

CALDWELL ROAD PROJECT

Councillor McInroy stated that subsequent to the last council session during which it was suggested that perhaps the Community Committee could review the matter and take a position. After some discussion with the local MLA and others a resolution was formulated and agreed to at a special meeting on June 1, 1992. The intent of the motion is that in as much as Halifax County will be the administrator of the contract and will undertake the project and since it can be completed within the road right of way, which is owned by the Department of Transportation and Communications, and also recognizing that there may be site works required on the watercourse that is currently used and will be used to carry the storm water to Morris Lake, in order for the project to proceed the recommendation is that council authorize the Engineering department to proceed with the calling of tenders. Included in the motion is a commitment to reflect the fact that the County is not ignoring the requirement for site works on the watercourse and recognizes that it is committing itself to undertaking this part of the project at some point.

The last statement was put in because at the time it was prepared there had been no written final information received from the Department of Transportation and Communications with regard to its financial commitment. Initially the project was approved on a cost sharing basis, 70% Provincial and 30% County. However, when the design was beginning to be finalized, it was recognized that there were considerable more costs associated with the fact that the storm sewer had to be much deeper than was originally anticipated. Because that depth was much more than the Department of Transportations normal requirements for drainage of its street, the point was raised that there would not be complete cost sharing on those additional costs. He stated that he understands that basically what is being said is that the Departments position is that it will cost share 70/30 on the entire storm sewer project. In order to get the project constructed in 1992 the finalization of design work and preparation for tender call proceed now. Addressing the situation of the watercourse, he feels comfortable in moving now on the project itself. He feels that a move has to be made in order to get the work done because the funds may not be available much longer. The funds are available now and the Department of Transportation has no difficulty with the County proceeding right now as is proposed. What is being suggested is that pipes be installed on Caldwell Road right of way so that the water that is presently running by open ditch will now run by pipe to the watercourse. The flows will be increased somewhat because of the fact that the ground is not soaking up water it is all going through the pipe to its point of discharge. He has discussed this with Mr. Sheppard and, in terms of flows, it is not going to cause any significant difficulty without the site works having been done prior to the installation of the storm sewer pipes.

He stated that he would appreciate the support of council in adopting this resolution.

It was moved by Councillor McInroy, seconded by Councillor Richards:

"THAT THE RESOLUTION FROM THE COLE HARBOUR COMMUNITY COMMITTEE BE APPROVED WITH THE ADDITION THAT UNTIL AFTER THE ISSUE OF THE BROOK IS ADDRESSED AND REMEDIED THERE WILL BE A DEVELOPMENT MORATORIUM ON ALL THOSE WATERSHED LANDS"

Mr. Meech stated that he was not in a position to concur with the resolution. It seems to him that the County is not being very responsible if it proceeds with the project without first having in hand the right of access to this watercourse. Based on the resolution, as he understands it, that the County would propose to proceed with the design and installation of the storm sewer project and at some later point when it becomes necessary then we would make whatever arrangements that are necessary to either make improvements or gain access to the right of way. He stated that it would be his view that it would not be the most appropriate way to proceed. He stated that the County may find that it may be necessary because to enforce that position one of the conditions from DOT is that the County makes an application to the Department of the Environment both federal and provincial. This may mean that they would want the County to demonstrate that it has permission of the property owner. He stated that he wanted to make it clear for the record that he could not recommend the County proceed with the project as proposed without first having put in place the agreement to right of access to the watercourse.

Councillor Peters asked if there had been any response to the Council's letter to the Ministers and MP with regards to this project.

Warden Lichter stated that no letter had been received from the Honourable Tom Siddon, Minister of Indian and Northern Affairs. He had spoken with David Nantes and Ken Streach and he had indicated to them that the Council is expecting a reply from them. They have both asked what the Council want as a reply since they had nothing to do with negotiations between Halifax County and the Millbrook Band. He stated that all that would be required is a letter with the date on it saying they have received the correspondence.

Councillor Peters stated that she would hope that the MLA, the Honourable David Nantes would have at least supported Council's concerns and perhaps sent a letter to Mr. Siddon to support what the County has to say.

Deputy Warden Sutherland asked if, with reference to the existing waterway, it got to the stage where as a result of putting more

water into the open ditch and started causing some flooding would there be any legal recourse through the property owners to the Municipality.

Mr. Dickson stated that the property owners might be able to claim nuisance against the Municipality.

Councillor Cooper stated that this project centres along a natural watercourse and if the County proceeds with the section of the project which is the road right of way, would the County in effect be creating a larger water flow than would be found in a 25 year storm. Would somebody have to prove that the County created more than that type of storm would create. To sit around and wait to maybe continue with this project on the scenario that we don't have a guaranteed access to that land is the wrong thing to do. The County basically saying that it is prepared to move along and look at the section of the project in the road way. It is also indicating that the County is prepared to make the necessary improvements in that watercourse to handle anticipated extra flows down the road. This resolution is also saying that the County is not coming up with that significant sum to gain access. This does not include paying the amount to the Indian Band. This is just saying that the County and the Westphal/ Cole Harbour Community is prepared to endorse the continuation of improvements in the community and are asking for the affected people in the community to cooperate and to allow the County to get on with the project.

Councillor Richards stated that he feels it is important to recognize that the flow of water that will be created by the installation of the storm sewer is going into a natural watercourse. There will be some additional flow but at this point in time will be limited because there is not any new development going on. He stated that he does not think that this closes the door on any further action that may be required or negotiable between the Municipality, the province and the Department of Indian Affairs. He stated that this would help get the problem resolved that is there today, to close in the open ditch along Caldwell Road, to get the road back in the order that it needs to be and allows the residents in that area to enjoy traffic flows that are more in line with the community that surrounds it. The project does not stop the County from looking at what might be presented in the future but resolves the problem of today. This is the position taken by the Community Committee and they are asking the Council to give consideration to this and with the provinces position of funding in place he has no hesitations on getting the go ahead.

Councillor McInroy stated that the last sentence states that proceeding with the storm sewer project or portion thereof is subject to the finalization of total cost sharing arrangements between the Department of Transportation and Communications and the Municipality.

Councillor Merrigan asked how much more water would be dumped on the watercourse. He stated that he feels that the County should either negotiate or not negotiate.

Councillor Boutilier stated that, through the Executive Committee, he was under the impression that rather than do one piece at one end of the road the idea was that it would be better if it all could be done at one time.

Councillor Peters stated that she believed that the Department of Transportation said that they would not proceed to lay one piece of pipe until the decision on what was happening with the Indian Band was resolved. If the Department of Transportation are saying they will not proceed until approval to discharge into this watercourse is given then this resolution puts the County in an awkward position because the project would be fully completed and the Indian Band could say that the County now has to pay them.

Mr. Meech stated that the Department of Transportation is saying that they are prepared to cost share but it is a Municipal project and if there are any associated liabilities or risks they are the Municipality's. One of their conditions is that the Municipality is to obtain the water access permit from the Department of the Environment. He stated that at that point the Municipality will be required to indicate that it has the permission of the land owner. Councillor Peters stated that she is in favour of securing the watercourse and reinforce the banks but she is not in favour of that payment being made when it is a natural watercourse.

Councillor Ball stated that once everything is put in place the Municipality owns it and if the Municipality owns it then it is liable. He stated that if this project is endorsed then the Municipality has in fact endorsed the government to forcing the Municipality into resolution of the waterway and taking on the sole responsibility. He stated that he would prefer to see the resolution of the other matter before proceeding with this. He stated that if a moratorium was put on development this might be more acceptable because it controls the development in the sense that it is not going to have any more impact on the watercourse than what was already there.

Councillor Bates stated that he is concerned when advise is given to the CAO and legal advise as to the problems the Municipality could get into. He stated that this has come to a point where the Municipality has to decide whether it wants to carry on this work. He stated that the risks have to be looked at if this situation is not resolved in accordance with the recommendations from Mr. Meech and the solicitor. He feels that the risks are too great the Municipality should make an amendment so that this matter can be resolved by paying \$163,000.00 to the Indian Band.

Councillor McInroy that this project started at the request of the

Millbrook Band to have a waterline extension. Water and sewer was installed but when the Municipality moved on to storm sewer things were stopped. It could be that the Municipality will have to pay out at some point but he feels that the Municipality has a responsibility to stop throwing money at things to solve them and he feels that if the Municipality takes a position such as has been suggested. He stated that the Indian Band knew what the project was all about when it went from an extension of a water line to relieve their arsenic problem to a full fledged sanitary sewer, storm sewer and water installation. He stated that there are options and this is one.

Councillor Richards stated it was the position of council at the last meeting that the Community Committee try to come up with a resolution that would be acceptable at the community level and then the Community Committee could bring forward and present to council. There were some concerns expressed that might create a potential difficulty in light of solving some real problems. It does not close the door on what might occur if the water flows increase to the point that the natural watercourse through the Indian lands can't handle. He stated there is the natural watercourse that has handled extensive amounts of water and putting in this pipe does not increase the flow by any significant amount. The money from the Department of Transportation is available this year but it may not be available in future and this project needs to be completed.

Councillor Merrigan asked how the water problems are going to be solved without increasing water flows to this watercourse.

Mr. Tam stated that the situation right now is that if you put a pipe in the ground without any new development the flow is not going to be increased very much. There won't be any erosion of the brook. He stated that they are presently withholding subdivision approvals because with new development that is going to increase the flow and as a result there will be erosion of the brook. By putting this pipe in without upsizing that brook would mean not allowing any more development. He stated that his understanding of what the Department of Transportation is saying is they do not want to put in this pipe without having the how the water is to be discharged resolved. He stated that the pipe is not designed to handle just the existing flow but to handle the ultimate flow in that area.

Councillor Peters stated that she felt that a moratorium might be the answer.

Councillor Richards stated that the concern of additional flows could be addressed by putting a clause in the resolution to put a moratorium on development until such time as this project is resolved but gets the Municipality in the position whereby it can get the pipe into the ground and the necessary road work completed.

He stated that he would amend the resolution to add the moratorium.

Warden Lichter asked if this would be part of the original motion or an amendment to the motion.

Councillor Richards stated that this would be an addition to the resolution.

Warden Lichter stated that for clarification what Councillor Richards was saying was that everything that is stated in the resolution with the addition that until after the issue of the brook is addressed and remedied there will be a development moratorium on all those watershed lands. A moratorium means no building permits would be issued or sub division approvals given.

Councillor McInroy stated that he is aware of one landowner in that watershed that has an option of storm drainage in one or two directions. The intent of what is being added is that there be no further development that would add additional storm water flows.

Warden Lichter asked the solicitor to clarify the following situation: when an MPS or an amendment is being contemplated and council announces its intention to adopt an MPS or an amendment to an MPS is the criteria that is applied is anybody who received tentative approval is okay but anybody who hasn't received tentative approval is not. He asked if the same thing would apply in the case of a moratorium.

Mr. Dickson stated that he was concerned about how the moratorium would be implemented whether it would be implemented under the Subdivision By-law or the Land Use By-law for the area. By implementing this moratorium you are affecting landowners rights to deal with their land. He stated that he is not certain which would be the most appropriate way to proceed and he would like further time to consider this.

Councillor Peters asked if the County Engineering department monitor the direction of the flow.

Warden Lichter stated that it would be the Storm Drainage Engineer.

Councillor Cooper asked Mr. Tam if the lands on the Eastern and Western side of Caldwell Road take their storm drainage into this system including those lands of the Millbrook Indian Band.

Mr. Tam stated that the intent is to have it low enough that it would handle all the drainage from all homes on Caldwell Road.

Councillor Cooper stated that he would not be able to support any amendment that would talk about a moratorium that would effect the proponents of the Municipality but not all. He stated that it is his understanding that the Municipality is not able to control

development on the lands belonging to the Indians. He stated he could not support a resolution that includes an amendment that would stop landowners outside the Indian Band land from developing and yet not be able to include any development by the land belonging to the Indian Band.

Warden Lichter stated that the amendment speaks about a moratorium but whether it is there or not, what Mr. Meech is telling Council is that the Municipality has to apply to the Department of Environment for water rights. The Municipality will not get those water rights until after the issue of actually showing what work the Municipality intends to do is resolved. If the water rights are not there then the project cannot go ahead because the Department of Transportation and Communications says that this is one of the conditions under which the project is to go. If, for some reason the project goes ahead without the actual remedies to the brook, County Engineering staff, when they examine the subdivision applications, are going to say you are not going to be given subdivision approval because the water has no place to go. He stated that whether the motion says moratorium or not it appears that a moratorium may be there.

Councillor Richards stated that purpose of putting that clause in was to see what kind of support council might offer for it. He stated that would withdraw that section of the resolution and go with the original resolution.

MOTION DEFEATED7 IN FAVOUR14 AGAINST

It was moved by Councillor Bates, seconded by Councillor MacDonald:

"THAT HALIFAX COUNTY PAY \$93,800.00 FOR THE RIGHT OF WAY ACROSS THE LANDS OF THE MILLBROOK INDIAN BAND AND \$70,00.00 FOR THE WORK TO BE DONE ON THE WATERCOURSE"

Councillor Peters asked if any replies had been received from Mr. Siddon or the MLA's with regard to this question. She stated that the Council agreed that it would wait for a response either one way or the other and the motion was contrary to the decision of Council.

Warden Lichter stated that he did not feel that an reply would be forthcoming from either Mr. Siddon or the MLA's.

Councillor Merrigan suggested the motion be put on the floor be approved subject to a satisfactory agreement with the Indian Band. This would allow the Municipality to go ahead.

Warden Lichter asked Councillor Merrigan if he was referring to the motion by the Cole Harbour/Westphal Community Committees

resolution.

Councillor Merrigan verified that this was his intention.

Mr. Meech stated that he would agree that the resolution as proposed with the addition would be satisfactory. The only thing he would add to it is to put in subject to receiving a report at the next council session outlining what the financial implications are.

Councillor Bates as the mover and Councillor MacDonald as the seconder agreed to withdraw their motion in order that this could be voted on.

It was moved by Councillor Richards, seconded by Councillor Bates:

"THAT COUNCIL APPROVE THE RECOMMENDATION OF THE COLE HARBOUR/WESTPHAL COMMUNITY COMMITTEE SUBJECT TO AN SATISFACTORY AGREEMENT WITH THE MILLBROOK INDIAN BAND AND SUBJECT TO RECEIVING A REPORT, AT THE NEXT COUNCIL SESSION, OUTLINING THE FINANCIAL IMPLICATIONS"

Councillor Boutilier asked how long the province was willing to wait.

Mr. Meech stated that there is some urgency to advise the Department of Transportation and Communications that the Municipality would like to proceed with the project and the resolution on the floor will do that. Unless something else comes forward his assumption is that the agreement will be as proposed. He stated that at the present time everybody has the knowledge that as a result of negotiations at least one side has said they are prepared to come back and accept this and are waiting for a response from the Municipality.

Councillor Peters asked how this affected her deferral. She stated that her understanding was that this could not be dealt with until a reply was received from the letters sent to the Minister of Indian and Northern Affairs and the MLA's.

Warden Lichter stated that if it had been brought up at the beginning of the debate that the deferral motion ought to be honoured then it would have not been debated.

Councillor Peters stated that she is aware the \$93,800.00 fee is not being addressed but by making these improvements you would get into a position where all these pipes would be in and development would occur that would require discharging into these pipes. She stated that then the Indian Band could say that the County could not discharge into the brook. She asked the solicitor if the County pays to discharge into the brook could there be a precedent set that allows for any other developer or land owner in future say

they want compensation.

Mr. Dickson stated that you have to look at the duty to provide compensation where you are affecting a landowners rights.

Warden Lichter stated that the issue was on the agenda because he had requested it. He stated that he had to weight the chance of losing that amount of money or put it on the agenda. He stated that he had received a phone call from the Honourable Ken Streach in which he inquired as to what the status of this particular situation. He had explained the situation to him and he had said that there are a number of areas that are looking for provincial monies and he cannot hold this money forever. He wanted to know if the project was a go or not. Warden Lichter stated that he had informed Mr. Streach that he did not know and Mr. Streach had informed him that he needed to know or the money would have to go to another project somewhere else. He had informed Mr. Streach that he would put it on the agenda to make sure that Council has a chance to deal with it.

Councillor Cooper asked for clarification of the two addendums suggested by Mr. Meech.

Mr. Meech stated the second addition was that, in the meantime, Halifax County will clarify all of the financial implications and also clarify with the Department of Transportation and Communications so that the Municipality is very clear as to what they intend to pay 70% of and also how the Municipality would propose to recover its net cost for the project.

Councillor Cooper stated that during discussions, with regard to the resolution, the figure of \$93,800.00 came up and it was his understanding that it was never the intention to indicate that Halifax County would in any way endorse that amount.

Mr. Meech stated that the reason the addition is there to make it clear that this has to be part and parcel of the resolution of going ahead with this project.

Councillor Cooper stated that he would remove his seconding of the motion because there is no way he will accept that \$93,800.00.

Councillor Bates stated that he would second the motion.

MOTION CARRIED
11 IN FAVOUR
10 AGAINST

It was moved by Councillor Richards, seconded by Councillor Smiley:

"THAT THE LETTER FROM L.L. CENTA, DEPUTY MINISTER,
DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS INFORMING

THE MUNICIPALITY THAT THEY WILL COST SHARE ON A 70/30 BASIS BE RECEIVED"

Councillor Peters asked if the motion that was just passed was legal as there was a deferral motion at the last council meeting with regards to dealing with this item.

Mr. Dickson stated that in order to rescind the earlier motion notice of motion to rescind would have had to have been circulated with the notice of this meeting. He stated that this was his opinion.

Councillor Brill asked, after hearing the opinion of the solicitor, what was the chairs' decision.

Warden Lichter stated that the chairs' decision was that the motion had passed.

MOTION CARRIED

CHERRYBROOK WATER EXTENSION PHASE I

Mr. Kelly outlined a report from the Engineering and Works Department stating that the first phase of the Cherrybrook water main extension is currently under construction by Woodlawn Contracting and Colonel Contracting. The report states that at the present time, the estimated cost of Phase I is about 1.9 million, i.e. about \$400,000. under the budgeted amount of \$2.3 million.

Warden Lichter stated that this relates to item #6 on the main agenda which is a memorandum to council from the chairman Cole Harbour/Westphal Community Committee Re: Extension of Water - Westphal - Second Phase which recommends that Council approve the second phase of water installation in Westphal, which would include Lake Major Road, Upper Montague Road, and Burnhope Drive, with a projected total cost of \$838,000.

It was moved by Councillor Bates, seconded by Councillor Richards:

"THAT COUNCIL APPROVE THE SECOND PHASE OF WATER INSTALLATION IN WESTPHAL, WHICH WOULD INCLUDE LAKE MAJOR ROAD, UPPER MONTAGUE ROAD, AND BURNHOPE DRIVE, WITH A PROJECTED COST OF \$838,000"

Councillor Deveaux asked if the abutting residents pay frontage for water.

Mr. Meech stated that they would.

Councillor Meade asked if this would go to public tender.

Mr. Meech stated that there are a number of things that will have