To: Chair and Members of the Public Works Committee  
Outstanding Business Item No. PW07080 and Issue: Hauser Municipal Drain PW07080a

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Re: Hauser Municipal Drain (PW07080a) (Ward 14)

Council Direction:

On May 28, 2007, the Public Works Committee considered Report PW07080 which provided some background on the Drainage Act and the Hauser Municipal Drain specifically. Included with Report PW07080 was the report of the Engineer on the Hauser Municipal Drain. The report was tabled by Committee to the June 18, 2007, meeting pending receipt of further clarification on the Drainage Act.

Information:

Essentially the Drainage Act is a legislative tool to allow Municipalities to resolve drainage disputes in primarily rural areas. This process is accomplished by the Municipal Council responding to petitions for drainage works from residents. The petition when received is referred by the Council to an Engineer appointed by Council. The Engineer prepares a report on whether the petition is valid as per the requirements of the Drainage Act. If the petition is valid the Engineer’s report will determine the area requiring drainage works, describe the type of drainage works that should be done and will apportion costs to benefiting property owners in the drainage area.

When the Engineer’s report is complete a meeting is held and petitioners are given the chance to speak. They can also add or subtract their names from the petition. This is what happened on May 28th. Should the petition remain valid after the meeting, the Council will normally approve the Engineer’s report by By-law to allow the drainage works to proceed. When a Council approves an Engineer’s report it must be done by By-law as required in the Drainage Act. This action approves the schedule of assessed costs for the drainage works which is in the report and attached to the By-law. However the Drainage Act is a complex piece of legislation which provides a number of appeal mechanisms for those affected by the cost of the drainage works. One of these is the Drainage Court of Revision. Once the report is approved by Council the Clerk of the municipality has thirty days to advise all assessed property owners of the day of the first sitting of the Court of Revision. It is the municipality’s responsibility to hold a Court of Revision to allow assessed property owners the chance to appeal their assessed costs. The Court of Revision can have from three to five members. Anyone eligible to be
elected as a member of Council can sit on the Court of Revision. This includes Council members. Once the Engineer’s report is approved the By-law approving the Engineer’s report must go with the Court of Revision notice. Because assessments can change the By-law is only provisionally passed (usually two readings) until the time of appealing has expired and there are no appeals or until after all appeals have been decided. At that point the Council may pass the provisional By-law thereby authorizing the construction of the drainage works.

Unless there are a large number of assessed owners with appeals of a complex nature, there is usually only one or two sittings of the Court of Revision. The Court of Revision can function on an informal basis by simply asking assessed owners to come forward and state their arguments. The engineer who prepared the report, the City’s Drainage Superintendent and representation from the City Clerk’s office are all present to offer information and clarification if called upon by the Court. The Court can decide to alter any owner’s assessment but must keep in mind that the overall assessed costs for the works must remain constant unless there is an error in the Engineer’s assessments. Decisions of the Court could be appealed to the Ontario Drainage Tribunal which is a provincially appointed quasi judicial appeal board

Conclusion

The recommendation in Report PW07080 should be amended to reflect the above. The Hauser Drain does not involve many property owners and it would be best to simplify the process by appointing three members of Council to sit as the Drainage Court of Revision. The recommendation in Report PW07080 should also be amended to reflect that three members of Council be appointed to the Court of Revision for the Hauser Municipal Drain.

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