



Auditor General Report Complaint Investigation Report Administration of Right-of-Way Sewer Permits

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Executive Summary

Background

The Office of the Auditor General received a complaint alleging that the City of Windsor improperly supported a contractor in relation to sewer connection permits and unpaid fees. The complainant raised concerns that the City's actions and communications between 2013 and 2016 created the appearance that the City was enforcing a private debt.

Five allegations were reviewed:

1. The City acted as the enforcer for a contractor to collect unpaid funds.
2. The City provided unclear and contradictory information regarding ownership of sewer connections.
3. The City failed to recognize the legal discharge of a contractor's lien.
4. The City indicated that sewer laterals remained the property of the contractor until paid.
5. The City issued permits in a way that supported a contractor's pursuit of unpaid fees.

These allegations matter because City permitting is expected to be neutral and technical. If City processes are perceived as taking sides in private disputes, it undermines public confidence and creates risks for governance and enforcement.

Investigation Approach

The Office of the Auditor General ("OAG") created a detailed timeline of events from 2013 to 2016, drawing on permit files, lien records, and correspondence. The investigation reviewed complainant submissions, additional records from Administration, and applicable bylaws. Permit files were tested for completeness against documented requirements.

During the investigation, the City articulated a position — informed at various points by advice from the City Solicitor — that unpaid sewer laterals remained the property of the contractor until compensation was received. The investigation considered, from a governance perspective, whether City processes and documentation consistently reflected the City's chosen position. For context, City

bylaws and permit documentation reference property owners as responsible.

This report does not attempt to resolve which legal interpretation is correct. Instead, findings assess whether City processes, documentation, and communications were neutral, consistent, and aligned with sound governance expectations.

Scope Limitation

All legal interpretations in this matter rest with the City Solicitor. This report does not attempt to assess or challenge those interpretations. Instead, it evaluates whether City processes and communications were clear, neutral, and consistent with governance best practices.

Findings in this report reflect whether City processes and communications reasonably created perceptions of bias or inconsistency, not whether the City's legal position is correct.

Summary of Procedures and Findings

To assess the allegations, the Auditor General reviewed complainant submissions and additional correspondence from City Administration, tested permit files for completeness against documented requirements, and constructed a detailed timeline of events from 2013 to 2016. The Auditor General did not assess or challenge that interpretation. Instead, the review considered whether City processes, documentation, and communications consistently reflected the City's chosen position, and whether any inconsistencies reasonably created perceptions of bias or confusion.

An essential consideration in reading this report is that while the allegations relate to communications, there is a crucial timing element wherein the property was purchased in an "as is" state, where it appears that the sewer lateral under the right of way had been capped, or at least cut back from the property line, before the date of the Power of Sale. As such, the property was purchased without a sewer lateral to the property line.

The investigation concluded that:

Allegation 1: The City acted as the enforcer for a contractor to collect unpaid funds was **Partially Warranted**. Although permit records themselves did not reference non-payment, subsequent City correspondence linked a capping permit to unpaid fees, creating the perception that the City was enforcing a private debt.

Allegation 2: The City provided unclear and contradictory information regarding ownership of sewer connections was **Partially Warranted**. In 2015, city communications provided three sequential conflicting statements about ownership of a sewer lateral, causing

confusion and reducing trust in this permitting process.

Allegation 3: The City failed to recognize the legal discharge of a contractor's lien was **Not Warranted**. The City appropriately recognized the discharge of a contractor's lien, and no concerns were identified in this regard.

Allegation 4: The City indicated that sewer laterals remained the property of the contractor until paid was **Warranted**. Correspondence suggested that contractors retained ownership of sewer laterals until paid, creating ambiguity, given that bylaws reference property owners as responsible.

Allegation 5: The City issued permits in a way that supported a contractor's pursuit of unpaid fees was **Partially Warranted**. While the permit application itself was neutral, later correspondence described capping permits as an alternative to liens, linking the process to private payment disputes and creating the appearance of enforcement.

In summary, while no evidence was identified to suggest deliberate bias in favour of contractors, weaknesses in permitting practices and inconsistencies in subsequent correspondence reasonably gave rise to the complainant's perceptions.

Recommendations:

The Auditor General recommends:

1. Strengthen Permit Integrity and Documentation

- Require complete applications (including forms, drawings, and signatures) before permits are issued.
- Document and independently approve any exceptions.
- Ensure reasons for capping are recorded and limited to legitimate technical or safety grounds — explicitly excluding private payment or contractual disputes.

2. Maintain Neutrality and Clarify Administrative Boundaries

- Affirm that the City's role in sewer lateral permitting is administrative and regulatory, not adjudicative.
- Ensure bylaws, forms, and communications clearly reflect this neutrality by removing references to ownership or payment disputes.
- Provide clear, plain-language explanations of the City's limited role and direct contractors and property owners to resolve private matters independently.

3. Improve Staff Communication and Training

- Provide written guidance and training to ensure staff communications are factual, neutral, and consistent with bylaws and Council direction.
- Avoid references to contractor payment status or ownership unless explicitly supported by policy or legal opinion.
- Reinforce that permits are **technical instruments used to regulate compliance**, not mechanisms to manage or resolve private disputes.

Assessment of Administration's Proposed Actions

Management has provided responses which are expected to address the findings.

Complaint Disposition:

Based on the evidence reviewed, the conflict arose primarily from inconsistent and evolving communications rather than deliberate bias or improper intent. Subsequent clarification of permit status, lien discharge, and servicing responsibilities resolved the operational barriers affecting the property. No ongoing City action continues to enforce or sustain the prior dispute, and the matter is considered administratively concluded.

Background Information

The Office of the Auditor General received a complaint alleging that the City of Windsor improperly supported a contractor in pursuing unpaid fees relating to sewer connections. The complainant expressed concern that the City's processes and communications between 2013 and 2016 favoured the contractor, creating the appearance that the City was enforcing a private debt.

Five allegations were raised:

1. The City acted as the enforcer for a contractor to collect unpaid funds.
2. The City provided unclear and contradictory information regarding ownership of sewer connections.
3. The City failed to recognize the legal discharge of a contractor's lien.
4. The City indicated that infrastructure installed by a contractor remained the property of the contractor until paid.
5. The City issued permits in a way that supported contractors' pursuit of unpaid fees.

These allegations were significant because they touched on the City's role as a neutral regulator of work under the municipal Right-of-Way (ROW). Suppose City processes appear to support one party in a private contractual dispute. In that case, it risks undermining public trust in permitting, as well as creating confusion over property ownership and related remedies. As such, these allegations matter because City permitting must be neutral; any perception of enforcement of private debts undermines trust.

Scope & Limitations

The Auditor General does not provide legal advice and is not qualified to determine ownership under the Construction Act. During the investigation, the City articulated the position that contractors retain ownership of unpaid works until compensated, and may either register a lien or apply for a capping permit.

Permit documentation and City bylaws reference property owners as responsible for private sewer connections. However, certain City correspondence introduced payment status as a factor in determining responsibility.

This report does not attempt to resolve which interpretation is legally correct. Instead, findings focus on whether City communications and records consistently reflected a single position, and whether any inconsistencies reasonably created perceptions of bias or confusion.

Contextual Information

Understanding the governing framework for sewer permits is critical to interpreting the allegations in this investigation. The investigation concerns work carried out under the municipal Right-of-Way (ROW), which is distinct from work done on private property.

Building Code vs. Right-of-Way Permits

- **Private property:** Work that takes place on private property falls under the Ontario Building Code. The Chief Building Official issues permits for these works.
- **Right-of-Way:** Work under the ROW (for example, sewer connections from the City's main sewer to the property line) is governed by City bylaws and technical specifications, not by the Ontario Building Code. The City Engineer issues permits in these cases.

In simple terms, the Building Code governs what happens on private property, while the City Engineer governs what occurs under the road. This investigation relates only to the latter.

Permit Applications

- Either a property owner or a City-approved contractor may apply for a ROW permit.
- At the time of the events under review, the City did not require proof of property owner authorization for contractors applying as an Applicant, or representative of the property owner. The City's view was that contractors incur costs in applying, and therefore have little incentive to do so without an owner's agreement. The Permit document requires the identification of both the Permit Applicant and the Property/Property Owner which may be two different entities/persons.
- For sewer tap permits, only pre-approved contractors are eligible to apply.

From a governance perspective, this lack of a requirement for explicit property owner consent meant that a contractor could apply without the City independently verifying authorization.

Application Process

As described on the City's website, the ROW permit process requires:

- An application form, drawing, and fee payment.
- An indemnity deposit to ensure that the ROW is restored to City standards; refundable after inspection and restoration.
- A Sewer Information Sheet where the connection location at the lot line is unknown.
- The use of a pre-qualified City sewer contractor.

- City inspection of the connection before backfilling, with documentation of compliance at the time of inspection.

The permit application form itself requires the applicant to:

- Indemnify the City;
- Agree to complete the work under the City Engineer's requirements;
- Acknowledge that failure to comply may result in revocation; and
- Acknowledge the collection of private information.

Enforcement of Requirements

Discussions with Administration indicated that, before late 2016, enforcement of form requirements was inconsistent. While the same forms existed from 2014 to 2016, staff discretion determined whether all elements were completed before issuance. In particular, drawings were often not required for sewer connections during the investigation period. From 2016 onward, new leadership emphasized stricter enforcement, and drawings became a standard requirement for most applications.

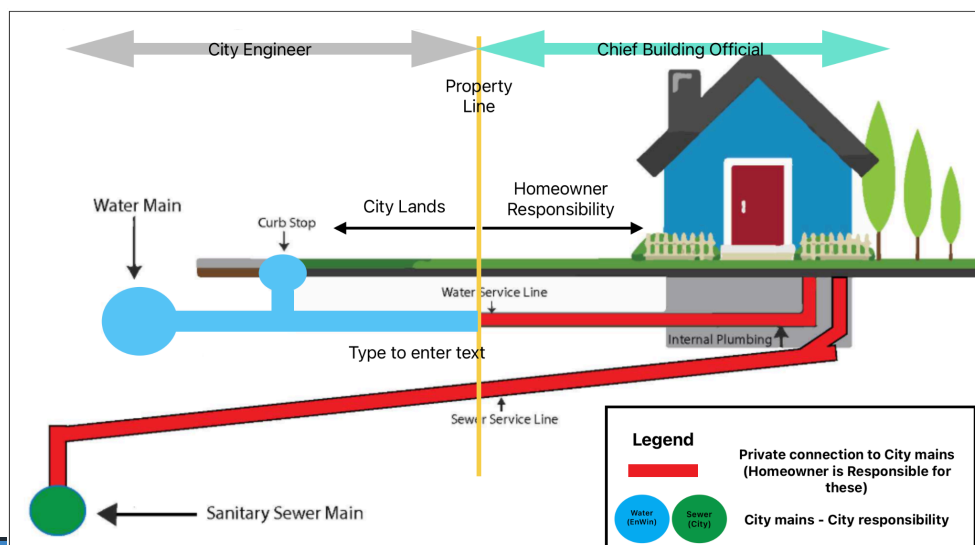
Responsibilities for Water and Sewer Connections

- **Water:** The service from the water main to the property line is the responsibility of EnWin (Windsor Utilities Commission), although the property owner is responsible for the original installation costs.
- **Sewer:** The connection from the main sewer to the private property is part of the Private Sewer Connection and is the responsibility of the property owner.

City Bylaw 4921 defines a *private sewer connection* as:

That part of a sewer system which connects private property to a municipal sewer system and includes the following: the tee or tap into the municipal sewer, the entire pipe from the municipal sewer to 3 feet (1.0 metres) inside the building, the cleanout tee fitting, the riser, and the cap/cover or sampling manhole with frame and cover.

The image to the right is for contextual purposes only. It provides a rough illustration of the water/sewer system, which City office oversees



vs. permits (City Engineer vs. Chief Building Official), the lands, and the water/sewer connections.

City Articulated Position

In its communications, Administration — informed at various points by input from the City Solicitor — indicated that where a contractor had not been paid, ownership of the installed sewer infrastructure remained with the contractor until compensation was received. On this basis, the City described two potential remedies available to contractors:

- Register a lien against the property under the Construction Act; or
- Apply for a permit to cap the unpaid work.

This interpretation underpinned several City communications to Council and the complainant.

Investigator's Independent Business Perspective

The Auditor General's role is not to resolve questions of law, but to assess whether City processes, documentation, and communications reasonably align with sound governance expectations.

From a governance standpoint, the concern is that at times City communications described both *lien* and *capping* as valid remedies available to contractors in cases of non-payment. These remedies, however, rest on opposing premises and were presented as interchangeable.:

- A lien assumes that ownership of the work has already transferred to the property and creates a financial claim against that property.
- Capping assumes that ownership has not transferred, allowing the contractor to restrict use of the work.

Because these two remedies are conceptually incompatible, presenting them as interchangeable created confusion for residents, reduced confidence in the neutrality of municipal permitting, and contributed to the perception that the City was taking sides in a private dispute. Avoiding presenting them together or clearly indicating why they are both viable options would enhance understanding.

From a governance perspective, more explicit guidance is needed to ensure that City staff communications consistently reflect Council's chosen position and are supported by evidence and policy. This will reduce ambiguity, reinforce neutrality, and enhance public confidence in the permitting process.

Implications

These inconsistencies in how remedies were described created a reasonable perception that the City might be taking sides in a private dispute, even if that was not the intent. They also reduced confidence in the neutrality and transparency of municipal permitting processes.

The governance risk is not about which Contractor course of action is correct, but about how contradictory or unsupported communications can undermine trust. When staff present conceptually inconsistent remedies, residents and contractors are left uncertain about their rights and responsibilities.

More explicit guidance on the City's role — and consistent alignment of staff communications, bylaws, and forms with Council's chosen position — would reduce confusion, strengthen transparency, and better support public confidence in the fairness of City permitting practices.

Summary of Investigation Approach Results

Investigation Procedures

The Office of the Auditor General conducted this investigation in accordance with its mandate to review processes, controls, and governance considerations. The following procedures were undertaken:

1. Timeline Reconstruction

- Compiled a chronology of events from the issuance of the initial TAP_PERMIT in July 2013 through to the final servicing of the property in 2015. (see Appendix A).
- Incorporated permit records, inspection notes, lien registration and discharge dates, and property ownership changes.

2. Review of Complainant Submissions

- Examined documentation provided by the complainant, including correspondence with City staff.
- Obtained additional correspondence and records from City Administration to supplement the evidence.

3. Permit File Testing (2013–2015)

- Reviewed permit applications, approvals, inspection records, and related documentation. (see Appendix C).
- Met with Bylaw and Public Works staff to verify permit status and practices.
- Tested permit records against stated requirements (application, drawings, fees, indemnity deposit).
- Compared completed permit files with City forms to assess completeness and consistency.

4. Research of Principles and Precedents

- Conducted summary research on construction lien principles, property improvements, ownership of affixed works, and municipal permitting responsibilities.
- Reviewed publicly available legal case summaries to establish a business-level understanding of lien and ownership principles.
- Sought verbal input from two independent legal professionals on general legal principles (not case-specific legal opinions).

5. Consultation with City Solicitor

- Obtained the City Solicitor's position on the legal interpretation of ownership under the Right-of-Way and the remedies available to contractors in cases of non-payment.

Findings by Allegation

The following assessment of allegations is made strictly from a governance, control, and process perspective. Where legal interpretations differ — such as ownership of infrastructure under the Right-of-Way — the City Solicitor has provided views that are beyond the Auditor General’s ability or mandate to validate. The ratings (Warranted / Partially Warranted / Not Warranted), therefore, reflect whether the City’s processes and communications reasonably contributed to the perceptions underlying the complaints, not whether the City’s legal position is correct.

Allegation 1 – The City is acting as the enforcer for contractors to collect unpaid funds

Evidence Reviewed

In February 2014, a CAP_PERMIT was issued to a contractor to seal a sanitary connection one metre short of the property line. The application was incomplete, lacking the required form, drawing, and property owner authorization, and was supported only by a handwritten note and a fee amount. (This was a permitted practice internally at the time.) The permit record itself did not reference non-payment as the reason for permit issuance. However, in subsequent correspondence internally and with a Councillor, City staff tied the permit to the contractor’s claim of non-payment and explained that the contractor had chosen to cap the service rather than pursue a lien, but that the contractor could have pursued either option. The sequence of events leading to the issuance of the CAP_PERMIT, including lien registration and property sale, is detailed in Appendix A. Testing confirmed that the 2014 CAP_PERMIT lacked a formal application form, drawings, or property owner authorization; detailed results are provided in Appendix C.

Investigator’s Understanding

Permits should be issued for technical and regulatory purposes, not as instruments to resolve private payment disputes. Although the permit file itself was silent on payment status, subsequent communications framed the permit as an enforcement mechanism. This created the perception that City processes could be used to enforce a private debt, which undermines neutrality and confidence in the permitting process.

Finding: Partially Warranted. Incomplete permitting and subsequent communications tied to non-payment created a reasonable perception that the City was facilitating contractor debt collection, even if that was not the intended outcome.

Allegation 2 – The City provided unclear and contradictory information regarding ownership

Evidence Reviewed

Between April and May 2015, the City issued three conflicting statements about ownership of the Private Drain Connection (PDC). In April, correspondence advised that the PDC was the contractor's property because payment had not been made. In May, correspondence to the complainant stated that ownership had transferred to the new property owner. Two weeks later, the City reversed this position again, asserting that the contractor retained ownership until paid.

Investigator's Understanding

These communications presented mutually exclusive positions within a short timeframe. Regardless of which legal interpretation may be correct, presenting these varying positions created confusion for the complainant and others privy to the messages. From a governance standpoint, inconsistent messaging of this nature undermines public trust and reduces confidence in the City's permitting processes. Furthermore, if sewer laterals remain the property of contractors until the contractor is paid, the City will require a system or process to maintain awareness of who the owner/responsible party is for the lateral and what evidence needs to be provided to the City to demonstrate transfer of ownership.

Finding: Partially Warranted. The City's contradictory communications directly contributed to confusion and diminished trust in its processes. While this sequence of communications represents the City's understanding based on information at a point in time - as the City was actually stating who owned the lateral/work - ensuring accuracy and avoiding shifting messages is important. This finding reflects governance and communication weaknesses, not a determination of legal ownership.

Allegation 3 – The City did not recognize the discharge of contractor liens

Evidence Reviewed

In 2013, the contractor registered a lien against the property relating to the water connection. The lien was discharged in January 2015 through the Power of Sale process. City records acknowledged the discharge. No evidence was identified to suggest that the City failed to recognize or respond appropriately to the discharge.

Investigator's Understanding

Lien registration and discharge are matters governed by the *Construction Act* and fall within the jurisdiction of the courts. The City's role is limited to acknowledging such registrations. The available evidence confirms that the City did recognize the discharge of the lien.

Finding: Not Warranted. The investigation found no evidence that the City failed to recognize the discharge of the lien. This allegation does not raise concerns regarding process or communication.

Allegation 4 – The City indicated that contractors owned sewer laterals until paid

Evidence Reviewed

In April 2015, City correspondence advised that the PDC remained the contractor's property due to non-payment. In May, the City informed the complainant that ownership had transferred to the new property owner. Two weeks later, the City reversed its position again, stating that ownership remained with the contractor. Permit applications consistently identified contractors as applicants, with property owners listed separately. City Bylaw 4921 defines private sewer connections in a manner that holds property owners responsible. The City's records did not include evidence documenting how payment status was verified before staff made these ownership statements. The ownership-related correspondence from April to May 2015 is set out in Appendix A.

Investigator's Understanding

Permit documentation and City bylaws reference property owners as responsible for private sewer connections. The City's permit forms distinguish between property owners and contractors, anticipating that contractors may apply as agents on behalf of owners. However, some City correspondence tied ownership to whether the contractor had been paid.

From a governance perspective, introducing payment status as a factor — without documented evidence or reference to bylaw authority — created ambiguity and gave the impression that the City was endorsing one party's position in a private dispute. The concern is not the legal correctness of ownership, but the effect of inconsistent messaging on consistency, neutrality, and public confidence.

Finding: Warranted. Correspondence that tied ownership to payment status was inconsistent with bylaws and forms, and undermined confidence in the City's neutrality.

Allegation 5 – The City issued permits to support contractors in pursuing unpaid fees

Evidence Reviewed

The CAP_PERMIT issued in 2014 did not cite non-payment in the application or approval record. However, in subsequent correspondence, Administration advised that contractors who were not paid had two options: to register a lien or to apply for a CAP_PERMIT. In this case, the contractor was said to have chosen the capping option. This explanation linked the permit to a private payment dispute after the fact, even though the permit system itself does not include "payment status" as a criterion.

Investigator's Understanding

Permits are intended to regulate work in the ROW for safety and compliance. By describing the permit to cap in correspondence as an alternative to a lien, the City framed a permit to cap as a remedy for non-payment. This post-permit framing, rather than the application itself, created the perception that the City's permitting processes could be used to pursue unpaid fees.

From a governance standpoint, presenting lien and capping as interchangeable remedies created confusion. Because these remedies address the issue in very different ways, presenting them together

without explanation contributed to confusion and the perception that the City was taking sides. The concern is not the legal correctness of ownership, but the effect of framing inconsistent remedies as both valid.

Finding: Partially Warranted. While the permit application itself did not reference non-payment, subsequent City correspondence linked the permit to unpaid fees and framed it as an enforcement option. This created a reasonable perception that City permitting could be used to support contractors in private disputes.

Recommendations

1. Strengthen Permit Integrity and Application Requirements

- Require complete applications (including forms, drawings, and signatures) before issuing permits.
- Document any exceptions and subject them to independent approval.
- Require applicants to state a reason for capping, and limit valid reasons to technical or safety grounds. Private payment or contractual disputes should be explicitly excluded as valid reasons for capping.

Administration Response			
Since the occurrence of the allegation, drawings have been made a mandatory component of all permit applications. Additionally, staff will receive further training to reinforce the importance of ensuring that all required forms and documents are properly completed and signed. Standardized wording for all permits will be developed to promote uniformity and transparency across all issued permits. The planned implementation of the online permitting portal will address these recommendations by streamlining submission requirements and reducing the likelihood of incomplete applications. Capping permits are extremely rare and typically occur under unique circumstances. Currently, comments on the reason for capping are not provided; however, this process will be reviewed to ensure clarity and consistency.			
Responsible Party:	Executive Director of Engineering	Due Date:	August 2028

2. Maintain Neutrality and Clarify Administrative Boundaries

Ensure bylaws, forms, and policies clearly define the City's limited regulatory role and avoid implying ownership, liability, or mediation responsibility between contractors and property owners.

Council should affirm that:

- The City does not determine or opine on ownership or payment disputes related to sewer laterals.
- Its role is limited to verifying compliance with permit and safety requirements.

Administration should:

- Align all communications and forms with this neutral position.

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- Remove or revise any wording that suggests the City determines ownership or payment responsibility.
- Provide general process information only, referring parties to private legal or contractual remedies outside City processes.

This should be designed such that the City avoids getting involved in disputes such as the one related to this allegation.

Administration Response

The City will work with legal counsel to add a clear disclaimer to all permits stating that the review is limited to verifying compliance with permit and safety requirements. This will reinforce the City's neutral role and avoid any implication of ownership, liability, or involvement in private disputes.

The planned implementation of the online permitting portal will further support these recommendations by standardizing language, streamlining submission requirements, and ensuring that all communications align with the City's neutral position.

Responsible Party:

Executive Director of Engineering

Due Date:

January 2027

3. Improve Staff Communication and Training

Provide staff with written guidance to ensure communications remain neutral, factual, and consistent with bylaws and Council direction.

Staff should not comment on contractor-owner payment issues or ownership of infrastructure unless there is clear policy or legal direction to do so.

Deliver training on:

- Proper permitting and documentation protocols.
- Communication practices that maintain neutrality and avoid legal interpretation.

Administration Response

Administration will review existing documentation and incorporate recommendations to enhance existing staff onboarding and training efforts. This will include clear guidance on responsibilities and expectations, emphasizing that staff should refrain from commenting on legal matters such as contractor-owner payment issues or ownership of infrastructure unless there is explicit policy or legal direction.

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Training will reinforce proper permitting and documentation protocols and communication practices that maintain neutrality and avoid legal interpretation.

Responsible Party:

Executive Director of Engineering

Due Date:

January 2027

Appendix A - Timeline of Associated Events

Names used:

- Property Owner A
- Previous Property Owner - legal entity that owned the property before the purchase of the property by Property Owner A through the Power of Sale
- Contractor - permit applicant
- TAP_PERMIT - permit to tap into EnWin (Windsor Utilities Commission)Water Main and City Sewer Main under the City Right of Way (ROW) for the purposes of creating part of the Private Drain Connection (PDC)/sewer lateral with the permit issued by City Engineering
- CAP_PERMIT - permit to cap sewer services under the City Right of Way (ROW) with the permit issued by City Engineering

Timeline Narrative:

In July 2013, the contractor applied for a sewer TAP_PERMIT, identifying themselves as the Applicant of the property owner. The permit included connections for water, sanitary sewer, and stormwater from the City main to the property line. The application met all documentation requirements, including signatures and drawings.

By late October 2013, the contractor completed the work, and the City inspected and approved the connections. The permit was finalized, with the boulevard and road restored to municipal standards. That same week, the contractor registered a lien against the property—specifically citing the water connection (inbound) - no other connections or work were noted in the lien.

In February 2014, the contractor applied for and received a CAP_PERMIT to seal the sanitary connection one meter short of the property line. Unlike the earlier permit, this application lacked standard supporting materials: no formal application form, no drawing, and no verified signature or approval from the property owner nor the applicant. The permit was granted based on a handwritten note and the payment of a fee. Discussion with Administration indicated that such a practice was not uncommon, given that the original permit contained all the required information and the request was from the same applicant as the original permit.

A City inspection in March 2014 identified violations under the CAP_PERMIT, suggesting that substantive capping work had already occurred by that time, but further work was required.

In January 2015, the property was sold under a Power of Sale to a new owner. At the time of Power of Sale the following were noted in the timeline: (1) the registered lien, (2) an open CAP_PERMIT, and (3) evidence of partially completed capping work.

The lien on the water connection (inbound) was discharged as part of the Power of Sale process.

In mid-April 2015, the City issued correspondence stating that because the contractor had not been

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paid for the sewer connection (Private Drain Connection, or PDC), the infrastructure remained the property of the contractor. Administration also informed a City Councillor that:

- The PDC was the contractor's property due to non-payment.
- The contractor requested the capping permit, which the City approved.
- The matter was between private parties and not one in which the City would intervene.

In response to a follow-up question from the Councillor regarding the contractor's decision not to pursue a lien, City staff stated that the contractor had two options: (1) register a lien or (2) request a permit to cap unpaid infrastructure. They confirmed that the contractor had chosen the second route.

In May 2015, the City inspected the capped connection and finalized the CAP_PERMIT.

Between December 2015 and January 2016, new servicing permits for laterals under the ROW were issued and completed for the property, enabling the lot to be properly connected at the property line.

Timeline:

Various communications are summarized below in sequence. Multiple communications on a given day are denoted by (a), (b), (c), etc.

- 7/13/2013 Contractor C, the Applicant, not the Previous Property Owner, applies for one permit (TAP_PERMIT - 2013 187784 000 00 SR) to connect the following services from the City Main line in the road up to the property lot line. The three services listed were :
- a 6" Sanitary tap (tee),
 - 6" storm connection, and
 - water service tap
- This was for a lot that was that was severed into two new lots to accommodate new developments on each.
- 7/16/2013 TAP-PERMIT issued by the City.
- 10/24/2013 Contractor registers a lien on the private property for service work
A lien, in the amount of \$####1, for work performed between July 17, 2013, and September 27, 2013, related to all labour, equipment, materials, and permits to install one new water connection from the water main to the lot line, is registered.
- 10/28/2013 City records indicate that the final City inspection for the 7/13/2013 TAP_PERMIT permit had occurred, passed and was closed.
- At this point, city records indicate that three services were inspected and passed for a connection from the city main line under the ROW up to the property lot line. The three services listed were :
- 6" Sanitary tap (tee),

- 6" storm connection, and
 - water service tap
- 02/21/2014 Contractor, the Applicant, applies for a permit (CAP_PERMIT - 2014 171678 000 00 SR) for "Permission to cap new sanitary connections in blvd 1m short of property line".
- 02/22/2014 CAP-PERMIT issued by the City.
- 03/14/2014 The City performed an initial inspection on 02/12/2014 CAP_PERMIT, with violations noted, and the permit was not finalized.
- Unknown Power of Sale initiated on the property
- 01/22/2015 Property owners change hands in the "Power of Sale" transaction. Previous Property Owner's property was offered by a Financial Institution through a "Power of Sale" transaction and sold to Property Owner A. (For the purchaser in a Power of Sale the property is sold in an as is condition free from encumbrances registered after the mortgage being enforced by the Power of Sale - i.e. only items that were previously part of the real property (at date of sale) are part of the property accrue to the new owner.
- 01/26/2015 The lien held by Contractor C was discharged under the Power of Sale/Court Order, and the Land Registry was updated.
- 04/10/2015 Property Owner A visits the building department to get a building permit. This is not permitted as there is an open permit to cap the services on the lot.
- 04/12/2015 Property Owner A issues a complaint to a City contact requesting an official decision he believes is incorrect.
- 04/14/2015 (a) Property Owner A escalates the complaint to executives, requesting an official decision he believes is incorrect.
- (b) Internal City emails regarding:
- Private Drain Connection (PDC) is not the City's.
 - If the previous owner did not pay the contractor for the PDC, it is still the contractor's property.
 - The lot is currently unserviced, as the work undertaken by contractor was not paid for by the previous owner.
 - The property owner could get a permit and service the lot themselves.
- (c) City responds to Property Owner A with a note that the Property Owner should be aware of what can be done on the property.
- (d) Property Owner A requests specificity about those possibilities.

- 04/15/2015 (a) The City informs Property Owner A that there are two options (wye connections or straight line connections) and that the Contractor/Applicant had taken a permit out for a sewer connection to the lots, but was not paid for the work, and the permit was not finalized for that sewer connection. Additionally, Property Owner A has the option of obtaining a permit and hiring someone to perform the connection work.
- (b) Property Owner A indicates they are putting in the services themselves. They requested that the city remove the old services. Property Owner A suggests that they believe this was an attempt to make the new owner pay for the prior owner's work.
- (c) The City responded with a reminder that Property Owner A needs to submit a lot servicing plan for review. Once received and reviewed, the City will deal with the prior service provider's permit.
- (d) Property Owner A responded that they have never received nor been informed of such a request.
- (e) The City responded with the name of the City employee with whom the conversation had been had, and that a lot servicing plan is required to move forward. If Property Owner A does not remember the conversation, then they should consider this email to be the advice thereof. The City explicitly requests a lot serving plan for the two addresses in question and indicates where to submit them. The City also notes that the outstanding permit referred to in the prior email is the CAP-PERMIT and was open and not yet final.
- (f) A City Councillor issues a summary of a complaint on the circumstances above and an allegation that the City is supporting the Contractor and requests any insight that City staff may have regarding this matter.
- (g) City staff respond by attaching correspondence with Property Owner A and summarizing the situation. Key points identified are:
- The issue is between two private parties.
 - The private sewer connection is the responsibility of the property owner's responsibility.
 - The work was done under permit and inspected.
 - The City was advised that the previous owner did not pay for the work, and therefore, the work was not transferred to the previous owner or the property, as it was not paid for.
 - The contractor then went to public works for a permit and was given a permit to cap off the private sewer connections.
 - The property was then sold to Property Owner A under conditions unknown to the City.

- Property Owner A then sought a permit to develop the lots in question and was informed by the City that he needed to negotiate with the current permit holder to purchase the unpaid-for private sewer connections or place new ones.
- City personnel will not become involved in discussions between Property Owner A and the current permit holder.

04/17/2025 (a) The City Councillor follows up with specific questions to City staff.

1. Did we inspect and pass the sewer works?
2. Is the contractor's recourse not with the person who contracted the work, and should the contractor not have put a lien on the property if there was an issue?

(b) The City staff respond to the questions:

1. Yes, the original permit to service the lot was inspected and passed.
2. Yes, but City staff identify two possible options that a contractor could take:
 - a. Register a lien against the property
 - b. Request that the City issue a permit to cap services for which the contractor had not been paid.

The contractor opted for option "b" to seek a CAP-PERMIT.

The City staff also provide information regarding the open permit, CAP-PERMIT. That the CAP_PERMIT was not yet final, as Property Owner A and the contractor cannot come to an agreement, and as such, the City will order the Contractor to remove the PDC from the right of way so that the City can issue a permit to the next person.

City staff indicate that the Contractor will not be paid for the prior work and will incur additional costs to remove what is there.

Both parties lose, and the work gets done twice because they can't agree: the Contractor wants to get paid, while Property Owner A wants the job done for free.

Once the CAP_PERMIT is revoked and work is removed, the City can issue a new permit to Property Owner A.

05/06-08/2015 The Contractor has an inspection performed by the City, where remedial action for violations regarding the capping permit was accepted, and the permit was finalized and closed. Note: Status changed from "Final" to "Rejected".

05/11/2015 (a) The City issued a communication to the Contractor referencing a discussion the week of May 3-9, 2015. Communication indicates that the Engineering

permits issued for the property related to Property Owner A at the lots involved in this complaint have been revoked. Specifically:

- The permit to cap the sewer connection 1 meter short of the property line is revoked,, effective May 8, 2015.
- A discharge lien has been received effective January 26, 2015
- The Contractor has been advised that no further work is authorized at the location and that the open permit has been revoked.

(b) The City issued a communication to Property Owner A, indicating that:

- There are several issues to address in servicing the property.
- The lien discharge has been confirmed.
- The existing services constructed by the Contractor are available to Property Owner A.
- The City sewer information sheets have been updated.
- The Private Drian Connections are now the property of the property owners

05/22/2015 Property Owner A issued a communication indicating that:

- Several urgently marked messages had been left for the member of the City staff
- Seeking an explanation as to why the May 11, 2015, decision was rescinded.

05/23/2015 Property Owner A escalates the issue outside the City, reiterating several prior allegations and stating that a permit prevents Property Owner A from building.

05/25/2015 A City staff member responds to Property Owner A, indicating that:

- Property Owner A should not have contacted a City staff member at their personal residence.
- The rescinding of the May 11, 2015, decision was based on additional information received and discussions with the City Solicitor's office. The communication indicates that the City had previously understood that the lien discharge resulted from compensation to the Contractor for the property servicing. It was the result of a Power of Sale. As such, the states that the new services constructed by the Contractor are not available to Property Owner A.
- Property Owner A will require lost servicing plans and permits.
- Please have a qualified serving contractor submit a serving plan for review and approval to acquire permits.

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- 06/10/2015 The Contractor invoices Property Owner A \$###2 to "Excavate and reinstate services to {property} lot line" and per a second typed invoice "Supplied all labour, equipment, material and permit to re-instate storm and sanitary connections."
- 07/22/2015 Payment by Property Owner A to the Contractor for \$###2.

Appendix B – Governance Analysis of Contradictory Options

City correspondence at times described lien and capping as two equal remedies available to contractors who had not been paid. From a governance perspective, the concern is not which remedy is legally valid, but that they rest on opposing premises and were presented to residents as if they were interchangeable.

Option 1 – Registering a Lien

- **Governance implication:** A lien signals that the contractor is pursuing a financial/legal claim through established statutory channels.
- **Perception risk:** By presenting this as an option while also presenting capping as a valid alternative, the City's communications suggested two contradictory bases for responsibility, without providing supporting rationale.

Option 2 – Requesting to Cap the Connection

- **Governance implication:** Capping restricts the physical use of infrastructure and was framed as a tool available to contractors in payment disputes.
- **Perception risk:** Describing this alongside a lien, without explaining the differing assumptions, created the impression that the City was endorsing both approaches.

Why They Are Not Equivalent

- These options rest on different underlying assumptions, and presenting them together without clarification created inconsistency.
- From the public's perspective, receiving contradictory explanations undermines trust in the neutrality and reliability of City permitting processes.

Implications for Governance

The governance issue is that City communications presented two conceptually incompatible remedies as equally valid. This inconsistency created confusion for residents, reduced confidence in the permitting process, and gave rise to the complainant's concerns.

To prevent recurrence:

- Council should determine or affirm the City's role in situations of non-payment, informed by legal advice. Administration should then ensure that staff communications are consistent with that direction.
- Staff should avoid presenting lien and capping as interchangeable remedies, unless clearly explaining why both are being referenced.
- Permit forms and communications should clearly reflect the intended boundaries of the City's role, focusing on neutrality and evidence-based explanations.

Appendix C - Testing of Permit Applications

Conducted testing of permits listed:

- a. Met with the Bylaw/Building Department to collect initial tick information.
- b. Met with Public Works' sewer contact to review detailed permit information.

Observed system to confirm all permits, nature, status, issuance date, application/owner and notes

- c. Selected the sewer permits from 2013 to 2015 up to the final capping/deservicing of sewers for testing and evidence review.

Per the City website, acquiring a Sewer Permit requires four elements:

- (1) an application,
- (2) a drawing,
- (3) fees, and
- (4) an indemnity deposit.

With regards to the ROW Permit application, the application indicates that the following fields are required:

- i. Applicant information (7 fields).
- ii. Property information - 2 fields if the applicant is the property owner; 7 fields if the applicant is not.
- iii. Description of Work to be completed - 1 field.
- iv. Type of Permit - select one of 5 types.
- v. Sewer Permit Type - has a drawing required indicator and 5 required variable fields.
- vi. Date and signature fields are needed for the application to be completed, attested to, and acknowledged for several items.

The 4 elements and the required application fields were considered in the following tests.

Conducted testing and noted that:

1. TAP_PERMIT - The July 16, 2013 permit taken out for water connection and sewer (storm and sanitary) was completed and final inspected on Oct. 23/13, with a note that "New sanitary wye from new connections located at ADDRESS. Must abandon the existing sanitary connection at the property line. Restore Boulevard/Road to City of Windsor standards."

The TAP_PERMIT had evidence of (1) an application, (2) a drawing, (3) fees and (4) an indemnity deposit.

A review of the TAP_PERMIT application noted the following fields completed as compared to the requirements:

Application Area	Detected in Evidence	Requirement
Applicant	2 fields	7 fields
Property (where applicant is the property owner)	NA	2 fields
Property (where applicant is <u>not</u> the property owner)	1 field	7 fields
Determination of Work	1 field	1 field
Type of Permit	1 field	One of 5 options
Sewer Permit	Drawing 5 fields	Drawing required Variable selected for 5 options
Date and Signature of Acknowledgemtn and agreement/attestation	Date and signature	Date Signature

For the missing applicant information, the City has the relevant contact information elsewhere, given that the Contractor/Applicant must be on the city-approved listing.

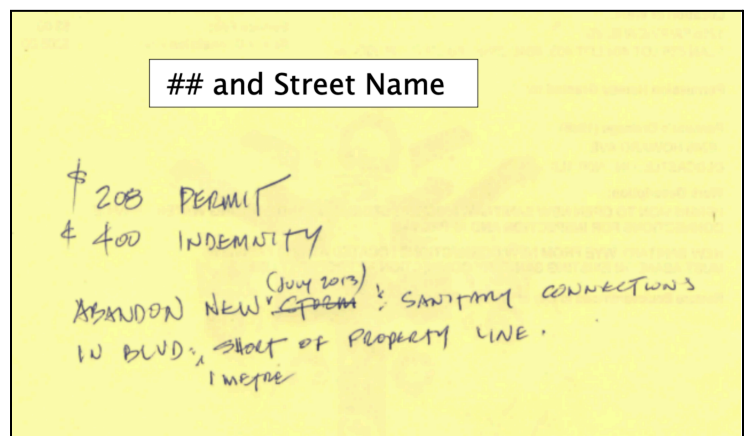
While the property information is mostly missing, given that the address is provided, other City systems may be used to look up the remaining information.

No issues were noted in testing the TAP_PERMIT.

- The CAP_PERMIT to cap the “new sanitary connections in boulevard 1M short of the property line” had substantially less information.

The CAP_PERMIT had evidence of (3) fees and (4) an indemnity deposit. No evidence of (1) an application or (2) a drawing was noted. The only attachment/support was a handwritten note on yellow paper with the address, two fees to pay to the City and a partial sentence summing up the work with some strike-outs.

While the Investigator has evidence of the existence of an Application



for Right of Way Permits form requiring the above information and drawings before 2016, discussions with Administration identified that before 2016, Administration did not require a drawing for most permits, and that drawings from the prior tap connect were available from the July 2013 permit, which was closed in October 2013. Although Boulevard strike-through summarizing, be paid

The CAP_PERMIT had evidence of (3) fees and (4) an indemnity deposit. No evidence of (1) an application or (2) a drawing was present.

Given that an application was not detected, the handwritten note was compared to the requirements of an application, where investigators noted the following fields completed as compared to the requirements:

Application Area	Detected in Evidence	Requirement
Applicant	0 fields	7 fields
Property (where applicant is the property owner)	NA	2 fields
Property (where applicant is <u>not</u> the property owner)	1 field	7 fields 
Determination of Work	1 field	1 field
Type of Permit	0 field	One of 5 options
Sewer Permit	No Drawing 0 fields	Drawing required Variable selected for 5 options
Date and Signature of Acknowledgemtn and agreement/attestation	No date No signature	Date Signature

A reviewer may imply that the applicant was the Contractor, as that is the party to whom the permit was issued.

While the property information is mostly missing, since the address is provided, other City systems may be used to look up the remaining information.

The type of permit was not specified, but may be implied from the work description.

None of the permit information was noted; however, one might surmise that it impacts an existing connection or a residential nature connecting to the sewer main, where a sewer information sheet is not required, given the data completed in the actual permit.

The required drawing was not noted.

No evidence of the applicant's signature or date was noted.

Issues were noted in testing: Some required elements (the actual application and drawings) were not detected, nor was the applicant's signature/date noted. Most of the application fields had to be inferred from the completed permit, including the applicant, property information, and the permit variables. However, discussions with Administration indicated that this was an acceptable practice at the time.