

**Report to
Rapport au:**

**Court of Revision
Commission de révision
2 May 2019 / 2 mai 2019**

**Submitted on April 18, 2019
Soumis le 18 avril 2019**

**Submitted by
Soumis par:**

**Laila Gibbons, Director, Parks, Forestry & Stormwater Servics / Directrice,
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Contact Person

Personne ressource:

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Ward: BARRHAVEN (3)

File Number: ACS2019-PWE-GEN-0012

**SUBJECT: Court of revision - Amendment to the Engineer's Report for the
O'Keefe Municipal Drain Block C, Stations 0+000 to 0+234**

**OBJET: Commission de révision – Modification au rapport de l'ingénieur
pour le drain municipal O'Keefe, îlot C, de la station 0+000 à la
station 0+234.**

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 O'Keefe Municipal Drain, Block C, Stations 0+000 to 0+234 dated November 2018.**
- 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 O'Keefe Municipal Drain, Block C, Stations 0+000 to 0+234 dated November 2018.

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 modification au rapport de l'ingénieur pour le drain municipal O'Keefe, îlot C, de la station 0+000 à la station 0+234), date du mois de novembre 2018;**
- 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 de terrains évalués pour les travaux de drainage dans le rapport intitulé daté du mois de novembre 2018**

BACKGROUND

The following provides a high level overview of the proposed modifications, improvements and maintenance to the existing O'Keefe 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 entitled Amendment to the Engineer's Report for the O'Keefe Municipal Drain, Block C, Stations 0+000 to 0+234 dated November 2018 prepared by Robinson Consultants Inc.

The O'Keefe Municipal Drain was first constructed in 1968 under By-law No. 17-68 in the former Township of Nepean. The Engineer's Report was updated in 2006 to relocate a portion of the existing drain and to accommodate land use changes within in Lot 16, Concession IV, Barrhaven Ward. The Engineer's Report was further updated in 2015 to accommodate land development upstream of McKenna Casey Road, to lower the existing profile, increase the existing cross-section of the drain and to update the drainage basin. The amendments to the O'Keefe Municipal Drain completed in 2015 also include land use change from a rural to urban, the provision for a proposed stormwater management system within the development area and the abandonment of the North East Branch of the drain. The Engineer's Report dated November 2018 accommodates land use changes within Block C from vacant to urban development and the installation of a new culvert within the existing O'Keefe Municipal Drain. All costs associated with this report, the initial design and other costs will be recovered through

assessments to the property owners of the lands in Block C. Future maintenance costs for Block C of the O'Keefe Municipal Drain will be assessed as per assessment schedule "A" Schedule of Assessment – Block 'C' for the O'Keefe Municipal Drain in the Engineer's Report dated November 2018.

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 April 11, 2019, to each owner of lands assessed for the drainage works in the Engineer's Report entitled Amendment to the Engineer's Report for the O'Keefe Municipal Drain, Block C, Stations 0+000 to 0+234 dated November 2018 and prepared by Robinson Consultants Inc. A copy of the provisional by-law that received 1st and 2nd reading by Council on April 10, 2019 is included in Document 2 to this report. Document 3 to this report is the Amendment to the Engineer's Report for the O'Keefe Municipal Drain, Block C, Stations 0+000 to 0+234 dated November 2018.

FINANCIAL IMPLICATIONS

There are no financial implications associated with this report. However, there is a risk that the allocation of costs currently identified in the Engineer's report may be appealed, which could result in higher costs to the City, but that is unknown at this point in time.

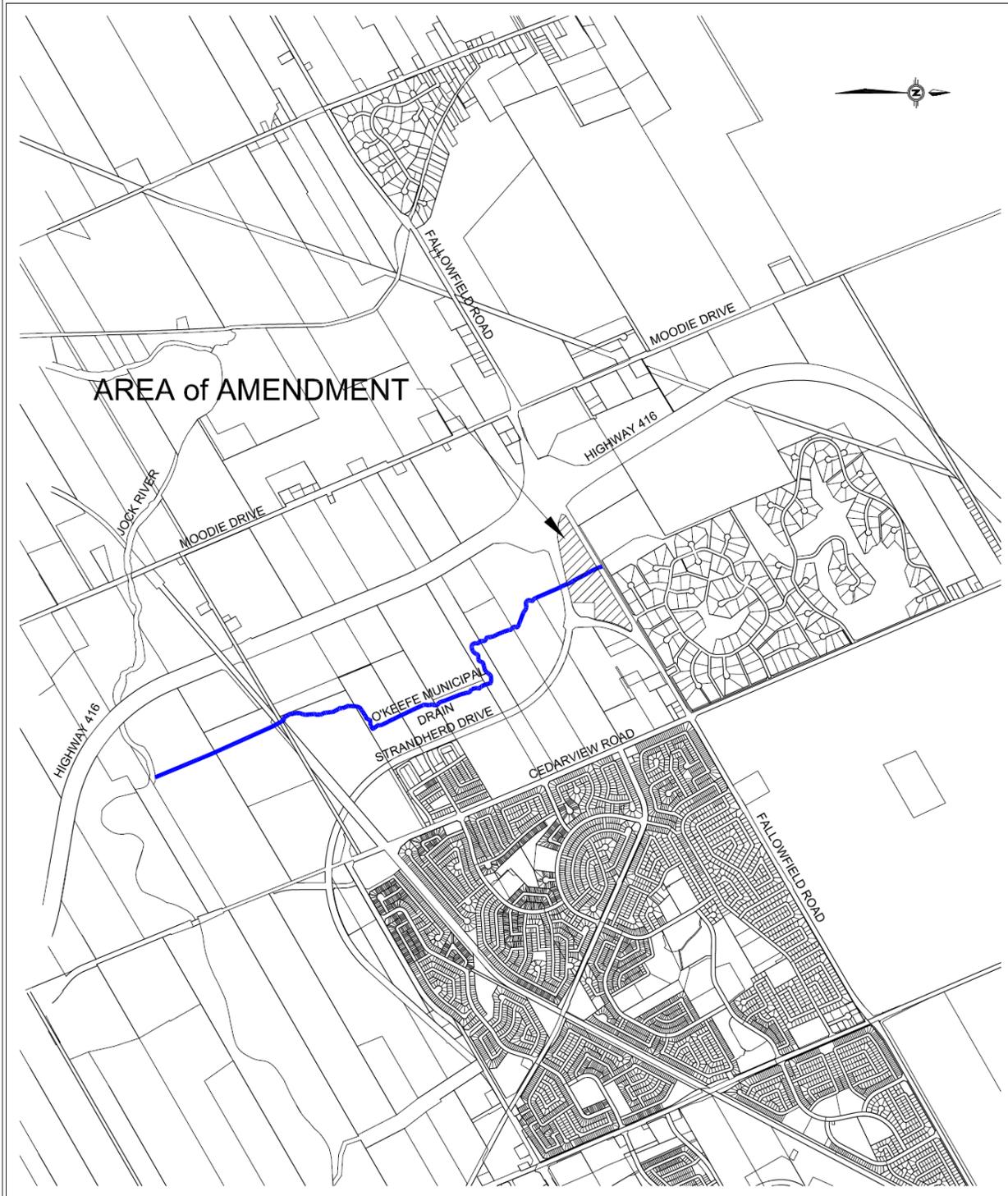
SUPPORTING DOCUMENTATION

Document 1 - Location plan

Document 2 – Notice of First Sitting of Court of Revision mailed out on April 11, 2019.

Document 3 – Amendment to the Engineer's Report for the O'Keefe Municipal Drain, Block C, Stations 0+000 to 0+234 dated November 2018.

Document 1



Robinson
Consultants

Title		LOCATION PLAN		Fig. No.	
				3.1	
Project		O'KEEFE MUNICIPAL DRAIN		Job No.	
				17081	
		Scale		Date	
		N. T. S.		NOVEMBER 2018	