



The Corporation of the Town of Tecumseh

Public Works & Environmental Services

To: Mayor and Members of Council

From: Sam Paglia, Drainage Superintendent/Engineering Technologist

Date to Council: February 12, 2019

Report Number: PWES-2019-04

Subject: Request for Repair and Improvements to West Branch of the East Branch Delisle Drain
Appointment of Drainage Engineer

Recommendations

It is recommended:

That Rood Engineering Inc. (Rood) **be appointed** Drainage Engineer to:

- (i) Make an examination of the West Branch of the East Branch of the Delisle Drain (Subject Drain) and drainage area as submitted by the owner of 11079 County Road 34 in the “Notice of Request for Drain Improvement” dated September 5, 2018; and
- (ii) Prepare a report in accordance with Section 78 of the *Drainage Act*.

Background

The Town of Tecumseh (Town) received a “Request for Improvement” form from the Owners requesting a new access culvert on Parcel No. 460000034000000 for access to their farms lands as per Severance Application B-08/18.

As a condition of severance, the Owners must provide access to the farmlands being retained. As this access is over a Municipal Drain, the Owners are required to request an update to the current By-Law No. 77-15 and Drainage Report for the Subject Drain to include the newly designed culvert.

As a result of the received request for improvement, and upon appointment of a Drainage Engineer, conditions 6 and 7 outlined in Schedule "A" of Severance Application B-08/18 will be satisfied administratively.

The most recent Engineer's Report, prepared by C.G. Russel Armstrong Ltd. in 1977, assessed 5.5 acres (2.03 hectares) as described above, as well as a portion of County Road 43 and a Highway 3.

The Owners have indicated their preference to have the Subject Drain abandoned as a Municipal Drain. The Owners were informed that although their preference is for an abandonment, all affected lands and roads are assessed into the Subject Drain. The Town's obligation on any particular Municipal Drain regulated under the *Drainage Act* is to maintain and repair Municipal Drains for the benefit of **all** landowners within a watershed.

Administration has advised the Owners that once an Engineer is appointed, their request can be brought forth at the onsite meeting and once the Engineer fulfills their obligations under the *Act* to all affected landowners, the Engineer, if deemed most appropriate, may recommend abandonment of the drain as a Municipal Drain under Section 19 of the *Act*.

Comments

Legislation

Section 78 of the *Drainage Act* requires Council by by-law or resolution to appoint an Engineer to make an examination of the areas requiring drainage as described in the Request and to prepare a Drainage Report. The report shall include:

- a) plans, profiles and specifications of the drainage works, including a description of the area requiring drainage;
- b) an estimate of the total cost thereof;
- c) an assessment of the amount or proportion of the cost of the works to be assessed against every parcel of land and road for benefit, outlet liability and injuring liability;
- d) allowances, if any, to be paid to the owners of land affected by the drainage works; and
- e) such other matters as are provided for under the *Act*.

Section 78

Improving, upon examination and report of engineer

(1) If a drainage works has been constructed under a by-law passed under this Act or any predecessor of this Act, and the council of the municipality that is responsible for maintaining and repairing the drainage works considers it appropriate to undertake one or more of the projects listed in subsection (1.1) for the better use, maintenance or repair of the drainage works or of lands or roads, the municipality may undertake and complete the project in

accordance with the report of an engineer appointed by it without the petition required in section 4. 2010, c. 16, Sched. 1, s. 2 (27).

Projects

[\(1.1\)](#) the projects referred to in subsections (1) are:

1. Changing the course of the drainage works.
2. Making a new outlet for the whole or any part of the drainage works.
3. Construction a tile drain under the bed of the whole or any part of the drainage works.
4. Constructing, reconstructing or extending embankments, walls, dykes, dams, reservoirs, bridges, pumping stations or other protective works in connection with the drainage works.
5. Otherwise improving, extending to an outlet or altering the drainage works.
6. Covering all or part of the drainage works.
7. Consolidating two or more drainage works. 2010, c. 16, Sched. 1, s. 2 (27).

Section 78(1) of the Act states that where, for the better use, maintenance or repair of any drainage works constructed under a by-law passed under this Act or any predecessor of this Act or to otherwise improve, extend to an outlet or alter the drainage works or to cover the whole or any part of it, the Council of any municipality whose duty it is to maintain and repair the drainage works or any part thereof may, on the report of an Engineer appointed by it, undertake and complete the drainage works as set forth in such Drainage Report.

All proceedings, including appeals, under Section 78 shall be the same as on a report for the construction of a drainage works (Section 78(4)).

Notice to conservation authority

[\(2\)](#) An engineer shall not be appointed under subsection (1) until thirty days after a notice advising of the proposed drainage works has been sent to the secretary-treasurer of each conservation authority that has jurisdiction over any of the lands that would be affected. R.S.O. 1990, c. D.17, s. 78 (2); 2010, c. 16, Sched. 1, s. 2 (28).

Powers and duties of engineer

[\(3\)](#) The engineer has all the powers and shall perform all the duties of an engineer appointed with respect to the construction of a drainage works under this Act. R.S.O. 1990, c. D.17, s. 78 (3).

Proceedings

(4) All proceedings, including appeals, under this section shall be the same as on a report for the construction of a drainage works. R.S.O. 1990, c. D.17, s. 78 (4).

Section 19

Engineer may recommend abandonment of drain

The engineer in the report may recommend the abandonment of any drain or part thereof that is no longer useful or that is being supplanted by a new drainage works. R.S.O. 1990, c. D.17

Schedule “A” To Consent Application B-08/18

Conditions 6 and 7

6. That the Owners enter into, and provide the Town of Tecumseh, a written agreement for the reapportionment of the drainage assessment for the subject lands, in accordance with Section 65(2) of the *Ontario Drainage Act*, R.S.O. 1990, as amended, and that the associated costs of same be borne solely by the Applicant. Apportionments for affected Municipal Drains are required and are to be assessed against the lands affected in accordance with any past, current or future drainage by-laws, until otherwise determined under the provisions of the *Drainage Act*.
7. That the parcel to be retained and the parcels to be severed are to be serviced with separate driveway accesses to the satisfaction of the Town of Tecumseh Engineering Services Division prior to the severance being finalized by means of submitting a “Notice of Request for Drain Improvement (Drainage Act, R.S.O. 1990, c. D.17, subs. 78(1))” to begin the process for the installation of an access culvert over the Municipal Drain.

Required approvals

On September 11, 2018, the Town sent notification to the Essex Region Conservation Authority (ERCA) that it received a request for the repair and improvement of the Subject Drain. On September 25, 2018, ERCA sent notification of the receipt of the request, stating that they do not expect there will be any extraneous comments or concerns with respect to this project.

As outlined in Section 78(2) of the Act, the Engineer shall not be appointed until after the 30 day notification to the Conservation Authority who has regulation of the area. This administrative report is in line with those provisions as the 30-day period expired on October 11, 2018.

The proposed drainage works is rated as a “Class F” Drain by the Department of Fisheries and Oceans (DFO) and has intermittent flow or periods of flow, and is not applicable in relation to species of fish. Authorization for work on the Subject Drain within the Restricted Activity

Period (RAP) from March 15, to July 1, does not apply provided that work can be completed when the drain is dry, frozen or when low to no flow conditions exist.

The Subject Drain may contain significant species, such as plants, animals, habitat, etc., that are protected under the provincial Endangered Species Act (ESA). The Town will use its SAR Mitigation Plan for Drainage Works under Section 23.9 of Ontario Regulation 242/08. The Town's registered municipal drainage works permitted under Section 23.9 of Ontario Reg. 242/08 will provide the Ministry of Natural Resources and Forestry with the Notice of Drainage Work Activity Form annually and provide information on any encountered species and mitigation plan for same.

Appointment of Engineer

It is recommended that Rood be appointed Drainage Engineer to the Subject Drain for consistency and efficiency as seen in previous projects completed for the Town. Rood has previously examined the West Branch of the Delisle Drain which lies just west of the Subject Drain. As these drains have abutting watersheds, Rood has previous knowledge with respect to the surrounding drainage area which may result in any efficiencies with respect to timing and project costs to examine background information. Furthermore, Rood is experienced in examining the Town's municipal drainage infrastructure and completes thorough and timely reports. As the Town continues to meet their Strategic Priorities, these attributes from a consultant are crucial in order to ensure future growth is built upon the principles of sustainability and strategic decision-making.

Administration recommends that the Town appoint Rood under Section 78 of the *Drainage Act* to review to examine the drainage works and report recommendations on the proposed abandonment of the Subject Drain.

For the benefit and conveyance of the water received by all affected lands within the watershed and adjacent to the Subject Drain that depend on it as an outlet for the water that they receive, it is recommended that Rood be appointed Drainage Engineer to:

- (i) Make an examination of the West Branch of the East Branch of the Delisle Drain and drainage area as submitted by Francis Lafferty and Rosemary Jobin in the "Notice of Request for Drain Improvement" dated September 5, 2018; and
- (ii) Prepare a report in accordance with Section 78 of the *Drainage Act*.

Consultations

Financial Services
Corporate Services & Clerk
Rood Engineering Inc.

Financial Implications

The Engineer's Report shall assess for benefit, outlet liability and injuring liability. A schedule of assessment is to be contained in the report which details in separate columns, the sums

assessed for each parcel of land and the road. The Town of Tecumseh does not have any affected roads in this By-Law.

Link to Strategic Priorities

Applicable	2017-18 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 the Town of 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 the Town 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:

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Reviewed by:

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Reviewed by:

Laura Moy, Dipl. M.M., CMMIII HR Professional
Director Corporate Services & Clerk

Recommended by:

Tony Haddad, MSA, CMO, CPFA
Chief Administrative Officer

Attachment Number	Attachment Name
1	West Branch of the East Branch Delisle Drain Map