



TOWN OF INNISFIL STAFF REPORT

Staff Report No.: DSR-173-19
Date: November 27, 2019
To: Mayor, Deputy Mayor and Members of Council
From: Jason Inwood, Director of Operations
Jeremy Nyenhuis, Drainage Superintendent
Subject: South Innisfil Creek Drain 2019 Improvement
Passing of the Provisional By-law 010-19

RECOMMENDATION:

1. That Staff Report DSR-173-19 regarding the South Innisfil Creek Drain 2019 Improvement – Passing of the Provisional By-law 010-19 dated November 27, 2019 be received; and
2. That the Provisional By-law, being By-law 010-19, as amended, be given a third reading and approved, therefore authorizing the construction of the South Innisfil Creek Drain 2019 Improvement; and
3. That the issuance of a ten-year debenture, if/when required, for the unpaid portion of the private property owner share of the works be approved; and
4. That the amount to be recovered from private property owners includes both principal and interest, with interest calculated at a rate equal to the Town's cost of borrowing in effect at the time amounts are added to taxes.

BACKGROUND:

On February 13, 2019, Jeff Dickson, P. Eng., the Engineer from R.J. Burnside & Associates Limited, completed the study for the South Innisfil Creek Drain and filed the Final Engineer's Report with the Clerk. On February 13, 2019, Council received the Final Engineer's Report and expressed their intention to proceed with the drainage works as per Section 41 of *the Drainage Act* ("Act").

On February 27, 2019, the meeting to consider the Final Engineer's Report took place including a presentation by R.J. Burnside & Associates Limited. Council gave landowners an opportunity to provide input before Council provisionally adopted the report under Section 45(1) of the Act.

Under Section 46 of the Act, Council also set the date and time for the first sitting of the Court of Revision, appointed four members (two sitting and two alternatives) for the Court of Revision and instructed the Clerk to send a copy of the Provisional By-law and Notice for the Court of Revision to all landowners affected by this drainage works. The mailing of this Notice initiated the beginning of appeal period.

On March 21, 2019, the first sitting of the Court of Revision took place in the Council Chambers. The Court received twenty-four appeals in total filed on the grounds that properties were assessed too high, due consideration was not given to the type of land use and/or the other land or road should have been assessed. The Court's Decision ordered the adjustment of costs for five appeals. The remaining nineteen appeals filed were dismissed as the properties had been assessed fairly. The Court of Revision Decision has been attached as Appendix 1.

On April 10, 2019 the 40-day period for appeals to be filed to the Drainage Tribunal or Referee expired. On April 11, 2019 the 21-day period for appealing the decision of the Court of Revision to the Drainage Tribunal expired. Prior to these deadlines, seven appeals were filed.

On July 23 and 24, 2019 a Hearing held by the Agricultural, Food and Rural Affairs Appeal Tribunal took place in the Council Chambers. The Tribunal heard the seven appeals that were filed under Sections 48 and 54 of the Act.

The Tribunal published its Decision dated October 22, 2019, regarding all of the appeals heard. The Tribunal's Decision ordered the increase of allowance for loss of access for one appeal and the remaining six appeals were dismissed. Their full Decision has been attached as Appendix 2.

ANALYSIS/CONSIDERATION:

The Decision of the Appeals Tribunal dated October 22, 2019 ordered the Engineer to make changes to the Report. These changes, along with the changes made in the Decision of the Court of Revision, have been completed by the Engineer. As required by Section 56 of the Act, By-law 010-19 has been amended in order to incorporate these changes to allow for the third and final reading of the By-law.

FINANCIAL CONSIDERATION:

Estimated Cost Recovery

Table 1 – Estimated Cost Recovery has been amended since Staff Report DSR-020-19 to reflect the changes made by the Decisions of the Court of Revision and the Drainage Tribunal. As explained in Staff Report DSR-020-19, Council has the following choices in regard to the Estimated Cost Recovery for the drainage works in Table 1:

Table 1 - Estimated Cost Recovery	
Item	Cost
Province of Ontario	\$107,898.00
County of Simcoe	\$195,147.00
Town of Innisfil	\$1,176,833.00
TOI - Agricultural Lands Owners *Note 1	\$2,149,789.00
TOI - Non-agricultural Land Owners	\$837,620.00

Item	Cost
Town of Bradford West Gwillimbury	\$1,471.00
BWG - Agricultural Lands Owners *Note 1	\$8,730.00
BWG - Non-agricultural Land Owners	\$6,822.00
Section 26 – Non-Pro-Ratable – Town of Innisfil	\$820,590.00
Section 26 – Non-Pro-Ratable – Province of Ontario	\$56,000.00
Total	\$5,360,900.00

1. Council could choose to fund a portion of the costs noted in Table 1 that are not directly attributable to the Town's share of the works to reduce the assessments to the landowners.
 - If this option was selected the additional transfer of financial costs would be borne by all property tax payers throughout increased taxation and/or use of reserves set aside from taxation.
2. Council could choose not to debt finance the unpaid portion of the private property owners share and require full payment from them at the time of completion of the works leaving them to secure their own financing, if required.
 - This option could result in taxpayers facing undue financial burden as the Town can usually obtain long term debt financing at lower rates than the private property owner can obtain. Additionally, the property tax account placing them at a 1.25% monthly charge if they do not obtain their own financing plus adding to cashflows issues from the Town from unpaid taxes.
3. Council could choose to amortize any debt that is required to be issued over a period ranging from 5 to 20 years.
 - Depending on the term chosen, the interest carrying costs from the property owner will increase as longer term rates are higher plus the principal repayment is lower each year. This also impacts the Town's long term debt capacity in that the longer the term, the longer the Town has to wait until that borrowing capacity is available for other uses.
4. Council could choose to provide a reduction to the financing charges component to assist property owners with the carrying costs of the works.
 - This option would result in a cost to the Town that would need to be funded through an increase in property tax rates to offset the debt servicing costs not recovered each year from the respective property owners.

Court of Revision and Drainage Tribunal Costs

As indicated on page 6 of Appendix A2 of the Final Engineer's Report;

"NOTE: The above summary contains estimates of cost only. It is emphasized that these estimates do NOT include costs to defend the drainage report should appeals be filed with the Court of Revision, the Drainage Tribunal and/or the Drainage Referee. Should additional costs be incurred, unless otherwise directed, the additional costs would be distributed in a prorate fashion over the assessments contained in the Schedule of Assessment and as may be varied under the Act."

Costs associated with the defence of the Final Engineer's Report by Burnside for appeals filed to the Court of Revision was approximately \$33,000. Costs associated with the defence of the Report by Burnside for appeals filed to the Drainage Tribunal was approximately \$40,000. This amount includes the cost associated with completing the amendments to the Report and assessment schedule as ordered in the Decisions. Legal costs for the Town to defend the Report by Courey Law Professional Corporation and assist with discussion following the Decision was approximately \$22,500.

Projects Costs

The cost recovery for this project is itemized in Table 1. The Construction Assessment Schedule splits out the costs for each individual piece of property (residential, farm, road, etc.) and is contained in amended Appendix A and B in the final engineer's report. These assessments are based on the estimated costs and the Construction Assessment Schedule will be updated after the completion of the project using the actual construction costs for assessment purposes.

The construction of the drainage works is planned to be completed once By-law 010-19, as amended, has been given third and final reading. A total of \$6,950,371.00 was included in the capital budgets to complete these drainage works however \$1,400,000.00 has been moved out of this budget for the design and construction costs for the ultimate replacement option for Reive Boulevard, as explained in Staff Report DSR-020-19. Therefore, the capital budget to complete these works is \$5,550,371.00.

Debt financing is expected to be required for the unpaid portion of the private property owner's share at the time final costs and assessments have been made excluding those costs attributable to the County of Simcoe and the Province of Ontario as the Town should not be debt financing for senior levels of government. The term of the amortization period for the debt is recommended to be no longer than 10 years to minimize borrowing costs for the property owner as well as ensuring debt capacity is returned to the Town in a reasonable period. Debt financing for the property owner share has previously been approved and staff have factored into debt capacity calculations accordingly.

The property owner will be responsible for the principal associated with their share of the assessment plus interest if they do not pay in full or in part at the time the final assessment is provided to them. Debenture repayment requirements issued for a 10-year amortization period would be added to the property tax bill until the debt is fully retired. The amount remains with the property, not the owner, and is automatically transferred should there become a new owner. Since the Town is obligated for a full 10-year term, any payout of individual amount owing will represent the full balance of principal and interest owing to maturity, no discount for early payment will be provided.

Currently the 10-year debenture rate with Infrastructure Ontario is approximately 3.1% but the rate charged to the property owner would be the rate in effect at the time the Town issued the debenture. Subject to any options Council may consider, the debt repayment each year would be offset by an equal charge on the property owner tax bill.

The total estimate of \$1,997,423.00 would be funded from capital reserves for the Town portion of the South Innisfil Creek Drain 2019 Improvement. Any additional costs that Council may choose to fund the assessments to each property owner and/or reductions in interest would need to be quantified and a funding mechanism decided upon (e.g. use reserves if a cost reduction, include in annual budget if an interest reduction).

Assessed property owners who do not opt for the 10-year payment plan and do not pay the assessed amount would have the full costs added to their tax account and be subject to interest charges at the rate of 1.25% per month until paid.

OPTIONS/ALTERNATIVES:

At this point in the process, it is recommended that Council pass the Provisional By-law, being By-law 010-19, as amended, as per Section 58(1) of *the Drainage Act*.

By-law may be passed

“**58(1)** Where the **council** of an initiating municipality has adopted a report for the construction of a drainage works after the time for appealing has expired and there are no appeals or after all appeals have been decided, the **council** may pass the provisional by-law to which the **engineer’s** report was attached, thereby authorizing the construction of the drainage works, and work may be commenced ten days after the by-law is passed if no notice of intention to make application to quash the by-law has been filed with the **clerk** of the **council**.”

Failure to pass the Provisional By-law could result in an appeal to the Tribunal under Section 58(5) of the Act.

CONCLUSION:

On February 27, 2019, Council gave first and second reading to By-law 010-19, the Report was considered adopted and the By-law was known as a Provisional By-law. The Act requires a public appeal process to be undertaken before final reading of the By-law and this process has now been completed. It is the recommendation of staff that Council pass the amended Provisional By-law, thereby authorizing the construction of the South Innisfil Creek Drain 2019 Improvement.

Staff also recommend that Council approve the option of a ten-year debenture for the unpaid portion of Innisfil’s private property owners share of the works with interest, if landowners wish to spread the costs of the drainage works over 10 years.

PREPARED BY:

Jeremy Nyenhuis, Drainage Superintendent

APPROVED BY:

Jason Inwood, Director of Operations

ATTACHMENTS:

1. Court of Revision Decision dated March 21, 2019
2. Drainage Tribunal Decision dated October 22, 2019
3. Amended Assessment Schedules as ordered by the Tribunal – October 22, 2019
4. By-law 010-19, As Amended – South Innisfil Creek Drain 2019 Improvement By-law