

**Balancing Needs and Rights: A New Relationship Between the
Aboriginal Community and its Municipal Neighbour**

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BALANCING NEEDS AND RIGHTS: A NEW RELATIONSHIP BETWEEN THE ABORIGINAL COMMUNITY AND ITS MUNICIPAL NEIGHBOUR

Executive Summary

Relations between First Nations and the various levels of government have undergone profound changes in the last few years. Amendments to the federal Indian Act in 1988, followed by provincial legislation on Indian property taxation in 1990, enabled bands to levy property taxes on reserve lands.

The Matsqui Indian Band was one of the first bands in the Province to adopt taxation and assessment by-laws, forcing the District of Matsqui to vacate the property tax field on the reserve. In 1992, the first year of band taxation, the municipality and the Matsqui Band executed an agreement for the provision of water and police services to the reserve. It had taken the parties five years to negotiate the first agreement; a second agreement for sanitary sewer services followed one year later.

The relationship between the Matsqui Indian Band and the municipality has evolved from infrequent contact every few years to a continuous dialogue on a number of issues of mutual concern. In 1971, the Band applied for its first water connection. By 1993, 28 residential buildings had been constructed, most of them during the previous six years. More housing development, including a mobile home park, is planned. Several years ago, the Band submitted a proposal for a sanitary landfill site on the reserve.

The only control the municipality has over land use on the reserve is through the provision of services. Agreements for water and sewer services are tied to a specific development plan for the reserve lands and any change requires consultation between the parties. Negotiations are ongoing with the band for additional services, such as fire protection, and for water and sewer extensions to accommodate planned new development on the reserve. The municipality, in turn, seeks a right-of-way for the Fraser River dyke, an extension of a regional trail through band lands, and the removal of billboards along the highway bordering the reserve.

The reconciliation of the different interests is a delicate task, which began in 1987 and continues to this day. Hopefully, the negotiations will lead to the establishment of a partnership between the Band and the municipality. The challenge lies in balancing the rights and aspirations of the Band with the municipality's desire to avoid land use conflicts and the need to be compensated for services to the reserve.

BACKGROUND

The Matsqui Indian Band is a member of the Sto:lo Nation which comprises 24 first nations in the Lower Fraser Valley. It occupies four reserves, two within the boundaries of the District of Matsqui, one in Langley, and one in Mission. The only inhabited reserve in the District of Matsqui, Indian Reserve No. 2, is a 280-acre triangular piece of land in the northwest sector of the municipality. The Fraser River forms the northern boundary of the reserve which is surrounded on the other three sides by the Agricultural Land Reserve. The developed part of the reserve is in the flood plain, protected by a dyke.

The municipality inherited the responsibility for dyke maintenance from the Provincial Inspector of Dykes in 1971. The portion of the dyke running through the reserve is approximately 1 km long. It forms part of the 12 km Matsqui dyke which starts at the foot of Sumas Mountain at the eastern boundary of the municipality and has its western terminus in the Matsqui Indian Reserve. In 1975, in response to the municipality's request, the Matsqui Indian Band Council passed a resolution granting the District a right-of-way over the reserve for the dyke and foreshore lands. Unfortunately, the municipality has been unable to get the Department of Indian Affairs and Northern Development to complete the necessary paper work.

In the mid-eighties, shortly after Matsqui had become a member of the Greater Vancouver Regional District park function, the GVRD and Matsqui executed an agreement for the development and use of the Matsqui dyke as a regional park. Over the last few years, trails have been developed for the use of hikers, horse riders and cyclists. The 150-acre Matsqui Trail Regional Park stretches for 10 km along the south side of the Fraser River. It is maintained by the GVRD as one of its 19 regional parks. Since the Matsqui Trail was part of the original Centennial Trail connecting Hope to Horseshoe Bay, the municipality and the GVRD would like to provide a link through the Matsqui Indian Reserve. This would make it possible to develop a continuous trail along the Fraser River from Matsqui to Derby Reach in Fort Langley.

DEVELOPMENT OF RESERVE LANDS

There are now 28 residences on the reserve, a Band Council office, and a saw mill. The first application for water service was received and granted by the municipality in 1971. By 1988, 12 houses had been constructed and connected to the municipal water system, at a rate of one or two in any given year. During the last five years, the Band has developed two small subdivisions of eight single-family dwellings each. The municipality invoices the Band yearly for each building's metered water consumption. Until 1993, sewage disposal for all dwellings was by septic field. The Band has now installed a sanitary sewer force main to service the reserve.

No particular concern surfaced until 1987, when the Matsqui Indian Band engaged a consultant to prepare a proposal for a landfill site. The municipality was approached to allow leachate from the proposed landfill to be collected and discharged into the municipal sanitary sewer system.

Relations between the Band and the municipality, which had been entirely amicable up to this point, became somewhat tense. I realized that the issue of services to the reserve needed to be addressed in a more formal way. The construction of three new houses in 1987, for which the Band wanted water connections, provided the needed leverage for starting negotiations of appropriate service agreements.

NEGOTIATING PROCESS

In initial discussions, the Band was represented by a lawyer specializing in land claims. His dispute of public ownership of the roads which form the west, south and east boundaries of the reserve, and his claim that the municipality was in trespass, got the parties off to a rocky start. It took me several meetings, the involvement of the Ministry of Transportation and Highways, and a search of the B.C. Gazette, to convince the Band that these roads were legally established in 1875 and 1882 and were not part of the reserve.

By 1988, the Band's negotiating team was headed by the Administrator of the Sto:lo Nation in the Chilliwack Office. His assistance in the negotiations over the last six years has been invaluable. Through him, the Band officially requested in 1988 to purchase water, fire and police protection from the municipality and to enter into a service agreement. By that time the landfill proposal had been abandoned.

Band Council members, the Sto:lo Nation Administrator, and municipal staff held numerous meetings between 1987 and 1991 in an attempt to negotiate the terms of the first agreement, which was finally executed in 1992. It only covered water and policing. One year later, after the construction of a number of new houses which could not be serviced by septic systems, the Band obtained federal funds to install a sanitary sewer system. We then negotiated a second agreement for the provision of sewer services.

I encountered many difficulties during the lengthy negotiations. Band council elections resulted in a regular change of players at the table, including two new Chiefs in the last few years. This caused considerable delay and disruption, as it seemed that we had to start negotiations over again each time. The process was frustrating for our staff and the municipal council. However, I had established a positive relationship with the Band Administrator, and between the two of us we kept the negotiations going. We both had the advantage of having been involved since the early start and of having a fair degree of determination.

Complex negotiations, due to the number of different issues at stake, became even more complicated with the advent of Indian Self-Government and Taxation legislation. This brought a number of other players into the process: the Federal Department of Indian Affairs and Northern Development, the Indian Taxation Advisory Board, Provincial Ministries of Native Affairs and Municipal Affairs, B.C. Assessment Authority and the Union of British Columbia Municipalities. In addition, there was always a need to consult with other municipalities to compare notes on the status of negotiations with their respective Indian bands.

ABORIGINAL BAND TAXATION

On October 30, 1990, the Matsqui Band gave notice that it intended to commence property taxation in 1991 on reserve lands. The Provincial Minister of Native Affairs signed a corresponding certificate under the Indian Self Government Enabling Act on January 7, 1991. Although negotiations for water and policing services were ongoing with the Matsqui Band, I was not aware of the Band's intention to take over taxation. On January 30, 1991, UBCM hosted a workshop on Indian Band Property Taxation which I attended, along with other municipalities that had Indian Reserves within, or adjacent to, their boundaries as well as representatives of the various provincial and federal authorities. The purpose of the seminar was to familiarize municipalities with the new legislation, to present several case studies of first nations/municipal service agreements, and to identify issues and concerns about the implementation of Indian Band taxation. It was only at this workshop that I learned of the Matsqui Band's intention. It turned out that, since the Matsqui Band also has reserves in Langley and Mission, all correspondence from the provincial and federal authorities had been sent to those municipalities.

With the adoption by the Matsqui Band of Property Taxation and Property Assessment By-laws later in 1991, the Province and the municipality had to vacate the taxation field. Since the reserve lands are mainly used for residences for Band members, the loss of revenue to the municipality was relatively small: \$25,577 in 1992, almost all of which attributable to utilities (three railways and a pipeline). The only non-native occupier was a small saw mill.

SERVICE DELIVERY AGREEMENTS

Beginning in 1992, the municipality started collecting the charges under the water and policing services agreement. Matsqui has its own municipal police force and we agreed that the Band would pay for policing in the same manner as the municipal tax payer, i.e. on the basis of assessment. The agreement provides that the service charge for police protection on the reserve shall be based on the assessed value of all premises on the reserve and shall be calculated annually to reflect the actual costs of operating the Matsqui Police Department for the previous calendar year.

The Band's share of policing costs is calculated using the ratio of the total value of all premises on the reserve as determined by the B.C. Assessment Authority to the total value of all assessed values in the municipality. Staff from the Regional Assessment Office were given permission to enter the reserve and to assess the 28 residences. In 1992, the Band's policing costs amounted to \$7,385, about 1/10 of one per cent of the municipal police budget.

The municipality has no legal authority on lands under federal jurisdiction and, therefore, cannot levy taxes or development cost charges. Since both the Band and the municipality had agreed that the Band would pay all charges which are imposed on any other property or development outside of the reserve boundaries, we had to find a way of levying these charges against band property without compromising federal legislation or prejudicing other bands' negotiations - (this was of considerable concern to the Sto:lo Nation Administrator).

Bulk water supply and sewer treatment are regional district functions. Matsqui is a member of DARD for water and of CFVRD for sewer. The municipality had to make appropriate applications to the two regional districts before being able to supply these services to the reserve.

Development cost charges for both water and sewer apply to all new development and are collected by the municipality on behalf of the two regional districts. The water and sewer servicing agreements entered into with the Matsqui Indian Band provide that the Band pays a fee which is equivalent to the development cost charge for each water connection and for each sewer unit. The municipality remits these fees to the respective regional district.

In addition to the normal hook-up fees and user rates, the Band also pays the standard frontage tax charged to all properties which are on municipal water. Because of the Band's concern that it should not be perceived to pay any form of tax, the frontage tax is referred to as "water frontage payment" in the agreement.

I had initially asked the municipal solicitor to draft an agreement for services. What I received - with a substantial bill, I might add - did not at all suit our purposes. The Band and I had a very basic understanding: residential properties on the reserve occupied by Band members should be treated the same as residential properties elsewhere in the municipality. The Band accepted that it would pay any fees and charges which are payable by any other off-reserve property. We proceeded to draft the agreement ourselves, incorporating many provisions from our various bylaws regulating water and sewer services in the municipality. Needless to say, the Band Administrator and I went through many draft versions, before finalizing each agreement and presenting it to the Band Council and the Municipal Council for their respective approval.

The municipality's overriding concern throughout the negotiating process was to avoid potential land-use conflicts between development on the reserve and the surrounding agricultural uses. This was certainly the most difficult issue we had to settle. On one hand, the First Nations reject the notion that a municipality has the right to interfere in their internal affairs and to dictate what development can occur on the Indian land. On the other hand, the municipality has a legitimate concern about potentially negative impacts of development on a reserve which does not fit in with the land use patterns established by its official community plan.

We found a solution to these seemingly irreconcilable differences by agreeing to substantially restrict services to existing development and to stipulate that any future development would require further negotiations between the parties. Both servicing agreements for water and sewer provide that any development on the reserve, which requires or has an impact on municipal services, shall be in accordance with the Band's Physical Development Plan attached to the agreements. The Band has advised that it intends to construct additional housing, including a mobile home park which it plans to operate as a revenue generator. The mobile home park is not shown on the plan which forms part of the agreements.

The service agreements provide that the infrastructure installed by the Band becomes part of the municipal water and sewer systems. In turn, the municipality is responsible for maintaining the lines but can use the mains to service other off-reserve properties as long as the committed capacity for the Band is not compromised.

Officially, the reserve to this day, does not enjoy fire protection. While Matsqui has its own municipal force, fire protection, on the other hand, is provided by a Joint Fire Department serving both Abbotsford and Matsqui. The two Councils had a long history of disagreements over joint services, and I thought it would be futile to raise the issues of providing fire protection to the Indian reserve in Matsqui. Moreover, after the Abbotsford defeat of the amalgamation vote in 1990, joint fire and recreation services were slated to become regional district functions. The enabling by-laws never did get approved, which in retrospect was just as well since a second vote on amalgamation passed in both municipalities in 1993. We have recently resumed negotiations of a fire protection agreement.

MATSQUI DYKE AND TRAIL

Because of our attempts of obtaining a right-of-way over the dyke for maintenance purposes, we have also been negotiating for the extension of the GVRD trail which was originally proposed to continue on top of the dyke through the reserve. It was felt that the Band would be more responsive to dealing with Matsqui on both issues. The municipality is acting on behalf of the GVRD in its discussions with the Band regarding the most appropriate route of the trail through the reserve and the Band's conditions for allowing the use of its land for this purpose.

In 1993, Matsqui Council had attached three conditions to the execution of a sewer servicing agreement: a right-of-way for the dyke, the extension of the Matsqui Trail, and the removal of billboards along the Abbotsford Mission Highway (Matsqui Indian Reserve No. 1). Although the Band provided written commitments to the municipality on the first two issues a year ago, progress has been slow.

The Band had agreed last year to grant rights-of-way for both the dyke and the trail. The Department of Indian Affairs and Northern Development then recommended that the Band renew its 1975 resolution to grant the municipality a right-of-way for the dyke. The Band Council complied and I was confident that after all these years the matter would finally be concluded.

In February 1993, our Director of Public Works, several Band representatives, and I spent an afternoon hiking through the reserve to find the most suitable route for a trail. At the end of the day, we had reached an agreement in principle and a tentative trail was subsequently mapped.

Unfortunately, a series of setbacks occurred. The Matsqui Indian Chief became ill and could no longer attend to Band affairs. Eventually, there was another Band Council election. In the meantime, the land claim issue was gaining more prominence; DIAND had changed its position and advised me that it could not proceed to approve a right-of-way.

Probably due to the Matsqui Band's legal dispute with Canadian Pacific Railway over who is deemed to own the rail right-of-way through the reserve (the case is scheduled to be heard by the Supreme Court of Canada this year), First Nations and DIAND have been directed not to grant or approve rights-of-way for any purpose. Until the railway issue is settled, DIAND is concerned that the granting of a right-of-way is a surrender of lands. Another legal instrument, some form of use permit, has been suggested.

The new Chief says that the Band's 1993 commitments to the municipality were not binding since they had not been approved by the members, only by the Band Council. She has given me an undertaking to obtain the Band members' approval, but cautions that there is opposition among the members about the trail. In the meantime, we assembled another hiking party (same people as before except for the new Chief) in the spring of 1994 to walk through the reserve again to find yet another route for the extension of the Matsqui Trail. The Band members had rejected a path on the dyke as well as the track which was surveyed last year.

We have finally agreed to a trail. Indian Band lawyers are preparing documents to permit the use of Band lands for trail purposes and for dyke maintenance. The concept of a use permit, versus a statutory right-of-way which is registered in the Land Title Office, is of concern to us, particularly, if the Band has the right to revoke the permit at will. Undoubtedly, the terms of these two permits will be subject to negotiation.

OTHER OUTSTANDING ISSUES

A number of other issues remain unsolved. No agreement has been reached on the removal of the billboards which are a source of revenue for the Band. Agreements for all the "soft" services - fire, library, recreation - have yet to be negotiated. Because of the relatively small size of the reserve and its location in the midst of the Agricultural Land Reserve, we are concerned about the Band's future development plans.

Aboriginal land claims will also affect relations between the First Nations and municipalities. The Matsqui Band has been in the forefront of aboriginal self-government. It was one of the first bands in the province to adopt property taxation and assessment by-laws, which were promptly challenged by Canadian Pacific Limited and Unitel Communications Inc. It also was one of the first bands to enter into rather unique agreements for municipal services. What other "firsts" are in store?

One thing is certain: dialogue between the Matsqui Band and the municipality will continue for many years to come. The success of these negotiations will depend on being able to sustain a relationship which can accommodate differences. Important factors in the process to date have been mutual trust and respect, personal effort, patience and, above all, perseverance.

CONCLUSION

My personal involvement in building a new relationship between the aboriginal community and the municipality has been extensive. It has taken a great deal of my time to negotiate with the Band and to deal with the myriad of authorities involved in one way or the other in the process. There have been countless meetings and seminars, as well as communication with other municipalities. In 1993, I was asked by UBCM to review the draft "Indian Property Taxation Handbook for Local Government". I provided one of three case studies for the book.

I have had to play the role of arbitrator between the Band and the Municipal Council who took the position that the First Nations should comply with all of our by-laws and accede to our demands before we give them basic services. I asked Council to take a leap of faith by extending services to the reserve and using the good will to obtain the things that we want later. Slowly, but surely, we are managing to change attitudes. However, a great deal of work remains to be done before we have full recognition and acceptance of the collective rights of the aboriginal community.