



BURNSIDE

**Section 40 Report
Proposed Municipal Drain**

Township of North Huron

**R.J. Burnside & Associates Limited
449 Josephine Street P.O. Box 10
Wingham ON N0G 2W0 CANADA**

**April 3, 2017
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Section 40 Report
April 3, 2017

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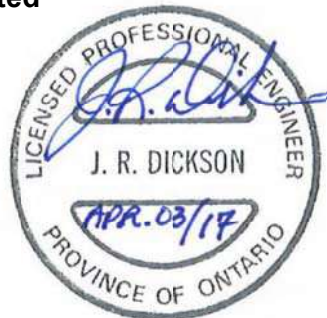
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Revision	Date	Description
0	April 3, 2017	Submission to the Township of North Huron

R.J. Burnside & Associates Limited

Report Prepared By:



J.R. (Jeff) Dickson, P.Eng.
Project Engineer
JRD/CNF:ls

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1.0 Introduction

In accordance with a letter of instruction received from the Township of North Huron (Township) dated November 23, 2016, we submit this Report regarding a proposed municipal drainage project involving a tributary of the Belgrave Creek. A "Notice of Withdrawal From Petition" form was endorsed and submitted by the new owners of a property in the geographic Township of East Wawanosh, Township of North Huron, County of Huron; the previous owners of the property were one of the original petitioners. This Report is being prepared in accordance with Section 40 of the Drainage Act R.S.O., 1990, Chapter D.17 (Act).

2.0 Chronology

A Preliminary Engineer's Report, Proposed Municipal Drain 2016, Township of North Huron dated June 23, 2016, and prepared in accordance with Section 10(1) of the Act, shall be deemed to form part of this Report; this report outlines the activities for the drainage project since the appointment of the engineer.

The "*Consideration of report*" for the above, in accordance with Section 10(2) of the Act, was held on July 21, 2016. At that meeting, and in accordance with Section 10(3) of the Act, there was no "*withdrawal from and additions to petition*" of any names. Accordingly, at the July 21, 2016 meeting, the Council passed a resolution to "*instruct the engineer to proceed with the preparation of a report*" in accordance with Section 10(5) of the Act.

Since not all affected landowners were present at the meeting, it was decided to allow written comments to be submitted until the end of the day July 31, 2016; however, these comments would "not" in any way affect the validity of the petition.

Immediately following the meeting there was an informal discussion with one member of the Council as well as a number of the stakeholders; the major items of discussion were a "Benefit Cost Statement" and why the project was proceeding when only 3 petitioners were in favour of it but upwards of 30 or more potentially affected landowners were not.

Subsequent to the meeting, there were numerous conversations, discussions and emails involving some of the petitioners as well as the owners of other properties deemed to be within the watershed of the proposed drain as indicated on the Preliminary Watershed Plan contained within the Report. The petitioners consistently expressed that they still wished to proceed with the project as outlined in the preliminary report. The owners of other properties expressed that did not wish to proceed; they were informed that it was the petitioners and the (still) valid petition in accordance with Section 4 of the Act that governed the project and that it would be proceeding to a final report.

3.0 Meetings with Stakeholders

Following the July 21, 2016 consideration meeting and the closing of the comment period, Burnside arranged and met with senior staff from the Township on August 3, 2016 to review and discuss matters brought to their attention.

Immediately following, there was another meeting with two non-petitioning landowners indicating that they represented the majority of the private landowners within the watershed. They reiterated concerns about the project and asked what would be required to terminate it. The items discussed included but were not limited to the following:

- The need for the project
- How could the project be terminated
- The area that flooded on the petitioning properties was minor in comparison to the area of the watershed
- The validity of the petition, the requirements of and the process under the Act
- The cost versus the benefit of the project
- The removal of names from the petition
- That municipal drains under the Act are a user pay system
- Who would be liable for the costs to date if the petitioners terminated the project
- Would the non-petitioning landowners be willing to contribute to the costs to date if the project was to be terminated

Also, the two stakeholders presented a copy of a number of forms representing 35 landowners within the proposed watershed who were in opposition to the proposed drain. Township staff confirmed the forms were received prior to the end of the comment period; with consent the forms may be available for viewing at the Township.

The stakeholder's reiterated concerns were received and acknowledged; however, they were reminded that the process under the Act must be followed and unless altered in the future, the project would be proceeding to a final report.

4.0 Notice of Withdrawal

On November 29, 2016, Burnside received a letter from the Township Clerk to which was attached a Council Resolution (see Appendix A). Also attached was a "Notice of Withdrawal From Petition" form endorsed by the new owners of part of the south part of Lot 42 and part of the east part of Lot 41, Concession 10; the form was dated November 16, 2016 and was filed with the Township.

As indicated in Section 2.0, a meeting for the consideration of the Preliminary Report for this project was held in July; this meeting complied with Section 10(5) of the Act. Accordingly, there would be ONLY one final opportunity to withdraw or add names to the

petition; see Section 42 of the Act. However, given the new owners of part of the south part of Lot 42 and part of the east part of Lot 41, Concession 10 endorsed the above form; it was evident to Township staff and the engineer that the validity of the petition would eventually need to be reviewed as per Sections 41, 42 and 43 of the Act.

Further, it was determined by the engineer that without the names of owners of this property on the petition, it would not comply with Section 4 of the Act.

Accordingly, and with respect for the rights of the original petitioners, the Act and the July 21, 2016 resolution of the Township Council, it was decided to prepare and file this report before additional time, effort and costs were incurred on a final report and to the financial burden and liability of the original petitioners.

5.0 The Drainage Act

This Report is being prepared in accordance with Section 40 of the Act which states:

“Where the engineer finds that a drainage works is not required or is impractical, or cannot be constructed under this Act, the engineer shall forthwith file with the clerk of the initiating municipality a report to that effect, stating the reasons therefor, the amount of the engineer’s fees and other charges and by whom they shall be paid, and the clerk shall forthwith send a notice of the filing of such report to all persons who signed the petition and the matter shall not be further proceeded with unless the decision of the engineer is reversed on appeal.

R.S.O. 1990, c. D.17, s. 40; 2010, c. 16, Sched. 1, s. 2 (8).”

6.0 Conclusions

The content of this Report is the result of numerous discussions and emails, several meetings and much consideration and deliberation. It has been determined that to proceed to a final report for this drainage works is **“impractical”** given the circumstances that have come to be, since November of 2016.

In regards to the engineer’s fees and other charges associated with the project, the following were taken into consideration:

- Petitioners for a drainage project have some privileges not afforded to all affected stakeholders; however, petitioners also bear some specific financial responsibilities in accordance with the Act depending on what stage the project is at in the process.
- Stakeholders on a drainage project are afforded an opportunity(s) to ask questions, provide input and voice concerns in regards to the project in general and the process under the Act. However, and unique to this project, a majority of the non-petitioning stakeholders signed and submitted forms; approximately half of the forms included specific written comments/concerns in opposition to the proposed Municipal Drain.

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- The amount of time and effort dealing with input from all stakeholders and responding to general concerns about the project and the process under the Act. However, there was also time and effort to address repeated questions and concerns about the need for the project, how could the project be terminated, the cost versus the benefit of the project, the removal of names from the petition, liability for costs to date if the project was terminated, etcetera.

Furthermore, the following shall apply as to the incurred fees and other charges and *“by whom they shall be paid”*:

- The three original petitioners (which as of November 2016 includes the new owners of part of the south part of Lot 42 and part of the east part of Lot 41, Concession 10 who assume all of the responsibilities and liabilities of the previous owners who signed the petition), shall bear the fees and other charges of the project up to the time of the end of the consideration meeting in three (3) equal shares; the total amount of those fees and other charges being \$26,100.00 plus applicable taxes;
- The 35 owners of the 27 properties who each endorsed and submitted a written form(s) to the Township in opposition to the proposed drain in twenty-seven (27) equal shares; the total amount of those fees and other charges being \$5,400.00 plus applicable taxes; and
- The new owners of part of the south part of Lot 42 and part of the east part of Lot 41, Concession 10 shall bear a portion of the fees and other charges of the project since the time of the end of the consideration meeting in excess of the above two amounts; the total amount of those fees and other charges being \$ 2,500.00 plus applicable taxes.

We respectfully submit and file this Section 40 Report for consideration by the Staff and Council of the Township of North Huron and await further instructions. In accordance with Section 40, the Clerk is respectfully requested to *“forthwith send a notice of the filing of such report to all persons who signed the petition”*. It is further recommended to send a copy to all owners of property circulated a copy of the preliminary report.

Respectfully submitted,

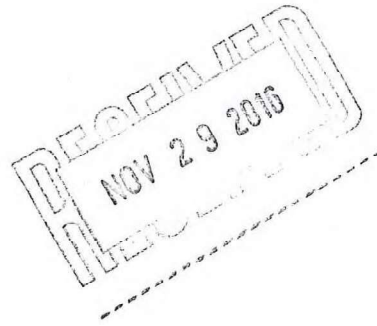


BURNSIDE

[THE DIFFERENCE IS OUR PEOPLE]

Appendix A

Section 40 Township Resolution



November 23, 2016

Jeff Dickson, Engineer
R. J. Burnside & Associated Limited
P.O. Box 10
Wingham ON N0G 2W0

Dear Jeff:

Re: Proposed Hopper Drainage Petition.

The Township of North Huron at their regular meeting held November 22, 2016 adopted Resolution M613/16, giving direction to forward the "Withdrawal from Petition Form" for the property for the proposed Hopper Drainage, to Jeff Dickson, Engineer, R. J. Burnside & Associated Limited.

I have enclosed a copy of the Council Resolution for your information.

Should you have any questions or require additional information concerning this matter, I may be contacted at the Municipal Office.

Yours truly,

Kathy Adams, Clerk
Township of North Huron

/b

Encl.

c.c.: Jeff Molenhuis, Director of Public Works

P.O. Box 90, 274 Josephine Street, Wingham, Ontario N0G 2W0
Phone: 519-357-3550 Fax: 519-357-1110

www.northhuron.ca

RELEVANT EXCERPT FROM THE MINUTES OF THE
TOWNSHIP OF NORTH HURON COUNCIL MEETING
HELD MONDAY, NOVEMBER 21, 2016

M613/16

MOVED BY: T. Seip

SECONDED BY: R. Hallahan

THAT the Council of the Township of North Huron hereby give direction to the Clerk, to forward the 'Withdrawal from Petition Form', containing original signatures of the owners of the notable property, who wish to withdraw their names from the petition, in regard to the proposed Hopper Drainage petition, to the Engineer, J. R. Dickson, R J Burnside & Associates Limited, to make a determination, if the petition remains valid;

AND FURTHER THAT the Engineer provide a Section 40 report, under the Drainage Act, stating that the petition does not contain sufficient signatures to proceed, or it is not practical to proceed, or that the works cannot be constructed under the Act and file with the Clerk a report stating his reasons, the amount of fees and other charges and by whom they shall be paid;

AND FURTHER THAT the Clerk, upon receipt of the report shall send a notice of the filing of the report to all persons who signed the petition.

CARRIED