



The Corporation of the Town of Tecumseh

Public Works & Environmental Services

To: Mayor and Members of Council

From: John Henderson, Manager Engineering Services

Date to Council: May 28, 2019

Report Number: PWES-2019-32

Subject: Request to Consider Engineer's Report – Lachance Drain

Recommendations

It is recommended:

1. **That** the Drainage Report and Specifications for the Lachance Drain as prepared by Mr. Mark Hernandez, P.Eng., of Dillon Consulting Ltd., dated May 3, 2019 (Drainage Report) **be received**;
2. **And that** consideration **be given** to the first and second readings of a provisional by-law to adopt the Drainage Report at the May 28, 2019 Regular Meeting of Council;
3. **And further that** notice **be given** to all affected landowners of the Court of Revision to be held on Tuesday, June 25, 2019 at 5:30 p.m. in accordance with Section 46(1) of the Drainage Act subject to adoption of the provisional by-law.
4. **And furthermore that** Mayor Gary McNamara and Councillor Brian Houston **be appointed** to the Court of Revision to be held on Tuesday, June 25, 2019, at 5:30 p.m.
5. **And further moreover that** Mayor Gary McNamara **serve** as Chair of the Court of Revision.

Background

The purpose of this report is to provide a summary of the background and other information in order to assist Council in giving consideration to the Drainage Report in accordance with Section 42 of the Drainage Act (Act).

The Town submitted a "Notice of Request for the Repair and Improvement" of a Municipal Drain on September 15, 2017, in accordance with Section 78 of the Act. On November 14, 2017, Council accepted the recommendation by the Drainage Superintendent under Public Works & Environmental Services Report No. 56/17 and passed resolution RCM-406/17 as follows:

THAT Dillon Consulting Ltd. (Dillon) be appointed Drainage Engineer to:

- I. make an examination of drainage area as submitted by the Drainage Superintendent for the Town of Tecumseh in the "Notice of Request for Drain Improvement" dated September 15, 2017; and
- II. to prepare a Drainage Report for the Lachance Drain in accordance with Section 78 of the *Drainage Act*, including provisions for future maintenance of the Drain....

On-site meetings were held on February 8, 2018, and April 6, 2018. A summary of each meeting is included in Schedule A-1 and A-2 of the Drainage Report as per the requirements in the Act.

The Town received a draft report dated April 23, 2019, for discussion at a public information meeting. Invitations were sent to landowners regarding a Public Information Centre (PIC) that was held on May 2, 2019, in Council Chambers to discuss the content of the draft report.

On May 3, 2019, Dillon, filed a report dated May 3, 2019 for the repair and improvement to the Lachance Drain in accordance with Section 41 of the Act. On May 4, 2019, Invitations were sent to all affected landowners and agencies that the Public Council Meeting to consider the Engineer's Report would be held on May 28, 2019 at 5:15 p.m.

Comments

Legislation

The sections of the Act referenced within this report are included in Schedule A which is attached to this Council Report as Attachment No. 2.

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 approve by giving first and second readings to a Provisional By-law.

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.

Court of Revision

Section 97(3) of the Act states that:

“Where the lands assessed for the drainage works extend from the initiating municipality into a neighbouring municipality, the court of revision shall consist of two members appointed by the council of the initiating municipality, of whom one shall be chair and one member appointed by the council of each of the neighbouring municipalities and the court shall hear and rule on appeals as if the entire area affected by the drainage works were in one municipality.”

As the lands assessed in the Drainage Report extend from the Town into the City of Windsor, Town Council is to appoint two (2) members to the Court of Revision to hear and rule on appeals. The members appointed to the Court of Revision by the Town are to be persons eligible to be elected a Member of Council or shall be a Member of Council.

As the landowners within the Town that are affected by the Drainage Report are located within Ward 4 and Councillor Brian Houston is the representative of the Ward, it is recommended that he be appointed as one of the Town's representative members on the Court of Revision.

It is further recommended that the head of Council, Mayor Gary McNamara, be appointed to the Court of Revision and serve as Chair.

The City of Windsor has advised the Town that they have appointed Councillor Ed Sleiman as the member of Court of Revision representing their municipality.

Approvals

The Town made initial submissions to the Essex Regional Conservation Authority (ERCA) regarding their requirements for approval under Section 28 of the Conservation Authorities Act. A response from ERCA was received by email on October 5, 2017, and indicated that the Town must apply for a permit and follow standard mitigation requirements.

The Consultant and the Town of Tecumseh conducted a self-assessment in respect to the Federal requirements of the [Department of Fisheries and Oceans](#) (DFO). It has been determined that this project does not require a formal review by DFO because the Drain is considered a Class F drain however, the Drain outlets into the Little River Drain, which is classified as a Class C drain. Based on the classification of the Little River Drain, the Town has submitted a Request for Review to the DFO on April 24, 2019, and is currently awaiting a response regarding the proposed drainage works. This does not eliminate the requirements under the Fisheries Act (R.S.O. 1985, c. F-14) to avoid causing serious harm to fish by following best practices such as minimizing the duration of in-water work and respecting the restricted activity periods relating to timing windows to protect fish. The resulting habitat impacts must be replaced with equivalent habitat features. If a Biologist is necessary, the cost of same becomes the responsibility of the proponent.

The Drain may contain significant species that are at risk (SAR) and may be aquatic, plants, animals, habitat, etc. These species are protected under the provincial Endangered Species

Act (ESA) and the Town utilizes its compliance document with the Ministry of Natural Resources and Forestry (MNR) under Section 23.9 of Regulation 242/08 for SAR Mitigation Plan for Drainage Works. The Town, along with its contractors, gather data with respect to information on any encountered species and/or mitigation plans implemented before and during construction for all registered municipal drainage works permitted under Section 23.9 of Ontario Reg. 242/08 and reports to the MNR annually.

Based on the comments above, it is recommended:

1. **That** the Drainage Report and Specifications for the Lachance Drain as prepared by Mr. Mark Hernandez, P.Eng., of Dillon Consulting Ltd., dated May 3, 2019, be received;
2. **And that** consideration be given to the first and second readings of a provisional by-law to adopt the Drainage Report;
3. **And further that** notice be given to all affected landowners of the Court of Revision to be held on Tuesday, June 25, 2019, at 5:30 p.m. in accordance with Section 46(1) of the Drainage Act subject to adoption of the provisional by-law.
4. **And furthermore that** Mayor Gary McNamara and Councillor Brian Houston be appointed to the Court of Revision to be held on Tuesday, June 25, 2019, at 5:30 p.m.
5. **And further moreover that** Mayor Gary McNamara serve as Chair of the Court of Revision.

Consultations

Financial Services
Corporate Services & Clerk
Public Works & Environmental Services
Dillon Consulting Ltd.

Financial Implications

Engineer's Estimates for the Lachance Drain

Description	Estimate
Construction	\$66,530
Incidentals	\$50,000
Permit	\$800
Allowances/Compensation	\$9,210
Total	\$126,540

Assessment Summary	Estimate
Town of Tecumseh - Road Authority	\$8,370
Town of Tecumseh – Block A – Lands	\$11,743
Town of Tecumseh – Non-Agricultural Lands (non-grantable)	\$10,530
Town of Tecumseh – Agricultural lands (grantable)**	\$15,697
City of Windsor – Road Authority	\$6,549
City of Windsor – Non-Agricultural Lands (non-grantable)	\$45,103
City of Windsor – Agricultural Lands (grantable)**	\$13,799
Provincial Grants *	\$14,749
Total	\$126,540

**As shown in the table above, a portion of a Section 78 assessment for drainage works to agricultural lands described in an engineer's report are eligible for grants by the Ontario Ministry of Agriculture, Food and Rural Affairs (OMAFRA) through the provisions set out in Sections 85, 86 and 87 of the Act, and under the Agricultural Drainage Infrastructure Program (ADIP) policies. Upon completion of the application form, the Minister may pay to the treasurer of the Town *33 1/3 per cent of the assessments eligible for grant in accordance with the Agricultural Drainage Infrastructure Program.

The Town of Tecumseh lands have been assessed \$5,803 in the engineer's report for Benefit and Outlet Liability for works involving 2.46 hectares (6.08 acres) of the roads encompassing the urban residential area of Block A shown on page 1 of 9 in the Overall Watershed Plan view. The Town has also been assessed \$2,567 for Benefit and Outlet Liability for Intersection Road.

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 May 3, 2019. The Town will utilize the Lifecycle Reserve to pay for the Town's drainage assessment totalling \$8,370.

The Engineer has provided the block assessment under Section 25 of the Act. Although the Town is required to impose the cost of the drainage works by by-law (Section 61(1)), upon the lands assessed for drainage works, the assessment with which it is chargeable, may also be paid out of the general funds for assessments with a \$50 balance or less under Section 61(3) of the Act. The assessment to the lands within the Block A area will be proportionately assessed to all properties within Block A based on the affected area of each property.

For assessments in excess of \$5,000 the Town offers landowners the option of paying the balance plus interest, currently set at 4%, over a five (5) year period; the annual payments are added as a special charge on their taxes.

Link to Strategic Priorities

Applicable	2017-18 Strategic Priorities
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- Make the Town of Tecumseh an even better place to live, work and invest through a shared vision for our residents and newcomers.
- Ensure that the Town of Tecumseh's current and future growth is built upon the principles of sustainability and strategic decision-making.
- Integrate the principles of health and wellness into all of the Town of Tecumseh's plans and priorities.
- Steward the Town's "continuous improvement" approach to municipal service delivery to residents and businesses.
- 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:

Cameron Hedges, E.I.T.
Assistant Drainage Superintendent

Reviewed by:

John Henderson, P.Eng.
Manager Engineering Services

Reviewed by:

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

Reviewed by:

Tom Kitsos, CPA, CMA, BComm
Deputy Treasurer & Tax Collector

Reviewed by:

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

Recommended by:

Margaret Misek-Evans, MCIP, RPP
Chief Administrative Officer

Attachment Number	Attachment Name
1	Drainage Report dated May 3, 2019 By Mark Hernandez, P.Eng, of Dillon Consulting Ltd.
2	Schedule A – Drainage Act Excerpts