

# Koelen Municipal Drain 2020

## Court of Revision

### July 14, 2020

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- ▶ Written Appeal by:
- ▶ John Wilson
- ▶ Owner of Lot 11, Concession 14 (Roll No. 3-118)

# The Drainage Act, R.S.O. 1990:

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- ▶ Provides a mechanism for the construction, improvement and maintenance of a drainage works
- ▶ Enables non-riparian landowners to obtain a legal drainage outlet
- ▶ Safeguards the rights and property of riparian landowners through which the drainage system may be constructed
- ▶ User pay system, all lands and roads within the watershed boundary are assessed a portion of the costs



# Engineer to distinguish assessments (Section 21)

- ▶ The **engineer** in the report shall assess for benefit, outlet liability and injuring liability, and shall insert in an assessment schedule, in separate columns, the sums assessed for each opposite each parcel of land and road liable therefor.

# Assessment for benefit

## Section 22

- ▶ Lands, roads, buildings, utilities or other structures that are increased in value or are more easily maintained as a result of the construction, improvement, maintenance or repair of a drainage works may be assessed for benefit.



# Definition of benefit

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- ▶ “benefit” means the advantages to any lands, roads, buildings or other structures from the construction, improvement, repair or maintenance of drainage works such as will result in a higher market value or increased crop production or improved appearance or better control of surface or subsurface water, or any other advantages relating to the betterment of lands, roads, buildings or other structures.



# Outlet liability

## Section 23(1)

- Lands and roads that use a drainage works as an outlet, or for which, when the drainage works is constructed or improved, an improved outlet is provided either **directly** or **indirectly** through the medium of any other drainage works or of swale, ravine, creek or watercourse, may be assessed for outlet liability.



# Basis of assessment

## Section 23(3)

- ▶ The assessment for outlet liability and injuring liability provided for in subsections (1) and (2) shall be based upon the volume and rate of flow of the water artificially caused to flow upon the injured land or road or into the drainage works from the lands and roads liable for such assessments.

# John Wilson

## (Roll No. 3-118) Lot 11, Concession 14

### Benefit Assessment

▶ Construction Costs	\$ 33,148.00	
▶ Allowances	\$ 4,980.00	
▶ Engineering & Administration	<u>\$ 16,055.00</u>	
▶ Total Cost of the Work on Property	\$ 54,183.00	(86.7%) of project
▶ Benefit	\$ 12,800.00	(23.6%)



# John Wilson

## (Roll No. 3-118) Lot 11, Concession 14

### Outlet Liability Assessment

- ▶ Total Acreage 3.6 hectares (9.0 acres)
- ▶ 3.6 (9.0 ac.) hectares agricultural lands entering at the outlet structure Sta. 0+000
- ▶ The outlet assessment has been calculated to be \$647.00
- ▶ The construction costs of the outlet structure and brushing and mulching is \$6,728.00.
- ▶ The outlet assessment for this property represents 9.6% of the estimated construction costs of the outlet structure.

# John Wilson

## (Roll No. 3-118) Lot 11, Concession 14

### Summary of Assessments

- ▶ Benefit Assessment \$12,800.00
- ▶ Outlet Assessment \$ 647.00
- ▶ Total Assessment \$13,477.00 (21.6%) of Estimated Total Cost of Project
- ▶ Less 1/3 Provincial Grant -\$4,482.00
- ▶ Less Allowances Provided -\$4,980.00
- ▶ Net Assessment \$3,985.00
- ▶ \$3,985.00 of \$62,500.00 Estimated Total Cost of Project = 6.4%



# John Wilson

## (Roll No. 3-118) Lot 11, Concession 14

### Appeal on Assessment Reads:

The proposed drain offers little benefit to my property Lot 11, Concession 14 (Roll No. 3-118) (Former Township of Greenock) Municipality of Brockton. Under the definition of benefit in the Drainage Act, the proposed drain will not result in higher market value, increased crop production or betterment of land. A large part of the current drainage system for the area depicted on the Plan and Profile drains into the outlet on Concession 14.

The Dietrich Engineering report Schedule A does not include allowance for loss of access and use. The report specifies the working area shall be an average of 25 metres in width. This would sever access to approximately 75 percent of the farm during construction. There is no suitable stream crossing west of the laneway.



# John Wilson

## (Roll No. 3-118) Lot 11, Concession 14

### Appeal Arguments:

1. The proposed drain offers little benefit to my property based on the definition of benefit under the Drainage Act.

There are other examples of benefit included in the Drainage Act definition, beyond what was included in the appeal, such as “better control of surface or subsurface water”, which apply to the Wilson property

2. A large part of the current drainage system for the area depicted on the Plan and Profile drains into the outlet on Concession 14.

the watershed on our drawings was established by field investigation and data analysis of SWOOP data (Southwestern Ontario Orthophotographic Project). In other words we believe the watershed boundaries in our report to be correct, and we don't have any other information to suggest otherwise.



# John Wilson

## (Roll No. 3-118) Lot 11, Concession 14

### Appeal Arguments:

3. The report does not include allowance for loss of access and use to approximately 75 percent of the farm during construction.
- Allowances are not assessments the proper venue to object to the allowances provided in the report would have been at the Consideration of the Report, the Court of Revision has no authority to adjust allowances.
- I suspect that the above statement may be the result of a misunderstanding of how construction will be done. Most contractors would install the 244 metres of pipe in one or two days and access to the area south of the proposed drain will not be compromised throughout the construction of this project.