

# ADAMS SWEET DRAIN

## Section 76 Assessment Schedule

### Geographic Township of Colchester North



**TOWN OF ESSEX**  
**33 Talbot Street South**  
**ESSEX, Ontario N8M 1A8**  
**519-776-7336**

**Rood Engineering Inc.**  
**Consulting Engineers**  
9 Nelson Street  
Leamington, Ontario N8H 1G6  
519-322-1621

Project REI2024D018  
2024-07-23



July 23rd, 2024

Mayor and Municipal Council  
Corporation of the Town of Essex  
33 Talbot Street South  
Essex, Ontario  
N8M 1A8

Mayor Bondy and Members of Council:

**ADAMS SWEET DRAIN**  
**Section 76 Assessment Schedule**  
**Geographic Twp. of Colchester North**  
**Project REI2024D018**  
**Town of Essex, County of Essex**

**I. INTRODUCTION**

In accordance with the instructions confirmed by letter of April 2nd, 2024, from your Director, Legal and Legislative Services/Clerk, Joseph Malandrucolo, we have prepared the following report that provides for updated cost sharing for the Adams Sweet Drain when maintenance is done to the open drain or bridges along the drain. The Adams Sweet Drain comprises of an open drain generally located across Lots 19 and 18, North Malden Road Concession and then heads southerly through the midline of Lot 17 across County Road 12 and South Malden Road Concession all the way until it outlets into the Canard River, in the geographic township of Colchester North, Town of Essex. A plan showing the Adams Sweet Drain, as well as the general location of the bridges along the drain, is included herein as part of the report.

Our appointment and the works relative to the updated cost sharing of the Adams Sweet Drain, proposed under this report, is in accordance with Sections 76 and 65 of the “Drainage Act, R.S.O. 1990, Chapter D.17, as amended 2021”. We have performed all of the necessary survey, investigations, etcetera, for the proposed works, and we report thereon as follows.

**II. BACKGROUND**

From our review of the information provided from the Town’s drainage files we have established the following reports that we utilized as reference for carrying out this project:

- 1) September 29th, 1967      Gesto Sideroad Drain      C.G.R. Armstrong, P.Eng.

- |    |                    |                              |                           |
|----|--------------------|------------------------------|---------------------------|
| 2) | July 21st, 1976    | Adams Sweet Drain – Addendum | Maurice Armstrong, P.Eng. |
| 3) | December 1st, 1993 | Campbell Sideroad Drain      | Henry Regts, P.Eng.       |

The 1976 report by Maurice Armstrong, P.Eng. provided for general repairs and improvements to the entire length of the drain and has the latest profile for the grading of the drain. The other reports were referenced for establishing the latest watershed and assessment schedule for establishing the updated assessment schedule.

We arranged with the Town to provide us with the updated assessment roll information for the affected parcels. We also reviewed reports for the abutting drains and spoke to the owners to help in establishing the current watershed limit for the Adams Sweet Drain.

### **III. PRELIMINARY EXAMINATION AND ON-SITE MEETING**

After reviewing all of the available drainage information and documentation provided by the Drainage Superintendent, we arranged with Town staff to schedule an on-site meeting for May 2nd, 2024. The following people were in attendance at said meeting: Dale Bridgen, Terance Byrne, Brian Lawson, Marcel Mailloux, Robert Mailloux, Henry Schuurman, Shawn Mulder (County Roads), Mark Fishleigh (County), Terry Brockman, David McBeth (Essex Infrastructure), Mackenzie Atanasio (Essex Drainage), Tanya Tuzlova (Essex Drainage Clerk), Lindsay Dean (Essex Drainage Superintendent), David Montigny (Rood Engineering) and Gerard Rood (Rood Engineering).

Ms. Dean did introductions and explained the purpose of the meeting which is to establish any updates to the Maintenance Schedule of Assessment and cost sharing for bridges that might be required. She explained County Road 12 drainage coming from near Gesto and westerly to the drain. She explained the Drainage Act process for updating the maintenance schedule for proper assessment of maintenance work that the Town has received notice for including the engineer appointment and drainage report process and meetings with the Drainage Board. An owner asked about expected costs and Ms. Dean responded that this is not known at this time and will depend on the extent of the work required to the drain. Another owner advised that brushing is required near the downstream end of the drain near the Canard River and some washouts that have been observed. In response to a question on the work being done, Ms. Dean responded with the information on how standard maintenance work is carried out. Owners were advised that they can call her with any questions or input that they may have on the drain and work expected. The work schedule may not be after harvest and there is no provision for allowances when maintenance work is carried out and there is already a legal access for the maintenance work to be done. The Town will try to avoid crop time and the work will be tendered to get the best price. Ms. Dean will send out notice of the maintenance work schedule and work may be

late this year or early next year. Mr. Rood advised the owners that the report work is typically around \$6,000.00 and explained Benefit and Outlet Liability assessment and stated that they will just check the bridge location and establish a cost sharing basis for them that will be included in the drainage report and do checking of the 1976 drainage report assessment schedule. He asked the Town and owners to provide information on any drainage changes that they might be aware of. Henry Schuurman advised that he has a new bridge on the drain. Ms. Dean explained the Town billings process for the report and maintenance works and owners can call her for information on the two bills that they are expected to be sent. Mr. Rood explained assessment for Benefit and Outlet to owners of a parcel near Gesto. Ms. Dean elaborated on the maintenance works and especially the brushing along the drain and explained what private drains were. She noted that most new lots at the west side of Gesto will be using the improved road ditches being provided by the County and those parcels are then part of the watershed and will have assessment for a portion of the costs. The owners were advised to contact Ms. Dean or Mr. Rood if they require any information or have questions on the project or the drainage report when it is sent out.

The overall drainage report procedure, future maintenance processes and grant eligibility were generally reviewed with the owners. They were also advised that any works will be subject to the approval of the Department of Fisheries and Oceans (D.F.O.), the Ministry of Natural Resources and Forestry (M.N.R.F.), the Ministry of Environment, Conservation and Parks (M.E.C.P.) and the Essex Region Conservation Authority (E.R.C.A.).

#### **IV. SURVEY AND INVESTIGATIONS**

Following the on-site meeting we arranged for our staff to establish the existing details of the structures along the drain so that proper cost sharing could be established.

The Town made initial submissions to the Essex Region Conservation Authority (E.R.C.A) regarding their requirements for work that would be proposed to be carried out on the section of the Adams Sweet Drain to be maintained. E.R.C.A. stated that the portion of the Adams Sweet Drain is located within a regulated area administered by E.R.C.A. Accordingly, a permit or approval will be required by E.R.C.A. for any repairs and/or maintenance works to the Adams Sweet Drain in the future.

For the purposes of establishing the watershed area of the Adams Sweet Drain and determining the bridge cost sharing required for future replacements, we investigated and reviewed the past drainage reports on the Adams Sweet Drain and abutting watersheds.

**V. FINDINGS AND RECOMMENDATIONS**

We find that the profile included in the 1976 report plans by engineer Maurice Armstrong, P.Eng. provides a good fit to the existing profile of the drain. Said report provided for improvements to the open drain and some bridges that still appear to suit the current conditions of the watershed.

Based on our detailed investigations, examinations, and discussions with the affected property owners, we would recommend that a new maintenance assessment schedule for the Adams Sweet Drain be used for assessment of future costs for repairs and improvements to the drain, at the locations as established in our drawings attached and to the general parameters herein. The attached assessment schedule and plan include new parcels that have been created and connected since the 1976 drainage report and removed areas that have been disconnected as set out in Campbell Sideroad Drain report from 1993.

Based on all of the above, we recommend that the open drain and any new replacement access bridges be constructed in the Adams Sweet Drain to serve the agricultural and residential lands within the watershed, in accordance with this report cost sharing and maintenance schedule of assessment and the 1976 and any subsequent drainage reports and plans, and the accompanying drawing, and that all maintenance works associated with same be carried out in accordance with Section 74 of the "Drainage Act, R.S.O. 1990, Chapter D.17 as amended 2021".

In order to properly assess any maintenance works to the Adams Sweet Drain it will be necessary to vary the Schedule of Assessment dated July 21st, 1976, within the current governing Engineer's Report prepared by Maurice Armstrong, P.Eng. We recommend that the current Maintenance Schedule of Assessment be varied and same has been prepared and provided within this report.

In order to establish the new Maintenance Schedule of Assessment for the Adams Sweet Drain, an estimated value of \$10,000.00 has been utilized as a basis for the future cost sharing of maintenance works. This amount was distributed amongst the lands and roads affected within the updated watershed including the new parcels that exist. The amount utilized in the Maintenance Schedule of Assessment does not authorize expenditure of this amount but only provides an arbitrary value for the purpose of establishing a relative distribution of cost amongst the property owners and roads affected by the maintenance work based on the actual costs of the future maintenance works.

Furthermore, in order that a mechanism exists by which the Town can undertake maintenance works on the existing access bridges, we recommend that the attached schedule be utilized. We would also recommend that the access bridges presently found in the drain, for which the maintenance costs are to be shared with the upstream lands and roads within the watershed, be maintained by the Town and that said maintenance would include works to the bridge culvert, bedding, backfill and end treatment. When concrete or asphalt driveway surfaces over these bridge culverts require removal as part of the maintenance works, these surfaces shall be

repaired or replaced as part of the work. Likewise, if any fencing, gate, decorative walls, guard rails or special features exist that will be impacted by the maintenance work, they are also to be removed and restored or replaced as part of the bridge maintenance work. However, the cost of the supply and installation of any surface material other than granular “A” material, and the cost of the removal and restoration or replacement, if necessary, of any special features, shall be totally assessed to the benefiting adjoining owner served by said access bridge.

We would also recommend that all engineering costs and expenses related to the preparation, distribution, and consideration of this report be included as an expense to the drainage works and that the estimated value of \$6,500.00 is to be assessed in the same proportions as set out in the new Maintenance Schedule of Assessment for the Adams Sweet Drain, attached herein.

**VI. ESTIMATE OF COST**

Our estimate of the Total Cost of all incidental expenses to prepare this report, is the sum of **SIX THOUSAND FIVE HUNDRED DOLLARS (\$6,500.00)**, that will be assessed as set out below.

**INCIDENTALS**

1) Report, Estimate, & Specifications	\$	2,000.00
2) Survey, Assistants, Expenses, and Drawings	\$	3,500.00
3) Duplication Cost of Report and Drawings	\$	500.00
4) Estimated Net H.S.T. on Incidental Items Above (1.76%)	\$	106.00
5) Contingency Allowance	\$	394.00
		<hr/>
<b>TOTAL FOR INCIDENTALS</b>	<b>\$</b>	<b>6,500.00</b>
		<hr/>
<b>TOTAL ESTIMATE</b>	<b>\$</b>	<b>6,500.00</b>
		<hr/>

**VII. DRAWINGS**

As part of this report, we have attached the watershed drawing for the future repairs and maintenance construction of the drain and bridge improvements. The drawing shows the subject

drain location and the affected watershed limits for the drain, as well as the approximate location of existing bridges within the watershed area and the affected owners and road. The drain watershed drawing is attached to the back of this report and is labelled **Appendix "REI-E"**.

#### **VIII. SCHEDULE OF ASSESSMENT**

We would recommend that the Total Cost for preparation of the report for this project, including incidental costs, be charged against the lands and roads affected in accordance with the attached Maintenance Schedule of Assessment on a pro-rata basis. The cost of preparing this report pursuant to Section 76 of the Drainage Act is not grantable. On September 22nd, 2005, the Ontario Ministry of Agriculture, Food and Rural Affairs (O.M.A.F.R.A.) issued Administrative Policies for the Agricultural Drainage Infrastructure Program (A.D.I.P.). This program has reinstated financial assistance for eligible costs and assessed lands pursuant to the Drainage Act. Sections 85 to 90 of the Drainage Act allow the Minister to provide grants for various activities under said Act. Sections 85 and 87 make it very clear that grants are provided at the discretion of the Minister. For any future maintenance work on the drain or bridges, based on the current A.D.I.P., "lands used for agricultural purposes" may be eligible for a grant in the amount of 1/3 of their total assessment. The new policies define "lands used for agricultural purposes" as those lands eligible for the "Farm Property Class Tax Rate". The Town provides this information to the Engineer from the current property tax roll. Properties that do not meet the criteria are not eligible for grants. In accordance with same we expect that future work on this drainage works will be qualified for the grant normally available for agricultural lands when billed out for the maintenance work on the drainage works. The Ministry, however, is continually reviewing their policy for grants, and we recommend that the Town monitor the policies, and make application to the Ministry for any grant should same become available through the A.D.I.P. program or other available funds. Where a bridge structure has increased top width beyond the standard 6.10 metre (20.0 ft.) top width, all of the increased costs resulting from same are assessed 100% to the Owner, as provided for in the cost sharing set out in the attached Schedule of Assessment.

#### **IX. FUTURE MAINTENANCE**

When maintenance work is carried out in the future on the open drain portion, the cost for said future maintenance shall be assessed in accordance with the attached Maintenance Schedule of Assessment. When future maintenance work is carried out, the assessment to the affected Owners shall be based on the actual future maintenance cost shared on a pro-rata basis with the values shown in this assessment schedule.

When maintenance work is carried out on any bridges in the future, we recommend that part of the cost be assessed as a Benefit to the abutting parcel served by the access bridge, and the remainder shall be assessed to the upstream lands and roads based on their affected area and outlet assessments as set out in the attached Maintenance Schedule of Assessment. The share for Benefit and Outlet Liability shall be as set out in the Bridge Cost Sharing table below.



**BRIDGE COST SHARING**

<b><u>Bridge</u></b>	<b><u>Owners</u></b>	<b><u>Benefit to Owner</u></b>	<b><u>Outlet Upstream</u></b>
1	County of Essex, (Road 12),	98.0%	2.0%
2	Henry & Maureen Schuurman, (500-01300),	66.1%	33.9%

Should any future works or maintenance be required to the existing access bridges, the cost will be shared as noted in the above table based on maintaining the existing bridge top width or achieving the minimum 6.1m (20') standard top width. The share indicated for the Owner shall be assessed as a Benefit to the bridge Owner and the remaining cost share shall be assessed as an Outlet Liability against the lands and roads within the watershed lying upstream of said access bridge and shall be assessed in the same proportions as the Outlet assessments shown in the Maintenance Schedule of Assessment established and included herein. Pursuant to Section 26 of the Drainage Act, the Road Authority is responsible for all increases in cost to the drainage works due to the existence of their roadway. This requirement has been reflected in the above Table related to sharing of future maintenance costs for the access bridges. This provision shall apply to the County Road 12 crossing for the County of Essex.

Where a bridge structure has increased top width beyond the standard 6.10 metre (20.0 ft.) top width, all of the increased costs resulting from same are assessed 100% to the Owner as provided for in the cost sharing set out in the Bridge Cost Sharing Table above. We recommend that the bridge structures as identified herein be maintained in the future as part of the drainage works. We would also recommend that the bridges, for which the maintenance costs are to be shared with the upstream lands and roads within the watershed, be maintained by the Town and that said maintenance would include works to the bridge culvert, bedding, backfill and end treatment. Should concrete, asphalt, or other decorative driveway surfaces over these bridge culverts require removal as part of the maintenance works, these surfaces shall also be repaired or replaced as part of the works. Likewise, if any fencing, gate, decorative walls, guardrails, or other special features exist that will be impacted by the maintenance work, they are also to be removed and restored or replaced as part of the bridge maintenance work. However, the cost of the supply and installation of any surface materials other than Granular "A" material and the cost of removal and restoration or replacement, if necessary, of any special features, shall be totally assessed to the benefiting adjoining Owner(s) served by said access bridge.

Should an owner request a wider top width beyond the existing or standard 6.1m minimum top width during bridge maintenance, we recommend that the tender document include special

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items. To assist with accurately assessing the future maintenance costs, we recommend that the tender for the works include the following items:

- a) An item for the cost to repair and improve the existing or standard 6.1 metre top width of the bridge including all backfill and end treatment costs
- b) An item for the cost to provide any extra length of pipe including extra backfill material costs and installation costs for the additional length
- c) An item for the cost of removing and reinstalling or replacing any special features

Item a) costs shall be shared on the basis shown in the table above and shared as outlined above. Items b) and c) shall be assessed to the Owner(s) of the parcel served by the access bridge with no cost sharing to the upstream lands and roads.

The Maintenance Schedule of Assessment included herein has been developed on the basis of an estimated cost of \$10,000.00. The actual cost of maintenance work on the drain and the cost of this drainage report shall be assessed against the lands and roads in the same relative proportions as shown therein, subject to any future variations that may be made under the authority of the "Drainage Act R.S.O. 1990, Chapter D.17, as amended 2021".

We further recommend that the maintenance cost sharing as set out above shall remain as aforesaid until otherwise determined and re-established under the provisions of the "Drainage Act, R.S.O. 1990, Chapter D.17 as amended 2021".

All of which is respectfully submitted.

**Rood Engineering Inc.**

*Gerard Rood*

Gerard Rood, P.Eng.



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att.

**ROOD ENGINEERING INC.**

Consulting Engineers  
9 Nelson Street  
LEAMINGTON, Ontario N8H 1G6

**MAINTENANCE SCHEDULE OF ASSESSMENT**  
**ADAMS SWEET DRAIN**  
**Town of Essex**

**3. MUNICIPAL LANDS:**

Tax Roll No.	Con. or Plan No.	Lot or Part of Lot	Hectares Owned	Acres Afft'd	Hectares Afft'd	Owner's Name	Value of Benefit	Value of Outlet	Value of Special Benefit	TOTAL VALUE
		County Road 12		5.05	2.044	County of Essex	\$ 244.00	\$ 117.00	\$ -	\$ 361.00
<b>Total on Municipal Lands.....</b>							<b>\$ 244.00</b>	<b>\$ 117.00</b>	<b>\$ -</b>	<b>\$ 361.00</b>

**4. PRIVATELY OWNED - NON-AGRICULTURAL LANDS:**

Tax Roll No.	Con. or Plan No.	Lot or Part of Lot	Hectares Owned	Acres Afft'd	Hectares Afft'd	Owner's Name	Value of Benefit	Value of Outlet	Value of Special Benefit	TOTAL VALUE
430-01400	SMR	18	0.478	1.18	0.478	Ryan & Michelle O'Neil	\$ -	\$ 4.00	\$ -	\$ 4.00
430-01500	SMR	18	3.877	9.58	3.877	William & Patricia Beaudoin	\$ -	\$ 36.00	\$ -	\$ 36.00
430-01800	SMR	18	0.425	1.05	0.425	Nicole & Robert Mailloux	\$ -	\$ 4.00	\$ -	\$ 4.00
430-01900	SMR	19	1.582	3.91	1.582	Jeffery & Nicholle Kuzniak	\$ -	\$ 15.00	\$ -	\$ 15.00
430-01901	SMR	19	0.364	0.90	0.364	Terrance & Cindy Brockman	\$ -	\$ 3.00	\$ -	\$ 3.00
430-01903	SMR	19	0.344	0.85	0.344	Benjamin & Nicky Allsop	\$ -	\$ 3.00	\$ -	\$ 3.00
430-01904	SMR	19	0.247	0.61	0.247	Robert & Katharina Strong	\$ -	\$ 2.00	\$ -	\$ 2.00
430-01905	SMR	19	0.247	0.61	0.247	Shane Therrien	\$ -	\$ 2.00	\$ -	\$ 2.00
430-02000	SMR	20	0.121	0.30	0.121	Magdalena Maj	\$ -	\$ 1.00	\$ -	\$ 1.00
430-02100	SMR	20	0.198	0.12	0.050	David & Estelle McBeth	\$ -	\$ 1.00	\$ -	\$ 1.00
500-00500	NMR	19	0.425	0.31	0.127	Michael & Charmaine Gillis	\$ -	\$ 2.00	\$ -	\$ 2.00
500-00501	NMR	19	0.279	0.69	0.279	Philip & Kathleen Mailloux	\$ -	\$ 2.00	\$ -	\$ 2.00
500-00610	NMR	19	0.388	0.96	0.388	Brian & Debra Lawson	\$ -	\$ 4.00	\$ -	\$ 4.00

Tax Roll No.	Con. or Plan No.	Lot or Part of Lot	Hectares Owned	Acres Afft'd	Hectares Afft'd	Owner's Name	Value of Benefit	Value of Outlet	Value of Special Benefit	TOTAL VALUE
500-01305	NMR	19	0.372	0.92	0.372	Cindy & Steven Marchand	\$ -	\$ 14.00	\$ -	\$ 14.00
<b>Total on Privately Owned - Non-Agricultural Lands.....</b>							<b>\$ -</b>	<b>\$ 93.00</b>	<b>\$ -</b>	<b>\$ 93.00</b>

**5. PRIVATELY OWNED - AGRICULTURAL LANDS (grantable):**

430-01300	SMR	17 & 18	22.173	10.00	4.047	Marc & Michelle Cooper	\$ 365.00	\$ 36.00	\$ -	\$ 401.00
430-01700	SMR	18	25.026	10.00	4.047	Robert, John & Nicole Mailloux	\$ -	\$ 40.00	\$ -	\$ 40.00
430-02300	SMR	19 & 20	58.052	5.00	2.023	Terrance & Cindy Brockman	\$ -	\$ 20.00	\$ -	\$ 20.00
500-00600	NMR	19	27.620	68.25	27.620	Marcel & Lou-Anne Mailloux	\$ -	\$ 352.00	\$ -	\$ 352.00
500-00700	NMR	17, 18 & 19	113.255	199.69	80.814	Terance & Elaine Byrne	\$ 2,850.00	\$ 1,372.00	\$ -	\$ 4,222.00
500-01300	NMR	17, 18 & 19	67.198	126.05	51.011	Maureen & Henry Schuurman	\$ 2,461.00	\$ 1,921.00	\$ -	\$ 4,382.00
500-01670	NMR	20	20.291	20.00	8.094	Paul, Phillip & Rose Jobin	\$ -	\$ 103.00	\$ -	\$ 103.00
500-01900	NMR	20	4.193	5.00	2.023	Jeffrey & Carol Cross	\$ -	\$ 26.00	\$ -	\$ 26.00
<b>Total on Privately Owned - Agricultural Lands (grantable).....</b>							<b>\$ 5,676.00</b>	<b>\$ 3,870.00</b>	<b>\$ -</b>	<b>\$ 9,546.00</b>

<b>TOTAL ASSESSMENT</b>				471.04	190.63		<b>\$ 5,920.00</b>	<b>\$ 4,080.00</b>	<b>\$ -</b>	<b>\$ 10,000.00</b>
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1 Hectare = 2.471 Acres  
Project No. REI2024D018  
July 23rd, 2024

## APPENDIX "REI-D"



**Ontario**Ministry of Agriculture,  
Food and Rural Affairs**AGRICULTURAL  
ENGINEERING**

## UNDERSTANDING DRAINAGE ASSESSMENTS

Agriculture and Rural Division  
(Reprinted March 1997)

The *Drainage Act* provides a legal procedure by which an "area requiring drainage" may have an outlet drain constructed to dispose of excess water.

The drainage work is initiated by interested individuals within an "area requiring drainage" who will benefit from the construction of the drain. A petition form, obtained from the municipal clerk, is signed by interested landowners. In order to be valid or sufficient, the petition must be signed by the majority of the owners in the "area requiring drainage" or by owners that represent at least 60% of the lands in this area. The "area requiring drainage" is usually described by lot and concession, or other legal land description. By taking this action, it is presumed that the owners signing the petition have made a decision that the drain will be of benefit to them and that the probable cost will be lower than the anticipated benefits. The initial benefit-cost decision is made at this point by the landowners, not the engineer or Council.

The petition is presented to and considered by Council. If the petition represents a proper "area requiring drainage", that is a real drainage basin, and appears to be valid, the Council may decide to proceed. Council then notifies each of the petitioners of this decision as well as any other municipality affected and the local Conservation Authority and the Ministry of Natural Resources.

Council then appoints an engineer. The engineer is an employee of Council, hired to design this specific drain. Under *The Drainage Act*, Section 9(2), the engineer is required to hold an on-site meeting to determine (1) the area requiring drainage, (2) if the petition is valid, (3) the drainage needs of the area. The engineer is then required "to make an examination of the area requiring drainage as described in the petition and to prepare a report which shall include:

- (a) plans, profiles and specifications of the drainage works;
- (b) a description of the area requiring drainage;
- (c) an estimate of the total cost thereof;
- (d) an assessment of the amount or proportion of the cost of the works to be assessed against every parcel of land and road for benefit, outlet liability and injuring liability;

- (e) allowances, if any, to be paid to the owners of land affected by the drainage works and
- (f) such other matters as are provided for under this Act."

The engineer's report is presented to Council, who then notifies all persons assessed and calls a special meeting where the report is considered. General objections to the report may be raised at this time. At this meeting signatures may be added or removed from the petition and this determines if the project will continue. Unresolved problems, depending on the subject, may be appealed to the Court of Revision, the Ontario Drainage Tribunal or the Drainage Referee. Details on appeal procedures may be found in *The Drainage Act*\* or in Ontario Ministry of Agriculture, Food and Rural Affairs Factsheet, Drainage Legislation.

The engineer's report includes two important items:

1. The estimated cost of the work — No matter how individual assessments are arrived at, this total estimated cost must always be equal to the total amount assessed, otherwise the work cannot proceed.
2. The assessment liability — This may be spread over several pages if an owner owns several parcels of land and if there are branch drains. It may be summarized.

Let us examine the obligations regarding this assessment.

### RESPONSIBILITIES UNDER COMMON LAW

A natural watercourse is defined generally as a stream of water which flows along a defined channel, with bed and banks, for a sufficient time to give it substantial existence. This may include streams that dry up periodically.

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\**The Drainage Act may be found in the Revised Statutes of Ontario 1980, Chapter 126, available in most public libraries. Individual copies may be purchased from the Ontario Government Bookstore, 1-800-668-9938.*

A riparian landowner (owner of lands that abut upon a natural watercourse) has the right to drain his or her lands into the natural stream, but may not bring water in from another watershed. He or she can collect water in ditches and drains and discharge it into the watercourse even though it results in an increase in volume and rate of flow.

Where a natural watercourse becomes a part of a drain, it is no longer a natural watercourse. When this occurs, the riparian rights, as described earlier, are lost.

Surface water not flowing in a natural watercourse (i.e. not having discernible bed and banks) has no right of drainage. An owner of lower land may, at his or her own choice, either allow the water from higher land to flow over it or by dams or banks, keep such water off his or her property. No owner has the right to collect such surface water by ditches or drains and discharge it on lands of another. He or she has a responsibility to take this water to a sufficient outlet, i.e., a natural watercourse or a drain constructed under *The Drainage Act*.

Since there is no right to drain surface water, the owner of each parcel of land in the watershed is generally assessed for "outlet liability". In other words, his or her Common Law liability is removed by paying for the increased size or cost of the drain due to the volume of water which is discharged from his or her property, even though the drain may not provide a direct outlet for this water. The authority for this liability is set out in Section 23(1).

Since, through Common Law, a landowner is also liable for any damage he or she may cause from water which he or she collects in drains and discharges on other land without a sufficient outlet, he or she may be assessed for relief from such "injuring liability" if the new drain serves as an outlet for his or her drains and prevents this injury from occurring. The authority for this liability is set out in Section 23(2).

Injuring liability is frequently difficult to distinguish from outlet liability, consequently many engineers' reports do not contain such an item.

The assessment for outlet liability and injuring liability is based on the volume and rate of flow of the water artificially caused to flow from an owner's property. Generally, the assessment is based upon a unit value per hectare. Owners at higher elevations on a watershed may have a higher unit charge than those owners near the outlet since the water from their land makes use of a greater length of drain. A difference may be made in the unit outlet charge due to varying types of soil or land use, or the distance to the drain.

## **RESPONSIBILITY UNDER THE DRAINAGE ACT**

In addition to the Common Law responsibility, an owner may also be assessed for benefit.

Benefit will vary between different lands, according to their differences of elevation, quantity of water to be drained from each, distance of undrained land from the course of the proposed ditch, and the presence or absence of existing drains, and other like factors.

To consider whether a parcel of land will receive any benefit from the construction, it is proper to consider whether any enhanced financial value will accrue to it as a result of the drain construction. This may occur through the increased productive power of the land or by rendering it more salable and at a better price, or by preventing water from entering on to it.

If the proposed drainage works can be of no possible benefit to the owner, or is of no commercial or agricultural value, the Act does not authorize a contribution for benefit.

Sometimes, an owner has an undeveloped area that he or she intends to leave in this condition. The owner may feel that he or she should not be assessed since the drain will be of no benefit. However, the property could change hands and the new owner might want to drain and develop it. It is with this in mind that the engineer must make an assessment, regardless of the present owner's intentions.

It is the duty of the engineer to determine whether or not a parcel of land will benefit from the project. When appealing a benefit assessment, the landowner must prove that the land does not benefit from the drain.

An owner has no responsibility for work done upstream from his or her property unless the work provides a benefit by "cutting off" a harmful flow of water across the property.

In some instances, a "special benefit assessment" may be levied against the property. This value usually represents the difference in cost between that which was originally designed and the increased level of design requested by a landowner. Examples include a closed or tile drain where open ditches would ordinarily suffice, or the construction of ponds beside the drain, or other special requests by a landowner specifically for this benefit. The authority for this liability is set out in Section 24.



## **ENGINEER'S REPORT**

The Engineer's report should contain a plan and profile of the drain, as well as details on the drain design and the assessment schedule.

The plan shows the location of drains and the limits of the watershed. The profile shows ground elevations along the drain and the present and proposed drain bottom. The specifications give details on how the drain is to be constructed.

The Schedule of Assessment contains several columns. The first group contains the names of owners with a description of each parcel of land assessed.

The hectarage shown in the schedule for which an owner is assessed is only approximate. No survey is made to accurately establish the watershed boundary or farm areas. Any minor error in hectarage assessed is not a valid basis for appeal nor does it greatly affect the assessment. The other columns in the Schedule set forth the assessment liability for each drain and/or branch drain. These values are only estimates. The final value will not be known until the construction work is finished. The assessment will then be prorated to recover the actual cost.

Allowances to lands injured by the work are set out in a separate schedule by the engineer as authorized in Sections 29 to 33 of *The Drainage Act*.

Damage to crops during construction and disposal of waste material will vary depending on the time of year that the work is constructed. Crop damage due to spreading the spoil on the banks is based on a decreasing yearly loss of crop over several years. All or part of the cost of access bridges from a public road to the property may be assessed to the property owner.

Farm bridges are constructed as a part of the work. In certain circumstances a severance allowance may be paid instead of building the bridge. The allowance will depend upon the value of the land severed, or the cost of the bridge that would be required. The cost, or part of the cost of farm bridges or the severance allowance may be assessed across the property.

Where private drains are incorporated into the new drain, a nominal allowance may be paid based on any saving that may result from using the private drain. These allowances may not be included in the Summary of Assessments but are usually shown in a separate Schedule of Allowances.

## **RELEVANT OMAFRA FACTSHEETS**

*Drainage Legislation.*

This Factsheet was authored by **Sid Vander Veen**, P.Eng., Resources Management Branch.



## APPENDIX "REI-E"



WATERSHED  
OF THE  
**ADAMS SWEET DRAIN**  
(Geographic Township of Colchester North)  
IN THE  
TOWN OF ESSEX  
IN THE  
COUNTY OF ESSEX • ONTARIO

*Gerard Rood*  
GERARD ROOD, P.ENG.

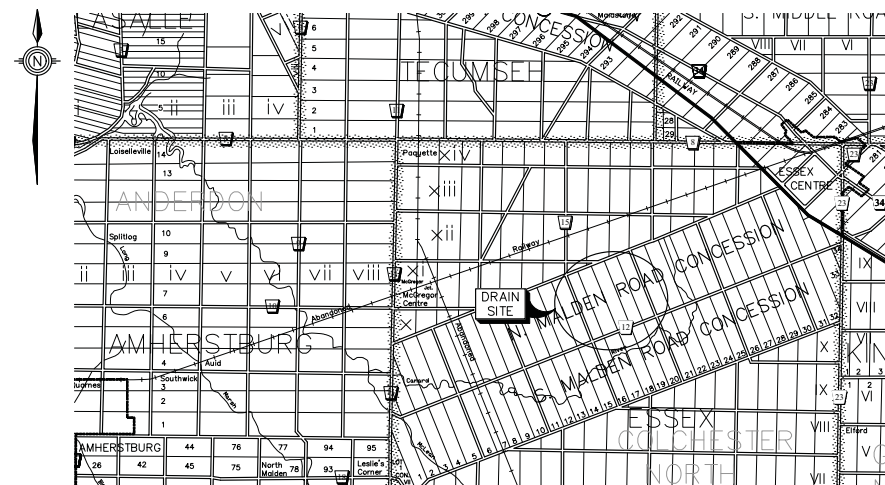


**ROOD  
ENGINEERING  
INC.** CONSULTING ENGINEERS  
Leamington, Ontario  
519-322-1621

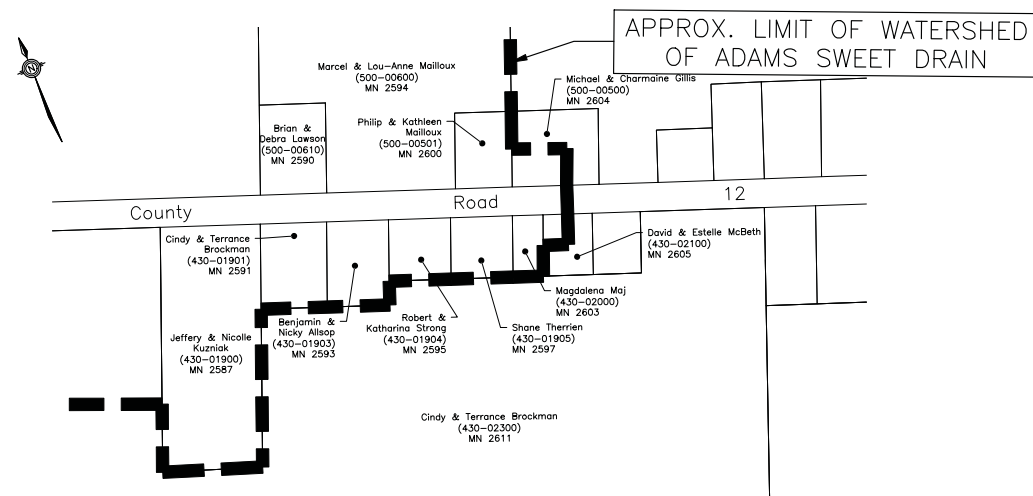
DATE: July 23rd, 2024

TOWN OF ESSEX  
MAYOR: Sherry Bondy  
CLERK: Joe Malandrucolo  
DRAINAGE SUPERINTENDENT: Lindsay Dean, B.Sc.

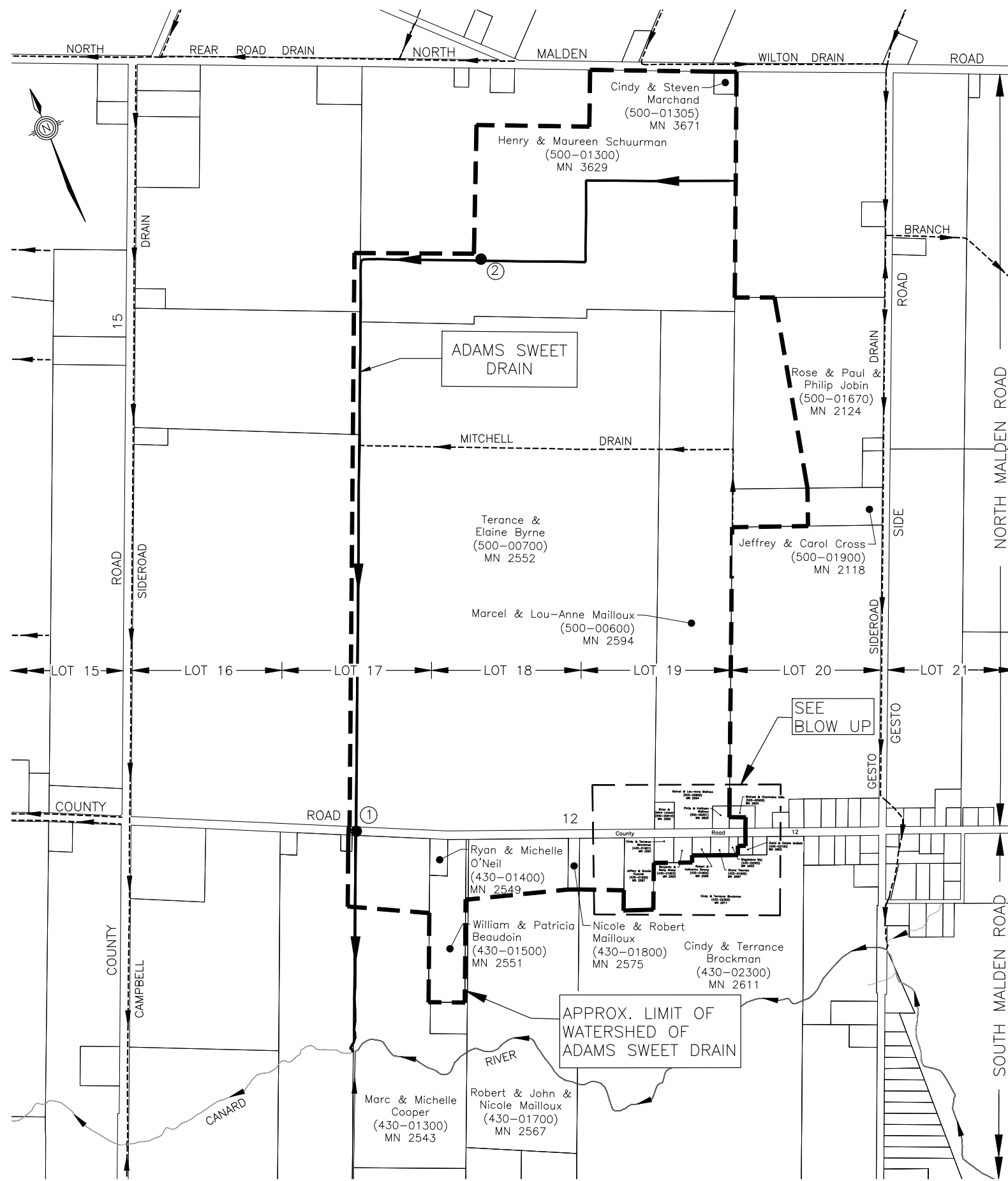
BENCHMARKS:  
NORTH END OF CONCRETE BOX CULVERT AT COUNTY ROAD 12  
CROSSING ELEV: 14.676m



**KEY PLAN**  
Scale = 1:100,000



**BLOW UP**  
Scale = N.T.S.



① Bridge No.

**WATERSHED PLAN**

SCALE = 1:4000

THESE PLANS HAVE BEEN REDUCED  
AND THE SCALE THEREFORE VARIES.  
FULL SCALE PLANS MAY BE VIEWED  
AT THE MUNICIPAL OFFICE.

DRAWN BY: P.K.  
PLOT CODE: 1-1  
COMPUTER FILE: REI2024D018.DWG  
FILE No.: REI2024D018 SHEET No.: 1 OF 1