

**Report to
Rapport au:**

**Court of Revision
Commission de révision**

**September 4, 2014
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**Submitted by
Soumis par:**
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Ward: RIDEAU-GOULBOURN (21)

File Number: ASC2014-COS-ESD-0017

SUBJECT: ARBUCKLE MUNICIPAL DRAIN – COURT OF REVISION

**OBJET: COMMISSION DE RÉVISION DES INSTALLATIONS MUNICIPALE DU
DRAINAGE ARBUCKLE**

REPORT RECOMMENDATIONS

That the members of the Court of Revision:

- 1. Receive the report of the engineer appointed under the Drainage Act entitled Engineer's Report, Arbuckle Municipal Drain Modification and Improvements, Goulbourn Ward, dated February 2010.**
- 2. Convene for the first sitting of 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, Arbuckle Municipal Drain Modification and Improvements, Goulbourn Ward, dated February 2010.**

RECOMMANDATIONS DU RAPPORT

Que les membres de la Commission de révision :

1. Prennent connaissance du rapport de l'ingénieur nommé aux termes de la *Loi sur le drainage*, intitulé *Engineer's Report, Arbuckle Municipal Drain Modification and Improvements, Goulbourn Ward* (Rapport de l'ingénieur, Modifications et Améliorations au drain municipal Arbuckle, quartier Goulbourn), daté de février 2010.
2. Se réunissent pour la première séance de la Commission 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 des terrains qui été évalués pour les travaux de drainage dans le *Rapport de l'ingénieur, Modifications et Améliorations au drain municipal Arbuckle, quartier Goulbourn*, daté de février 2010.

BACKGROUND

The following description provides a high level overview of the proposed Arbuckle 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, Arbuckle Municipal Drain Modification and Improvements, Goulbourn Ward, dated February 2010*.

Drainage works commonly referred to as the Arbuckle Award Drain are believed to have been constructed in the late 1800's and are located in the Village of Richmond along the western boundary of the village south of Perth Street and runs in a general north to south direction to the Jock River. The existing drainage works provide outlet for surrounding lands and roads including those in the watershed of the Van Gaal Municipal Drain. The proposed Arbuckle drainage works was initiated by a landowner petition pursuant to Section 4 of the *Drainage Act*.

The proposed modifications and improvements lie within Lots 22 and 23, Concession III, Former Goulbourn Township. Proposed modifications to the existing drainage works commence at the confluence with the Jock River, and ends at Perth Street, to the north.

Proposed modifications to the Moore Branch of the existing drainage works commence at the outlet to the main drain. The existing channel currently within the road allowance of Queen Charlotte Street is to be relocated to the west, outside of the road allowance.

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” (*Understanding Court of Revision Procedures Under the Drainage Act*, published by Ontario Ministry of Agriculture, Food and Rural Affairs, February 2010, attached as Document 1 to this report).

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 First Sitting of Court of Revision and the three sample appeal forms that were sent by mail on August 7, 2014, to each owner of lands assessed for the drainage works in the *Engineer's Report, Arbuckle Municipal Drain Modification and Improvements, Goulbourn Ward, dated February 2010.*, is attached as Document 2 to this report. A copy of the provisional by-law that received 1st and 2nd reading by Council on July 9, 2014 included in Document 2 to this report.

SUPPORTING DOCUMENTATION

Document 1 – “Understanding Court of Revision Procedures Under the *Drainage Act*”, published by Ontario Ministry of Agriculture, Food and Rural Affairs, February 2010

Document 2 – Notice of First Sitting of Court of Revision mailed out on August 7, 2014 and the three sample appeal forms.

Document 3 – Location plan

Document 4 – Schedule 1, Distribution of costs for the construction of all sections