

Understanding Court of Revision Procedures Under the Drainage Act

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INTRODUCTION

The Court of Revision is an appeal body established under the Drainage Act and administered by the local municipality. The Court of Revision allows landowners to challenge their drainage assessments quickly and informally. Unlike the Drainage Tribunal or the Drainage Referee, the Court of Revision has one power -- to re-allocate funds in a drainage assessment schedule.

To learn more about assessments under the Drainage Act, refer to fact sheet Agdex 557 Order # 92-035, "Understanding Drainage Assessments."

STEPS LEADING UP TO THE COURT OF REVISION

The Drainage Act sets out a democratic process for constructing new drains or improving existing drains. The following is a very basic outline of how a typical report would get to the Court of Revision. Refer to the Drainage Act for specific process requirements.

- One or more property owners submit a petition for drainage to their municipality. A project to improve an existing drain can also be initiated with a landowner request to council.
- The Council reviews the petition or request and decides whether to accept it.
- If accepted, Council sends a notice to the petitioner(s) and the local Conservation Authority, or, where a Conservation Authority does not exist, to the Minister of Natural Resources.
- After a 30 day period Council appoints an engineer to prepare a report.
- After completion of all meetings, surveys, design calculations or possible preliminary reports, the Engineer submits a final report which includes an assessment schedule that levies a share of the project cost on individual properties.
- The report is considered by council at a "meeting to consider the report". The property owners affected by

the drain are invited to this meeting and have an opportunity to influence council's decision.

- If council decides to proceed with the project, they give two readings of a bylaw adopting the report; at this stage, the bylaw is known as a 'provisional bylaw'.
- A copy of the provisional by-law and a notice of the date and time of the Court of Revision hearing is sent to all involved property owners.
- The Court of Revision must be held before the third and final reading of the bylaw.

As you can see, quite a few steps must occur before a municipality can hold the Court of Revision's first sitting.

APPEALS PROCEDURE AND TIMELINES

1 - Notice of the Sitting of Court

The municipal clerk must send notice of the first sitting of the Court to all landowners in the watershed of the proposed drain. The notice must be sent not more than 30 and not less than 20 days before the Court date. The notice must also be sent within 30 days of the second reading of the provisional bylaw. This notice must include:

- Date and time of the Court of Revision
- A copy of the provisional bylaw
- Procedure for Filing an Appeal

2 - Appeal Notice

Owners must send their appeal notices to the municipal clerk at least 10 days in advance of the date for the Court.

However, at their first sitting, the Court may, by resolution, agree to hear appeals that were not filed 10 days prior to the hearing date.

3 - Hearing

The municipality holds the hearing. For more detail on how to run a Court of Revision hearing, refer to "Suggested Procedure," below.

4 - Appeals from the Court of Revision

All decisions made can be appealed to the Agriculture, Food and Rural Affairs Appeal Tribunal within 21 days of the pronouncement of the Court of Revision's decision.

5 - Authorizing Bylaw

After all assessment appeals to the Court of Revision, Tribunal or Referee are exhausted, Council gives third reading to the authorizing bylaw. Due to the appeals process, 40 days is the minimum amount of time that must pass between mailing the notice of the Court's first sitting, to giving the by-law its third reading. If landowners file appeals, the process will likely take longer.

THE ROLE OF THE CLERK

- The municipal clerk receives all notices of appeal to the Court of Revision.
- In advance of the Court of Revision hearing, the clerk should make a list of all appeals specifically listing the name of the appellant, the property of the appellant, the amount of the assessment and a summary of the grounds for the appeal
- If the Court of Revision is considering the reduction of a property assessment and is considering adding this reduction to a property whose owner is not in attendance, the court must adjourn. The clerk schedules a second sitting of the Court and notifies all property owners affected by the reduction.
- The clerk also alters any assessments changed by the Court and amends the provisional bylaw.

THE ROLE OF THE MEMBERS OF THE COURT OF REVISION

- Members of the Court may hear appeals on three grounds:
 - 1) Land or road has been assessed too high or low.
 - 2) Land or road should have been assessed but has not.
 - 3) Due consideration has not been given to the land's use.
- The members of Court must hear these appeals and decide whether they are valid. The members must comply with the *Statutory Powers Procedure Act*, and they must conduct themselves fairly and without bias.
- The Court only has authority to change the schedule of assessments; they cannot make changes to the technical aspects of the report and they cannot refer the report back to the engineer for modifications.

- Total costs of the project must remain the same, which means that if the Court reduces an assessment, the Court re-allocates the shortfall among other assessed property owners.
- If the Court is considering adding to the assessment of one or more properties whose owners are not in attendance, the Court must adjourn and send notice to assessed property owners who were not at the Court of Revision at the time of the re-allocation. This allows the re-assessed landowners to appeal their new assessments.

THE ROLE OF THE APPELLANT

- If a landowner feels an assessment against their lands is too low, that land should have been assessed but has not, or that consideration has not been given to land use, they can file an appeal with the Court of Revision.
- Appeals must be filed with the clerk at least 10 days before the date of the Court of Revision.
- If a landowner wishes to appeal, but misses the date for filing the appeal, they can appear at the first sitting of the Court of Revision and request to have their appeal heard.
- At the sitting of the Court, the list of appellants will be read out and the Engineer will give evidence. When his or her time to present their case comes, the appellant must explain their reasons for appealing the assessment schedule.
- After the Court of Revision pronounces their decision, affected property owners have 21 days to appeal this decision to the Agriculture, Food and Rural Affairs Appeal Tribunal and the Tribunal's decision on this appeal is final.

COMPOSITION OF THE COURT OF REVISION

- If a drainage works only affects the initiating municipality, the initiating municipality's council appoints 3 to 5 members to make up the Court of Revision.
- If a drainage works affects two or more municipalities, the council of the initiating municipality appoints two members of the Court; and every other involved municipality appoints one person to be a member. One of the members appointed by the initiating

- municipality is the chair of the Court of Revision.
- To be eligible to sit as a Court of Revision member, the individual must be eligible to seek election as a member of council.
- Members of council may be appointed as members of the Court. However, the two roles must be kept separate -- if a council member wishes to hear information or pass resolutions outside of the scope of the Court of Revision, they must close the Court, then open a new council meeting.

SUGGESTED PROCEDURE

- Opening of the Court of Revision
- Oaths
 - Members may take an oath, but it is not legally required.
 - Members are still legally required to act fairly and impartially, whether they declare this publicly as an oath or not.
- Order of Appeals
 - The appeals and the order in which they will be held are read out.
- Engineer Gives Evidence
 - The engineer gives his or her evidence regarding each appeal before the Court, per s. 55 of the Act.
- Appellants Present their Case
 - The landowners orally make a case for why their land was improperly assessed before the members of court.
 - The engineer may rebut the landowner's case.
- Late Appeals
 - If the Court of Revision members choose, they agree to entertain late appeals, per s. 52(2) of the Act.
- Deliberations
 - The Court of Revision members should retreat to deliberate these appeals and make decisions in private.
 - If court is considering reducing an assessment and adding it to a property whose owner is not present, then they must adjourn the Court of Revision, send notice to the absent parties to allow them to appeal the change, then reconvene, per s. 53 of the Act.
- Closing the Court of Revision and Rendering a Decision
 - The Court of Revision may give oral decisions on each appeal but this oral decision should be followed up with a decision in writing.
- Choosing which schedule to adopt

- The Court of Revision should document whether they decided to adopt an altered version of the assessment schedule, or whether they chose to adopt the schedule as presented by the engineer.
- A sample decision is included below.

FURTHER INFORMATION

Related Factsheets

Understanding Drainage Assessments, Agdex 557
Drainage Act Appeals, Agdex 557

Author Information

These Court of Revision guidelines were authored by Sharon McCartan, OMAFRA, Environmental Management Branch, Guelph, Ontario.
Reviewed by Sid Vander Veen, Drainage Coordinator, and by Andy Kester, Drainage Inspector.

Sample Decision of the Court of Revision:

DECISION of the COURT OF REVISION

RE: _____ Municipal Drain
Decisions Pronounced on the ____ day of _____, 20____

Appeal #1 - Appellant: _____ Property: _____

Appeal Summary: Assessment should be lowered because a portion of the property drains into another municipal drain.

Decision: That the assessment of costs on Lot 19, Con 84, Roll #0330 be reduced by two thirds from \$300.00 to \$100.00 and that the difference of \$200.00 be assessed to municipal road.

Appeal #2 - Appellant: _____ Property: _____

Appeal Summary: The crop damage allowance is insufficient and should be increased.

Decision: The appeal is dismissed as it is outside the jurisdiction of the Court of Revision. Property owners have the right to appeal their allowances to the Agriculture, Food and Rural Affairs Appeal Tribunal.

Appeal #3 - Appellant: _____ Property: _____

Appeal Summary: Assessment should be lowered because the engineer has calculated the assessment based on 100% agricultural land use; actual use is 50% agriculture and 50% bush.

Decision: The assessment on this property is reduced by \$300 and the reduction is added to the assessment on property _____. The owner of this property was present at the hearing of the court of revision.

Appeal #4 - Appellant: _____ Property: _____

Appeal Summary: Assessment should be lowered because the owner has no intention of using the land for agricultural purposes.

Decision: That the appeal be dismissed. Property still has the potential to be used for agriculture and has been assessed at similar rates to nearby agricultural properties.

Appeal #5 - Appellant: _____ Property: _____

Appeal Summary: Assessment on all private properties should be reduced and an environmental agency should be charged \$5000 for the cost of studies that were required for the agency's approval of the project.

Decision: The appeal is dismissed. The Drainage Act only allows properties to be assessed and the environmental agency is not a property owner.

FURTHER APPEAL RIGHTS

If dissatisfied with the Decisions of the Court of Revision which were pronounced on the ____th day of _____, 20____, anyone may appeal this decision to the Agriculture, Food and Rural Affairs Appeal Tribunal by filing a notice of appeal with Clerk of the municipality within 21 days of the date of this decision.

Signed: _____
_____(name), Chair
Court of Revision for the _____ Municipal Drain

Dated this ____th day of _____, 20____.
_____, Clerk
Municipality of _____

Sample Court of Revision Decision. A written decision should be mailed to every appellant after the hearing concludes.

For more information:
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www.ontario.ca/omafr