

Subject: Website Delegation Request - Gordon Tebbutt - Milton West Fish & Game Club Inc.

Hello Town Clerk's Staff,

Please note the following response to Delegate Request Application has been submitted at Thursday March 18th 2021 8:53 AM with reference number 2021-03-18-146.

<https://forms.milton.ca/Management/Response/View/6eb0c01a-29ef-46b8-8f27-41e560ea4177>

Application Information

- **First Name:**
Gordon
- **Last Name**
Tebbutt
- **Email Address:**
- **Phone number:**
- **Street Address:**
- **Town**
Ancaster
- **Postal Code:**
- **Are you representing a group?**
Yes
- **Group Name**
Milton West Fish & Game Club Inc.
- **Street Address:**
320 Campbell Avenue East
- **Town**
Milton

- **Council Meeting Date**

3/22/2021

- **Please indicate how you intend to interact with the online Council Meeting**

Both audio and video

- **Please describe the issue you intend to present:**

We have two main issues regarding the runoff water plans contained in the development submission for the properties located at 225 - 269 Campbell Avenue East.

Of primary concern is the illegal encroachment of a drain-pipe installed by the Town on our property without proper survey and without our permission. We wish to engage with the Town in order to seek resolution on this issue.

N.B. - There is a limit to the number of documents that may be submitted in this electronic application, hence we are unable to include our current property survey dated September 8, 2020.

We would request the opportunity to provide that document separately for the clarification of our assertion that the drain-pipe has been illegally situated.

Additionally, we have concerns about the legality of discharging said runoff water into our pond, which is classified as a "Provincially Significant Wetland".

Our concerns range from the content of the runoff water (the developer's report referenced several locations of chemical spillage on the sites) to violation of accepted principles & laws concerning changing the drainage patterns of property in a way that will affect properties located downhill of said property.

These issues are important to us for environmental reasons as well as the Club's increased risk of liability due to concerns about the redirection and intensification of the waterflow into the pond.

- **Please describe specific actions you want Council to take:**

We seek to have proper engagement and communication with the intention of addressing both the issue of the illegal encroachment of the drain-pipe installed by the Town and address the issues involved in the proposed channelling of runoff water onto our property.

We feel resolution of these issues is possible given that engagement.

- **Staff Report Number (if known)**

DS-018-21 225-269 Campbell Avenue E Public Meeting Report

- **Please provide your comments in support of or in opposition to the staff recommendation:**

Attached please find our written submission.

- **Optional: Upload the written submission that you wish to share with Council (single document, maximum 15 MB)**

1. [DS-018-21 - MWFGC -18MAR2021.docx \[19.7 KB\]](#)

- **Do you give your permission to be audio and video recorded on the Town of Milton's live Council meeting stream?**

Yes I give my permission

[This is an automated email notification -- please do not respond]



esolutionsNoReply -External Contact

, ON,

www.milton.ca

Milton West Fish & Game Club Inc.
Milton, ON
c/o Gordon Tebbutt

Ancaster, ON

March 18, 2021

Mr. Colin Best
Ms. Kristina Tesser Derkesen
Regional Councillor Ward 1
Town of Milton

Dear Mr. Best
Dear Ms. Tesser Derkesen

I am writing to you in advance of the Town of Milton Council Meeting scheduled for Monday, March 22, 2021 @7 pm.

The relevant item on the Agenda is **Public Meeting for 225 & 269 Campbell Avenue East - Town Files: 24CDM-20005/M & Z-20/20 - Meeting Report # DS-018-21.**

I writing on behalf of the Board of Directors of The Milton West Fish & Game Club (1894) Inc. We are the owners of the private property located at 320 Campbell Avenue East. Our holdings include the former mill pond on Sixteen Mile Creek that is shown on maps as the 'Campbellville Pond'. We also own the dry borderland surrounding the pond itself. It is our understanding that our private pond and land are classified as a "**Provincially Significant Wetland**" by the Ministry of Natural Resources.

As a neighbour of the properties located at 225 & 269 Campbell Avenue East, we have taken an interest in the proposed development plans for said properties. There are a few issues arising out of the plans to develop the properties at 225 & 269 Campbell Avenue East that may adversely affect our private property. We do not oppose the development *per se*, but feel strongly that our concerns be given serious consideration and be adequately addressed.

I, along with Club member Ian Robinson, attended the virtual "*Preliminary Public Information Meeting*" held on February 11, 2021 and hosted by the developer's planner, Upper Canada Consultants. They were represented by Mr. Craig Rohe.

Prior to the meeting we had reviewed the various documents and reports that had been filed with the Town in connection with the development proposal. We noted that the various reports drew attention to the existence of several areas of chemical contamination ('fuels & lubricants') on the site. There is also a concern that nutrients & contaminants (i.e. fertilizer, pesticides, and herbicides) from urbanized landscaping would find their way into our pond / Provincially Significant Wetland (a similar problem resulted from an older development abutting our westerly boundary). Additionally, there is the concern of the introduction of salt from the paved areas of the development. The salt will be in solution and we don't believe it will be removed from the storm water runoff by the 'grit / oil separator' in the proposed on-site catch-basin, contrary to a specific statement made by the planning consultant when this question was asked at the virtual "*Preliminary Public Information Meeting*" held on February 11, 2021.

All of this is potentially significant as the proposed Drainage & Servicing Plans showed the intention of diverting much of the development's runoff water to a storm-sewer that would run under the site's private road and connect with a stand-alone catch-basin and outlet pipe that had been constructed by the Town when the Campbell Avenue East roadway improvements were made in 2016. The development's storm water runoff would then discharge onto our property and into our pond via the outlet pipe constructed by the Town. As noted later, the last 3m+/- of this outlet pipe (& associated rip-rap) was constructed on our property **without benefit of an easement or our permission.**

At the meeting we explained our specific concerns about the Drainage & Servicing design and asked several questions. Mr. Rohe acknowledged that we had raised highly-detailed technical issues and said that he could not provide answers at that time, but left us with the impression our concerns would be addressed. We emphasized that these issues were important as there are several pieces of legislation that govern the management of our pond / Provincially Significant Wetland. At the end of the meeting we requested the opportunity to meet with the developer's relevant consultants so that we could discuss and possibly resolve/allay our concerns. We have not been contacted by anyone to date and no such meeting has occurred.

To that end we are submitting the following information to be considered by the Town Council.

In **2016** the Club received notice that the Town of Milton intended to perform roadway improvements to Campbell Avenue East. When the Club's executive reviewed the notice informing residents of the planned roadway improvements, we did not feel that this would have a significant impact upon our private property. We understood that improvements to the roadway were necessary, but we had some questions related to the purpose of a stand-alone catch-basin & the proposed location of its outlet pipe on our property. Ian Robinson, who is Club member & one of our former directors, as well as a (now) retired Ontario Land Surveyor, contacted Engineering staff at the Town of Milton to gather background information & to discuss the proposed placement of the storm outlet pipe on our property without any prior consent from us. This enquiry was curtailed once the potential problem was raised by Mr. Robinson, when a representative of the Town's "risk management" team would not permit him to engage further with Town staff. They ended the communication with the statement that they had discussed the matter with the appropriate (but unidentified) people & had determined that there was no problem with the location or the outlet pipe, and that there would not be any further discussion on this matter. No further explanation or evidence supporting their conclusion was provided. This was a frustrating situation and has indirectly led to the position which we now hold.

Had we known then, as we do now, that the primary purpose of the recently installed catch-basin was to serve the private development of 225 & 269 Campbell Avenue East rather than any apparent municipal purposes related to the public use of the roadway, we would have mounted a stronger and timelier opposition to the portion of the plans that appeared to adversely affect us.

To that end we attach a current legal survey completed by a local licenced Ontario Land Surveying company, dated October 8, 2020, which confirms that our property boundary along Campbell Avenue East, is almost entirely located within a few centimetres of the road's guard rail posts & well north of the water's edge of the pond. Based on the location of our properly surveyed property boundary, it is clear that southerly 3m of the development's storm water outlet pipe & related rip-rap structure, encroaches onto the land owned by The Milton West Fish & Game Club. In spite of our stated concerns at that time, the Town failed to conduct a proper legal survey prior to constructing this structure on our property and hence the installation is illegal and contravenes our property rights. We stress that we did not consent

to this installation. As explained earlier, we were denied the opportunity to properly discuss this situation with the Town before the offending structure was constructed.

The fact that the drainage outlet pipe is illegally situated on our private property would suggest that it cannot be utilized for its primary intended purpose, which as noted earlier, is for the processing of drainage water from the proposed urban development of 225 & 269 Campbell Avenue East. It would be well within our rights to ask that this structure be removed or that the matter of the infringement on our property rights be addressed to our satisfaction.

The Club also expresses its reservations about other aspects of the proposed drainage plan. The diversion of water from the properties located at 225 & 269 Campbell Avenue East may increase the risk of our pond flooding over its embankments, resulting in unacceptable liability issues for the Club. The financial and legal implications are potentially onerous and we take exception to the possibility that our property rights could be compromised in this manner.

It is our understanding that under generally accepted common law drainage principles, there is a prohibition against a development or property alteration increasing the volume or reducing the quality of historical surface water runoff to downhill neighbours. The existing grades/contours & the drainage arrows on the Existing Conditions Drainage Plan prepared by the developer's engineers, appear to suggest that much of the surface water from the proposed residential area is currently either absorbed on site or drains towards the east end of the developer's property and beyond the east side of our pond. Some statements in the Storm Water Management Plan prepared by these engineers, seem to contrarily suggest that natural historical drainage from the site, flows southward towards Campbell Avenue & then into our pond (even if this last statement was accurate, the north gutter & centreline crowning of the road, would appear to prevent much of the surface runoff water from flowing across the road & into our pond, and would instead direct it easterly to follow the road's downhill gradient to a point where it would apparently enter Sixteen Mile Creek at a point beyond the east side of our pond). These seeming conflicts leave us with the impression that the post-development runoff being diverted into our pond, may actually be more than the historical pre-development runoff (which may in turn alter the current hydrogeological runoff calculations). If this is the case, the proposed drainage plan would adversely change the *status quo* and this would be unacceptable under our understanding of established principles of drainage law.

Our embankments & sluiceway were designed and built to handle the traditional, natural water drainage of the hill area to the north of the pond and the other surrounding areas. Currently any run-off water from the north that reaches our pond, would be more or less evenly distributed into our pond over roughly 300 hundred metres of road frontage along the bottom of the hill on which the properties are located. This water flows, at much slower rate, through the soil of the hill and into the water table over a period of days. Additionally, all of this allows our dam to handle even large & sudden rainfalls. However, the balance of controlling the water level of our pond is sometimes delicate & any sudden influx of non-historical runoff, especially if it's at a concentrated, focussed point like the outlet pipe built by the Town on our property has, under the right conditions, the potential to significantly increase the risk of our pond flooding the properties & road below our property. When considering this point, please bear in mind that the surface area of our pond is about 13 acres with an average depth of several feet, so any flooding event that endangers our embankments, raises flood damage & liability concerns for all that contribute to the cause.

Under the plans that have been proposed, it seems like much of the post-development rainfall from those properties will be directly diverted through the storm-sewer outlet, without the benefit of the slow drainage of the property. This will intensify the volume of water being discharged into the pond over short periods and may cause situations where the dam itself could be overwhelmed. We can only adjust the flow of water over the dam by a comparatively small volumes due to the constraints of both the dam construction and also by the limitations of a seemingly small culvert located on the Biederman property (312 Campbell Avenue East) immediately below our dam. In the past several decades we have had a few excess-flow events that were triggered by events beyond our control. In 1 or 2 of those instances, the resulting water-flow overflowed the dam and temporarily flooded Biederman's property and approximately one hundred metres of Campbell Avenue East. Fortunately, these events were mitigated before more serious damage etc. could occur.

The Club respectfully brings this potential increased flooding issue to your attention so that you may be aware that there could be long-term legal and financial ramifications resulting from anything that is beyond our control & causes an increased risk of claims stemming from property damage downstream in event of future flooding. There appears to be potential liability ramifications if the proposed drainage plan is approved without further mitigation measures being put in place.

As noted in the Environmental Impact Statement prepared for Jansen Consulting by Azimuth Environmental Consulting, Inc. (October 2020) and submitted in support of the development plan there are several other environmental issues that need to be addressed. Although the report seemed to clear the development itself, it raised several issues that impact our property.

- On Page 6 of the report the report writer notes that "The Federal Fisheries Act includes provisions for the protection of fish and fish habitat. It specifies that "Projects that take place near or in water have the potential to impact fish and fish habitat, and may require a permit from DFO."
- The Campbellville Pond and the attached Sixteen Mile Creek system is home to significant wildlife populations. As mentioned in the report (Page 17) there are numerous bird & fish species (which are also located on our property), including Barn Swallows & Redside Dace, which are specifically mentioned under the listing of *Endangered and Threatened Species* (Page 19). There are also species of turtles present, including Snapping Turtles & Painted Turtles. The pond, in its role as a wetland, is also used by various waterfowl including various ducks, geese and (occasionally) Trumpeter Swans as well as Red-winged Blackbirds, Great Blue Herons & Kingfishers.

The report finds no issue with the impact of the development on the properties proposed for development itself, but does not seem to fully address the impact of the proposed development's drainage-sewer on the Campbellville Pond and Sixteen Mile Creek. The Club asks if the impacts to the flora & fauna in our pond (a Provincially Significant Wetland) & the creek, have been adequately addressed in the Environmental Assessment of this development or by the relevant government bodies. It seems to us that the discharge of post-development storm water (perhaps with some contaminants) Into a "Provincially Significant Wetland", is somewhat contrary to the purpose of designating such bodies.

We are asking that our concerns be specifically addressed. This would allow the progression of the development and hopefully not result in costly delays. We acknowledge that there is supposed to be a

further technical report which might answer some of our questions or perhaps prove some of our concerns to be unfounded, but there is no mention of whether this report will be shared with the public prior to any final development approvals or whether it will remain a strictly internal document.

As I mentioned in our interaction with the planners during the meeting of February 11, 2021, the issue of the infringement of the Club's private property and the threat of a change in the quality and quantity of water represents a potential existential threat to the Club's 126 year existence. We would prefer that improved communications be established so that these issues can be dealt with quickly and to the satisfaction of all parties involved; the alternative is a less palatable outcome that may require the involvement of numerous governmental regulatory interests, additional cost in time and money and mobilization of additional support from outside groups.

We sincerely hope that we can come to an accommodation in this matter and avoid any further delays.

Sincerely,

Gordon Tebbutt
Treasurer
Milton West Fish & Game Club (1894) Inc.
Milton, ON
(289) 339-5726

c.c. Mr. Ian Robinson
Ms. Angela Janzen, Planner – Development Review – Town of Milton
Mr. Craig Rohe - Upper Canada Consultants