



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-2023-63

Subject: Request to Reconsider Engineer's Report – Shuttleworth Drain

Recommendations

It is recommended:

That the Reconsidered Drainage Report for the Shuttleworth Drain (Drain) as prepared by Gerard Rood, P.Eng., of Rood Engineering Inc., dated August 21, 2023 (Drainage Report) **be received**;

And that consideration **be given** to the first and second readings of a provisional by-law to adopt the Drainage Report in accordance with Section 42 of the *Drainage Act* (Act);

And further that notice **be given** to all affected landowners of the Court of Revision to be held on October 10, 2023, in accordance with Section 46(1) of the Act, subject to the adoption of the provisional by-law.

Background

On December 20, 2022, Gerard Rood, P.Eng., filed a report dated December 14, 2022, for the repair and improvement of the Drain in accordance with Section 41 of the Act. The Drainage Report was presented to Council for consideration on February 28, 2023, under report [PWES-2023-13](#), and was also presented to the Court of Revision on March 28, 2023.

Subsequent to the Court of Revision, on April 17, 2023, two (2) landowners (5480 North Talbot Road and 5520 North Talbot Road) formally appealed to the Tribunal and also submitted email requests to Administration to refer the Drainage Report back to the Drainage Engineer. The landowners requested that their lawn enclosures be removed from the proposed works and that the Drainage Report be revised accordingly. After discussions with the Ontario Ministry of Agriculture, Food and Rural Affairs (OMAFRA), Administration presented report [PWES-2023-](#)

[37](#) titled 'Request to Refer the Drainage Report Back to the Engineer – Shuttleworth Drain' to Council at the May 9, 2023 Regular Council Meeting, with a recommendation to refer the Drainage Report back to the Drainage Engineer and repeal By-law 2023-027 (Motion: RCM - 138/23).

There were additional discussions between the Drainage Engineer and the landowners (5480 North Talbot Road and 5520 North Talbot Road) who requested their enclosures be removed from the Drainage Report which included providing them with the specifications and cost estimates for standard access culverts. The landowners from 5480 North Talbot Road and 5520 North Talbot Road provided their written approval via email to proceed with standard access culverts.

In addition, during the reconsideration process, the Drainage Engineer was contacted regarding two (2) other enclosures that were included in the December 14, 2023 Drainage Report (5466 North Talbot Road and 5500 North Talbot Road).

On August 21, 2023, Rood Engineering Inc., filed a report dated August 21, 2023 for the repair and improvement of the Drain in accordance with Section 41 of the Act. On August 22, 2023, invitations were sent to all affected landowners and agencies that the Public Council Meeting to reconsider the Engineer's Report would be held on Tuesday, September 12, 2023, at 6:00 pm.

Comments

A summary of the revisions to the previous drainage report are outlined below.

1) 5480 North Talbot Road

After the Court of Revision held on March 28, 2023, the landowner contacted Administration about removing their requested enclosure. Following the Drainage Report being referred back, Administration and the Drainage Engineer provided details and a cost estimate to the landowner for a standard access culvert to which they agreed. The Drainage Engineer has revised the Drainage Report to include a 7.1 meter top width access culvert to match the existing driveway and has updated the construction cost estimate and assessment schedule accordingly.

2) 5520 North Talbot Road

After the Court of Revision held on March 28, 2023, the landowner contacted Administration about removing their requested enclosure. Following the Drainage Report being referred back, Administration and the Drainage Engineer provided details and a cost estimate to the landowner for a standard access culvert to which they agreed. The Drainage Engineer has revised the Drainage Report to include a 6.1 meter top width access culvert to match the existing driveway and has updated the construction cost estimate and assessment schedule accordingly.

3) 5466 North Talbot Road

Family members representing the landowner have been communicating with the Drainage Engineer and Administration during the drainage project thus far. The portion of the Drain along the front of the property is currently enclosed. Following the Drainage Report being referred back to the Engineer, Administration was contacted by the landowner's representatives about possibly removing the existing enclosure along the front of the property or leaving the enclosure and performing maintenance in the future.

The Drainage Engineer reattended the site to undertake further investigations on the existing enclosure and observed settlement around the existing catch basin and that the bottom of the pipe was severely corroded. The Drainage Engineer confirmed that his original recommendations and design to replace the enclosure and catch basin remained valid. The Drainage Superintendent and Manager of Engineering Services also reviewed these findings and agreed with the Engineer's conclusions. The Drainage Engineer advised the owner's representatives of his findings and that he would be proceeding with the full replacement of the enclosure as per a previous written request. The Drainage Engineer further asked that any requests to proceed differently, such as the owner wanting only a driveway access culvert with the remainder of the frontage being restored to an open drain, be received by June 19, 2023. No further information was received from the owner's representatives.

4) 5500 North Talbot Road

Following the Drainage Report being referred back to the Engineer, the landowner contacted Administration about removing their requested enclosure. Administration and the Drainage Engineer provided details and a cost estimate to the landowner for a standard access culvert to which they agreed. The Drainage Engineer has revised the Drainage Report to include a 7.2 meter top width access culvert to match the existing driveway and has updated the construction cost estimate and assessment schedule accordingly.

Consideration by Council

Subject to the discretion of Council, the Drainage Report may be:

- a. Referred back to the Drainage Engineer for reconsideration if it appears that there are, or may be errors in the report or for any other reason the report should be reconsidered; or
- b. Provisionally approved by giving first and second readings to a Provisional By-law.

Subject to the discussions that take place at the Public Council Meeting to reconsider the report, and if no issues are raised that would warrant the report being referred back to the engineer, Administration recommends giving the first and second readings of a Provisional By-law to adopt the Reconsidered Drainage Report.

Following provisional adoption of the By-law, a meeting of the Court of Revision shall be scheduled to allow any affected owner of land assessed for the drainage works to appeal their assessed costs subject to the following:

- a. Any land or road has been assessed too high or too low; or
- b. Any land or road that should have been assessed has not been assessed; or
- c. Due consideration has not been given as to type of land use.

Regulatory Approvals

Regulatory Approvals have been reviewed for the Shuttleworth Drain and consist of:

- 1) Essex Region Conservation Authority (ERCA) – *Conservation Authorities Act*
 - a. A permit from ERCA will be required prior to construction.
- 2) Department of Fisheries & Oceans (DFO) – *Fisheries Act*
 - a. A self-assessment has been completed and determined that this project does not require a formal review by DFO and the Drain should not contain any aquatic species at risk or critical habitat.
- 3) Ministry of Environment, Conservation & Parks (MECP) – *Endangered Species Act*
 - a. The Town's Species-At-Risk Mitigation Plan continues to comply with the *Endangered Species Act*. The Town and Contractor will gather information on encountered species and/or mitigation plans implemented prior to and throughout construction.

Consultations

Financial Services
Rood Engineering Inc.

Financial Implications

The Town of Tecumseh lands have been assessed a total of \$88,600, \$59,492 for Benefit and Outlet Liability for works involving 6.50 acres (2.63 hectares) of the lands and North Talbot Road and \$29,108 for Special Benefit Liability for the access culvert to Weston Park that is encompassing the area as shown on page 1 of 9 in the Overall Watershed Plan view.

Other than costs to administer the project, the cost of constructing the project is 100% recoverable by affected lands including the Town's portion of land mentioned above and detailed in the Assessment Schedule included in the engineer's report dated August 21, 2023. The Town will utilize the Drain Lifecycle Reserve to pay for the Town's drainage assessment totalling \$88,600.

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 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:

Tom Kitsos, CPA, CMA, BComm
Director Financial Services & Chief Financial Officer

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 dated August 21, 2023 by Gerard Rood, P.Eng., of Rood Engineering Inc.
2	Schedule A – Drainage Act Excerpts