



## The Corporation of the Town of Tecumseh

Public Works & Environmental Services

**To:** Mayor and Members of Council

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

**Date to Council:** July 23, 2019

**Report Number:** PWES-2019-33

**Subject:** Request to Consider Engineer's Report – Wellwood Drain

---

### Recommendations

It is recommended:

1. **That** the Drainage Report and Specifications for the Wellwood Drain (Drainage Report) as prepared by Mr. Dennis R. McCready, P. Eng., of RC Spencer Associates Inc., dated May 8, 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 at the July 23, 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, August 13, 2019 at 6:30 p.m. in accordance with Section 46(1) of the *Drainage Act*, subject to adoption of the provisional by-law.

### 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 and Specifications for the Wellwood Drain (Drainage Report) in accordance with Section 42 of the *Drainage Act* (Act).

The Town received a "Notice of Request for Drain Improvement" on May 7, 2015, in accordance with Section 78 of the Act. On June 23, 2015, Council accepted the recommendation by the Drainage Superintendent under Public Works and Environmental Services Report No. 33/15 and passed resolution RCM-211/15 as follows:

**THAT** Mr. Lou Zarlenga, P.Eng., of RC Spencer Associates Inc. be appointed Drainage Engineer to:

- a) make an examination of the drainage area as submitted by the affected landowner at Roll No. 420-000-09103-0000 in the "Notice of Request for Drain Improvement" dated May 7, 2015; and
- b) prepare a Drainage Report for the Wellwood Drain (Drain) in accordance with Section 78 of the *Drainage Act*, including provisions for future maintenance of the Drain...

On-site meetings were held on October 15, 2015 and April 12, 2017. The second on-site meeting, held on April 12, 2017, was to address written requests from landowners on estimates of enclosing portions of the Drain. A summary of each meeting is included in Appendix C of the Drainage Report as per the requirements in the Act.

On December 4, 2017, a letter was received from RC Spencer Associates Inc. (RC Spencer) notifying the Town that the appointed Drainage Engineer for this project was to be changed from Mr. Lou Zarlenga to Mr. Dennis McCready.

The Town received a draft report dated March 14, 2019, for discussion at a Public Information Centre (PIC). Invitations were sent to landowners regarding the PIC that was held on April 10, 2019, at Fire Station No. 1 to discuss the content of the draft report.

On May 10, 2019, RC Spencer filed a report dated May 8, 2019, for the repair and improvement to the Wellwood Drain in accordance with Section 41 of the Act. On May 27, 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 July 23, 2019, at 6:30 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 approved 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 use of land.

## Approvals

The Town made initial submissions to the Essex Region 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 May 20, 2015, indicating that the Town must perform a self-assessment through the Department of Fisheries and Oceans (DFO) website, apply for a permit, and follow standard mitigation requirements.

The Consultant and the Town of Tecumseh conducted a self-assessment with respect to the Federal requirements of the [DFO](#). It has been determined that this project does not require a formal review by DFO as the Drain is considered a Class F drain. 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) which 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 (MNRF) under Section 23.9 of Regulation 242/08 for SAR Mitigation Plan for Drainage Works. The Town, along with its contractors, gathers 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 MNRF annually.

Based on the comments above, it is recommended that the Drainage Report be received, a provisional by-law be given first and second readings and that notice be given to affected landowners regarding the Court of Revision to be held on August 13, 2019.

## Consultations

Financial Services  
Corporate Services & Clerk  
RC Spencer Associates Inc.

## Financial Implications

### Engineer's Estimates for the Wellwood Drain

| Description           | Estimate        |
|-----------------------|-----------------|
| Construction – Area 1 | \$4,391         |
| Incidentals – Area 1  | \$7,409         |
| Construction – Area 2 | \$24,056        |
| Incidentals – Area 2  | \$15,194        |
| Construction – Area 3 | \$10,649        |
| Incidentals – Area 3  | \$12,221        |
| Allowances – Area 3   | \$1,080         |
| <b>Total</b>          | <b>\$75,000</b> |

| Assessment Summary                              | Estimate        |
|---|-----------------|
| Town of Tecumseh – Area 1                       | \$5,364         |
| Non-Agricultural Lands (Non-Grantable) – Area 1 | \$2,885         |
| Agricultural Lands (Grantable) – Area 1**       | \$2,367         |
|   |                 |
| Town of Tecumseh – Area 2                       | \$8,047         |
| Non-Agricultural Lands (Non-Grantable) – Area 2 | \$30,479        |
| Agricultural Lands (Grantable) – Area 2**       | \$483           |
|   |                 |
| Town of Tecumseh – Area 3                       | \$5,023         |
| Non-Agricultural Lands (Non-Grantable) – Area 3 | \$7,466         |
| Agricultural Lands (Grantable) – Area 3**       | \$7,641         |
|   |                 |
| Provincial Grants *                             | \$5,245         |
| <b>Total (Including Non-Recoverable HST)</b>    | <b>\$75,000</b> |

\*\*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 *Drainage 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 \$18,434 in the engineer's report for Benefit and Outlet Liability for works involving 2.78 hectares (6.88 acres) of the roads encompassing Area's 1, 2, and 3 as shown on page 1 of 10 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 May 8, 2019. The Town will utilize the Lifecycle Reserve to pay for the Town's drainage assessment totalling \$18,434. The Lifecycle Reserve is included as Attachment No. 3.

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 | 2019-22 Strategic Priorities |
|------------|------------------------------|
|------------|------------------------------|

- 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 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 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  
Director Financial Services & Chief Financial Officer

Reviewed by:

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

Recommended by:

Margaret Misek-Evans, MCIP, RPP  
Chief Administrative Officer

| <b>Attachment Number</b> | <b>Attachment Name</b>   |
|--------------------------|--|
| 1                        | Drainage Report dated May 8, 2019 By Dennis R. McCready, P.Eng of RC Spencer Associates Inc. |
| 2                        | Schedule A – Drainage Act Excerpts   |
| 3                        | Lifecycle – Drains Reserve   |