



Committee Report

To:	Warden McQueen and Members of Grey County Council
Committee Date:	October 8, 2020
Subject / Report No:	PDR-CW-38-20
Title:	Overview of a New Proposed Residential Crossing Over the CP Rail Trail
Prepared by:	Stephanie Lacey-Avon & Lacey Thompson
Reviewed by:	Michael Letourneau, Randy Scherzer, Kim Wingrove
Lower Tier(s) Affected:	Municipality of Grey Highlands
Status:	Recommendation adopted by Committee as presented per Resolution CW176-20; Endorsed by County Council October 22, 2020 per Resolution CC84-20;

Recommendation

- 1. That Report PDR-CW-38-20 regarding a new proposed residential crossing over the CP Rail Trail be received; and**
- 2. That the proposed residential crossing be supported in principle and that staff be directed to continue working with Grey Highlands, the property owner, and utility companies to enter into the necessary agreements without the need for additional reports to council; and**
- 3. That by-laws be prepared for Council's consideration to implement the necessary agreements; and**
- 4. That staff be directed to prepare a policy regarding how these types of requests for CP Rail Trail crossings will be dealt with in the future.**

Executive Summary

The County recently received a request from a private landowner to cross the CP Rail Trail via a laneway for residential purposes through a legal easement. Through the Recolour Grey process, staff have incorporated a new policy section 8.8 Rail Corridors, intended to protect the rail trail corridor in the event rail returns to the area.

Because a building permit has been issued, and construction has begun, staff are aiming to work with the Municipality, along with the property owners to provide legal access to Parcel A via the CP Rail Trail. Should Council support the proposal in principle, County staff will continue to work with the Municipality of Grey Highlands, the property owners, and utility companies (Hydro One and Enbridge Gas) to complete the required agreements.

It is recommended that staff be directed to prepare a policy for dealing with these types of requests for crossings across the CP Rail Trail.

Background and Discussion

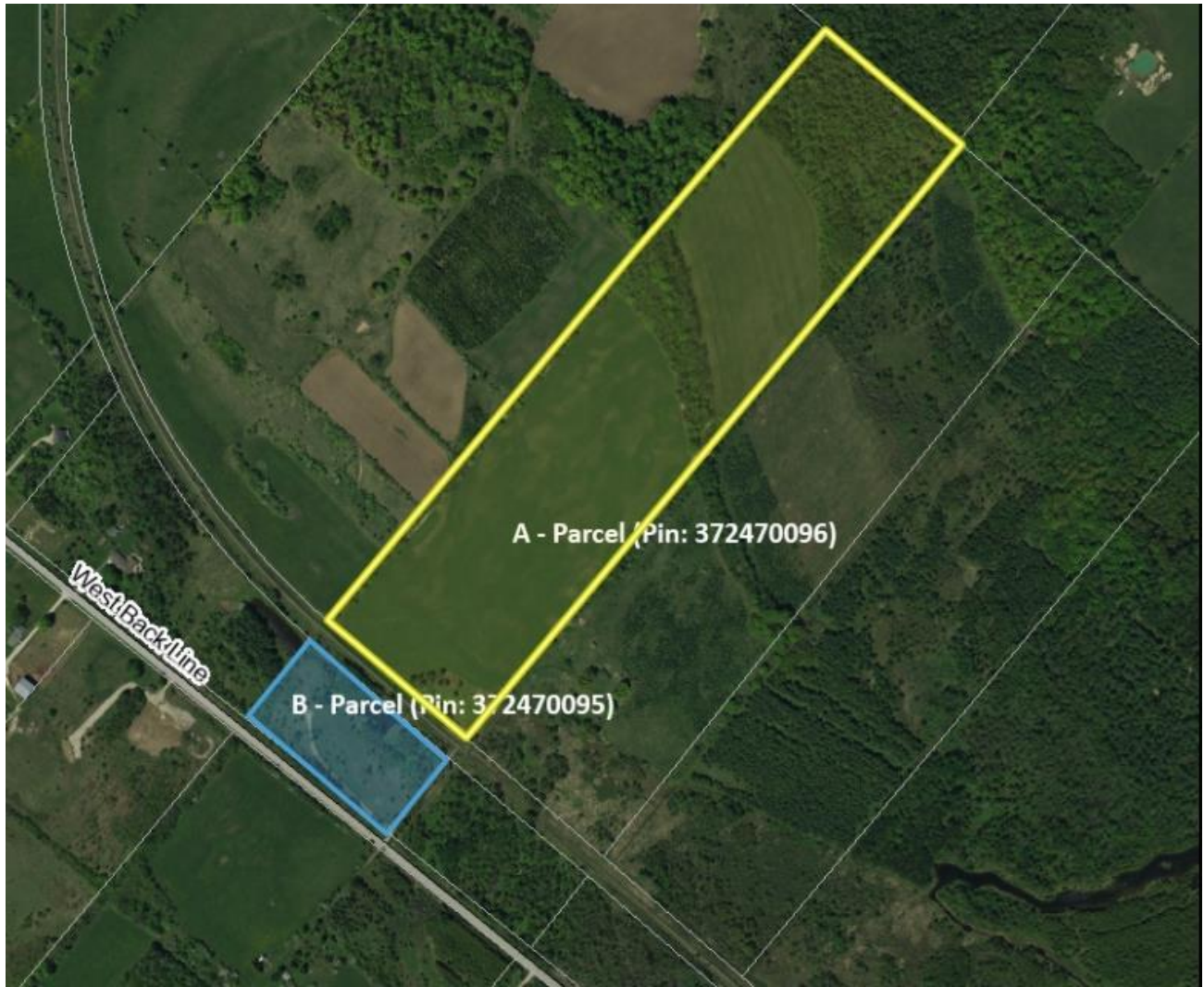
The County recently received a request from a private landowner to cross the CP Rail Trail via a laneway for residential purposes which ultimately results in the need for installation of utilities over, across and/or under the CP Rail Trail.

The subject property requiring access is in Grey Highlands, on the north east side of the CP Rail Trail and has no public access (referred to as "Parcel A"). Parcel A is seeking access for residential purposes by way of consent to acquire legal access to the land via obtaining easements over Parcel B (municipally known as 734687 West Back Line). Parcel B is on the south west side of the trail and has road access from West Back Line.

Parcel A and Parcel B are separate, legally conveyable parcels of land.

Historically, the existing laneway crossing the CP Rail Trail between Parcel A and Parcel B was used for farming purposes. That historic use for farming is not enough to provide a legal right for full residential driveway access to Parcel A, including the installation of utilities. Parcel A is otherwise landlocked with no frontage along an open or maintained public roadway. For simplicity, a map has been provided.

Map 1



By changing the use of this laneway from agricultural to residential purposes, several liability and legal concerns have been brought forward, needing consideration. The following discusses the procedure required in order to grant formal, ongoing residential access across the CP Rail Trail. Staff are seeking general support in principle for this proposal, in order to proceed with drafting the required agreements. An overview of the process that has occurred to date will also be provided.

1. A residential building permit has been issued to the property owner for construction on Parcel A and construction has begun. Several critical planning matters have since been raised, specifically pertaining to ongoing legal and safe access to Parcel A.

2. The applicant has subsequently applied for a consent for easement application with the Municipality of Grey Highlands, formally ensuring an easement over Parcel B, in favour of Parcel A to legally establish ongoing and future access to Parcel A, in the event Parcel B is sold to a separate property owner. This consent application (B18.2020) has been circulated for review and comment and a public meeting was held September 8th, 2020. The consent application has since been conditionally approved.
3. A zoning by-law amendment (Z39.2020) has also been initiated with the Municipality by the landowner, to legally recognize Parcel A as having frontage on an open and maintained municipal road (formalized by the consent for easement application B18.2020). The public meeting was held for this file September 28th, 2020.
4. Grey County staff require the landowner to enter into a consent for easement agreement with the County. Included in this easement agreement will be matters pertaining to motor vehicle access, pedestrian access, utility service provision (both overhead and underground), emergency vehicle/personnel and/or equipment access, and provision 8.8 – *rail corridors* of the County OP. Section 8.8 of the County OP was created with the intent of providing guidance on protecting the rail corridors should rail return to the area. The intent and function of the proposed easement agreement will be to clearly establish through title registration where the responsibility lies for any potential legal matters that may arise along the CP Rail Trail. An example may be – who is responsible for fixing the hydro line traversing the CP Rail Trail, connected to the residential property (Parcel A) should it become disconnected along the CP Rail Trail? The details of the agreement may extend beyond what is listed above should it be deemed necessary by the County.
5. The County will also require a '*County Facility/Premises Use Agreement*' with each of Enbridge Gas and Hydro One, to legally permit access to the CP Rail Trail for the installation of these two utilities, in favour of Parcel A. These are temporary agreements that allow works to be completed on or adjacent to County owned lands and would allow the utilities to be installed prior to formalizing the easement.
6. Restrictive covenants will be needed against both Parcel A and Parcel B to provide that no drainage from either Parcel be diverted toward the CP Rail Trail in the future.

Grey County staff are certainly aware that this is not the first instance where residential access traversing the CP Rail Trail has been or will be established. Although, with careful consideration under the Recolour Grey process, staff have incorporated a new policy section 8.8 Rail Corridors, intended to protect the rail trail corridor in the event rail returns to the area. From a planning perspective, residential development on Parcel B would have been the recommended approach, as those lands have frontage on an open and maintained public roadway and it would have limited the need to establish a 'new use' – a residential laneway and utility corridor (over the CP Rail Trail).

Because a building permit has been issued, and construction has begun, staff are aiming to work with the Municipality, along with the property owner to effectively meet the desired outcome, being access to Parcel A via the CP Rail Trail. Should Council support the proposal in principle, County staff will continue to work with the Municipality of Grey Highlands, the property owner, along with the utility companies (Hydro One and Enbridge Gas) to work out details with respect to the *Temporary Encroachment Agreement*, *Consent for Easement Agreement*, the *County Facility/Premises Use Agreements*, and the *Restrictive Covenants*.

Staff seek to proceed with these agreements without needing additional reports to council regarding each agreement type, aiming to simplify the process and meet customer service expectations. All agreements would be approved by the Director of Planning and the Director of Legal Services – County Solicitor before they would be signed. It is recommended that staff be directed to prepare a policy for dealing with these types of requests for crossings across the CP Rail Trail.

Legal and Legislated Requirements

Planning Act, R.S.O. 1990, c. P.13

The formal Easement between the County and the Property Owners and the Restrictive Covenants will be deposited on title to the lands at the local Land Registry Office (Grey No. 16).

Financial and Resource Implications

Planning staff in coordination with Legal Services and County's Clerks staff will be preparing and reviewing the necessary agreements for the subject file. The procedures completed as part of this process will help inform a County policy.

The Property Owners will be responsible for all costs, including but not limited to the following: obtaining a survey of the lands to define the part of the CP Rail Trail that will be subject to the proposed easement; registration of the easement and restrictive

covenants on title; any and all costs associated with the installation, repairs, upgrades and/or removal of the proposed residential access, hydro service and gas service.

Relevant Consultation

- Internal (Clerks, Legal, Planning Staff)
- External (Municipality of Grey Highlands and the Property Owner's)

Appendices and Attachments

None