



Subject: Emmanuel Lutheran Cemetery Transfer

To: Council – Public Meeting

From: Public Works Department

Report Number: 2023-31

Meeting Date: March 28, 2023

Recommendation:

That Public Works Department Report 2023-31 be received;

That Council accept ownership of the Emmanuel Lutheran Cemetery located at 5194 Beach Road, Sherkston, Ontario L0S 1R0 Lot 3 & 4, Concession 1, Plan 35;

That Council authorize the Director of Public Works to complete a survey of the lands required for ownership transfer and retain resources to update the Cemetery Software database for a cost of \$15,000 to be funded from the 2023 operating budget;

That Council direct the Director of Public Works to apply the City of Port Colborne cemetery rate structure to the Emmanuel Lutheran Cemetery effective immediately; and

That Council authorize the CAO to sign the Transfer to Cemetery Care and Maintenance Trust Fund/Account Information Sheet and the Cemetery Transfer and Acceptance of the Municipality by Mutual Consent forms as required by the Bereavement Authority of Ontario (BAO).

Purpose:

In 2022 the Emmanuel Lutheran Cemetery Board (the Board) contacted City staff to discuss transferring land ownership, administration, and general maintenance of the Emmanuel Lutheran Cemetery (ELC) to the City.

Background:

The ELC is located on Beach Road and is set back approximately 135 meters from the road allowance to the north. It consists of 725 plots of which 272 are available for

purchase and 99 are sold awaiting interments. Appendix A provides a map of the general location of the cemetery, Appendix B provides a Cemetery Layout map.

The ELC Board has an appointee who provides operational oversight of the cemetery including ground maintenance, and the layout and coordination of internments. This appointee has recently retired but agreed with the ELC Board to provide operational oversight until the transfer of the ELC has been completed.

The City currently owns Beach's Burying Ground which is contained within the ELC boundary and shares a common access road. The ELC Board coordinates the maintenance of both the ELC and the Beach's Burying Ground with the City reimbursing all associated cost of the Beach's Burying Ground to the Board.

Discussion:

The City will most likely be required to take ownership of the ELC if the Board applies to the Superior Court Justice to have a judge declare the cemetery abandoned. If the court declares the cemetery abandoned, the municipality will become the owner and will take over all the previous owner's cemetery assets, rights, and obligations. If the court does not declare the cemetery to be abandoned the owner/operator will be required to pay the cost of the proceedings. In all other cases, the Bereavement Authority of Ontario (BAO) has identified that the municipality will be required to pay the cost of the proceedings.

A cemetery owner or operator can apply to the Superior Court of Justice to have a judge declare a cemetery abandoned if its owner:

- cannot be found or is unknown
- is unable to maintain the cemetery
- is not a licensed operator and there is no licensed operator for the cemetery

The ELC Board has presented the rationale for the transfer of ownership being that the owner is unable to operate and maintain the cemetery due to its board members resigning and having no suitable candidates from their small congregation to fill the vacated positions.

The ELC is an Active cemetery, meaning that plots are currently being sold and internments taking place. An Inactive cemetery would no longer sell internment rights or conduct internments. The physical act of internments dictates whether a cemetery is Active or Inactive. There are currently 99 plots sold awaiting interments so the ELC will stay Active until all internments have taken place. The City could offer internment right holders a plot that has a value equal to or more than their current plot, but typically most internment right holders prefer to be interred where they have already purchased rights as it is usually likely they want their final resting place to be close to friends or family

that may be in the cemetery. The costs associated with the 272 available plots within the ELC is discussed within the Financial Implications section of this report.

The City will assume operations of the ELC. According to records, approximately 6-10 burials are held annually. The Cemetery generally has been well maintained and staff believe it can be maintained with the City's current complement of resources. The conditions will be monitored by staff and external resources will be retained if the need arises to increase current levels of service.

As part of the City assuming the role for the ELC administration, the City's Cemetery By-law 5840-94-12 will be applied to this site. The current By-law is under review and an updated By-law will be presented to Council for consideration at a future Council meeting.

The City will be required to oversee grass cutting approximately 25 times per year, head stone repairs, landscaping which includes leveling of grounds, tree trimming, and snow removal estimated to cost the City \$10,000 annually for staff time and use of equipment and materials.

To integrate the ELC into the City's digital data base, Stone Orchard, the City would be required to complete a land survey of the existing plots to verify the layout as provided by the Board. The survey would be uploaded into Stone Orchard to identify plots sold and available. Staff would then be required to manually load the hard copy data base into the Stone Orchard software for proper records. This same survey will be used to transfer land ownership to the City. The cost for the land survey and staffing to update the cemetery software is an estimated expense of \$15,000.

Based on current site conditions, consideration for road work and fence delineation between the cemetery and crop lands that run adjacent to the property, the amount of \$15,000 will be considered as part of the 2024 Capital budget submission.

Internal Consultations:

Staff have confirmed ownership is currently with St. Luke's Evangelical Lutheran Church of Ridgeway Trustees. Maintenance staff have visited the site and have been consulted regarding annual maintenance costs. Financial Services has reviewed the ELC Board's financial statements from 2016 to 2022.

The Bereavement Authority of Ontario (BAO) is aware that the ELC Board and City of Port Colborne are currently in discussion regarding the transfer of the ELC.

The City Solicitor has provided comment and agrees with this recommendation to Council.

Financial Implications:

Current balance provided by the ELC for year end 2022 as provided to the BAO states there is \$39,588 in the ELC perpetual care account with public trustee and \$8,572 balance on hand which will be transferred to the City.

To fully fund the annual operating expenses identified below the City would need a perpetual care account of approximately \$430,000. The 2022 statement identifies a perpetual care account of only \$39,588.

Expenses:

- Increase to overall annual operating expense: \$8,572
- Cost for land survey and transfer, staffing to update software: \$15,000

Fees:

- Staff propose that upon transfer of administration to the City of Port Colborne, the City's current rate schedule and By-law 5840/94/12 would apply to the ELC. The City's current fee schedule is under review and will be brought to a future Council meeting for consideration as current rates are subsidized by the levy.

	Emanuel Lutheran Cemetery	Port Colborne
Cremation Plots (includes perpetual care)	\$1,250	\$485
Full Body Plots (includes perpetual care)	\$1,250	\$1,377

(Excludes taxes and burial fees)

Strategic Plan Alignment:

The initiative contained within this report supports the following pillar(s) of the strategic plan:

- Service and Simplicity - Quality and Innovative Delivery of Customer Services
- City-Wide Investments in Infrastructure and Recreational/Cultural Spaces
- Value: Financial Management to Achieve Financial Sustainability

Conclusion:

In conclusion, it is recommended that the transfer of land and administration be accepted by the City of Port Colborne and the ELC remain Active to continue with the previously sold interments and sell new interment rights for the 272 available plots.

Appendices:

- a. General Location Map
- b. Cemetery Layout Map

Respectfully submitted,

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Report Approval:

All reports reviewed and approved by the Department Director and also the City Treasurer when relevant. Final review and approval by the Chief Administrative Officer.