

The Corporation of the City of Kawartha Lakes

Council Report

Report Number ENG2017-017

Date: September 12, 2017

Time: 2:00 p.m.

Place: Council Chambers

Ward Community Identifier: 5

Subject: Petition for Drainage Works By Owner - Waite

Michael Farquhar, Supervisor, Technical Services

Recommendation(s):

THAT Report ENG2017-017, "Petition for Drainage Works by Owner – Waite", be received;

THAT Council proceeds with the petition submitted by Joseph and Carol Waite for drainage works by owners for Part Lt. 10 West Half of Concession 6, Fenelon, and instruct the City Clerk to proceed with the notices required under Section 5 of the Drainage Act;

THAT Council appoints and retains, R.J Burnside & Associates in accordance with the Drainage Act, as the Engineer of Record and for the petition and to proceed with the requirements of a petition drain; and

THAT should, R.J Burnside & Associates not be available, that Council instructs staff to retain an alternate qualified Engineer from is standing list.

Department Head:_____

Financial/Legal/HR/Other:_____

Chief Administrative Officer:_____

Background:

On August 15, 2017 a “Petition for Drainage Works by Owners” was filed with the City for Part Lt 10 West Half of Concession 6, Fenelon, (see Appendix A – Waite petition Memo).

The Drainage Board considered the petition at its meeting held on August 28, 2017. The Drainage Board passed the following resolutions recommending that Council proceed with the petition, to instruct the Clerk to proceed with the notices required under Section 5 of the Drainage Act and to also appoint an Engineer as follows:

Moved By J. Bedard

Seconded By J. Oriotis

RECOMMEND THAT the memorandum by Supervisor of Technical Services – Engineering and Corporate Assets, Mike Farquhar, dated August 28, 2017, regarding the petition for drainage works by Joseph and Carol Waite owners of Part Lot 10 West Half of Concession 6 Fenelon, be received,

THAT Council proceed with the petition submitted from Joseph and Carol Waite for drainage works for Part Lt 10 West Half of Concession 6 Fenelon to be known as the “Waite Drain” and instruct the City Clerk to proceed with the notices required under Section 5 of the Drainage Act; and

THAT Staff concurrently continue to pursue with the petitioner options for a mutual drain agreement as per the City's Agricultural Tile Drain Discharge to Roadside Ditches Policy 114 EPW 007.

CARRIED

Moved By J. Oriotis

Seconded By E. Bagshaw

RECOMMEND THAT pursuant to Section 8(1) of the *Drainage Act, R.S.O. 1990, Chapter D. 17*, that staff recommend to Council a Drainage Engineer for the examination of the area requiring drainage and proceed with the requirements of a petition drain for Part Lt 10 West Half of Concession 6 Fenelon.

CARRIED

This report addresses and brings forward those recommendations of the Drainage Board so that Council can make their decisions on this matter within the prescribed 30 day time frame as set out in the Drainage Act.

Rationale:

The Drainage Board has made a recommendation to Council to proceed with the petition. Neither the Drainage Board nor Council has the authority to determine if the petition is valid; this responsibility is vested with the Engineer under the Drainage Act.

Once a decision has been made to accept the petition and proceed, notice of its intention to proceed must be sent, within 30 days, to each petitioner, the Clerk of any other municipality that may be affected, the local conservation authority and the Director of the Ministry of Agriculture, Food and Rural Affairs.

Section 8(1) of the Drainage Act stipulates that where Council has decided to proceed with the drainage works, Council shall by by-law or resolution appoint an Engineer to make an examination of the area and to prepare a report.

An alternative to a petition drain would be to consider mutual agreements between the City of Kawartha Lakes, the petitioners and any downstream property owners. Staff presented this alternative to the Drainage Board. The petitioners were not in support of a mutual agreement and requested that a petition drain process be followed.

In order for any mutual agreement to be viable, all parties involved need to be in agreement. As the petitioners were not receptive to this course of action and there was no representation from the downstream landowners, a mutual agreement was not likely to succeed. In light of this information, the Drainage Board recommended that a petition drain process commence. Staff is satisfied and agrees that accepting the petition is a suitable course of action to deal with this petition.

The Drainage Board left the selection of a Drainage engineering firm up to Council based on a recommendation by staff. Staff has recommended single sourcing drainage engineer, R J Burnside & Associates, noting that this engineering firm has suitable experience and familiarity with the surrounding municipal drains and subject area. Staff supports this recommendation, and if accepted by Council, would proceed through the City's procurement process to implement.

Other Alternatives Considered:

If Council's decision is not to accept the petition, the Drainage Act states that the Council must, within 30 days of the filing of the petition, send notice to each petitioner of Council's decision not to accept the petition (section 5(2)). Each

petitioner has the right to appeal to the Tribunal against Council's decision not to accept the petition (Section 5(2)). This action is not recommended.

Financial/Operation Impacts:

If the drainage works proceed, the engineer's report will include an estimate of the cost of the works, which includes the engineer's costs for the preparation of the report and the tendering and construction inspections. The report includes an assessment schedule, which indicates the total assessment of each property assessed on the drainage works, including assessments on roads. When the construction is completed and the final costs of the project are known, a by-law is passed to reflect the true costs, and the costs are billed out to the owners assessed in the report.

Notwithstanding the above, Council adopted Policy No. 118 FD 013 Municipal Drainage Projects on March 23, 2005 which outlines the process to follow for drainage works, as follows:

1. Prior to the commencement of each phase of the project, the Drainage Engineer shall prepare a detailed work program. The work program shall lay out the major items of work, the resources to be employed and the associated costs. The work program shall be reviewed by the Drainage Superintendent and subsequently, the Drainage Board for approval.
2. A schedule of payments shall be determined prior to the commencement of each phase of the work and approved by the Drainage Board. Once approval has been obtained, a purchase order shall be established for the value of the work. According to City policy, a change order is required to amend the initial tender. No payments shall be made until the change order receives the appropriate approvals. City staff shall not proceed with a change order without an amendment to the Engineer's original report which shall be undertaken pursuant to the provisions of the Drainage Act.
3. Once an Engineer's report has been received, the cost of the works shall be built into the City's capital budget. If the construction is to cover multiple taxation years, the capital budget will also be planned for multiple years.
4. The Drainage Superintendent shall satisfy himself that the invoice conforms to the schedule of payments and the work has been completed in accordance with the work program. When satisfied, the Drainage Superintendent shall recommend the invoice for payment. Final sign off shall be by the Director of Public Works or designate.
5. The Finance department shall prepare quarterly reports on all municipal drains for the Drainage Board meetings that document the financial status of all active capital drainage projects.

6. The final step of the procedure is to set the levying by-law before Council for approval, and subsequently, issue invoices to the ratepayers. The Finance Department shall confirm all expenses with the Engineer prior to setting the rate By-law.

Relationship of Recommendation(s) To The 2016-2019 Strategic Plan:

Section 3.1.7 of the Strategic Plan recognizes the protection of prime agricultural land by including policies in the Official Plan and working with the agricultural community to identify opportunities to support the sector.C05

Consultations:

Drainage Board
Office of the City Clerke

Attachments:

Appendix A – Waite petition memo to Drainage Board



Waite petition.pdf

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Assets

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