



## **Court of Revision Minutes**

**Location: Zoom Video Conferencing**

**Wednesday, February 24, 2021 - 5:00 p.m.**

**The purpose of the meeting is to hold the Court of Revision for:**

### **Relocation of the Rush Drain**

**Former Township of Colchester North, Now in Town of Essex,**

**File No. 19-1023**

This is pursuant to the report prepared by Tim R. Oliver, Professional Engineer, Dillon Consulting Limited, dated January 8, 2021 which was considered and adopted at a Consideration Meeting held January 21, 2021 and pursuant to By-Law No.1987 which received two readings by Council at its regular meeting held February 1, 2021.

This sitting of this Court of Revision was duly appointed by Council on February 1, 2021.

The Deputy Clerk confirmed that all notices have been sent in accordance with The Drainage Act.

Present:	Percy Dufour, Chair Felix Weigt-Bienzle Kirk Carter
Regrets:	None
Also Present:	Shelley Brown, Deputy Clerk, Legal and Legislative Services Kevin Girard, Director, Infrastructure Services Norm Nussio, Manager, Operations and Drainage Lindsay Dean, Drainage Superintendent Tanya Tuzlova, Operations/Drainage Clerk Tim R. Oliver, P. Eng., Dillon Consulting Limited
General Public:	Michael T. Wiens, Solicitor for Sturgeon Woods Graydon Botsford, Ministry of Transportation Ontario Mario Frechette, Ministry of Transportation Ontario

## **1. Call to Order**

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

## **2. Declarations of Conflict of Interest**

None Declared.

### 3. Adoption of Published Agenda

#### 3.1. Court of Revision Agenda

Deputy Clerk informed that a late appeal was received from 1954990 Ontario Limited.

Moved by Board Member Carter

Seconded by Board Member Weigt-Bienzle

**COR21-02-001 That** the published agenda for the February 24, 2021 Court of Revision be adopted as amended to include the appeal from 1954990 Ontario Ltd.

**Carried**

### 4. Adoption of Minutes

#### 4.1. Court of Revision for Shepley Drain Bridge Replacement for Gorski Land Holdings and for the Szakacs Drain Repair and Improvement held on January 6, 2021.

Moved by Board Member Carter

Seconded by Board Member Weigt-Bienzle

**COR21-02-002 That** the minutes of the Court of Revision held on January 6, 2021, be adopted as circulated.

**Carried**

### 5. List of Written Appeals

The Chair advised that the purpose of the Court of Revision is to hear appeals regarding the schedule of assessment only. The schedule of assessment may be altered, but the total assessment must remain the same. If one assessment is reduced then another must be increased to balance.

The Chair informed that there is an appeal from 1954990 Ontario Limited pertaining to Parcel Roll Number 210-000-00500-0000.

### 6. Public Presentations

#### 6.1. Tim R. Oliver, Professional Engineer

Re: Report from Dillon Consulting Limited dated January 8th, 2021 regarding Relocation of the Rush Drain, Former Township of Colchester North, Now in Town of Essex, File No. 19-1023

Mr. Oliver advised the Court that the appeal from 1954990 Ontario Limited contained two items. The first item is to change the name of the severed portion of the property that took place since the Consideration of the Report held on January 21, 2021. Mr. Oliver

advised that the name of the severed portion could be changed to "Roll number to be assigned". The second item in the appeal pertains to Special Benefit Assessment that was levied in full to the retained part of 1954990 Ontario Limited parcel. 1954990 Ontario Limited requested that the Special Benefit Assessment of \$31,310 be apportioned to the retained and severed portions.

Mr. Oliver advised that the original report had one assessment for the 12 acre property of 1954990 Ontario Limited prior to the severance. The revised assessment was prepared for the Court of Revision with the Benefit and Outlet assessments divided between retained and severed properties.

Mr. Oliver explained that the Special Benefit Assessment of \$31,310.00 pertains to two amounts. The amount of \$16,540.00 for the stone erosion protection is to keep the drain confined within the greenway corridor so the drain would not be situated on the property owned by 1954990 Ontario Limited. Mr. Oliver explained that the steeper bank slope requires stone protection. That part of the Special Benefit Assessment was assigned in full to 1954990 Ontario Limited since it will benefit the property considering a shallower slope would occupy the lands of 1954990 Ontario Limited and would create larger setbacks for the future development of the property. Mr. Oliver also noted that if the drain slopes are designed shallower that would require a maintenance corridor for the future maintenance works, therefore, bank erosion protection will benefit 1954990 Ontario Limited in the future since a maintenance corridor would not be required from their side of the drain.

Mr. Oliver further explained that the second amount of Special Benefit Assessment in the amount of \$14,770.00 is related to transporting the excavated materials from 1954990 Ontario Limited parcel and using this material to fill in the original drain alignment. Mr. Oliver noted that usually the excavated material is laid on the adjacent land, but to save the cost he has recommended that the materials to be placed to fill in the abandoned part of the drain instead of trucking the material away.

Mr. Oliver added that the rationale to keep the Special Benefit Assessment in full with the original property owner was that at the time the request was made to provide the revised assessment apportionment, the transaction had not been made yet and there was only one owner. The intent of the report was to relocate the drain to benefit the original property, therefore the assessment was kept with the original property.

**Board Member Carter** asked why the total cost of the project was not proportionally distributed to both severed and retained properties and why it is a Special Benefit.

Mr. Oliver replied that the Special Benefit to the original property was levied and then revised based on the rationale explained earlier. Mr. Oliver added that the divided cost between these two properties due to the severance does not affect the other properties within the drain, therefore the Special Benefit should not be distributed to the entire drain since the other parcels do not benefit from the works on the 1954990 Ontario Limited property.

Board Member Carter asked if the rock protection is the true benefit to the retained property or it is to protect the entire drain from erosion.

Mr. Oliver reiterated that the stone protection is needed to narrow the drain to fit it within the Greenway corridor. Mr. Oliver added that the rock protection is a benefit for the retained property since without it the drain would occupy part of that property.

**Board Member Weigt-Bienzle** noted that he recognizes that there is a special benefit to the retained property since rock protection keeps the drain on the Greenway property and therefore the service corridor is not required. If rock protection is not provided, the retained property would lose some acreage to the drain.

**Mario Frechette, Ministry of Transportation Ontario** asked Mr. Oliver to explain his rationale for the engineering cost assessed to the Ministry of Transportation Ontario in the report in the amount of \$41,800.00. Mr. Frechette added that that cost seems high in comparison with the assessments to other properties.

Mr. Oliver explained that the engineering cost to prepare the report is part of the total cost of the project. Mr. Oliver added that typically the engineering cost is a part of a Special Benefit Assessment and is a percentage of the total project cost. The engineering cost is assessed proportionally similar to the Special Benefit Assessment and is distributed proportionally to the cost of construction.

**Graydon Botsford, Ministry of Transportation Ontario** asked Mr. Oliver to clarify why the part of the drain that runs parallel between the highway and South Talbot Road was assessed 100% to the Ministry of Transportation.

Mr. Oliver explained that a Special Benefit cost for the construction of two bridges was entirely assessed to the Ministry of Transportation. Mr. Oliver added that there is also a shared cost component for the part of the drain which runs parallel to the highway.

Mr. Botsford stated that the assessment of this portion should be to the benefit of the Town of Essex for their infrastructure or the assessed properties.

Mr. Oliver explained that during the discussions with the Ministry of Transportation in early 2020, it was established that the highway system would be using the part of the drain to legally discharge the drainage. On the plans that were provided in the report there is a ditch at the west part of the drain, so the lands along the highway may discharge water into the lower portion of the drain. Mr. Oliver added that the current highway drainage plans have highway drainage which have an outlet at the downstream position of the drain. Mr. Oliver added that when the lands are bordering the municipal drain they are receiving a benefit to take the water through that course.

Mr. Botsford commented that the Ministry of Transportation has informed the engineer about a number of design related issues by e-mail on April 28, 2020, which were not addressed in this report and that the design does not meet the Provincial standards. Mr. Botsford added that there is no benefit to the Ministry of Transportation for this part of the drain and that changes to the design should be made. Mr. Botsford explained that the parallel discharge system will be built by the Ministry of Transportation on that part and that right of way would narrow at the top of the berm which will split the highway drainage. Mr. Botsford added that there will be a change of ownership in the future.

Mr. Oliver replied that he was not aware of the proposed property ownership change and the division between the highway drainage system and the Rush Drain.

The Chair asked if this information would require changes to the report.

Mr. Oliver replied that if he knew this information prior to the assessment he would have considered a lower benefit assessment for the Ministry of Transportation for that portion of Rush Drain. Mr. Oliver added that if the Court of Revision decides to reduce the assessment to the Ministry of Transportation, then the assessment to the South Talbot Road or to the other properties should be increased.

The Chair asked the Drainage Superintendent if these changes would require a second Court of Revision.

Lindsay Dean, Drainage Superintendent, has noted that this information from the Ministry of Transportation of Ontario should have been presented as an official appeal within the specified timelines.

Mr. Botsford commented that since the previously proposed design issues were not addressed, then he believes that the appropriate apportionment of the assessments could be done when that design portion of the report is completed by the engineer.

The Chair commented that during the Consideration of Report meeting the Ministry of Transportation had been asked to meet with the engineer to discuss design issues.

Mr. Botsford replied that the design work is not completed yet and asked to allow the Ministry to proceed with the completing the design prior to proceeding to the next meeting.

**Michael T. Wiens, Solicitor for Sturgeon Woods**, the new property owner of the severed property which was initially part of 1954990 Ontario Limited, noted that a small square parcel of a less than an acre of land situated on the Watershed Plan, Block "C", above station 0+000 is owned by the Ministry of Transportation of Ontario, but is shown as Block "C". Mr. Wiens asked Mr. Oliver if this section of the drain is filled in and if so, than should a portion of the Special Benefit assessment for this section not belong to the Ministry of Transportation.

Mr. Oliver responded that the abandoned portion of the drain to be filled in as indicated in the report includes all the existing drain up to the location when it turns and crosses the highway, which would include that small square parcel. Mr. Oliver added that Sturgeon Woods may leave that part open to be able to discharge the drainage at their property limit. Mr. Oliver explained that that square portion is very small in relation to the total Special Benefit.

Mr. Wiens commented that he would like to ensure that no works are done on the Ministry of Transportation lands at the expense of a private owner.

**Board Member Carter** asked how long the project timeline would be extended if the report is sent back to the engineer due to the Ministry of Transportation requests to change the design.

Mr. Oliver replied that information received during the meeting from the Ministry of Transportation regarding the changes in property limits could be addressed though the adjustments to the assessments since these are changes to two road authorities due to shifted location of the drain and do not affect the private lands. Mr. Oliver added that he is concerned that the Ministry of Transportation's design changes are not finalized and that would lead to a considerable delay.

Board Member Carter asked how long it will take to process the requested changes.

Mr. Oliver replied that if the report is returned for reconsideration then it would take 2-3 weeks to process the changes and couple weeks to mail out assessments and set up a meeting to consider the report and then to hold a Court of Revision which will take longer time than a just holding a second Court of Revision.

The Deputy Clerk has commented that both issues should be addressed at this meeting.

Lindsay Dean, Drainage Superintendent, noted that procedural issues could be addressed later and at this time the Court of Revision members should address the appeal and to instruct the engineer what they would like him to amend.

The Chair proposed to table the project in order to deal with the appeal and the concerns from the Ministry of Transportation.

The Deputy Clerk asked how this action would affect the project.

Lindsay Dean, Drainage Superintendent, commented that it will take approximately 6 to 8 weeks to schedule another Court of Revision meeting. Ms. Dean reminded the Court of Revision members they should address the formal appeal submitted in advance to that meeting and the issues brought by the Ministry of Transportation during this meeting. The Court of Revision members should give instructions to the engineer regarding both issues.

Board Member Carter noted that reviewing the appeal would lead to changed assessments to the upstream owners and therefore the engineer needs to review all the assessments.

The Deputy Clerk has asked to provide clarifications regarding the proposed changes from the Ministry of Transportation.

Lindsay Dean, Drainage Superintendent, clarified that the Ministry of Transportation is asking to make assessment changes to the full schedule and Court of Revision members should decide if they accept that last minute request for change and if they would instruct the engineer to revise the whole schedule or not. Ms. Dean also noted that Court of Revision members should also make a decision about the formal appeal which was submitted yesterday and was added to the agenda at the beginning of the meeting.

The Deputy Clerk noted that the Ministry of Transportation request is not in the nature of a formal appeal as it was not filed in time nor presented and accepted as a formal appeal by way of resolution prior to the sitting of the Court this evening.

Mr. Botsford commented that the design changes were expected to be presented, therefore it was reasonable to assume that this will lead to the changes in assessments.

The Deputy Clerk reiterated that a formal appeal was not submitted and therefore procedurally it is the decision of the Court of Revision whether to entertain the proposed changes.

Board Member Carter said that in his opinion the report should be returned to the engineer for review to address issues related to the appeal and the information received from the Ministry of Transportation.

Mr. Weins noted that the technical aspects of the project were addressed at the previous Drainage Board meeting held on January 21<sup>st</sup> and no appeals were submitted at that time and the report was approved. Mr. Weins added that this meeting should address only the assessments. Mr. Weins asked if this is procedurally permissible to return the report to the engineer to review technical issues while the technical aspects were considered and approved at the previous meeting.

The Chair commented that the Ministry of Transportation may present their concerns if they have them.

Lindsay Dean, Drainage Superintendent, asked the Ministry of Transportation to provide clarification regarding the requested changes in design. Ms. Dean recalled that during the January 21, 2021 meeting, the Ministry of Transportation design changes were deemed to be considered minor and would not impact the overall project. Based on that determination, the Drainage Board proceeded with the adoption of the report.

Mr. Oliver added that he is not looking into changing the technical design of the drain since the changes are occurring within the Ministry of Transportation lands. Mr. Oliver added that the design changes to the highway drainage are still in process. Mr. Oliver added that changing assessments may be done much quicker than the reconsidering the entire report. In addition, reconsidering the report would open the opportunity for everybody to appeal any aspect of the report.

Mr. Botsford clarified the proposed changes to the highway drainage were presented in April of 2020 and were not addressed and that they are trying to work on a solution regarding the design for the highway drainage and South Talbot Road area. Mr. Botsford presented a concept drawing of the proposed cross section of the drain realignment adjacent to the highway.

Board Member Carter commented that the redesign of the project by the Ministry of Transportation should not be discussed at this meeting. Mr. Carter proposed to review the apportionment related to the official appeal.



Moved by Board Member Carter

Seconded by Board Member Weigt-Bienzle.

**COR21-02-003 That** the Special Benefit assessments for the severed and retained portions of 1954990 Ontario Limited to be reviewed by the engineer.

**Carried**

The Chair asked Norm Nussio, Manager of Operations and Drainage to comment on the proposed motion.

**Norm Nussio, Manager of Operations and Drainage**, said that the Court of Revision should make a decision which is on the floor right now. Mr. Nussio reminded that at the last meeting the Ministry of Transportation informed that the changes proposed by the Ministry of Transportation were presented as very minor and it was said that they can be worked out through the construction process and there was no formal appeal. Mr. Nussio added that some drainage may be cut off which would be known when the Ministry of Transportation presents a final design that potentially may lead to the assessment changes.

Ms. Dean noted that Mr. Oliver already presented his opinion on the appeal and Court of Revision members should give Mr. Oliver instructions about how it should be apportioned. Ms. Dean further clarified that Mr. Oliver should be provided with recommendations on how to apportion the Special Benefit related to the appeal. Ms. Dean asked Mr. Oliver if he has the information necessary to review the apportionment.

Mr. Oliver stated that he has provided his decision and explanations to the Court of Revision members and he believes that this apportionment is fair. Mr. Oliver added that no additional information was presented to him at the meeting. Mr. Oliver noted that the reassessment was circulated to all property owners before the Court of Revision and both the buyer and the seller were aware of the proposed apportionments before the actual sale took place. Mr. Oliver added that he is not in the position to make any changes to the apportionments on the appeal related to the Special Benefit assessment.

Moved by Board Member Weigt-Bienzle

Seconded by Board Vice Chair Dufour

**COR21-02-004 That** Resolution COR21-02-003 as part of these minutes be rescinded.

**Carried**

Moved by Board Member Weigt-Bienzle

Seconded by Board Vice Chair Dufour

**COR21-02-005 That** the appeal submitted by 1954990 Ontario Inc. dated February 23, 2021 by be denied.

**Carried**

Board Member Carter commented that he does not believe that the apportionment of the Special Benefit related to the appeal was done fairly.

The Chair asked the engineer if he can provide clarifications.

Mr. Oliver explained that the first part of the appeal is related to the fact that the legal name of the severed parcel was not known at the time when the apportionments were prepared. Mr. Oliver added that the adjustments can be made when the roll number for the severed portion is known. Mr. Oliver concluded that the request to change the legal name does not require a revised assessment since there are no changes to the assessed amounts.

Mr. Oliver further explained that the second paragraph of the appeal relates to the Special Benefit assessment and if the Court of Revision would like to change the allocation of Special Benefit then the Court of Revision must decide what this allocation should be and make the motion to make this change.

## **7. Court of Revision Decision**

Moved by Board Member Weigt-Bienzle

Seconded by Board Vice Chair Dufour

**COR21-02-005 That** the assessments contained in the schedules of assessment report for the Relocation of the Rush Drain, Former Township of Colchester North, Now in Town of Essex, File No. 19-1023, as prepared by Tim R. Oliver, Professional Engineer from Dillon Consulting Limited, dated January 8th, and as revised and circulated on February 2, 2021 be confirmed as presented.

**Carried**

8. Adjournment

Moved by Board Member Weigt-Bienzle

Seconded by Board Member Carter

**COR21-02-006 That** the meeting be adjourned at 6:32 pm.

**Carried**

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Chair

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Recording Secretary

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Date