



CORPORATE SERVICES

Staff Report

REPORT NO: COR 2023-26

TO: Council

SUBMITTED BY: Patrick Kelly, Director of Corporate Services/Treasurer

PREPARED BY: Jeff Bunn, Manager of Legislative Services/Municipal Clerk

REVIEWED BY: Sharon Chambers, CAO

DATE: March 20, 2023

SUBJECT: Petition for Drainage Works at by Owners of 1089 Huron Street regarding North Part Lot 27, Concession South of Bleams Road

RECOMMENDATION:

THAT Report COR 2023-026, regarding a petition for drainage works by Owners of 1089 Huron Street regarding North Part Lot 27, Concession South of Bleams Road, be received; and further,

THAT the Council of the Township of Wilmot hereby accepts the petition for new drainage works on the North Part Lot 27, Concession South of Bleams Road in the Township of Wilmot; and further,

THAT Council appoint K. Smart Associates Limited as the Engineer to make an examination of the area, in accordance with Section 8 of the *Drainage Act, R.S.O 1990*.

SUMMARY:

On February 27, 2023, the Municipal Clerk of the Township of Wilmot received a petition for drainage works from the Owners of 1089 Huron Street regarding North Part Lot 27, Concession South of Bleams Road (Attachment 1). This report provides Council with a copy of the petition, a key map (Attachment 2) and provides a detailed explanation of steps that occur if Council chooses to accept or reject the petition.

BACKGROUND:

This report is in response to a petition for drainage works submitted by an agent for the owners of 1089 Huron Street regarding a proposed drain for North Part Lot 27, Concession South of Bleams Road (shown below in Figure 1)

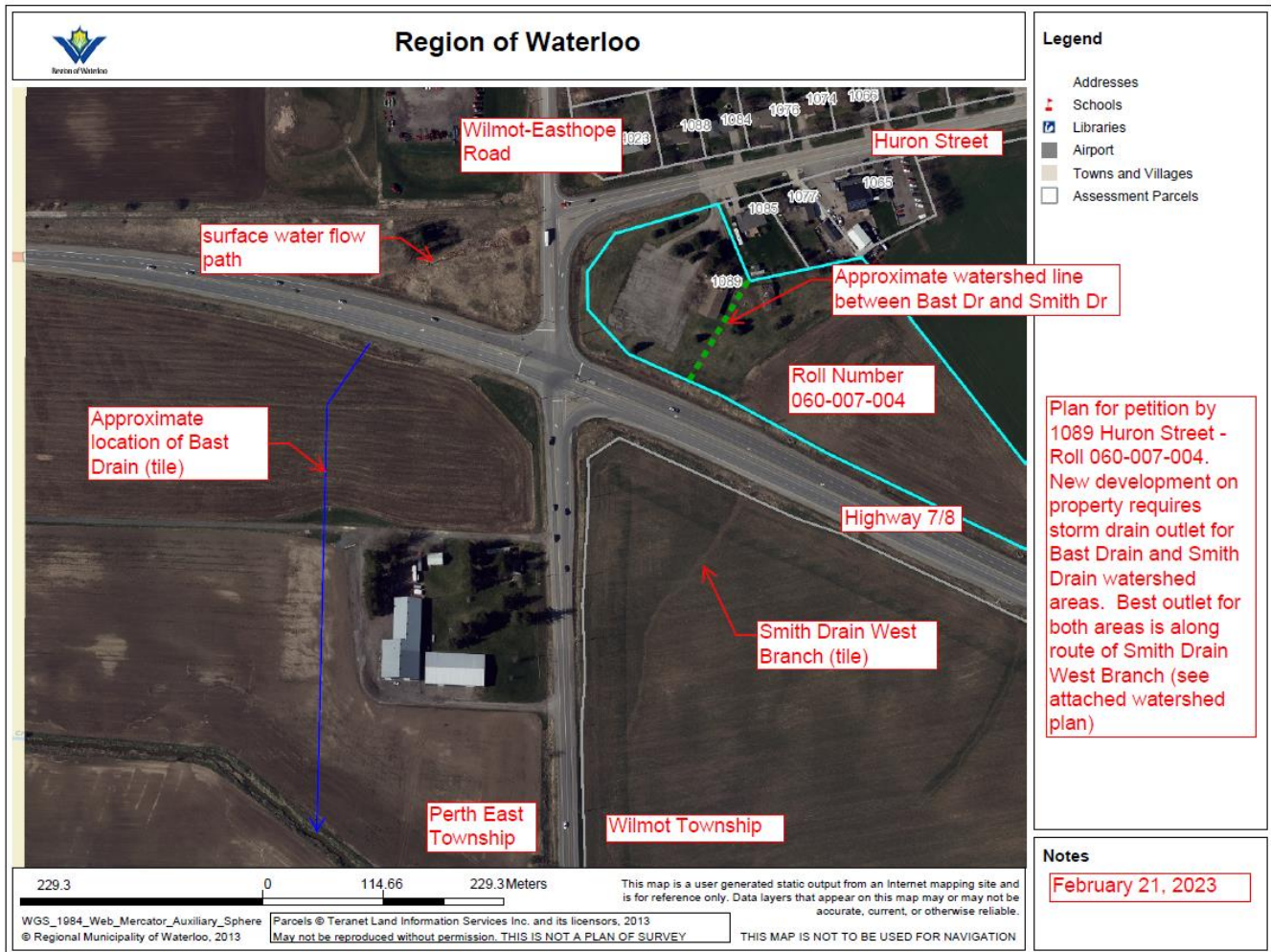


Figure 1 – Map, submitted by the agent for the petitioner, of properties for proposed drainage work

REPORT:

In accordance with the *Drainage Act, R.S.O 1990*, Council must consider the petition within thirty (30) days of filing and send notice to each petitioner if Council decides to reject the petition.

Next steps if Council chooses to accept the Petition:

Step 1 (Council Decision) Acceptance of Petition

If Council decides to accept the petition and proceed, Notice must be sent within thirty (30) days to:

- the petitioner,
- the Clerk of any other municipality that may be affected; and,
- to the local Conservation Authority (Grand River Conservation Authority).

Step 2 (Optional) Environmental Appraisal

Council, the Conservation Authority, and/or the Ministry of Natural Resources may request an environmental appraisal of this project. If an environmental appraisal is requested, Council must authorize a Preliminary Report by the Engineer. Council itself may request an environmental appraisal. The request must be submitted to Council within thirty (30) days of the Notice being sent.

Step 3 (Optional) Benefit/Cost Statement

Council or the Ontario Ministry of Agriculture, Food and Rural Affairs (OMAFRA) may request a benefit/cost statement. The request must be made within thirty (30) days of the Notice being sent.

Step 4 (Mandatory) Appointment of Engineer

Council must appoint an Engineer by resolution or by-law. The appointment must be completed within sixty (60) days of the Notice being sent. The Engineer must perform work to the best of their ability without fear of, favour to or prejudice against any person. Council can provide general instructions to the Engineer but cannot instruct the Engineer what to design.

The Engineer has one (1) year to prepare an Engineer's Report after the appointment is made.

Step 5 (Mandatory) On-Site Meeting

The Engineer will set a date for an on-site meeting and the Clerk will send Notice to all owners within the area requiring drainage. The Engineer will determine if the petition meets the majority of the requirements of the *Drainage Act, R.S.O 1990*, and if it's valid for proceeding.

For the petition to be valid, it must:

- be signed by the majority of property owners requiring drainage works (shown on the last assessment roll); or the owners holding at least 60% of the land in the area requiring drainage; or an appropriate representative at OMAFRA.

Step 6 (Mandatory if requested) Preliminary Report

A preliminary report may be useful if some preliminary investigation is required around the form of drain (e.g., pipe or ditch) or location of the drain. Once the preliminary report is filed,

the Clerk will schedule a meeting of Council to consider the findings of the report. The Clerk will prepare and send Notice to:

- every owner of land in the area requiring drainage;
- any public utility or road authority that may be impacted by the project;
- the local Conservation Authority;
- any other municipality affected by the project; and,
- OMAFRA.

At the meeting, Council will consider the Preliminary Report and the petitioners must be given an opportunity to withdraw their name from the petition. Other property owners in the area requiring drainage must be given an opportunity to add their name to the petition.

Step 7 (Mandatory) Filing of Engineer's Report

When the Engineer's Report is filed, the Clerk will confirm that the Engineer's Report was received within one (1) year after the Engineer's appointment was made. If the Report is received after one (1) year, Council will be asked to extend the time for filing the Report by resolution or by-law (consistent with how the Engineer was appointed).

The Engineer's Report must contain:

- plans/profiles/specifications, description of area requiring drainage, cost estimates;
- assessments: Council can direct the engineer to assess lands in a block;
- allowances;
- benchmarks;
- disposal of materials;
- bridges and culverts;
- working space; and,
- address any legislative requirements e.g., *Fisheries Act*, *Conservation Authorities Act*, *Endangered Species Act*, etc.

Step 8 (Council Decision) Proceeding on Report

After considering the Engineer's Report, Council may pass a resolution to proceed on the Report.

Step 9 (Mandatory) Notice of Meeting to Consider Report

If Council intends to proceed, the Clerk must send a Notice and copy of the Engineer's Report (including the plan, profile and specifications) to:

- the affected owners in the initiating municipality;
- the Clerk of every other municipality affected;
- the Conservation Authority having jurisdiction over the affected land;
- any railway company, public utility or road authority affected by the Report;
- Ministry of Natural Resources where Crown land may be affected by the project; and,
- the Director, Environmental Management Branch, OMAFRA

The Notice must contain:

- the date of the filing of the Report;
- the name or other designation of the drainage works; and,
- the date of the Council meeting at which the report will be considered

This Notice must be sent at least 10 days prior to the meeting being held.

Step 10 (Mandatory) Notice Set by Affected Municipalities

The Clerk of every other municipality affected is responsible for providing Notice to property owners affected by the drainage works within thirty (30) days of receiving the Notice outlined in Step 9.

Step 11 (Mandatory) Council Meeting to Consider Engineer's Report

At the Council meeting, Council will be asked to:

- consider the Engineer's Report;
- announce that any petitioner has the right to withdraw from the petition (this can be done verbally or in written form);
- announce that other owners in the area requiring drainage have the right to sign the petition; and,
- consider authorizing, through resolution, the Head of Council (Mayor) to sign the petition if Council has assessed lands or roads within the area requiring drainage (if applicable).

The Clerk will receive, and record written additions to the petition.

If the Petition fails to comply with Section 4 of the *Drainage Act, R.S.O 1990*, or at the meeting to consider the final report one or all the petitioners have decided to withdraw their names, the original petitioner will be liable for all costs incurred on the project to date.

Step 12 (Council Decision) Adoption of Engineer's Report

If after the meeting to consider the Engineer's Report and the petition is sufficient and valid, Council may:

- **adopt** the report by giving two readings to a provisional by-law;
- **refer** the report back to the Engineer, which would mean the proceedings for handling the report start over; or,
- **decline** to move the proceedings further in which case any petitioner can appeal to the OMAFRA Appeals Tribunal.

Step 13 (Mandatory) Court of Revision Notice

The Clerk must send Notice of the first sitting of the Court of Revision to all landowners in the watershed of the proposed drain.

The Notice must be sent:

- not more than thirty (30) and not less than twenty (20) days before the Court date.

- within 30 days of the provisional by-law receiving first and second reading.

The Notice must include:

- the date and time of the Court of Revision;
- a copy of the provisional by-law; and,
- procedures for filing an appeal.

Step 14 (Mandatory) Court of Revision Meeting

The Court of Revision is an appeal body, established under the *Drainage Act, R.S.O 1990*, and comprised of three (3) or five (5) members of Council. The Court allows landowners to challenge their drainage assessment quickly and informally. The Court has only one power and that is to re-allocate funds in a drainage assessment schedule.

The Clerk will compile all appeals, including the dates the Township received the appeals and reasons. The Clerk will notify, and provide copies of the appeals, to all parties appealed against. If the appeal is general, the Clerk will notify all parties assessed.

If the proposed drainage project proposes to assess lands in one or more other municipalities, the Court of Revision is made up of two (2) members of the initiating municipality and one (1) member from each of the other municipalities. If more than one municipality is affected by the drain, the Court can hear and rule on the appeals as if the entire are within one municipality.

The Court may hear appeals on three grounds:

1. land or road has been assessed too high or low;
2. land or road should have been assessed but has not; and/or,
3. Due consideration has not been given to the land's use

The Court only has authority to change the schedule of assessments; they cannot make changes to the technical aspects of the Engineer's Report and they cannot refer the Report back to the Engineer for modification.

Total costs of the project must remain the same, which means that if the Court reduces an assessment, the Court must re-allocate the shortfall among other assessed property owners.

If the Court is considering adding to the assessment of one or more properties who are not in attendance, the Court must adjourn and send notice to assessed property owners who were not at the Court of Revision at the time of the re-allocation. This allows the re-assessed landowners to appeal their new assessment.

If at the sitting of the Court, any late appeals are heard, Council must pass a resolution to accept them.

The Clerk will record all the decisions of the Court and will send, by registered mail, the decisions of the Court to the affected persons.

Step 15 Landowner's Appeal Mechanism

After the Court of Revision has made their decision, affected property owners have twenty-one (21) days to appeal the decision to the OMAFRA Appeals Tribunal. The Tribunal's decision is final.

Step 16 (Council Decision) Final Passing of the By-law

The by-law may only be passed by Council after the time for appealing has passed.

Step 17 Commencing Work

After a by-law is passed, individuals have ten (10) days to give Notice of intention in writing to the Clerk to make an application to the Superior Court of Ontario to quash the by-law. Therefore, construction cannot take place until at least ten (10) days after the by-law has been passed by Council.

Next steps If Council chooses to reject the Petition:

Council may choose to reject the petition by resolution. If Council rejects the petition, the Clerk will send Notice to the petitioners informing them of Council's decision. Each petitioner has the right to appeal Council's decision to reject the petition to the OMAFRA Appeals Tribunal.

ALIGNMENT WITH THE TOWNSHIP OF WILMOT STRATEGIC PLAN:

This Report aligns with the Responsible Governance Strategic Goal in the Township of Wilmot Strategic Plan.

FINANCIAL CONSIDERATIONS:

There are no financial impacts as a result of this Report.

ATTACHMENTS:

- Attachment 1 – Petition for Drainage Works by Owners of 1089 Huron Street regarding North Part Lot 27, Concession South of Bleams Road
- Attachment 2 – A Key Map of Proposed Drainage Works