

## Consideration of Valley Growers Municipal Drain Engineer's Report

Presented To:	Hearing Committee
Meeting Date:	February 14, 2023
Type:	Public Hearing
Prepared by:	Paul Javor Infrastructure Capital Planning
Recommended by:	General Manager of Growth and Infrastructure

## Report Summary

This report provides a recommendation regarding the Council approved petition for drainage pursuant to the Drainage Act on June 15, 2021.

## Resolutions

### Resolution 1:

THAT the City of Greater Sudbury adopts the Drainage Engineer's Report, dated November 25, 2022, regarding the Valley Growers Drain, which drain serves to improve the drainage outlet for the low area on the south side of St-Laurent Street and the upstream farmlands;

AND THAT staff be directed to present a provisional By-law at the City Council meeting to be held on February 21, 2023, for first and second reading;

AND THAT a Court of Revision be held Wednesday, March 22, 2023, at 4:00 p.m. by the City of Greater Sudbury's Hearing Committee at Tom Davies Square;

AND THAT if Valley Growers Drain project is approved to proceed, that the amount of \$684,865 be funded from the Capital Financing Reserve Fund – General of which \$600,427 will be billed and reimbursed from benefitting landowners once construction of the Valley Growers Drain is certified complete by the Engineer.

## Relationship to the Strategic Plan, Health Impact Assessment and Community Energy & Emissions Plan (CEEP)

The proposed Valley Growers Drain is in an agricultural area of the community with the purpose to improve the production of the land supporting development in agriculture in Section 2.1 of the Strategic Plan would improve local food production which would have positive impacts to food transportation lowering emissions in line with objectives of the CEEP.

## Financial Implications

The total estimated cost of the project is \$684,865. This includes construction, engineering, and other costs associated to the project.

Of the total cost of \$684,865, costs are to be distributed between the following parties: landowners to repay \$599,002 (subject to grant eligibility), Hydro One to repay for \$1,425, and the City for \$84,438. The City will be required to front end the total costs of this project until completion. The total cost of \$684,865 will be funded from the Capital Financing Reserve Fund - General until the project is completed.

Section 88 of the Drainage Act provides for the Municipality to apply for a grant available for benefitting landowners on the assessments against lands used for agricultural purposes. The City must confirm the Farm Property Tax Class on the assessed parcels at the time the grant application is completed and submitted to the Ontario Ministry of Agriculture, Food and Rural Affairs.

Once construction of the Valley Growers Drain is certified complete by the Engineer, the net costs of the drain (after any grant received) will be billed to the benefiting property owners.

## **Background**

The City received a drainage improvement petition from several landowners along St. Laurent Street through Drainage Act processes. The Drainage Act is a Provincial statute that provides a process to resolve surface water problems between landowners, it can involve public and private lands. The Drainage Act statutes require Councils, municipal staff, and Engineers to do specific activities. Generally, all Council, Engineer or municipal staff activities can be appealed to a higher body, the Tribunal or Referee.

Council accepted the petition for drainage improvement along St. Laurent Street and appointed K. Smart Associates Ltd. prepare the Engineer's Report for the proposed drain through Council resolution, CC2021-182, on June 15, 2021. The Engineer's Report is complete, and Council must now consider it.

### **Discussion:**

Pursuant to the requirements of the Drainage Act, copies of the Engineer's Report have been mailed to all persons and affected agencies entitled to receive them, along with a Notice that the Engineer's Report will be considered by Council. (Notice included mention of this Hearing Committee Meeting). Both meetings and the Notice were advertised on the City website. In addition, the Notice included a link to the the Ontario Ministry of Agriculture, Food and Rural Affairs (OMAFRA) site wherein information relative to landowners' rights regarding appeals could be found.

Two public meetings were held on July 23, 2021, and June 15, 2022.

In addition, the Drainage Act requires Council to provide an opportunity at this meeting for the petitioners to withdraw their names from the petitions and an opportunity for owners in the area requiring drainage to add their names to the petition (Section 42). If any petitioner chooses to withdraw from the petition at this meeting, then the Engineer must determine if the petition remains valid. If the remaining owners of the lands in the area represent less than 60% of the lands in the area petitioned for drainage, the petition would be deemed no longer valid. If the petition is rendered invalid, proceedings for the drainage work related to that petition would stop and any costs incurred to-date would be borne by the Petitioners in accordance with their assessments in Schedule A in the Report (Section 43). Below are the estimated engineering cost breakdown proportions if the petition becomes invalid.

Roll No.	Assessment (\$)
023-11200	15,328.58
023-01400	15,328.57
023-01300	15,328.57
023-01200	15,328.57
023-00901	15,328.57
023-00800	15,328.57
023-00400	15,323.57

Total	107,295
-------	---------

## **COUNCIL'S OPTIONS:**

- A) Adopt the Report by giving two readings to the Provisional By-law and move forward to the next step in the process under the Drainage Act.
- B) Do not adopt the Report, in which case the Petitioners may appeal to the Ontario Drainage Tribunal.
- C) Refer the Report back to the Engineer for reconsideration and report back to Council.

## **OPTION A:**

If Council agrees that the Engineer's Report offers the best solution, it should select Option A to move forward in the process to adopt the Report by giving two readings to the Provisional By-law. The date of the Court of Revision must be set between twenty and thirty days of completing the sending of the copies of the provisional by-law (Section 46.3). The Provisional By-law and Notice of the time and place of the first sitting of the Court of Revision would then be forwarded to every affected agency and property owner. Any owner/agency that wishes to appeal their assessment would be required to submit a written notice to the Clerk within the prescribed timelines of the Drainage Act, outlining their intent. Verbal appeals may be made while the Court of Revision is sitting but the Court of Revision can choose whether or not to consider them. Written appeals sent to the Clerk 10 days before the sitting of the Court of Revision must be heard. Any revisions to assessments would be decided by the Court of Revision.

### **Property Owner Appeal Rights**

If Council adopts the Report and gives two readings to the Provisional By-law, within 40 days of the City sending out Notice of the Provisional By-law, any owner of land or any agency affected by the drainage works, may appeal to the Ontario Drainage Tribunal (Section 48) if they are dissatisfied with the Engineer's Report, by submitting a notice of appeal to the Clerk of the City. Under this section, an appellant would be dissatisfied with the Engineer's Report on the grounds that:

- I. The benefits to be derived from the drainage works are not commensurate with the estimated cost thereof; or,
- II. The drainage works should be modified on the grounds to be stated by the appellant; or,
- III. The compensation or allowances provided by the engineer are inadequate or excessive.

The costs of having the Engineer attend the Tribunal Hearing would be part of the final cost of the drain and be pro-rated as per Schedule C in the report.

## **OPTION B:**

If Council chooses Option B, not adopt the Engineer's Report, the project would not move forward but would be subject to appeal by the Petitioners. If there are no appeals, any costs to-date for engineering (approximately \$107,300) would be borne by the City and would be allocated from the overall general levy.

### **Petitioner/Property Owner Appeal Rights**

Any petitioner may appeal to the Ontario Drainage Tribunal under Section 45(2) if the Engineer's Report is not adopted by Council. If the appeal is upheld, the Tribunal will order Council to proceed with the report and may

require that payment of the Engineer's attendance at the hearing be paid by the Municipality and not be added to the final cost of the drain.

### **OPTION C:**

If there is a reason to change the Report (not related to assessments), Council may refer the Report back, with suggested changes, to the Engineer. The Engineer shall reconsider the Report and report back to Council. The new Report will be subject to the same procedures as the original report in terms of the mailing of notices and the meetings that are required to be held (Section 57).

If, at the end of the Council meeting Council wishes to proceed to adopt the Report, a By-law known as the Provisional By-law for the Drainage Works is given first and second reading only. Council sets the date for the Court of Revision (where written appeals to the assessments are received and reviewed) and appoints members to the Court. Subsequently, all affected parties will be mailed a Notice of the Court of Revision date and time.

### **Next Steps**

The Engineer's Report has been prepared to meet the requirements of the Drainage Act, petitioners and changes made based on the public meetings detailed in the Engineer's Report (Appendix A) for the Valley Growers Drain. It is recommended that Council adopt the Engineer's Report, give the By-Law first and second reading and allow the Drainage Act process to proceed.

If Council adopts the Engineer's Report and completes the two readings of the By-Law, a Court of Revision must also be set. This is where landowners may appeal assessments, if landowners remain unsatisfied after the Court of Revision, they may appeal to the Drainage Referee or Tribunal and a final decision is made there. When all appeals have been heard and dealt with Council can give third reading to the By-Law and construction may begin. A process diagram detailing is provided in (Appendix B).

### **Resources Cited**

City Council Report of June 15, 2021 - Drainage Petition – St. Laurent Street  
<https://pub-greatersudbury.escribemeetings.com/Meeting.aspx?Id=e48e3c86-edcd-4b96-a53a-c7c669c606ec&Agenda=Agenda&lang=English&Item=53&Tab=attachments>