

# The Corporation of the City of Kawartha Lakes

## Council Report

Report Number WWW2017-001

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**Date:** February 7, 2017

**Time:** 2:00 p.m.

**Place:** Council Chambers

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**Ward Community Identifier:** 6

**Subject:** Request for Exemption to By-law 2014-255 for properties along Cty. Rd 121, (between Clifton St. and Northline Rd.) Fenelon Falls

**Author/Title:** David Kerr, Manager, Environmental Services

**Signature:**  for D. Kerr

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### Recommendations:

**RESOLVED THAT** Report WWW2017-001, **Request for Exemption to By-law 2014-255 for properties along Cty. Rd. 121(between Clifton St. and Northline Rd.) Fenelon Falls**, be received;

**THAT** the request for an exemption from By-law 2014-255 for the properties along Cty. Rd. 121 (between Clifton St. and Northline Rd.) Fenelon Falls, be denied on the grounds that the request for an exemption is inconsistent with the Mandatory Connection By-law 2014-255.

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**Department Head:**



**Corporate Services Director / Other:**

**Chief Administrative Officer:**



## **Background:**

Property Owners on County Rd 121, between Clifton Street and Northline Road, on the east side of the Village of Fenelon Falls, have requested an exemption to **By-law 2014-255** "A By-law to require Owners of buildings to connect such Buildings to Drinking Water Systems and/or Wastewater Collection Systems in the City of Kawartha Lakes" hereinafter referred to as the "Mandatory Connection By-law". This By-law is included as Appendix A of this report.

The Mandatory Connection By-law was passed in 2014 and was created to ensure property owners are connected to available municipal infrastructure. New users will see benefit from safe, reliable drinking water and efficient and effective wastewater treatment. The additional revenue, through full community servicing, will help lower the average overall cost to property owners paying for municipal water and wastewater utilities by ensuring servicing costs are shared equally among those who benefit from the infrastructure available.

As a result of the Mandatory Connection By-law being passed, and as part of the City's Initiative Management process, staff organized a pilot project in Fenelon Falls to strategically phase in the implementation and enforcement of the by-law. One of the purposes of the pilot project is to aid in the establishment of City-wide cohesive policies and procedures related to mandatory connection practices. The City will continue to enforce mandatory connection throughout the City based on the policies generated through the pilot.

At the start of the pilot project, staff completed a survey and identified approximately thirty (30) properties that are serviced by private water and/or septic systems and front onto roadways with available municipal water mains or sewer mains. The scope was narrowed further to identify properties with only municipal water available, due to current capacity restrictions in the sanitary system. The identified property owners received letters notifying them of the requirement to connect to municipal water services under the Mandatory Connection By-law.

At the November 22, 2016 Council meeting, a group of approximately fifteen (15) property owners, represented by resident Penni Holdham, presented a deputation to Council seeking an exemption to the mandatory connection requirement to the City's municipal water services. The following properties are directly affected by the exemption request:

- 791 County Rd 121, Fenelon Falls
- 795 County Rd 121, Fenelon Falls
- 797 County Rd 121, Fenelon Falls
- 799 County Rd 121, Fenelon Falls
- 801 County Rd 121, Fenelon Falls

- 762 County Rd 121, Fenelon Falls
- 755 County Rd 121, Fenelon Falls
- 757 County Rd 121, Fenelon Falls
- 768 County Rd 121, Fenelon Falls
- 772 County Rd 121, Fenelon Falls
- 774 County Rd 121, Fenelon Falls
- 776 County Rd 121, Fenelon Falls
- 780 County Rd 121, Fenelon Falls
- 788 County Rd 121, Fenelon Falls
- 798 County Rd 121, Fenelon Falls

Exemption from wastewater is unnecessary since there is no sewer main in front of the properties. Ms. Holdham cited the high capital cost of connecting to the water service and the inability to connect to a sewer main as reasons for the exemption request.

In response to the deputation presented by Ms. Holdham, Councillor Doug Elmslie presented a memo at the Council Meeting on December 13, 2016. A copy of Councillor Elmslie's memo is attached to this report as Appendix B. After some discussion, Council adopted the following resolution:

**CR2016-1147**

**Moved By** Councillor Breadner

**Seconded By** Councillor Yeo

**RESOLVED THAT** the memo from Councillor Elmslie regarding **Mandatory Hook Up – Properties along County Road 121**, be received;

**THAT** the matter be forwarded to staff for review and report back in the first quarter of 2017; and

**THAT** the mandatory deadline for properties along County Road 121 to connect to municipal water services be extended by three months.

**CARRIED**

This report addresses the above directions and rationale for the staff recommendation. An alternative recommendation is also provided for consideration should Council support an exemption to the by-law.

**Rationale:**

As a result of the passing of the "Mandatory Connection By-law", property owners are required to connect to municipal sewer and water services if available and pay for the required infrastructure connections from the water main to their private residence or building.

Specifically, buildings that are located on properties fronting a municipal right of way containing a municipal water main, such as the properties fronting County Rd. 121, are required to connect to those services. As the properties are likely serviced by private wells, their systems must be disconnected from the well(s) to ensure there is no potential siphoning from the well(s) into the city water main.

One of the concerns brought forward by Ms. Holdham is that residents would be forced to install services in two phases: initially to connect to the municipal water system and in the future to connect to a new sewer service once a sewer main is installed on County Rd. 121. Currently, there is no plan to install sewer services along this part of County Rd. 121. Potential future development is proposed in the vicinity of this area (i.e. Fenelon Trails), however this proposed development would likely be serviced from a sewer main from Clifton St. At this time, there is no confirmed schedule of when the proposed development may move forward.

While Staff recognizes there is a capital cost to the property owners for connecting to the municipal water system, the benefits to connecting are listed as follows:

- The City is committed to providing safe and reliable drinking water to municipal users. The City is held to a high standard through strict regulations enforced by the Ministry of the Environment and Climate Change.
- Municipal serviced properties through source protection legislation are less susceptible to risk from contamination, drought and well interference from nearby development.
- Private wells can have high maintenance costs particularly if they have to be re-drilled.
- Properties with municipal servicing are generally perceived to be of higher value in comparison to privately serviced properties since there are governing bodies (i.e. municipality and MOECC) ensuring safe and reliable servicing.
- The Fenelon Falls municipal water system provides fire protection through the provision of hydrants and adequate pressurized flows. As there is a water main on County Road 121 the property owners are already receiving this benefit at no cost.
- Property owners will be contributing fairly and in a balanced manner for the ongoing maintenance, operation and capital upgrades to the municipal water treatment plant and associated infrastructure that services Fenelon Falls.

### **Other Alternatives Considered:**

Should Council choose to exempt the property owners an alternative recommendation is as follows:

THAT Council approves the exemption request to the Mandatory Connection By-Law 2014-255 for the residences along County Rd. 121, Fenelon Falls identified as:

- 791 County Rd 121, Fenelon Falls
- 795 County Rd 121, Fenelon Falls
- 797 County Rd 121, Fenelon Falls
- 799 County Rd 121, Fenelon Falls
- 801 County Rd 121, Fenelon Falls
- 762 County Rd 121, Fenelon Falls
- 755 County Rd 121, Fenelon Falls
- 757 County Rd 121, Fenelon Falls
- 768 County Rd 121, Fenelon Falls
- 772 County Rd 121, Fenelon Falls
- 774 County Rd 121, Fenelon Falls
- 776 County Rd 121, Fenelon Falls
- 780 County Rd 121, Fenelon Falls
- 788 County Rd 121, Fenelon Falls
- 798 County Rd 121, Fenelon Falls

THAT Council applies the Fixed Rate and Capital Levy to properties along County Rd. 121 between Clifton St. and Northline Rd. to commence immediately as part of this decision;

THAT the exemption remains in effect until such time as both municipal water and sanitary servicing is available in accordance with the Mandatory Connection By-Law.

This alternative recommendation addresses concerns expressed by property owners regarding the capital cost to connect while holding owners accountable for paying their fair share for the municipal servicing available to them.

### **Financial Considerations:**

While the cost of servicing is at the property owner's expense, the City needs to take under consideration the cost of maintaining municipal water services in Fenelon Falls. Part of this cost is recovered through the fixed monthly and Capital Levy rates that are paid by the users to the system. To ensure that costs are allocated fairly, property owners fronting onto the available infrastructure, whether they have service connections or not, should be charged the Fixed Rate and Capital Levy as they do have the opportunity at any time to connect. For the properties included in this report the annual charge is \$329.16, based on 2017 rates.

### **Relationship of Recommendations To The 2016-2019 Strategic Plan:**

Both recommendations are consistent with the Council Adopted Strategic Plan. Specifically, the recommendations ensure that Goal 1, A Vibrant and Growing Economy, is met through the proper servicing and collection of appropriate user fees to fund the maintenance, capacity and growth of the municipal water and wastewater systems. The recommendations will also ensure that Goal Three (3), A Healthy Environment, will be met by ensuring that the necessary funds are in place to sustain water and wastewater infrastructure necessary to protect the health of the Environment.

### **Servicing Comments:**

The above recommendations will make funds available to maintain the existing water infrastructure and accounts for the services available to property owners. This recommendation is consistent with the 2014 Provincial Policy Statement under the *Planning Act, 1990*. The Policy highlights the preference for municipal water and wastewater services for servicing settlement areas while emphasizing the efficient use and optimization of existing municipal services.

### **Consultations:**

Corporate Services  
Development Services and Policy Planning  
Engineering and Corporate Assets

### **Attachments:**

Appendix A - Mandatory Connection By-law 2014-255  
Appendix B-Memo from Councillor Elmslie



Appendix

A-Mandatory Connec



Appendix B

-D.Elmslie Memo.pdf

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Department Head: Bryan Robinson  
Department File:

**A BY-LAW TO REQUIRE OWNERS OF BUILDINGS TO CONNECT SUCH BUILDINGS TO DRINKING WATER SYSTEMS AND/OR WASTEWATER COLLECTION SYSTEMS IN THE CITY OF KAWARTHA LAKES**

**Recitals**

1. Council authorizes the passage of a mandatory connection by-law through resolution number CR2014-853.
2. The *Municipal Act, 2001*, S.O. 2001, c.25, as amended (the "*Municipal Act, 2001*") sections 8 and 10 provide authority to municipalities to pass by-laws regarding public utilities, including water and wastewater services, and mandatory connection thereto.
3. Section 425 of the *Municipal Act, 2001* provides the authority for a municipality to create an offence for failure to comply with a by-law. Section 426 of the *Municipal Act, 2001* provides for the offence of obstruction. Section 429 provides the authority for the municipality to create a system of fines.
4. Pursuant to section 445 (1) of the *Municipal Act 2001*, if a municipality is satisfied that a contravention of a by-law of the municipality has occurred, the municipality may make an order requiring the person who contravened the by-law to do work to correct the contravention. Section 446 of the *Municipal Act, 2001* provides the authority for a municipality to create a by-law that allows the municipality to enter and conduct work where the owner fails to do so, and to recover the costs in the same manner as property taxes.

**Accordingly, the Council of The Corporation of the City of Kawartha Lakes enacts this By-law 2014-255.**

**Section 1.00: Definitions and Interpretation**

**1.01 Definitions:** In this by-law,

**"appurtenances"** means the apparatus or equipment that is an accessory to the drinking water system and/or wastewater collection system including municipal sanitary laterals and/or water services and their components; or an accessory to private sanitary laterals; or to private water services and/or sewage collection systems.

**"Building"** means and includes but is not limited to any building, trailer, or other covering or structure with a water supply which is located on a parcel of land abutting a public highway or street or right of way in front of which a water distribution main and/or wastewater collection main is located or a parcel of land not more than one foot from a public highway or street in which a water distribution main and/or wastewater collection main is located, and

- i. Contains, or is required by this or any other by-law, regulation or statute to contain, any sleeping, eating or food preparation facilities, or
- ii. Contains or is required by this or any other by-law, regulation or statute to contain, any washing or toilet or cleaning facilities, or
- iii. Is connected, or is required by this or any other by-law, regulation or statute to be connected, to a water supply or drinking water system, or
- iv. Is connected or is required by this or any other by-law, regulation or statute to be connected, to a drain or wastewater collection system or
- v. Which is a source of sewage

Other than a barn used for agricultural purposes and which contains no sleeping accommodation for humans.

**"City", "City of Kawartha Lakes" or "Kawartha Lakes"** means The Corporation of the City of Kawartha Lakes and includes its entire geographic area.

**"City Clerk"** means the person appointed by Council to carry out the duties of the clerk described in section 228 of the *Municipal Act, 2001*;

**“Connect”** (or **“connected”**, or **“connecting”** or **“connects, or “connections”**) means to install a sanitary sewer lateral and/or water service including associated appurtenances.

**“Cost”** includes but is not limited to the cost of restoring any property disturbed or damaged in the course of making a connection and the cost of design, if any, materials, labour and supervision of the connection incurred after the date of sending a notice and includes the amount of expense charged by the City to the owner when the municipality makes a connection at the expense of the owner.

**“Council”** or **“City Council”** means the municipal council for the City.

**“Director”** means the person who holds the position of Director of Public Works and his or her delegate(s) or, in the event of organizational changes, another person designated by Council;

**“Drinking Water System”** means any works for the production, treatment, storage, supply and distribution of water, or any part of such works, according to the Safe Drinking Water Act, 2002, but does not include plumbing to which the *Building Code Act, 1992* applies.

**“Municipal Sanitary Lateral”** means the pipes and appurtenances of a municipal sewer system located within the right-of-way and situated between the wastewater collection main and the property line; or up to but not including the inspection tee.

**“Municipal Law Enforcement Officer”** is the person duly appointed within the City’s administration to enforce the by-laws of the City.

**“Municipal Water Service”** means the portion of the water service from the water distribution main to the property line or up to and including the curb stop.

**“Notice”** means a notice given pursuant to this by-law requiring a connection to be made.

**“Owner”** means the registered owner of a lot or parcel of land on which a building is located.

**“Private Sanitary Lateral”** means the portion of the sanitary sewer lateral from the building to the property line or up to and including the inspection tee

**“Private Water Service”** means the portion of the water service from the building to the property line or up to and not including the curb stop.

**“Wastewater Collection System”** means any works for the collection, pumping, storage, or any part of such works, but does not include plumbing to which the *Building Code Act, 1992* applies.

**“Wastewater Collection Main”** means a collection and transmittal pipe or main of the wastewater collection system excluding municipal and/or private sanitary laterals.

**“Water Distribution Main”** means any transmittal pipe or main of the drinking water system excluding municipal and/or private water services.

1.02 **Interpretation Rules:**

- (a) The Appendix attached to this by-law forms part of the by-law.
- (b) The words “include” and “including” are not to be read as limiting the meaning of a word or term to the phrases or descriptions that follow.
- (c) In this by-law, municipal water or wastewater service shall be deemed to be available if the City would be obliged to supply such service or services on request under section 86 (1) of the *Municipal Act, 2001*.

1.03 **Statutes:** References to laws in this by-law are meant to refer to the statutes, as amended from time to time, that are applicable within the Province of Ontario.

1.04 **Severability:** If a court or tribunal of competent jurisdiction declares any portion of this by-law to be illegal or unenforceable, that portion of this by-law shall be considered to be severed from the balance of the by-law, which shall continue to operate in full force and effect.



## Section 2.00: Mandatory Connection

- 2.01 Subject to section 2.02 herein the owner of any building on land in which there is located a municipal water distribution main or wastewater collection main and such service or services have capacity, shall be responsible for the physical installation of a private sanitary lateral and/or private water service at the Owners expense and shall be responsible for the payment of all fees and charges payable to the Municipality for the installation and connection of a municipal sanitary lateral and/or water service in accordance with the provisions of this by-law and any and all by-laws governing connections to municipal drinking water systems and wastewater collection systems within eighteen (18) months of the date of the passage of this by-law. For further explanation refer to Appendix1: Connection Diagram.
- 2.02 Subject to section 2.01, in the event that water and/or wastewater services become available after the date of passage of this by-law, persons described in section 2.01 shall connect their premises directly to the services in accordance with section 2.01 within eighteen (18) months of such services being available for public use.
- 2.03 Notwithstanding sections 2.01 and 2.02, in the event that:
- the source of potable water for a premises described in section 2.01 or 2.02 is or may be contaminated or otherwise unsuitable for drinking water as determined by the Medical Officer of Health under the *Health Protection and Promotion Act*, R.S.O. 1990, c. H.7, as amended; or
  - the private sanitary sewage septic system servicing a premises described in Sections 2.01 or 2.02 is or may contravene the *Environmental Protection Act*, R.S.O. 1990, c. E.19 or the *Building Code Act*, 1992, S.O. 1992, c.23,
- the owner of the premises shall connect the premises to the services immediately upon such conditions ceasing to exist.
- 2.04 Any connection required to be made by an owner under this by-law shall be made with eighteen (18) months of the mailing of a notice to the owner shown on the current tax roll, by the Director, by registered mail.
- 2.05 Any Notice sent by the Director shall:
- require the Owner to make the connection; and/or
  - require the Owner to decommission the old system; and
  - advise the Owner of the date on which the connection is to be made and/or the decommissioning of the old system is to occur; and
  - advise the Owner that, if the Owner fails to make the connection as required, the City has the right to make it at the Owner's expense; and
  - make reference to this by-law.

## Section 3.00: Decommissioning and Disconnection of Private Services

- 3.01 **Private Well and/or Water Supply Disconnection:** upon connection to the municipal drinking water system and upon obtaining a building permit under the *Building Code Act* to do so, all plumbing from private wells shall be disconnected from the building and maintained in accordance with O. Reg. 903, as amended, to the *Ontario Water Resources Act*, R.S.O. 1990, c. O.40.
- 3.02 **Failure to Disconnect Private Well and/or Water Supply:** In the event that a private well is to be disconnected from the building at the time the new municipal drinking water supply is connected, the City has the right to enter the property and inspect and perform works to ensure the plumbing for the private well or water supply is disconnected and decommissioned at the Owner's expense in accordance with sections 435 to 439 inclusive, and section 446 of the *Municipal Act*, 2001, as amended.
- 3.03 **Septic and/or Sewage Disposal System Disconnection:** All septic systems or any other sewage disposal system upon obtaining a permit under the *Building Code Act* to do so, shall be decommissioned after connection to the municipal wastewater collection system at the Owner's expense.
- 3.04 **Failure to Disconnect Septic and/or Sewage Disposal System:** In the event that a septic and/or sewage disposal system is not decommissioned in accordance with this by-law, the City has the right to enter the property and

inspect and perform works to decommissioned private septic and/or sewage disposal systems at the Owner's expense in accordance with sections 435 to 439 inclusive, and section 446 of the *Municipal Act, 2001*, as amended.

#### Section 4.00: Failure to Connect

- 4.01 If the Owner fails to make a connection required by a Notice within the eighteen (18) month period, the City may make the connection at the sole expense of the Owner and for this purpose may enter into and upon the property of the Owner in accordance with sections 435 to 439 inclusive of the *Municipal Act, 2001*. Failure to connect by the date set out in the Notice shall constitute an offence.
- 4.02 If the Owner fails to decommission in accordance with this by-law, the City may undertake the works at the sole expense of the Owner and for this purpose may enter into and upon the property of the Owner in accordance with sections 435 to 439 inclusive of the *Municipal Act, 2001*. Failure of the Owner to decommission the private well and/or water supply by the date set out in the Notice shall constitute an offence.
- 4.03 The City may, at any reasonable time, enter land and/or building in accordance with section 436 of the *Municipal Act, 2001* for the purpose of carrying out an inspection in accordance with this by-law, at the Owner's expense.
- 4.04 All persons exercising power of entry to carry out works under this by-law shall be accompanied by an employee or agent of the City and show identification as required by section 435 of the *Municipal Act, 2001*.
- 4.05 No person shall hinder or obstruct, or attempt to hinder or obstruct, any person exercising a power or performing a duty under this By-law.
- 4.06 The cost of work undertaken by the City in accordance with this by-law shall be added to the tax roll for the property by the Treasurer and be collected in the same manner as municipal taxes or in like manner, in accordance with the *Municipal Act, 2001*, sections 398 (2), 446 (3) and (5).

#### Section 5.00: Orders, Enforcement and Penalties

- 5.01 **Authority:** All authority pursuant to section 445 (1) of the *Municipal Act, 2001* to issue Orders requiring persons who have contravened this by-law shall be and is hereby delegated to a Municipal Law Enforcement Officer. Any and all authority delegated under this section may only be exercised in accordance with section 445 of the *Municipal Act, 2001*.
- 5.02 **Offence:**  
Every person who contravenes any provision of this by-law is guilty of an offence and upon conviction is liable to a fine as provided for by the *Provincial Offences Act*, R.S.O.1990, Chapter P.33, as amended.
- 5.03 **Offences:** Any person who contravenes any provision of this by-law is guilty of an offence, and upon conviction, is liable to a maximum fine of not more than \$100,000.00, as provided for by section 429 of the *Municipal Act, 2001*, as amended.
- 5.04 **Corporation:** A director or officer of a corporation who knowingly concurs in the violation or contravention by the corporation of any provision of this by-law is guilty of an offence and upon conviction, is liable to a maximum fine of not more than \$100,000.00, as provided for by Section 429 of the *Municipal Act, 2001*, as amended.
- 5.05 **Enforcement:** This by-law may be enforced by Municipal Law Enforcement Officers and police officers.

#### Section 6.00: Administration and Effective Date

- 6.01 **Administration of the By-law:** The Director is responsible for the administration of this by-law.

6.02 Effective Date: This By-law shall come into force on the date it is finally passed.

By-law read a first, second and third time, and finally passed, this 9<sup>th</sup> day of September, 2014.

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Ric McGee, Mayor

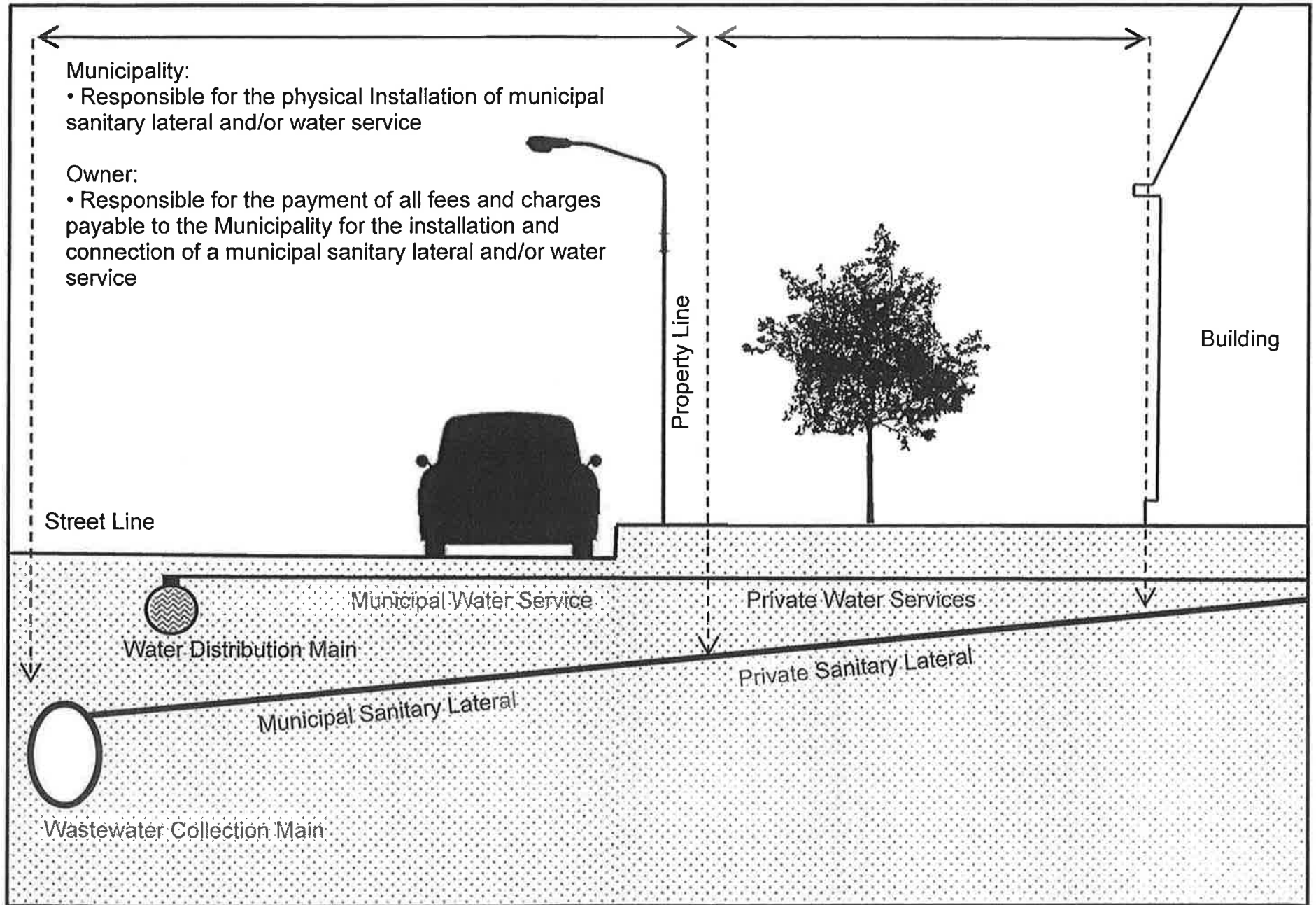
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Judy Currins, City Clerk



2014-255 Set  
Fines.pdf

## Appendix 1: Connection diagram





Appendix # B  
to  
Report # WWW-2017-001

## Memo

**To:** Mayor Letham & Members of Council  
**From:** Councillor Elmslie  
**Date:** November 22, 2016  
**Subject:** Mandatory Hook Up – Properties along County Road 121

### BACKGROUND

The City of Kawartha enacted a mandatory connection by-law that requires all properties that are adjacent to water or wastewater services to connect to the system. The residents on the north side of County Road 121 between Clifton Street and Northline Road have received notices requiring them to connect to the water main running up County Road 121.

Council has previously exempted one resident as his house is outside the catchment area. Two other houses in the catchment area had asked to be hooked up several years ago. This would have required drilling through solid rock and the cost would have been exorbitant so the residents withdrew their request and we do not know if adjacent properties would be faced with similar circumstances.

This leaves 13 units to be connected on County Road 121 and the notice received was for connection to water only. There is a large development adjacent to this area which will be going forward within the next few years. It is likely that when this occurs, these residents will also have access to a waste water connection. This would mean that the resident would experience construction of the water connection now and then the construction would be repeated for wastewater in a few years. This impacts both the resident and the City. There is currently no time frame on this construction.

### RECOMMENDATION:

**RESOLVED THAT** the memo from Councillor Elmslie regarding Mandatory Hook – Properties along County Road 121, be received and **THAT** the residents of County Road 121 from Clifton Street to the intersection of County Road 121 and City Road 8 be granted an exemption from connecting to the Municipal water system until such time as the connection to the wastewater system can be completed during the same construction cycle or until such time as a resident wishes to be connected due to lack of potable water.