
HALDIMAND COUNTY

Report LSS-14-2022 Easement Agreement with Xplornet Communications Inc. – Grand Vista Bridge and Trail, Cayuga



For Consideration by Council in Committee on August 23, 2022

OBJECTIVE:

The purpose of this report is to authorize staff to negotiate and execute an Easement Agreement with Xplornet Communications Inc. to allow for the installation of fiber optic equipment across County owned lands and bridge as a part of their high-speed broadband internet service in the rural areas of Haldimand County.

RECOMMENDATIONS:

1. THAT Report LSS-14-2022 Easement Agreement with Xplornet Communications Inc. – Grand Vista Bridge and Trail, Cayuga, be received;
2. AND THAT staff be authorized to finalize an Easement Agreement with Xplornet Communications Inc. over the lands and bridge shown in red on Attachment 1 to Report LSS-14-2022, for the provision of installing equipment to supply internet services, at a cost of \$8,437.50 plus all associated costs, subject to a survey being provided by Xplornet Communications Inc. with legal description of the easement lands, and pending all necessary agency permits;
3. AND THAT a by-law be presented for enactment to authorize the easement;
4. AND THAT the Mayor and Clerk be authorized to execute all necessary documents.

Prepared by: Melissa Lloyd, Property Coordinator, Legal and Support Services

Reviewed by: Lori Friesen, Manager, Legal and Support Services

Respectfully submitted: Cathy Case, General Manager of Corporate & Social Services

Approved: Craig Manley, MCIP, RPP, Chief Administrative Officer

EXECUTIVE SUMMARY:

Xplornet Communications Inc. has requested an easement on County property for the purpose of laying fibre optic infrastructure on a portion of the Grand Vista trail starting from Munsee Street North, Cayuga across the Grand Vista Bridge and continuing down the trail to King George Street. The proposed site for the easement is shown as Attachment 1.

BACKGROUND:

In September 2019, Council adopted corporate priorities for the 2018-2022 term, with one of these priorities being high-speed, reliable internet service for all Haldimand County residents. Xplornet Communications Inc. (Xplornet) is constructing a high-speed broadband internet network in the rural areas of Haldimand County and has entered into a Municipal Access Agreement with the County for the installation of the associated infrastructure within the County's Road Right of Way (ROW). The

design of the fibre optic cable system also requires an easement across a section of County owned lands and bridge known as the Grand Vista Trail, Cayuga (Attachment 1). Trails and other County lands are not included within the Municipal Access Agreements and require an easement agreement to be executed. The agreement will be between the County and Xplornet. The infrastructure will consist of an underground fibre optic cable line installed through a combination of directional drilling and plow on land. The final design for installation of the cable has not yet been confirmed, however there are options being considered which are subject to review by the County's structural consultant noting the installation must not detract from the aesthetics or bridge functionality.

Subject to approval and finalization of the easement agreement, Xplornet expects that the construction of this section of the network will be completed by the end of 2022, with the installed infrastructure remaining within the lands in perpetuity. The easement will be registered with the Land Registry Office (LRO) for the portion of land on either side of the bridge. Bridges are not considered 'property' for land registration by the (LRO); however, for due diligence and risk mitigation purposes, the bridge is identified on Attachment 1 in red and included in the draft easement agreement (Attachment 2).

ANALYSIS:

Upon receipt of request for easement, staff circulated notice to County divisions: Public Works, Facilities and Parks, Building Controls & By-Law Enforcement, Community Development & Partnerships, Economic Development & Tourism, Emergency Services, Engineering Services, Environmental Services and Planning. Emergency Services has requested that access continues to be maintained to the area for emergency response purposes while the cables are being installed. Engineering Services confirmed that Xplornet Communications Inc. (Xplornet) has engaged structural engineering services to ensure that the attachment of the fibre cable to the bridge will not have any impact on the bridge integrity or design/aesthetics with installation subject to approval and execution of the draft easement. Environmental Operations confirmed that there are watermains running through a section of the trail in the area of the proposed easement. This information will be shared with Xplornet to ensure that there are no negative impacts and to facilitate Xplornet's requirement to complete locates. Facilities and Parks staff support the application with the understanding that Xplornet must not disturb the current trail system and if any excavation or grounds are being disturbed, that they be returned to their original state. The latter provision is included in the easement document. Hydro One has relayed that there is a pole line that appears to be near the limit of the trail property on the South side, crossing to the North and heading East toward the river. Hydro One recommends the easement, if granted, starts close to the edge of the traveled portion of the trail. Feedback from the Ministry of Natural Resources and Forestry is still pending. Xplornet has been provided this information and acknowledges the comments and requirements.

The draft easement agreement is enclosed as Attachment 2. Xplornet Communications Inc. is aware that they will be required to pay a fee of \$242 prior to staff registering the easement on title. The easement is in perpetuity or until the infrastructure is no longer required and then shall be removed at the expense of the easement holder. A survey/reference plan is required to be provided by Xplornet in order to register the easement on title. Once provided, a full legal description of the easement lands will also be included within the easement agreement and subsequent by-law presented to Council for approval.

Compensation for easements of this nature has been sought in the past from other companies requiring easements over municipal lands and is appropriate where the subject land is not a roadway. Staff have completed an informal valuation using the Vacant Land Values Chart as a guide. When formulating compensation for an easement such as this, factors that are considered include whether or not permanent infrastructure will be placed over, on or under the easement lands and the impact to the value of the remaining property. In the past, similar methodologies for valuating easement lands for

various wind energy companies were used, and it is presumed that going forward, similar requests for easements for other internet expansion projects will also require compensation from other private entities on the same basis. Details of the compensation being sought for granting an easement to Xplornet is shown in the Financial Implications section of the report. The contact from Xplornet is aware of the costs involved.

FINANCIAL/LEGAL IMPLICATIONS:

Staff will continue to work with representatives from Xplornet to finalize the details of the easement agreement, and upon approval and payment of the one-time fee, necessary insurance documentation, the easement compensation, the reference plan and any legal costs incurred by the County, this easement will be registered on title.

All costs relating to the creation of the easement agreement and registering the easement with the LRO will be at the cost of Xplornet. The proposed compensation is shown below and represents 75% of the estimated market value of the easement lands. Historically, if an easement in perpetuity is being granted, and the easement will include permanent infrastructure within it, the market value of the lands has been discounted by 25%. Alternatively, if the easement lands would not have any infrastructure installed within it, the market value would be discounted by 50%. In this case the proposed value is 75% of the market value as per the Vacant Land Values Chart based on the “Other” category of land. Xplornet has been advised of the estimated value and the requirement to cover any associated costs.

	Acres	Estimated Market Value	75% Market Value
Value of Easement	1.0	\$ 11,250.00	\$ 8,437.50

Net revenue received will be placed in the Land Sales Reserve in accordance with County Policy.

STAKEHOLDER IMPACTS:

The easement agreement will include a provision that requires Xplornet to advise the County when works will be undertaken on the property so that the County may provide appropriate notification to the public in the event of temporary trail closures. Xplornet has advised that it is not expected that any disruptions will be necessary in the future once the initial construction is complete.

Approval of this easement facilitates the installation of rural high-speed internet in Haldimand County which aligns with Council’s priorities.

REPORT IMPACTS:

Agreement: Yes

By-law: Yes

Budget Amendment: No

Policy: No

REFERENCES:

None.

ATTACHMENTS:

1. Map of proposed easement area
2. Draft easement agreement