



Minutes

The Blue Mountains, Court of Revision

Date: April 11, 2023
Time: 10:00 a.m.
Location: Town Hall, Council Chambers and Virtual Meeting
32 Mill Street, Thornbury, ON
Prepared by: Kyra Dunlop, Deputy Clerk

Members Present: Greg Aspin, Michael Martin, Jim Oliver, Robert Waind

Staff Present: Director of Planning and Development Services Adam Smith, Manager of Engineering Brian Worsley, Town Clerk Corrina Giles, Executive Assistant to Committees of Council Carrie Fairley

A. Call to Order

A.1 Traditional Territory Acknowledgement

We would like to begin our meeting by recognizing the First Nations, Metis and Inuit peoples of Canada as traditional stewards of the land. The municipality is located within the boundary of Treaty 18 region of 1818 which is the traditional land of the Anishnaabek, Haudenosaunee and Wendat-Wyandot-Wyandotte peoples.

A.2 Committee Member Attendance

Deputy Clerk Kyra Dunlop confirmed all members were in attendance and noted that Member Greg Aspin was in attendance only as the alternate Court of Revision Member to attend the training portion of the agenda and would not be voting on matters.

A.3 Approval of Agenda

Moved by: Robert Waind

Seconded by: Jim Oliver

THAT the Agenda of April 11, 2023 be approved as circulated, including any items added to the Agenda.

Yay (3): Michael Martin, Jim Oliver, and Robert Waind

Absent (1): Greg Aspin

The motion is Carried (3 to 0)

A.4 Appointment of Chair

Moved by: Robert Waind

Seconded by: Michael Martin

THAT Jim Oliver is hereby appointed as Chair to the Court of Revision for the Blue Mountain Outlet Diversion Drain and Ford Outlet Drain.

Yay (3): Michael Martin, Jim Oliver, and Robert Waind

Absent (1): Greg Aspin

The motion is Carried (3 to 0)

A.5 Declaration of Pecuniary Interest

NOTE: In accordance with the *Municipal Conflict of Interest Act*, and the Town Procedural By-law 2022-76, Court of Revision Committee Members must file a written statement of the interest and its general nature with the Clerk for inclusion on the Registry.

None

B. Court of Revision Member Orientation, 10:00 a.m.

Chair Jim Oliver thanked staff and the Court of Revision members for their attendance at today's meeting and thanked Sid Vander Veen for providing orientation to the members today.

Mr. Vander Veen provided an overview of his presentation:

- What is the purpose of the Drainage Act;
- Petition Drain Process;
- Municipal Drain Management;
- Court of Revision

Chair Oliver asked if there is a fee for assessed parties to apply for an appeal, and Mr. Vander Veen advised that there would not be a fee to apply for an appeal of the Court of Revision's decision to the Ontario Ministry of Agriculture, Food and Rural Affairs.

Chair Oliver noted that where properties change hands, and considering the principle of 'buyer beware', how would a new property owner find out if they have liabilities and responsibilities relative to a municipal drain that may be upstream or across the road from their home. Mr. Vander Veen noted that this was a source of controversy, as these are not registered on title. Mr. Vander Veen noted that the Drainage Act was originally

meant for application to farming practices, and there was never a requirement to register these drains on property title and that they received their authority from municipal by-laws. Mr. Vander Veen noted that sometimes new owners are not aware until maintenance is being done on the drain and a bill is sent out to them with their tax bill and that in rural areas generally people do know about the drains on or near their properties. Town Clerk Corrina Giles noted that not everyone who purchases a property requests information from the municipality about tax certificates or zoning requirements, but that staff could look into this to advise the Court of Revision if this would be something included in Town staff's standard response when zoning information is requested. Member Michael Martin noted that the way around this potential problem is for property owners to purchase title insurance.

Member Robert Waind noted that the nature of the Drainage Act is to deal with existing issues on the land, and asked if it could also be used in a situation where future development and potential drainage which currently do not exist at the time the petition was made. Mr. Vander Veen noted that the Drainage Act in agricultural settings deals with existing conditions but nowhere in the Drainage Act does it say it has to be for existing conditions. Mr. Vander Veen noted that assessments are made for existing conditions, but that if you know a development is forthcoming the appointed engineer would design for the development and that he was surprised the Drainage Act is not used more frequently by developers to attain outlets for subdivisions. Mr. Vander Veen noted that there are obligations under legislation that requires engineers to plan for peak flows, for example, and that in order to secure an outlet engineers have an obligation to ensure under the common law that their development does not result in damages to downstream properties by increasing the volume and rate of water. Greg Aspin asked if downstream damages would include a body of water. Mr. Vander Veen noted that he had never seen it applied that way. Greg noted that the Ministry of Oceans and Fisheries is involved so that they would have a say in this, and as they oversee bodies of water, he would assume that it could be applied. Mr. Vander Veen noted that the Drainage Act really does not deal with water quality, but rather it was used as a quantity management statute.

Chair Jim Oliver noted that while the member orientation was meant for the Court of Revision members to receive, he would make an exception to allow Alison Kay, one of the assessed parties, to ask a general question about the process of the Court of Revision. Alison Kay, resident, noted that the Drainage Act is a specific process and if the process is not followed properly, how would they move forward to the Court of Revision. Mr. Vander Veen noted that if there were concerns about the process not being followed correctly that there is a right of appeal to the referee under the Drainage Act. Ms. Kay noted that when she received the Notice in the mail that she had received one previously with the draft watermark on it, and noted that she was advised that this was a final report with no changes being able to be made outside of the Court of Revision. Chair Oliver noted that report has been in front of Council twice, first as a draft report, sent back to the engineer for revisions, and then Council received that report again and at that point it is the final report for the municipal drain project from an

engineering, design and technical perspective. Mr. Vander Veen noted that that process sounded proper, and that the report that gets provisionally adopted by By-law is the one to go forward with to the Court of Revision. Manager of Development Engineering Brian Worsley noted that the report distributed to the assessed parties for this hearing was the final report, which pending any amendments to it from the Court of Revision or other additional process as outlined by Mr. Vander Veen, will be what goes forward.

Moved by: Robert Waind

Seconded by: Michael Martin

THAT the Court of Revision receives the Court of Revision Member Orientation as provided by Sid Vander Veen for information.

Yay (3): Michael Martin, Jim Oliver, and Robert Waind

Absent (1): Greg Aspin

The motion is Carried (3 to 0)

C. Public Hearing: Blue Mountain Outlet Diversion Drain and Ford Outlet Drain, 1:00 p.m.

Chair Oliver re-convened the public hearing portion of the meeting at 1:00 p.m. with all members in attendance.

Chair Oliver noted that under the authority of the Statutory Powers Procedures Act, 1990 and in accordance with Ontario's Municipal Freedom of Information and Protection of Privacy Act (MFIPPA), The Corporation of The Town of The Blue Mountains wishes to inform the public that all information including opinions, presentations, reports and documentation provided for or at a Public Meeting, Public Consultation or other Public Process are considered part of the public record. This information may be posted on the Town's website and/or made available to the public upon request. Chair Oliver noted that the purpose of the Court of Revision meeting is to hear appeals to the schedule of assessment for the Blue Mountain Outlet Diversion Drain and Ford Outlet Drain in the Town of The Blue Mountains, County of Grey.

Deputy Clerk Kyra Dunlop confirmed Notice of the Court of Revision was circulated to all assessed parties by registered mail on March 16, 2023 and included a copy of the provisional By-law 2022-74, a blank Notice of Appeal to the Court of Revision, and the document "Understanding the Court of Revision Procedures Under the Drainage Act". Kyra noted that the public was also informed of the meeting through posting on the Town website and circulating in an e-blast. Chair Oliver asked if there had been any late appeals filed from the assessed parties. Kyra confirmed that no late appeals had been received by staff to date. Chair Oliver asked if there were any assessed parties in attendance at the meeting who wished to submit a late appeal, and no member of the audience who was an assessed party requested consideration of a late appeal to be filed.

C.1 Engineer's Report - WT Infrastructure Solutions Incorporated

In accordance with section 55 of the Drainage Act, in any appeal to the court of revision or to the Tribunal in which the engineer is called upon to give evidence as to how an assessment was determined, the engineer shall give evidence before the appellant's case is presented.

C.1.1 Explanation of Assessment by Engineer

Jaime Witherspoon, WT Infrastructure, provided an overview of their report dated June 6, 2022 as attached to provisional By-law 2022-74 Blue Mountain Outlet Diversion Drain and Ford Outlet Drain.

Chair Oliver noted that they had been advised previously by Ms. Kay, one of the assessed parties, that the three major developers have agreed to pay 100% of the cost of the drain. Manager of Engineering Brian Worsley noted that this was correct, and that in both the initial petition and subsequent correspondence the developers have indicated that they would pay 100% of the cost through a fully secured agreement with the Town and Ministry of Transportation. Chair Oliver noted that the report, which assessed costs to landowners based on their benefit or outlet they receive, that there were still costs apportioned in the schedule, to the County, the Town, and for two private property owners. Chair Oliver asked how the costs that have been assessed to these other land owners be paid by the 3 corporate land owners. Brian Worsley noted that the 3 corporate landowners have indicated that they will pay all costs, and increases in costs will be borne by them. Brian noted that the Drainage Act requires the current process to unfold. Mr. Witherspoon noted that an agreement related to the development would make sure that the costs are paid to the landowners. Member Robert Waind noted that moving forward for maintenance purposes the schedule apportioning costs in the report would remain, but for practical purposes for today's hearing that the dollar amounts assessed to the municipality, and Georgian Trail, were 0. Mr. Witherspoon noted that the Drainage Act deals with particular components but that from an engineering perspective he was trying to be impartial. Mr. Witherspoon noted that he did not care who paid for these assessments, but it is a relevant discussion of why we go through this process even in this situation where the developers are advising that they will bear the costs. Mr. Witherspoon noted that the Drainage Act results in people incurring obligations, responsibilities or benefits. Member Michael Martin noted that the report dealt with the apportionments and whether they were fair and reasonable. Chair Oliver noted that Mr. Witherspoon had mentioned that in the assessments at Schedule A that 75% of the total costs were apportioned for benefit, and only 25% were apportioned for outlet, and that the only received appeal to date had only been assessed relative to outlet, which Mr. Witherspoon confirmed.

Chair Oliver noted that it was an unusual situation that there was a drainage report which was to assess costs to various landowners, and yet separate from that, and hopefully superseding that, there would be an agreement between the municipality and several of the landowners to cover all of the costs. Mr. Witherspoon noted that it is a more unique situation than the Drainage Act was originally envisioned for, as usually when it is implemented as part of an agricultural project all the benefitting parties would share in it equally as they all equally shared benefit from it. Mr. Witherspoon noted that while the same principle applied to this situation, it was a different result and that it was not typical that they would pay all of the costs but in this situation it is in the developers benefit to do so. Chair Oliver asked Mr. Witherspoon that in his perspective as the engineer, that regardless of how much a particular property owner is assessed on Schedule A, is it important for that property owner to be listed on the Schedule in terms of the drain being designed now and in future relative to any maintenance apportionments. Mr. Witherspoon noted that it was important as there would be implications tied to the benefits and drainage outlets, that it was important for the individuals to be consulted and for them to understand the implications of impacts on their land. Mr. Witherspoon noted that it was also mandatory under the Drainage Act to complete this process.

It was noted that the provisional By-law 2022-74 included a copy of the report that had "Draft" on the first page of the report, and Mr. Witherspoon noted that that may have been a typo but that it was the final version and provisionally adopted by Council.

C.2 Appeals

C.2.1 Appeal No. 1

Owner: Alison Kay and Bernard Oegema

Municipal Address: 213 Lakeshore Road East

Legal Description: Plan 529 PT LOT 174 RP 16R3841 Part 2, Town of The Blue Mountains

Chair Oliver noted that one appeal had been received to date from Alison Kay and Bernard Oegema and invited the parties to speak to their appeal.

Ms. Kay and Mr. Oegema spoke in opposition to the assessment as completed by WT Infrastructure. Ms. Kay noted that their property had watercourse seven, a municipal drain, and watercourse eight, a natural watercourse, running through their property. Ms. Kay noted that they really enjoyed their property and location and thanked the Court of Revision for reviewing their appeal. Ms. Kay noted that they preferred that their property remain untouched and the drainage issues be resolved upstream, but failing that, they should be compensated fairly for the negative impacts of this drainage plan on their property. Ms. Kay expressed her concern that the procedures under the

Drainage Act had not been followed as there should have been opportunity before the second reading of the provisionally adopted Bylaw for people to provide their feedback. Ms. Kay noted that they had been told the drainage work would not impose maintenance liability on the minority landowners, and advised that the developers had stated at previous meetings that they would pay for all the costs, including maintenance and liabilities, associated with this drainage work. Mr. Oegema noted that MPAC had provided them with an assessment based on 2016 values and that the current value of the property is roughly 4 times the 2016 value and noted his concern that 31 trees on their property would need to be removed. Ms. Kay noted that the Drainage Act did not provide a section of how land is valued, and that MPAC had advised that watercourse seven is not on the property. Ms. Kay noted that they were concerned about the overall impacts of the project on their land value.

Chair Oliver noted that the terminology being used both in terms of the assessment of the drain and the assessment value on the home were two completely different things. Ms. Kay noted that amount of the funds to be paid for the drainage project by herself and Mr. Oegema was a non-issue right now because her concern was centered around the developers advising them that the developers would be responsible for all of the costs and liability. Chair Oliver noted that as the Court of Revision the members had no jurisdiction to make decisions relative to how much the assessed parties were being compensated for the impacts on the property, but rather are able to make a decision relative to the assessment of costs against the assessed parties for the construction. Chair Oliver noted that perhaps Mr. Vander Veen could provide some additional guidance of how to appeal the costs being offered to Ms. Kay and Mr. Oegema.

Member Michael Martin noted that with respect to Schedule A setting out the apportionments of the parties if there were any issues the appellants had. Mr. Oegema noted that their objection was that they would have to pay any amount at all now or for maintenance costs in future. Michael asked if the appellants felt there was any unfairness with the disposition of the costs. Mr. Oegema noted that they had learned today how the costs would be apportioned, and that if the costs were apportioned by flow their property had a negligible amount of impact on the flow. Ms. Kay noted that the WT Infrastructure flow confirmed the flow amounts.

Mr. Oliver noted that the engineer had advised the assessment was based 75% on benefit and 25% on outlet, and that the Court of Revision had heard during their training session from Mr. Vander Veen that the assessments take into consideration the area of an individual property relative to the whole watershed or area requiring drainage, and the flow coming off the individual property versus the entire affected watershed. Mr. Oliver asked how those two calculations come into play for a small residential impact. Jaime Witherspoon, the engineer, noted that these lands all have existing drainage through existing

municipal drains, and that the drainage project was for peak drainage flows, and that all the lands upstream would be in similar residential flow situations. Mr. Witherspoon noted that the focus was on localized impacts and that they were not privy to the detailed design of the subdivisions, and that assessed parties were considered as equal contributors per square metre. Michael asked if Mr. Witherspoon was satisfied that the costs distributed amongst the parties was fair and reasonable, which Mr. Witherspoon confirmed that it was.

C.3 Questions raised by assessed parties

Alison Kay, appellant, asked if the members would be willing to take in all the information and make a decision at another time. Chair Oliver noted that the Court of Revision could deliberate and make a decision at the meeting or render a decision at a later date.

C.4 Court of Revision Member Discussion and Deliberation

Chair Oliver called the meeting into recess at 2:00 p.m. The Court of Revision met to deliberate the appeal received.

The Court of Revision re-convened at 2:27 p.m. with all members in attendance.

D. Decision of the Court of Revision

Moved by: Robert Waind

Seconded by: Michael Martin

Appeal Summary (1): The allowances (compensation) provided to the subject property known municipally as 213 Lakeshore Road West are insufficient.

Decision: THAT the appeal on allowances be dismissed as it is outside the jurisdiction of the Court of Revision under the Drainage Act.

Yay (3): Michael Martin, Jim Oliver, and Robert Waind

Absent (1): Greg Aspin

The motion is Carried (3 to 0)

Moved by: Michael Martin

Seconded by: Robert Waind

Appeal Summary (2): The assessment levied against the subject property municipally known as 213 Lakeshore Road West is unfair and unreasonable.

Decision: THAT the appeal is dismissed.

Yay (3): Michael Martin, Jim Oliver, and Robert Waind

Absent (1): Greg Aspin

The motion is Carried (3 to 0)

E. Adjournment

Moved by: Robert Waind

Seconded by: Michael Martin

THAT the Court of Revision now adjourns at 2:37 p.m.

Yay (3): Michael Martin, Jim Oliver, and Robert Waind

Absent (1): Greg Aspin

The motion is Carried (3 to 0)