

2015 DRAINAGE PRACTITIONERS MEETING
FINAL MINUTES OF MEETING
Thursday October 22, 2015
Holiday Inn Hotel and Conference Centre – Trillium Room
Guelph, Ontario

1.0 General Business

- 1.1 An attendance sheet was circulated at the meeting and there were 40 people in attendance. Chairman Tony Peralta called the meeting to order at 7:00 p.m.
- 1.2 Accept agenda as revised, moved - Jeff Dickson, 2nd - John Kuntze, carried.
- 1.3 Adopt minutes from last meeting – October 23, 2015, moved - Bill Dietrich, 2nd – John Kuntze, carried.
- 1.4 Business arising from the minutes – none.
- 1.5 Correspondence – Chairman Tony Peralta advised that nothing significant.

2.0 Chairman`s Report – Tony Peralta, P.Eng.

Not much correspondence – quiet year.

Discussed conference tomorrow.

M.N.R.F. status – everyone still working out details of working with them and new legislation.

D.F.O. – relatively good experience for him.

D.A.R.T. and D.A.W.G. – quiet due to new regulations – Guidelines near completion.

3.0 O.M.A.F.R.A. Report – Sid Vander Veen, P.Eng.

Update on Ministry staff, new director in July: George McCaw, has an ag background; Len Senyshyn Manager; Valerie Anderson retired; Becky Curran; Brenda Rumble: grants and licenses; Andy Kester: licensing, grants, tiles; Jacqui LaPorte; Arlene Robertson; Rob Waters Drainage Referee.

Courses: Jeff Dickson has been helping with drainage superintendent course. Last year saw 34 attendees; clerk – treasurer courses, 63 in London, 44 for calculations of assessments. New course Feb 29 – Mar 4, register through Ridgeway College (should open soon).

Northern Ontario Heritage Fund – info
programs continuing
grants up to \$500/ac for tiling
now 5 contractors versus 1 in the past
positive impact

Tile Installation Act

Drainage Practitioners Meeting

Guidelines: Kenn Smart and Kay Palmer finished draft

O.M.A.F.R.A. reviewing – hope by end of year, estimate of 200 pages before graphics, excited about new info available

D.A.W.G. – 1 meeting in April – some issues coming up – Tom Hoggarth and Jenn Thomas at D.F.O. are good to deal with.

D.A.R.T. – holding pattern due to Conservation Authority (C.A.) Act Review. Stalemate on new engineer's reports, awaiting clarifications, review of C.A. Act on E.B.R. (Environmental Bill of Rights); submit comments by the end of the week. Hope D.A.R.T. can then move forward. Resolve Drainage Act and C.A. Act conflicts – legislative barriers. Hope for new procedures in next couple of years. Have teleconferences and try to resolve concerns. Peterborough meeting provided comments. Wetland Policies review – opportunities for input online by the end of the month.

New Computer System – working on outward facing portal, not there yet, design and programming stage, licensing component.

Drainage contacts layer – on website, 3 forms – firms have to author reports to get on, also have tile drainage contractors and most municipal Drainage Superintendents.

A.D.I.P. statistics

Many grant applications didn't show drain length, will provide statistics once info is available. (see attachment at end)

Some reports with no profile provided – statutory requirement.

Grant eligibility only if farm property tax class rate – can show people up front, onus on owners to qualify. Let O.M.A.F.R.A. know if discrepancies between maps and roll info. Ministry uses 2 years of data, not grant eligible just because they farm the land.

Kenn Smart – which website is more up-to-date?

Sid – get their data in January and post in March. Expects it to be most up-to-date.

Andy Kester – try to update 2-3 times per year.

Sid – they update at least once per year.

Bill Dietrich – 34 at last course, does Sid follow up?

Sid – to a degree he does, he gets by-law copy when appointment done. Appointment by-law is important. Course qualifies you for grant. Allowances for land taken under Sec. 78 – R.O.W. along drain. Mike Devos has discussed providing if not shown in the past.

4.0 O.M.A.F.R.A. Appeal Tribunal & Drainage Referee Report – Andy McBride, P.Eng. & Robert Waters, LL.B.

Robert Waters – Drainage Referee

Double check roll numbers. Short Drain 2008 to 2012: 17 days of hearings. Has 2 new cohorts.

Interviewed 6 of 20 applicants. New appointees:

Andrew Wright – Municipal background

Ted Oldfield – Ag background

7 cases this year still have to be heard. 3 year terms, both new appointees will be at conference tomorrow.

Working on Regulations under Drainage Act: some very old sections, needed a lot of discretion, Sec. 232/15 – Sept. 5, 2015 – some apply to engineers, can find on e-laws.

Referee determines when engineer can be examined on discovery, rules more fixed. Attendance of engineer at hearing – Town has to get engineer to attend. Can appeal or make motion, now claim for damages allowed. Go to “CANLII” website, over 125 decisions posted; www.canlii.org Can now have pre-trials if needed, to save costs. Last year 2 larger hearings: Town of Innisfil & another Town.

Del O'Brien was hearing the case, started Aug 2004. Went through 8 orders, final was 2 options, some court cases, new Council asked for reviews due to quadruple costs, gone back to drawing board after \$400,000 expended. If there is a problem, get a procedural order – Sec. 106 of Dr. Act.

Regulation 275 is gone now; new Regulation is 232/15 enacted September 5, 2015.

Andy McBride – Tribunal report for 2015.

50 hearings to date

35 were farm tax matters

15 other hearings

11 of those other hearings were regarding the Drainage Act.

The Tribunal has dealt with 25 drainage related matters in total.

10 decisions have been issued to date and 1 is pending.

Of those 11 hearings, 5 were under Sec. 54, related to assessments; 1 under Sec. 48; 3 under both sections; 1 under Sec. 64, quality of construction; 1 Sec. 54 & 72, assessments & account of engineer.

9 hearings to be held yet and 4 of those are scheduled.

Twice as many appeals this year as compared to last year.

Issues can be emotional and high cost. Good communication by engineer and informed municipal staff is very important.

Suggestions to follow:

Proof read reports very closely – check stations, lengths, assessments, and all other values.

Communication with landowners – listen to their concerns, explain why or why not, do follow-ups, note options in report and why one was selected.

A second meeting with owners is a good idea before finalizing the report. It can increase cost but often saves costs afterwards. Independence of engineer – Sec. 11 – council cannot tell you what or how to do it – you can choose to leave report unchanged.

In reply to comments from practitioners last year:

1 – Tribunal should follow past decisions – their decisions are not precedent setting; each case is unique.

2 – What to do with frivolous appeals – owners have rights to appeal; as long as the legal conditions are met, the Tribunal must hear appeal; they can decide to hear in whole or in part. Rule 28 sets out the Tribunal's views regarding awarding costs. Municipalities can make requests for award of costs in their submissions. Tribunal can ask for submissions on costs by a certain time, and then a subsequent decision will be issued on costs.

3 – Need for info from appellants – most are sent an 'Appellant Statement' to fill out and submit to Clerk. Clerk or Drainage Superintendent should provide engineer with all appeals and submissions before the hearing. Clerk should have all documents 2 weeks before hearing. At the hearing, the engineer gives an overview and, if a 54 appeal, gives assessment reasoning; appellants present their case; engineer can cross examine; engineer gives evidence.

4 – Who is responsible to educate owners on appeals? – Typically the Drainage Superintendent. O.M.A.F.R.A. Website has fact sheets related to Tribunal. The Tribunal website. O.M.A.F.R.A. and Tribunal offices.

5 – How are engineer's costs of hearing apportioned – decisions normally state costs of engineer form part of cost of works – Sec. 70 & 73 of Act.

6 – Can't congratulate engineer on good report at hearing or in decisions.

7 – Chair of Tribunal always makes all assessed owners parties to a hearing, so be prepared for that.

Q – Does anybody ever ask for standing at a hearing to provide evidence – Andy has not experienced that. John Kuntze: people can appear and make a statement. Sid Vander Veen: Bernie Goodal used to have practise notes, do current decisions provide practise notes? Andy – yes, Tribunal tries to make constructive suggestions, such as, better communication, likes to see interior watershed boundaries, need detailed cost estimate in report, a report had 2 plans but neither showed complete watershed, keep your specs up to date. John Kuntze – 2 recent decisions on Maintenance assessments, are they a guide? Andy – not all agree. There have been dissenting opinions issued on various decisions.

There are 21 members on Tribunal; 8 lawyers; 1 chair; 7 vice chairs; 2 engineers and 11 lay members. The Chair selects the Tribunal members for each hearing. Ed Dries and Andy are engineers on Tribunal.

Q – Is Tribunal seeing same issues as engineers with agencies – Andy: yes, some Conservation Authorities not responding to on-site meetings. Discussion of farm tax appeals.

6.0 Elections of New Members

Election of new members:

Tony Peralta and Tim Oliver are up for re-election.

Sid Vander Veen ran election – 2 positions – only practising engineers can nominate

Sid recorded nominations

Stand:

Yes – Tony Peralta – N.J. Peralta Eng.

Yes – Mark Hernandez – Dillon

No – Tim Oliver – Dillon

No – Jeremy Taylor – Burnside

No – Mike Devos – Spriet

Nominations Closed

Tony and Mark elected by acclamation.

7.0 New Business

Jeremy Taylor – Court of Revisions

What if applicants don't appear...How to adjourn...What wording...What is timeline...

Bill Dietrich – if adjustments made a notice has to be sent out; do so within a reasonable timeframe approximately 2-3 weeks. There will be no decision until 2nd sitting. After that appeals can be made to Tribunal.

Other – suggestion to use 20 – 30 days as notice for 1st sitting.

Sid Vander Veen – there is an info sheet they have, was discussed at D.S.A.O. meeting. Greg Nancekivell to look at training sheet.

Bill – Court should go to separate room to deliberate and then issue decision with reasons.

Sid – encourages deliberation by members of the Court of Revision

Drainage Practitioners Meeting

John Kuntze – suggests training is needed, he hands out the info sheet because some Courts are handled poorly.

Paul Courey – if someone shows up at meeting the Court can adjourn – cost of notice, attending next meeting are all considerations ...

Neil Morris – sometimes makes himself available by phone or skype for the meeting.

Kenn Smart – Act doesn't say what you have to do.

Sid – should block assessments be used for benefit and outlet?

Gerard – need to split between lands and roads, often paid out of general funds.

Tim Oliver – has done several block assessments for different areas, engineer could make more than 1 block.

Kenn – looking at creating 3 separate blocks to divide benefit, instructions may not specify.

Sid – his advice is to assess Benefits separately and only assess Outlet in blocks.

8.0 Adjournment

8:50 Will Bartlett - moved to adjourn

Bill Dietrich – 2nd

Carried.