



REPORT TO COUNCIL

Prepared by: Trevor Hallam

Date: July 21, 2020

Subject: Cross Border Servicing Negotiation Update

Recommendation:

For information purposes only.

Background:

Negotiations with North Huron regarding a Cross Border Servicing Agreement for Morris-Turnberry properties connected to or with the potential to connect to the Wingham Water System have reached an impasse. There is inaccurate information circulating in the community regarding the status of these negotiations and the positions of each municipality. A summary of the negotiations is provided below for clarification and correction, namely around the two proposals from North Huron and their claim that no response has been received to those proposals. Where matters have been discussed in Closed Session by either Council the specific details have been omitted.

It should be remembered through this that Morris-Turnberry users currently represent 25 of the total 1557 connections to the Wingham Water System (1.6%). With the infrastructure currently in place, 9 more properties could potentially connect, bringing the total to 34 properties (2.1%). Morris-Turnberry's goal from the beginning has been to reach an agreement through which users of the system provide fair compensation to North Huron for the services received.

July 11, 2019 – CAO/Clerk Trevor Hallam received correspondence from North Huron indicating that the agreement for Cross Border Servicing that was signed in May of 2017 and amended in November of 2018 had come to an end as neither party had given notice of its wish to continue under that agreement. It indicated a desire to negotiate a new agreement and provided the names of members of Council who had been appointed to a Committee that North Huron had struck for the purpose. Morris-Turnberry was instructed to similarly appoint members to the committee.

The termination clause in question reads as follows:

*This Agreement will come into effect on the date that it is signed by the last of the parties and shall terminate on September 1, 2019 unless either party provides notice in writing to the contrary at last (*spelling error copied directly from agreement*) **one (1) year in advance of the first or any subsequent termination date, the agreement will be automatically renewed for successive periods of five (5) years.***

While the intent of the clause is very clear, North Huron chose to interpret the clause in such a way that the agreement would expire unless notice is given. It should be noted that in correspondence and at later meetings, the bold and underlined part of the clause above has consistently been omitted by North Huron. Following consultation with the municipality's solicitor, it was decided that entering into negotiations would be more prudent and collegial than arguing the interpretation and seeking a legal ruling on the matter.

July 22, 2019 – Following consultation with Council, Mr. Hallam issued correspondence to North Huron stating that Morris-Turnberry would seek no substantial amendments to the agreement, and asked North Huron to provide proposed amendments in writing, following which a response would be issued by Council.

August 2, 2019 – Mr. Hallam received correspondence from North Huron reiterating their position that the agreement will end on September 1st, as well as their preference for a committee structure. No proposed amendments were provided, and a preference for an entirely new agreement was expressed.

August 14, 2019 – Following consultation with Council, Mr. Hallam issued correspondence to North Huron indicating which members of Council had been appointed to the Committee. Copies of the Belgrave Cross Border Servicing agreement through which Morris-Turnberry provides water to North Huron properties, and an agreement with Huron East providing sanitary sewer services to Morris-Turnberry were provided as examples of agreements that have served both parties well. Mr. Hallam requested that any such example agreements North Huron would like to put forward for consideration

be provided in advance of the meeting. Mr. Hallam proposed Augusts 15th and 16th as potential meeting dates.

September 5, 2019 – The Cross Border Agreement Committee consisting of Mayor Heffer, Deputy Mayor Zinn, Councillor Nelemans, Reeve Bailey, Deputy Reeve Seip and Councillor van Hittersum met. Options for moving forward with the negotiations were discussed and direction was given to staff to formulate the substance of the agreement in draft form which would then be brought back to the committee for consideration, following which the final agreement could be ratified by both Councils. Morris-Turnberry emphasized its wish to negotiate an agreement that focused on fair compensation for water and sanitary sewer services only.

October 2, 2019 – Mr. Hallam and Mr. Evans met at the North Huron Municipal Office to work on the draft agreement. The clear message was given that Morris-Turnberry should have to pay for capacity or surrender it back to North Huron.

October 3, 2019 – Mr. Hallam and Mr. Evans met at the Morris-Turnberry Municipal Office to work on the draft agreement.

October 17, 2019 – Mr. Hallam and Mr. Evans met at the North Huron Municipal Office to work on the draft agreement.

October 30, 2019 – Mr. Hallam and Mr. Evans met at the Morris-Turnberry Municipal Office to work on the draft agreement.

December 2, 2019 – Mr. Hallam received correspondence stating that North Huron had received a request for a connection from J.E. Hodgins Lumber Ltd for their new building. North Huron stated that with the consent of Council the connection could be permitted under the previous agreement's terms. An official request would be required from Morris-Turnberry.

December 6, 2019 – Following consultation with Council, Mr. Hallam issued correspondence to North Huron confirming the request for a connection for J.E. Hodgins Lumber Ltd. It should be noted that this property is already connected and has been for many years, and the request was for a second connection to service their new building.

December 10, 2019 – Mr. Hallam and Mr. Evans met at the North Huron Municipal Office to work on the draft agreement

December 20, 2019 – Mr. Hallam met with engineers from BM Ross and Associates regarding draft capacity numbers that he had been formulating for the new draft agreement.

January 10, 2020 – Mr. Hallam and Mr. Evans met at the North Huron Municipal Office to work on the draft agreement and the upcoming presentation of the draft to the Committee.

January 16, 2020 – The Cross Border Agreement Committee met and received a joint presentation from Dwayne Evans and Trevor Hallam on the agreement they had drafted together over a series of meetings over the previous months. Mayor Heffer raised some concerns regarding certain clauses. North Huron members raised no concerns regarding the draft agreement but insisted that Morris-Turnberry produce capacity numbers to complete the agreement, and that the committee meet again once those were ready. No proposed capacity numbers were prepared for the meeting, as the structure of the agreement would determine how those numbers were calculated.

January 29, 2020 - Mr. Hallam and Mr. Evans met at the Morris-Turnberry Municipal Office to discuss the issues raised by Mayor Heffer at the committee meeting. Compromise was reached on all but one of the items, being the inclusion of the former Willis lands. While servicing for those lands was guaranteed under an annexation compensation agreement in 2005, North Huron wanted to include them in this agreement.

January 29, 2020 through March 12, 2020 – Using the draft capacity numbers that were reviewed by B.M. Ross and Associates, Mr. Hallam began meeting personally with landowners for whom a change to capacity was recommended by his calculations. This included increases, decreases, and connections that were not in previous agreements. Mr. Hallam presented landowners with two years of data regarding their metered water use (where available), and projected cost estimates based on the structure of the draft agreement and changes to North Huron's water rates. It was explained that the term of the agreement would be 10 years, and that no guarantee could be given that any changes could be made

during that time. Landowners were given the final say in how much capacity was reserved for their property, as the agreement would have them pay for capacity whether it is being used or not. This was determined to be a financial decision that should be made by landowners, not one imposed by the Municipality. The numbers were not finalized and made public until the March 12th meeting of the Committee.

February 3, 2020 – Mr. Hallam provided Mr. Evans with an updated draft including the changes agreed to at their January 29th meeting.

February 6, 2020 – Correspondence was received indicating that the servicing request for J.E. Hodgins Lumber Ltd that had been made on December 6th was considered by North Huron Council at their February 3rd meeting. North Huron Council passed a motion at that meeting deferring any further connections until an agreement was signed with Morris-Turnberry.

February 21, 2020 – Mr. Hallam received an email from Mr. Evans acknowledging the updated draft sent on February 3 and expressing frustration at the amount of time Morris-Turnberry was taking to produce capacity numbers. The email contained a proposal to include 160 cubic meters of capacity in the agreement, extend the term of the agreement from 10 years to 20 years, remove the option of amendment to the capacity number by either party by mutual agreement for the first 10 years of the extended term, and backdate the agreement to January 1, 2020. Mr. Evans requested a meeting of the Committee on March 5th.

February 26, 2020 – Following consultation with Council, Mr. Hallam issued correspondence to Mr. Evans explaining that the proposal in his last email was in contradiction with what the committee had agreed upon at the January 16th meeting, and that Morris-Turnberry was working diligently to produce accurate and reliable capacity numbers and ensure the fairness of the agreement to users.

March 12, 2020 - The Cross Border Agreement Committee met. Morris-Turnberry presented their proposed capacity numbers of 30 cubic meters each of water and sanitary sewer capacity. North Huron immediately moved to adjourn the meeting rather than proceeding into a productive discussion. The motion to adjourn failed, and Morris-Turnberry proceeded to provide a detailed explanation of how the numbers were reached and explained why the proposal of 160 cubic meters was in excess of its needs. It should be remembered that the structure of the agreement would have Morris-Turnberry pay for assigned capacity as if for use. Morris-Turnberry expressed their willingness to sign the agreement that the committee had reviewed on January 16th with the inclusion of the 30 cubic meter capacity number. The numbers were not well received, and North Huron no longer viewed the compensation terms in the draft agreement as sufficient. Morris-Turnberry asked for clarification regarding what would be required in terms of compensation, noting that the agreement was acceptable until the capacity numbers were presented and more transparency on this was requested on what threshold had not been met. North Huron suggested that other ideas for compensation be considered, suggesting tax sharing or the exchange of land. North Huron Council was to discuss additional compensation and convey those ideas to Morris-Turnberry. Morris-Turnberry did not view it as their role to produce such offers of this nature for the consideration of North Huron.

March 17, 2020 – Mr. Hallam received an email from Mr. Evans with notification that North Huron had passed a motion to suspend all Committee and Board meetings until April 5th or further notice.

April 23, 2020 – Following consultation with Council, Mr. Hallam issued correspondence to North Huron asking that they reconsider their decision not to allow J.E. Hodgins Lumber Ltd to connect their new building to services. Emphasis was put on the business' crucial role in the supply chain of the local economy of both municipalities, and the importance of their business in getting development and employment back on track during COVID-19 economic recovery efforts.

April 27, 2020 – Correspondence was received stating that North Huron has been in contact with the business community and understands the economic consequences, however Council stands by its previous decision to not allow any connections until an agreement is signed. North Huron reiterated its desire to explore tax sharing, land exchanges or other financial arrangements, and that it awaits offers from Morris-Turnberry in that regard.

April 29, 2020 – Following consultation with Council, Mr. Hallam issued correspondence again providing Morris-Turnberry's position regarding capacity and the previous acceptance of the agreement by the Committee. It stated that Morris-Turnberry had been waiting to receive new proposals from North

Huron regarding the tax sharing or land exchange suggested by North Huron at the March meeting. Morris-Turnberry's willingness to sign the agreement presented in March with the provided capacity numbers was reiterated.

May 14, 2020 – Correspondence was received providing an explanation of how the proposed capacity number of 160 cubic meters was arrived at. It referenced North Huron's recently adopted strategic plan that focuses on economic development. The letter detailed a proposal for a border adjustment that would see certain Morris-Turnberry lands become part of North Huron, as had been done with the 110 acres that were given to North Huron by Morris-Turnberry in 2005 which provided the land for the current A2A development (Maitland Estates). The proposal stated that in exchange for this land North Huron would be willing to sign the agreement with Morris-Turnberry's requested 30 meters of capacity. It was requested that Morris-Turnberry Council discuss the proposal at their next meeting.

May 28, 2020 – Following consultation with Council, Mr. Hallam issued correspondence stating that Morris-Turnberry respectfully declined the proposal put forward by North Huron as it was grossly disproportionate to the amount of service provided. Morris-Turnberry's capacity needs were reiterated, and errors and inaccurate assumptions in the detailed explanation of North Huron's 160 cubic meter calculation were explained. Morris-Turnberry provided detailed information regarding how the 30 cubic meters was arrived at, including a spreadsheet listing all properties and their capacity needs, and signed letters confirming capacity request from landowners for whom there was a notable change in capacity requirements from the previous agreement. Morris-Turnberry's willingness to sign the agreement presented in January with the capacity numbers provided in March was reiterated.

June 3, 2020 – Correspondence was received stating that there is little to no benefit to North Huron ratepayers to signing the agreement as it is currently written. It explained that North Huron was holding capacity for Morris-Turnberry lands with no compensation. It listed other items in North Huron's budget which were a benefit to Morris-Turnberry, including daycare, cemetery, arenas, greenspaces, parks, playgrounds and trails. The proposed border adjustment was reoffered as a preference for compensating North Huron for these services, and the proposed capacity number was reduced from 160 to 60. North Huron expressed a willingness to surrender the previous agreement's Schedule F which listed compensation for some of these services. Also noted was that there needed to be a publicly identifiable benefit to North Huron through signing the agreement.

June 15, 2020 – Following consultation with Council, Mr. Hallam issued correspondence stating that Morris-Turnberry remains focused on an agreement that compensates North Huron fairly for water and sanitary service. It explained that Morris-Turnberry had lost faith in the negotiation process, and that while the bulk of the agreement had been drafted, the two parties seemed to only be in disagreement over the amount of capacity required, and the scope and means of compensation. Morris-Turnberry presented 5 options for resolution ranging from mediation to arbitration in different forms, and asked North Huron to consider the proposal and express their preference for a method of resolution so the agreement could be finalized.

June 18, 2020 – Correspondence was received stating that North Huron had put forward two proposals, but that Morris-Turnberry had not shared the reasons for their refusal. An explanation was requested.

June 30, 2020 – Following consultation with Council, Mr. Hallam issued correspondence that provided an explanation of where the responses to the two proposals could be found in previous correspondence and reiterated those responses. The older letters were included for reference. It reiterated that Morris-Turnberry felt that the two parties seemed to only be in disagreement over the amount of capacity required, and the scope and means of compensation, and asked again that North Huron express its preference for one of the suggested avenues for resolution presented in the June 15th letter.

July 2, 2020 – Correspondence was received stating that North Huron had received a request for a connection for water from the Green family. It stated that Morris-Tunberry had not listed Green's in their May 28th correspondence. It reiterated that Council had passed a motion deferring new hook ups until an agreement was signed, and as there is no agreement staff must seek Council's approval for the connection. A written connection request from Morris-Turnberry was requested.

July 2, 2020 - Mr. Hallam issued correspondence to North Huron requesting a connection for Green's. It asked for understanding in light of the Green's catastrophic loss and change of circumstance.

July 7, 2020 – Correspondence was received informing Morris-Turnberry that North Huron Council had received and filed the Green’s connection request at their July 6th meeting. The connection was not approved.

July 8, 2020 – Following consultation with Council, Mr. Hallam issued correspondence stating that as no response had been received to its request for North Huron to express their preference for the means of resolution presented in the June 15th and June 30th correspondence, Morris-Turnberry’s preference is for legal counsel representing each party to be put in contact with each other to work toward reaching agreeable terms. The name of the representative North Huron would like to use was requested.

July 13, 2020 – Correspondence was received stating that North Huron felt its last offer (June 3) was fair. It expressed dismay at Morris-Turnberry’s wish to “terminate the negotiation process in favour of lawyers”. It stated that North Huron respects Morris-Turnberry’s decision to terminate the negotiation process, and will continue existing services and defer new connections until an agreement is reached.

Others Consulted:

None

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Trevor Hallam', written over a horizontal line.

Trevor Hallam