

Holland Marsh Drainage System Canal Improvement Project (HMDSCIP)

Background

The Holland Marsh Drainage System Canal Improvement Project (HMDSCIP) will be a project to restructure 27.8 km of the Canal, including total or partial canal relocation, bottom cleanouts, and structure improvement in select areas. Issues of drainage, flood protection, improved ease of maintenance and life safety, especially regarding human fatalities and flooding, have been the primary motivations for the approximately \$26 million project. Last year, the Holland Marsh Drainage System Joint Municipal Services Board received a \$10.2 million grant from the Ontario Municipal Infrastructure Investment Initiative (MIII). This will reduce some of the cost allocated to the municipalities and landowners of the 72,000 acres within and surrounding the Holland Marsh. The costs will also be distributed amongst the Ministry of Transportation, the County of Simcoe, and the Ontario government.

There has been general compliance from the landowners, who are responsible for anywhere from \$1 to upwards of \$70,000 of the gross cost depending on how many hectares of Marsh land they own. With the various grants, the net costs to landowners are substantially reduced.

Since the fall of 2008, the HMDSCIP has experienced several significant progressions. These events, such as the completion of the engineer's report and trial works, the mailings to and responses from the stakeholders, and the moving forward with legal proceedings, are all important milestones in this multi-million dollar project.

Engineer's Report

The key component and most important step thus far has been the completion of the engineer's report which is pursuant to Section 78 of the Drainage Act, R.S.O. 1990. The Drainage Act is a statute of Ontario which outlines the legal process to be followed with respect to any construction, improvement, maintenance or repair of any drainage work in Ontario. Section 78 specifies that any improvement, maintenance or repair by the municipality must be carried out under the specific instruction as outlined in an engineer's report. Kenn Smart, P. Eng., of K. Smart Associates Limited, was appointed by the Town of Bradford West Gwillimbury to prepare an engineering report for the HMDSCIP. This report was completed in January of this year.

A portion of the report involved conducting trial work on two intervals along the canal. This was completed in October and November of 2008. The purpose of the trial work was to develop specific construction methodologies for the final report and to also proactively work out any issues before full construction. Out of 18 possible Intervals along the canal to conduct the trial work, Intervals 1 and 15 were strategically chosen.

Interval 1 (North Canal), located north of Highway 9, was considered one of the worst areas in terms of conditions and repair requirements and would likely give a good assumption of a worst-case scenario. Interval 15 (South Canal), east of Jane Street by the Cardinal Golf Club, was considered the prototypical area which demonstrated the most common canal conditions. This area would provide a most-likely scenario of events for when actual construction takes place. Overall, the cost of the trials came under budget which could suggest accurate cost estimation and efficient work procedures for the overall project.

Additionally, tree-clearing work was conducted from November to December 2008 to comply with MIII's grant requirements. The grant required ground to be broken and a portion of work started by the end of 2008 at the latest. Since the report was not yet completed at that time, and thus construction could not commence, the Ontario Ministry of Agriculture, Food and Rural Affairs (OMAFRA), granted the work on an emergency basis to satisfy MIII.

As required by the Drainage Act upon completion of the report, 7000 copies were sent to project stakeholders. Based on land placement and extent of involvement, stakeholders received either a paper copy or a CD of the report which consisted of 4 volumes and approximately 600 pages of text and drawings. The decision to send either a paper copy or CD facilitated substantial cost savings.

As previously mentioned, construction cannot commence until the report is fully processed. This process may sound simple; however, the legal procedure behind it is thorough and can be time consuming. According to the Drainage Act, there are three basic stages:

- ✓ Report Consideration
- ✓ Appeals
- ✓ Report Adoption

Currently, the HMDSCIP has completed the Report Consideration and the first Appeals step being the Court of Revision on June 11th and 12th, 2009.

Report Consideration

In conjunction with Sections 41 and 42 of the Drainage Act, there are three important processes of the Report Consideration stage. Firstly, the report must be completed. Secondly, the report as well as a notice of a meeting to consider the report must be sent out to landowners. Thirdly, the meeting to consider the report will take place.

With respect to the HMDSCIP, the report was submitted to the Town of Bradford West Gwillimbury on January 16th, 2009 and the request for Report Consideration sent

out shortly thereafter. On April 22nd, a special meeting of Council was held to consider the engineering report. Council voted to provisionally accept the report as a by-law. After any or all appeals are resolved, the by-law can be given its Third reading and then construction can be authorized to begin. Legally, the report must be registered as a bylaw since it is a municipal undertaking and overseen and approved by Council.

At the Report Consideration meeting on April 22, 2009, a presentation to over 200 attending stakeholders was made by Kenn Smart, P. Eng., from K. Smart Associates Limited. It included a summarized history of the Holland Marsh Drainage System, a cost benefit analysis of the decision to do work, as well as what the stakeholders should expect over the next couple of years. The open-forum presentation left room for questions and concerns from attendees. A number of issues were raised, including environmental concerns, project timing and cost, water table levels, and possible business disruptions due to road closures. Overall, there seemed to be a general consensus between K. Smart Associates and the stakeholders. Concerns were heard, questions were answered, and the presentation concluded. Council then adopted the engineering report provisionally by two readings.

Subsequent to the Report Consideration meeting and the passing of the provisional by-law, a copy of the provisional by-law was sent out to the affected landowners that gave them an opportunity to review the by-law and file appeals through the Drainage Act's specified bodies of appeal. The three bodies of appeal are the Court of Revision, the Drainage Tribunal and the Drainage Referee.

Court of Revision

The Court of Revision for this project took place on June 11th and 12th, 2009, with 7 appellants present. One landowner objected that his allowance was too low, while two other landowners objected that their respective assessments were too high. Another landowner felt that the assessment did not reflect their land's use. A number of appeals were related to the eligibility of the property for the provincial grant (administered by OMAFRA). Tentative agreements were made between some of the appellants and the Court, and all report assessments were sustained. Appellants were given the option to file an appeal re the Court of Revision's decision to the Ontario Drainage Tribunal

Drainage Tribunal Appeal Process

As outlined in the Drainage Act, all landowners have the right to appeal to the Drainage Tribunal the engineer's report and/or individual land assessments, and to request amendments to the provisional by-law. The Drainage Act sets the date for the filing of appeals to be 40 days from the mailing of the provisional by-law.

This date for all appeals expired on July 2nd, 2009. Approximately 11 appeals were received and the date for the Drainage Tribunal hearing is currently being arranged.

Ontario Drainage Tribunal

The Ontario Drainage Tribunal hears two types of appeals: appeals on the technical aspects of the engineer's report, and appeals on the decisions of the Court of Revision. Technical aspects include, but are not limited to, allowances, design, cost benefit and specifications. The process to appeal to the Drainage Tribunal is similar to the Court of Revision in terms of filing a Notice of Appeal with the initiating municipality's (the Town of Bradford West Gwillimbury) Clerk. As outlined by the Drainage Act, most decisions made by the Drainage Tribunal are final but some may be appealed to the Drainage Referee.

Drainage Referee Appeals

The Drainage Referee hears appeals on the legal aspects of the drainage work as well as appeals on limited decisions made by the Drainage Tribunal. The time period to appeal on legal aspects is also limited to 40 days from the mailing of the provisional by-law and on this project no appeals were received. The process, if implemented, is more involved than appeals to the Court of Revision and Drainage Tribunal. A landowner looking to file an appeal must first file a notice to the initiating municipality's (the Town of Bradford West Gwillimbury) Council and then proceed to apply for a trial before the Drainage Referee. The procedures are formal and legal counsel is advised before proceeding.

Report Adoption

This occurs after all appeals have been settled. At this point, Council will give the by-law a Third reading which amends it from a provisional by-law to a legal by-law. The by-law, which is essentially the engineer's report, authorizes construction to begin as early as 10 days after the Third reading. It is difficult to approximate the commencement of this stage, as the duration of the preceding Appeals Stage is difficult to forecast. At present time, the adoption stage is tentatively scheduled for fall of 2009.