MUNICIPALITY OF MORRIS-TURNBERRY
COUNCIL CHAMBERS
41342 Morris Road
Monday March 27th 2017 4:00 pm

Agenda for the Special Council Meeting

1) Call to order:

Council in Attendance:
Paul Gowing, Mayor
Jamie Heffer Councillor
Dorothy Kelly Councillor
Jim Nelemans Councillor
John Smuck Councillor
Sharen Zinn Councillor

Purpose: Special meeting authorized by Council to review the request and reports to give consideration to ‘stop the process for the Section 78 request for the Blyth Creek Drain’.

2) Agenda:

   Adoption of Agenda:
   Moved by Seconded by
   “That the agenda for the meeting of March 27th, 2017 be adopted as circulated or amended.”
   Any discussion
   Is everyone in Favour or Opposed
   Disposition Carried or Defeated

3) Declaration of Pecuniary Interest:

   Does any member wish to declare a pecuniary interest?
   ◆ State interest and nature

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4) Business:
   1. Request received from a landowner to stop the Section 78 process
      – John Huether attached
   2. Clerk’s report attached
   3. RJ Burnside report attached
   3. Public Works report attached
   4. Report from the Drainage Superintendent attached

5. Motion to receive Reports:
   Moved by ___________________ Seconded by ___________________
   "That the Council of the Municipality of Morris-Turnberry receive the following reports:
   1. Clerk’s report dated March 27, 2017
   2. RJ Burnside Report, dated
   3. Public Work’s Report, dated
   4. Drainage Superintendent Report, dated
   or
   
   Any discussion
   Is everyone in Favour or Opposed

6. Landowners Deputation attached
   Two landowners will present – John Huether and Jim Phelan

7. Comments from Sid VanderVeen- OMAF

8. Council discussion on how to proceed- drain maintenance
   Section 78 report or
9. Motion of Direction:

Motion No. -2017 Moved by Seconded by
"That the Council of the Municipality of Morris-Turnberry hereby:
1. To authorize RJ Burnside & Associates Limited to prepare a revised cost estimate and assessment schedule, including a Section 26 assessment on the Blyth Creek Municipal Drain, based on the amended scope of work;
or

2. To accept the request to stop the Section 78 process for the Blyth Creek Drain; and that RJ Burnside & Associates Limited be instructed to prepare a report under Section 40 of the Drainage Act to complete the Section 78 project; and authorize the drainage improvement under the Drain Maintenance program;

(a copy of Section 40 from the Drainage Act is attached for your information) attached

or

Any discussion
Is everyone in Favour or Opposed
Disposition Carried or Defeated

5) By-law No. 29-2017 Confirming By-law attached
Moved by Seconded by
"That By-law No. 29 - 2017 be passed as given first, second, third and final readings, being a by-law to Confirm the actions of the Municipality of Morris-Turnberry for the meeting March 27th, 2017."

Any discussion
Is everyone in Favour or Opposed
Disposition Carried or Defeated

6) Adjournment:
Motion No. -17
Moved by Seconded by
"That the meeting be adjourned at pm."
Any discussion
Is everyone in Favour or Opposed
Disposition Carried or Defeated
Yes that is fine Nancy you just let me know what time on March 28. Also as landowners we feel no letter is required to revert back to section 74 of Drainage Act because it was council that appointed section 78 to Blyth Creek not the landowners. So in our mind it is council responsibility to do.

Also we were wondering if you could send out notifications to landowners in the Blyth Creek watershed about the meeting on March 28th. Thanks.

Sincerely,

John Huether
Report to the Council on March 27\textsuperscript{th}, 2017
Blyth Creek Drain
Presented by: Nancy Michie

\textbf{Recommendation:} That the Council of the Municipality of Morris-Turnberry receive the Clerk's report on the status of Blyth Creek Drain Section 78 project.

\textbf{Executive Summary:}
The following is a listing of the events that took place in regards to the Blyth Creek Municipal Drain, in regards to the Section 78 project.

1. February 21, 2014 Huether Farms Inc, c/o John Huether signed a Request for Maintenance for the Blyth Creek Drain, for the Spt Lot 16 Concession 8 Morris, a cleanout. The work would be pursuant to the 1911 Blyth Creek Drain report.


3. July 31, 2014, Gary Pipe and Nancy Michie contacted Sid VanderVeen at OMAF and discussed the proposal. The plan was to dig a small channel down the middle of the drain, which changed the project from a repair to an improvement, which would require a Report under Section 78 of the Drainage Act. It was noted from the discussion that “if improve or alter from the current state- a ‘grey area’.”

4. August 19, 2014, Huether Farms Inc, c/o John Huether submitted a request for an improvement under Section 78 of the Drainage Act for the Blyth Creek Drain, at Spt Lot 16 Concession 8, Morris. A note is in the file that John Huether preferred R J Burnside as the engineer on the project.

5. September 5, 2014, a letter of appointment was sent to RJ Burnside and copied- Ed DeLay at RJ Burnside, MVCA and Huether Farms Inc.

6. A letter from MVCA was received October 22, 2014 – MVCA requested notification of the on-site meeting.

7. November 11, 2014 RJ Burnside confirmed appointment and that Ed DeLay would be the Engineer in charge of the project.

8. January 7, 2015 on on-site meeting was held to review the project.

9. March, 2015 records are in the file for authorization from MVCA for brushing.

10. Invoices were received in May, 2015 for brushing from MRH Excavating & Bulldozing

11. A note in the file from Ed Delay that Heather Surette – biologist at DFO is the biologist for the project.

12. November 2, 2016 an information meeting was held at the Brussels, Morris & Grey CC to present the proposal to the property owners.

13. January 27, 2017 Jim Phelan and John Huether attended at the office to ask questions about the project.

Next steps- the engineer would review the revised project with DFO and relay information to John Huether and call another meeting.


The revised plan was reviewed. Ed De Lay explained that they could not confirm the 1911 profile, as there is no date on it. The landowners expressed that their wish was to not go forward with any new expense, do spot cleanouts under Drain Maintenance.

They asked that the Council stop the Section 78 process and proceed under Drain Maintenance. It was explained to John Huether that a letter would be required to request council to stop the process.


17. March 8, 2017 I advised John Huether that the Council preferred a special meeting for this purpose. The proposed date was March 28th, 2017.

18. March 9, 2017, John Huether sent an email saying that the landowners feel that no letter is required to revert back to Section 74 of the Drainage Act because it was the council that appointed Section 78 not the landowners. Also asked if all landowners could be notified.

19. March 13, 2017, John Huether was advised that all landowners would not be invited, due to lack of space.

20. The Council meeting was set for Monday March 27, 2017 at 4 pm. Council was notified March 15, 2017.

21. March 15, 2017, John Huether was advised of the meeting date and the process if the landowners wish to speak.

22. March 17, 2017 Sid VanderVeen confirmed that he will attend the meeting March 27, 2017.

23. Received confirmation that Jeremy Taylor will attend the meeting and that Chris Dietrich will attend the meeting.

24. Wray Wilson – Interim Director of Public Works will submit a report in regards to the Drain Relocation on Clyde Line.

Thank you.

Nancy Michie
Technical Memorandum

Date: March 24, 2017  
Project No.: 300035955.0000

Project Name: Blyth Creek Municipal Drain

Client Name: Municipality of Morris-Turnberry

Submitted To: Nancy Michie, Administrator Clerk-Treasurer


Reviewed By: Jeremy Taylor, P.Eng.

1) History

1911 – Original Report – John Roger, O.L.S.

- Included the establishment of the drain.
- This assessment schedule is used presently for maintenance work.

1915 – Blyth Creek Extension Drain Report – Extended through the Village of Blyth

1977 – Maintenance - An investigation was performed by Maitland Engineering Services (MES) on the Main Drain, from the Clyde Line crossing upstream.

- Drain cleanout, brushing, and beaver dam removal was apparently done under maintenance following this investigation in the early 1980s.

1999 – Blyth Creek Municipal Drain, Branch 1 Report – J.A. McBride, P.Eng., of MES

- Petition and request for drainage improvements following inability to perform work under maintenance, with increased involvement from DFO and MNR.

2) Current Appointment:

Appointed - September 2014:

- Appointed under Section 78 for improvement to drainage system.
• Heavy sedimentation at Clyde Line crossing and upstream and bank slumping also present.

On-Site Meeting – January 2015:

• Held at the Municipal office.
• Downstream landowners present:
• Adjourned meeting with plan to brush working corridor prior to survey.
• Survey area was from confluence with Parker MD upstream to confluence with Branch 1.

Site Brushing – March-April and July 2015:

• Work began upstream of Clyde Line under frozen conditions per MVCA request to limit impact.
• Engineer and Contractor worked with landowners to accommodate when and how work was completed.

Site Survey – June/July 2015

Site Meetings with Landowners - Summer 2015:

• Jim Phelan discussed effects to ex. private bridge and brushing on his property.
• Mike McNichol discussed Culvert Crossing (N ½ Lot 13, Con. 9).
• Public Works Manager, Gary Pipe/Kelly Church discussed relocation of section paralleling Clyde Line and road crossings.

Co-ordination with Agencies - Fall 2015 – Fall 2016:

• Preliminary design submitted to DFO and MVCA in December 2015.
• Co-ordination and follow up with MVCA and DFO over same period.
• Site meeting with personnel from DFO in April 2016.

Information Meeting with entire watershed - November 2016:

• First meeting with entire watershed.
• Explained the design approach and discussed drain sensitivity and environmental considerations as well as overview of budgetary cost estimate.

Drawing set resubmission to Agencies for review – February 2017
R.J. Burnside & Associates Limited

Ed DeLay, P.Eng.
ED:Js

Other than by the addressee, copying or distribution of this document, in whole or in part, is not permitted without the express written consent of R.J. Burnside & Associates Limited.
Recommendation: That the Council of the Municipality of Morris-Turnberry instruct RJ Burnside to prepare a revised cost estimate and assessment schedule including a Section 26 assessment on the Blyth Creek Municipal Drain based on the amended scope of work presented and discussed at the landowners meeting on March 2, 2017.

I was in attendance at a landowners meeting on March 2, 2017, regarding the Section 78 Report on the Blyth Creek Municipal Drain. At that meeting it was evident that the landowners were concerned about the cost of the work proposed. They referred to an estimate in excess of $450,000.00 that was given at a previous meeting. It is my understanding, that estimate was based on a substantially larger amount of work than what is now being considered.

The landowners present at that meeting requested Morris-Turnberry suspend any further engineering with respect to a 78 Report on the Blyth Creek Drain and to consider a drain cleanout under Section 74. Morris-Turnberry Council will have the final decision on this request.

Drain Relocation on Clyde Line

Barry Shaw and I inspected the area where it is proposed to relocate the open drain from the road side on Clyde Line onto private property. A couple of pictures are attached for information.

We are not aware of any incidents where motorists have left the roadway and entered the drain in this location. This section doesn't appear to be any more hazardous to traffic than other sections on Clyde Line such as the ditch north of St Michaels on the east side of the road.

Morris-Turnberry Public Works would like to have an estimate of the cost of relocating this section of the drainage ditch and what the cost specifically would be under Section 26 of the Drainage Act for this work. If an estimate were available, a decision could be
made on the relocation. Other stakeholders would also be in a better position to make an informed decision on the future of this project.

Action:

Morris-Turnberry Council instruct the drainage Engineer to prepare revised cost estimates including, Section 26 estimates, for the amended scope of work proposed at the March 2, 2017 landowners meeting.

Respectfully submitted

Wray Wilson, Interim Director of Public Works
March 23, 2017

Re: Report to Council for Maintenance of the Blyth Creek Municipal Drain
Municipality of Morris-Turnberry
(Morris Ward)
Our Reference No. 1707

Existing By-Law No. 7-1911, a report prepared by John Roger, O.L.S. dated February 4, 1911. This report provided for the construction of 12,405 metres of open drain and approximately 790 metres of 200mm to 250mm dia. tile known as the Main Drain. This report also provided for the construction of approximately 2,420 metres of open drain and approximately 180 metres of 250mm dia. tile known as the Branch Drain.

The by-law provides for future maintenance of the above mentioned drains using the total assessment or a combination of benefit, outlet liability, and injuring liability as apportioned in the 1911 report.

The Branch Drain schedule for future maintenance was updated under a report prepared by Maitland Engineering, dated October 1999.

The Main Drain schedule for future maintenance could also be updated under Section 76 of the Drainage Act, R.S.O. 1990 to include changes in the watershed, land severances, and land use changes since 1911.

If instructed to perform maintenance on the Main Drain the following is an estimate of costs:

- Cleanout and Levelling of material from Sta. 0+832 to Sta. 2+788 (1954 metres) $10,000
- Supply and place quarry stone riprap and erosion control matting (where required) $4,500
- Construct 2 new sediment traps $500
- Existing Brushing Invoices $36,000
- DFO requests, contingencies and NET H.S.T. $3,000
- Total Estimated Cost of Maintenance $54,000

Yours truly,

DIETRICH ENGINEERING LIMITED

Chris J. Dietrich, B.A.Sc.
Drainage Superintendent
Municipality of Morris-Turnberry

CJD:cjd
To: Morris-Turnberry Township  
March 22, 2017.
From: Blyth Creek Landowners  
Agenda for our Presentation

(1) Aquatic Assessment
(2) Brushing of Ditchbank
(3) Options given to Landowners by Engineers (best interest of clients)
(4) Cost Structure/ Payments already made
(5) Original Request Discussion and how things got out of hand
(6) Public Relations going forward
(7) Full Landowners Disclosure discussion (open meeting)
(8) Time Line of Events to date

Note: We will have John Huether and Jim Phelan speaking at our presentation. We will have a minimum of 5 landowners attending.

Sincerely,

Blyth Creek Landowners.

(Dropped off at Morris-Turnberry Municipal Office on March 22, 2017.)
Time for filing report
39. (1) The engineer shall file the report with the clerk of the initiating municipality as soon as it is completed or, in any event, within one year after the appointment of the engineer or within such further time as may be extended before or after the expiry of the one-year period by resolution of the council of the municipality. R.S.O. 2010, c. 16, Sched. 1, s. 2 (7).

Engineer may forfeit compensation
(2) Where, after thirty days notice by council, the engineer neglects to make a report within the time limited by or extended under this section, the engineer shall forfeit all claims for compensation for the work done upon the drainage works, and the council of the local municipality may appoint another engineer. R.S.O. 1990, c. D.17, s. 39 (2).

By-law not invalid by reason report not filed
(3) A by-law passed by the council of any local municipality for the construction of a drainage works under this Act shall not be quashed by reason only that the report of the engineer was not filed within the time limited by or extended under this section. R.S.O. 1990, c. D.17, s. 39 (3).

Section Amendments with date in force (d/m/y) [*]

Engineer's finding, drainage works not required, etc.
40. Where the engineer finds that a drainage works is not required or is impractical, or cannot be constructed under this Act, the engineer shall forthwith file with the clerk of the initiating municipality a report to that effect, stating the reasons therefor, the amount of the engineer's fees and other charges and by whom they shall be paid, and the clerk shall forthwith send a notice of the filing of such report to all persons who signed the petition and the matter shall not be further proceeded with unless the decision of the engineer is reversed on appeal. R.S.O. 1990, c. D.17, s. 40; 2010, c. 16, Sched. 1, s. 2 (8).

Notice of drainage works
41. (1) Upon the filing of the engineer's report, the council of the initiating municipality, if it intends to proceed with the drainage works, shall, within thirty days of the filing of the report, cause the clerk of the initiating municipality to send a copy of the report and a notice stating,

(a) the date of filing of the report;

(b) the name or other designation of the drainage works; and

(c) the date of the council meeting at which the report will be considered,

to,

(d) the owners, in the initiating municipality, as shown by the last revised assessment roll to be the owners of lands and roads assessed for the drainage works or for which compensation or other allowances have been provided in the report;

(e) the clerk of every other local municipality in which any land or road that is assessed for the drainage works or for which compensation or other allowances have been provided in the report is situated;

(f) the secretary-treasurer of each conservation authority that has jurisdiction over any land affected by the report;

(g) any railway company, public utility or road authority affected by the report, other than by way of assessment;

(h) the Minister of Natural Resources where land under his or her jurisdiction may be affected by the report; and

(i) the Director. R.S.O. 1990, c. D.17, s. 41 (1); 2010, c. 16, Sched. 1, s. 2 (9).

Cl (c)lerk to notify persons assessed
(2) The clerk of every other local municipality in which any land or road that is assessed for the drainage works or for which compensation or other allowances have been provided in the report is situated shall send within thirty days of the sending of the last notice under subsection (1) a copy of the report and notice to the owners, as shown by the last revised assessment roll to be the owners of the lands and roads in such municipality assessed for the drainage works, or for which compensation or other allowance has been provided in the report stating,

(a) the date of filing of the report;

(b) the name or other designation of the drainage works; and

(c) the date of the council meeting of the initiating municipality at which the report will be considered. R.S.O. 1990, c. D.17, s. 41 (2); 2010, c. 16, Sched. 1, s. 2 (10).

Copy of report not required
(3) Despite subsections (1) and (2), where a block assessment is made, the notice to the owners of the lands so assessed need not be accompanied by a copy of the report. R.S.O. 1990, c. D.17, s. 41 (3).

Same
(3.1) Despite subsections (1) and (2), the council of a local municipality is not required to send a copy of the report to owners of lands and roads assessed for a sum of less than $100. 1998, c. 18, Sched. A, s. 1 (1).

https://www.ontario.ca/laws/statute/90d17

3/24/2017
CORPORATION OF THE MUNICIPALITY OF MORRIS-TURNBERRY

BY-LAW NO. 29-2017

“CONFIRMATORY BY-LAW”

Being a by-law of the Corporation of the Municipality of Morris-Turnberry to confirm the proceedings of the Council of the Corporation of the Municipality of Morris-Turnberry, for the meeting, dated March 27th, 2017;

WHEREAS by Section 8 of the Municipal Act 2001, S.O. 2001, c. 25- A municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act;

WHEREAS by Section 5. (3) of the Municipal Act 2001, S.O. 2001, c. 25 – A municipal power, including a municipality’s capacity, rights, powers and privileges under Section 8, shall be exercised by by-law unless the municipality is specifically authorized to do otherwise;

AND WHEREAS it is deemed expedient that the proceedings of the Council of the Corporation of the Municipality of Morris-Turnberry for the March 27th, 2017 meeting, be confirmed and adopted by By-law;

NOW THEREFORE, THE COUNCIL OF THE CORPORATION OF THE MUNICIPALITY OF MORRIS-TURNBERRY ENACTS AS FOLLOWS:

1. The action of the Council of the Corporation of the Municipality of Morris-Turnberry at its meeting held the 27th day of March, 2017, in respect of each recommendation contained in the Minutes and each motion and resolution passed and other action taken by the Council of the Corporation of the Municipality of Morris-Turnberry at the meeting, is hereby adopted and confirmed as if all such proceedings were expressly embodied in this By-Law;

2. The Mayor and proper officials of the Corporation of the Municipality of Morris-Turnberry hereby authorized and directed to all things necessary to give effect to the action of the Council to the Corporation of the Municipality of Morris-Turnberry referred to in the preceding section thereof;

3. The Mayor and Administrator Clerk-Treasurer are authorized and directed to execute all documents necessary in that behalf and to affix thereto the Seal of the Corporation.

Read a first, second and third time and passed this 27th day of March, 2017.

Mayor, Paul Gowing

Clerk, Nancy Michie