

# Liability, costs still major factors in Cousins Drive plan

**By Brock Weir**

Councillors could rebuff recommendations to install a nearly \$400,000 pedestrian crossing over railway tracks at the foot of Cousins Drive.

Staff made the recommendations to Council last week at the committee level, arguing in favour of going into a licensing agreement with Metrolinx, the owner of the railway tracks, for maintaining a pedestrian crossing.

Their recommendations were almost two years in the making, first getting started in June 2011 when Council nixed anti-train whistling efforts throughout the Town. At the time, Council recommended a pedestrian crossing be built to improve public safety and boost public access, but over a year later, that plan hit a snag.

In the meantime, Metrolinx told the Town that by building a pedestrian crossing, Aurora would assume all liability for people crossing the tracks, except in the case of gross negligence on the part of the transit provider. Councillors balked at taking that on, but according to a report from Ilmar Simanovskis, Aurora's Director of Infrastructure, Metrolinx has since softened its stance.

“The Town is to indemnify and save Metrolinx harmless in the case of any claim, loss, or damage that is connected to the crossing, except in the event of negligence and wilful misconduct of Metrolinx,” said Mr. Simanovskis in his report. “In essence, this clause means that the Town will assume the risk in the event of any sort of accident that occurs at the crossing. The Town could escape liability if it could be shown that any such incident was caused by the negligence or wilful misconduct on the part of Metrolinx.”

Added Town Solicitor Warren Mar during last Tuesday's Committee discussions: “Metrolinx agreed to tone down the liability. They're assuming liability to the town because, as Metrolinx has explained it, the Town wants the crossing and they expect the Town to take on basic negligence. The definition was that Metrolinx would be responsible if Metrolinx was grossly negligent. We got that brought down to negligence which makes lawyers so happy.”

While the shift in tone addressed some of Councillors' lingering concerns, the cost factor still seemed to trip up making this crossing a reality.

Councillor Michael Thompson, for instance, questioned whether it was practical from a cost perspective, considering there are two further rail crossings each within approximately 500 metres of each other, plus a further crossing farther afield on Wellington Street.

“It is an awful lot of money for the amount of people who are going to cross it,” he said. “One of the big drivers, obviously, was the kids, especially those going to Dunning, which although I have seen some people use Cousins to cross over and they were also using Dunning to cross over.”

“Although Cousins seems to be the more appropriate one to use, at the end of the day I think the right solution is what Metrolinx is planning to do to agree to this and that is put up a fence. It is \$500,000 for a 500 metre detour. When you think about it in money it is \$1,000 a metre.”

Mayor Geoffrey Dawe agreed.

“This is just a very bad use of taxpayers' money,” he said. “In my opinion, Metrolinx has done the minimum possible to dissuade people from using this. A three section piece of chain link fence is nowhere close. Metrolinx, in my opinion, has not done what they should have done and enhanced that whole area. It is an illegal crossing. It is trespassing when people go around it and I don't see why we should have to be stepping up to change that.”

One Councillor voicing his support for the crossing was Councillor John Gallo, who sits on the Town's Trails and Active Transportation Committee. He said he was in favour of the crossing as a safety measure, but also to help people get around Aurora, a town bisected by railway lines.

?[This] is an additional crossing where pedestrians can cross the railway tracks. In my view, it can only be a good thing in the Town because we're bisected by the tracks and there are limited amounts,? he said. ?If we don't go this way, I am in favour of making sure Metrolinx puts up a fence and nobody crosses that, but I am in favour of this.?

Councillor Gallo recommended a final decision on whether or not to proceed with the crossing be delayed pending further comment from the Trails committee, which received further information to consider on the crossing just two business days before General Committee was asked to make a decision.

Trails advocates were presented with three options for the crossing, including an at-grade pedestrian crossing to the tune of \$380,000, an overpass for \$4 million, or a \$7 million underpass. The second and third options were, according to the report, cost prohibitive.