



**City of Kingston
Report to Council
Report Number 19-060**

To: Mayor and Members of Council
From: Jim Keech, President & CEO, Utilities Kingston
Resource Staff: Mark Campbell, Director of Engineering
Date of Meeting: February 19, 2019
Subject: Release of Consent Agreement to Change in Drainage, 1445 Middle Road

Executive Summary:

The lawyer for the owner of 1445 Middle Road has requested that the City of Kingston consent to the release of an agreement – Consent Agreement to Change in Drainage – from the title to the property, indicating that the agreement should not have been, or it should no longer be, registered on title against the subject property.

The agreement was required by the former Corporation of the Township of Pittsburgh as a condition to address drainage concerns which arose at the time when the lands to the west of the property – the Grousewood Subdivision – were proposed to be developed as a subdivision. Staff have reviewed the request and determined that the agreement is no longer applicable for 1445 Middle Road.

Recommendation:

That Council authorize the Director of Legal Services to register the required documentation on title to 1445 Middle Road to release the Consent Agreement to Change in Drainage, registered May 25, 1983 as Instrument Number FR372408.

Authorizing Signatures:

**Jim Keech, President & CEO,
Utilities Kingston**

**Lanie Hurdle, Acting Chief Administrative
Officer**

Consultation with the following Members of the Corporate Management Team:

Peter Huigenbos, Acting Commissioner, Community Services	Not required
Desirée Kennedy, Chief Financial Officer & City Treasurer	Not required
Deanne Roberge, Acting Commissioner, Corporate & Emergency Services	Not required

Options/Discussion:

As part of the process of development of the Grousewood Subdivision, the former Corporation of the Township of Pittsburgh required that the developer obtain written approval from the surrounding landowners to allow the theoretical “additional” runoff from this 109 acres to continue to flow through the natural drainage courses. The developer, Township and the adjacent landowners entered into a Consent Agreement to Change in Drainage to acknowledge consent to storm water runoff from Lots 6, 8 and 13 onto the adjacent lands. The Township was obligated to execute the agreement as evidence of compliance with the requirements of the subdivision agreement. Subsequently, the lands adjacent to the Grousewood Subdivision were subdivided and the agreement was then applied to and registered on title to the subdivided parcels which included 1445 Middle Road.

When the request from the lawyer representing the owner of 1445 Middle Road to release the agreement was received by the City it was reviewed by staff and determined that this agreement was no longer applicable to 1445 Middle Road, as this parcel of land exists at a higher elevation than the Grousewood Subdivision and does not receive any of the flows from the subdivision.

This request is limited to the release of the Consent Agreement to Change in Drainage from the lands with civic address 1445 Middle Road. The agreement will remain on title for the remainder of the lands identified in the agreement because these lands are still accepting flows from the Grousewood Subdivision.

Existing Policy/By-Law:

Council approval is required as there is no delegated authority to staff to release this type of agreement from title.

Notice Provisions:

Not applicable

Accessibility Considerations:

Not applicable

Financial Considerations:

All costs for the preparation and registration of the required documents will be paid by the property owner.

Contacts:

Mark Campbell, Director, Engineering Services, 613-546-4291, ext. 3139

Don Brodie, Senior Development Technologist, Engineering Services, 613-546-4291, ext. 3146

Other City of Kingston Staff Consulted:

Tyler Lasko, Manager, Design & Development, Engineering Services

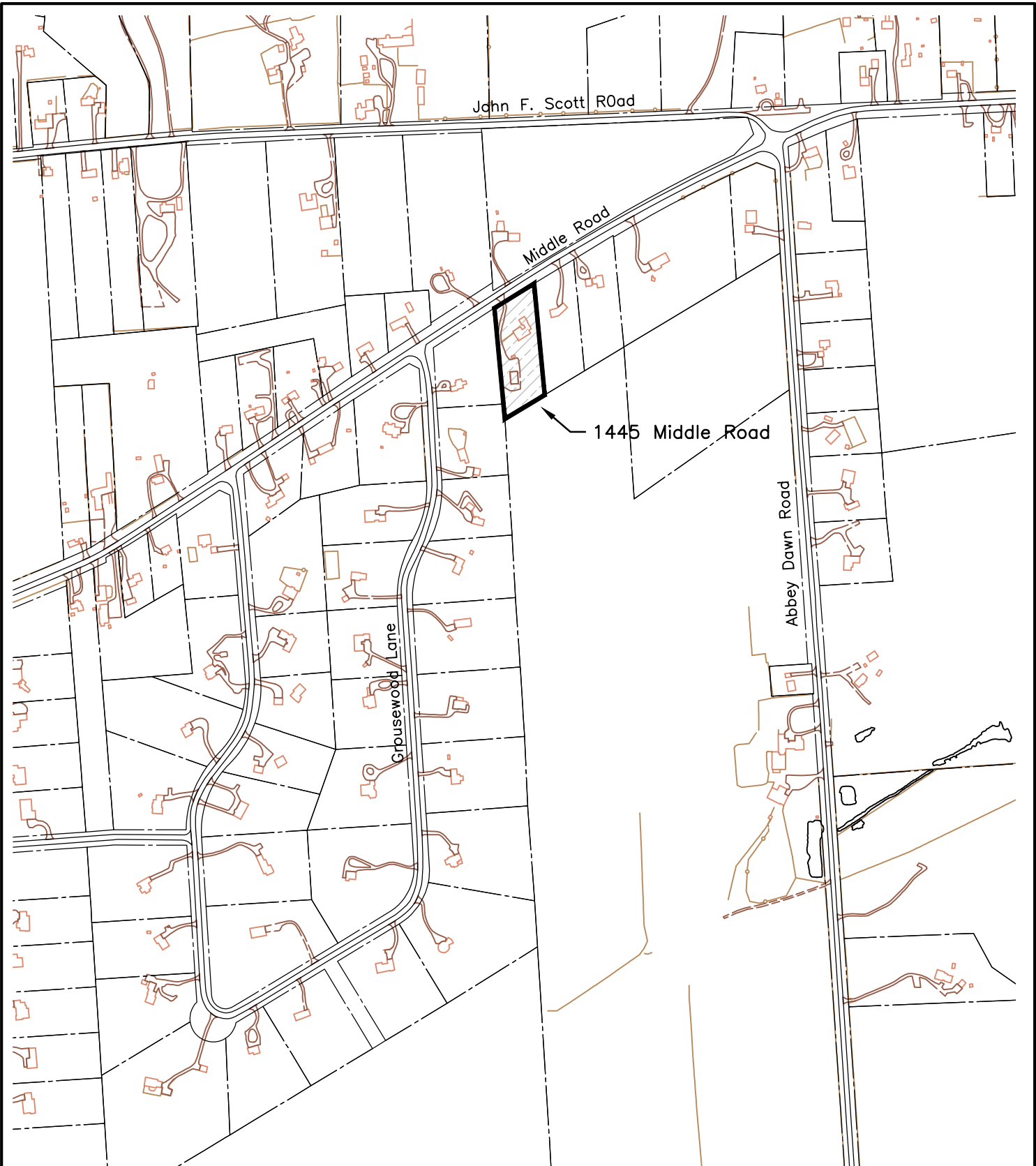
Adam M. Hardy, Supervising Engineer, Engineering Services

Mary C. Rae, Senior Legal Counsel, Legal Services

Exhibits Attached:

Exhibit A Location Map

Exhibit B Consent Agreement to Change in Drainage



CITY OF KINGSTON
Engineering Department

Location Map

Prepared by: N. Traves Date: January 24, 2019

CONSENT AGREEMENT TO CHANGE
IN DRAINAGE

Made this 22nd day of April, one thousand, nine hundred and eighty-three.

B E T W E E N:

GEORGE R. MYLES, and JOHN JOSEPH MYLES,
both of the Township of Pittsburgh, in
the County of Frontenac,

Hereinafter called the OWNERS

OF THE FIRST PART

-and- HOMESTEAD LAND HOLDINGS LIMITED,
a company incorporated under the laws
of the Province of Ontario, having its
Head Office at the City of Kingston,
in the County of Frontenac,

Hereinafter called the SUBDIVIDER

OF THE SECOND PART

-and- THE CORPORATION OF THE TOWNSHIP OF PITTSBURGH,

Hereinafter called the TOWNSHIP

OF THE THIRD PART

WHEREAS the Subdivider and the Township executed a Subdivision Agreement dated the 9th day of July, 1979, with reference to what is now Registered Plan 1757, known as "Grousewood Subdivision," and said Agreement was duly registered against Lots 1 to 34 of Plan 1757, on the 23rd day of August, 1979, as Instrument Number 325991;

AND WHEREAS Schedule "G" of said Subdivision Agreement provided for certain work to be done by the Subdivider in order to accommodate adequately the surface collection and drainage of storm water within Grousewood Subdivision;

AND WHEREAS it was noted in the Storm Drainage Report which comprised said Schedule "G" that natural drainage courses existed at that time over what are now Lots 6, 8, 13 and 16 of Plan 1757;

AND WHEREAS it was recited in said Schedule "G" that the Subdivider would obtain "written approval from the surrounding land-owners to allow the theoretical "additional runoff" from the subdivision "to continue to flow through the natural drainage courses";

AND WHEREAS the drainage courses over Lot 16, Plan 1757 affect Part of Lot 4, Concession 2, in the said Township of Pittsburgh, owned by one Charles Barnes, and has been provided for by a Grant of Easement for Drainage Purposes in favour of the Township over that Part of said Lot 4, designated as Part 1 on Reference Plan L3R-3803, in a Grant dated the 12th day of September, 1979;

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AND WHEREAS the Owners are the registered owners of Part of Lots 4, 5 and 6, Concession 2, in the said Township of Pittsburgh, which abut on the east and south Plan 1757, and are affected by any drainage over Lots 6, 8 and 13 of Plan 1757;

AND WHEREAS in order to accommodate the surface collection and drainage of storm water from within Plan 1757, the drainage pattern within said Grousewood Subdivision has been designed in such a way as to channel run-off over Lots 6, 8 and 13, Plan 1757, to the lands of the Owners;

AND WHEREAS said drainage pattern is shown on Drawing No. GW-1, dated the 29th day of September, 1979, entitled a "Grading Plan for Grousewood Subdivision," prepared by Zagrodney Engineering Limited and containing forty (40) duly noted and dated revisions to date;

AND WHEREAS the Owners have agreed to execute this Consent Agreement as evidence of their agreement with and concurrence in such design of the drainage pattern within Plan 1757 and the runoff from said Grousewood Subdivision onto their lands;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the sum of TWO DOLLARS (\$2.00) paid by the Subdivider to the Owners in lawful money of Canada, the receipt whereof is hereby acknowledged, the Owners for themselves, their heirs, executors, administrators and assigns, do hereby consent to storm water runoff from Plan 1757 over Lots 6, 8 and 13, Plan 1757, onto their lands as illustrated on said Grading Plan of Zagrodney Engineering Limited hereinabove referred to;

IT IS UNDERSTOOD AND AGREED that no excavation will be made or ditches constructed on the lands of the Owners and that the Subdivider accepts full responsibility for any damage or inconvenience caused to the Owners;

The Township hereby executes this Agreement as evidence of compliance by the Subdivider with the relevant provisions of Schedule "G" of said Registered Subdivision Agreement.

The said George R. Myles executed a Power of Attorney dated the 7th day of September, 1982, appointing John Joseph Myles his attorney and same was registered on the 3rd day of May, 1983, as Instrument Number 371664.

This Agreement shall be registered against the following lands:

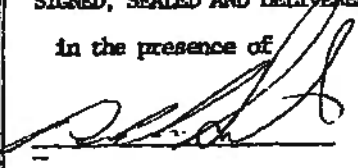
ALL AND SINGULAR those certain parcels or tracts of land and premises, situate, lying and being in the Township of Pittsburgh, in the County of Frontenac, and being composed of Lots 4, 5 and 6, Concession 2, and Lots 6, 8 and 13, Plan 1757;


THIS AGREEMENT shall be binding upon and enure to the benefit of the parties, their respective heirs, executors, administrators, successors and assigns;

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals.

SIGNED, SEALED AND DELIVERED)

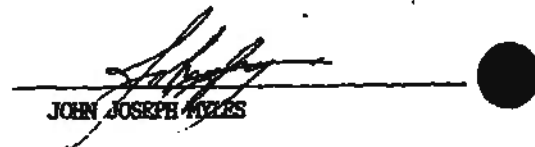
in the presence of





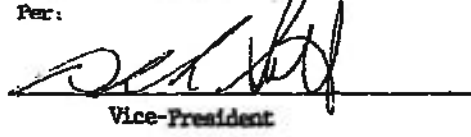
GEORGE R. MYLES, by his attorney,




JOHN JOSEPH MYLES

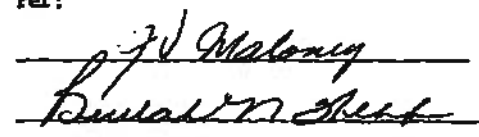
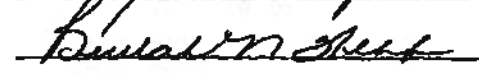
HOMESTEAD LAND HOLDINGS LIMITED,

Per:


Vice-President

THE CORPORATION OF THE TOWNSHIP OF PITTSBURGH,

Per:

AFFIDAVIT OF SUBSCRIBING WITNESS

I, ALEXANDER M. SMITH,
of the Township of Pittsburgh,
in the County of Frontenac,

make oath and say:

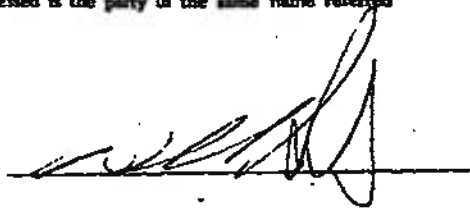
I am a subscribing witness to the attached instrument and I was present and saw it executed
at Kingston, Ontario, by GEORGE R. MILES, by his attorney
**See footnote* JOHN JOSEPH MILES, and JOHN JOSEPH MILES,

**See footnote* I verily believe that each person whose signature I witnessed is the party of the same name referred to in the instrument.

SWORN before me at the City of Kingston,
in the County of Frontenac,

this 25th day of April, 19 83

Carol Ann Harper
CAROL ANN HARPER, a Commissioner, etc.,
Frontenac County, for A. Britton Smith, Barrister,
Expires February 10th, 1984.



*Where a party is unable to read the instrument or where a party signs by making his mark or in foreign characters add "after the instrument had been read to him and he appeared fully to understand it". Where executed under a power of attorney insert "I am an attorney for (name of party)"; and for each other substitute "I verily believe that the person whose signature I witnessed was authorized to execute the instrument as attorney for (name)".

AFFIDAVIT AS TO AGE AND SPOUSAL STATUS

I, ~~JOHN~~ JOHN JOSEPH MILES,
of the Township of Pittsburgh,
in the County of Frontenac,

**If attorney see footnote* make oath and say: When I executed the attached instrument,

~~I was~~ at least eighteen years old.

Within the meaning of section 1(1) of The Family Law Reform Act, 1978—

Strike out inapplicable choices.

a) I was ~~not~~ a spouse.

b) ~~Where a party is unable to read the instrument or where a party signs by making his mark or in foreign characters add "after the instrument had been read to him and he appeared fully to understand it". Where executed under a power of attorney insert "I am an attorney for (name of party)"; and for each other substitute "I verily believe that the person whose signature I witnessed was authorized to execute the instrument as attorney for (name)".~~

c) ~~I am not a non-resident as that term is used in Section 116 of The Income Tax Act.~~
I am not a non-resident as that term is used in Section 116 of The Income Tax Act.

**Not a Matrimonial Matter, etc. see footnote.

Resident of Canada, etc.

(SEVERALLY) SWORN before me at the City
of Kingston,

this 25th day of April, 19 83

Carol Ann Harper
CAROL ANN HARPER, a Commissioner, etc.,
Frontenac County, for A. Britton Smith, Barrister,
Expires February 10th, 1984.



*Where affidavit made by attorney substitute: "When I executed the attached instrument as attorney for (name), before was found to be a party and, if applicable, name of spouse) within the meaning of Section 1(1) of The Family Law Reform Act, 1978, and when before executed the power of attorney, before had attained the age of majority".

Attest 372408

DATED April 22nd, 1983

23 NOV 25 07:15

BETWEEN:

GEORGE R. MYLES & JOHN JOSEPH MYLES,
-and-
HOMESTEAD LAND HOLDINGS LIMITED,
-and-
THE CORPORATION OF THE TOWNSHIP OF PITTSBURGH,

CONSENT TO CHANGE IN DEADVAGE

4.56 6,813
2 1,757

ERNEST VALORIE SWAIN Q.C.
BARRISTER AND SOLICITOR
194 ONTARIO STREET
P.O. BOX 1566
KINGSTON, ONTARIO
K7L 5C8

No. 372408
Registry Division of Frontenac (No. 18)
I CERTIFY that this instrument is registered in or
3/13 AM
MAY 25 1983
Land Registry Office at Kingston, Ontario.
W. D. Roberts
Land Registrar

A. BRITTON SMITH, Q.C.

PLFR1757

