



## THE CORPORATION OF THE TOWN OF AMHERSTBURG

### OFFICE OF ENGINEERING & INFRASTRUCTURE SERVICES

*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.*

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Author's Phone: 519 736-3664 ext. 2318	Date to Council: July 11, 2022
Author's E-mail: smcvitty@amherstburg.ca	Resolution #: N/A

To: Mayor and Members of Town Council

Subject: Pike Road Drain Improvements and Auxiliary Outlet

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#### 1. RECOMMENDATION:

It is recommended that:

1. The Drainage Board Meeting Minutes of May 17, 2022, **BE RECEIVED**;
2. **By-law 2022-031** being a by-law to provide for the Pike Road Drain Improvements and Auxiliary Outlet be taken as having been read a 3<sup>rd</sup> and Final time and finally passed and the Mayor and Clerk **BE AUTHORIZED** to sign same;
3. The Director of Corporate Services/Chief Financial Officer **BE DIRECTED** to increase the Drainage Line of Credit from \$2,000,000 to \$4,000,000 to finance the Pike Road Drain Improvements and Auxiliary Outlet project, with costs to be recovered according to the assessment schedule provided under the engineering report in late 2023 following project completion; and,
4. An operating expenditure not to exceed \$505,345 including net HST **BE APPROVED**, to be funded by a combination of an allocation from the 2021 surplus and a commitment for the balance from the 2023 Budget.

#### 2. BACKGROUND:

The Pike Road Drain is an existing Municipal Drain that provides drainage benefit to a large watershed of approximately 500 acres of residential lands located to the north of Simcoe Street. Specifically, approximately half of the lands within the "Monopoly" subdivision, along with those on Martin Crescent, Bratt Drive, Hainer Court, Hart Street, and properties on both sides of Simcoe east of Fryer, benefit from the Pike Road Drain.

The existing Pike Road Drain generally consists of a buried concrete pipe system with connecting manholes and catchbasins, with its upper end consisting of an open drain between Meloche Road and Richmond Street. The drain runs within private residential lands along the north side of Simcoe Street, extending from its upstream limits at Meloche Road to its outlet into the 2<sup>nd</sup> Concession Road Drain North at the north-east corner of Fryer Street.

In order to alleviate flooding historically experienced to residential properties along Simcoe Street and to provide drainage relief to those lands downstream, and in accordance with Council's 2015 authorization to allow Administration to utilize an engineering roster to provide services under the Drainage Act, Gerard Rood, P.Eng., of Rood Engineering Inc., was instructed by Administration on November 27<sup>th</sup>, 2015, to complete a report for improvements to the Pike Road Drain in accordance with Section 78 of the Drainage Act.

### **3. DISCUSSION:**

Since receiving his instruction, the engineer has performed all of the necessary surveys and investigations and has submitted his report for the Pike Road Drain Improvements and Auxiliary Outlet, dated January 26, 2022. At the March 22, 2022 Drainage Board meeting, the drainage report was presented to the Board, and residents were provided the opportunity to speak to their concerns. Council provisionally adopted By-law 2022-031 for the Pike Road Drain Improvements and Auxiliary Outlet at its April 11, 2022 meeting. Since then, the Court of Revision has taken place at the May 17, 2022 Drainage Board meeting, where residents were invited to attend and were provided the opportunity to appeal their assessments. There were no appeals received, nor were there any residents in attendance. Minutes from this meeting and a copy of the drainage report have been attached. The Drainage Board has recommended that the schedule of assessment as presented by the engineer under his report be accepted and that the By-law for the works be finally adopted by Council.

The drainage report completed by Gerard Rood, P.Eng. recommends improvements to a portion of the existing Pike Road Drain and the installation of a new, auxiliary drain to be located on the south side of Simcoe Street. The auxiliary drain will provide relief to the upper and lower reaches of the watershed. Manhole connections and roadway crossing culverts will also be provided to join the existing Pike Road Drain on the north side of Simcoe to the new auxiliary drain. The new auxiliary drain, which will consist of buried concrete storm sewer pipes, catch basins, manholes, and a swale to convey overland flow, will be capable of carrying the 1 in 100 year storm event to the open portion of the 2<sup>nd</sup> Concession Road Drain North behind Ste. Jean Baptiste elementary school. Once completed, the auxiliary drain will intercept flows from the eastern parts of the watershed and divert them to the 2<sup>nd</sup> Concession Road Drain North, thereby reducing the amount of flow previously taken by the downstream portion of the Pike Road Drain. This will serve to benefit the entire watershed by alleviating existing flooding along Simcoe Street, and lessening the burden on the existing drain thereby increasing its overall level of service. Additionally, the recommended improvements will provide storm water outlet for Mulberry Court, a 26 block residential subdivision comprised of 52 semi-detached townhouses proposed for the north side of Simcoe, west of Martin Crescent. Engineering plans and specifications describing the technical details of the proposed drainage improvements are provided in the appended drainage report. A map of the existing and proposed Pike Road Drain and Auxiliary Outlet has been appended to this report as well.

The total estimated cost for the Pike Road Drain Improvements and Auxiliary Outlet is \$1,570,000 including net HST. An assessment schedule is included in the drainage report which outlines how the costs of the project will be funded. In general, assessments are broken down as follows:

#### **Pike Road Drain Improvements and Auxiliary Outlet - Assessments**

Town of Amherstburg	\$ 505,345
County of Essex	\$ 195,492
Mulberry Court Subdivision	\$ 260,796
Landowners (private – non-agricultural lands)	<u>\$ 608,367</u>
<b>Total Estimated Project Cost (incl. net HST)</b>	<b>\$ 1,570,000</b>

The costs listed above are estimates according to the drainage report completed by the engineer. Final project costs and assessments may vary depending on actual values tendered and interim financing costs for the project. At this stage, appeal periods to the Court of Revision and the Ontario Appeal Tribunal have expired, with no appeals received.

#### **4. RISK ANALYSIS:**

##### **Adoption of the By-law**

Under the Drainage Act, the municipality can be held responsible for damages due to flooding and drain failures if recommended improvements are not completed. Affected landowners may also appeal to the Ontario Appeal Tribunal if a report is not adopted by Council. This is described under Section 45(2) of the Drainage Act which states:

##### **Appeal or referral to Tribunal**

*45(2) Where a report is not adopted by council, any petitioner may appeal to the Tribunal or, where lands used for agricultural purposes are included in the area to be drained, the Minister may refer the matter to the Tribunal. R.S.O. 1990, c. D.17, s. 45 (2); 2006, c. 19, Sched. A, s. 6 (1).*

The general powers of the Tribunal are provided under Section 51(1) of Act:

##### **Powers of Tribunal**

*51(1) On any appeal or reference to the Tribunal under this Act, the Tribunal shall hear and determine the matter and, where not so provided, may make such order and direct such things to be done as are authorized by this Act or as it considers proper to carry out the purposes of this Act. R.S.O. 1990, c. D.17, s. 51 (1); 2006, c. 19, Sched. A, s. 6 (4).*

While Administration cannot predict the likelihood of such an appeal from an affected landowner, it should be noted any resident that has been experiencing hardship due to flooding or a lack of adequate drainage within this drainage system could submit an appeal to the Tribunal should Council not elect to provisionally adopt the by-law.

Decisions rendered by the Tribunal are final, and the Municipality would be statutorily obligated to heed any such decisions. In addition, Tribunal hearings add costs and project delays.

### Passing of the Provisional By-law and Delay of Construction

Once the drainage report has been provisionally adopted, and once all appeal periods have expired and appeal matters have been decided, Council may elect to pass the provisional by-law. This is illustrated under Section 58(1) of the Drainage Act:

#### **By-law may be passed**

*58 (1) Where the council of an initiating municipality has adopted a report for the construction of a drainage works after the time for appealing has expired and there are no appeals or after all appeals have been decided, the council may pass the provisional by-law to which the engineer's report was attached, thereby authorizing the construction of the drainage works, and work may be commenced ten days after the by-law is passed if no notice of intention to make application to quash the by-law has been filed with the clerk of the council. R.S.O. 1990, c. D.17, s. 58 (1); 2010, c. 16, Sched. 1, s. 2 (23).*

After the by-law has been passed, it is advisable to proceed as quickly as reasonably possible with construction. Should construction be delayed, appeal rights are afforded to affected landowners under Section 58(5) of the Drainage Act. The intention of this section of the Act is to ensure that a landowner's right to sufficient drainage as recommended by the engineer is protected. This section of the Act also helps to mitigate further damage suffered from a lack of drainage. Section 58(5) is as follows:

#### **Appeal to Tribunal**

*58 (5) Where the council does not proceed with reasonable dispatch with the construction of the work after passage of the by-law, a petitioner may appeal to the Tribunal or, where lands used for agricultural purposes are included in the area to be drained, the Minister may refer the matter to the Tribunal, and the Tribunal may direct the council to take such action as the council is authorized to take under this Act and as the Tribunal considers proper. R.S.O. 1990, c. D.17, s. 58 (5); 2006, c. 19, Sched. A, s. 6 (1); 2010, c. 16, Sched. 1, s. 2 (24).*

If Council elects to pass the by-law, Administration recommends an expedient start to tendering and construction, with the expectation for construction to commence in the fall of 2022. Should construction be delayed, appeal rights are afforded to affected landowners under Section 58(5) of the Drainage Act.

### **5. FINANCIAL MATTERS:**

Should Council pass the recommended by-law, the estimated financial impacts of costs still to be incurred will be reflected in the draft 2022-2023 Budget under the Drainage budget centre for costs and funding (recoveries) of the project. Costs incurred to date will continue to be financed by the Town until recovered from benefiting property owners, plus applicable interest, based on the assessment schedules in the engineer's report; such recoveries are usually done once the project is completed.

Drainage projects are financed through a line of credit, whereby repayments are made regularly as project costs are recovered through assessments. Historically, the Drainage Line of Credit has been set to \$2,000,000, which has been an appropriate value in light of the typical amount of drainage projects that require financing on an annual basis. Due to the size of the estimated costs for the Pike Road Drain Improvements and Auxiliary Outlet project, the current line of credit will not be sufficient to finance the proposed work in addition to all other ongoing and expected drainage projects. To address this, Administration recommends increasing the Drainage Line of Credit from \$2,000,000 to \$4,000,000. The nature of this drainage project is that approximately 68% of the cost, which includes assessments to the Count of Essex, will be recovered from taxpayers late 2023, with the majority of cost incurred in early 2023

As shown above, the estimated cost for the Pike Road Drain Improvements and Auxiliary Outlet project is estimated at \$1,570,000, excluding interim financing costs and including net HST. The Town's share of those estimated costs is \$505,345. Administration will bring forward a recommendation to allocate a portion of the 2021 surplus to the Drainage Reserve with the 2021 Year-end audit to plan for this expenditure. In addition, Administration will bring forward a report to Council recommending tender award following the completion of the public tender process. This report will provide Council with updated cost figures and assessments based on the results of the tender.

## **6. CONSULTATIONS:**

Director of Corporate Services/Chief Financial Officer  
Chief Administrative Officer  
Supervisor of Accounting

## **7. CONCLUSION:**

Administration is recommending that Council adopt the recommended By-law and approve an operating expenditure of \$505,345 to be funded through an allocation from the 2021 surplus and a commitment for the balance from the 2023 Budget to fund the Town's share of the costs for the Pike Road Drain Improvements and Auxiliary Outlet project. Further, Administration is recommending that the Drainage Line of Credit be increased from \$2,000,000 to \$4,000,000 to finance the Pike Road Drain Improvements and Auxiliary Outlet project, with costs to be recovered according to the assessment schedule provided under the engineering report in late 2023 following project completion.



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Shane McVitty  
**Drainage Superintendent and Engineering Coordinator**

## Report Approval Details

Document Title:	Pike Road Drain Improvements and Auxiliary Outlet.docx
Attachments:	<ul style="list-style-type: none"><li>- 220524 - Drainage Board Meeting Minutes - May 17, 2022.pdf</li><li>- Bylaw 2022-031 -Pike Road Drain - Provisionally Adopted and Signed.pdf</li><li>- Public Drainage Report - Pike Rd Dr and Aux Outlet.pdf</li><li>- Pike Road Drain - Aerial Map.pdf</li></ul>
Final Approval Date:	Jun 28, 2022

This report and all of its attachments were approved and signed as outlined below:



Antonietta Giofu



Tracy Prince



Valerie Critchley