



THE CORPORATION OF THE TOWN OF AMHERSTBURG

OFFICE OF ENGINEERING AND PUBLIC WORKS

MISSION STATEMENT: Committed to delivering cost-effective and efficient services for the residents of the Town of Amherstburg with a view to improve and enhance their quality of life.

Table with 2 columns and 3 rows containing author information and report details.

To: Members of the Drainage Board

Subject: Revise current By-Law – Jeths Drain

1. RECOMMENDATION:

It is recommended that:

- 1. That the Engineers Report, dated January 14, 2025 for improvement on the Jeths drain BE RECEIVED.
2. That the Engineers Report, dated May 7, 2024 appended to By-Law No. 2024-006 for improvement on the Jeths drain BE RESCINDED.
3. That the Amended Engineers Report, dated January 14, 2025 BE APPENDED to By-Law No. 2024-006 as the governing Engineers Report.

2. BACKGROUND:

An engineer’s report, adopted by Town bylaw, forms the legal basis for the construction and management of a drainage system under the Act. The drainage work adopted in that bylaw must be constructed in accordance with the drawings and specifications in the engineers report, however, there may be circumstances discovered during construction that require the design changes to be considered.

Section 58 of the Drainage Act (Act), specifically, subsections 1 through 5 speak to the referral back to the Engineer, Quashing of the bylaw, the Repeal of the bylaw, errors in the report and ultimately, the appeal to the Tribunal for methods that provide Council the ability to amend a drainage bylaw.

Section 58(4) is proclaimed by the Lieutenant Governor to be repealed (2020, C. 18, Sched 4, s. 7)

In its place, the Minister has provided Fact Sheet #21-047 in September of 2021 that creates an order for which municipalities can revise engineer's reports without having to go to the Tribunal.

The Ministry has set out a process under Ontario Regulation 500/21 whereby, those changes can occur.

### **3. DISCUSSION:**

Town Council along with the community of affected landowners approved and authorized that the recommended works from the examination of the engineer and in the report of that examining engineer dated May 7, 2024 be constructed and adopted as By-Law 2024-006 providing the legal basis for the construction and future maintenance of the Jeths Drain.

Changes during construction (culvert material and location) assessed solely to one landowner as a Special Benefit have surfaced. As a result, the requirement for the original culvert design is no longer warranted. Access to another portion of land is still required, but the access culvert in the current report was required to be designed above provincial standards and was specific to a proposed land use. For reasons outside the drainage act, the proposed development is no longer active or proposed and will not proceed forward. Considered an unforeseen circumstance by the drainage project, the owner requested that a standard culvert be installed as opposed to the current design. The owner also requested that the standard culvert be moved to a more functional position that serves the current use of the land.

Currently, the contract is awarded, but construction has not been scheduled. The awarded contractor was made aware of the changes and is amenable. They have also provided the necessary estimates for the revised work to replace the work originally tendered.

The examining engineer has provided a revised report dated January 14, 2025 which revises the original report on matters relative to this landowner, the design of the new culvert location and material, and all cost differences associated with the material and construction changes and all incidentals related to the revisions in the report have been assessed as a Benefit Assessment to those lands.

As there is no adverse effect to any other landowner, It makes amending the bylaw easier by way of any potential appeal. Since the assessments to lands has not changed, there is no economic reason for appeal. Notwithstanding any appeals on construction or workmanship, the project changes in the revised report do not adversely affect the financial liabilities of upstream and downstream landowners.

As a secondary measure, the Drainage Superintendent has asked that the requesting landowner approve the costs for the changes and that they withdraw any right to appeal the design or the adjusted cost associated with same. The landowner has approved the extra cost assessed to them and has agreed to forgo any future right to appeal specifically, and appeal related to the costs and/or the designed crossing.

**4. RISK ANALYSIS:**

The Town is obligated to construct, maintain and repair drainage works and to recover the cost to do so from all affected lands, but only as dictated by the current bylaw for said drain. Therefore, the Town must make revisions to the bylaw to reflect the changes in the legal authority to construct the details in the engineers report appended to that bylaw.

The Act also requires that once a project is completed, that the Council of the initiating municipality pass a bylaw to assess the actual costs of a drainage project under what is known as an Amending By-Law.

**5. FINANCIAL MATTERS:**

The Town does not have a drainage assessment on the Jeths Drain as none of our lands or roads use the drain. Town costs to administer the Act are not recoverable.

**6. CONSULTATIONS: - N/A**

**7. CONCLUSION:**

Administration is recommending that the Amended Engineers Report, dated January 14, 2025 **BE APPENDED** to By-Law No. 2024-006 as the governing Engineers Report for By-Law 2024-006 providing the basis for the construction and use for the repair and improvements to the Jeths Drain.



Sam Paglia, P.Eng.,  
**Drainage Superintendent and Engineering Coordinator**