

COURT OF REVISION - FRANK SZEDER DRAIN  
HEARING MINUTES  
June 7, 2022

Minutes of the 1<sup>st</sup> sitting of the Court of Revision on the Frank Szeder Drain, held on Tuesday, June 7, 2022, at 5:00 p.m. at the municipal office of the Township of LaVallee

Members: Harold McQuaker, Township of Emo  
Warren Toles, Township of Emo  
Ken McKinnon, Township of LaVallee

Town Engineer: John Kuntze – K. Smart & Associates

Staff: Doug Brown, Special Assignment Coordinator, Township of Emo  
Crystal Gray, Interim CAO/Clerk-Treasurer, Township of Emo  
Nico Veldhuisen, Drainage Superintendent, Township of Emo

Others: Mike Sheppard, Appellant  
Shannon Bowcock, Property Owner Adjacent to Drain  
Danial Adam, Fort Frances Times  
Stefan Szeder, Appellant  
Paul Courey (O'Brien, Courey & Miller), Solicitor for Frank Szeder , Appellant;  
Solicitor for Stefan Szeder, Appellant  
Randy Thoms, 93.1 The Border

**1. Call to Order**

Interim CAO/Clerk-Treasurer Crystal Gray called the first sitting of the Court of Revision on the Frank Szeder Drain to order at 5:02 pm.

**Resolution #1**

Moved By: Warren Toles  
Seconded By: Ken McKinnon

BE IT RESOLVED That this 1<sup>st</sup> sitting of the Court of Revision on the Frank Szeder Drain be called to order at 5:02 p.m.

**CARRIED**

**2. Resolution to appoint Chair**

Crystal advised the next order of business was to appoint a Chair and read resolution prepared, asked for

**Resolution #2**

Moved By: Ken McKinnon  
Seconded By: Warren Toles

BE IT RESOLVED That Harold McQuaker be appointed as the Chair of the Court of Revision on the Frank Szeder Drain.

**CARRIED**

**3. Opening remarks by the Chair**

Chair McQuaker stated the purpose of the Court of Revision was to hear appeals regarding the Schedule of Assessment only and that the Court of Revision had no authority to change the Engineer's Report in any way, and that the Schedule of Assessment may be altered but the total must remain the same, stating that if one assessment was reduced then other assessments must be increased to balance.

**4. Filed Appeals**

Chair McQuaker stated that the Court of Revision will hear appeals from the following appellants who filed appeals by the statutory deadline of 3:30 p.m. May 27, 2022 and read the list of appellants to be heard including the name, legal description of property, percentage of cost assessed, costs assess and summary of appeal.

**5. Late Appeals**

Chair McQuaker asked if there was any other assessed landowner who wished to appeal their assessment, and if so, please state your name and roll number of property.

**Shannon Bowcock**

Roll #: 59-19-000-000-005300

Property Description:

Reason for late Appeal: Received package but did not realize she had to pre-submit. Use of Land

Summary of Appeal: She stated her initial concern was her well. She has a surface well and initially was told that the drain wouldn't affect any of the watershed off of her property and wouldn't affect her well. Later she heard that it would, and I am paying because it will affect my property. Also concerned about the use of the land and if it's going to change that use. land of use due to watershed off of it and so getting contradictory messages. Property was not on original report but added afterwards on a revision and because she has the ability to tie into this drain, doesn't understand why is she paying?

Doug Brown raised a point of order reminding everyone present that the Court of Revision was only able to hear appeals based on assessment costs only and cannot consider issues related to wells.

**5.1 Resolutions for Late Appeals**

**Resolution #3**

Moved By: Warren Toles

Seconded By: Ken McKinnon

BE IT RESOLVED That the Chair of the Court of Revision on the Frank Szeder Drain dismisses the late appeal submitted by T & S Bowcock on grounds that were dealing with assessments only.

**CARRIED**

**6. Engineer to provide information on assessments**

Chair McQuaker called for the Engineer, John Kuntze to provide information on the assessments for the drain Section 55.

The Township's Engineer provided an overview of the assessment, and his report called the Frank Szeder Drain dated March 4, 2022, noting that

- the Court of Revision primarily deals with Schedule A, which is the assessment allocated to each property.
- Schedule B relates to future maintenance but none of the appeals relate to assessment of the future maintenance.
- If changes are made to Schedule A, changes may be needed in Schedule B but would involve further input.
- Schedule C is the actual cost by-law and is included in report for information only. The Court of Revision would not make changes to Schedule C but if any changes are made to Schedule A, Schedule C would automatically be changed.
- There are situations where special assessments are levied. Special assessments are calculated separately based on the actual cost of the work and could include,
  - o To cost of surveying to determine the boundaries of involved land. Some of the properties are not fenced or have been overgrown. If survey is needed, an Ontario Land Surveyor would be retained to survey before the drain is constructed. The surveying would not be necessary for the function of the drain but would establish the exact boundary of the property and be levied to only the benefiting properties. The report shows an estimate of \$10,000 but the actual cost would be assessed separate from the other assessments in the report. If the alignment of the drain is agreed on, the special assessment would not be levied.
  - o Increase cost due to a road or public utility. There are two crossings that will be considered for special assessment.
- He outlined the costs and spoke to each aspect of the project. He noted again that if any changes were made to the assessments, the costs would be shifted and that the total cost of \$403,105.00 would not change.

The Engineer noted a correction in the report on page 12 where the special assessment is shown for property roll #59-19-000-000-04900 should be \$500 and not \$1,000 as shown. The cost shown in the Assessment Schedule is correct.

Another error was noted in the Table on page 13 where the HST was incorrectly shown as \$195.

**7. Presentation by Appellant**

Chair called upon each appellant to present their appeal.

**Appellant #1: Keith R. Barker**

Mr. Barker was not present. Chair McQuaker asked for clarification on protocol from the Engineer. John Kuntze stated that the Court of Revision will often dismiss an appeal if a landowner does not attend the hearing because there is no evidence presented to justify changes to the assessed cost. His recommendation was to dismiss the appeal.

**Resolution #4**

Moved By: Warren Toles

Seconded By: Ken McKinnon

BE IT RESOLVED THAT the Court of Revision on the Frank Szeder Drain hereby dismisses the following appeal:

**Appeal #1**

Appellant: Keith R. Barker

Property: Roll # 59-16-000-002-01900

Devlin, SW 14/ of SE ¼ of Section 6, Township of LaVallee

Appeal Summary: - Land assessed too high

- Type of use of land – Property is used for hunting.

Reason for Decision: Not Present

**CARRIED**

**Appellant #2: Michael Sheppard**

Mr. Sheppard asked why the assessment for the Szeder property (#046) was \$5,000 when all the other ¼ sections are assessed at \$30,000 as the drain goes through the whole property.

John stated that that property was assessed \$10,000 (\$5,000 for each direct outlet) and even though it crosses the full length of that ¼ section, the vast majority of that section was already being drained by the original Fisher Drain with only a small portion draining into this one so there was no basis to allocate a larger benefit.

Mr. Sheppard felt his assessment should be reduced and the assessment for the Szeder (#046) property should be increased as his property is not receiving a benefit as his property is already being drained. Mr. Sheppard suggested a berm that blocks any potential water from his property going into the drain. He stated the Fisher ditch is on the south end of that property and this drain is draining the whole ¼ section. John corrected Mr. Sheppard, stating that any property that is tile drained slopes west and drains to the Fisher Drain as that was the reason it was constructed.

Mr. Sheppard said he had asked that road access be put on the north side of Frank Szeder property that adjoins his. This would stop all water shed from his property because there would be no culverts running north and south. Doing that would reduce his assessment to zero, except for the survey cost of \$500 which he is in agreement with. He stated that Frank had agreed to this suggestion initially, but he has had no further response from him.

Mr. Sheppard reiterated that his appeal would be that the road access be moved to the north side of the ditch as that would benefit Szeder by allowing them to use more of their property because there wouldn't be road access there and wouldn't be blocking the watershed going into the ditch.

Warren Toles asked for clarification regarding appeals. He stated the appeals seem to be a mixture of how the drain was constructed or reconstructed and was of the understanding that only the assessments could be considered.

Ken McKinnon agreed with Mr. Toles stating that the only authority the Court of Revision had was to deal with assessments and don't have the authority to alter the design of the drain.

The Township Engineer advised that Mr. Sheppard is presenting his appeal the right way in that if someone feels their assessment should be reduced it helps to who's assessment should be increased. The argument that he made is a proper argument to make to the Court of Revision and it is now up to the Court to either accept that opinion.

Doug Brown asked for clarification from the Engineer whether each appeal is considered and decided as they are presented or if all of the appeals are considered at the end. Mr. Kuntze said it can be done either way but made the suggestion to move forward with all of the appeals after they are heard.

The decision was made to hear all appeals then consider them all later. The decision on Mr. Sheppard's appeal was set aside.

**Appellant #3: Frank (Jr) Szeder**

Chair McQuaker identified appellant #3, identified the property and read the summary of the appeal. He asked if the appellant was present.

Paul Courey identified himself as representing both Frank Szeder and Stefan Szeder and will address all five of their appeals.

He noted a point of clarification asking for copy of the recording of the zoom meeting. Crystal asked that a request be submitted by email.

He also noted a concern about the training session, stating it to be irregular and not usually the way justice is administered. He stated he would like his concern included into record.

Mr. Courey stated that issue has been going on thirteen years since the Szeders signed the Petition and the report only came out after litigation in 2010 and that the costs of the drain have become quite expensive due to the delays and changes by the municipality. He advised that Mr. Szeder received the report after fighting to get it and was willing to accept the cost but when the Township wanted changes to the design of the drain, became vastly more expensive and it is logical that the costs of those changes be placed on the parties that created the issue, which is the municipality of Emo, and should be assessed as a cost either on the roads or municipal land owned by Emo. Mr. Courey stated that Mr. Szeder had the assessments analyzed by an engineer who was qualified to work under the drainage act and based on that analysis, suggested the following reductions and reallocations on the appeals as noted:

Appeal #3.a (Roll # 5919-000-000-04600 ) – assessed cost should be reduced by \$13,200 and reallocated to municipal lands and roads owned by Emo and in the case of roads, LaVallee.

Appeal #3.b (Roll # 5916-000-001-07500) – assessed cost should be reduced by \$12,500 and reallocated to lands and roads.

Appeal #4.a (Roll # 5919-000-000-04900 ) – Mr. Courey conceded this assessment was in the ballpark because of the extra work to keep the parcel from being interrupted by the drain but suggested the assessment be reduced by \$6,000 with that cost being reallocated to the municipality.

Appeal #4.b (Roll # 5919-000-000-05000) – assessment reduced by \$38,000 with same reason that the problem was caused by Emo and should be paid by Emo.

Appeal #4.c (Roll # 5916-000-001-07400) - assessment be reduced by \$30,000 for same reason as previously stated with costs reallocated to municipality.

Mr. Courey stated the total reduction was just shy of \$100,000 and that the cost of the project

- increased astronomically because of the actions of Emo
- should not be borne by the property owners
- has inflated because of the time passing
- allocates too much benefit on Szeder
- should go to special benefit to municipal lands and roads

He reminded the Court of Revision that it is comprised of members of the two municipalities but that it has to think independently and judge these assessments by what is fair and reasonable not as an individual municipal council member. He expressed concern in the ability of the Court to act independently because it appeared to him that it was encouraged by the Engineer to come to a specific conclusion on the appeals.

In regard to the surveying, he felt that if a survey is needed, it should be a special benefit to the party that requested it. He suggested the survey monuments along the west side could be located with modern GPS equipment and sufficient for the purposes of locating the drain, that an Ontario Land Surveyor was not needed to set iron bars within an 1/8 of an inch of accuracy.

He asked the Court to please consider the request for Szeder to lower their assessments by the amounts indicated by their analysis and reallocate those totals to the township lands and roads; deal with the special benefit for the survey as a contingency special benefit to the requester and those are the requests of these appellants.

Mr. Courey concluded with a concern regarding the agenda and request that in the interest of fairness, the appellants get the right to reply after the Engineer responds to his comments.

Mr. Courey answered questions from members of the Court of Revision for clarification.

#### **7.1 Response by Engineer**

Mr. Kuntze noted that he didn't have anything to add about Mr. Courey's argument except with respect to the survey. He noted that he only recently became aware of survey bar in the northwest corner of roll # 049 property. He stated that there was no record of it in the registry office but had been advised by Mr. Szeder that was planted by an Ontario Land Surveyor. If that is correct, it can be used to try and determine the location of the town line but that unless it is done by a Land Surveyor, it is not going to be the official boundary.

He also noted a 2010 report Mr. Courey mentioned stating he was not aware of a 2010 report. Mr. Courey confirmed the report was filed in 2021.

#### **8. Deliberation on appeals**

The Court of Revision withdrew from public session to deliberate on the appeals as presented, to make decision.

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The Court of Revision resumed public session.

#### **9. Resolutions on appeals**

Chair McQuaker asked for resolutions on the decisions made by the Court of Revision on the appeals.

##### **Resolution #5**

Moved By: Ken McKinnon

Seconded By: Warren Toles

BE IT RESOLVED THAT the Court of Revision on the Frank Szeder Drain hereby dismisses the following appeal:

**Appeal #2**

Appellant: Michael Sheppard

Property: Roll # 59-19-000-000-04800

Aylsworth, SW ¼ of Section 36, Township of Emo

Appeal Summary: - Land assessed too high  
- Type of use of land – Groundwater well possibility impacted

**CARRIED**

**Resolution #6**

Moved By: Warren Toles

Seconded By: Ken McKinnon

BE IT RESOLVED THAT the Court of Revision on the Frank Szeder Drain hereby dismisses the following appeal:

**Appeal #3.a**

Appellant: Frank (Jr) Szeder

Property: 5919-000-000-04600

Aylsworth, SE ¼ of Section 35, Township of Emo

Appeal Summary: - Land assessed too high - Benefit vs. Outlet allocation of assessment is too heavily assigned on private lands and too lightly on roads and public lands.  
- Type of use of land – Roads vs. undeveloped/farm private land is inadequately weighted.

**CARRIED**

**Resolution #7**

Moved By: Ken McKinnon

Seconded By: Warren Toles

BE IT RESOLVED THAT the Court of Revision on the Frank Szeder Drain hereby dismisses the following appeal:

**Appeal #3.b**

Appellant: Frank (Jr) Szeder

Property: 5916-000-001-07500

Woodyatt, N ½ of SW ¼ of Section 31, Township of LaVallee

Appeal Summary: - Land assessed too high - Benefit vs. Outlet allocation of assessment is too heavily assigned on private lands and too lightly on roads and public lands.

- Type of use of land – Roads vs. Undeveloped/farm private land is inadequately weighted.

**CARRIED**

**Resolution #8**

Moved By: Warren Toles

Seconded By: Ken McKinnon

BE IT RESOLVED THAT the Court of Revision on the Frank Szeder Drain hereby dismisses the following appeal:

**Appeal 4.a**

Appellant: Stefan Szeder (Estate Trustee)

Property: 5919-000-000-04900

Aylsworth, SW ¼ of Section 36, Township of Emo

- Appeal Summary:
- Land assessed too high; Other land or road has been assessed too low - Benefit vs. Outlet allocation of assessment is too heavily assigned on private lands and too lightly on roads and public lands.
  - Type of use of land – Roads vs. Undeveloped/farm private land is inadequately weighted.

**CARRIED**

**Resolution #9**

Moved By: Ken McKinnon

Seconded By: Warren Toles

BE IT RESOLVED THAT the Court of Revision on the Frank Szeder Drain hereby dismisses the following appeal:

**Appeal #4.b**

Appellant: Stefan Szeder (Estate Trustee)

Property: 5919-000-000-05000

Aylsworth, SE ¼ of Section 36, Township of Emo

- Appeal Summary:
- Land assessed too high; Other land or road has been assessed too low - Benefit vs. Outlet allocation of assessment is too heavily assigned on private lands and too lightly on roads and public lands.
  - Type of use of land – Roads vs. Undeveloped/farm private land is inadequately weighted.

**CARRIED**

**Resolution #10**

Moved By: Ken McKinnon  
Seconded By: Warren Toles

BE IT RESOLVED THAT the Court of Revision on the Frank Szeder Drain hereby dismisses the following appeal:

Appeal #4.c

Appellant: Stefan Szeder (Estate Trustee)

Property: 5916-000-001-07400

Woodyatt, NW ¼ of Section 31, Township of LaVallee

Appeal Summary: - Land assessed too high; Other land or road has been assessed too low - Benefit vs. Outlet allocation of assessment is too heavily assigned on private lands and too lightly on roads and public lands.  
- Type of use of land – Roads vs. Undeveloped/farm private land is inadequately weighted.

**CARRIED**

Chair McQuaker advised that all appellants and affected assessed owners will receive a written notice of the Court decisions. Any appellant or affected assessed owner will have the right to appeal the decisions of the Court to the Drainage Tribunal. Tribunal appeals must be submitted in writing to the Clerk within 21 days of the pronouncement of the decisions of the Court of Revision - Section 54(1). Notice of decision will contain information on the process to appeal the decision of the Court of Revision to the Drainage Tribunal.

**10. Adjourn**

**Resolution #10**

Moved By: Warren Toles  
Seconded By: Ken McKinnon

BE IT RESOLVED THAT the Court of Revision on the Frank Szeder Drain being held for the purposes of hearing appeals, be and hereby adjourns at 7:40 p.m.

**CARRIED**