



Township of Wainfleet

"Wainfleet - find your country side!"

**NOTICE OF DECISION
OF THE AGRICULTURE, FOOD AND RURAL AFFAIRS
APPEAL TRIBUNAL
FOR
THE CONSOLIDATED SOUTH WAINFLEET DRAIN
IN THE
TOWNSHIP OF WAINFLEET**

In accordance with Section 76 of the Drainage Act R.S.O. 1990, the Township of Wainfleet is required to maintain current and accurate assessment schedules for each of its Municipal Drains. The Township of Wainfleet has received permission from the Ontario Drainage Tribunal to proceed with a new engineering report under Section 76 of the *Act*, in order to develop new assessment schedules for the Consolidated South Wainfleet Drain.

A requirement of the Order from the Tribunal is that notice of this decision be posted in the Municipal Offices and a copy of the decision be posted on the Township's website.

The decision of the Drainage Tribunal can be viewed on the Township of Wainfleet website at www.wainfleet.ca.

Dated this 1st day of December, 2017

Jason Culp *C.Tech., EP*
Drainage Superintendent

For additional information please contact Drainage Superintendent at 905-899-3463 ext. 228, or by email at jculp@wainfleet.ca.

NOTE: This notice may be viewed by persons who are not landowners in the area of the proposed drainage works and is intended for information purposes only.

31940 Highway #3 • P.O. Box 40 • Wainfleet, ON • L0S 1V0
PHONE 905.899.3463 • FAX 905.899.2340 • www.wainfleet.ca

**Agriculture, Food and Rural Affairs
Appeal Tribunal**
1 Stone Road West
Guelph, Ontario N1G 4Y2
Tel: (519) 826-3433, Fax: (519) 826-4232
Email: AFRAAT@ontario.ca

**Tribunal d'appel de l'agriculture, de
l'alimentation et des affaires rurales**
1 Stone Road West
Guelph (Ontario) N1G 4Y2
Tél.: (519) 826-3433, Téléc.: (519) 826-4232
Courriel: AFRAAT@ontario.ca



CONSOLIDATED SOUTH WAINFLEET DRAIN Township of Wainfleet

IN THE MATTER OF THE *DRAINAGE ACT*, R.S.O. 1990, CHAPTER D.17, AS AMENDED.

AND IN THE MATTER OF: An application to the Agriculture, Food and Rural Affairs Appeal Tribunal by the **Township of Wainfleet** under Section 76 of the *Drainage Act* requesting permission to complete a new report of an engineer for the purpose of varying the current assessments on the **Consolidated South Wainfleet Drain (CSWD)**.

Before:

Jeffrey J. Hewitt, Chair; Edward Dries, Vice-Chair; and, Arnold Strub, Member

DECISION OF THE TRIBUNAL

The Township of Wainfleet applied to the Agriculture, Food and Rural Affairs Appeal Tribunal (the Tribunal) for permission to complete a new engineering report for the CSWD pursuant to Section 76 of the *Drainage Act*.

This application was considered by way of written submissions.

Statutory Context

The purpose of an application to the Tribunal under Section 76 of the *Drainage Act* is to deal with an existing drainage project involving more than one municipality, where conditions have changed and the existing Schedule of Assessments in the current drainage by-law are now unworkable for the purpose of levying assessments for maintenance work required on the drain.

Approval of an application by the Tribunal provides a municipality with the authority to procure an Engineer's Report to produce a new Schedule of Assessment that would be used by the municipality for the distribution of costs of future maintenance and repair of a drainage works undertaken under Section 74 of the *Act*.

Background

The Consolidated South Wainfleet Drainage System ("CSWD") was last constructed, repaired or improved under a report by Blake Erwin dated June 2, 1969. That report recommended the construction or improvement of forty-four (44) branch drains within

the overall drainage scheme. The drainage areas of some of these branches extended into Haldimand County. The assessment schedule provided by Blake Erwin in that report did not create separate assessment schedules for each of the branch drains. Consequently, it was not possible to accurately or equitably distribute drain maintenance costs that may be incurred on any particular branch.

In a report to Council, Township staff identified issues with regards to the current assessment schedule of the CSWD. Staff recommended that a new report be completed under Section 76 of the *Act* that will accurately delineate the catchment areas of each branch and develop a specific assessment schedule for maintenance for each branch based on the newly defined catchment areas. It was noted that a new report under Section 76 would only address the definition of the catchment areas and the development of an assessment schedule for each branch but would not include any design or improvement works. It was also noted that in light of the fact that the watershed includes lands within the Haldimand County, its support for a new report under Section 76 is required.

The Township of Wainfleet approved the staff report recommending that an engineering firm be retained to complete a new report under Section 76 and provide Council with a clear plan and cost breakdown. The Township also sought the support of Haldimand County. Haldimand County adopted a resolution of support for the Township of Wainfleet for completion of a new report for the CSWD.

The Issue

Should the application for permission to create a series of new assessment schedules for the CSWD be granted?

The Evidence

In correspondence to Haldimand County dated August 3, 2017, the Township of Wainfleet indicated its intentions to apply to the Ontario Drainage Tribunal for permission to create new assessment schedules for the many branches of the CSWD under a new report under Section 76 of the *Act*. Haldimand County advised of its support to proceed with the preparation of a new report for the purposes of varying the original assessments in correspondence dated October 13, 2017.

The Findings

A detailed review of the 1969 report which forms the basis for the current governing by-law for the CSWD clearly shows that specific drainage areas and assessments directly related to each branch are not included in that report. Further, it is also clear that there have been many severances and changes in land use within the watershed since the 1969 report that would impact assessments. A new report under Section 76 is required to address those issues.

The Tribunal finds that the request by the Township of Wainfleet for permission to obtain a report of an engineer to vary the original assessment on the Consolidated South Wainfleet Drain meets the requirements of Section 76 of the *Act*.

Order of the Tribunal

The Tribunal hereby grants permission to the Township of Wainfleet to appoint an engineer pursuant to Section 76 of the *Act* to procure an engineer's report to vary the assessments in the current by-law for the Consolidated South Wainfleet Drain.

A handwritten signature in black ink, appearing to read 'Jeffrey J. Hewitt', with a large, sweeping flourish at the end.

Jeffrey J. Hewitt
Vice-Chair

Dated at Tecumseh, Ontario this 22nd day of November, 2017.

TO:

Jason Culp
Drainage Superintendent
c/o Adam Cross, Clerk
Township of Wainfleet
31940 Highway #3
Wainfleet, Ontario
L0S 1V0

AND TO:

Evelyn Eichenbaum
Clerk
Haldimand County
Cayuga Administration Office,
45 Munsee Street North
P.O. Box 400
Cayuga, Ontario
N0A 1E0

AND TO:

All owners of lands that were assessed or compensated in the engineer's reports associated to the above listed drains