

O.S.P.E. LAND DRAINAGE COMMITTEE

2019 DRAINAGE PRACTITIONERS MEETING

MINUTES OF MEETING

Thursday, October 24, 2019

Holiday Inn Hotel and Conference Centre – Trillium Room
Guelph, Ontario

1.0 General Business

1.1 Attendance sheets were circulated at the start of the meeting and there were 52 people in attendance.

Chairman Jeff Dickson called the meeting to order at 7:05 p.m.

1.2 Accept agenda, moved – Tony Peralta, 2nd – Steve Brickman, carried.

1.3 Adopt minutes from last meeting – October 25, 2018; moved – Bill Dietrich, 2nd – Brandon Widner, carried.

1.4 Business arising from the minutes (action items if any) – none.

1.5 Correspondence – none

2.0 Drainage Referee Report – Presented by Tim Brook, P.Eng.

Tim delivered the Referee's report. There is not a lot of information to report. The Drainage Referee is Rob Waters. The Acting Referees arrangements have expired. Andrew Wright is the only Acting Referee at this time.

3.0 Agriculture Food & Rural Affairs Appeal Tribunal (A.F.R.A.A.T.) Report and Discussions – Tim Brook, P.Eng.

Members of the Tribunal were not able to attend, so Tim Brook delivered the Tribunal's report.

The AFRAAT received

- 20 appeals related to 14 drains, plus 1 request for costs, and 1 request for review
- 1 application for costs received under the Farm Implements Act
- 1 appeal under the Food Safety and Quality Act
- 13 appeals received under the Ministry of Agriculture, Food and Rural Affairs Act
- 34 appeals received under the Assessment Act
- 126 applications for religious exemption under the Farm Registration and Farm Organization Funding Act

The AFRAAT rendered the following decisions:

- 1 decision under the Food Safety and Quality Act
- 4 decisions under the Farm Implements Act
- 4 decisions under the Ministry of Agriculture, Food and Rural Affairs Act
- 21 decisions under the Drainage Act
- 23 decisions under the Assessment Act

- 105 decisions on religious exemption under the Farm Registration and Farm Organization Funding Act

The Tribunal held 24 days worth of hearings under the Drainage Act, out of a total of 38 days of hearings under all Acts.

Two appeals under **Section 64** of the Drainage Act (Quality of Construction) were received. Both appeals were unsuccessful, and costs were awarded against the appellant.

One application under **Section 72** (Review Engineer's Account) was received. Eventually, the Tribunal refused to accept the application due to delays.

Seven appeals under **Section 48** (Engineer's Report) were received. One of these matters dealt with the design of an outlets structure. A Request for Review has been granted and a decision has not yet been released.

Eight appeals under **Section 54** (Court of Revision Decision) were received.

A notable appeal was the Cranberry Creek Drain, where 43 appeals were received dealing with Sections 48 and 54. The matter required 12 hearing days (representing half of the hearing days under the Drainage Act). A common issue was the concern over how the proposed works could negatively affect wetlands. A discussion about 'valuing ecosystems' was among other evidence. A decision has not been released yet.

Gerard Rood asked why respondents and appellants are waiting almost a year to get a hearing date. Since a member of the Tribunal was not present, an answer or response was not provided.

Jeff asked that, if anybody would like to make a comment, or pose a question to the Tribunal, then those questions can be forwarded to Steve Brickman or Jeff. The LDC can facilitate communication.

4.0 O.M.A.F.R.A. Drainage Coordinator Report – Tim Brook, P.Eng.

Tim reviewed the key ministry contacts: The Honourable Ernie Hardeman was appointed as OMAFRA's Minister. He is MPP for Oxford County and served as OMAFRA's Minister from 1999 to 2001. He has previously served as a councillor and mayor for the Township of Southwest Oxford. Colleen Fitzgerald-Hubble is currently the Directory of Environmental Management Branch, however Tom Hagerty will be moving into that position effective December 2, 2019. Len Senyshyn is currently the Manager of the Approvals, Certification and Licensing Unit – a component of the Environmental Management Branch. He is retiring from OMAFRA with his last day being around the end of November 2019. Len is responsible for the management of the Ministry's drainage programs. James Mitchell will become Manager of the Approvals, Certification and Licensing Unit on Monday, November 4, 2019. James has a lot of farm related experience.

OMAFRA staff for Administration and review of grants is unchanged.

Other OMAFRA staff who may assist with drainage issues include: Jacqui Empson Laporte, Environmental Specialist, Jacqui is located in the Clinton office.

Tim provided an update on the Drainage Courses from 2019, and then discussed the 2020 Drainage Course schedule. Sid Vander Veen will be instructing the Drainage Superintendents' Course and other Ridgetown Courses.

Tim discussed the Endangered Species Act and the Ministry of Environment, Conservation and Parks (MECP). Tim holds quarterly teleconferences with a contact from MECP. Tim noted that some practitioners have had difficult experiences with MECP. Most notably, drainage systems which are in provincial parks require authorizations under their act. Understanding what is required has been challenging.

Tim noted to the practitioners that OMAFRA has been working to get a complete Request for Proposal for engineering services in unorganized territories (Section 123). The goal is to post the RFP around November 2019. Tim is anticipating a 3-year contract ending March 31, 2022. The RFP will be posted on the MERX website.

Tim noted that Jacqui Empson-Laporte of OMAFRA is on the steering committee for the 2020 Natural Channel Conference. Jacqui is hoping to chair a session on rural drainage, and she hopes that there will be some interest from drainage practitioners. Abstracts will be due sometime in February or March of 2020. The Conference is scheduled for July 6 to 8, 2020 in Guelph. The theme is 'Balance'.

Tim provided an update on Transfer Payment Ontario (TPON). OMAFRA has been working with TPON staff to develop the Report Back forms and process for the superintendent construction grants. Tim expects the forms to be available early December 2019, with training being set up for late December and early January. More accurate dates will be coming soon. The forms will look very similar to the existing forms. Engineers will digitally sign the document. The new report back forms will be asking for information related to environmental investments.

Alex Barrie presented the Statistics Report. Alex had a problem with new stats for maintenance because there was a change in the system. Sid Vander Veen asked if the final report will be coming out soon. Alex confirmed.

5.0 Chairman's Report – Jeff Dickson, P.Eng.

Jeff explained that we met three times this year; January, June, and October. The purpose of the June meeting is to brainstorm ideas for the conference. Jeff gave credit to Pat for all the work she does.

Currently, the LDC is working on establishing better communication with the MECP; continuing with the Drainage Engineers' Course (Round II); bring the PEO's attention to the Drainage Engineers' Guide; and ongoing committee participation with OSPE. Jeff also asked for feedback on the format of the meal and social which was held after the Drainage Engineers' Course.

Jeff discussed tomorrow's conference, and what the LDC is able to do with revenue generated. In the past, the revenue generated by the conference did not cover the expenses; today it does.

Some of that money goes to the Ross Irwin Scholarship. This year, two students will be present at the conference, which is important for marketing our industry to future practitioners.

Jeff noted that the Office of Open ED needs to update their AODA compliance from AA to AAA. Pat will be managing this.

The website will soon have the proceedings of all the conferences all the way back to 1971. The website also includes biographies of many past practitioners.

Next year's course and conference is October 22nd, and 23rd 2020. It is likely that there will be an adjustment to the typical schedule, as there is a conflict between the Drainage Engineer's Course and DSAO meetings.

6.0 Succession of O.S.P.E. - L.D.C. Members

Jeff noted that each member of the Committee serves a 3-year term. Each year there are 2 members whose terms have concluded. Only active practitioners can participate. Jeff stated that Jeff Dickson and John Kuntze have each completed their 3-year term.

Nominations were asked for and recorded:

Jeremy Taylor – Willing to Stand – nominated by Tony Peralta

John Kuntze – Willing to Stand – nominated by Gerard Rood

Neal Morris – Declined – nominated by Jeremy Taylor

Nominations Closed.

Jeremy and John were declared by acclamation. No election was conducted.

7.0 New Business – None

8.0 Open Discussion

Dan Krutsch introduced himself as authoring two reports under the Drainage Act and having several more reports pending. Dan described the following scenario:

Engineer A was appointed to prepare a report. Engineer A did their job. Appeals under Section 48 and 54 were received. A hearing was held. The Tribunal instructed that the Respondent retain another Engineer (Engineer B) to answer three questions which test some components of the Engineering work completed. Engineer B answered the three questions – the first two answers were in support of Engineer A, the last question resulted with a recommendation for a minor tweak to the design. The Tribunal decided to set the report aside. The Tribunal assessed all costs to the Respondent. Dan was Engineer B.

Dan's conclusions are that too much is expected from an engineer working under the Drainage Act. The expectations of the Tribunal exceed the Profession's expectation to be at the level of your peers. This is an awfully harsh environment to be practicing in. Dan questioned if the role of the Tribunal is to 'dig deeper' to find more evidence that the appellant failed to bring forward. Furthermore, when the new evidence largely upholds the opinion of Engineer A, they chose not to accept the evidence.

Drainage Practitioners Meeting

Paul Courey stated that Dan's synopsis was accurate, and in his opinion, the Tribunal has lost its way. Paul noted that lawyers should not be at Tribunal hearings, but people feel they are not being treated correctly, so there are lawyers.

Sid Vander Veen supported Dan and Paul. In Sid's opinion, the Tribunal is meddling outside of its jurisdiction.

Jeff Dickson is aware of a practitioner who felt he was mistreated by the Tribunal, and the practitioner left the business. Gerard Rood added that 10 to 20 years ago, the Tribunal decisions were treated as precedent setting. This helped Engineers complete their role by referencing past decisions.

Jeff added that comments like these can be passed on to the right people through the LDC. Jeff noted how the LDC prepared a request for review for another project last year.

Neal Morris suggested talking to an MPP.

Sid also noted a few options: (1) request a review, (2) Appeal to the Referee, (3) Judicial Review

John Kuntze asked if there are Terms of Reference for the Tribunal, something that states its mandate.

Paul Courey briefly discussed the development of the Tribunals. The purpose of Tribunals is to keep problems out of the courts. Another purpose was to provide some relief for MPs from having to deal with complaints. It seems that the Tribunal treats cases like there is an engineering problem, instead of assessing the evidence.

Jeff reminded the practitioners to think of interesting case studies.

8.0 Adjournment

8:47 – Ed DeLay moved to adjourn
Gerard Rood – 2nd
Carried.