

Bill No. 438
2019

By-law No. A.-_____ - _____

A by-law to approve a Mutual Agreement Drain Agreement (the "Agreement") between The Corporation of the City of London ("City") and Gordon Douglas Boughner and Marilyn Jane Boughner; (the "Boughners") and to authorize the Mayor and City Clerk to execute the Agreement.

WHEREAS section 5(3) of the *Municipal Act, 2001* S.O. 2001, c.25, as amended, provides that a municipal power shall be exercised by by-law;

AND WHEREAS section 9 of the *Municipal Act, 2001* provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act;

AND WHEREAS it is deemed expedient for The Corporation of the City of London (the "City") to enter into a Mutual Agreement Drain Agreement with Gordon Douglas Boughner and Marilyn Jane Boughner (the "Agreement");

NOW THEREFORE the Municipal Council of The Corporation of the City of London enacts as follows:

1. The Agreement attached as Schedule "A" to this by-law, being a Mutual Agreement Drain Agreement with Gordon Douglas Boughner and Marilyn Jane Boughner is hereby approved.
2. The Mayor and City Clerk are hereby authorized to execute the Agreement approved under section 1 of this by-law.
3. This by-law shall come into force and effect on the day it is passed.

PASSED in Open Council November 26, 2019.

Ed Holder
Mayor

Catharine Saunders
City Clerk

First reading – November 26, 2019
Second reading – November 26, 2019
Third reading – November 26, 2019

Schedule "A"

Mutual Agreement Drain Agreement

Between

The Corporation of the City of London

(herein called the "City")

-and -

Gordon Douglas Boughner and Marilyn Jane Boughner

(herein called the "Boughners")

WHEREAS the City is the owner of the property described as Part of Lot 10 Concession 5 (formerly Township of Westminster) designated as Part 1 on Plan 33R12017, in the City of London, County of Middlesex, and known municipally as 5200 Highbury Avenue South Roll # 080010097100000 (the "City's Land");

AND WHEREAS the Boughners are the owners of the property described as Part of Lot 10 Concession 5 (formerly Township of Westminster) in the City of London, County of Middlesex, and known municipally as 1889 Westminster Drive Roll # 080010097000000 (the "Boughner's Land");

AND WHEREAS the City has constructed the Southeast Reservoir and Pumping Station ("SERPS") on the City's Land;

AND WHEREAS in conjunction with the construction of SERPS the City has installed drainage works on the Boughner's Land (the "Mutual Agreement Drain");

AND WHEREAS the parties have agreed to enter into the Agreement to confirm their rights and responsibilities with respect to the Mutual Agreement Drain;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the premises and the sum of TWO (\$2.00) DOLLARS of lawful money of Canada now paid by the City to the Boughners, the receipt and sufficiency whereof is hereby acknowledged, the Parties agree as follows:

1. The Mutual Agreement Drain consists of the following works:

a) a 200mm drain tile extending approximately 193 m from the east limit of 5200 Highbury Ave S on the north side of the fence line between 5200 Highbury Avenue South and 1889 Westminster Drive;

b) a 375 mm diameter pipe extending approximately 100m from the Northeast corner of 5200 Highbury Avenue South extending easterly through 1889 Westminster Drive to the Madter Drain; and

c) berm works and a catch basin inlet located on 5200 Highbury Avenue South to contain runoff from the Northeast Corner of 5200 Highbury Avenue South and direct these flows through the 375mm pipe to the Madter Drain.

2. The Mutual Agreement Drain works are located as shown on the attached plan which forms part of this Agreement.

3. The construction cost of the Mutual Agreement Drain works was \$85,580.00 plus taxes. The full cost of the Mutual Agreement Drain works was paid by the City.

4. For the purposes of future maintenance, the Mutual Agreement Drain works will be identified as:

a) the 200mm drainage tile on the 1889 Westminster Drive Property with an outlet for these works to the 5200 Highbury Avenue South Property, and

b) the 375mm drain pipe outletting from 5200 Highbury Avenue South through 1889 Westminster Drive to the Madter Drain; and the berm works and catch basin inlet located on 5200 Highbury Avenue South Property to contain runoff from the Northeast corner of 5200 Highbury Avenue south Property and.

5. Future maintenance costs of the Mutual Agreement Drain works described in paragraph 4, above will be paid as follows:

a) The Boughners will be responsible for one hundred (100%) percent of the cost of maintaining the works identified in paragraph 4a) above; and

b) The City will be responsible for one hundred (100%) percent of the cost of maintaining the works identified in paragraph 4b) above.

6. This agreement is made under the Authority of the *Drainage Act*, R.S.O. 1990, c. D. 17.

7. In accordance with Section 2(3) of the Drainage Act, an agreement or an executed copy thereof made under this section shall, upon registration in the proper land registry office, be binding upon the heirs' executors, administrators, successors and assigns of each party to the agreement.

IN WITNESS WHEREOF the parties have executed this Agreement.

The Corporation of the City of London

Ed Holder, Mayor

Catharine Saunders, City Clerk

Witness:

Gordon Douglas Boughner

Marilyn Jane Boughner