

THE MUNICIPALITY OF LAMBTON SHORES

Report CL 11-2024

Council Meeting Date: May 14, 2024

TO: Mayor Cook and Members of Council

FROM: Stephanie Troyer-Boyd, Director of Corporate Services

RE: Appointment of Engineer – Tulpin Drain

RECOMMENDATION:

THAT CL 11-2024 regarding the Appointment of Engineer for the Tulpin Drain be received; and

THAT staff be directed to proceed with notification to the Ausable Bayfield Conservation Authority and Ontario Ministry of Agriculture, Food and Rural Affairs; and

THAT GEI Consultants Canada Ltd. be appointed to complete the required engineer's report after the 30 day notice period has expired and no comments have been received.

SUMMARY

This report presents a request under Section 78 of The Drainage Act for an improvement to an existing municipal drain known as the Tulpin Drain located on Lots 15 & 16 Concession 6 of the Municipality of Lambton Shores known as 8597 Northville Road. The drain was originally constructed in 1976. The request has been received to replace the existing drain with a larger drain.

BACKGROUND

A Request for Drainage Improvement follows the same Engineer's Report process and Council proceedings as a Petition Drain, minus the requirement for sufficiency of petition as in Section 4 drains. A request for drainage improvement is required to follow Section 78 of the Ontario Drainage Act, 1990. Section 78 of the Drainage Act reads as follows:

Improving, upon examination and report of engineer

78 (1) If a drainage works has been constructed under a by-law passed under this Act or any predecessor of this Act, and the council of the municipality that is responsible for maintaining and repairing the drainage works considers it appropriate to undertake one or more of the major improvement projects listed in subsection (1.1) for the better use, maintenance or repair of the drainage works or of lands or roads, the municipality may undertake and complete the

project in accordance with the report of an engineer appointed by it and without the petition required by Section 4.

Projects

(1.1) The major improvement projects referred to in subsection (1) are:

- 1. Changing the course of the drainage works.*
- 2. Making a new outlet for the whole or any part of the drainage works.*
- 3. Constructing a tile drain under the bed of the whole or any part of the drainage works.*
- 4. Constructing, reconstructing or extending embankments, walls, dykes, dams, reservoirs, bridges, pumping stations or other protective works in connection with the drainage works.*
- 5. Extending the drainage works to an outlet.*
- 5.1 Improving or altering the drainage works if the drainage works is located on more than one property.*
- 6. Covering all or part of the drainage works.*
- 7. Consolidating two or more drainage works.*

Analysis

It is Council's responsibility to determine whether they should accept the Section 78 request (see attached flowchart). If Council accepts the request, notice will be sent to the Conservation Authority and OMAFRA to allow these agencies to request an environmental appraisal or benefit cost statement. Council will receive feedback on this and then have the opportunity to request an environmental appraisal or benefit cost statement on its own behalf. Council should note that any environmental appraisal or benefit cost statement that they determine is required shall not be assessed back to the watershed or the property owner, meaning the appraisal or the benefit cost statement would be paid through the tax base. Once 30 days has passed and no comments have been received, Staff will then bring an Action Request back to Council in order to appoint an engineer to prepare a report regarding the work.

With regard to this request, in determining whether to accept the request submitted, there are two questions which must be answered:

1. Is this a valid request under the Drainage Act?
2. Should Council proceed to accept the request or are there justifiable reasons to deny the request?

With respect to question 1, to determine whether this is a valid request, Section 78 (1) of the Drainage Act states:

"If a drainage works has been constructed under a by-law passed under this Act or any predecessor of this Act, and the council of the municipality that is responsible for maintaining and repairing the drainage works considers it appropriate to undertake one or more of the projects listed in subsection (1.1) for the better use, maintenance or repair of the drainage works or of lands or roads, the municipality may undertake and complete

the project in accordance with the report of an engineer appointed by it and without the petition required by section 4.”

Projects referred to in subsection 1.1 that pertain to this specific request are “Improving or altering the drainage works if the drainage works is located on more than one property”. Staff feel that based on the Ontario Drainage Act this is a valid request.

With respect to question 2, to examine if there are justifiable reasons to deny the request, Staff feel that there is no valid reason to deny the request being reviewed by the Conservation Authority and OMAFRA. Should issues be identified by the Conservation Authority or OMAFRA upon review, this information will return to Council prior to the appointment of an Engineer.

It is staff’s recommendation to accept the Section 78 request.

ALTERNATIVES TO CONSIDER

None are presented. The Drainage Act establishes the local municipality as the steward of the process established in the Act. The Act obligates the municipality to research, establish the need for municipal drains when requested by a landowner. As a result, the municipality is obliged to complete this request.

RECOMMENDED ACTIONS

Staff is recommending that Council accept the request for upgrades to the Tulpin Drain, provide notification to the Conservation Authority and OMAFRA and assign a drainage engineer to the file.

FINANCIAL IMPACT

The Drainage Act establishes that all costs associated with municipal drains are shared proportionately amongst the assessed landowners. In this case where a new engineer’s report and upgrades to the municipal drain are requested, the requesting landowner will pay the cost of the upgrades as will be determined in the engineer’s report. Future maintenance will be assessed throughout the watershed.

CONSULTATION

Staff has received the request for these drainage upgrades from a landowner assessed to the drain. This request is attached to this report.