



**The Corporation of the
City of Kawartha Lakes**
12 Peel Street P.O. Box 9000
Lindsay, ON K9V 5R8
Phone: 705-324-9411, Ext. 1156
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MEMO

Date: September 11, 2019
To: Drainage Board
From: Lucas Feitler, Drainage Superintendent – Engineering & Corporate Assets
Re: Petition for Municipal Drainage
MacEachern - Brown petition
CC: Juan Rojas Director of Engineering and Corporate Assets
Mike Farquhar, Supervisor of Technical Services.

Recommendation:

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.



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Background:

The subject area/ land is bounded by Palestine Road to the South, and is separated by Kawartha Lakes Road 46 (refer to Appendix A). There are no existing Municipal Drains within the vicinity. The area of the land identified in the petition is approximately 200 acres in size.

The property is within the Simcoe County Conservation Authority jurisdiction as defined under the Ontario Conservation Act and has an identified watercourse on the property (see appendix B). This existing watercourse has been identified as the Eli Budd Award Drain, awarded construction in 1904.

On September 3, 2019 the City of Kawartha Lakes Clerks department received a petition for Drainage works within the subject area (Appendix C).

The Drainage Superintendent was called to site after a neighbor was concerned that a drainage ditch had been replaced with a covered pipe. A records request was completed and it was determined that the ditch was an existing Award drain. A meeting was held with landowners where legislation governing Award drains was discussed. The following was explained to land owners:

Section 3(18) of the Drainage Act states:

Drainage works constructed on requisition

3 (1)-(17) Repealed: 2010, c. 16, Sched. 1, s. 2 (1).

Existing ditches

(18) Every ditch constructed under *The Ditches and Watercourses Act*, being chapter 109 of the Revised Statutes of Ontario, 1960, shall be maintained in accordance with the award of the engineer providing for such maintenance until such ditch is brought under the provisions of this Act by petition under section 4. 2010, c. 16, Sched. 1, s. 2 (2).

Therefore, the drain must be maintained as per the latest engineer's report until it is petitioned for a municipal drain.

The first step to initiating maintenance is to send notice to the owner who is not maintaining their section of drain. This notice was served which initiated a site meeting between the land owner in contravention and owner serving notice. If the drain is still not maintained as per the engineer's report then there are three options for the landowner serving notice;

- Initiate a civil lawsuit based on non-compliance with an agreement.
- Initiate an appeal to the drainage referee under subsections 3(18) and paragraph 106(1)(c) of the Drainage Act.
- Petition under section 4 of the drainage act to have the award drain made into a municipal drain.



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It is up to the land owner to initiate the appeal to the drainage referee and the procedure to follow for appeal is Ontario regulation 232/15 Rules of Practice and Procedure in Proceedings Before the Referee. Recommendation was made that all land owners to seek their own legal advice for clarify and next steps.

Subsequent meetings where held with the applicants representative and City staff on site to review options for a mutual drain, municipal drain or alterations to the award drain. This situation was also discussed with the current Drainage Coordinator for OMAFRA. It was of the opinion that upon appeal, the Drainage Referee would change the Award to a Municipal drain and therefore the petitioning process initiated as per Section 4(1) of the Ontario Drainage Act. It was determined to be too costly and time consuming to pursue the appeal process and a petition was submitted to the Clerk's office on September 3rd, 2019.

Alternatives:

As an option for required drainage the City firstly promotes the use of a Mutual agreement through the City's policy for Agricultural Tile discharge to roadside ditches prior to pursuing a petition for a Municipal drain under the Ontario Drainage Act. At this point in time the Drainage Superintendent has currently presented this option to the petitioners and explained its avenues in comparison to petitioning for a Municipal Drain under the Drainage Act. At this current time the petitioners wish to carry on with the process under the Drainage Act for the petition. Staff will leave the door open for pursuing a mutual agreement up until the prescribed time the petitioner has under the Drainage Act for removing their names and abandoning the petition.

Recommendation for appointment of a Drainage Engineer:

Currently the City has a pool of Drainage Engineers which list in the following.

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

Attachments:

