Property Policy requires that to transfer property it must first be declared surplus, and further, land that is declared surplus is to be sold at fair market value. As the City was not meant to have acquired title to these lands, it is recommended that the City retain the original portion of the lands within the road allowance as agreed upon in 1991, and that the remainder of the lands be transferred back to St. Matthews United Church for the nominal fee of \$1.00.

Notice Provisions:

The City's Public Notice Policy requires that notice be published on the City's public notice webpage two weeks in advance of the proposed meeting date in which Council considers the declaration of said property as surplus. Notice was published on April 24, 2019 on the City's public notice webpage.

Accessibility Considerations:

Not applicable

May 8, 2019

Page 4 of 4

Financial Considerations:

There is sufficient budget to cover the costs of the legal survey and closing costs. The City is covering all costs related to the transfer.

Contacts:

Peter Huigenbos, Acting Commissioner, Community Services 613-546-4291 extension 3148

Other City of Kingston Staff Consulted:

Not applicable

Exhibits Attached:

Exhibit A Site Sketch of 31 Weller Avenue



Property to be Transferred
31 Weller Avenue

LEGEND:

- Road allowance to be kept as City owned
- Church property to be transferred back