



The Corporation of the Town of Essex

Court of Revision Minutes

June 19, 2025, 5:00 pm

Shaheen Room, Essex Centre Sports Complex, 60 Fairview Avenue West

Present: Member - Bezaire Arevalo, Daniel
Vice Chair - Dufour, Percy
Member - Pocock, Tiffany
Member - Nicole Hackett, Town of Kingsville

Also Present: Lindsay Dean, Drainage Superintendent
Tanya Tuzlova, Recording Secretary
Joseph Malandrucolo, Director, Legal and Legislative Services/Clerk
Norm Nussio, Manager, Operations and Drainage
Cory Simard, Manager, Legal, Licensing and By-Law Enforcement

Accessible formats or communication supports are available upon request. Please contact the Clerk's Office at clerks@essex.ca or 519-776-7336 extension 1100 or 1101.

Present from the General Public:

For Snyder Branch Drain:

Gerald Czajkowski and Dana Jones, 10901 10th Concession Road

For Rush Drain Relocation Amendments:

For Sturgeon Woods Inc.: Sam Mazella

For Essex Town Centre Inc.: Andrew Colautti, Counsel, Amy Valente-Sarkis, and Gabe Valente

James Renaud, 230 Maidstone Avenue

Also Present:

Sherry Bondy, Harrow

Rob Shepley, Essex

Kate Giurissevich, Kingsville

1. Call to Order

The Vice Chair called the meeting to order at 5:02 PM.

2. Land Acknowledgement

We acknowledge that this land is the traditional territory of the Three Fires Confederacy of First Nations (comprised of the Ojibway, the Odawa, and the Potawatomi Peoples), and of the Huron-Wendat Peoples. We value the significant historical and contemporary contributions of local and regional First Nations and all of the Original Peoples of Turtle Island who have been living and working on the land from time immemorial.

3. Declarations of Conflict of Interest

There were no declarations of conflict of interest noted at this time.

4. Adoption of Published Agenda

4.1 Court of Revision Agenda for June 19, 2025

Joseph A. Malandruccolo, Director, Legal & Legislative Services/Clerk, noted that the agenda should be amended to include the conclusion of the first Court of Revision and the opening of the second one.

COR 25-06-06

Moved By Tiffany Pocock

Seconded By Nicole Hackett

That the published agenda for the June 19th, 2025, Court of Revision be adopted as amended.

Carried

5. Adoption of Minutes

5.1 Adoption of Minutes

There are no minutes to adopt at this time.

6. Presentation by Drainage Superintendent

Lindsay Dean, Drainage Superintendent, explained that the scope of the Court of Revision is to discuss the assessments which are provided in the assessment schedules. Ms. Dean noted that the assessments are estimates only and added that the technical merits of the reports were discussed during the previous meetings.

COR 25-06-07

Moved By Tiffany Pocock

Seconded By Nicole Hackett

That the presentation by the Drainage Superintendent be received for information.

Carried

7. Snyder Branch Drain

7.1 Appeals from Landowners

7.1.1 Written Appeals Received by the Due Date

Joseph A. Malandruccolo, Director, Legal & Legislative Services/Clerk, informed that no written appeals were received by the Clerk's Office by the due date.

7.1.2 Written Appeals Received After the Due Date

Joseph A. Malandruccolo, Director, Legal & Legislative Services/Clerk, informed that no written appeals were received by the Clerk's Office after the due date.

7.2 Correspondence

There was no correspondence received at this time.

7.3 Engineer to Provide Background on the Drain Assessment

7.3.1 David Montigny, Engineer-in-Training, Rood Engineering Inc.

David Montigny, Engineer-in-Training, Rood Engineering Inc., presented a brief review of the report and the assessments contained in the Addendum 1.

COR 25-06-08

Moved By Nicole Hackett

Seconded By Tiffany Pocock

That the verbal report provided by David Montigny, Engineer-in-Training, Rood Engineering Inc., regarding Snyder Branch Drain, be received as presented.

Carried

7.4 Delegations by Appellants

There were no appeals.

7.5 Questions from the Court of Revision

There were no questions from the Court of Revision members.

7.6 Questions from Landowners

There were no questions from Gerald Czajkowski or Dina Jones, who were in attendance.

7.7 Court of Revision Decision

COR 25-06-09

Moved By Nicole Hackett

Seconded By Tiffany Pocock

That the assessments contained in the Addendum 1 dated May 16th, 2025, for the Snyder Branch Drain, Replacement Bridge for MN 10901 10th Concession Road, Geographic Township of Colchester North, Project REI2023D014, report dated April 4th, 2025, Town of Essex, County of Essex, be confirmed as presented.

Carried

8. Adjournment

COR 25-06-10

Moved By Nicole Hackett

Seconded By Tiffany Pocock

That the Court of Revision for Snyder Branch Drain be adjourned at 5:08 PM.

Carried

9. Call to Order

The Vice Chair called the Rush Drain Court of Revision to order at 5:10 PM.

10. Rush Drain Relocation Amendments

10.1 Appeals from Landowners

10.1.1 Written Appeals Received by the Due Date

Joseph A. Malandruccolo, Director, Legal & Legislative Services/Clerk, informed that a written appeal was submitted by the Essex Town Centre Ltd. on June 3rd, 2025. Mr. Malandruccolo added that the appeal was further amended on June 17, 2025.

Mr. Malandruccolo presented the summary of the appeal.

10.1.1.1 Appeal from the Essex Town Centre Ltd.

10.1.2 Written Appeals Received after the Due Date

Joseph A. Malandruccolo, Director, Legal & Legislative Services/Clerk, informed that no written appeals were received by the Clerk's Office after the due date.

10.2 Correspondence

There was no correspondence noted at this time.

10.3 Engineer to Provide Background on the Drain Assessment

10.3.1 Mark D. Hernandez, Professional Engineer, Dillon Consulting Limited

Mark D. Hernandez, Professional Engineer, Dillon Consulting Limited, provided a review of the costs that are distributed through the Rush Drain Relocation Amendments report. Mr. Hernandez explained his rationale for the assessments. Mr. Hernandez addressed each section of the appeal providing references to the Drainage Act and explained his approach to allocating the cost of the unforeseen items under the current report.

COR 25-06-11

Moved By Tiffany Pocock

Seconded By Daniel Bezaire Arevalo

That the verbal report provided by Mark D. Hernandez, Professional Engineer, Dillon Consulting Limited, regarding Rush Drain Relocation Amendments be received.

Carried

10.4 Delegations by Appellants

Andrew Colautti, Counsel for Essex Town Centre Ltd. (ETC), presented the summary of the amended appeal:

Mr. Colautti provided the history of the ETC development starting from the 1980s and leading to the current report.

Mr. Colautti also referred to various reports that were prepared for the subdivision. Mr. Colautti noted that the reports were requested by the Town and were procured and paid for by his client and therefore, in his opinion, his client should not be assessed any costs related to the unforeseen items listed in the Relocation Amendments Report or at least should only pay a similar proportion to the initial report.

Mr. Colautti referred to the Drainage Act and Environmental Protection Act while elaborating on the probable cause of contamination and concluded that the Town caused the contamination and therefore should cover all the costs related to contamination mitigation.

Mr. Colautti suggested that a conflict of interest occurred since Dillon Consulting Limited was representing both ETC and the Town of Essex. Mr. Colautti suggested that Dillon Consulting Inc. was pressured by the Town to assess all unforeseen costs to Essex Town Centre Ltd.

Mr. Colautti concluded that the report is not fair and asked the Court of Revision to reassess the costs to the properties causing the contamination, or in the proportions established in the initial report.

10.5 Questions from the Court of Revision

Tiffany Pocock, Drainage Board Member, asked if it is normal practice when the same engineering company prepares reports for both the developer and the Town.

Mr. Colautti replied that this is normal practice and there are no issues until there is a conflict of interest.

Ms. Pocock further asked if Mr. Colautti's client decided on his own to procure reports that were further provided to Dillon Consulting Limited.

Mr. Colautti explained that the reports were required by the Town to proceed with the development.

Ms. Pocock inquired if ETC was discussing with the Town the inclusion of the cost of the reports into the project cost.

Mr. Colautti reiterated that the reports were requested by the Town and provided to Dillon Consulting Limited at their request.

Ms. Pocock asked what the process would be if the contamination was discovered on ETC's property and there was no municipal drain.

Mr. Colautti replied that ETC would request it be cleaned up (by the Town??) and if that is not done, they would undertake that and further sue the Town to recover the costs.

Ms. Pocock asked if ETC did research and bought title insurance before buying the land.

Mr. Colautti replied that ETC was not aware of contamination until October 2021.

Ms. Pocock asked when Mr. Hernandez was hired for this report.

Mr. Hernandez replied that he was hired last year when Mr. Oliver retired.

10.6 Questions from Landowners

Gabe Valente, Essex Town Centre Ltd., noted that the contamination comes from the land that was artificially elevated. Mr. Valente inquired about some of the concepts that Mr. Hernandez used during his presentation.

Mr. Hernandez explained the concepts of surface water and injuring liability and the context in relations to which he used this terminology.

Cory Simard, Manager, Legal, Licensing and Enforcement, Town of Essex, summarized the deliberations of the Court of Revision. Mr. Simard noted that Mark Hernandez, Professional Engineer, has prepared the assessment schedule under the Drainage Act. Mr. Simard further noted that ETC's counsel referred to the Environmental Protection Act which is not relevant to the Court of Revision and noted that costs related to this Act could be addressed through civil litigation. Mr. Simard stated that the Town did not require the Essex Town Centre to procure all the reports they have stated was a requirement.

Mr. Colautti insisted that contamination costs should be assessed per Section 23.2 of the Drainage Act as an injuring liability.

Mr. Hernandez explained that Section 23.2 is not intended to address costs related to a drain relocation.

Ms. Pocock noted that contamination is not addressed in Section 23.2 and asked Mr. Colautti how his client can recover the costs.

Mr. Colautti noted that his client could sue the Town to recover the costs, however he believes that the costs should be recovered under Section 23.2 of the Drainage Act.

The Vice Chair proposed to go into a Closed Meeting to seek legal advice.

COR 25-06-012

Moved By Daniel Bezaire Arevalo

Seconded By Tiffany Pocock

That the Court of Revision move into Closed Meeting pursuant to 239 s.3.2 (f) of the Municipal Act, S.O. 2001, c. 25, as amended to receive advise that is subject to solicitor-client privilege, including communication that is necessary for that purpose.

Carried

COR 25-06-13

Moved By Daniel Bezaire Arevalo

Seconded By Tiffany Pocock

That Court of Revision move out of the Closed Meeting and move back into Open Meeting at 6:19 PM.

Carried

10.7 Court of Revision Decision

Mr. Hernandez presented a brief overview of the assessment and noted that neither the Town nor Dillon Consulting Limited pressured him in any way on how he and his team prepared the report and the assessments.

COR 25-06-14

Moved By Tiffany Pocock

Seconded By Daniel Bezaire Arevalo

Theat the verbal presentation by Mark D. Hernandez, Professional Engineer, Dillon Consulting Limited, be received.

Carried

COR 25-06-15
Moved By Tiffany Pocock
Seconded By Daniel Bezaire Arevalo

That the assessments contained in the Schedules of Assessment for the Rush Drain Relocation Amendments, report dated May 2nd, 2025, File No.19-1023, in the Town of Essex, as prepared by Mark D. Hernandez, Professional Engineer, Dillon Consulting Limited, be confirmed as presented.

Carried

11. Adjournment

COR 25-06-16
Moved By Daniel Bezaire Arevalo
Seconded By Tiffany Pocock

That the meeting be adjourned at 6:24 PM.

Carried

Chair

Recording Secretary