

18. Re: Letter dated November 16, 1973 from Mr. A. S. Gregson on Lane East of Brantford Avenue and South of Stanley Street. Subdivision Reference #122/73
(Item 19, Report 83, November 5, 1973)

Appearing on the Agenda for the December 3, 1973 Council Meeting is a letter dated November 16, 1973 from Mr. A. S. Gregson, 6376 Burns Street, regarding the lane East of Brantford and South of Stanley Street. Mr. Gregson's first correspondence to Council in this respect is dated September 19, 1973, and was considered by Council on October 1, 1973.

When Council considered this subject on October 1, 1973, the following motion was passed based on the recommendation made by the Municipal Manager:

"THAT the Municipal Council endorse the position of the Approving Officer in that it would be unreasonable to withhold approval of the proposed subdivision for the reasons stated in his letter of September 20, 1973 to Mr. Gregson; and

THAT the Planning Department send a letter to the affected residents advising them of the implications of developing a lane, and soliciting their opinion on the merits of a lane; and

THAT if the residents wish a lane developed as a local improvement immediately, the necessary survey and dedication take place as a condition of subdivision."

Upon reflection, the Municipal Manager feels that a portion of his recommendation of that date was slightly contradictory in that the first part recommends "approval of the subdivision" whereas the last part refers to the necessary survey and dedication of a lane taking place as "a condition of subdivision". It would have been more proper if the words "as a condition of subdivision" had not been used and the sentence stopped after the word "place" in the second to the last line.

In any event, on the one hand we had a subdivider who was pushing to have his subdivision approved (see attached) and to be paid for the land that we had purchased from him and on the other hand we had a group of people who wanted a lane dedicated as part of a subdivision. What we all seem to have lost sight of on October 1, 1973, including the Manager, is the fact that:

- (a) On August 15, 1973, the Parks and Recreation Commission approved of the acquisition of the Easterly portion of the Herbold property on Stanley Street (including within the purchase the area where a lane would be if one were to be dedicated).
- (b) On August 20, 1973, the Municipal Council approved of the acquisition by accepting the owner's offer, and thus the negotiation for the property had been concluded.
- (c) On September 10, 1973, the survey separating the Municipal acquisition from the lot was completed.

When the subdivider insisted that the agreement that the Municipality conclude the property transfer, the Approving Officer approved of the subdivision on October 5, 1973. This fact was reported orally at the Council Meeting of November 5, 1973, during the questioning by Council when considering Item 19, Report 83. It is admitted that this fact was not reported in the Item itself. It should be clearly understood however that the subdivision plan was only approved after considerable delay and when it was concluded that such approval would not negate the possibility of lane dedication from property that the Municipality had purchased some 2½ months previously. To do otherwise would have jeopardized the land acquisition and would have meant commencing land negotiations all over again.

For the record the letter asking the property owners for their opinion on the development of the lane was sent out on October 15, and the responses are dated October 17, 18, 19, 23, 29 and one undated. The report item #19 giving a summary of the responses (see attached) was considered by Council on November 5, 1973 and tabled pending a response from the Parks and Recreation Commission as to its opinion on the development of the lane over the property just purchased and adjacent to additional property under its control.

At the same time that we were contacting the property owners, Mr. Gregson brought in an "informal" petition at the Council Meeting on October 15 asking for the development of a lane at the rear of their properties. (Note - the Deputy Municipal Clerk subsequently prepared a "formal" petition for only the dedicated but unopened lane.) The Deputy Municipal Clerk has advised that there are 11 owners of property abutting the lane (including the Municipality but not the School Board) which means that in order for him to certify it as sufficient, 8 of them must sign the petition. The "formal" petition is signed by seven owners only. The Planning Director's report of November 5 (Item #19, Report 83) is not correct in this respect as it refers to 13 owners and 9 signatures required to make the petition sufficient. This condition only applies if one considers the "total" lane including the possible new or additional dedication. Regardless of the incorrectness of the Planning Director's report on this aspect, the petition is still insufficient to authorize that we proceed with development of the lane. Another point that must be considered, however, is that in order to build the lane out to connect with Stanley Street, 2 more property owners are involved after dedication which would mean that another petition would be required to cover these additional properties for a local improvement assessment. (One has already said "No").

The Solicitor has ruled that School Board properties are not subject to the local improvement section of the Municipal Act and therefore the Board's properties cannot be taken into consideration whereas Municipally owned lots are subject to the local improvement sections of the Act and must be considered in the determination of whether or not a petition for local improvements is sufficient. He points out that Section 612 (1) of the Act states: "Land wholly exempt from taxation under Section 327 is not subject to this Division." On reading Section 327 (1), subsection (7) states: "The exemption from taxation under clauses (b) (municipally owned land); (d) (land owned under the Public Libraries Act); (g) (cemeteries); (h) (houses of worship); (i) (homes for elderly citizens); and (k) (privately owned schools) of subsection (1) extends only to taxation imposed under Section 206." Section 206 relates only to taxes for general purposes, debts, hospitals, improvement district rates and Regional Hospital District rates. There is no reference to local improvements. In other words, Municipally owned lots are subject to the local improvement sections of the Act and must be considered in assessing a petition as to sufficiency. School Board properties are not. In any event, the School Board is not opposed to the works and would cooperate, but it would prefer to not see the lane developed. There is no doubt, however, that it will provide whatever property is necessary to open a lane onto Brantford Avenue if requested by the Municipality. Further, even though the Municipality's lands must be considered when assessing a petition as to its sufficiency, the Municipality has always adopted a "neutral" stance by not voting for or against local improvement works.

In summary then:

1. The subdivision plan is registered.
2. The land required if a lane is dedicated is now owned by the Municipality.
3. We have not yet heard from the Parks and Recreation Commission as to its wishes with respect to the dedication of a lane on the recently acquired property.

4. The petition received is not sufficient to allow the Municipality to construct the lane as a local improvement in the existing right-of-way at the expense of the abutting owners. Because of the insufficiency of the petition, if the lane is to be constructed, it will have to be at municipal expense. Further, no cash deposits have ever been taken for the cost of constructing the lane.

RECOMMENDATIONS:

THAT this report be tabled pending the receipt of the report from the Parks and Recreation Commission; and

THAT a copy of this report item be forwarded to all those abutting property owners involved in opening this lane, whether or not they signed the petition; and

THAT a copy of this report item be forwarded to the Parks and Recreation Commission and the School Board; and

THAT this matter be placed on the Agenda for the Council Meeting of December 10, 1973, when any representations can be made by anyone affected.

D.L. 82

LOT 82

PLAN 1146

6316 BRANTFORD.

S.D. 122/73

ZONING R5

ITEM 10

MANAGER'S REPORT NO. 73

COUNCIL MEETING Oct. 1/73

ITEM 19

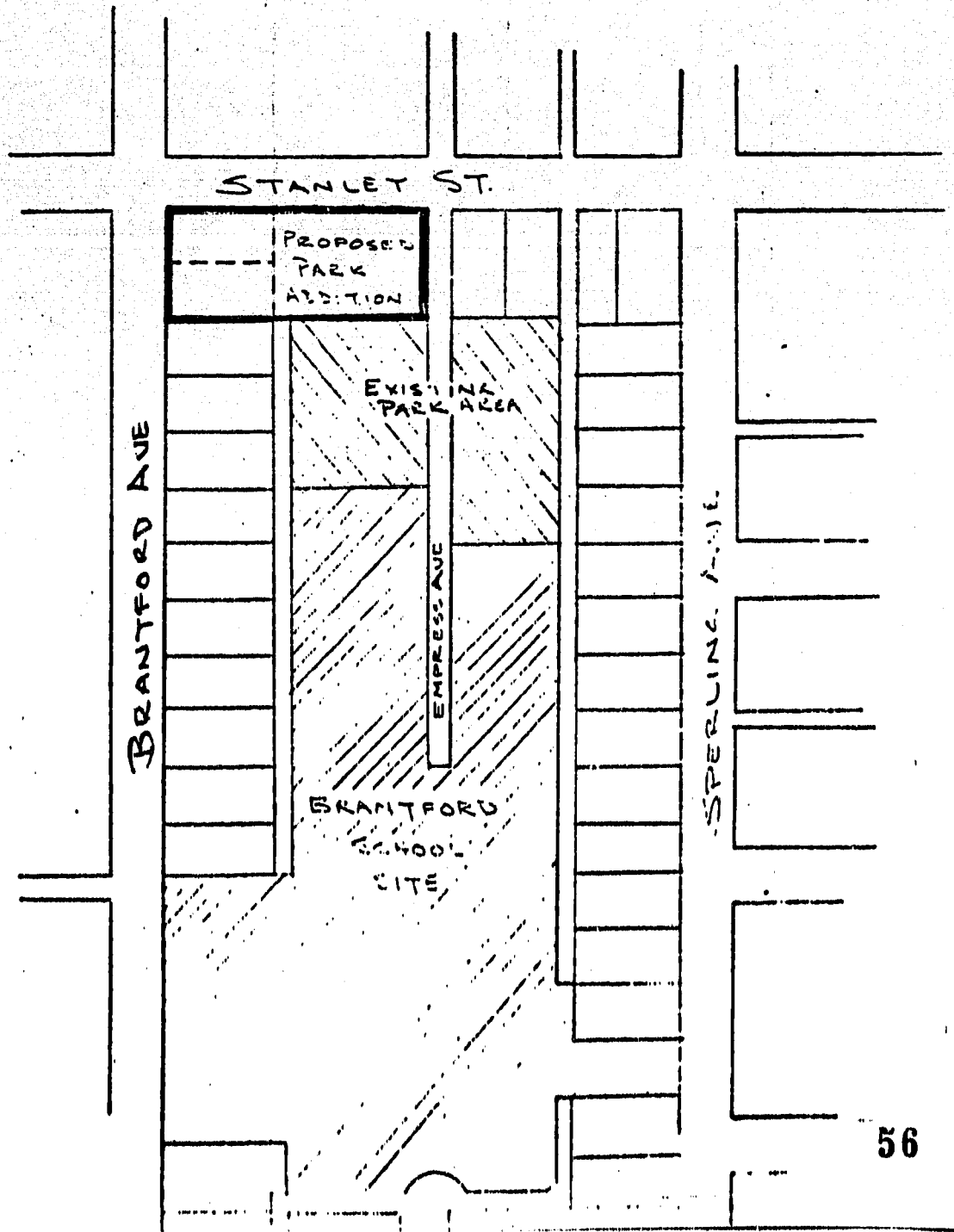
MANAGER'S REPORT NO. 83

COUNCIL MEETING Nov. 5/73

ITEM 18

MANAGER'S REPORT NO. 90

COUNCIL MEETING Dec. 3/73



ITEM 19
 MANAGER'S REPORT NO. 83
 COUNCIL MEETING Nov. 5/73

ITEM 18
 MANAGER'S REPORT NO. 90
 COUNCIL MEETING Dec. 3/73

STANLEY ST.

NORTH

BRENTFORD AVE.

EMPRESS AVE.

HERBOLD NO \$ 19,990	SUBJECT	NECESSARY DEDICATION
MELMINER YES \$ 8,485		CORPORATION \$ 4,550
TITTERINGTON NO \$ 8,485		CORPORATION \$ 4,550
DREW NO \$ 8,485		SCHOOL \$ 4,550
COOK YES \$ 8,930		SCHOOL \$ 4,550
HARBOR NO \$ 8,930		SCHOOL \$ 4,550
R.W. WOODMAN YES \$ 9,930		SCHOOL \$ 10,560
GREEN YES \$ 9,890		
E.P. WOODMAN YES \$ 7,890		
TWYFORD YES \$ 10,270		SCHOOL \$ 25,455
HUNTER YES \$ 8,485		
SCHOOL \$ 24,250		NECESSARY DEDICATION

S.D. REF. # 122/73