

September 21, 2023

Honourable Mayor Canniff and members of Chatham-Kent Council,

We are submitting this deputation on behalf of the members of the Erie Shore Drive Property Owners Association in response to the Preliminary Report for the Burk Drainage Works, Community of Harwich, Municipality of Chatham-Kent prepared by PC Spencer Associates Inc., Consulting Engineers dated June 18, 2023 (the "**Preliminary Report 2023**"). In reviewing the report, we felt it important to provide additional context and to clarify key points of significance prior to Council making a decision on any next steps.

The significance of the lakeshore embankment (shoreline), including the properties situated along Erie Shore Drive, and the protection they provide to the Burk Drainage works cannot be understated. The Preliminary Report 2023 states: "there is little doubt that the beach area, the beach dune, and the residential structures between the lake and Erie Shore Drive absorb a great deal of the energy from wave attack and in fact, provide some considerable degree of protection to Erie Shore Drive and lands to the North." The significance of this statement cannot be stressed enough. While several reports were quoted in this most recent report, what is notably omitted is the fact that many historical reports have also identified the importance of the shoreline and Erie Shore Drive properties in the protection of the dyke, the municipal assets and the agricultural lands contained within the Burk Drainage Scheme.

We draw your attention to the following reports:

5 November 1930 report by W. G. McGeorge and G.A. McCubbin

"In compliance with your instructions we have made an examination of the Burk Drainage Works and we submit herewith a plan for a work of protection along or near the lakeshore. We consider the restoration of drainage works to be wholly dependent on the rebuilding and protection of the lakeshore."

It should be noted that the quote above is from November 5, 1930 when the water level was 570.54 ft which is approximately 2 ft lower than the water level of Lake Erie today.

7 December 1945 report by G.A. McCubbin

"In compliance with your instruction I made an examination of the lakeshore embankment. I found that 800 ft at the westerly end had been seriously endangered by the recent storms. It is an urgent matter for the safety of the Burk Drainage Works that 800 ft of shoreline protection be constructed as quickly as possible."

The seawall and groyne system are part of the Burk Drainage Works and have been found to be instrumental in protecting the shoreline.

26 March 1946 report by G.A. McCubbin

“The storm of November 1945 threatened the complete destruction of the lakeshore road and embankment for a distance of about 800 feet at its westerly end. Failure of the embankment at that time would have inundated all the reclaimed marshland of the Burk Drainage works. Emergency measures adopted at the time consisted of cutting, hauling, and placing of trees, brush, timber, stones, and any other material that would tend to check the force of the wave action that was undermining cottages and reaching to the edge of the roadway embankment. This section of the embankment lies exposed to any similar storm that might occur in future and it is proposed to construct 800 feet of sea wall along the beach and 17 groynes, each 50 feet in length extending into the lake at right angles to the sea wall. This form of protection has been found satisfactory wherever constructed in other portions of the lakeshore embankment since 1930.”

The water level at the time of the storm referenced by George McCubbin in November 1945 was approximately 571.59 ft which is approximately 1 ft lower than today’s water level. At that time, it was determined that it was appropriate for shoreline protection to be implemented and constructed. The Municipality proceeded with the construction of 800 ft of seawall with 17 groynes. **The sole purpose of the seawall and groynes was for shoreline protection.**

Understanding the importance of the shoreline in protecting the dyke, in 1947-1948 the Municipality proceeded to add an additional 1750 ft of shoreline protection. In 1947, the water level of Lake Erie was approximately six inches higher than today and in 1948 the water level was virtually the same as today. At that time, in a letter dated May 8, 1947, George A. McCubbin said, “it may be expected that through the course of years, the whole of the lake shore road or of the sandbank along the water’s edge will need substantial protection if the Burk Drainage scheme is to be kept in successful operation”. In other words, approximately eighty years ago it was acknowledged that lakeshore road (or sandbank or Erie Shore Drive today) required substantial protection to ensure the continued and successful operation of the Burk Drainage Scheme. It has been determined that the Burk Drainage scheme is instrumental in the protection of the agricultural lands to the north of Erie Shore Drive.

In 1950 the farmers were of the opinion that additional drainage works were required in the area under the provisions of the *Drainage Act*. At that time, the water levels of Lake Erie were 572.05 ft being slightly lower than the Lake Erie water levels today. In 1950 the area farmers petitioned the federal and provincial governments for funding to assist with the construction of additional seawall and groynes similar to what was constructed in the area since in or around 1930. The funding from both the provincial and federal levels of governments was granted and in 1950 - 1951 the remaining area along the Lake Erie shoreline received its protection.

Why is this background information so important to the issue before Council today?

It is important for Council to understand that the sandbank and shoreline protection was considered an integral part of the Burk Drainage Works and essential to the operation of the

dyke and protection of the agricultural lands. Absent the sandbank, the embankment would likely fail and Chatham-Kent's road in the area being Erie Shore Drive would be flooded and impassable resulting in the farms being flooded with Lake Erie water.

The farmers and the Municipality of Harwich at that time understood the importance of the sandbank to the Burk Drainage Works in the area and as a result continued to protect the embankment from the force of Lake Erie. It was, and it continues to be, imperative that the embankment be protected from the impacts of Lake Erie. The dyke on which Erie Shore Drive is built is "the most critical dyke that protects the Burk Drainage Work."

It has been confirmed that "the council of the Municipality of Chatham-Kent is responsible to administer the continued repair and improvement of these protective works under the Drainage Act." The Preliminary Report 2023 states, "generally speaking the walls and groynes have not been maintained by the municipality or the landowners". With respect, the responsibility to repair and improve the seawall and groynes rests solely on the Council of Chatham-Kent who have failed in their obligation. Based on a historical review of the information and documentation there have been no repairs to the walls or groynes since in or around 1958. More importantly, Chatham-Kent has never repaired or improved any shoreline work on the most critical dyke of the Burk Drainage Works that Chatham-Kent is responsible for since their construction and since Chatham-Kent amalgamated with the Township of Harwich in 1998.

As the seawall and groynes continued to fall into a state of disrepair from the continued and ongoing lack of maintenance by the Municipality, **the property owners on Erie Shore Drive have had no alternative but to take steps and implement measures to protect the embankment with their own resources where possible.** The residents have been forced to bear the burden of 100% of the cost of protecting the sandbank since the early 1970's.

The Preliminary Report 2023 states, "there is little doubt that the beach area, the sand dune and the residential structures between the lake and Erie Shore Drive absorb a great deal of the energy from wave attack and in fact provide some considerable degree of protection to Erie Shore Drive and the lands to the north". In other words, the lands to the north being Chatham-Kent's Road and the farmers' land, agricultural fields, and buildings. "

PREFERRED OPTION OF THE PRELIMINARY REPORT 2023

The preferred option of the Preliminary Report 2023 appears to be the construction of a new inland dyke that is likely not strong enough in and of itself to withstand the energy from the wave attack of Lake Erie. The Preliminary Report 2023 also requires that the private shoreline works, the sandbank they protect and the residential structures (being the homes and cottages) absorb the vast majority of the impacts from Lake Erie. This new dyke appears to be a continuation and promulgation of the philosophy under which the high road (Erie Shore Drive) was constructed. At the time of the construction of Erie Shore Drive the engineer responsible stated, "the protection we are recommending for the new embankment would, we feel, be adequate under severe storm conditions, since the existing cottages and road embankment

would prevent large waves from breaking directly on the new works. Should the cottage properties and existing road suffer severe erosion as a result of prolonged storm activity and high lake levels, such that the new embankment is opened to the full force of the waves, it may then be necessary to add heavy armour stone to the slope protection we are currently recommending”.

The preferred option of the Preliminary Report 2023 continues to promote the same philosophy being that the shoreline protection works are the responsibility of the local private landowners. This statement fails to take into consideration the role of the Conservation Authority and their continued reluctance to approve works in the shoreline area.

The agricultural landowners and Chatham-Kent can avoid the high costs associated with maintaining the seawall and groynes being the shoreline protection by recommending the construction of a more cost-effective inland dyke, provided that the residents of Erie Shore Drive continue to maintain a minimum standard of lakeshore protection with their private works and their homes at the private landowner’s costs and expense. Should the private works fail to meet the minimum standard, the Municipality would have no alternative but to increase the protection on the inland dyke. This is also true if a landowner is unable to maintain the private shoreline protection works or the Conservation Authority refuses to approve the private shoreline works or the landowner has limited resources to engage in the private shoreline protection works.

SITE MEETING

Mr. McCready states that the sole concern expressed at the site meeting on January 27, 2022 was that of water from Lake Erie crossing Erie Shore Drive and entering the Burk Drainage Works. Representatives from the Erie Shore Drive Property Owners Association were present at that meeting and several representatives expressed the need for shoreline protection. During the site meeting on January 27, 2022, it was also referenced that the seawalls and groynes were in a state of disrepair. It is apparent that Mr. McCready either misunderstood or misinterpreted the concerns and comments that landowners made at that on-site meeting. These comments have not yet been addressed.

During that site meeting with Mr. McCready, the property owners were reminded by Mr. Dick that Mr. Kelly and himself had repeatedly advised that the drainage works (seawall and groynes) in Lake Erie could not be repaired because any drainage work needs a valid report and a valid assessment. The implication of that statement being that you can’t build something bigger than what the report specifies or add new properties to the assessment. This is incorrect as the Municipality can improve, alter, repair, and maintain the drainage works under the provisions of the *Drainage Act*. In fact, the preferred option of the Preliminary Report 2023 is a new dyke that is bigger than the current dyke and has new landowners added to the schedule of assessment.

CONSTRUCTED UNDER THE DRAINAGE ACT

Under a section 78 report the engineer has the ability to recommend a repair or improvement to the existing drainage works. In January 2020, Chatham-Kent was disputing whether the works in Lake Erie being the seawall and groynes from Erie Shore Drive (the high road) to the pond were constructed under the provisions of the *Drainage Act*. This very issue has been decided in the court of the Drainage Referee and confirmed that those drainage works were in fact constructed under the provisions of the *Drainage Act*.

In point 5 of the Preliminary Report 2023 the engineer states that "with the exception of portions of Erie Shore Drive from the west end of McGeachy pond to Bisnett sideroad the diking system which protects the Burk Drainage Works from Lake Erie and Rondeau Bay was constructed under provisions of the Drainage Act." However, later in this report in section 8 the engineer goes on to list all the works and the years they were built and confirms that they were constructed under the provisions of the *Drainage Act*. **In a recent decision of Acting Drainage Referee Wright, it was confirmed that all the shoreline works on the lake side of the homes on Erie Shore Drive were constructed under the provisions of the *Drainage Act*.**

We are now certain that for the vast majority of the length of Erie Shore Drive there are existing bylaws in place for those works in Lake Erie – the seawall and groynes - that can be repaired and improved under the provisions of the *Drainage Act*.

THE ISSUE OF ASSESSMENT

In 1968 the residential property owners of Erie Shore Drive joined the petition for the creation of shoreline protection. The engineer at that time considered the benefit for the residential properties along the shoreline and confirmed that those properties received 16.9% of the benefit which is what was paid. The remaining amount was assessed to the other lands situated in the drainage area of the Burk Drainage Works. There was no appeal of the assessment and as a result no amendment or alteration to the allocation of those costs occurred.

In the Preliminary Report 2023, the engineer repeatedly stresses that the residents of Erie Shore Drive, except for the portion of shoreline protection built in 1968, have not paid into the municipal protection. As the engineer is aware this does not mean that the works are not considered to be part of the Burk Drainage Works. The responsibility of preparing the schedule of assessments, including both benefits and allowances, is that of the engineer drafting the report. Assessment is based on benefit. The engineer who prepared those historical reports recognized that the benefit of the dyke not breaking and failing was predominantly for the agricultural lands situated below water level as well as to the municipal road (Erie Shore Drive) that would be destroyed and or submerged under Lake Erie.

The people that petitioned for the creation of the dyke were the farmers and agricultural landowners. With the creation of the dyke, 1700 + acres of farmland and approximately 150 residential properties on the south side of the dyke were made possible. With that construction and for the first time, a road could be constructed providing easy access into the Erieau area.

Prior to this Erieau was only accessible by boat and train. This road (Erie Shore Drive) facilitated and prompted the increase of development to the area we know today. Without the dyke the development of the area would not have been possible and the Municipality of Chatham Kent would not be receiving the tax revenue from Erieau that it does without the construction of Erie Shore Drive.

A PREFERRED OPTION THAT PROTECTS ALL OF THE DRAINAGE WORKS

The seawall and groynes work together to create small coves in which sand collects. Sloping sand beach, as the Preliminary Report 2023 states, is the best way to dissipate the energy from a wave. Everyone in the area has experienced this while walking beaches on windy days. We have also all seen the contrast of a vertical wall when a wave smashes into it, sending a spray of water everywhere.

As the Preliminary Report 2023 states **"the purpose of the walls and groynes was to protect the natural beachfront from erosion and thereby protect the Burk Drainage Works from flooding."** The Preliminary Report 2023 further states that "past studies had determined that the lakefront property owners would like to have a high degree of shoreline protection provided for their benefit but were generally of the opinion that they should not bear any significant costs for such an endeavor." **The property owners of Erie Shore Drive would be agreeable to shoreline protection that maintains the beach front and that protects the dyke and would expect to pay our share as distributed among all those who benefit from the Drainage Works.** Previous Engineers have recommended protecting the sandbank on the basis that it protects the Dyke (and Erie Shore Drive). The sandbank is a required and necessary part of the Burk Drainage Works and this section of the Dyke.

CURRENT CONDITIONS ALONG ERIE SHORE DRIVE – THE REST OF THE STORY

In section 13 of the Preliminary Report 2023 the engineer reports that "in March 2020 Chatham-Kent completed enhanced maintenance works along Erie Shore Drive" which "included the raising and relocation of a continuous row of concrete blocks to a location near the centerline of the road". This is merely an overview of the events that occurred. The Municipality of Chatham-Kent hired Golder Associates to conduct a study of road conditions. Golder stated that the blocks needed to go on the south edge of the road which would necessitate a complete closure of Erie Shore Drive. Municipal staff recommended a permanent closure of Erie Shore Drive. To facilitate this, residents were given only 9 days to pack their belongings and for the numerous full-time residents, find a new place to reside. In the midst of this chaotic situation the local area residents were making quick decisions. Possessions were disposed of or given away because there wasn't enough time to do anything else and because they were told they would likely not be able to return.

That decision of the Municipality to close the road had devastating and long reaching impacts on the area residents. At the time that the residents were told that Erie Shore Drive was to be closed, members of the Erie Shore Drive Property Owners Association Board of Directors spoke

to the engineering staff of Chatham-Kent and requested that the blocks be placed on the centre line of Erie Shore Drive so the residents could still have access to their properties. We were told it was not possible and that Golder's report required both lanes be closed.

Council will recall, as the residents were preparing to leave their homes, we hired a lawyer and sent a letter to Chatham-Kent informing them we would be bringing a claim for the value of our homes and loss of the use and enjoyment of our properties because we no longer could access them. As the blocks started being placed on Erie Shore Drive they were placed down the centerline as had been requested despite Municipal staff advising that this could not be done. The engineers at Golder amended their position to confirm that there needed to be an access lane along Erie Shore Drive to be able to reach the services. All of those services existed when the first report was written and when Chatham-Kent's staff recommended permanently closing Erie Shore Drive and when Chatham-Kent's Councillors opted to listen to staff and voted to remove people from their homes, giving them a period of 9 days to find alternate living accommodations. The removal of people from their homes created considerable stress for the residents, many of which had no place to go.

This time, we respectfully ask that the elected Council Members of Chatham-Kent take time to look into this matter more fully to resolve this ongoing situation before making a decision in haste. We would be pleased to meet with Council to provide an overview of the development of the shoreline protection works under the provisions of the *Drainage Act*.

We also remind Council that the ESDPOA has proceeded with an application under the provisions of the Drainage Act as it relates to the repair of the Burk Drainage Works. Many of the issues raised in the Preliminary Report 2023 are currently before the Court of the Drainage Referee as set out in the *Drainage Act*.

Our request to Council of Chatham-Kent who are responsible to repair and improve the Burk Drainage Works is to do so in accordance with all of its by-laws and responsibilities under the provisions of the *Drainage Act*. We are asking that Council shelve the Preliminary Report 2023 at this time pending the completion of the issues and matter before the Court of the Drainage Referee. Once the matter before the Court of the Drainage Referee has been finally determined with no further appeal(s) it would be appropriate for Council to consider the information set out in the Preliminary Report 2023 taking into consideration the decision of the Court of the Drainage Referee.

Respectfully submitted,

Board of Directors
Erie Shore Drive Property Owners Association