

**Report to
Rapport au:**

**Court of Revision
Tribunal de révision
23 November 2015 / 23 novembre 2015**

**Submitted on October 16, 2015
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**Submitted by
Soumis par:**
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Ward: RIDEAU-GOULBOURN (21)

File Number: ACS2015-COS-ESD-0024

**SUBJECT: Branch 1 of the Flewellyn Municipal Drain upstream of Flewellyn
Road – Court of Revision**

**OBJET: Conduite secondaire n° 1 du drain municipal Flewellyn en aval du
chemin Flewellyn – Commission de révision**

REPORT RECOMMENDATIONS

That the members of the Court of Revision:

- 1. Receive the report of the Engineer appointed under the *Drainage Act* entitled Amendment to the Engineer's Report for the Flewellyn Municipal Drain Branch 1 dated August 2015.**
- 2. Convene for the first sitting for 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 Amendment to the Engineer's Report for the Flewellyn Municipal Drain Branch 1 dated August 2015.

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 de 1990 sur le drainage*, intitulé *Amendment to the Engineer's Report for the Flewellyn Municipal Drain Branch 1*, daté du mois d'août 2015;**
- 2. Se réunissent pour la première séance de la Commission de révision aux termes du paragraphe 46(3) de la *Loi de 1990 sur le drainage*, afin d'entendre les appels interjetés, aux termes de l'article 52 de la *Loi de 1990 sur le drainage*, par les propriétaires de terrains évalués pour les travaux de drainage dans le rapport intitulé *Amendment to the Engineer's Report for the Flewellyn Municipal Drain Branch 1*, daté du mois d'août 2015.**

BACKGROUND

The following provides a high level overview of the proposed amendments to the existing Branch 1 of the Flewellyn Municipal Drain drainage works upstream of Flewellyn Road. This brief overview does not describe the project or its purpose in its entirety, for further details please refer to the Amendment to the Engineer's Report for the Flewellyn Municipal Drain Branch 1 dated August 2015 prepared by Robinson Consultants Inc.

The Flewellyn Municipal Drain was first constructed in 1971 under By-law No. 12-71 in the former Township of Goulbourn. The Flewellyn Municipal Drain is currently governed by the engineer's report entitled "Engineer's Report Flewellyn Municipal Drain", August 12, 1970, revised October 21, 1970 and further revised May 5, 1971 by Graham, Berman & Associates Limited. A new Engineer's report is required to amend the existing report and By-law for the drain to accommodate the land use and drainage changes. The Engineer's Report dated August 2015 proposes modifications to the existing Branch 1 of the Flewellyn Municipal Drain include lowering the profile and increasing the cross-section of the drain downstream of Fernbank Road to accommodate the elevation of the outlet control structure for the proposed storm water management pond immediately upstream of Fernbank Road, replacing existing culverts to provide a safety factor, updated profile drawings and assessment schedules to reflect

the new land use and property parcels. As the works are primarily required to provide improved drainage associated with certain lands designated for development, all costs have been assessed by the Council-appointed Engineer to the developers.

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.

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 was sent by mail on October 29, 2015, to each owner of lands assessed for the drainage works in the Engineer's Report entitled Amendment to the Engineer's Report for the Flewellyn Municipal Drain Branch 1, dated August 2015 prepared by Robinson Consultants Inc. A copy of the provisional by-law that received 1st and 2nd reading by Council on October 14, 2015 is included in Document 2 to this report. Document 3 to this report is the Amendment to the Engineer's Report for the Flewellyn Municipal Drain Branch 1, dated August 2015.

SUPPORTING DOCUMENTATION

Document 1 – Location plan

Document 2 – Notice of First Sitting of Court of Revision mailed out on October 29, 2015.

Document 3 – Amendment to the Engineer's Report for the Flewellyn Municipal Drain Branch 1, dated August 2015.