

Court File No. CV-23-00001165-0000 (Chatham)

**ONTARIO
SUPERIOR COURT OF JUSTICE**

IN THE COURT OF THE DRAINAGE REFEREE

IN THE MATTER of the *Drainage Act*, R.S.O. 1990, Chapter D. 17

AND IN THE MATTER OF an application by the Corporation of the Municipality of Chatham-Kent for certain orders of the Drainage Referee with respect to construction of the Shaw Branch of the East Branch Facey Drain and By-law No. 93-2021;

B E T W E E N:

CORPORATION OF THE MUNICIPALITY OF CHATHAM-KENT

Applicant

and

CANADIAN PACIFIC RAILWAY COMPANY

Respondent

APPLICATION pursuant to s.106 of the *Drainage Act*, R.S.O. 1990, c D.17

AFFIDAVIT OF ALEX MILLER

I, *Alex Miller*, of the Municipality of Chatham-Kent, Ontario, MAKE OATH AND SAY:

1. My wife, Darlene Miller and I are the registered owners of PT LT 3-4 CON 3 ZONE AS IN 656262; S/T 656195; CHATHAM-KENT, being PIN 00627-0016, associated with Roll No. 3650 310 001 09300. In February 2020, I petitioned the Municipality of Chatham-Kent for drainage work under the *Drainage Act* to improve drainage conditions on my property. Attached

hereto as Exhibit "A" to this my Affidavit is a copy of my petition. As such, I have knowledge of the matters hereinafter deposed to, save and except where I have indicated that I have obtained facts from other sources, in which case I state the source of the information and I verily believe those facts to be true.

2. I graduated from Ridgetown Agricultural College in 1975. Following my graduation, I farmed, with part-time off-farm employment, until 32 years ago when my farm operation was downsized and I started full time off-farm employment.

3. From 1983 to 1997, I was a member of Zone Township Municipal Council. During my term as councillor, I was responsible for different sections of Zone Township drainage, including attending on site with contractors, attending during construction, and meeting with property owners.

4. As a councillor in Zone, with two railways crossing the Township, I have seen many *Drainage Act* projects involving work on railway rights-of-way. I have seen projects completed using jack and bore under the right-of-way to provide proper outlet for drainage systems. Prior to my petition, I have never encountered a railway company refusing to cooperate with a *Drainage Act* process or pay their share of assessed costs.

5. Before myself and my wife Darlene took possession of our property, the property was owned by Lyle Shaw. Lyle Shaw had stopped physically farming about fifteen years before 2007, when we became the owners of the property. Lyle had rented out his property during those fifteen years and intensive farming on the property degraded the soil conditions on the property. As the current owners of the property, we are working to improve the workable portion of the property.

6. The property has two aspects of production. There is approximately fifteen acres of managed woodlot, harvested lightly twelve years ago with a large cutting three years ago. Those fifteen acres are not drained so are wet for most of the year.

7. The other aspect of the property is bare land. This part of the property is rotated between soybeans and corn, with the corn being shared cropped by Tri Hawk Farms from Kent Bridge Ontario, and I farm the soybeans. Attached hereto as Exhibit "B" to this my Affidavit is a map generated by the Municipality's GIS mapping imagery system showing my property, on which I have marked these two aspects of land, the approximate location of the proposed drainage work, and the approximate boundary of my property.

8. Before my current petition for proper outlet, to my knowledge, there has been no history of *Drainage Act* work on my property during my ownership. However, we have paid assessments for work to the Main Branch, Middle Branch and East Branches of the Facey Drain.

9. The present system on our property is more than fifty-five years since installed. No header tile is present, and the system relies on 4" plastic tile. The capacity is not enough to handle the erratic weather that now seems to be the norm, and new sub surface drainage is required. However, to put in a new sub surface system, a lower outlet is needed.

10. The increased outlet will greatly improve drainage of gravitational water and lessen the loss of growing crop (corn/soybeans) on my property.

11. Not having adequate gravitational drainage has caused high volumes of standing water on my property, resulting in crop loss in two of last four years. In particular, two years ago, we

experienced four inches of standing rainwater on our property that caused a reduced soybean yield and resulted in a crop insurance claim.

12. By June 2021, I understood that the *Drainage Act* process in response to my petition was complete, and that the process had been fully followed with no appeals at any point. I had anticipated that the work set out in Spriet's Engineering Report, which was approved by the Municipality's Council, would proceed in summer 2021. To date, the work has not moved ahead.

13. I have contacted Blaise Chevalier from the Municipality every four months or so since I initiated my petition to keep current on progress with this project. I have reviewed a copy of the Canadian Pacific Railway's letter to the Municipality concerning this project from November 26, 2021, and their written response to the Municipality's Application on this project, which I understand Canadian Pacific Railway has filed with the Drainage Referee.

14. I understand that Canadian Pacific Railway would like to treat me and my petitioned project as a utility, which it is not. I also understand that they want me to assume all costs related to the drain. Before the railway existed, water naturally flowed through this area into the Thames River. The rail bed prevents adequate outlet of water to the Thames.

15. Additionally, when Canadian Pacific Railway raised the railbed with stone ballast, this widened the heel/toe of the railbed, with stone going past drain inlets and outlets, reducing flow in the drainage system.

16. Further to the northeast of the proposed drainage work, water from the Canadian Pacific Railway right-of-way property flows off of the right-of-way and onto my property and travels back towards the proposed project area through my property.


17. The Ontario *Drainage Act* has enabled farms in our area to be established and improved. Many areas have little or no natural drainage. In Zone Township, two railways, including Canadian Pacific Railway's line, cut across these areas, impacting drainage. Cooperation with *Drainage Act* processes by all landowners, including railways, is very important to farm productivity and land drainage in our area.

18. I make this Affidavit in support of the Municipality's Application and for no other or improper purpose.

SWORN BEFORE ME at the City of Chatham, in the Province of Ontario on March 20, 2024



Commissioner for Taking Affidavits
(or as may be)



Alex Miller

Linda Marie Kalp, a Commissioner, etc.
Province of Ontario, for the
Municipality of Chatham-Kent.
Expires August 31, 2026.

THIS IS EXHIBIT "A" REFERRED TO IN THE AFFIDAVIT OF ALEX MILLER SWORN
BEFORE ME THIS 20th DAY OF MARCH, 2024

Linda Marie Kalp

A COMMISSIONER FOR TAKING AFFIDAVITS

Linda Marie Kalp, a Commissioner, etc.
Province of Ontario, for the
Municipality of Chatham-Kent.
Expires August 31, 2026.



This form is to be used to petition municipal council for a new drainage works under the *Drainage Act*. It is not to be used to request the improvement or modification of an existing drainage works under the *Drainage Act*.

To: The Council of the Corporation of the Chatham-Kent of _____

The area of land described below requires drainage (provide a description of the properties or the portions of properties that require drainage improvements)

out let through Canadian
Pacific Property

no work required on West Pt.
lots 3 and 4 Con 3.

In accordance with section 9(2) of the *Drainage Act*, the description of the area requiring drainage will be confirmed or modified by an engineer at the on-site meeting.

As owners of land within the above described area requiring drainage, we hereby petition council under subsection 4(1) of the *Drainage Act* for a drainage works. In accordance with sections 10(4), 43 and 59(1) of the *Drainage Act*, if names are withdrawn from the petition to the point that it is no longer a valid petition, we acknowledge responsibility for costs.

Purpose of the Petition (To be completed by one of the petitioners. Please type/print)

Contact Person (Last Name) Miller (First Name) Alex Telephone Number 519 672-4409
ex. 401-6336

Address
Road/Street Number 29405 Road/Street Name Florence Rd.

Location of Project
Lot West 3 and 4 Concession 3 Municipality C-K Former Municipality (if applicable) Zone

What work do you require? (Check all appropriate boxes)

- Construction of new open channel
- Construction of new tile drain
- Deepening or widening of existing watercourse (not currently a municipal drain)
- Enclosure of existing watercourse (not currently a municipal drain)
- Other (provide description ▼)

Provide legal and Functional outlet

Name of watercourse (if known) outlet to East Branch Facey

Estimated length of project width of Canadian Pacific Property

General description of soils in the area Sand

What is the purpose of the proposed work? (Check appropriate box)

- Tile drainage only
- Surface water drainage only
- Both

Petition filed this 11th day of FEBRUARY, 2020

Name of Clerk (Last, first name)

DICK, TIMOTHY

Signature

THIS IS EXHIBIT "B" REFERRED TO IN THE AFFIDAVIT OF ALEX MILLER SWORN
BEFORE ME THIS 20th DAY OF MARCH, 2024

Lynn Karp

A COMMISSIONER FOR TAKING AFFIDAVITS

Linda Marie Karp, a Commissioner, etc.
Province of Ontario, for the
Municipality of Chatham-Kent.
Expires August 31, 2026.



- Legend**
- Pumping Stations
 - Municipal Drain
 - Open Drain
 - Tile Drain
 - Road network
 - Settlement Areas
 - Road network
 - Railway
 - Footprints
 - Assessment Parcel

Notes



1: 8,943

0.3
0.14
0 Miles

NAD_1983_UTM_Zone_17N
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THIS MAP IS NOT TO BE USED FOR NAVIGATION

**CORPORATION OF THE MUNICIPALITY OF
CHATHAM-KENT**
Applicant

-and- COURT FILE NO. CV-23-00001165-0000 (Chatham)
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PROCEEDING COMMENCED AT
CHATHAM, ONTARIO

AFFIDAVIT OF ALEX MILLER

**CORPORATION OF THE MUNICIPALITY OF
CHATHAM-KENT**

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