The Corporation of the City of Kawartha Lakes

Agenda

Drainage Board Meeting

DB2019-04

Wednesday, October 23, 2019

7:00 P.M.

Victoria Room

City Hall

26 Francis Street, Lindsay, Ontario K9V 5R8

Members:

Councillor Ron Ashmore
Councillor A. Veale
Charles Clarke
Jim Oriotis
Mike Verbik

1. Call to Order

2. Administrative Business

2.1 Adoption of Agenda

2.2 Declaration of Pecuniary Interest

2.3 Adoption of Minutes from Previous Meeting 3 - 8

3. Deputations

4. New Business

4.1 Memorandum 9 - 14

Lucas Feitler, Drainage Superintendent
Contravention of Drainage Act
Anderson Municipal Drain

5. Other Business

5.1 Update on MacEachern Brown Municipal Drain

5.2 Update on 2019 Drainage Maintenance

6. Adjournment

The Corporation of the City of Kawartha Lakes

Minutes

Drainage Board Meeting

DB2019-03
Tuesday, September 17, 2019
7:00 P.M.
Victoria Room
City Hall
26 Francis Street, Lindsay, Ontario K9V 5R8

Members:
Councillor Ron Ashmore
Councillor A. Veale
Charles Clarke
Jim Oriotis
Mike Verbik

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1. Call to Order

Chair A. Veale called the meeting to order at 7:00 p.m. Drainage Board members Councillor Ashmore, C. Clarke, J. Oriotis, and M. Verbik were in attendance.

Supervisor of Technical Services M. Farquhar, Drainage Superintendent L. Feitler, and Recording Secretary and Deputy Clerk J. Watts were also in attendance.

Chair Veale welcomed all in attendance and introduced the members of the Board and staff present.

2. Administrative Business

2.1 Adoption of Agenda

DB2019-018
Moved By C. Clarke
Seconded By J. Oriotis

That the agenda be adopted as circulated.

Carried

2.2 Declaration of Pecuniary Interest

There were no declarations of pecuniary interest disclosed.

2.3 Adoption of Minutes from Previous Meeting

2.3.1 DB2019-03.2.3.1

Minutes from the July 2, 2019 Drainage Board Meeting

DB2019-019
Moved By M. Verbik
Seconded By C. Clarke

That the minutes of the Drainage Board meeting held on July 2, 2019, be adopted as circulated.

Carried

2.3.2 DB2019-03.2.3.2

Minutes from the August 15, 2019 Court of Revision (Webster Drain)

DB2019-020
Moved By Councillor Ashmore
Seconded By J. Oriotis

That the minutes of the Court of Revision - Webster Drain meeting held on August 15, 2019 be adopted as circulated.

Carried

3. Deputations

3.1 DB2019-03.3.1

Deputation from the Petitioners for Drainage Works
Robert and Lynda MacEachern
Scott Brown (for D. S. & B. Farms Inc.)

Robert and Lynda MacEachern spoke as the petitioners for drainage works. Mr. MacEachern shared they petitioned for a municipal drain to replace an old Award Drain (known as the Budd, and Hopkins Award Drains) that were awarded in 1904. They stated that a portion of the award drain had been filled-in on the Brown property, and replaced with a closed drain system that was too small to accept their water. After considering their options under the Drainage Act for dealing with an altered Award Drain, Mr. & Mrs. MacEachern signed the petition for drainage work with Mr. Brown. He responded to questions from the members of the Board.

DB2019-021
Moved By Councillor Ashmore
Seconded By C. Clarke

That the deputation of Robert and Lynda MacEachern, regarding Petition for Drainage Works by Owners, be received.

Carried

4. New Business

4.1 Petition for Drainage Works by Owner(s): D. S. & B Farms Inc and Robert and Lynda MacEachern

Memorandum, Lucas Feitler, Drainage Superintendent

Drainage Superintendent L. Feitler presented an overview of the existing drainage infrastructure in the area. He stated that several site meetings were held with the property owners, and they discussed future options following filling-in of the open award drain on the Brown property. Under the Drainage Act the assessed land owners could:

- initiate a civil lawsuit
- appeal to the Drainage Referee
- petition to the municipality for Drainage Works

The Brown's options discussed included:

- appeal to the Drainage Referee to determine the validity of the report, for allowing changes to the award, or any other power of the referee under section 106(1) of the drainage act
- petition to the municipality for Drainage Works

Based on the discussions it was felt that the MacEacherns and Browns would sign on to a petition under Section 4 of the Drainage Act to turn the 1904 and 1907 Award Drains into a Municipal Drain. Mr. Feitler provided the options to the Board for how to respond to the petition, and that if approved to proceed, a recommendation to Council would come to the October 22, 2019 Regular Council Meeting. He responded to questions from the members of the Board.

DB2019-022
Moved By Councillor Ashmore
Seconded By J. Oriotis

That the memorandum from the Drainage Superintendent - Engineering and Corporate Assets L. Feiter, dated September 17, 2019, regarding the petition for drainage works by owners of Concession 2, Part Lot 16, Geographic Township of Eldon (being Scott Brown of D.S.& B. Farms Inc.), and Concession 3, Part Lot 16, Geographic Township of Eldon (being Robert and Lynda MacEachern), be received;

That Council proceed with the petition submitted by D. S. & B. Farms Inc. and Robert and Lynda MacEachern for drainage works for Concession 2, Part Lot 16, and Concession 3 Part Lot 16 Geographic Township of Eldon to be known as the "MacEachern-Brown Drain" and instruct the City Clerk to proceed with the notices required under Section 5 of the Drainage Act;

That Staff concurrently continue to pursue with the petitioners options for a mutual drain agreement as per the City Policy; and

That pursuant to Section 8(1) of the Drainage Act, R.S.O. 1990, Chapter D. 17, staff recommend to Council a Drainage Engineer for the examination of the area requiring drainage and proceed with the requirements of the proposed MacEachern-Brown Drain.

Carried

5. Other Business

5.1 DB2019-03.5.1

Verbal Update on the Webster Drain

Mr. Farquhar provided an update on the Webster Drain stating that no appeals had been received after the Court of Revision was held on August 15, 2019. He stated that preparations are now underway to present By-law 2019-110 for Third Reading at Council, and tendering for construction in consultation with the Lake Simcoe Region Conservation Authority.

DB2019-023
Moved By C. Clarke
Seconded By Councillor Ashmore

That the update by M. Farquhar, regarding Webster Drain, be received.

Carried

5.2 DB2019-03.5.2

Verbal Update on the Waite Drain

Mr. Farquhar advised that staff are still in discussions with the Ministry of Transportation regarding the proposed crossing of Highway 35. Once their review is complete, they will be able to proceed with the Court of Revision.

DB2019-024
Moved By C. Clarke
Seconded By J. Oriotis

That the update by M. Farquhar, regarding the Waite Municipal Drain, be received.

Carried

6. Adjournment

DB2019-025
Moved By C. Clarke
Seconded By M. Verbik

That the Drainage Board Meeting adjourn at 7:36 p.m.

Carried

The Corporation of the
City of Kawartha Lakes
12 Peel Street P.O. Box 9000
Lindsay, ON K9V 5R8
Phone: 705-324-9411, Ext. 1167
Fax: 705-324-2982

Memorandum

Date: **October 17, 2019**

To: **Drainage Board**

From: **Lucas Feitler, Drainage Superintendent – Engineering & Corporate Assets**

Re: **Contravention of Drainage Act**
Anderson Municipal Drain
CC: **Juan Rojas Director of Engineering and Corporate Assets**
Mike Farquhar, Supervisor of Technical Services.

Recommendation:

Recommend that the memorandum from L. Feitler, Drainage Superintendent - Engineering and Corporate Assets, dated October 23, 2019, regarding the Contravention of the Drainage Act - Anderson Municipal Drain, be received;

That the Engineering and Corporate Assets Department initiates proceedings under the provisions of Section 65(3) of the *Drainage Act, R.S.O. 1990, c. D.17;*

That the City Clerk be instructed to advise an engineer in writing to inspect the land and assess it for a just proportion of the drainage works, taking into account any compensation paid to the owner of the land in respect of the drainage works as per section 65(3) of the *Drainage Act, R.S.O. 1990, c. D.17;* and

That that Engineering and Corporate Assets Department staff complete a detailed survey of the Anderson Municipal Drain to determine any changes from the original design.

Background:

In the summer I was contacted by Ron Anderson regarding the Anderson Municipal Drain. He was concerned about water ponding in the ditch and vegetation that was growing downstream of the Anderson property. Mr. Anderson stated his intention was to install tile drainage this summer and wanted the water to get away quicker. Mr. Anderson stated he maintained his section of drain by cutting the vegetation before it became overgrown.

I inspected the site and completed a preliminary survey of the drain at the request of Mr. Anderson. The survey, as well as the visual inspection confirmed that the drain required a cleanout.

Mr. Anderson was concerned about the allocation of costs. He was concerned that his neighbour (Robert Kelly) would have to pay a portion of the cleanout at his request. It was explained by Mr. Anderson that Mr. Kelly is not an active farmer and the condition of the drain does not matter to him. I explained the provisions of the Drainage Act for maintenance, and that the current report and assessment schedules must be used. Mr. Anderson also had concerns about the total cost of cleanout. He was concerned about contractors charging a markup when dealing with the government. I explained our procurement policy and that it is competitive.

Mr. Anderson and I went through the current maintenance assessment schedule, using prices from current bids on other drains to get an estimated cost for the cleanout. We also discussed the possibility of receiving grants from OMAFRA.

Over the course of the summer I had several site visits with Mr. Anderson. I explained on several occasions the procedure to initiate maintenance through the Drainage Act.

Because of Mr. Anderson's concerns about his neighbours, our discussions concluded with me stating I would not initiate maintenance unless a request was submitted by Mr. Anderson. I explained that I had completed a full inspection of the drain and most likely won't be completing another one for some time. It was left with Mr. Anderson.

In September I saw Walker Wright Drainage on site tiling Mr. Anderson's property. I noticed they tiled outside the watershed, which contravenes Section 65 of the Drainage Act. I emailed Kevin Braiser on September 19th, 2019 (Walker Wright Drainage) to see if they had tiled into the Anderson drain or found an alternative outlet. I received no response so I completed an inspection.

Upon inspection I found:

- The tile extended outside the Anderson Drain watershed
- An additional open channel branch drain was excavated and connected to the Anderson Drain
- A clean out of the entire open section of drain had been completed.

At this time I wrote up the attached contravention letter and sent it to the City Solicitor for review. It was reviewed and sent to land owners on October 8th, 2019 via registered mail. The department of Fisheries and Oceans and Kawartha Conservation have been informed of this work via email.

A discussion was also had with Tim Brook, Drainage Coordinator for OMAFRA, regarding possible next steps for the drain.

Alternatives:

1. Pursue an action for damages through the Drainage referee against Ron Anderson pursuant to Section 82 of the Drainage Act.
2. Pursue a new engineer report under Section 78 on the premise that the additional land brought into the watershed necessitates an improvement to the drain.
3. Pursue an appeal to the drainage referee pursuant to Section 106(1) for any other action the Drainage board determines of which the referee has original jurisdiction.

Recommendation for appointment of a Drainage Engineer:

Currently the City has a pool of Drainage Engineers which list in the following. Depending on availability the Engineer firm is to be:

Burnside Engineering
Tulloch Engineering
K-Smart Engineering
R. D. Dobbin Engineering
DM Wills Engineering

Attachments:

Contravention Letter

ENGINEERING AND CORPORATE ASSETS
Technical Services
Box 9000, 12 Peel St., Lindsay, ON K9V 5R8
Phone : (705) 324-9411 Ext. 1167 Fax : (705) 324-2982
Toll Free : 1-888-822-2225
e-mail : lfeitler@kawarthalakes.ca

October 8, 2019

Mariposa CON 9 PT LOT 11
Mariposa CON 9 PT LOT 12

Dear Ron Anderson

Re: Contravention of the Drainage Act

Please be advised that the Municipal Drainage Superintendent attended your property located at 659 Highway 7 on September 26th, 2019 to observe outlets of recent tile drainage installation. Additional work was completed without permission.

It was noted that:

- Tile installation extended outside the watershed of the Anderson Drain.
- An Additional branch drain had been excavated and connected to the Anderson drain.
- A clean out of the entire length of open section had been completed.

This work has not been initiated or authorized by the Corporation of the City of Kawartha Lakes. Accordingly, you are in contravention of the below sections of the Drainage Act.

Section 65(3) of the Drainage Act states:

Subsequent connection to drainage works, etc.
(3) If an owner of land that is not assessed for a drainage works subsequently connects the land with the drainage works for the purpose of drainage, or if the nature or extent of the use of a drainage works by land assessed for the drainage works is subsequently altered, the clerk of the local municipality in which the land is situate shall instruct an engineer in writing to inspect the land and assess it for a just proportion of the drainage works, taking into account any compensation paid to the owner of the land in respect of the drainage works. 2010, c. 16, Sched. 1, s. 2 (26).

Section 65(5) of the Drainage Act states:

Restriction on connection or disconnection
(5) No person shall connect to or disconnect from drainage works without the approval of the council of the municipality. 2010, c. 16, Sched. 1, s. 2 (26).

No land owner can connect to the drain without permission from council. Not only was the connection made without the inspection of the Drainage Superintendent or permission from Council but land outside the watershed was tiled into the drain. Your assessment is based on the rate and volume of water that you contribute to the drain. You have now added additional volume which necessitates a change in the assessment.

No erosion and sediment controls were found on site. No rock check dams or silt fence was installed to control the flow of sediment and prevent erosion. Lose sediment is now uncontrolled in the drain and constitutes damage to the drainage works.

Section 82 of the Drainage Act states:

Municipality may sue for cost of damage to drainage works
82 *(1) A municipality in which a drainage works or part thereof is situate may bring an action for damages against any person who destroys or injures in any way a drainage works, including any bench mark or permanent level, and any damages ordered by the referee to be paid shall be paid to the municipality and used for the construction, improvement, maintenance or repair of the drainage works. R.S.O. 1990, c. D.17, s. 82 (1).*

Penalty for damage to drainage works
(2) Every person who obstructs, fills up or injures or destroys by any means a drainage works is guilty of an offence and on conviction, in addition to liability in damages, is liable to a fine of not more than $1,000 or to imprisonment for a term of not more than thirty days, or to both. R.S.O. 1990, c. D.17, s. 82 (2).

The department of Fisheries and Oceans and Kawartha Conservation classify and monitor these drains for aquatic life and vegetation. You are in contravention of their legislation if you did not apply for and receive approval to clean out the ditch. Please forward any permits or correspondence you had with the above authorities.

Please contact our office immediately to discuss the work that was completed and to determine next steps. Should we fail to receive a response to this letter within 7 days from the date of receipt of this letter, we will proceed with either a 65(3) amendment to the Anderson report, or, since the scope of work is unknown, a new Engineer's report under section 78 of the Drainage Act. The

procedure of both has been included in this correspondence. The Drainage Board and Council will also decide whether to pursue further legal options under section 82 &106(1) of the Drainage Act.

Sincerely,

The Corporation of the City of Kawartha Lakes



Lucas Feitler
Senior Engineering Technician
Municipal Drainage Superintendent
LC:lc
Encl.

cc Juan Rojas, Director of Engineering and Corporate Assets
Robin Carlson, City Solicitor
Roy Walker, Walker Wright Drainage
Mike Farquhar, Supervisor of Technical Services