

O.S.P.E. LAND DRAINAGE COMMITTEE

2020 DRAINAGE PRACTITIONERS' MEETING

DRAFT MINUTES OF MEETING

Friday, October 23, 2020

Zoom Meeting

1.0 General Business

1.1 Zoom reports indicate that 68 participants joined the meeting. It's important to note that Zoom reports only count individual 'log-ins'. There are instances where multiple viewers were participating in the meeting through one individual 'log-in'. Exact numbers of participants are not known.

Chairman Tony Peralta called the meeting to order at 10:05 a.m. Tony welcomed everybody and introduced the members and liaison members of the Land Drainage Committee (LDC).

1.2 Accept agenda, moved – Gerard Rood, 2nd – Steve Brickman, carried.

1.3 Adopt minutes from last meeting – October 24, 2019; moved – John Kuntze, 2nd – Gerard Rood, carried.

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

1.5 Correspondence – none

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

Tony discussed the LDC's activities for the year. COVID-19 made a large impact on the LDC activities and lead to a postponement of the annual Drainage Engineer's conference, and a virtual meeting of the practitioner's meeting.

The LDC participated in the public consultation process for changes to the Drainage Act to reduce regulatory burden.

Tony circulated emails to the drainage practitioners in Ontario regarding Professional Engineer's Ontario (PEO) request for volunteers to participate in PEO's 'Experience Requirements Committee' (ERC) which conducts technical interviews to assess the experience of applicants applying for a Limited License for engineering.

PEO continues to reference a document titled 'Services of the Engineer Acting under the Drainage Act'. The LDC informed PEO that there is a new document for Drainage Engineers working under the Drainage Act – 'A Guide for Engineers working under the Drainage Act in Ontario (Publication 852)'.

Municipal Freedom and Protection of Privacy Act (MFPPA) – Municipalities are beginning to deny access to Roll Information and asking Engineers to eliminate the combination of owners'

names, roll numbers, and addresses in their reports. The LDC continues to look for ways to deal with this issue.

Tony also noted that the excess soil regulation is coming into effect. The excess soil regulation is administered by the Ministry of Environment, Conservation and Parks (MECP).

3.0 Drainage Referee Report – Andrew Wright and Rob Waters

Rob noted that COVID shut down the courts until they moved toward video conferencing for virtual hearings – The Referee had to adjust its methods to move forward as well.

Andy Wright – The referee has tried to replicate what is done in the court room by using video conferencing. Zoom was selected as a platform. Andy provided his notes to the LDC in advance and suggested those notes be shared with the participants. The Referee's notes can be found at this [Link](#).

Andy discussed security and access (e.g., Preventing Zoom bombing). The Referee uses the virtual waiting room to limit entry. The Referee also circulates log-in credentials only a few days prior to the event and additionally limits the list of people to receive log-in credentials to further control security.

Rob Waters noted that some places don't have good internet connection, so telephone login options are required.

Recording of the hearing also takes place, and access to the recording is shared with the lawyers of both sides.

Exhibits – In court, exhibits are marked and become part of the court's record. Challenges with exhibits in virtual settings include making sure that everybody has an exhibit, and secondly, how do you get it into the Court file with a reference number? The Referee requires that documents which will be relied upon in the hearing be circulated to everybody in advance of the hearing. Once the Referee admits a document as an exhibit, the referee assigns the reference number. The person submitting the exhibit must then forward the document to the Court Office for filing and advise of the exhibit number.

The Ontario courts are piloting electronic filing systems. The Referee is requiring that hard copies be filed in the normal way (forwarded to the Court for filing).

Chat facility – The Referee has allowed for private chat, however private chat directly to the Referee is not allowed.

When swearing in a witness, the witness must have a bible with them. Affirmation does not have the same requirement.

Witness Coaching – It is important to note that the witness should not be coached through text messages, or private chat, etc. The Referee has instructed that the witness shutdown such devices.

Rob thanked Andy for preparing the presentation.

Questions:

Paul Marsh – Paul described a scenario involving a public meeting aimed at Americans who were affected by a drainage project but were not able to attend the meeting. The phone number from Zoom for Americans didn't work so they weren't able to participate in any way. Andy - The invitation that gets sent out has a list of telephone numbers. They are all Canadian numbers. When sending the invitation, Zoom does allow you to include American phone numbers. Andy reframed the question - What do you do for somebody who wants to be involved but can't be involved. Andy suggests that depending on who it is who can't be involved, he would be reluctant to proceed.

4.0 Agriculture Food & Rural Affairs Appeal Tribunal (AFRAAT) Report and Discussions – Andy McBride, P.Eng.

Andy introduced himself and thanked Tony for the opportunity to present.

Andy thanked Tim Brook for presenting last year's AFRAAT report.

Kirk Walstead retired, and Glenn Walker was appointed as chair. Glenn issued guidelines for virtual hearings. AFRAAT will be using Zoom as a platform.

Staffing: Manager of support staff Joe Kozza retired, and Graham Fleming became the manager but recently moved on. Jane Widdicombe is now the manager of support staff. Tracy Henderson has returned from her secondment position. The Tribunal consists of 14 members made up of six lawyers, three engineers, five lay people.

Rebecca Moffatt-Valley prepared Andy's presentation.

The Tribunal hears complaints under 17 different Acts. There was activity on six of those Acts this past year.

- 27 appeals on nine projects under the Drainage Act
- 3 matters were heard
- 5 decisions were released

All in person hearings have been suspended since March 16, however some matters are now resuming virtually using Zoom.

Questions

Tim Brook – how is the Tribunal working through COVID and virtual hearings? Andy – The Engineers on the AFRAAT are asking for documentation that is not scaled down. Regarding Coaching – The members of the Tribunal have concerns with coaching.

Dan Krutsch – Dan noted that he'd like to discuss the Tribunal's expectations of Engineers. The comment was deferred for the open discussion.

Gerard Rood – how does the Engineer get the report to the Tribunal – Andy suggests that the Municipality forward paper copies of the documents to the Tribunal office.

Tony Peralta – Do you (Andy) think virtual hearings will continue past the COVID pandemic – Andy expects that the Tribunal will be returning to normal practice after the pandemic.

Neil Morris – how is the Tribunal prioritizing appeals? – Andy wasn't sure. He expects there are several criteria to consider.

Steve Brickman – What's happening to the queue of appeals – Andy – they will all move forward virtually.

5.0 OMAFRA Drainage Coordinator Report – Tim Brook, P.Eng.

Tim listed the key OMAFRA staff.

Tim can't comment directly on specifics for dealing with COVID, but he can pass the information along. OMAFRA suggests assessing what the risks are of proceeding, or not proceeding. Tim noted that documentation is very important when making decisions on how to proceed during COVID.

Tim and OMAFRA have been working toward establishing an Inter-Ministerial Drainage Manager's Working Group (Provincial, not Federal) including Ministry of Natural Resources and Forestry (MNRF), MECP, and the Ministry of Transportation (MTO). Meetings are monthly to discuss anything related to drainage.

Tim has been meeting quarterly with Paul Heeney of MECP regarding the Endangered Species Act (ESA). Paul is working toward obtaining approvals to do an information session with the LDC and Drainage Superintendents Association of Ontario (DSAO).

Excess Soil Regulation and Grandfathering – The MECP has an Environmental Registry of Ontario (ERO) posting currently live (ends November 20, 2020). One of the specifics discusses grandfathering. The ERO discusses extending the grandfathering date to January 1st, 2022. Tim encouraged participation in the ERO.

Drainage Act Changes – The Drainage Act changes are in place, but the regulation referenced in the Act is under development.

Drainage Superintendents Guide – OMAFRA is at the final draft stage. OMAFRA secured funding to move the project forward and it is anticipated that the document will be available in the spring or summer of 2021.

Drainage Superintendents Course – Ridgeway College and OMAFRA are looking into holding the course in person. The scheduled dates for the course are March 1 to March 5, 2021. The venue is yet to be determined.

Drainage Statistics – With the switch to Transfer Payment Ontario (TPON), statistics are not yet available. OMAFRA is working with their IT department to extract data and make the statistics available. Tim asked the group to comment on how useful the statistics are.

Emergency Authorizations – There has been a very large influx in Emergency requests. OMAFRA has a guidance document available to explain the requirements for Emergency Authorizations.

Questions

Statistics – Steve Brickman asked for more information about when the stats will be available (hopefully Christmas). Answer (from James Mitchel, OMAFRA) James expressed appreciation for receiving input on the value of the stats. Stats won't be available by Christmas.

Stats Poll: Question – “Do you consider the OMAFRA Drainage Act Statistics to be important?”
Results – Yes – 37 (including six yes votes from the LDC) No – 0 votes.

Sid Vander Veen – Could Tim provide an update on the DART committee and developing protocols for new Engineer's Reports? Tim – Currently, the DART committee is not active. Tim suggested that the new Inter-Ministerial Drainage Manager's Working Group investigate reestablishing/reinvigorating the DART committee.

Paul Marsh – MECP has changed Environmental Compliance Approvals (ECA). Does it cover Drainage Works? Tim - Aziz Ahmed is the manager under the Water Resources Act, and he is better equipped to address the ECA question.

Paul Marsh – What constitutes an Emergency? Tim – It is a case-by-case review by a team of staff at OMAFRA. COVID has been used by applicants as a reason to justify an emergency authorization; it still requires a review on a case-by-case basis.

Paul's follow up – Is there a record of Emergency Authorizations? Tim – He has the historical records of Authorizations.

6.0 Elections of New LDC Members

Motion – “Due to the ongoing COVID-19 Pandemic, the current OSPE LDC Members are willing to extend their terms for an extra year.” Moved by John Kuntze, Second by Jeff Dickson.

Carried.

7.0 New Business – None

8.0 Open Discussion

Dan Krutsch – The Tribunal – The expectations of Engineers in front of the Tribunal.

For Context: Regarding a hearing that was ongoing last year. Dan suggested some revisions to a design that he thought would satisfy questions posed by the appellants. The Tribunal set aside the report and the Municipality had to absorb costs. The questions came from the Tribunal, not the appellant. Is that right (in terms of appeal procedure)? Dan felt the decision was extreme, and the standard expected of practitioners by the Tribunal is substantially higher than the expectations of our engineering profession.

Andy Wright – A lay appellant has raised questions and the Engineer now needs to educate the lay person about technical issues. If good questions are not answered with good answers, then the fate of the engineer's evidence is questionable.

Dan Krutsch follow up – Dan feels that challenges made by appellants weren't made with any reasonable understanding of science or any attempt to understand science.

Drainage Practitioners' Meeting

Andy McBride – Each tribunal decision is supposed to stand on its own. Andy was not involved in the later portion of this hearing. Andy noted that he will bring up Dan's comments at the Tribunal's annual meeting.

Paul Courey – Paul commented that Dan summed up the appeal process best. There is a problem, and it's getting worse. Appellants must bring evidence to support their appeal. It should not be that the engineer must prove that the municipality is not wrong. The appellant must prove their case with evidence.

Tony Peralta – What should be done to address the problem?

Paul Courey – Follow up – Every one of your members (drain practitioners) should write a letter individually to the Tribunal chairman. It is not complaints toward individual members of the Tribunal, but about the Tribunal collectively. It wouldn't be untoward for the members to agree with Dan's comments and make these comments known to the Referee.

Dan Krutsch – Dan has 34 years' experience as an Engineer. Dan has a few drainage reports to finish. The standard being expected by the Tribunal is unreasonable and unfair to practitioners. When Dan is done his reports, he may be finished with engineering works under the Drainage Act.

NEW TOPIC

Sid Vander Veen – Sid notes that the lines are beginning to blur between the office of the Referee and the Tribunal. The Tribunal has made decisions on the validity of a petition, and issues have come before the Tribunal on the application of Section 78.

Question to Andy (Wright) and Rob Waters – is it appropriate for the Tribunal to determine the validity of a petition? Is it appropriate for the Tribunal to direct the application of Section 78?

Andrew Wright – Andy cannot make any comment because Sid is involved on a case on that topic.

Andy McBride – With respect to issues just presented – Andy suggested that the Engineers pursue these issues as a group through the LDC.

Dan Krutsch – LDC should have an interest and get some clarification with respect to Engineers regarding the perfection of design.

Tony Peralta – Tony asked that if anybody has any requests of the LDC, please submit something to the LDC more formally.

NEW TOPIC

Neil Morris – Tribunal Hearing Prioritization – When will hearings begin to move forward? How is it prioritized?

Tim Brook will investigate the question with the Tribunal.

NEW TOPIC

Neil Morris – (Transfer Payments Ontario) TPO and Environmental Features – can we request additions to the list of Environmental features?

Drainage Practitioners' Meeting

Tim Brook - Yes you can make these requests. OMAFRA would welcome the feedback.

NEW TOPIC

Neil Morris – Neil asked the group, is anybody having problems with TPON? No response from participants. Tim Brook - OMAFRA is trying to make improvements on an ongoing basis.

NEW TOPIC

Neil Morris – Will the MECP be involved with paying their assessments?

Tim Brook – No, OMAFRA hasn't had that discussion with MECP. Tim said if you have issues on a specific project, please contact him.

Tim Brook on Canadian National Railway (CN) – CN challenges with construction, permitting, paying assessments. OMAFRA is looking into what role they can play on that issue. Tim asked to be made aware of issues.

NEW TOPIC

Tim Oliver – Drainage Act updates – reference to remove Section 58.4. Tim (Oliver) described a project that was adopted under bylaw and some construction had moved forward, but most of the work had not received approval from agencies. A new engineer was appointed to prepare a new report (the previous engineer had retired and was not replaced within his firm). Question for Tim (Brook) – Can this be done (a new report when there's already a by-law but not fully constructed)?

Tim Brook – can't answer questions because he doesn't have permission to consult.

8.0 Adjournment

12:56pm – Steve Brickman moved to adjourn
Gerard Rood – 2nd
Carried.