Drainage Engineers Conference

“Assess” vs. “Pay”

October 19, 2012
“Assess” vs. “Pay”
3 Parties Involved in Assessments

1. Engineer → must distribute the estimated project costs to the appropriate lands, roads & public utilities in accordance with the instructions in the Drainage Act;

2. Municipality (Treasurer) → levies a charge or assessment against the lands, roads or public utilities in the proportions as adopted by by-law;
   - Charged in the same way as taxes
   - Municipality goal is to recover project costs

3. Payer → the person or party that is paying the charge (other terms used = levy or assessment)
   - Not always the property owner!
Drainage Act

Instructions to Engineer

- S. 21 – engineer must distinguish assessments
- S. 22 – assessing for benefit
- S. 23 – assessing for outlet & injuring liability
- S. 24 – special benefit
- S. 25 – block assessments
- S. 26 – special assessment to roads/utilities
- S. 27 – can assess lands in downstream municipality
- S. 28 – can assess lands in upstream municipality
Drainage Act

Instructions to Engineer

11 The engineer shall, to the best of the engineer’s skill, knowledge, judgment and ability, honestly and faithfully, and without fear of, favour to or prejudice against any person, perform the duty assigned to the engineer in connection with any drainage works and make a true report thereon.
Instructions on Levying Construction Costs

• S. 61(1): The council of each local municipality … shall by by-law impose upon the land assessed for the drainage works the assessment with which it is chargeable, and the amount so imposed is payable in such instalments as the council may prescribe.

• S. 61(2): The council of any local municipality may provide that persons whose lands are assessed may commute for a payment in cash the assessments imposed thereon and may prescribe the terms and conditions thereof.
Instructions on Levying Maintenance Costs

• S. 74: Any drainage works constructed under a by-law … shall be maintained and repaired by each local municipality … at the expense of all the upstream lands and roads in any way assessed for the construction or improvement of the drainage works and in the proportion determined by the then current by-law pertaining thereto …

• S. 75(3): The council of any municipality shall not be required to assess and levy the amount charged for maintenance or repair of a drainage works more than once in every five years if the total expense incurred does not exceed the sum of $5,000…
Assessing vs. Paying:
Scenario 1: Small Assessments

S. 61(3): Where the assessment against any parcel of land is $50 or less, the council of the local municipality may provide that the assessment shall be paid out of the general funds of the municipality or that the assessment shall be paid in the first year in which the assessment is imposed upon the land assessed.

Q: Should engineer reduce these assessments to $0 in the report?
A: No.

- Engineer determines assessments independently, regardless of who is paying the assessment less than $50
- Municipal staff acquire direction from council on the payment of assessments less than $50
- Municipal staff recover the payments, as directed.
Assessing vs. Paying:

*Scenario 2: Land Exempt from Taxation*

Section 61(5) and (6)
- 61(5) Even land exempt from taxation is assessable
- 61(6) Outlines who pays the assessment of lands exempt from taxation.

Q: Should engineer show who should pay the assessment on tax exempt land?

A: No.
- Engineer determines assessments independently, regardless of whether the land is tax exempt or not
- Municipal staff must sort out who pays the assessment on tax exempt land and levies the charge accordingly.
- Engineer not involved in who pays these assessments
Assessing vs. Paying:
Scenario 3: Rent and Lease Agreements

S.67 paraphrased:
An agreement of a renter to pay the taxes on the rented land doesn’t include Drainage Act assessments unless it is specifically stated in the agreement.

Drainage Act assessments on land where there is a contract to purchase or there is a lease with an option to purchase, the assessments get added to the price and is to be paid by the purchaser.

Q: Should engineer show in the assessment schedule individuals with a contract to purchase or a lease with option to purchase?
A: No.

- Engineer determines assessments independently
- Municipal staff are responsible to determine who should be paying the assessment when there is a contract to purchase or a lease with an option to purchase.
Assessing vs. Paying:

Scenario 4: One landowner offers to pay assessment of another

One private property owner agrees to pay all or part of the assessment of another property owner.

Q: Should engineer make these changes in the assessment schedule to reflect the payment that has been agreed upon?

A: No.

- Willingness to pay is not one of the assessment instructions in the Act; if you change, how do you defend your assessments?
- Engineer should determine assessments for all properties independently using the principles of the Drainage Act
- Owners can make arrangements for payment between themselves
Assessing vs. Paying:  
Scenario 5: Franchise Agreements

Some municipalities enter into “franchise agreements” with utilities that specify how the cost of future work in the municipal right of way will be shared between the utility and the municipality.

Q: Should engineer make these changes to the S.26 assessment to reflect the cost-sharing in the franchise agreement?  
A: No.

- This answer is very similar to the previous question where one owner offers to pay the assessment of another owner
- Engineer should determine assessments for all properties independently using the principles of the Drainage Act
- The parties to the franchise agreement can sort out who is supposed to pay the assessments – if they can’t sort it out, they can go to court as a matter of contract law
Assessing vs. Paying:
Scenario 6: Municipal Grants

Municipality provides special one-time funding towards a project; no costs will be assessed to properties

OR

Municipality has decided to fund all costs incurred under the Drainage Act through the general funds

Q: Should engineer show all properties with a “0” assessment in the schedule? Is a schedule even necessary?

A: To not have to develop an assessment schedule is tempting but… Absolutely not.

– Statutory responsibility to develop an assessment schedule
– Assessing properties “0” would be impossible to defend
– Getting involved in politics
– Assess the properties as required by the Act and let the politicians make the announcements about who’s paying them
Assessing vs. Paying:

Scenario 7: Special Provincial Grants

• Example: Added grants received from infrastructure funding (e.g. Holland Marsh or Pelee Island Pumps)
• The added grants may provide partial or full funding to the Drainage Act project.

Q. What is the engineer’s responsibility wrt funding?:
• Remain independent; the availability of funding should have absolutely no impact on assessments
• Calculate assessments as if no grants received
Assessing vs. Paying:  
Scenario 8: Special Legislation

Statutes give specific municipalities with special authority to levy Drainage Act costs across all rateable property in the municipality; Examples:

- An Act respecting the Township of Sandwich West
- City of Windsor Act 1968

Q. If special legislation allows costs to levied across all rateable property, does the engineer need to develop an assessment schedule?

A. If appointed to perform work under the Drainage Act, then must still comply with the statute

- Review special legislation – any impact on the engineer’s responsibilities under the Drainage Act?
- Special legislation primarily deals with the payment of assessments – likely no impact on engineer
Assessing vs. Paying: Scenario 9: Municipal Policy

Municipal Policy that stipulates or specifies assessment:
  – E.g. Policy that requires the engineer to assess a percentage of crossing costs to the owner receiving the crossing
  – Minimum assessment

Q. What should an engineer’s response be to a municipal policy that directs the engineer how to assess?

A. Statute trumps policy; S. 11 requires the engineer to be independent.
  – Engineer may take the policy into consideration but must not be bound by it.
Summary:

- There should be a clear and distinct separation between the Engineer’s responsibility to assess and the responsibility for payment of the assessment.
- The duty of the engineer is to assess the cost of drain construction or improvement work following the principles of the Drainage Act.
- Challenge anyone, including landowners, municipal staff or even council, who interfere with your duty to be independent and impartial.