



COURT OF REVISION

MINUTES

Monday, November 6, 2017

7:00 PM

Unico Community Centre

37 Beech Street

Kingsville, ON N9Y 1A9

Members of the Court: Nelson Santos
Gord Queen
Thomas Neufeld
Larry Patterson
Susanne Coghill

Members of Administration Jennifer Astrologo, Director of Corporate Services/Clerk
Sandra Kitchen, Deputy Clerk-Council Services
Director of Financial Services S. Zwiers
Director of Municipal Services A. Plancke
Public Works Manager S. Martinho
Public Works Supervisor/Engineering Coordinator R. Mackie
Drainage Superintendent K. Vegh
CAO Peggy Van Mierlo-West

A. OPENING COURT OF REVISION

Chairman Santos opened the Court at 7:20 p.m.

B. DISCLOSURE OF PECUNIARY INTEREST

Chairman Santos reminded the members that any declaration is to be made prior to each item being discussed and to identify the nature of the conflict, if any, as the agenda items come forward.

C. PURPOSE OF THE MEETING

The purpose of the Court of Revision is to hear from any owner who wishes to appeal his/her assessment as set out in the Municipal Drainage Report dated June 17, 2016 for the Esseltine Drain, Town of Kingsville--RC Spencer Associates Inc. Project No. 14-425.

L. Zarlenga, P. Eng. and Shane Lafontaine of RC Spencer Associates Inc., and K. Vegh, Drainage Superintendent

- i) Notice of Sitting of Court of Revision, dated October 16, 2017;
- ii) Excerpt of the Report Consideration Minutes, dated September 26, 2017;
- iii) By-law 93-2017, being a by-law to provide for the repair and improvement of the Esseltine Drain and the construction of the Richard Hicks Branch Drain and the Mucci-Hicks Branch Drain, provisionally adopted on September 26, 2017.

D. LIST OF APPEALS OF ASSESSEMENTS

The following Notices of Appeal to Court of Revision filed with the Clerk of The Corporation of the Town of Kingsville will be heard:

- i) David Gulyas and Jacqueline Bruno (290-10200)--Grounds for Appeal--Their land has been assessed too high; majority of their land drains to the lake as they have lakefront property which slopes to lake.

Comments from Mr. Gulyas:

Mr. Gulyas indicated that he is in favour of the project as a whole but had a concern with respect to the amount of land affected and the apportionment (that it is not 80% of the lot affected, but rather 30-40%). Engineer Zarlenga indicated that there was an error made early in the formation of the report and an adjustment will be made (from approx. .298 to .109 hectares affected). Engineer Zarlenga confirmed that the assessment to that property will now be approximately \$500.00.

John Penner, 1592 County Road 34--He indicated that he has been assessed for a larger home by 'some four feet'. Chairman Santos explained that this Court of Revision is for discussion of the Esseltine Drain schedule of assessment and not property tax assessment. Director of Financial Services S. Zwiers will contact Mr. Penner to discuss his concern (not related to this Drain).

ii) Harry Keller and Guglielmina Keller (290-23200)--Grounds for appeal--their land has been assessed too high--assessed area affected of 0.69 acres is too large and should be 0.28 acres as established in the East Ruthven Drain assessment; and affected property has only recently been connected to Esseltine Drain over the past 4-5 years as a result of the construction of the East Ruthven Drain in 2012 and therefore has not contributed water into the Esseltine Drain to be held responsible for erosion damage downstream over the past 50-100 years.

Comments from Mr. Keller:

Mr. Keller explained the slope of the land (the land slopes upward at the back and the water cannot flow up the slope). Engineer Zarlenga indicated he will meet Mr. Keller at the site and review the assessment and elevations. Mr. Keller also wanted to ensure that his concern regarding the short length of time his property has been connected to the Esseltine Drain would also be considered. Mr. Zarlenga indicated he would also review that item.

iii) Kathy and Leo Probe (290-09200); Grounds for appeal--Land has been assessed too high; The fair market value of their property used to calculate the allowance for property for the drain was based on 2016 property values and might not be valid at this time; the allowance calculated for property used for the cable concrete flow channel was .023 hectares and should be approximately .028 hectares; allowance for trees was 1 tree under 25 cm and should be 7 trees under 25 cm; have not been advised how much of their property will be severed for the project.

Comments from Mr. Probe:

Mr. Probe indicated that he received an email with a cross section sketch on Friday, but that there are at least 7 trees that will be affected and that his property has a steel wall that was constructed to prevent erosion and they feel they should receive an allowance for that expense.

Engineer Zarlenga indicated that information was provided to Mr. Probe regarding tree identification along with a cross section showing elevations. Mr. Zarlenga will attend at the site specifically for the tree reassessment, and to explain what is going to happen on their property. He stated that the steel wall is non-existent in some places but that it will serve a purpose (the top of the steel wall will be cut off and the remaining wall will be left alone).

iv) Scott Shilson (290-09800)--Grounds for appeal--due consideration has not been given as to type of use of land; objects to the amount of allowances given for materials used and installed to repair and slow down substantial erosion.

Engineer Zarlenga indicated that Mr. Shilson is appealing an allowance and he would have to make his appeal through the Agriculture, Food and Rural Affairs Tribunal; that this Court of Revision is to review assessments.

v) Carolyn Stockwell (290-27100) Grounds for appeal--her land has been assessed too high; other land or road has been assessed too low; due consideration has not been given as to type of use of land; much of the cost is attributable to urban development in the southerly reaches of the watershed, and intensification of some agricultural uses in the northerly reaches. Those changes are not fully accounted for in the assessments.

Solicitor Paul Courey was in attendance representing Ms. Stockwell. Ms. Stockwell was also in attendance.

Comments from Solicitor Courey:

Mr. Courey stated that his client's appeal is more basic. He indicated that in his opinion this is not a drain improvement project--the Drain ends 873 metres before the lake, the ravine is eroding, and there is no language in the report that says there is a problem with the drain. Solicitor Courey's opinion is that the only assessment to the owners presently, should be as the drain presently exists (Station 0+873 northward). He suggested that the engineer "charge the drain with work done on the drain, and charge the ravine with work that is done on the ravine".

Mr. Zarlenga indicated that Ms. Stockwell's land does indeed drain to the Esseltine Drain; and that he was not aware of the other issue that Solicitor Courey spoke to this evening. Mr. Zarlenga will speak to Mrs. Stockwell and her solicitor and see if there is any methodology of making it suitable.

vi) 1382296 Ontario Limited (290-17601)--Grounds for Appeal--land has been assessed too high--no consideration has been provided for the existing storm water management ponds, and the restricted rate of flow from these ponds; section 22 Value of Benefit Liability is incongruent with the actual benefit received;

Comments:

Mr. George Dekker, Project Manager, Mucci Farms, was in attendance with Mr. Bert Mucci and asked to speak to all four of the related appeals for 290-17601, 290-18200, 290-38700, and 290-17900 at the same time. Chairman Santos then brought forward vii), viii) and ix) as follows:

vii) Mucci Farms Ltd. (290-18200)--Grounds for appeal--land has been assessed too high--No consideration has been provided for the existing SWM ponds and

the restricted rate of flow from these ponds; Section 22 Value of Benefit Assessment is incongruent with the actual benefit received;

viii) Mucci Farms Ltd. (290-38700)--Grounds for appeal--land has been assessed too high--no consideration has been provided for the existing SWM ponds, and the restricted rate of flow from these ponds; Section 22 Value of Benefit Assessment is incongruent with the actual benefit received;

ix) Southshore Greenhouses Ltd. (290-17900)--Grounds for appeal--land has been assessed too high; no consideration has been provided for the existing SWM pond and the restricted rate of flow from these ponds; Section 22 Value of Benefit assessment is incongruent with the actual benefit received;

Comments from Mr. Dekker:

Mr. Dekkar questioned the assessment calculations to the Mucci group of properties and the method of allocation of the Section 22 Value of Benefit Liability. He wants to make sure the Mucci properties are allocated on a fair basis and not necessarily on an equal basis.

vi) vii) viii) and ix) (Mucci group of properties)

Mr. Lafontaine explained that relative to Mr. Mucci's four properties the Section 22 benefit is 30 per cent of the project total cost and it was assessed to all adjacent properties fronting on the drain that have direct access to the storm water. Mr. Lafontaine indicated that Mr. Mucci wanted some consideration put into effect for the SWM ponds installed on these properties and a more detailed review will be required. Mr. Zarlenga indicated he would have discussions in regard to these areas and work together to find a solution.

Chairman Santos called for a recess at 8:25 p.m. and the Court reconvened at 8:35 p.m.

x) John Fittler and Jennifer Fittler (340-01350) Grounds for Appeal--their land has been assessed too high; other land or road has been assessed too low; due consideration has not been given as to type of use of land.

Comments from Mr. Fittler:

Mr. Fittler explained that he has been operating a no-till farming operation for the past 25 years. He presented an audio-visual presentation with handouts, indicating he had three main points to address.

Firstly, he summarized a 1989 drainage assessment paper entitled "Drainage Assessment Revisited" which speaks to fairness to all concerned and reads in

part "that the assessment of costs of a drainage project is not an exact science nor does it involve the application of specific formulas".

Secondly, he spoke about rate of flow and volume of water, stating that studies have been undertaken to compare conventional tillage and no-till for runoff and soil erosion that show that water runoff and soil erosion can be reduced by 40 to 80 per cent by leaving 0.5 to 0.9 tons/acre of crop residue on the surface compared to bare soil. He stated that he has spent money trying to protect the ditches from soil erosion and he feels he's being penalized. He stated that there is an elevation drop from the Bowling Alley to County Road 20; and there is something happening from that drop that is causing the accumulation of water. Finally, he presented a video of his 'walk' of the Esseltine Drain to show the slight runoff after various storm events at the top of the drain (his lands) vs. the bottom (rapids of fast-flowing water). He stated he is a corn, soy bean and wheat farmer and is not contributing to this volume of water. He asked Council to consider his presentation as set out in the handout material.

CR10-2017

Moved by Thomas Neufeld

Seconded by Gord Queen

That the Court receive the handout information provided by John and Jennifer Fittler.

CARRIED

Administration was asked to research the matter of no-till to explore how that reduces the flow, so that that information would be available as this matter goes forward.

xi) Jennifer and Jason Cope (290-09300) (Incomplete Appeal Documentation)-- Grounds for appeal--land has been assessed too high; objects to drain and objects to removal of trees.

Mr. and Mrs. Cope were not in attendance at this Court of Revision.

E. VERBAL APPEALS FROM LANDOWNERS

1) Mrs. Christina Porrone, 1811 Talbot Road (792743 Ontario Inc.)--She stated that the assessment was too high. She asked why some people are paying more or less and that everyone should be treated the same. Mr. Zarlenga will arrange to speak to Mr. and Mrs. Porrone pertaining to their assessment.

2) Rob Hansen, Erieview Acres Inc., 1930 Seacliff Dr. indicated that his property drains 100 per cent to the Fleming Wagle Drain and to the Kiwanis Camp. Mr. Zarlenga stated he will review that assessment.

3) 1552843 Ontario Ltd., W. Branco (950 Seacliff) asked Mr. Zarlenga to meet on-site as there is an existing drain that cuts through the property.

There were no other verbal appeals.

F. QUESTIONS FROM COURT OF REVISION MEMBERS

There were no questions.

G. QUESTIONS FROM LANDOWNERS

Vicki Calcott, 1521 Brookview Dr., asked how the completed works will affect the Brookview and nearby lands in general, especially on the lake side of Seacliff, and asked how the works will affect the water table. Mr. Zarlenga indicated he would attend this particular site, provide some additional information to these residents, and provide the additional information in the report as well.

Kimberly Iaquina, 1519 Brookview Dr., stated that she has attended these meetings but has not spoken to anyone attending at the site.

Shirley Jensen, 1523 Brookview Dr., asked Engineer Zarlenga to attend the site at their residence as well.

George Dekker (RE: Mucci properties) asked for clarification regarding the allowances south of Seacliff. Mr. Zarlenga explained the discussions with the residents and the methodology of providing compensation for the loss of trees.

Ms. Porrone added that the ditch at her property fills in and the water flows over the road and asked why this flooding is occurring. Drainage Superintendent Vegh will investigate this item.

Engineer Zarlenga will review these and other matters and amend the Report and Schedules as and where required.

H. COURT OF REVISION'S DECISION

CR11-2017

Moved by Gord Queen

Seconded by Susanne Coghill

To adjourn the Court of Revision for a time sufficient to allow RC Spencer Associates Inc. time to recalculate the assessments and to allow the Clerk time to send notice of the Revised Schedule of Assessment to all affected parties at

that time giving notice of intention to reconvene the Court of Revision at a future date.

CARRIED

I. CLOSE COURT OF REVISION

CR12-2017

Moved by Gord Queen

Seconded by Larry Patterson

To Close the Court of Revision.

CARRIED

J. ADJOURNMENT

CR13-2017

Moved by Thomas Neufeld

Seconded by Larry Patterson

That the Court adjourn at 9:42 p.m.

CARRIED

MAYOR, Nelson Santos

CLERK, Jennifer Astrologo