



The Corporation of the Town of Tecumseh

Chief Administrative Officer

To: Mayor and Members of Council

From: Margaret Misek-Evans, Chief Administrative Officer

Date to Council: August 11, 2020

Report Number: CAO-2020-06

Subject: Boundary Adjustment Agreement and the County Road 43 Class Environmental Assessment Study

Recommendations

It is recommended:

That CAO-2020-06, Boundary Adjustment Agreement and the County Road 43 Class Environmental Assessment, **be received;**

And that a copy of CAO-2020-06 **be submitted** to County Council for their information;

And further that it is requested that County Council give consideration to passing a motion to:

- honour the County's obligations set out in the 2003 Boundary Adjustment Agreement; and
- complete a detailed design that is consistent with the recommended solution identified within the 2009 County Road 43 Environmental Study Report; and
- prioritize the aforementioned detailed design in 2020/2021, with construction to commence no later than 2023.

Background

In December 2002, the Province of Ontario approved the transfer of approximately 6,500 acres of land (annexed lands) from the Town of Tecumseh to the City of Windsor. This boundary adjustment was the culmination of a negotiation process that was originally triggered by

several years of political volatility and instability as the City of Windsor sought to implement a significant municipal restructuring in the region.

Briefly, the Town gave up 6,500 acres (approximately \$90M in assessment (2000)) in perpetuity to facilitate the continuation of the City and the County as separate entities, thereby also preserving intact the 7 municipalities of Essex County. A Boundary Adjustment Agreement (Agreement), effective January 1, 2003, set out the terms agreed upon by the Town of Tecumseh, the County of Essex and the City of Windsor. In return:

- The Town received \$2.41M of payment in lieu of taxes from the City of Windsor by 2007 (the County received \$1.30M);
- The jurisdiction for Banwell Road was transferred in segments to
 - the City, from County Road 22 to the Canadian Pacific Rail (CPR) tracks; and
 - the County, from south of the CPR tracks to County Road 42.
- The jurisdiction for the 11th Concession was transferred to the County;
- The City was to make improvements at its cost to the transferred segment of Banwell Road. Timing of these improvements was not specified in the Agreement. The Banwell Road Environmental Study Report was completed in September 2016 and the City is undertaking the first phase of construction this Fall (Tecumseh Road to Palmetto Street); and
- A commitment was made by the County to realign Banwell Road with the 11th Concession Road to form a single continuous north-south roadway, with the County undertaking and implementing the Class EA study with construction completed within 5 years of EA completion (or earlier if mutually agreed to).

A summary of the responsibilities of each party indicating the status of completion is found in Attachment 1, with a copy of the Agreement. While the Town and the City have each fulfilled their assigned obligations within the timelines set out in the Agreement, the County has not. While the County completed the County Road 43 Environmental Study Report (CR43 ESR) in 2009, over 10 years later, final design and construction have not been completed. Attachment 2 contains a description of the Technically Recommended Design from the CR43 ESR.

Town Administration have been in discussions with County Administration on design considerations since 2018 for various studies and projects such as the detailed design of CR42 which includes the Diversion of CR43 (the area subject to the Agreement). After several meetings, e-mail and formal correspondence advocating for the provisions of the Agreement and the recommended solution in the CR43 ESR, we are at a standstill. A recent letter from the County further delays the detailed design stage for the CR43 ESR to possibly 2021/2022.

As Council is aware the CR42 and 43 corridors in this area frame the Tecumseh Hamlet settlement area, one of the last remaining designated growth areas within the Town. Council has prioritized development as a strategic priority in this term of office. The lack of progress on

the implementation of the CR43 ESR recommended solution has a direct impact on the Town's ability to ready the adjacent lands within the Tecumseh Hamlet for development.

From the Town's perspective, there are three primary unresolved issues:

1. the design discussed with County Administration to date does not conform to the recommended solution approved in the CR43 ESR;
2. the limits of the proposed detailed design accounts for only two-thirds of the CR43 ESR study area length, omitting that portion of CR43 from Shields to the CPR tracks; and
3. the proposed timing of the design does not comply with the terms set forth in the Agreement, and there has been no commitment to date from the County on the timing for construction.

Comments

Issues 1 & 2: Proposed Design Not in Conformity with 2009 CR43 ESR

The area affected by the CR43 ESR is a designated urban area within the Sandwich South Official Plan and the County Official Plan. The Town was engaged throughout the course of the preparation of the CR43 ESR to ensure incorporation of an urban design standard, inclusive of active transportation facilities and landscaping along the corridor. Attachment 3 describes specific design considerations that were included in the approved 2009 CR43 ESR.

The County initiated the detailed design of the CR42 Reconstruction which included the Diversion of CR43 in early 2018. The County's Infrastructure Services Department (Infrastructure Services) determined the initial scope and extent of the works on CR43 was to include an interim solution consisting of a two-lane rural cross section phased for only two-thirds of the study length. This interim solution and phased approach was not contained within the approved CR43 ESR nor the Agreement (See Attachments 1 and 3).

Further discussions with Infrastructure Services in July 2019 resulted in a revision to the CR43 scope of works to complete the detailed design for the recommended solution. However, the extent of the works proposed only accounted for about two-thirds of the full length identified within the CR43 ESR (1.23km of the 1.93km length) and does not comply with the terms of the Agreement (see Attachment 4). The Town raised concerns with this approach and again highlighted the terms of the Agreement, specifically section 2.3(v) with County Administration.

As the detailed design of CR43 progressed into late 2019, the Town raised additional concerns as Infrastructure Services deviated from the approved road cross-section contained within the CR43 ESR, specifically on clearance requirements and the treed boulevard which would separate pedestrian facilities from the roadway (see Attachment 3).

Issues 2 & 3: Timing of CR43 ESR Improvements

With the CR43 ESR being completed in 2009, the full works as outlined in the CR43 ESR **should have been completed by 2014**, as outlined in section 2.3(v) of the Agreement:

“v) the County agrees to assemble all necessary lands and undertake said works within the earlier to occur of 5 years from the date that said Initial Class Environmental Assessment is completed or such earlier date as mutually agreed upon by the Town and the County;”

Infrastructure Services has not determined the timing for construction of the recommended works as outlined in the CR43 ESR. This is a significant concern to Town Administration as this obligation was one of the fundamental terms that brought some nominal level of value to the Town for it agreeing to the transfer of 6,500 acres to the City. Given the fulfillment of the other obligations by the Parties to the Agreement, including the core issue of providing for the transfer of the 6,500 acres from the Town to the City, it is of grave concern that this obligation which is of benefit to the Town remains outstanding and without a concrete end-date in sight.

More recently, Infrastructure Services has indicated their intent to postpone the detailed design for two-thirds of the CR43 improvements to possibly 2021/2022, with no indication of when construction will take place. There has also been no indication of the timing for the design and construction of the remaining one-third length of CR43 (Shields to CPR Tracks).

Neither the proposed design date nor the lack of a construction timeline comply with the Agreement or the CR43 ESR. Moreover, the limits of the proposed detailed design accounts for only two-thirds of the study length with no consideration for the remaining one third.

Recommended Next Steps

Given the foregoing and the challenges faced at the Administrative level to achieve compliance with the Agreement and concurrence with the approved CR43 ESR, we are requesting the assistance of Council. There has been an unwillingness on the part of Infrastructure Services to engage with the Town to discuss and address our concerns. Town correspondence that dates back to 2019 has gone unanswered. The Town’s attempts to resume meetings since January 2020 to resolve these issues have been unsuccessful.

To that end, Administration requests that Town Council formally advise County Council of the outstanding obligations of the Agreement and request a motion of County Council to:

- honour the County’s obligations set out in the 2003 Boundary Adjustment Agreement; and
- complete a detailed design that is consistent with the recommended solution identified within the 2009 CR43 ESR; and
- prioritize the aforementioned detailed design in 2020/2021, with construction to commence no later than 2023.

Other Options

The Town Solicitor was asked to identify other options available to the Town to achieve compliance with the Agreement and the CR43 ESR recommended solution. The Town Solicitor provided the following from the Agreement:

Article 14 of the Boundary Adjustment Agreement contains dispute resolution provisions. Subarticle 14.1 contemplates a dispute “arising out of the interpretation of this agreement” may be resolved through mediation. Mediation is a process whereby the mediator (neutral third party) chairs a meeting process with the parties to determine if the parties can develop a resolution (in part or in whole) of their dispute. A successful mediation process is typically followed up by an agreement documenting the manner in which the dispute is resolved, what actions shall be taken by each of the parties, at what cost and within what time frame and/or sequence.

If the parties cannot agree on a mediator or mediation does not resolve the dispute, the matter in dispute is referred to arbitration. The arbitrator, often a retired lawyer or judge (or someone with past experience issuing decisions respecting the subject matter of the dispute), hears evidence and argument of the parties in a manner similar to a trial or hearing and subsequently renders a decision on the matters in dispute. Article 14.3 indicates that the decision of the arbitrator “shall be final.” If the City of Windsor (a party to the Boundary Adjustment Agreement) is not a party to the mediation/arbitration, subarticle 14.4 provides that the costs of the mediation and/or arbitration are to be shared equally between the County and the Town.

If proceedings with the County in regards to the terms of the Boundary Adjustment Agreement and Environmental Study Report outlined herein remain frustrated, Administration and the Town Solicitor will report back to Council to seek direction on the option for dispute resolution set out above.

Consultations

Planning & Building Services
Public Works & Environmental Services
Town Solicitor

Financial Implications

The financial implications associated with this report are unknown at this point and are contingent on the amount of time the Town Solicitor is required to spend on this file. Considerable senior staff time has been spent on this matter to date.

Link to Strategic Priorities

Applicable	2019-22 Strategic Priorities
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- Make the Town of Tecumseh an even better place to live, work and invest through a shared vision for our residents and newcomers.
- Ensure that Tecumseh’s current and future growth is built upon the principles of sustainability and strategic decision-making.
- Integrate the principles of health and wellness into all of Tecumseh’s plans and priorities.
- Steward the Town’s “continuous improvement” approach to municipal service delivery to residents and businesses.
- Demonstrate the Town’s leadership role in the community by promoting good governance and community engagement, by bringing together organizations serving the Town and the region to pursue common goals.

Communications

Not applicable

Website

Social Media

News Release

Local Newspaper

This report has been reviewed by Senior Administration as indicated below and recommended for submission by the Chief Administrative Officer.

Prepared by:

Phil Bartnik, P.Eng.
Director Public Works & Environmental Services

Reviewed by:

Brian Hillman, MA, MCIP, RPP
Director Planning & Building Services

Recommended by:

Margaret Misek-Evans, MCIP, RPP
Chief Administrative Officer

Attachment Number	Attachment Name
1	Summary of Boundary Adjustment Agreement
1A	Boundary Adjustment Agreement
1B	Map 1 Annexed Lands
2	Summary of County Road 43 Class Environmental Assessment
2A	CR43 ESR Technically Recommended Design (Fig 7-2, Sheets 1-6)
3	Summary of County Road 43 ESR & Detailed Design
3A	July 30, 2007 Letter & July 25, 2007 Planning Report
4	Extent of CR43 ESR Limits