



Municipality of Northern Bruce Peninsula Council Report

Report Number: CAO 21-54

Subject: Cabot Head Road Ownership

From: Peggy Van Mierlo-West, CAO

Date: December 20th, 2021

Recommendation:

THAT, Council receives the report titled, Cabot Head Road ownership for information.

Background:

Council requested that staff review the ownership of Cabot Head Road and report back. Cabot Head Road has deteriorated to which public access is not permitted. There has been interest for the development of a path/trail for the public to use. A delegation surrounding this project was presented to Council. The group is continuing to work towards their goal of a trail and will be presenting this to Council at the January 24th, 2022 Council Meeting.

Comments:

Administration directed Middlesbro and Stevens LLP to review the file and history. The Municipality did build Cabot Head Road, based upon further review the Federal Ministry of Transportation and the provincial Department of Highways contributed funds to the project. The Federal Funds were accepted via By-law 750. Historic maintenance to the road occurred prior to 2001, this is referenced in a 2006 opinion letter from lawyer Don Greenfield.

Despite this background, none of Cabot Head Road is owned by the Municipality except a small portion that cross original road allowances. However, By-law 782 is an expropriation by-law which was passed but not registered. Usually when an expropriation by-law is passed there is some record of payment to the property owners. Unfortunately, there is no record of this.

It is Middlebro and Stevens opinion that Cabot Head Road is a highway within the meaning of the Municipal Act. A Highway is defined under the Municipal Act as;

"a common and public highway and includes any bridge, trestle, viaduct or other structure forming part of the highway and, except as otherwise provided, includes a portion of a highway;

According to the Highway Traffic Act a highway is defined as;

"a common and public highway, street, avenue, parkway, driveway, square, place, bridge, viaduct or trestle, any part of which is intended for or used by the general public for the passage of vehicles and includes the area between the lateral property lines thereof"

Hence any restriction of the road use to only include certain activities would require the road to be closed. As the road abuts the water, consent of the Crown would also be required. It should be noted that Cabot Head Road is the sole access point for motor vehicles to all the adjoining lands and their consent is required as well.

It was concluded that the municipality likely cannot restrict the road to pedestrian, bicycle, and other recreational uses only without formally closing the Cabot Head Road.

Attachments:

Budget Implications:

Municipal Strategic Commitment:

Respectfully submitted:

Peggy Van Mierlo-West

Peggy Van Mierlo-West,

Chief Administrative Officer

By-Law 750

Be it enacted and it is hereby enacted by the Municipal Corporation of the Township of Lindsay,

That the Corporation of the Township of Lindsay enter into agreement with the Dept of Transport Dominion of Canada to provide a road to Wingfield Basin Lindsay Township County of Bruce. as follows.

WHEREAS the Corporation, for the consideration hereinafter mentioned, has agreed with Her Majesty, to do, furnish and perform the works, materials, matters and things required to be done, furnished and performed, in the manner hereinafter described, in connection with the construction of a road from Dyer's Bay to Wingfield Basin, both in the Province of Ontario, (hereinafter referred to as "the said road"), to provide access to Cabot Head Light and Fog Alarm Station, so called, (herein referred to as "the said station"), situated at Wingfield Basin, in the Township of Lindsay, County of Bruce and Province of Ontario, the location of the said road being indicated colour'd brown on the plan annexed hereto.

NOW KNOW YE THAT THIS INDENTURE WITNESSETH that the parties hereto hereby covenant, promise and agree, each with the other, as follows:-

I. In this contract the following words shall, unless the context require a different meaning, have the following meanings, respectively, that is to say:-

"Corporation", or other words relative thereto, or of like import, shall mean and include the party of the first part as above designated or described, and its successors and assigns (duly consented to under this contract).

"Her Majesty", or other words relative thereto, or of like import, shall mean and include the reigning Sovereign or the Successors or Assigns of the Sovereign.

"Engineer", shall mean the Director, Marine Works, of the Department of Transport of Canada or other officer for the time being appointed to inspect, supervise or control the works on behalf of Her Majesty.

"Work" or "works", or other words relative thereto or of like import, shall mean the whole of the materials, work and supplies, matter and things required to be furnished, performed and maintained by the Corporation.

2. That the Corporation shall proceed to construct the said road, which shall be on such location that it will pass immediately adjacent to the said station.

3. That the Corporation shall supply all material, labour, transportation, supervision and service in the construction and maintenance of the works.

4. That, for and in consideration of the premises and the construction maintenance of the works, as established to the satisfaction of the Engineer, Her Majesty will pay to the Corporation a sum equal to fifty per cent. (50%) of the actual cost of constructing the said works, which sum shall not exceed, in any event, the sum of Two thousand five hundred dollars (2,500.00), payment to be made on the written certificate of the Engineer that the Corporation has performed such work and has complied with the terms of this contract and such certificate shall be a condition precedent to the right of the Corporation to receive payment from Her Majesty, and the Corporation shall furnish the Engineer with an and all accounts, together with supporting documents, that he may require.

5. That, in consideration of the said sum not exceeding Two thousand five hundred dollars (\$2,500.00) to be paid by Her Majesty to the Corporation hereby agrees, at its own cost and expense, to maintain, renew and keep in repair the said road, including snow ploughing, in perpetuity and to assume any and all liability or obligation to maintain, renew and repair the said road, including snow ploughing.

6. That the Corporation shall at all times indemnify and save harmless Her Majesty from and against all claims and demands, loss, costs, damages, actions, suits or other proceedings by whomsoever made, brought or prosecuted, in any manner based upon, occasioned by or attributable to the construction and maintenance of the works and any and all work in connection therewith or the default of the Corporation in maintaining or repairing the said road, and roadway appurtenances, whether the want of repair or maintenance be the result of misfeasance or nonfeasance or otherwise howsoever, or any action taken or things done or maintained by virtue hereof, or the exercise in any manner of rights arising hereunder.

7. That it is understood and agreed by and between the parties hereto that nothing herein contained shall entitle the Corporation to payment by Her Majesty as in clause No.4 hereof provided unless and until the necessary funds have been voted by Parliament in that behalf.

8. That the Corporation shall comply with be subject to all the terms stipulations and conditions contained in the labour conditions hereunto annexed and the said labour conditions shall be read with and form part of this contract.

9. That pursuant to the provisions of the Statute in such case made and provided, no member of the House of Commons of Canada shall be admitted to any share or part of this contract, or to any benefit to arise therefrom.

Passed in open council this 11th day of August 1962.

Donald R M Fay (Rev)



CANADA

DEPARTMENT OF TRANSPORT

YOUR FILE NO.....

OUR FILE NO. 7952-1594

Ottawa, September 24, 1962.

Mrs. Freda Meyer,
Clerk,
The Corporation of the Township of Lindsay,
R. R. No. 2,
Lion's Head, Ontario.

Dear Mrs. Meyer:

Enclosed herewith for the records of the Corporation of the Township of Lindsay is the duplicate original of Agreement dated September 19, 1962 and bearing No. 69592 in the records of the Department of Transport, for the construction by the Township of a road at Wingfield Basin and contribution by Her Majesty of 50% of the cost, not exceeding \$2,500.00.

Yours truly,

J. Fortier
Jacques Fortier,
Counsel.

Encl.

DEPARTMENT OF TRANSPORT

OTTAWA, August 3rd, 1962.

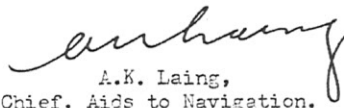
Mrs. Freda Meyer,
Clerk,
Township of Lindsay,
R.R. #2,
Lion's Head, Ontario.

Dear Mrs. Meyer:

I refer to your letter of July 21st concerning a grant by the Department of Transport to assist in the development of a road from Dyer's Bay to Wingfield Basin.

Enclosed is the original and duplicate original of the proposed agreement between the Corporation of the Township of Lindsay and Her Majesty The Queen. Please have these documents executed by the Township of Lindsay and have the completed duplicate original copy returned as soon as possible.

Yours very truly,


A.K. Laing,
Chief, Aids to Navigation.

Encls.

69592

No.

69592

DEPARTMENT OF TRANSPORT

AGREEMENT

Between

THE CORPORATION OF THE TOWNSHIP OF LINDSAY

-and-

HER MAJESTY THE QUEEN.

Date of Authority -

TB. 598038, Aug. 2/62.

Date of Agreement -

Sept. 19/62.

Public Work Concerned -

Cabot Head Light Station, Ontario.

Description

- Construction by the Township of Lindsay of a road to provide access to Cabot Head Light and Fog Alarm Station, at Wingfield Basin, Township of Lindsay, County of Bruce, Ontario, and contribution by Her Majesty of 50% of the cost thereof but not exceeding \$2,500.00

DEPARTMENTAL REFERENCE

FILE No.

7952-1594

MEMORANDA

THIS INDENTURE made this 19th day of *September*,
One thousand nine hundred and sixty-two:

B E T W E E N -

THE CORPORATION OF THE TOWNSHIP OF
LINDSAY, Lion's Head, in the
County of Bruce and Province of
Ontario, hereinafter called
"the Corporation",

Of the First Part;

- and -

HER MAJESTY THE QUEEN, represented
herein by the Minister of Transport,
hereinafter called "Her Majesty",

Of the Second Part.

WHEREAS the Corporation, for the consideration
hereinafter mentioned, has agreed with Her Majesty, to do,
furnish and perform the works, materials, matters and
things required to be done, furnished and performed, in
the manner hereinafter described, in connection with the
construction of a road from Dyer's Bay to Wingfield Basin,
both in the Province of Ontario, (hereinafter referred to
as "the said road"), to provide access to Cabot Head
Light and Fog Alarm Station, so called, (herein referred
to as "the said station"), situated at Wingfield Basin,
in the Township of Lindsay, County of Bruce and Province
of Ontario, the location of the said road being indicated
coloured brown on the plan annexed hereto.

NOW THEREFORE THIS INDENTURE WITNESSETH that
the parties hereto hereby covenant, promise and agree,
each with the other, as follows: -

1. In this contract the following words shall,
unless the context require a different meaning, have the
following meanings, respectively, that is to say: -

"Corporation", or other words relative thereto, or
of like import, shall mean and include the party of the

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first part as above designated or described, and its successors and assigns (duly consented to under this contract).

"Her Majesty", or other words relative thereto, or of like import, shall mean and include the reigning Sovereign or the Successors or Assigns of the Sovereign.

"Engineer", shall mean the Director, Marine Works, of the Department of Transport of Canada or other officer for the time being appointed to inspect, supervise or control the works on behalf of Her Majesty.

"Work" or "works", or other words relative thereto or of like import, shall mean the whole of the materials, work and supplies, matters and things required to be furnished, performed and maintained by the Corporation.

2. That the Corporation shall proceed to construct the said road, which shall be on such location that it will pass immediately adjacent to the said station.

3. That the Corporation shall supply all material, labour, transportation, supervision and services in the construction and maintenance of the works.

4. That, for and in consideration of the premises and the construction and maintenance of the works, as established to the satisfaction of the Engineer, Her Majesty will pay to the Corporation a sum equal to fifty per cent. (50%) of the actual cost of constructing the said works, which sum shall not exceed, in any event, the sum of Two thousand five hundred dollars (\$2,500.00), payment to be made on the written certificate of the Engineer that the Corporation has performed such work and has complied with the terms of this contract and such certificate shall be a condition precedent to the right of the Corporation to

N. H.

....

receive payment from Her Majesty, and the Corporation shall furnish the Engineer with any and all accounts, together with supporting documents, that he may require.

5. That, in consideration of the said sum not exceeding Two thousand five hundred dollars (\$2,500.00) to be paid by Her Majesty to the Corporation, the Corporation hereby agrees, at its own cost and expense, to maintain, renew and keep in repair the said road, including snow ploughing, in perpetuity and to assume any and all liability or obligation to maintain, renew and repair the said road, including snow ploughing.

6. That the Corporation shall at all times indemnify and save harmless Her Majesty from and against all claims and demands, loss, costs, damages, actions, suits or other proceedings by whomsoever made, brought or prosecuted, in any manner based upon, occasioned by or attributable to the construction and maintenance of the works, and any and all work in connection therewith or to the default of the Corporation in maintaining or repairing the said road, and roadway appurtenances, whether the want of repair or maintenance be the result of misfeasance or nonfeasance or otherwise howsoever, or any action taken or things done or maintained by virtue hereof, or the exercise in any manner of rights arising hereunder.

7. That it is understood and agreed by and between the parties hereto that nothing herein contained shall entitle the Corporation to payment by Her Majesty as in clause No.4 hereof provided unless and until the necessary funds have been voted by Parliament in that behalf.

26.26. 8. That the Corporation shall comply with and be subject to all the terms, stipulations and conditions contained in the labour conditions hereunto annexed and the said labour conditions shall be read with and form part of this

....

contract.

9. That pursuant to the provisions of the statute in such case made and provided, no member of the House of Commons of Canada shall be admitted to any share or part of this contract, or to any benefit to arise therefrom.

IN WITNESS WHEREOF the parties hereto have executed these Presents the day and year first above written.

SIGNED, SEALED AND DELIVERED
by the Corporation in the
presence of -

A. E. Meyer.

SIGNED, SEALED AND DELIVERED
by Her Majesty in the
presence of -

W. Whitmarsh

Donald R. McKay (Reeve)
Mrs. Freda Meyer (Clerk)

W. L. Hall
.....
for Minister of Transport.

A. A. A. A.
.....
Secretary.

OF THE CORPORATION OF THE TOWNSHIP OF LINDSAY

A BY-LAW TO PROVIDE FOR THE EXPROPRIATION OF LANDS
WITHIN THE SAID TOWNSHIP OF LINDSAY FOR THE PURPOSE
OF OPENING A HIGHWAY FROM DYERS BAY to CABOT HEAD.

WHEREAS the Corporation of the Township of Lindsay, in the exercise of its powers finds it necessary to expropriate certain lands for the specific purpose of opening a new highway from Dyers Bay to Cabot Head:

AND WHEREAS it is deemed expedient to proceed with such expropriations pursuant to the procedure provided by the Expropriation Procedures Act, 1962-63, Ontario Statutes:

BE IT THEREFORE ENACTED BY THE COUNCIL OF THE CORPORATION OF THE TOWNSHIP OF LINDSAY, AS FOLLOWS:

1. The lands shown on the land plan of the Township of Lindsay, in the County of Bruce, made and executed by J. C. Milne, O.L.S., and shown as having been completed on the 22nd day of May, 1965, which plan is hereto annexed and forms part of this by-law, which lands are more particularly shown as Part 1, being part of lot 38, Concession XI, E.B.R.; Part 2, being part of lot 38, Concession XII, E.B.R.; Part 3, being part of lot 39, Concession XII, E.B.R.; Part 4, being part of lot 39, Concession XIII, E.B.R.; Part 5, being part of lot 40, Concession XIII, E.B.R.; Part 6, being part of lot 40, Concession XIV, E.B.R.; Part 7, being part of lot 40, Concession XV, E.B.R.; Part 8, being part of lot 41, Concession XV, E.B.R.; Part 9, being part of lot 41, Concession XVI, E.B.R.; Part 10, being part of lot 42, Concession XVI, E.B.R.; Part 11, being part of lot 43, Concession XVI, E.B.R.; Part 12, being part of lot 43, Concession XVII, E.B.R.; Part 13, being part of lot 44, Concession XVII, E.B.R.; Part 14, being part of lot 45, Concession XVII, E.B.R.; Part 15, being part of lot 45, Concession

XVI, E.B.R.; Part 16, being part of lot 46, Concession XVI, E.B.R.; Part 17, being part of lot 46, Concession XVII, E.B.R.; all in the Township of Lindsay, in the County of Bruce, be and the same are hereby expropriated for highway purposes aforesaid, pursuant to the powers of the said Corporation of the Township of Lindsay, as contained in part 15 of the Municipal Act, being R.S.O. 1960, Chapter 249, and amendments thereto, and pursuant to the Expropriation Procedures Act, 1962-63, Ontario Statutes.

2. The Reeve and Clerk of the Corporation of the Township of Lindsay are hereby authorized to execute the said land plan referred to aforesaid, and to affix thereto the Corporate Seal of the Corporation of the Township of Lindsay, along with the execution of the said plan by the said J. C. Milne, O.L.S. and the said Reeve and Clerk are hereby further authorized to register the said land plan in the Registry Office for the Registry Division of the County of Bruce, as executed by the said J.C. Milne, the Reeve and the Clerk:

3. The said Reeve and/or Clerk be and they are hereby further authorized to do and perform all acts, sign all other documents and give such notices as may be necessary to complete the arrangements for providing for compensation for any owner with whom compensation has not been agreed upon, pursuant to the procedures set out in the said Expropriation Procedures Act.

FIRST READING: *September 7/65*

SECOND READING: *September 7/65*

THIRD READING: *September 7/65*

Donald K. McLay
REEVE.

Mrs. Freda Meyer
CLERK.

Members of:
Canadian Institute of Surveying
Community Planning Association of Canada
American Congress on Surveying and Mapping

Hewett & Milne

ONTARIO LAND SURVEYORS

MAURICE HEWETT, O.L.S. J. C. MILNE, O.L.S.
XXXXXXXXXXXX
1025 Second Avenue East Owen Sound, Ontario
P.O. BOX 112, Telephone FRanklin 6-5528

Grey & Bruce Counties Survey Records of the late:
R. McDowall, O.L.S. E. D. Bolton, O.L.S.
F. M. Eagleson, O.L.S. A. E. Farncomb, O.L.S.
J. M. Blyth, O.L.S.

302 - 8th Street East.

July 15, 1965.

Mr. Donald McLay,
Reeve of Township of Lindsay,
R. R. # 4,
Lions Head, Ontario.

Dear Sir:

We are forwarding to you to-day final plans for registration of the new Dyers Bay to Cabot Head Road.

Under the Expropriation Procedures Act 1962 - 63 all that is required to transfer title of the lands shown on this plan from the present owners to the Coporation of the Township of Lindsay is that you complete the Township Council Certificate and sign it along with the Clerk in India Ink and then take the two linen copies to the Registry Office for Regisitration. Your names should be printed also under the signature. Upon registration title becomes vested in the municipality. No deeds and consequently no descriptions need be prepared.

You should possibly seek your solicitors advice in dealing with any owner with whom compensation has not been agreed upon. However, this need not hold up registration of the plan.

Care should be taken to protect the linens against water or moisture. The remaining prints are for the municipalities use. We can make more prints of this survey anytime the township should require them.

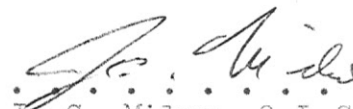
Our account is enclosed herewith.

Thanking you.

Yours very truly,

Hewett & Milne.

JCM/ss


J. C. Milne, O.L.S.

August 30, 1965.

Mr. Donald McLay,
Reeve, Township of Lindsay,
R. R. # 4,
LIONS HEAD, Ontario.

Dear Donald: Re: Dyers Bay, Cabot Head road

We have drafted a by-law which we enclose herewith in triplicate, together with one copy of the plan, and together with Jack Milne's letter.

As arranged, you can pick up the other plans the next time you are in the office. You should pass your by-law at the next meeting, or whenever is convenient, and be sure that you and the Clerk execute the plan and put the Corporate seal on it, and then take it to the Registry Office for registration.

After registration, notice is to be given to the owners with a notice of expropriation as provided in the Statute, that is, to any owner who has not agreed to the amount of compensation. Of course, failure to give a notice does not invalidate the procedure.

Under the new Expropriation Procedures Act, it is our opinion that you should not take possession of the land, however, without settling, or without complying with the requirement of offering a sum of not less than 50% of the amount which you estimate that the owner is entitled to. This can be discussed later. In the meantime, there is no reason why the by-law cannot be passed and the plan registered.

MAC/LJW

Yours very truly,
Graig & McKerroll,