

Full Authority
25 February 2021
Agenda Item: 13

The Gut Conservation Area – Access Road

The Gut Conservation Area is a 400-acre site located east of Apsley, ON. This Conservation Area features a parking lot, walking trails, a look out area and a stairway down to the gorge. The “Gut” is a large gorge that the Crowe River flows through for about 230 meters. The fissure that forms the gorge is over 30 meters high and varies from five to ten meters in width. As the Crowe River traverses through the property, just before it enters the gorge, the river takes a 90 degree turn and plunges over the rocks creating a spectacular waterfall in all seasons. The area could easily be considered an Eastern Ontario “hidden gem”.

Access Issue: The Gut Access Road

Background: Access road is a right-of-way obtained by the Crowe Valley Conservation Authority when the property was originally purchased.

The road is approximately 600 metres long.

Problem: The road has been an ongoing concern since it was built to allow access for the public to enjoy the conservation area.

For over 30 years, the road has been plagued by poor road construction, weather, usage and long intervals of virtually no maintenance. Specifically:

- There is a lack of ditching, especially along the last steep hill before entering the parking lot. As a result, heavy rainfall from storms will carve significant ruts in the road as the water crosses it or runs down the road.
- A culvert needs to be replaced to allow for proper drainage.
- Road material has eroded, numerous ruts and potholes

This has led to numerous complaints every year about the condition and there has also been a threat of a lawsuit due to damage to a vehicle.

Attempted Solutions:

- Additional fill material has been placed at various times in the past 30+ years to fill in the ruts, but is then washed away almost immediately.
- J.M. Longyear logging company temporarily agreed to maintain road while logging was being conducted on neighbouring property.

Possible Solutions:

1. Investigated hard surfacing of key stretches of the road to eliminate washout a few years ago. Estimated \$8,000 - \$10,000 worth of reused asphalt would be required for the worst slope. May still be long term solution, but would require additional funding sources (possibly grants, fundraising, donations, etc.).
2. Maintain and improve current road surface with additional funding raised through the CVCA levy to member municipalities. To be effective, funding should be allocated specifically for this purpose every year to avoid further road degradation.
3. Wollaston Township has proposed road maintenance to improve the current road surface with the assistance of neighbouring municipalities (and others willing to participate) sharing the workload and associated expenses.

From a financial perspective, the third option provides the CVCA the assistance it requires to maintain and improve the road for visitors to the area. Before the CVCA hands over any responsibility, staff have investigated the right-of-way and revealed the following:

- The CVCA has a ROW over private property to access The Gut C.A. The ROW was granted in 1984.
- The CVCA and the landowner are considered occupiers under the Occupier's Liability Act, R.S.O. 1990. Section 3(1) of the OLA states: An occupier of premises owes a duty to take such care as in all the circumstances of the case is reasonable to see that persons entering on the premises and the property brought on the premises by those persons are reasonably safe while on the premises.
- Therefore, in the opinion of the CVCA's solicitor, the CVCA has an obligation to maintain the ROW as part of its duty of care to those that enter the premises.
- The ROW Deed grants Crowe Valley assigns a free and uninterrupted right-of-way. In the opinion of the CVCA's solicitor, an "assign" should have the right to repair and maintain the road if Crowe Valley assigns the work to them.
- The CVCA can contract third parties to maintain this ROW.
- According to the Deed, CVCA's "assigns" have a free and uninterrupted right-of-way as well. Since Crowe Valley has the right to enter the right-of-way to repair and maintain it and the Deed gives the same rights to CVCA assigns, the solicitor has concluded that CVCA can assign the maintenance work to someone else.

The solicitor has recommended that any maintenance agreement with a third party should also include the landowner as a party and be registered on title to his property so that any future owners are also bound by the terms.

Staff Recommendation:

Discuss the following options:

1. CVCA Board members take Wollaston Township's proposal back to respective Councils for discussion and garner support.
2. CVCA makes formal request to interested municipalities in conjunction with Wollaston Township.
3. CVCA request Wollaston Township formally request support from neighbouring municipalities.
4. Investigate the agreement with the landowner should any of the above action items be undertaken.
5. CVCA investigate other funding sources to make road repairs (temporary and/or long term solution).
6. CVCA Board include additional levy for 2022 to make road repairs.