



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: September 12, 2023

Report Number: PWES-2023-64

Subject: Discontinuation of the Drainage Act Process (s.40)
Cunningham Drain (Brown Enclosure Extension)

Recommendations

It is recommended:

That report PWES-2023-64 Discontinuation of the Drainage Act Process (s. 40) for the Cunningham Drain (Brown Enclosure Extension), **be received;**

And that notice of the filing of the drainage engineer's report, under Section 40 of the *Drainage Act*, **be given by the Clerk** to the landowner at 12305 County Road 34 who had originally requested the drainage works.

Background

In July 2021, an application was filed by the landowner of 12305 County Road 34 to amend Zoning By-law 85-15 for their 0.57 hectare (1.4 acre) property, situated on the south side of County Road 34, from Hamlet Residential Zone (RH) to a site-specific Hamlet Residential Zone (RH-6). The purpose of this request was to facilitate the construction of one additional residential unit (ARU) on the property in accordance with subsection 11.2.3 of the Town of Tecumseh Official Plan. As outlined in report [DS-2021-51](#), presented to Council at the November 23, 2021 Regular Council Meeting, the proposed ARU was to be 6.0 meters (20 feet) from the eastern side lot line, adjacent to the Cunningham Drain (Drain).

When applying for the ARU, the landowner advised that they wanted to enclose a portion of the Drain to allow for a longer driveway. Through this process, it was also identified that the requested setback from the top of the drain to the ARU would require the Drain to be enclosed adjacent to the ARU. Alternatively, the ARU could be moved farther from the Drain to avoid the need to enclose the Drain adjacent to the ARU. The landowner was advised to contact the

Town's Drainage Superintendent since the Drain adjacent to their property is classified as a Municipal Drain under the Ontario Drainage Act (Act).

On February 3, 2022, the landowner at 12305 County Road 34 submitted a "Notice of Request for Drain Major Improvement" to the Clerk for a culvert extension over the Drain.

On April 26, 2022, Dillon Consulting Ltd. (Dillon) was appointed Drainage Engineer under report [PWES-2022-15](#). An on-site meeting was held virtually on July 26, 2022, with Administration and the landowner. It was discussed that, once a draft report was completed, a Public Information Centre (PIC) meeting would not be required as the requesting landowners would be responsible for the design and construction cost for the new enclosure and there would be minimal impacts on other landowners within the watershed.

The Drainage Engineer, along with Administration, met virtually with the requesting landowner on June 21, 2023, and July 6, 2023, to discuss Dillon's draft Engineer's Report for the requested drain enclosure. The landowner expressed their concerns about the project's estimated costs and the engineering costs. On July 17, 2023, the landowner notified Administration via email that they did not want to proceed with the project for the requested enclosure.

Comments

Administration contacted the Ontario Ministry of Agriculture, Food and Rural Affairs (OMAFRA) on July 24, 2023, for the procedural requirements under the Act when a landowner no longer wants to proceed with a request for improvement that only benefits their land. OMAFRA recommended that the Drainage Engineer prepare a report under Section 40 of the Act, which states the following.

Section 40 – Engineer's finding, drainage works not required, etc.

"Where the engineer finds that a drainage works is not required or is impractical, or cannot be constructed under this Act, the engineer shall forthwith file with the clerk of the initiating municipality a report to that effect, stating the reasons therefor, the amount of the engineer's fees and other charges and by whom they shall be paid, and the clerk shall forthwith send a notice of the filing of such report to all persons who signed the petition and the matter shall not be further proceeded with unless the decision of the engineer is reversed on appeal."

This section of the Act still grants appeal rights to the requesting landowner under Section 48(1d) should they disagree with the Drainage Engineer's s.40 report.

The landowner has been informed that if they wish to extend their enclosure in the future, the Drainage Act process must restart. This would entail the owner submitting a new request to the Town and the appointment of an Engineer.

Consultations

Legislative Services & Clerk
Dillon Consulting Limited

Financial Implications

The Section 40 report titled “Cunningham Drain (Brown Enclosure), Section 40 Letter” (Attachment 1) prepared by Dillon outlines the cost of engineering performed to date and the party who will be assessed. Since the requested enclosure was for the sole benefit of the requesting landowner, Dillon has recommended that the total engineering cost of \$16,987.89, excluding HST, be levied 100% against Roll No. 400-04900.

For assessments in excess of \$5,000 the Town offers landowners the option of paying the balance plus interest over a five (5) year period; the annual payments are added as a special charge on their taxes.

Link to Strategic Priorities

Applicable	2023-2026 Strategic Priorities
<input checked="" type="checkbox"/>	Sustainable Growth: Achieve prosperity and a livable community through sustainable growth.
<input type="checkbox"/>	Community Health and Inclusion: Integrate community health and inclusion into our places and spaces and everything we do.
<input checked="" type="checkbox"/>	Service Experience: Enhance the experience of Team Tecumseh and our citizens through responsive and respectful service.

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

Attachment Number	Attachment Name
1	Drainage Report (s. 40) dated August 24, 2023 by Oliver Moir, P.Eng., of Dillon Consulting Ltd.
2	Property Location Map