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# **The Drainage Act & Roles of Council and Drainage Board**

February 2023



*Where you belong*

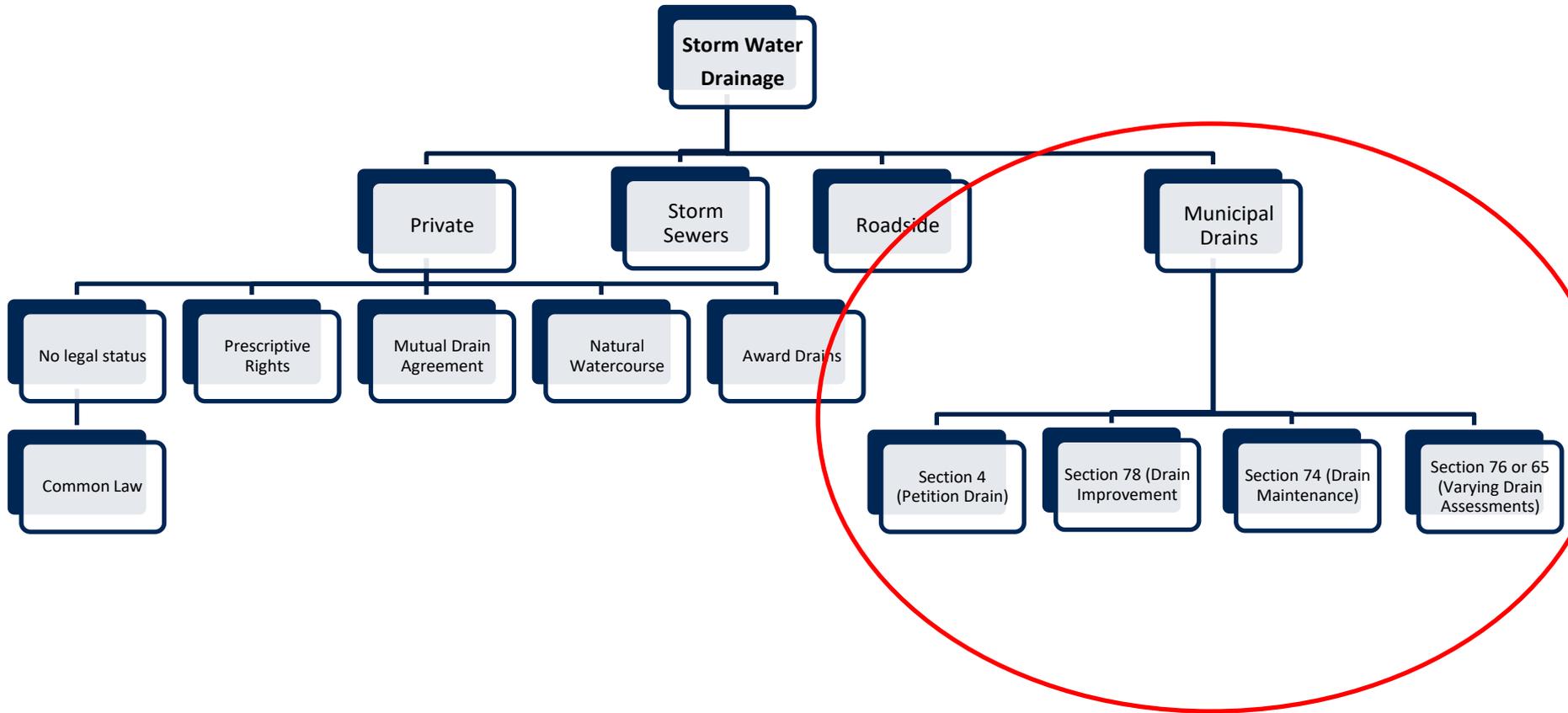


County Roadside Ditch



Municipal Drain

# What is "Drainage"?



# Delegation of Authority

- Council has delegated their authority to the Drainage Board under the Drainage Act with the following exceptions:
  - a) Council's power to create, repeal or quash by-laws,
  - b) Council's right to appeal to the Tribunal,
  - c) Council's obligations, duties or requirements for the appointment of engineers,
  - d) Council's obligations, duties and requirements dealing with raising payment or imposing levies or assessments, or payments of costs,
  - e) Council's obligations, duties and requirements dealing with the provision of payment of fees or other remuneration for the services performed by any municipal employees

# What is a Municipal Drain?

- Community Project:  
Developed through a public process
- Legal Existence: Adopted by by-law
  - By-law protects the system and incorporates an unregistered easement
- Municipal Infrastructure:  
Local municipality is responsible to manage and maintain



# Petition Drains (aka Municipal Drains)

- All new drains must be initiated by petition
- Petition is legal document
- Petitioners become financially responsible as soon as the petition is signed and submitted
- Inside the watershed is an internal “area requiring drainage” (ARD)

# Petition Drains (Aka Municipal Drains) continued...

- To be a valid petition, it must meet one of the following criteria: Signed by:
  - The majority of owners in the ARD
  - The owners that represent at least 60% of the ARD
  - The road authority, where the road needs drainage

# Petition Submission To Council

- Council considers petition
  - Council decides whether to proceed with the drainage works
  - Council may reject a petition, but must have a valid reason
    - Decision may be appealed
  - Council does not decide if petition is valid
- Petition is circulated to agencies

# Appointment of Engineer by Council

- Report to Council appointing engineer through administration recommendations (Section 8)
  - Engineer is fair and impartial (Section 11)
  - Authority to enter private lands (Section 12)
- May request a preliminary report
- On-site meeting with affected landowners and other organizations

# On-Site Meeting (Section 9)

- Engineer determines validity of petition
- Review the needs and concerns of the landowners and agencies
- Review the scope of the project

# The Drainage Report

- Engineer conducts field survey
- Research watershed boundaries
- Final report includes:
  - Scope of work with cost estimate
  - Allowances and Compensation
  - Assessment schedule
  - Plans, profiles and specifications
  - Future maintenance provisions

# Meeting to Consider

- This is where the Drainage Board comes in
  - Exercise Council's powers and duties under the Drainage Act, except for its power to create by-laws and resolutions.
- Owners can choose to add or withdraw name from petition
  - Is the petition still valid?

# Meeting to Consider

- Purpose of this meeting:
  - Deal with technical matters such as:
    - Design of the drainage works ex. Change in headwall type, drain alignment, etc.
    - Working corridors
    - Disposal of materials
    - Compensation & Allowances
    - Concerns of the agencies
- Tribunal appeals that can originate from denying appeals

# Meeting to Consider

- The Drainage Board can decide to:
  - Not proceed with the report
  - Send the report for reconsideration if changes are required (Section 57)
  - Adopt the report

# Meeting to Consider follow up

- A Council report comes from Legal and Legislative services recommending the following:
  - appointment of 3 members of the Drainage Board to be appointed as Court of Revision members.
  - First and second reading of the by-law
- Minutes from the Drainage Board meeting are presented for adoption

# Court of Revision

- Court hears appeals on **assessments only**
- Components of assessments:
  - Benefit
  - Outlet & Injuring Liability
  - Special Benefit
  - Special Assessments - Section 26
- Actual assessments levied at the end of the project are based on actual project costs

# Appeals to the Court

- Appeals to be received 10 days in advance of the meeting or the COR may pass resolution to hear late appeals
- 3 ground for appeals:
  - Lands or Roads assessed too low or too high
  - Lands or Roads should have been assessed but has not been
  - Due consideration has not been given to the use of the land

# Following the Court of Revision

- Minutes from the Court of Revision meeting are sent to Council to be adopted
- After all appeal periods have expired, Council reads the by-law a 3<sup>rd</sup> and Final time and the report is officially adopted
  - Construction of the project is authorized
  - Costs can be assessed to the lands
  - Drain now has legal existence and becomes part of the municipality's infrastructure

# Procure Contractor for Construction

- 2 methods:
  - Contractor Roster to obtain quotes for works less than \$120,000
  - Request for Tender (public bid)
- Regardless of the method, if the price received is more than 133% over the estimate then a meeting is held with all assessed landowners (Section 59)

# Procure Contractor for Construction

- Opportunity to add or withdraw names from the petition (Section 42)
- Engineer determines if the petition is still valid
  - If petition is valid, Drainage Board can pass a motion to award the tender/quote
  - If the petition is not valid, project stops and original petitioners pay project costs

# Appeal Bodies

- Agriculture, Food and Rural Affairs Appeal Tribunal
  - Appeals from the Court of Revision
  - Appeals on technical matters
- Drainage Referee
  - Legal or procedural appeals

# Now you have a Municipal Drain



# Repairs and Maintenance (Section 74)

Any drainage works constructed under a by-law passed under this Act

- shall be maintained and repaired by each local municipality through which it passes...
- at the expense of all the upstream lands and roads
- in the proportion determined by the then current by-law pertaining thereto...

# Repairs and Maintenance Projects

- Verbal or written request
- Preventative/routine maintenance driven by Municipality
  - Bank stabilization
  - Light brushing
  - Removing blockages/beaver dams
  - Operation of pump stations
- Municipality can proceed without notifying landowners



# Improvements (Section 78)

- Need community acceptance to change the “communally accepted” standards
  - Improvement examples: drain relocation, drain enclosure, change size, add crossings
- New engineer’s report using same process as for a new drain, but no petition required
- Additional requirement under Section 78(2) to notify the Conservation Authority and wait 30 days before appointing the engineer

# Improvements (Section 78)

- Change to Section 78 to separate minor improvement vs. major improvement
  - Major improvements are the typical reports seen in the past
  - Minor improvements have set criteria and intended to reduce timelines
    - Involves only 1 owner, doesn't change cost sharing or capacity for the drain
    - An example would be a secondary access

# Governing Agencies

- ERCA (Essex Region Conservation Authority)
  - Conservation Authority Act
  - Flooding and Erosion
- DFO (Department of Fisheries and Oceans)
  - Fisheries Act & Species at Risk Act
  - Species at Risk and Habitat protection of aquatic species (fish and mussels), fish passage through embedment
  - Fish spawning season March 15<sup>th</sup>-July 15<sup>th</sup> (no in water works during this window)

# Governing Agencies Continued...

- MECP (Ministry of Environment, Conservation and Parks) and MNRF (Ministry of Natural Resources and Forestry)
  - Endangered Species Act and Species at Risk Act
    - Exemption for drainage works under certain conditions through registry
    - Mitigation and Avoidance
  - Fish and Wildlife Conservation Act
  - Environmental Protection Act
    - Excess Soil Management

# Governing Agencies Continued...

- Road Authority ex. County, MTO, Municipal

**Duty falls under appointed engineer to be able to obtain permits and approvals**

# Assessment Updates

- Severances of land Section 65(1) and (2)
  - Appointing an engineer
  - Agreement by parties involved
- Connection to a drain Section 65(3)
  - Adding area to a watershed or change of land use
  - Does the drain have capacity?
  - Alter assessed value and buy in if applicable

# Assessment Updates continued...

- Disconnection from a drain Section 65(4)
  - Reduce/Remove area draining into a drain
  - Does another report need to be altered?
- Updated Maintenance Schedule Section 76
  - New schedule for the entire watershed
  - Including bridge cost sharing
  - Do some features require special cost sharing because they only benefit certain properties?

# Enforcement & Abandonment

- No one may block a municipal drain (S.80)
  - Owner/occupant can be ordered to remove blockage
  - If not done, superintendent can take action and the cost be added to the taxes

# Enforcement & Abandonment

- No one may damage a municipal drain (S.82)
  - Municipality can take legal action against anyone who damages a municipal drain
  - Damages could include anyone who relocates a drain or reshapes a drain without municipal authorization.

# Enforcement & Abandonment

- A municipal drain can be abandoned (S.84):
  - Property owners can initiate abandonment (S.84(1))
  - Municipal council can initiate abandonment (S.84(2))
  - After abandonment, municipality has no responsibility.

# Drainage Superintendent

- Appointed by by-law (Section 93) – With this appointment, the Act provides power of entry onto land
- Drainage Superintendent duties:
  - Inspect drains periodically
  - Maintain and repair drains
  - Assist engineer in construction and improvement projects
  - Report to Council

# Grants

- Authorized by the Drainage Act (Sect. 85-90)
- Governed under the Agricultural Drainage Infrastructure Program by OMAFRA
- Must comply with law to be eligible
- Grants towards:
  - Assessment for agricultural lands for maintenance, repair, construction and improvement (1/3 of assessment)
  - Cost for employing a Drainage Superintendent (50%)

# Drain Billing

- Maintenance
  - Sent in May-June for the previous fiscal year
  - Bills are sent out less the applicable agricultural grant amount
  - If grant is not received from OMAFRA, the outstanding amount is billed to the landowner
- Construction
  - Billed throughout the year
  - Bills are sent out less the applicable agricultural grant amount
  - Debentures available as set out in the by-law

# Summary

- Municipality administers Drainage Act process
- Provides a process to solve drainage issues, with:
  - Professional design by drainage engineer
  - Cost-sharing recommended by independent engineer
  - Compliance with other legislation
  - Legal means of recovering costs
  - Right of access onto private land
  - Independent appeal bodies
  - Authority for future maintenance/repair

# Questions

