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**OMBUDSMAN REPORT  
RE CHARGES FOR SANITARY SEWER CONNECTION TO  
PROPERTY OWNERS OF QUEEN STREET, LIONS PARK  
DRIVE AND ADELAIDE ROAD IN MOUNT BRYDGES**

**THE CORPORATION OF THE MUNICIPALITY OF  
STRATHROY-CARADOC**

**Aird & Berlis LLP**

**Paula Boutis**

August 16, 2023

**TABLE OF CONTENTS**

I. INTRODUCTION ..... 1

II. APPOINTMENT, AUTHORITY AND FUNCTION OF OMBUDSMAN..... 1

III. THE COMPLAINT..... 1

IV. REVIEW OF MATERIALS & INVESTIGATION ..... 3

V. FACTS..... 4

VI. FINDINGS ..... 8

VII. CONCLUSIONS ..... 9

## OMBUDSMAN REPORT RE SANITARY SEWER CONNECTION CHARGES IN MOUNT BRYDGES

### I. INTRODUCTION

1. Aird & Berlis LLP is the Ombudsman appointed for The Corporation of the Municipality of Strathroy-Caradoc (the “Municipality”).
2. On June 23, 2023, our office received a complaint (the “Complaint”) from the property owners of Queen Street, Lions Park Drive, and Adelaide Road in Mount Brydges (the “Complainants”) regarding the imposition of a sewer use connection fee in the amount of \$17,500 (the “Connection Charge”).

### II. APPOINTMENT, AUTHORITY AND FUNCTION OF OMBUDSMAN

3. Pursuant to subsection 223.13(1) of the *Municipal Act, 2011*, Aird & Berlis LLP was appointed as Ombudsman for the Municipality by Section 1 of Schedule “C” of By-law No. 81-22.
4. The Ombudsman reports to Council. In accordance with subsection 223.13(1), the mandate of the Ombudsman is as follows:

... to investigate in an independent manner any decision or recommendation made or act done or omitted in the course of the administration of the municipality ... as the municipality may specify and affecting any person or body of persons in his, her or its personal capacity.

5. Fundamentally, the Ombudsman’s function is to review unfair administrative actions and processes, seek resolutions and/or to make recommendations where it appears an action has been unfairly administered.

6. Under subsection 223.13(7), the Ombudsman is *not* empowered to do the following:

... to investigate any decision, recommendation, act or omission in respect of which there is, under any Act, a right of appeal or objection, or right to apply for a hearing or review, on the merits of the case to any court ... until that right of appeal or objection or application has been exercised in the particular case, or until after any time for the exercise of that right has expired.

### III. THE COMPLAINT

7. The Complaint appended four pieces of correspondence from the Municipality to residents. Two are dated February 17, 2022 and March 14, 2022. These two letters indicate that the Complainants are required to pay the Connection Charge as well as non-connection monthly fee of \$41.82 for the anticipated installation of lateral sewer pipes to their property line from a new

main line. The non-connection fee applies if a property owner does not connect into the municipal sewer system, if they have the option not to connect under the Municipality's Sewer Use By-Law (By-Law 64-14 for Sewage System Discharge Regulations).

8. The Complainants allege the letters demonstrate that the Municipality's staff was not conducting business in accordance with O. Reg. 586/06: *Local Improvement Charges – Priority Lien Status* made pursuant to *Municipal Act, 2001*. In support of this allegation, the Complainants provided two older letters, from 2011 and 2012, as a point of comparison.

9. The Complainants indicate that it is “crucial that all municipal business is conducted within the parameters of the law to ensure fairness, transparency, and adherence to established regulations.”

10. Following an interview with a representative of the Complainants (the “Representative”), we confirmed that the Complainants are not seeking a legal opinion related to the propriety of the fees charged under the *Municipal Act, 2001* or its associated regulations for fees and charges, as compared to the process established under O. Reg. 586/06, related to local improvement charges.

11. The Complainants' main concerns relate to the process for rolling out the Connection Charge and the execution of Council decisions related to it; and, further, that the quantum of the Connection Charge, is too high, as it encompasses costs beyond the pipe cost of the lateral pipe to private property, that it may include road upgrades, and that these fees may constitute “double dipping”, as the construction costs were paid for by a developer. They would like to ensure that, in the future, what they experienced does not occur again.

12. The Representative indicated that the Complainants were advised at a public meeting that they should hook up their private pipe at the same time as the construction, and they asked about prices and costs, but never heard anything until the correspondence dated February 17, 2022 arrived.

13. The Complainants believe the Municipality should have followed the process under O. Reg. 586/06, which would have provided notice and offered an option to object. Instead, they were forwarded a bill for \$17,500 “out of the blue”. The Representative suggested that the 2011 and 2012 letters to residents demonstrated that the Municipality was following a better process at that time, as the affected owners knew in advance what charges were anticipated related to sanitary sewer system upgrades. We note there is no indication that whatever occurred in 2011 and 2012 was done in accordance with O. Reg. 586/06.

14. Following the interview with the Representative, a fifth letter, dated June 30, 2023, was provided to our office. This letter outlined payment options for the Connection Charge, and indicated payments were due either September 5, 2023, if paid in a lump sum, or, if installment payments were chosen, the installment amounts would be included in their municipal taxes beginning February 2024.

15. The Ombudsman's office cannot provide a legal opinion on the legality of the fee under the *Municipal Act, 2001*, and its associated regulations, nor comment on whether a different process should have been followed, specifically that under O. Reg. 586/06.

16. If there are concerns that Council's decision to impose the fee was illegal, subject to a one year limitation period following approval of the by-law (defined to include an order or resolution), there is a process for contesting it under section 273 of the *Municipal Act, 2001*:

**Application to quash by-law**

**273** (1) Up the application of any person, the Superior Court of Justice may quash a by-law of a municipality in whole or in part for illegality.

17. Finally, we note that the Ombudsman is not in a position to look behind the quantum of the council-adopted fee or charge, i.e. whether the fee should only have been for the cost of the actual lateral pipe, and nothing else. However, through our background review we can confirm the facts regarding how the charge was established, what the charge covered, and who paid the construction costs of the Queen Street reconstruction.

18. Following a careful review of several staff reports from December 2021 to August 2023; related council minutes and resolutions; a review of the recordings of select Council meetings; a cost-sharing service agreement between the Municipality and a developer related to the installation of the sewer main and laterals; an interview with the Representative for the Complainants; an interview with a staff member; and correspondence with staff, we have concluded that to the extent there was any unfairness – or at least confusion – in the execution of Council decisions related to the Connection Charge, this has ultimately been rectified by:

- (1) subsequent decisions of Council;
- (2) by the adoption of a policy regarding fees for the extension of municipal water and wastewater services; and
- (3) a waiver/refund of non-connect fees until January 1, 2024, as well as a delay to January 1, 2024, for making payment arrangements for the Connection Charge.

19. For the reasons set out below, we dismiss the Complaint.

#### **IV. REVIEW OF MATERIALS & INVESTIGATION**

20. For the purposes of our investigation we took the following steps:

- Review of the Complaint;
- Interview with the Representative;
- Interview with a staff person at the Municipality;
- Correspondence with staff at the Municipality;
- Review of five letters from the Municipality to residents, dated November 8, 2011, January 4, 2012, February 17, 2022, March 14, 2022, and June 30, 2023;
- Staff reports and related minutes and council resolutions regarding Council's adoption of the Connection Charge and a payment policy for the extension of services, which

occurred on the following dates: December 20, 2021, February 7, 2022, March 21, 2022, August 2, 2022, June 19, 2023, and August 8, 2023;

- Review of the recordings of the Council meetings held on August 2, 2022, and August 8, 2023; and
- Review of By-Law 16-22, regarding a servicing agreement between the Municipality and Cirrus Developments Limited (the “Servicing Agreement”).

## **V. FACTS**

### **(a) Construction of and Costs for the Sewer Main and Laterals**

21. To understand the background leading to the construction of the sewer main and laterals, how construction was paid for, and the ultimate imposition of the Connection Charge, we reviewed the Service Agreement, several staff reports, and discussed the project with municipal staff.

22. The extension of sewer services arose out of a development for a new subdivision, the Timberview Subdivision. The developer for this subdivision only needed to run the sanitary and watermain into the development, but did not need to rebuild the road to an urban standard. Municipal staff decided there was value in taking advantage of the work otherwise being completed by the developer and established a cost-sharing mechanism. The developer obtained costing for restoring the road following installation of the sewer mains and laterals, and the Municipality paid the extra costs required to bring it up to urban standards.

23. Ultimately, the developer funded approximately 25% of the project within Queen Street. We reviewed the Servicing Agreement which included numerous schedules delineating costs to be borne by the developer or the Municipality related to the Timberview Subdivision and the Queen Street upgrades.

24. In addition, we reviewed the staff report dated March 21, 2022, which addressed the following questions, among others: “Where does the \$17,500 fee come from?” and “Who is paying for Queen Street Reconstruction”?

25. That staff report indicated that the Connection Charge was not intended to be related only to the cost of the Queen Street project: Council’s direction was for the fee of any sanitary sewer connection within the entire community of Strathroy-Caradoc where sanitary sewers did not exist.

26. Furthermore, the Connection Charge related not only to the infrastructure (i.e. the lateral pipes), but also included costs for dewatering, sediment erosion control, hydro vac, utilities, backfill/bedding and compaction materials, pipe costs, labour, equipment, trucking away materials, sod restoration and any other conflicts that may arise, such as tree reconstruction. It did not include road reconstruction costs related to bringing the road up to the urban standard, a point re-iterated at the Council meeting held on August 2, 2022.

27. We understand from staff that, to date, one owner has paid the full amount of the Connection Charge and has connected their property to the sanitary sewer system.

**(b) Staff Reports and Council Resolutions****(i) December 20, 2021 Report and Council Resolution**

28. The staff report dated December 20, 2021, indicated that the Municipality's Sewer Use By-Law requires that owners of a building on land abutting a street through which access to a sanitary sewer main is available, shall connect to the system. There are "grandfathering" provisions for buildings existing as of December 15, 2014, provided the owner pays a minimum monthly charge if the owner chooses not to connect to the system. If a building has a septic requiring replacement, property owners are not permitted to install a new septic, but must connect to the sanitary sewer.

29. The staff report noted that on October 17, 2019, Council approved proceeding with the sanitary extension of Queen Street, Mount Brydges. As at the date of this staff report, no charges had been charged to the owners who benefited from that extension, though there was a plan for a fee of \$17,500 to be charged. At the time of that plan, final connection charges had not yet been established. The intention was that if final fees exceeded the \$17,500, the homes that benefited from that extension would not pay more, but if the fee was lower than \$17,500, the residents would be credited the difference.

30. The report indicated that work had already been completed with sanitary services stubbed to the property lines in Mount Brydges on Queen Street and Adelaide Road. Staff submitted the report for Council to provide direction on which of the four options would be selected respecting the fees to be charged to owners.

31. Option #1 reflected actual costs incurred for the sanitary sewer connection, with no upset limit. Option #2 reflected direct costs to an upset limit of \$20,000. Option #3 was a fixed fee of \$17,500. Option #4 was that the costs would be borne by the rate-payers.

32. Council approved moving forward with Option #3 and this charge will be part of the annual Fees and Charges by-law, indexed to the consumer price index.

33. The report further indicated that the owners could pay in full once the service was provided, or the Municipality could fund the project with Middlesex County's low interest loan program to be offered to the residents, or the Municipality would, in turn, establish a low-interest loan program.

**(ii) February 7, 2022 Report and Council Resolution**

34. The staff report dated February 7, 2022, reviewed the Connection Charge and sought approval of the \$17,500 fee and direction from Council to notify affected owners respecting payment and payment options. Payments were to start on September 1, 2022.

35. This staff report also outlined the financial implications to property owners, specifically that the owners would be assessed the fee and that they could pay the full fee immediately or the municipality "may offer a low interest loan program". However, there was no information in the report about what the potential interest rate or number of years may be for payment.

36. The minutes of the meeting indicate that during discussion at Council, councillors sought information about payment plans and financing and/or were concerned about the recommendation being "fairly drastic" relative to previous connections options. The Director of

Financial Services indicated there could be a payment plan with various options, and the Chief Administrative Officer indicated that a report would come back to Council regarding payment options.

37. At that meeting, Council approved the Connection Charge in the amount of \$17,500, directed staff to notify affected owners about the requirement for payment and payment options; and that payments were to begin on September 1, 2022.

38. Letters were to be sent to affected property owners on February 16, 2022, with follow-ups, as necessary, on March 15, 2022 and April 15, 2022.

**(iii) March 21, 2022 Report and Council Resolution**

39. As noted earlier, the staff report dated March 21, 2022, reviewed a number of questions that residents had raised. The report indicated that the Municipality was working with local banks and credit unions to explore a preferred rate loan for payment of the Connection Charge and that more information would be available when discussions were concluded. The report further noted that owners could always use their own financial institution's credit facilities. Council received the report for information.

**(iv) August 2, 2022 Report and Council Resolution**

40. The staff report dated August 2, 2022, offered a proposed framework within which the Municipality could recover costs associated with the Connection Charge in a "fair and equitable manner."

41. A draft policy was appended to the report. The report offered four options for payment of the Connection Charges related to the installation of sewer services to previously unserved properties:

- (i) Pay the entire fee when billed;
- (ii) Arrange for private financing through a financial institution;
- (iii) Choose to make payments over eight years by adding the cost to property taxes with the applicable interest rate from Infrastructure Ontario added; and
- (iv) Choose to make the payment over fifteen years by adding the cost to their property taxes with the applicable interest rate from Infrastructure Ontario added.

42. The report also addressed what would happen if a resident could not afford the payment. It proposed that an application could be made to Council to have the fee plus accumulating interest registered on title as a lien.

43. We reviewed the recording of this meeting. During discussion, a councillor noted that the province was mandating that the sewer system had to be self-funding and that municipalities should not rely on property taxes. The Mayor noted this Connection Charge applies to the entire community, not just Mount Brydges. Staff also responded to questions revisiting what the Connection Fee was intended to cover, confirming that it did not include street reconstruction. While it does include other costs associated with the installation of the lateral pipe, a councillor noted that installing the pipes in this manner, connected other development, is ultimately cheaper



for the residents. Another councillor noted that the manner in which this had been rolled out upset some people, but he fully supported the options provided for in the policy, though expressed some concerns about how the hardship element of the policy would be implemented.

44. Council adopted policy and payment framework, but added a fifth option, which is payment over 20 years.

45. Although not reflected in any formal resolution of Council, we understand that Connection Charge was not to be payable until September 1, 2023, rather than, as earlier decided by Council, payable beginning September 1, 2022. This new date was referred to in the staff report dated June 19, 2023.

**(v) June 19, 2023 Report and Council Resolution**

46. The staff report dated June 19, 2023, provided an update regarding the Connection Charge. Staff sought, and obtained, approval from Council to increase the fee to \$18,555.25 effective July 1, 2023, for all new connections.

47. While increasing the fee as noted, it confirmed that private connections established prior to June 19, 2023, would remain at a fee of \$17,500. The higher fee does not apply to the properties of the Complainants, as all the laterals were already installed prior to June 19, 2023.

48. The staff report also indicated that the Connection Charge was to be issued to all affected owners by September 1, 2023. The report reiterated the costs included in this fee, from dewatering, to dust control, and all labour and equipment. The report further noted that the fee did not cover any of the costs associated with the treatment facility.

**(vi) August 8, 2023 Report and Council Resolution**

49. On August 8, 2023, staff brought forward a report related to the non-connect fee, citing “inconsistencies of the application of the sewer non-connect fee.” Further, at the meeting, staff commented that the non-connect fee may have been muddled by the Connection Charge issue, and there was confusion about it. Staff recommended that to address these inconsistencies, those owners who had been charged the sewer non-connect fee should have those fees credited and waived until January 1, 2024.

50. As described below, the letter to residents dated June 30, 2023, communicated that the payments would, at the earliest, be payable on September 5, 2023, if a lump sum was paid. Further, those owners who elected a longer-term payment plan option did not have to commence payments until February 2024, which staff advised was when the fees could be added to property taxes.

51. Council did approve the waiver/credit of the non-connect fee, but further decided that the Connection Charge of \$17,500 would also not be payable until January 1, 2024 (instead of September 5, 2023).

**(c) Correspondence to Residents from the Municipality**

52. Details of all correspondence provided to us from the Complainants are set out here.

53. The letter dated February 17, 2022, indicated that property owners will have a sanitary sewer private drain connection installed to the property line in the near future. The letter further indicated that on February 7, 2022, Council passed a resolution that a fee of \$17,500 was to be assessed to each property that has received a private drain connection to their property. In addition, under the current Sewer Use By-law, the Complainants would be required to pay a minimum monthly sewer charge for \$41.82 if they did not connect. The letter further indicated that owners should arrange payment with the Municipality. It offered no further details or explanation about payment, i.e. lump sum, or payments over time with installments and interest.

54. The second letter, dated March 14, 2022, reiterated the information provided for in the letter of February 17, 2022. It further offered that affected residents could participate in an upcoming meeting of Council, on March 21, 2022, to comment on and ask questions to Council and staff related to the connection mandate and fee.

55. At the time of filing the Complaint to our office, the Complainants also provided letters dated November 8, 2011 and January 4, 2012, regarding the “Mount Brydges Sewage System Update”. These letters identified an “Infrastructure Charge” of \$7,500, with three different payment schedules. The January 4, 2012, letter addressed payment under one of the options.

56. Following an interview with the Representative, we understand that in the lead-up to and prior to the receipt of the 2011 and 2012 letters by area residents, there had been public consultation and an explanation of the fees that would be charged, and that this was not the case for the matter at hand. The Connection Fees in issue “came out of the blue”.

57. Following the interview, the Representative provided us with a fifth letter, dated June 30, 2023, which confirmed the amount to be paid for the constructed laterals and related works, and provided for four different payment options: a lump sum payment, due September 5, 2023, or three different payment plans over eight, 15 and 20 years, with differing interest rates. If any of the installment payment plans were chosen, the payments will be included on the property taxes, beginning February 2024. If the Municipality received no reply from a resident regarding a preferred option for payment, the 20-year payment plan would be applied to an owner’s municipal taxes. These payment options reflect the policy, as amended and adopted by Council, on August 2, 2022.

## **VI. FINDINGS**

58. In summary, letters regarding the Connection Charge were sent to affected residents on February 17, 2022 and March 14, 2022. Neither of these letters made reference to payment options. Further to subsequent Council decisions and directions, another letter was sent to the residents on June 30, 2023, which outlined all payment options as approved by Council. The letter indicated that payments would not begin until September 5, 2023, or February 2024, depending on the payment option chosen. However, on August 8, 2023, Council directed that no payments for the Connection Charge were required until January 1, 2024, and any monthly non-connect fees paid to date were to be waived/refunded with those fees to be charged starting January 1, 2024.

59. We find that to the extent there may have been any unfairness or confusion in the initial rollout of the Connection Charge payment requirement, or what the Connection Fee included, these concerns have now been addressed and/or rectified.

## VII. CONCLUSIONS

60. After a thorough and careful review of all the relevant materials, including an interview with the Representative, as well as interviews and correspondence with relevant staff, the Complaint must be dismissed. Although there may have been some confusion related to the Connection Charge, and the Municipality was somewhat clumsy in its roll out of the payment options, we have determined that through various staff reports and Council direction, the issues have since been addressed and rectified.

61. The Complainants now have clarity about what is included in the Connection Charge, and payment options in accordance with a Council-approved policy. Payments for the Connection Charge will not be required before January 1, 2024, at the earliest. Furthermore, those persons who may suffer hardship in paying the Connection Charge have an option to apply to Council and request that the fee be placed on title as a lien.

62. We accordingly conclude that any administrative unfairness or inequity that may have occurred related to the manner of payment of the Connection Charge has been addressed appropriately and that no further actions are required on the part of Council or staff, subject to any usual policy review activity or questions that owners may have related to the implementation of the policy now adopted.

Respectfully submitted,

AIRD & BERLIS LLP



Paula Boutis

Ombudsman for The Corporation of the Municipality of Strathroy-Caradoc

Dated this 16th day of August, 2023