

Subject: Cranberry Creek Municipal Drain – Court of Revision

File Number: ACS2022-IWS-WS-0008

Report to Agriculture and Rural Affairs Committee on 3 November 2022

Submitted on October 17, 2022 by Tammy Rose, General Manager, Infrastructure and Water Services

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Ward: Rideau-Goulbourn (21)

Objet : Drain municipal du ruisseau Cranberry – Tribunal de révision

Dossier : ACS2022-IWS-WS-0008

Rapport au Comité de l'agriculture et des affaires rurales

le 4 novembre 2022

Soumis le 17 octobre 2022 par Tammy Rose, directrice générale, Services d'infrastructure et d'eau

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REPORT RECOMMENDATIONS

That the member of the Court of Revision:

- 1. Receive the report of the Engineer appointed under the *Drainage Act* entitled Engineer's Report for New Assessment Schedules under Section 76 of the Drainage Act R.S.O. 1990 c. D17 for Cranberry Creek Municipal Drain dated June 2022.**
- 2. Convene for the second sitting for the Court of Revision under subsection 46(3) of the *Drainage Act* for the purpose of hearing appeals under Section**

52 of the *Drainage Act* from owners of lands that have been assessed for the drainage works in the Engineer's report entitled Engineer's Report for New Assessment Schedules under Section 76 of the *Drainage Act* R.S.O. 1990 c. D17 for Cranberry Creek Municipal Drain dated June 2022.

RECOMMANDATIONS DU RAPPORT

Que les membres de la tribunal de révision:

- 1. prennent connaissance du rapport de l'ingénieur nommé aux termes de la *Loi sur le drainage*, intitulé « Rapport de l'ingénieur pour le nouveau calendrier des évaluations en vertu de l'article 76 de la *Loi sur le drainage*, L.R.O. 1990, chap. D17, pour le drain municipal du ruisseau Cranberry » en date du mois de juin 2022;**
- 2. se réunissent pour la seconde séance du tribunal de révision aux termes du paragraphe 46(3) de la *Loi sur le drainage*, afin d'entendre les appels interjetés aux termes de l'article 52 de la *Loi sur le drainage* par les propriétaires de terrains évalués pour les travaux de drainage dans le rapport de l'ingénieur intitulé « Rapport de l'ingénieur pour le nouveau calendrier des évaluations en vertu de l'article 76 de la *Loi sur le drainage*, L.R.O. 1990, chap. D17, pour le drain municipal du ruisseau Cranberry » en date du mois de juin 2022.**

BACKGROUND

The following provides a high level overview of the proposed amendments to the Cranberry Creek Municipal Drain. This brief overview does not describe the project or its purpose in its entirety, for further details please refer to the Engineer's Report entitled Engineer's Report for New Assessment Schedules under Section 76 of the Drainage Act R.S.O. 1990 c. D17 for Cranberry Creek Municipal Drain dated June 2022 prepared by Robinson Consultants Inc.

The purpose of the Engineer's Report is to update the assessment schedules which are part of the Engineer's Report for Cranberry Creek Municipal Drain dated 1969 under Section 76 of the *Drainage Act*, R.S.O. c. D17. An update to the assessment schedules will allow the City of Ottawa to appropriately assess costs associated with any necessary future maintenance and/or repair of the Cranberry Creek Municipal Drain.

On September 8, 2021 the Council of the City of Ottawa appointed Andy Robinson, P.Eng. of Robinson Consultants Inc., to prepare an Engineer's Report under section

76(1) of the *Drainage Act*. The Engineer's report entitled Engineer's Report for New Assessment Schedules under Section 76 of the Drainage Act R.S.O. 1990 c. D17 for Cranberry Creek Municipal Drain dated June 2022 includes updated assessment schedules for the Main Drain and pump and dyke system of Cranberry Creek Municipal Drain.

The first sitting of the Court of Revision was held on August 22 and 23, 2022 at the Alfred Taylor Recreation Center. The decision of the first sitting of the Court of Revision dated September 23, 2022 was mailed to all the landowners within the watershed on October 3, 2022.

The estimated cost of the report is \$26,500. Funding is available in capital internal order 907720 Cranberry Creek Municipal Drain for the cost of the engineer's report. All costs associated with the engineer's report will be initially paid by the Water Services Branch of the Infrastructure and Water Services Department but will be recovered from the landowners within the watershed as per the "Schedule A – Summary for the future maintenance of all sections of the Cranberry Creek Municipal Drain" included in the Engineer's Report dated June 2022. The assessment to City owned lands and roads as per the assessment schedules is \$2,291.90.

Function of Court of Revision: The Court of Revision is a statutorily mandated appeal body established under the provincial *Drainage Act* to hear appeals from owners of lands that have been assessed for the cost of construction and/or repair of drainage works under an engineer's report prepared under the *Drainage Act*.

The Court of Revision is one of three quasi-judicial bodies established by Council and although it is currently composed entirely of Councillors supported by the Clerk's staff, it does not operate as a Standing Committee and has an entirely different purpose and set of rules governing its operations (ACS2010-CMR-CCB-0106, Council Governance Review 2010-2014, City Council December 8, 2010).

Council is not legislated to consider any appeals concerning a drainage assessment schedule in an engineer's report or to hear any other types of *Drainage Act* appeals. As such, the members of the Agriculture and Rural Affairs Committee do not make any recommendations to Council on drainage assessment appeals to the Court of Revision and therefore a report to Council is not required in relation to Court of Revision hearings.

That being said, this report serves as a useful mechanism for providing information to the public, to Councillors and to staff on the status of existing and proposed drainage

works under the *Drainage Act* and facilitates the transparency, accountability and effectiveness of this quasi-judicial body established by Council. Accordingly, staff recommends that a report be posted for each Court of Revision hearing that is required under the *Drainage Act*.

To avoid allegations of a party adverse in interest that this report provides too much information on the circumstances leading up to Council's appointment of the drainage engineer under the *Drainage Act*, thereby potentially prejudicing a fair hearing of the appeals of private land owners, it is essential that this report serve a very limited and different purpose than that of a report to a City Standing Committee and Council.

Accordingly the sole purpose of this report is to serve as a guide on the role of the Members of the Court of Revision and Court of Revision procedures under the *Drainage Act*.

Role of the Members of the Court of Revision and Court of Revision Procedures

When members of quasi-judicial bodies are called upon formally to hear facts and make a decision, they are performing a function that is similar to what judges do in court (ACS2010-CMR-CCB-0106, Council Governance Review 2010-2014, City Council December 8, 2010).

As members of a quasi-judicial body, the members must comply with the *Statutory Powers Procedure Act*, and they must conduct themselves fairly and without bias.

As Court of Revision members are required to consider assessment appeals on an impartial and unbiased basis, each member should strive to keep his/her Court of Revision role completely separate and distinct from his/her City Council and Standing Committee roles.

The *Drainage Act* provides some guidance as to how the Court of Revision is to proceed:

- Section 55 states that in any appeal to the Court of Revision, if the engineer is called upon to give evidence as to how an assessment was determined, the engineer must give evidence before the appellant's case is presented.
- Section 53 addresses those cases where the ground of appeal is that lands or roads are assessed too high in the drainage assessment schedule that forms a part of the engineer's report. If the members of the Court of Revision are satisfied, based on the evidence presented at the hearing, that an assessment should be reduced and

added to lands owned by a person who is not present at the hearing, then they must adjourn the Court of Revision, send notice to the absent owners of assessed lands to allow them to appeal the change, and then reconvene in accordance with Section 53. At the adjourned date (i.e. the 2nd sitting of the Court of Revision), the Court must dispose of the matter of appeal and, where appropriate, redistribute the assessments in such manner as appears just.

- If the Court of Revision decides to change an assessment, Section 56 states that notice of the change must be sent to affected owners and the provisional by-law shall be amended to carry out any changes so made by the Court of Revision.
- A party to an appeal that is before the Court of Revision may appeal the decision of the Court of Revision to the Agriculture, Food and Rural Affairs Appeal Tribunal (Section 54).
- After the time for appeals to the Court of Revision has expired and there are no appeals, or after the appeals have been decided, Council may give third reading to the provisional by-law, thus authorizing construction of the drainage works. The work may be commenced ten days after the by-law is passed, if no notice of intention to bring an application to quash it has been filed with the clerk (Subsection 58(1)).

A copy of the Notice of Second Sitting of Court of Revision was sent by mail on October 3, 2022 to each owner of lands assessed for the drainage works in the Engineer's Report entitled Engineer's Report for New Assessment Schedules under Section 76 of the Drainage Act R.S.O. 1990 c. D17 for Cranberry Creek Municipal Drain dated June 2022 prepared by Robinson Consultants Inc. A copy of the provisional by-law which received 1st and 2nd reading by Council on July 6, 2022 is included in Document 2 to this report. Document 3 to this report is the Engineer's Report for New Assessment Schedules under Section 76 of the Drainage Act R.S.O. 1990 c. D17 for Cranberry Creek Municipal Drain dated June 2022. Document 4 to this report is the decision of the first sitting of the Court of Revision dated September 23, 2022.

SUPPORTING DOCUMENTATION

Document 1 - Location Map

Document 2 – Provisional By-law

Document 3 – Engineer's Report entitled Engineer's Report for New Assessment Schedules under Section 76 of the Drainage Act R.S.O. 1990 c. D17 for Cranberry Creek Municipal Drain dated June 2022

Document 4 - Decision of the first sitting of the Court of Revision dated September 23, 2022.

Document 1 – Location Map

