



## The Corporation of the Town of Tecumseh

Public Works & Engineering Services

**To:** Mayor and Members of Council

**From:** Phil Bartnik, Director Public Works & Engineering Services

**Date to Council:** May 9, 2023

**Report Number:** PWES-2023-37

**Subject:** Request to Refer Drainage Report Back to Engineer – Shuttleworth Drain

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### Recommendations

It is recommended:

**That** the Report and Specifications for the Shuttleworth Drain (Drain) as prepared by Gerard Rood, P.Eng., of Rood Engineering Inc. (Drainage Engineer), dated December 14, 2022 (Drainage Report) **be referred back** to the Drainage Engineer for reconsideration in accordance with Section 57 of the Drainage Act (Act);

**And that** the Clerk **notify** the Drainage Tribunal that the Shuttleworth Drain Report as prepared by Gerard Rood, P.Eng., of Rood Engineering Inc., dated December 14, 2022 has been referred back to the Drainage Engineer;

**And that** By-law No. 2023-027 which has been provisionally adopted, **be repealed**.

### Background

#### Appointment of Engineer, Site Meeting and Public Information Centre

Gerard Rood, P.Eng., from Rood Engineering Inc. was appointed as Drainage Engineer for the Drain on July 25, 2017. A site meeting was held on November 29, 2017, at Weston Park in the Town of Tecumseh. Following the site meeting, the landowner at 5480 North Talbot Road reached out to the Drainage Superintendent on December 5, 2017, to inquire about the potential for the full enclosure of the Drain that fronts their property.

A draft copy of the Drainage Report was submitted to the Town on February 10, 2023. This report was used for a Public Information Centre (PIC) that the Town hosts for all affected landowners. A PIC is not a required meeting under the Act, however, the Town chooses to hold these meetings for the benefit of the affected landowners. The PIC allows the landowners to review the draft report and ask questions of the Drainage Engineer and Administration.

Notices for the PIC were sent to all affected landowners on February 14, 2022, with instructions on how to register and attend the virtual meeting as well as a copy of the draft report. The PIC was held virtually on March 1, 2022, where the draft report was reviewed, and the next steps were detailed. On March 3, 2022, two (2) landowners who reside at 5480 North Talbot Road and 5520 North Talbot Road, contacted the Drainage Engineer via email requesting estimates to enclose the Drain along the entire frontage of their properties. The Drainage Engineer provided estimates for the construction of the lawn enclosures and both landowners provided their approval to proceed.

### **Meeting to Consider the Engineer's Report**

On December 20, 2022, the Drainage Engineer submitted the Drainage Report and it was presented to Council for consideration on February 28, 2023, under report [PWES-2023-13](#). The Drainage Report provided for the cleanout of accumulated silt and debris, replacement of existing bridges and enclosures, and future specifications for the remaining bridges and enclosures. The estimates for the requested lawn enclosures that were provided to the two (2) landowners after the PIC corresponded to the estimates included in the December 14, 2022 Drainage Report. One (1) affected landowner registered to be a delegate at the Meeting to Consider to express their concerns with the drainage works. The delegate advised they were concerned about the price of the drainage works, the effects of inflation on construction tenders and the impacts of future planned infrastructure improvements in the area. Council provided the first and second readings and provisionally adopted By-law 2023-027.

### **Court of Revision**

On March 28, 2023, the Court of Revision was held to hear any appeals from landowners on their assessment. Two (2) landowners registered as delegates to appeal their assessments to the Court. The landowners reside at 5480 North Talbot Road and 5520 North Talbot Road. The delegates expressed their concerns with the costs of the drainage works and believed the assessments were calculated incorrectly. They requested that their assessments be reassessed but at no additional costs to the landowners. The Drainage Engineer responded with an explanation of the factors that are considered when calculating drainage assessments, such as frontage length, position on the drain and distance to a sufficient outlet. It was also explained that any enclosure costs are assessed 100 percent to the requesting owners for anything beyond the standard 6.1 meter driveway top width. The Chair noted that if the delegates still had concerns, there is an appeal process to the Drainage Tribunal that can be pursued. A Member expressed the concern that an appeal process can cause delays to the project and inflation will play a role with the delays. The Member also asked one of the delegates if they still wanted the requested enclosure to which they replied they did. The Chair supported the Drainage Engineer's assessment schedule as being assessed as equitably as possible. The Court instructed Administration to work with the Drainage Engineer to facilitate

further discussions with the delegates to help provide clarity with the description of works and associated costs.

## **Comments**

### **Continued Consultation Subsequent to the Court of Revision**

After instruction from the Court of Revision, Administration worked with the Drainage Engineer to summarize the discussions that took place at the Court of Revision and to prepare a cost breakdown for the requested enclosures (i.e., cost of pipe per meter, stone for backfill, etc.). This additional information was provided to the delegates on April 5, 2023.

Administration met virtually with the two Court of Revision delegates on April 13, 2023, to answer any questions and provide clarification on the information they were provided in the summary. The two landowners advised that they did not fully understand their options regarding the enclosure throughout the Drainage Act process. The landowners further informed Administration that they would be appealing to the Tribunal on the basis that the costs were too high and they would like a reassessment but at no additional cost to themselves. They also explained that they no longer want the requested lawn enclosures and only want their existing driveway culverts replaced with standard access culverts.

Administration suggested that it may be possible to ask Council to refer the Drainage Report back to the Drainage Engineer, however, the Ontario Ministry of Agriculture, Food and Rural Affairs (OMAFRA) would need to be contacted for clarification on the procedural process for this to occur.

On April 13, 2023, Administration contacted OMAFRA via email and received a response the same day. OMAFRA provided a previous Drainage Referee decision for a similar situation to assist with the determination of next steps. After internal discussions, it was determined that a report to Council recommending the Drainage Report be referred back to the Drainage Engineer in accordance with Section 57 under the Act was an appropriate path forward. Administration relayed this information to the two landowners and requested that they provide written requests to remove their enclosures from the report which would then allow Administration to bring a report forward to Council requesting that the Drainage Report be referred back to the Drainage Engineer for reconsideration.

### **Appeal to the Drainage Tribunal**

The two landowners, 5480 & 5520 North Talbot Road, both submitted appeals under Section 48(1) and Section 54(1) of the Act to the Clerk on April 17, 2023. The Clerk then notified the Tribunal of the appeals on April 24, 2023, after the 40-day appeal period had expired.

On April 17, 2023, Administration received written requests via email from both appellants asking that their enclosures be removed from the Drainage Report and that Administration prepare a report to Council with the recommendation to refer the Drainage Report back to the Drainage Engineer.

## **Next Steps**

Based on the requests from the two landowners and the discussions with OMAFRA, Administration is recommending that Council refer the Drainage Report back to the Drainage Engineer in accordance with Section 57 of the Act. Section 57 of the Act states the following:

“The council of the initiating municipality, at any time before passing the by-law, if it appears that there are or may be errors in the report of the engineer or that for any other reason the report should be reconsidered, may refer the report back to the engineer for reconsideration, and the engineer shall thereupon reconsider the report and shall further report to the council, which report has the same effect and shall be dealt with in the same manner and the proceedings thereon shall be the same as upon the original report.”

Once the Drainage Report has been referred back and all necessary changes have been incorporated, the Drainage Engineer will submit an updated Drainage Report for reconsideration and the Drainage Act process shall proceed again in that meetings for Reconsideration of the Drainage Report and Court of Revision will be scheduled in accordance with the provisions of the Act with the current appeals to the Tribunal based on the original report likely to be deferred or withdrawn at this time.

## **Consultations**

Legislative Services & Clerk  
Ontario Ministry of Agriculture, Food and Rural Affairs  
Road Engineering Inc.

## **Financial Implications**

There are no financial implications associated with this report.

## Link to Strategic Priorities

Applicable	2019-22 Strategic Priorities
<input type="checkbox"/>	Make the Town of Tecumseh an even better place to live, work and invest through a shared vision for our residents and newcomers.
<input checked="" type="checkbox"/>	Ensure that Tecumseh's current and future growth is built upon the principles of sustainability and strategic decision-making.
<input type="checkbox"/>	Integrate the principles of health and wellness into all of Tecumseh's plans and priorities.
<input checked="" type="checkbox"/>	Steward the Town's "continuous improvement" approach to municipal service delivery to residents and businesses.
<input type="checkbox"/>	Demonstrate the Town's leadership role in the community by promoting good governance and community engagement, by bringing together organizations serving the Town and the region to pursue common goals.

## Communications

Not applicable ☒Website ☐Social Media ☐News Release ☐Local Newspaper ☐

This report has been reviewed by Senior Administration as indicated below and recommended for submission by the Chief Administrative Officer.

Prepared by:

Alessia Mussio, E.I.T.  
Drainage Superintendent

Reviewed by:

John Henderson, P.Eng.  
Manager Engineering Services

Reviewed by:

Phil Bartnik, P.Eng.  
Director Public Works & Engineering Services

Reviewed by:

Robert Auger, LL.B.  
Director Legislative Services & Clerk

Recommended by:

Margaret Misek-Evans, MCIP, RPP  
Chief Administrative Officer

<b>Attachment Number</b>	<b>Attachment Name</b>
1	Drainage Report dated December 14, 2022 by Gerard Rood, P.Eng., of Rood Engineering Inc.
2	Schedule A – Drainage Act Excerpts