

THE CORPORATION OF THE TOWN OF LAKESHORE
BY-LAW NUMBER 80-2016
BEING A BY-LAW TO AUTHORIZE THE
EXECUTION OF A MASTER WATERLINE
AGREEMENT
WITH
THE PUBLIC UTILITIES COMMISSION FOR
THE MUNICIPALITY OF CHATHAM –KENT
AND
THE CORPORATION OF THE TOWN OF LAKESHORE

WHEREAS, The Municipal Act, 2001, as amended, empowers municipalities to pass such by-laws and make such regulations to provide any service or thing that the municipality considers necessary or desirable for the public;

AND WHEREAS, it is deemed expedient to enter into an Agreement with the Chatham-Kent PUC to install, maintain and administer publicly owned waterlines in the areas depicted in the schedules of the said Agreement;


NOW THEREFORE BE IT RESOLVED THAT THE COUNCIL OF THE CORPORATION OF THE TOWN OF LAKESHORE ENACTS AS FOLLOWS:

That the Mayor and Clerk be authorized and directed to execute, on behalf of the Corporation of the Town of Lakeshore, the Master Waterline Agreement attached to and forming part of this by-law.

READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED THIS 11th DAY OF OCTOBER, 2016.



Tom Bain, Mayor



Mary Masse, Clerk

AGREEMENT

THIS AGREEMENT made (in duplicate) this 11th day of October, 2016,
BETWEEN:

**THE PUBLIC UTILITIES COMMISSION FOR THE
MUNICIPALITY OF CHATHAM-KENT**
(hereinafter the "PUC")

- and -

THE CORPORATION OF THE TOWN OF LAKESHORE
(hereinafter the "Lakeshore")

Collectively the "Parties"

WHEREAS the PUC is the agent for the Municipality of Chatham-Kent (hereinafter the "Municipality") with regard to water services;

AND WHEREAS Lakeshore is currently, and for the foreseeable future will remain, unable to provide water service to the eastern portion of the Town of Lakeshore, bordering on Chatham-Kent;

AND WHEREAS the *Municipal Act, 2001*, S.O. 2001, c.23, as amended, permits municipalities to provide extraterritorial services under certain conditions;

AND WHEREAS certain residents in the eastern portion of the Town of Lakeshore have requested water service from the PUC;

AND WHEREAS Lakeshore is, for its own purposes, willing to permit the PUC to provide water services in that portion of the Town of Lakeshore bordering on Chatham-Kent;

AND WHEREAS and the PUC is willing, for its own purposes to provide water services in that portion of the Town of Lakeshore bordering on Chatham-Kent;

AND WHEREAS Lakeshore and the PUC entered into an agreement, dated October 14, 2011 to replace and extend a private waterline along Essex County Road 46 in the Town of Lakeshore;

AND WHEREAS another request has been received to replace a portion of a private waterline in Lakeshore serviced by the PUC (Mill Street Water Main) and it is anticipated that more such requests will follow;

AND WHEREAS Lakeshore and the PUC now wish to streamline the approval process for PUC water services within Lakeshore's jurisdiction and to standardize the terms and conditions upon which such services will be cooperatively provided;

NOW THEREFORE in consideration of mutual covenants and promises contained herein, as well as other good and valuable consideration the sufficiency of which is hereby acknowledged, Lakeshore and the PUC agree as follows:

1. The preceding recitals are true and form part of this agreement as though they had been repeated hereafter.
2. Lakeshore hereby consents to the PUC providing its water services within the geographic area under Lakeshore's jurisdiction along the routes depicted in the schedules listed in section 3, below, as being attached to and forming part of this Agreement and the PUC agrees to provide such water services.
3. The following schedules are attached to and from part of this agreement:

Schedule "A" - Wheatley Rd. (Kent Rd.1) / Middle Line (Essex County Rd. 46)
Water Main Extension

Schedule "B" - Mill Street Water Main Extension

4. The PUC shall be the legal owner of the waterlines listed in Section 3, above, (the "Waterlines") and, accordingly, shall be responsible for the ongoing maintenance of the Waterlines, the supply of water to the Waterlines and for meeting all regulatory requirements including, without limitation, water quality.

Approval Process

5. Lakeshore and the PUC agree that the approval process for any new Waterline added to this Agreement may only be commenced by way of a written application, from a property owner or other proponent to Lakeshore.
6. The PUC shall refer any property owner or proponent who approaches the PUC for a water service within the Town of Lakeshore to Lakeshore to commence the approval process.
7. Lakeshore shall immediately notify the PUC of any application it receives for a new water service that would need to be provided by the PUC.
8. Lakeshore and the PUC shall each have the unfettered right to conduct its own process to determine whether or not to support the construction of a new waterline pursuant to this Agreement and both the PUC and Lakeshore must agree before any such construction may proceed.
9. Once both Lakeshore and the PUC have determined they support the addition of a new Waterline to this Agreement, this Agreement shall be amended prior to either Lakeshore or the PUC taking any further action.
10. The amendment to this Agreement contemplated by Section 9, above, shall be by way of a formal written agreement, between the PUC and Lakeshore, adding a schedule to this Agreement containing a description of the Waterline to be added and any other details unique to the new Waterline. For clarity, no waterlines may be added to this Agreement except by way of an amending agreement executed by both the PUC and Lakeshore.

Engineering Design Costs and Construction Costs

11. The PUC shall be responsible for the design and construction of each new waterline to be added to this Agreement and shall obtain both engineering design and construction services by way of a competitive public tender process.
12. The method to be used to pay the engineering design costs and the construction costs of each new Waterline will be determined on a case-by-case basis with Lakeshore having the unfettered right to determine if and when the "Local Improvement" process will be employed to fund the construction of any new Waterline.
13. In the event Lakeshore determines that it will employ the "Local Improvement" process to fund the construction of a new Waterline, Lakeshore shall reimburse the PUC for both the engineering design costs and the construction costs incurred by the PUC for such Waterline by remitting the Local Improvement Charges actually collected annually from benefitting landowners.

Water Rates

14. The PUC shall be responsible for billing and collecting the water rates directly from the property owners receiving the water services, which owners shall be billed at the rate set out in the Municipality's water and sewer rates by-law for non Chatham-Kent customers. Lakeshore agrees to assist in the collection of the water rates upon receiving the PUC's written request.
15. In the event that water arrears for a specific property have become uncollectable, either because the property in question has changed hands with the bill remaining unpaid or because such property is already involved in the Municipal Tax Sale process, Lakeshore shall assume legal responsibility for the payment of such arrears and shall add the arrears to the tax roll for such property.

Emergency Measure

16. When the PUC, in order to conserve and protect the supply of water from its system, imposes any restrictions upon the use of potable water on its customers that affects customers in the Town of Lakeshore, Lakeshore shall forthwith, at the request of the PUC's General Manager, impose and enforce similar restrictions upon the use of the water by the PUC's Town of Lakeshore customers.
17. In the event of a shortage of supply or an emergency, the PUC reserves the right to limit or interrupt the supply of water to the Waterlines. The PUC will use its best efforts to minimize such a limitation or interruption in supply. Any such limitation shall apply to all customers of the PUC. Lakeshore covenants to forgo any action, suit or claim for damage that may result from the actions of the PUC, acting reasonably, under the emergency situation.
18. Lakeshore shall be liable for and indemnify and save harmless the PUC from any and all losses, liabilities, damages, costs, claims, suits or actions arising out of:
 - a) any breach, violation or non-performance of any covenant, condition, agreement or other obligation in this agreement set forth and contained on the part of the Town to be fulfilled, kept, observed and performed;
 - b) any damage to property and any injury to any person (including death) resulting or occasioned by any wrongful act, default, omission or negligence of the Town and those for whom it is in law responsible, occurring in or on the area of operation or any part thereof;
19. The PUC shall be liable for and indemnify and save harmless the Town from any and all losses, liabilities, damages, costs, claims, suits or actions arising out of:
 - a) any breach, violation or non-performance of any covenant, condition, agreement or other obligation in this agreement set forth and contained on the part of the PUC or the Municipality to be fulfilled, kept, observed and performed;
 - b) any damage to property and any injury to any person (including death) resulting or occasioned by any wrongful act, default, omission or negligence of the PUC and those for whom it is in law responsible, occurring in or on the area of operation or any part thereof;
20.
 - a) Each waterline that is brought under this Agreement shall remain subject to this Agreement for a minimum of twenty years from the date such Waterline was placed into service. (the "Initial Twenty-Year Period").
 - b) Following the Initial Twenty-Year Period for any particular Waterline, either the PUC or Lakeshore may unilaterally remove such Waterline from this Agreement by giving written notice to the other and such removal shall take effect on the anniversary date of such notice. Ownership of the affected Waterlines will thereupon be deemed to be transferred to Lakeshore and the PUC agrees to take all necessary steps and to sign all necessary documents to affect the said transfer of ownership. Lakeshore shall be responsible for maintaining the affected Waterlines following the transfer of ownership pursuant to this section.
21. Notwithstanding the removal of a Waterline from this Agreement, as contemplated by section 21, above:
 - a) the PUC will continue to supply water to the Waterlines unless and until Lakeshore is able to secure another water source; and
 - b) Lakeshore and the PUC will enter into a new arrangement whereby Lakeshore shall purchase, in bulk, the water supplied by the PUC to such waterline.
22. The costs associated with putting new bulk purchase arrangement into effect pursuant to Subsection 21 b), above, including, without limitation, the cost to purchase and install bulk water meters, cost of adding new accounts to Lakeshore's billing system and costs associated with establishing the waterline as new

Lakeshore water system with the Ministry of Environment and Climate Change, shall be paid by Lakeshore.

23. Any notice required by this agreement shall be in writing and shall be deemed to have been sufficiently given when delivered personally, sent by prepaid registered post or telecopy (facsimile) to the addresses below:

Chatham-Kent PUC
Attention: GM-PUC
325 Grand Avenue East
P.O. Box 1191
Chatham, Ontario
N7M 5L8
Fax: 519-352-3432

Town of Lakeshore
Attention: Clerk
419 Notre Dame Street
Belle River, Ontario
N0R 1A0
Fax: 519-728-9530

24. This Agreement is not assignable by either Party without the express written consent of the other.
25. If any provision of this agreement, or the application of such provision shall be deemed unenforceable by a court of competent jurisdiction, the remainder of the agreement or the application of such provision shall not be affected thereby.
26. This Agreement binds the Parties and their successors and permitted assigns.

IN WITNESS WHEREOF the parties hereto have executed these presents effective as of the date first mentioned above.

**THE PUBLIC UTILITIES COMMISSION FOR THE
MUNICIPALITY OF CHATHAM-KENT**


Per: 

Chairperson

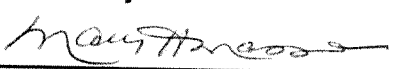
Per: 

Tim Sunderland, General Manager

THE CORPORATION OF THE TOWN OF LAKESHORE

Per: 

Tom Bain, Mayor

Per: 

Mary Masse, Clerk

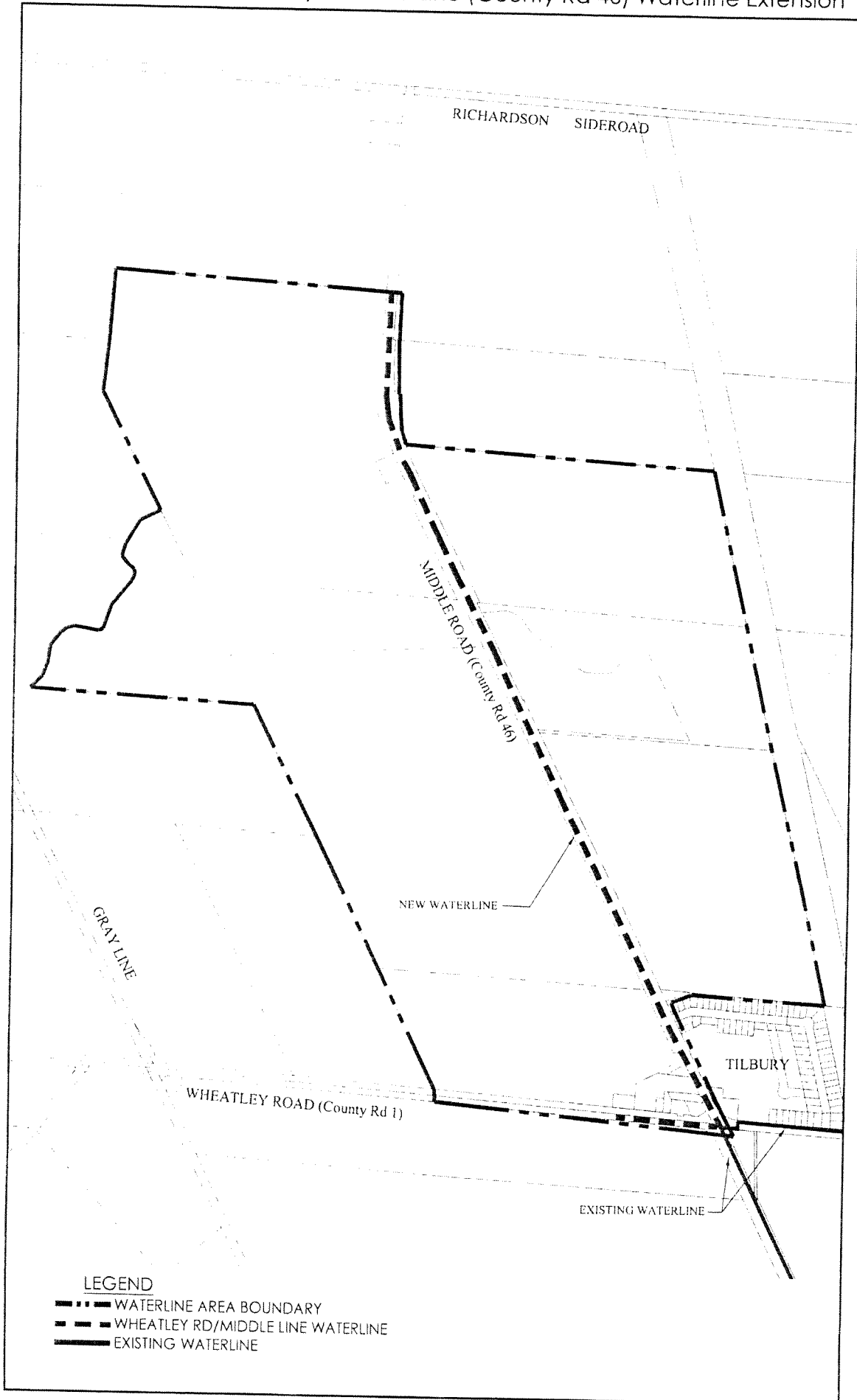
Schedule "A"

Wheatley Rd. (Kent Rd.1) / Middle Line (Essex County Rd. 46) Water Main Extension

1. The agreement between Lakeshore and the PUC dated October 14, 2011 regarding this waterline is hereby terminated in favour of having this waterline governed by this Agreement.

Schedule "R"

SCHEDULE A
Wheatley Rd (Kent Rd 1) / Middle Line (County Rd 46) Waterline Extension



SCHEDULE "B"
continued

(MAP)

Schedule "B"
Mill Street Water Main Extension

1. The existing water main located on Mill Street in the community of Tilbury in the Municipality of Chatham-Kent from its current terminus just east of Baptiste Creek to a point in front of 20400 County Road 42, Lakeshore as depicted in Schedule B.1 - Map.
2. The PUC will be responsible for the construction of the Mill Street Extension and will make arrangements directly with the property owner to recover the cost thereof.

SCHEDULE "B.1" - MAP



PLAN
SCALE: N.T.S.



No.	DATE	AGREEMENT	ISSUANCE

MILL STREET
WATERLINE REPLACEMENT
OVERALL SITE PLAN

T101-000
Sheet No.
G-1