

To:	Warden Milne and Members of Grey County Council
Committee Date:	March 14, 2024
Subject / Report No:	CAOR-CW-06-24
Title:	Midwest Co-operative Services Inc. – Potential Purchase of Leased Lands
Prepared by:	Kim Wingrove Randy Scherzer
Reviewed by:	
Lower Tier(s) Affected:	Township of Southgate
Status:	

Recommendation

1. That report CAOR-CW-06-24 be received; and
2. That the current lease agreement with Midwest Co-operative Services Inc. be terminated at the end of the term of the current land lease September 30, 2024, and that the leased lands be declared as surplus; and
3. That the leased lands be valued as vacant land by an appraisal or an opinion of value by a licensed real estate agent; and
4. That the property be sold to Midwest Co-operative Services Inc. in accordance with the County's Sale and Acquisition of Land Policy and Procedure subject to the following:
 - a. The County retaining the 20-metre corridor of the CP Rail Trail,
 - b. a requirement for Midwest Co-operative Services Inc. to remove any encroachments onto the travelled portion of the CP Rail Trail deemed to be unacceptable from a safety perspective, and execution of an easement agreement(s) between the County and Midwest Co-operative Services Inc. for any encroachments deemed acceptable,
 - c. The County not requiring the buildings to be demolished after the lease agreement has expired,
 - d. Agreed improvements to trail crossings between Midwest Co-operative Services Inc. buildings to ensure the safety of CP Rail Trail users; and
4. If Midwest Co-operative Services Inc. does not wish to purchase the leased land at

present, staff be directed to prepare a new lease agreement with Midwest Co-operative Services Inc. which shall include the following:

- **a purchase option in favor of the tenant for the appraised value of the land, subject to the County retaining the 20-metre CP Rail Trail corridor,**
- **an escalating fair market lease value for the lands,**
- **a requirement for the tenant to remove any encroachments onto the travelled portion of the CP Rail Trail deemed to be unacceptable from a safety perspective, and execution of an easement agreement(s) between the County and the tenant for any encroachments deemed acceptable,**
- **improvements to trail crossings between the tenant's buildings to ensure the safety of CP Rail Trail users; and**

5. That the negotiated purchase and sale agreement and/or associated by-law(s) be brought forward for Council's consideration.

Executive Summary

In January 2023 Council considered confidential report PDR-CW-03-23 and provided direction to staff to investigate the sale of County owned lands in Dundalk to the lessee, Midwest Cooperative Services. Grey County has had a lease agreement with Midwest Cooperative Services Inc. (Midwest) since 2004 to lease lands adjacent to the CP Rail Trail in Dundalk. Despite the current terms of the lease, it has never been the County's intent to own or operate the buildings and structures that have been developed on the leased lands by Midwest as these buildings/structures do not align with the County's long-term interests or policy goals.

There are two potential options for selling the lands to Midwest:

- Option 1 Sale at Expiry of Lease - Midwest purchases the lands at the end of the term of the current land lease agreement, September 30th, 2024.
- Option 2 Future Sale – Terminate the existing lease at the end of the term of the current land lease agreement, September 30th, 2024, and enter into a new lease agreement which includes a purchase option for the appraised value of the land (excluding the value of the buildings). The new lease agreement would also include an escalating fair market lease value for the lands as vacant property, which is lacking in the current lease.

Staff recommend that the following matters be addressed regardless of the option being considered:

- The County retaining the 20-metre CP Rail Trail Corridor,
- Address any encroachments on the 20-metre CP Rail Trail corridor and either require encroachments be removed that are deemed unacceptable or requiring an easement agreement for any encroachments deemed acceptable, and
- Any trail crossings between the Midwest buildings required for their operations be designed and improved to ensure the safety of CP Rail Trail users.

If the leased land is to be sold, or the lease continues under a new lease agreement with a purchase option, the leased lands must be declared as surplus in accordance with the County's

Sale and Acquisition of Land Policy and Procedure. Declaring the lands surplus would occur once the new lease agreement has been executed if that option is pursued. Staff recommends that the lands be appraised as vacant lands because Midwest added structures to the leased land on the understanding that it would ultimately be afforded the opportunity to purchase the land.

Background and Discussion

The County currently has a lease agreement with Midwest for lands adjacent to the library in Dundalk and adjacent to the CP Rail Trail (see lands shown in red on Figure 1 – Subject Lands). The County initially obtained these lands in 2004 as part of the former CP Rail line property. Prior to the County obtaining the CP Rail line property, Midwest (previously known as Huron Bay Cooperative) had a lease agreement in place for the subject lands and those same terms have carried over into the lease that currently exists between the County and Midwest. Midwest has been responsible for payment of the realty taxes on the Subject Lands since 2005 pursuant to the terms of the lease and currently pays an annual lease rate of just over \$4,000 (which staff believe to now be significantly less than fair market value).

Since the County took possession of the CP Rail Trail, the County has permitted Midwest to redevelop and expand the buildings on the leased land, including allowing for the construction of a fertilizer plant on County owned lands (shown in red on Figure 1). Staff report PDR-PCD-30-13, linked to in the Attachments section of this report, provides some background on this past expansion. Midwest is also proposing an addition to one of the buildings on the leased land.

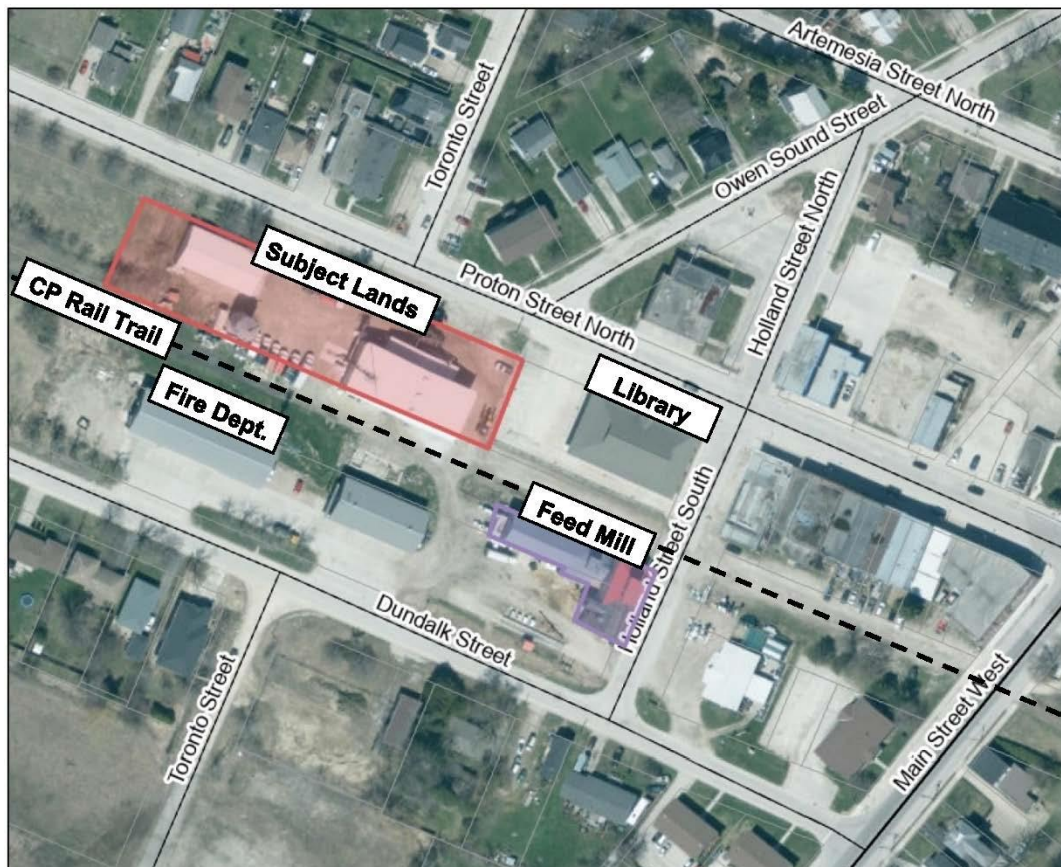


Figure 1: Co-op Key Map (approximate boundaries only, not exact measurements)

The current lease does not provide for a purchase option by the current tenant and was written to protect the County from incurring costs should the relationship between the County and the tenant come to an end. It indicates that the buildings be demolished upon termination or expiration of the County lease and the lands be levelled and repaired. Furthermore, an additional clause provides the County with the option to provide notice requiring the tenant to leave the buildings on the lands and surrender them in a neat and clean condition which would cause the buildings and improvements to become the property of the County. Despite the current terms of the lease, staff have determined that it was never the County's intent to own or operate the buildings and structures that have been developed on the leased lands by Midwest, nor does the County have an interest in seeing these buildings demolished at this time. The buildings and structures that exist on the leased lands do not align with the County's long-term interests or policy goals.

There are two potential options that could be considered to sell the leased lands to Midwest Cooperative Services:

Option 1 – Sale at expiry of lease: Terminate the lease agreement at the end of the term of the current land lease agreement, September 30th, 2024, so that the existing term does not continue beyond the current renewal period (which expires on September 30, 2024) and agree to sell the land to Midwest for its fair market value. Both County Council and Midwest would need to agree on this option, and one would have to provide the other with at least 90 days written notice of termination. The County could also agree to not require the buildings be demolished once the lease agreement expires. Midwest could then purchase the lands following the expiration of the current land lease agreement (i.e. on or after October 1, 2024) based on an appraised value or real estate valuation for the lands (not including the buildings/structures).

Option 2 – Future Sale: Terminate the existing lease at the end of the term of the current land lease agreement, September 30th, 2024, and enter into a new lease agreement with Midwest which will include a purchase option for the appraised value of the land. As part of the new lease, an escalating fair market lease value for the lands can be included with the leased premises being appraised as vacant lands.

It is recommended that the following matters be addressed regardless of the option being considered:

- a) The County retaining the 20-metre corridor of the CP Rail Trail,
- b) a requirement for Midwest Coop to remove any encroachments onto the travelled portion of the CP Rail Trail deemed to be unacceptable from a safety perspective, and execution of an easement agreement(s) between the County and Midwest Coop for any encroachments deemed acceptable. In 2021, as part of the planning and design phase for the Dundalk Medical Clinic, the County and the Township of Southgate undertook to have this block of land surveyed. As part of this survey, the lands leased to Midwest as well as any applicable easements and encroachments were identified as parts on a reference plan registered as 16R-11583, a copy of which is attached in Appendix 1.

Encroachments by the Co-op's buildings onto the travelled portion of the CP Rail Trail were identified as Parts 9, 12 and 16 on Plan 16R-11583. The silo that created the Part 9 Encroachment has been moved by Midwest and therefore this encroachment no longer exists. As it relates to Part 16 Encroachment (Feed Mill Building), it is our understanding that Midwest plans to demolish their existing feed mill building as shown in purple on Figure 1 and to reconstruct a new building within the lands leased from Southgate. Any encroachments that are deemed to be unacceptable will be required to be removed by Midwest and those that are deemed acceptable can be addressed through an easement agreement.

- c) Any trail crossings between the Midwest buildings required for their operations can also be improved and designed to ensure the safety of CP Rail Trail users.

Southgate has an agreement with Midwest for the lease of the lands where the feed mill building is located on the northeast corner of Dundalk and Holland Streets. The lands on the west side of the CP Rail Trail from Holland Street to Grey Street, that also fronts onto Dundalk Street, are owned by Southgate. If Option 2 is pursued, then there is an opportunity to align the lease agreements between the County and Midwest, and Southgate and Midwest, and County staff would be happy to share the updated lease agreement with Southgate.

Regardless of which option is considered, for the County to divest itself of the leased lands in the future, it is recommended that the leased lands be declared as surplus in accordance with the County's Sale and Acquisition of Land Policy and Procedure. It is recommended that the value of the leased lands be appraised as vacant land (i.e., appraisal to not include value of the buildings/structures). The leased lands that would be declared surplus are described as Part of Lots 229 and 230, Concession 2 South West of the Toronto and Sydenham Road being Parts 3 and 13 on Reference Plan 16R-11583. County staff note that in order to retain the CP Rail Trail corridor, a portion of the fertilizer plant would still encroach on County-owned lands, and this can be dealt with through an encroachment or easement agreement.

Legislated Requirements

Any disposal of lands will have to go through the County's land disposal process, which is in accordance with the provisions of the *Municipal Act* and the Sale and Acquisition of Land Procedure.

Legal Considerations

The County's external counsel has reviewed this matter and support a decision to terminate the existing lease and offering Midwest the opportunity to either purchase the leased land at fair market value or to continue leasing it to Midwest at a fair market rental (with an option to purchase it in the future).

Financial and Resource Implications

Should the lands be divested in the future, a future staff report to Council will be required, including the draft purchase and sale agreement for Council's consideration. The real estate valuation of the fair market lease value for the lands as well as an appraised value of the lands

(not including the buildings/structures) can be found in the confidential addendum to this Report.

Relevant Consultation

- Internal: Planning, Legal Services, Clerks
 - AODA Compliance (describe)
 - Contribution to Climate Change Action Plan Targets (describe)
- External: The Alliance, Midwest Co-operative Services Inc., Township of Southgate

Appendices and Attachments

Appendix 1, Schedule A: Plan 16R-11583

[4271-05 Lease for Huron Bay Cooperative Incorporated](#)

[Report PDR-PCD-30-13](#)