

MINUTES OF A COURT OF REVISION WITH RESPECT TO THE PURBROOK CREEK MUNICIPAL DRAIN HELD IN THE COUNCIL CHAMBERS OF THE ADMINISTRATION OFFICE, 1024 HURLWOOD LANE ON MONDAY, MAY 1, 2017 AT 7:00 P.M.

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PRESENT:	Chair	Jane Dunlop Township of Severn
	Members	Scott Macpherson Township of Oro-Medonte
		Ron Stevens Township of Severn
Director of Public Works & Utilities		Derek Burke
Drainage Engineer		Mike Gerrits, P. Eng. R. Dobbins Engineering Inc.
Clerk		Sharon Goerke
Chief Administrative Officer		Henry Sander

**Call to Order**

The Clerk called the meeting to order at 7:00 p.m.

**Appointment of Chair**

The Court of Revision appointed Member Jane Dunlop as Chair.

*MOTION NO. COR-050117-01: Moved by Member Macpherson and seconded by Member Stevens that Member Jane Dunlop be appointed as Chair of the Court of Revision for the Purbrook Creek Municipal Drain.*

*CARRIED*

**Disclosure of Pecuniary Interest & the General Nature Thereof**

- "NIL"

The Chair welcomed everyone to the meeting and advised that the purpose of the Court of Revision under the Drainage Act for the Purbrook Creek Municipal drain was to hear and make decisions on the appeals to the Engineer's Report, dated March 7, 2017.

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Chair Dunlop advised that the format of the meeting will proceed as follows:

1. The Chair will read the order in which the appeals will be heard.
2. The Township Engineer will make comments on each of the appeals received.
3. The appellants will be invited to present their evidence for their appeal in the order provided.
4. The Court of Revision will recess and meet to discuss the appeals and obtain advice from the Township's Engineer to assist with their decisions.
5. The Court of Revision will reconvene to announce the decisions of the appeals.

The Chair advised that if there were residents in attendance who had not already submitted their written appeal to the Clerk, they were to obtain an application for a late appeal at the back of the Council Chambers and complete it for the Clerk at this time.

### **Order of Appeals**

The Chair advised that the appeals would be heard in the following order:

1. Bruce & Brenda Goss – 4693 Line 11 North
2. Cahiague Farms Inc. – 1705 Mount St. Louis Road East
3. Ida & Oscar Fiorese – Fairgrounds Road
4. Barbara & William Broerken – 4597 Line 12 North
5. Tom & Christine Jarvis – 1645 Burnside Line
6. James & Lance Raymond - 2437 Wainman Line
7. Charleen & Garry Johnston – 2555 Town Line

The Chair also advised that the late appeals would be dealt with in order as received by the Clerk.

There was one late appeal from Frank Brazda of 3125 Town Line.

### **Overview of Appeals to the Engineer's Report**

The Chair invited Mike Gerrits of R. Dobbin Engineering Inc. to provide an overview of the appeals received in keeping with the *Drainage Act*.

Mike Gerrits addressed the Court of Revision and requested minor housekeeping amendments to the Engineer's Report as follows:

Roll No. 434602000620700 – South Part of Lot 11, Concession 14

- Change the owner's name from R. & Y. Rudd to Winterbum

Roll No. 44602000620601 – North Part of Lot 11, Concession 14

- Change the owner's name from Y. Rudd to Camber & Lambert

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Roll No. 435101000109110 – Part Lot 15, Concession 3

- Change the owner's name from D. & S. Brandon to D. & C. Brandon
- Change the assessment to agricultural which was confirmed by the Engineer

Roll No. 435101000404400 – Part Lot 9, Concession 1

- Change the Roll No. to 435101000104400

Roll No. 435101000100510 – Part Lot 13, Concession 1

- Change the owner's name from D. & A. Stewart to C. & S. Dustin

Mr. Gerrits continued with a review of each appeal received from residents on the Purbrook Creek Municipal Drain.

Bruce & Brenda Goss – 4693 Line 11 North

- Mr. & Mrs. Goss have appealed their assessment on the grounds that the hectares were too large in the Engineer's Report.
- Mr. Gerrits confirmed that the hectares should be reduced from 4 ha to 1.5 ha and the assessments adjusted as follows:

Engineer's Report	Decrease from \$20 to \$10
SM1	Decrease from \$11 to \$6
SM2	Decrease from \$15 to \$7
SM3	Decrease from \$27 to \$14
SM4	Decrease from \$30 to \$15

Cahiague Farms Inc. – 1705 Mount St. Louis Road East

- The appellant appealed the assessment area as being too large and questioned the catchment area of the Engineer's Report.
- Mr. Gerrits reviewed this area in the same manner as the Goss property and the catchment area appears to be correct. The property receives an outlet benefit for the water generated on the lands regardless of whether they are agricultural or residential.

Oscar & Ida Fiorese – Fairgrounds Road

- Mr. & Mrs. Fiorese have appealed their assessment on the grounds that their property is environmentally protected and the property has been left in its natural habitat to protect the species. Drainage is not wanted on this land to protect the environment, the assessment is too high and due consideration has not been given to the use of the land.
- Mr. Gerrits advised that this land is conservation exempted for taxation but is still accessible under Section 61.5 of the *Drainage Act – Land exempt from taxation under the Assessment Act is subject to this Act for all purposes, including being subject to assessment for the cost of a drainage works.*

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- Section 61-6 of the Act also defines who is responsible for paying the assessment:
  - (a) *An assessment under this Act that falls due while the land is exempt from taxation under the Assessment Act shall be paid:*
  - (b) *By the owner of the land if the land is,*
    - (i) *Land on which a church or other place of worship has been erected and which is used for that purpose;*
    - (ii) *Land of a university, college or seminary of learning, whether vested in a trustee or otherwise;*
    - (iii) *Land of a board of an elementary or secondary school, as defined in the Education Act; or*
    - (iv) *Land owned by an upper-tier municipality; or*
  - (c) *By the municipality that imposed the assessment in all other cases.*
- In this situation it appears the land falls under Section 61.69c) and as such the assessment should be paid by the Township.
- The landowner does not feel that the drain benefits his property even though the drain is located on the property and as such the landowner has been made aware that there is still an assessment for benefit and outlet on the property that will be paid by the Township as long as the property has a tax exemption. Benefit is defined as improving the land and having access to drain your land is considered a benefit whether you use it or not.

Barbara & William Broerken – 4597 Line 12 North

- Mr. & Mrs. Broerken have appealed their assessment as being too high and due consideration has not been given to the use of the land. The resent being forced to pay for the drain and the original lands were predominantly agriculture which is not the case now. They have requested that the drain be abandoned.
- Mr. Gerrits advised that the lands have been assessed as under the previous report in a similar manner and similar land use. Although the landowners do not agree with the drain, they are on the drain and if this report was not prepared and the maintenance completed they would have still been assessed for an outlet. Abandonment of the drain is not under the jurisdiction of the Court of Revision.

Christine & Tom Jarvis – 1645 Burnside Line

- Mr. & Mrs. Jarvis have appealed to ensure that their land is assessed as agricultural.
- Mr. Gerrits advised that he contacted OMAFRA to verify if their mapping is accurate but has not received a response. The schedule is based on the OMAFRA website mapping and if there is a farm registration on the land it will be assessed as agricultural.

James & Lance Raymond – 2437 Wainman Line

- The appellants have stated that the land was last farmed in 1948 and has returned to its original wetland on the south side and has been considered a conservation area.
- Mr. Gerrits advised that he walked this property and the drain goes through the land. Even if it is wet now it could be tiled in the future to allow for an agricultural use. The owners could apply through the Assessment Act to have this land conservation exempt from taxation but that would limit the use of the land in the future.

Charleen & Garry Johnston – 2555 Town Line

- Mr. & Mrs. Johnston have appealed the assessment as they do not believe that there is a benefit from the drain. There is no evidence that the land has benefitted from the drain and they would not have purchased the land if they were aware that it was part of the Purbrook Creek Municipal Drain. They are unsatisfied with the maintenance practices of the drain and equipment travelling over their land while the ground is still soft. The house and buildings are 100 feet above the creek and are not impacted by the drain.
- Mr. Gerrits advised that the previous owner accepted the Engineer's Report. The property has a benefit and outlet assessment which is associated with the land regardless of whether the landowner chooses to use the benefit. The assessments have not been altered since the prior report but rather redistributed them. The current assessment listed in the appeal includes both the report costs and the maintenance costs and as previously stated maintenance costs are based on the actual tendered amount. The report costs for this landowner are \$202.00. Mr. Gerrits also advised that the landowner cannot compare two assessments unless both assessments are of the same size and the drain is located on the property line between the two properties.
- Mr. Gerrits advised that when landowners purchase their rural lands they may inherit a municipal drain. If landowners are unaware of the drain at the time of purchase it is unfortunate but there is nothing the drain can do about it. Although the houses and outbuildings are high in elevation the property is assessed a benefit for water and an outlet for water that travels downstream. It is important to remember that our water drains through other people's lands. Since the landowner does not see the benefit you can understand their frustration. However, the drain is located on the property and does improve drainage.
- The timing of the maintenance is usually when the land is dryer and the crops are off but it is always at the discretion of the Drainage Superintendent and in some cases needs to be completed during times which are not conducive to the lands.

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Frank Brazda – 3125 Town Line

- Mr. Brazda has appealed his assessment as being too high and due consideration has not been given to the use of the land. The property is in excess of 3 km from the Purbrook Creek and there is no standing water on the land. He suggested that maintenance of the drain should be paid from surplus taxes to cover the costs.

**Landowner Appeals**

Chair Dunlop invited the appellants to present their evidence for the appeals in the order previously provided.

1. Bruce & Brenda Goss – 4693 Line 11 North

Mr. Goss addressed the Court of Revision and advised that he was in favour of the reduction in hectares from 4 ha to 1.5 ha.

2. Cahaigue Farms Inc. – 1705 Mount St. Louis Road East

There was no one present to provide evidence on this appeal.

3. Ida & Oscar Fiorese – Fairgrounds Road

Mr. Fiorese addressed the Court of Revision and provided the following evidence:

- There is no benefit to his land as it is environmental and conservation exempted for taxation.
- The land is a natural habitat for species and birds and it is also landlocked with no road access. He inquired how there could be a benefit to landlocked property.
- He advised that he does not want any maintenance or damage done to his land as he cannot even remove trees with it being an environmental area.
- When the maintenance was completed in the 1980's he was advised that it would add value to his land but the value has not increased to date.
- The ability to tile this land in the future is of no benefit to him at this time.
- He also suggested that the costs of the maintenance should be paid through the general taxes.
- He advised that the legislation is very old and the Ministry should be updating to reflect the current use of land.
- Mr. Gerrits responded that the By-law and Drainage Act provides an easement which allows the municipality to enter the land for maintenance of the drain. In some instances, the police have attended to ensure access to the drain. If you do not see the benefit of the drain or are denying access the drain goes through the property whether you agree or not.

4. Barbara & William Broerken – 4597 Line 12 North  
Mr. Broerken addressed the Court of Revision and provided the following evidence:
  - He advised that the property was originally classified as environmentally protected and there is a ditch on Mount St. Louis Road that takes his water away. He did not understand what the difference would be with the use of the drain.
  - He advised that the process is now archaic and not in keeping with the use of the land and the drain should be abandoned. The legislation should also be updated. There are many laws on the books that are very old and no longer enforced and this is one example.
  - Mr. Gerrits advised that the Drainage Act is for rural Ontario and roadside ditches do not always assist with the drainage of land. The Drainage Act provides that if the water travels through your land then you are assessed.
5. Tom & Christine Jarvis – 1645 Burnside Line  
Mr. Jarvis addressed the Court of Revision and advised that he is in favour of the drain and was only ensuring that his land is assessed as agricultural. He suggested that maintenance should be completed on a regular basis in the future to reduce costs.
6. James & Lance Raymond – 2437 Wainman Line  
There was no one present to provide evidence on this appeal.
7. Charleen & Garry Johnston – 2555 Town Line  
Mrs. Johnston addressed the Court of Revision and provided the following evidence:
  - There is no benefit to their lands as it would have drained through the creek originally anyways. The land is so dry now that they cannot pasture their cattle and have to feed them hay.
  - The house and outbuildings are elevated as is a portion of the property.
  - The original environmentally protected areas are dry now and it is difficult to get hay off the fields.
  - The benefit portion of the assessment is being appealed as the property would have already drained into the creek and they should not be paying extra for drainage.
  - Mr. Gerrits advised that the previous watercourse was converted into the municipal drain and the original work would have been agreed to by the previous owners in order to drain their lands.
  - The drain was on their land when it was purchased and it will always remain there.

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## **Late Appeals**

The Chair requested the appellant with the late appeal to make his presentation to the Court of Revision.

### Frank Brazda – 3125 Town Line

Mr. Brazda addressed the Court of Revision and provided the following evidence:

- The catchment area needs to be revised as his land drains to the east and south away from the assessment area. He has two spring fed ponds on his property that do not drain and therefore there cannot be a benefit from the drain.
- There did not appear to be any assessments in the report for the railways or municipalities involved.
- The Drainage Act is valuable but only in certain areas of the Province where there are large valuable farms that can actually benefit from drainage.
- Mr. Brazda reviewed the Township of Severn's Financial Statements and reserves and indicated that the municipality could afford to pay for the drainage maintenance from surplus or reserves.
- The assessment area is out of date as no one even remembers who petitioned the drain in 1905 and the landscape has changed dramatically. There are subdivisions on the farmland now who will not benefit from the drain.
  
- Mr. Gerrits advised that the roads and railways are assessed in the report and the catchment area is from the original report. The municipality is a landowner like everyone else on the drain. This Court of Revision is only dealing with the assessments for maintenance at this time.
- The subject property is within the watershed and was assessed accordingly.

## **Deliberations**

The Chair advised those in attendance that having heard all of the evidence for the appeals, the Court of Revision would now recess to consider the information provided and render their decisions on the appeals.

MOTION NO. COR-050117-02: *Moved by Member Stevens and seconded by Member Macpherson that this meeting be recessed to consider the appeals and determine decisions on the matters before the Court of Revision.*

*CARRIED*

## **Meeting Recessed**

Having completed their deliberations on the appeals, the Court of Revision reconvened to announce their decisions.

**Decisions of the Court**

MOTION NO. COR-050117-03: *Moved by Member Stevens and seconded by Member Macpherson that this meeting be reconvened to announce the decisions on the appeals to the Court of Revision.*

CARRIED

**Meeting Reconvened**

MOTION NO. COR-050117-04: *Moved by Member Stevens and seconded by Member Macpherson that the following housekeeping amendments be approved:*

1. *Roll No. 4346020006207 received a name change from Rudd to Winterbum;*
2. *Roll No. 434602000620601 receive a name change from Rudd to Camber and Lambert;*
3. *Roll No. 435101000109110 receive a name change from D. & S. Brandon to D. & C. Brandon and the assessment be changed to agricultural;*
4. *Roll No. 4351010004044 received a roll no. change to 4351010001044; and*
5. *Roll No. 435101000100510 received a name change from D. & A. Stewart to C. & S. Dustin.*

CARRIED

MOTION NO. COR-050117-05: *Moved by Member Stevens and seconded by Member Macpherson that the appeal of Bruce & Brenda Goss to their assessment for 4693 Line 11 North in the amount of \$20.00 be received; AND FURTHER THAT the assessed area be reduced from 4 ha to 1.5 ha and the assessment schedules be reduced as follows:*

- Engineer's Report to \$10*
- SM1 to \$6*
- SM2 to \$7*
- SM3 to \$14*
- SM4 to \$15*

CARRIED

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MOTION NO. COR-050117-06: *Moved by Member Macpherson and seconded by Member Stevens that the appeal of Cahiaque Farms Inc. to their assessment for 1705 Mt. St. Louis Road East in the amount of \$526.00 be denied.*

CARRIED

MOTION NO. COR-050117-07: *Moved by Member Stevens and seconded by Member Macpherson that the appeal of Ida & Oscar Fiorese to their assessment for Fairgrounds Road in the amount of \$1,834.00 be denied.*

CARRIED

MOTION NO. COR-050117-08: *Moved by Member Macpherson and seconded by Member Stevens that the appeal of Barbara & William Broerken to their assessment for 4597 Line 12 North in the amount of \$205.00 be denied.*

CARRIED

MOTION NO. COR-050117-09: *Moved by Member Stevens and seconded by Member Macpherson that the appeal of Tom & Christine Jarvis to their assessment for 1645 Burnside Line in the amount of \$256.00 be assessed as agricultural land.*

CARRIED

MOTION NO. COR-050117-10: *Moved by Member Macpherson and seconded by Member Stevens that the appeal of James & Lance Raymond to their assessment for 2437 Wainman Line in the amount of \$62.00 be denied.*

CARRIED

MOTION NO. COR-050117-11: *Moved by Member Stevens and seconded by Member Macpherson that the appeal of Charleen & Barry Johnston to their assessment for 2555 Town Line in the amount of \$3,746.00 be denied.*

CARRIED

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MOTION NO. COR-050117-12: *Moved by Member Macpherson and seconded by Member Stevens that the appeal of Frank Brazda to this assessment for 3125 Town Line in the amount of \$226.00 be denied.*

*CARRIED*

MOTION NO. COR-050117-13: *Moved by Member Stevens and seconded by Member Macpherson that the revisions to the assessments in the Engineer's Report as approved at this meeting be adjusted to the road portions for the Township of Severn and the Township of Oro-Medonte, as applicable; AND FURTHER THAT in accordance with the Drainage Act, the Clerk provide written notice to all appellants of the decisions of the Court of Revision; AND FURTHER THAT the Engineer's Report be adopted as approved at this meeting by the Court of Revision.*

*CARRIED*

**Adjournment – 8:35 p.m.**

MOTION NO. COR-050117-14: *Moved by Member Stevens and seconded by Member Macpherson that this meeting be and it is hereby now adjourned.*

*CARRIED*

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Jane Dunlop, Chair

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Sharon R. Goerke, Clerk