

*Harold Rayburn
Pres. Jan. 21. 1985*

H.

THE REGIONAL MUNICIPALITY OF HALTON



Solid Waste Management Committee

Agenda

JANUARY 14, 1985

THE REGIONAL MUNICIPALITY OF HALTON

MEETING NO. 1-85

NAME OF SUB-COMMITTEE:

SOLID WASTE MANAGEMENT

DATE OF MEETING:

Monday, January 14, 1985
1:30 p.m.

PLACE OF MEETING:

Committee Room No. 1
Regional Administration Bldg.
Oakville, Ontario

A G E N D A

ITEM NO.

PAGE NOS.

DISCLOSURES OF CONFLICT OF INTEREST

ELECTION OF CHAIRMAN AND VICE CHAIRMAN

DELEGATIONS

DAY-TO-DAY

- Release delayed by 1 month
for "OWMC data and plans" (NONE) re Walbridge*
1. D.P.D. Report 14/85 re: Landfill Environmental Assessment: Release of Draft Report Stage 2C Selection of Preferred Site 1 - 4 *later*
 2. C.A.O. Report 23/85 re: Environmental Mediation 5 - 18

OTHER BUSINESS

ADJOURNMENT

* * * * *

REGIONAL MUNICIPALITY OF HALTON

Report to Chairman and Members of the Solid Waste Management
Committee

From R. Mohammed, Director of Planning and Development

Date 84 01 11

Report No DPD 14/85

Re: Landfill Environmental Assessment: Release of
Draft Report Stage 2C Selection of Preferred Site

RECOMMENDATIONS

1. THAT the date for Public Release of the Landfill Environmental Assessment Draft Report Stage 2C Selection of Preferred Site be extended to February 6, 1985.
2. THAT a special meeting of Regional Council be held on February 6, 1985, at 11.00 a.m. to hear a presentation by Walker, Wright Young Associates Ltd. and consider authorization to circulate.

→ REVISED
to 9:00 am

SWMC meeting Jan. 14 '85

REPORT

As Councillors are aware the Draft Stage 2C Report was originally scheduled for public release on January 14, 1985. After lengthy discussions with the Consulting Team, and our Legal Counsel (Osler, Hoskin and Harcourt), we have collectively agreed the extensive work completed as part of the Stage 2C Work Program is not appropriately documented in a form that is adequate for public review at this time.

One of the difficulties causing this delay is a series of reports produced by other consultants that must be reviewed by the Walker, Wright Young Associates Ltd. consulting team. These reports were released to the Region in December and required some time for review. These included Phase B reports from the Ontario Waste Management Corporation,

released on December 10 and December 18, 1984 including the following:

1. Agriculture - Ecologistics Limited
2. Atmospheric Conditions - Ontario Research Foundation
3. Biology- Gartner-Lee Associates Limited
4. Facilities Characteristics and Technical Buffer Zones - M.M. Dillon Limited
5. Heritage Resources - Gartner-Lee Associates Limited.
6. Land Use - Marshall Macklin and Monaghan and Leon Kentridge Associates Limited
7. Physical Resources - Gartner-Lee Associates Limited
8. Sensitive Crops - Ecologistics Limited
9. Site Selection - 3 Volumes - M.M. Dillon Limited
 - a) General Characteristics and Identification of Site Areas
 - b) Identification of Potential Sites
 - c) Identification of Candidate Sites Map Portfolio
10. Social Economics - Institute of Environmental Research
11. Transportation - M.M. Dillon Limited
12. Urbanization - Ecologists Limited
13. Transportation of Special Waste in Ontario - Pilorusso Research Associates Inc.
14. Technical Data Map Portfolio (approximately 100 maps)

Additionally Hydrogeological Test Drilling Reports from Morrison Beatty, acting for the Town of Milton, were released on December 4, 1984. I authorized our consultants to meet with Morrison Beatty and review, discuss and assess this report. On January 9, 1985 the Region received Bore Hole Data from Gartner-Lee Associates Limited on the two OWMC sites that are concurrent with two of the Regional candidate sites in Milton and again our hydrogeological consultants are to meet and discuss the reports. While the Region's position is still to remain independent of OWMC's process, the public OWMC reports were required to be reviewed by the Region's consulting team as part of the work to be undertaken in the approved Stage 2C Work Program as described on page 2, "it is our intention to review technical documents which are available to the consulting team to ensure that our process is complete and that the review of the candidate sites is done thoroughly."

Over the Christmas holidays I reviewed 12 sub-consultants' reports prepared for Walker, Wright Young Associates Ltd. to ensure that the Stage 2C Work Program was followed and completed, and to ensure that the material will be readily understandable to the public. These sub-consultants' reports covered the subjects of:

1. Noise Assessment (Barman, Coulter, Swallow Assoc.)
2. Compatability with Existing and Future Land Use (Walker, Wright Young Associates Ltd.)
3. Visual Assessment (Landplan Collaborative Ltd.)
4. Transportation Assessment (Giffels Assoc. Ltd.)
5. Bio-physical Analysis (Bird and Hale Ltd.)
6. Social Impact Assessment (Myra Schiff Consultants Ltd.)
7. Economic Analysis (C.N. Watson Associates Ltd.)
8. Heritage Features Assessment (Landplan Collaborative Ltd.)
9. Archaeological Assessment (Museum of Indian Archaeology)
10. Agricultural Analysis (Ecological Services for Planning)
11. Hydrogeologic/Hydrologic Assessment (Hydrology Consultants Ltd.)
12. Air Quality Assessment (Senes Ltd.)

In addition, since others have been indicating the possibility of a hearing, I referred the Sub-consultants' Reports to Legal Counsel for review in terms of consistency, readability, formating, and completeness of the data in the appendices.

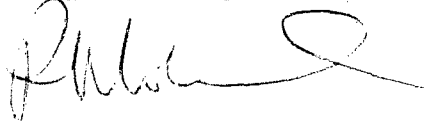
These reports were in draft form and will be published as supplements to the comprehensive Stage 2C Report comparing the six candidate sites and selecting a preferred site. This comprehensive overall report is being prepared by Walker, Wright Young Associates Ltd. and Peter Walker, has agreed to provide a copy for my review on Friday January 11, 1985. The Stage 2C Report will require some staff review time to ensure that the work program has been followed and the report is understandable to the public. Since the Region has undertaken an extensive public consultation program over the past two and one-half years, it has been made abundantly clear that understandability and completeness of the reports are very important ingredients in environmental assessment work.

Walker, Wright Young Associates Ltd. has advised that they need a further three weeks to complete the reports. They have made a firm commitment to provide the Draft Stage 2C

Report to myself for printing on February 1, 1985 at 9 a.m.
I intend to print sufficient copies for the 1,200 agencies and individuals on the Environmental Assessment mailing list and this will take some time because of the number of reports and the size and number of maps charts and diagrams (over 80).

With the receipt of the reports on February 1, 1985, I am confident that we can have all copies for Council and public distribution available for February 6, 1985. A special joint Solid Waste Management Committee and Planning and Public Works Committee Meeting could be held on the morning of February 6, 1985 for the release of the report. I feel that a preferable alternative would be to hold a special Council Meeting at 11.00 a.m. on February 6, 1985, and have Walker, Wright Young Associates Ltd. provide a full presentation of the report to Council. Due to the number of consultants, the time involved and the complexity of the Environmental Assessment Process to date, it will be difficult for all involved to absorb the contents of the Draft Stage 2C Report without a full presentation by the Consultant. The presentation will assist Councillors in responding to constituents who will no doubt have many questions regarding the content of the report. At the same time Council will consider a Staff Report requesting authorization to circulate the Draft Stage 2C Report for comment by the public and to prepare a submissions report analyzing the comments and a final report for Council's consideration. As authorized in the Stage 2C Work Program, the consultants will be holding two public information centres to explain the report. Having checked the report for completeness and understandability, Staff will be undertaking an evaluation of the report during the review period and providing comments.

Respectfully submitted,



R. Mohammed
Director of Planning and Development

PA/eb



THE REGIONAL MUNICIPALITY OF HALTON

Report to Chairman and Members of the Solid Waste Management Committee

From Dennis Y. Perlin, C.A.O.

Date 1985 01 11

Report No C.A.O. 23/85

Re: Environmental Mediation

RECOMMENDATION:

1. THAT C.A.O. Report 23/85 re Environmental Mediation be received for information.

REPORT:

This report is a follow-up to my Report C.A.O. 385/84 and the visit of the Chairman of the Environmental Assessment Board of the Province, Mr. Barry Smith.

Within that previous report I indicated that I would set out a more detailed written description of environmental mediation and how it might assist in the solution of the garbage problem in Halton as requested by resolution of Regional Council.

As stated previously, the responsibility for environmental mediation in this Province has been delegated by the Minister of the Environment to the Environmental Assessment Board.

(1) In the case of Halton I should indicate to you that, as the Chairman of the Board said to Regional Council on December 19th, the first step would be the appointment of "factfinders" to see if indeed environmental mediation would be worthwhile in Halton with respect to the landfill issue and if so, how and to what degree.

(2)
(Jan. '85) The Chairman of the Board, having received the resolution from Halton Council that it has had no objection to the appointment of factfinders, has indeed appointed two factfinders who are to report to the Chairman at the end of the month on whether environmental mediation would be possible in Halton and if so, as stated, to what extent?

(3) I have met with the two factfinders and have given them an overview of the waste management problem in Halton. In addition I have given them the names of contact people for each of the various ratepayer groups and the area municipalities whom they might use as starting points for their factfinding. They will probably expand upon that list as they see fit.

The Chairman of the Board will inform us of the decision he has made as a result of the factfinders report in due course.

(4) I am also informed that the two factfinders will be chairing a public meeting of sorts with the media and others interested in contributing to the factfinding in Oakville some time in the next couple of weeks. Once the date is precisely known, I will bring it to Council's attention.
(after Jan. 11, 83)

Environmental Mediation

(5) As far as the details of what environmental mediation is and where it started and how it has been used as well as the advantages and disadvantages of the process as experienced by others, I have asked the Planning Department to prepare the attached memorandum. Ms. Kathy Ash in that department is doing research on Environmental Mediation and has therefore agreed to prepare an overview of the whole process.

I therefore refer you to that memorandum for answers to most, if not all, of your questions concerning the process and how it has been helpful in other situations.

Applicability in Halton

Rather than extending the length of this report anymore by getting into speculation as to whether or not the process would be helpful in Halton, I will simply say that that matter is under study by two very capable factfinders, Mr. Michel Piche and Mr. Greenville-Wood, both of whom have long experience in labour mediation and both of whom have studied environmental mediation. Mr. Piche is the present Environmental Mediator involved in Simcoe County and Mr. Greenville-Wood has lectured on environmental mediations throughout the Province. These two factfinders will be making their recommendations to the Chairman of the Environmental Assessment Board as to whether in fact environmental mediation will be helpful to "solving the garbage problem in Halton" and thus the best thing would be

to just leave that particular matter in abeyance until we receive word from the Chairman of the Environmental Assessment Board.

Respectfully submitted,

DYPerlin /pm

Dennis Y. Perlin
Chief Administrative Officer

DYP*pm

THE REGIONAL MUNICIPALITY OF HALTON

INTEROFFICE MEMORANDUM

TO D.Y. Perlin, C.A.O.

FROM R. Mohammed
Director of Planning and Development

DATE 85 01 11

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Re: A Brief Literature Review of Environmental Mediation
File: 3708.54

The following was prepared by Mrs. K. Ash, Planning and Development, from a literature review of environmental mediation in Canada and the United States.


for R. Mohammed
Director of Planning and Development

PA/dsg

1. Introduction

There has been a growing recognition in Canada and the United States that Environmental Mediation can work in resolving various types of disputes (Grenville - Wood, 1983; Bellman, 1980; Cormick and Patton, 1977). The nature of these disputes may vary, but the most widely used definition of mediation is one used by Cormick (1980).

// Mediation is a voluntary process in which those involved in a dispute jointly explore and reconcile their differences. The mediator has no authority to impose a settlement. His or her strength lies in the ability to assist the parties in resolving their own differences. The mediated dispute is settled when the parties themselves reach what they consider a workable solution. //

This brief definition contains a series of important considerations or assumptions:

- ✓ . Involvement of the parties in the mediation process is voluntary.
- ✓ . Exploration of the issues will be carried out jointly by the parties, although it may be (supported by members of one or more parties) with the mediator.

(Expect reporting to MOE, though)

✓ (2) { The mediator has no authority to impose settlement. If a joint agreement is not achieved, the mediators will not make public recommendations or report on areas of agreement or disagreement. Therefore, the mediator is a neutral third party.

- ✓ . The mediator aids the negotiation process by assisting the parties in reaching a resolution acceptable to them.
- ✓ . The mediator shares the responsibility of ensuring that any agreement reached represents a workable solution - one which is politically, physically and financially feasible. The responsibility on the part of the mediator is inversely proportional to the experience and sophistication of the least skilled party in the dispute.

The essential difference between mediation as a technique for dispute resolution and the normal forums available such as court and arbitration is that mediation is a non-adversarial process. Disputes referred to courts require the skills of a technician and the art of persuasion (Mitchell, 1983). In such circumstances, the judge must apply the appropriate principles of law to the facts of each case. These skills are the attributes of the competent lawyer where success or failure of a client in the courts is usually determined not by the facts nor the principles of law, but rather by the relative competence or persuasive powers of the lawyer. In short, the tribunal's decision is binding on the parties in the case.

However, a mediated resolution of a dispute is one acceptable to all the parties involved in the dispute. In mediation, the dispute is not resolved on the basis of the principles of the law or on the basis of what a neutral arbitrator thinks is right, but rather on what the affected parties consider acceptable.

2. The "Parties"

In Environmental Mediation, the parties are the sole decision-makers as to all matters and may agree on any procedure - the parties, by agreement, can decide anything. Therefore, mediation is a non-adversarial technique. This technique is necessary where it is in the self interest of the parties to resolve their dispute on the basis of solutions that are acceptable to the parties involved in dispute resolution. It is a basic premise that the parties must be voluntary participants in the mediation process (Cormick, 1977; Lake, 1977; Fanning, 1979; Greenberg and Straus 1977).

Of greatest importance is that the parties may agree on any remedy they deem suitable to their needs and self interest. As a result, they are active participants in the process. The key to the resolution of a dispute lies in persuading the other parties to accept the reasonableness of its proposals, and not in persuading a third neutral party of the validity of their position.

The mediation technique is considered as an alternative for dispute resolution. Mediation is useful in circumstances where one or more of the following advantages are seen as important to the parties (Mitchell, 1983):

1. The process is voluntary. Any party at any time can withdraw from the process.

2. The process is participatory. The direct representatives can actively participate in the search for a mutually acceptable solution.
3. The setting and procedure is informal. There are no rules as to relevancy and admissibility of allegations and views.
4. The process involves discussion and explanation for the purpose of persuading the adverse party rather than a neutral party of the reasonableness of its position. The concept of what is fair becomes the criteria for achieving agreement rather than effective argument to persuade a neutral party of its rationality.
5. The potential process remedies are determined by the affected parties.
6. The mediation process provides an opportunity for each party to gain an understanding of the rationale for the position of the other party. Such discussion can improve understanding and possibly reduce tensions between the parties.
7. The mediation process can be a valuable educational experience for all participants.

3. The Role of the Mediator

(includes "active" involvement!)

The role of the mediator includes an identification and clarification of the 'real' issues in dispute; the objectives of each of the parties; the self interest of the parties as distinguished from what they deem to be in their respective self interest; the nature of the obstacles of agreement that must be modified or removed; and to assess what accommodation by each party be necessary to achieve a mutually acceptable settlement (Shorett, 1980; Haussmann, 1983).

In order for the mediator to fulfill the above tasks, he must conduct his role in a manner that will ensure that he will be seen by the parties as acting impartially. Furthermore, he must retain their confidence that he is making reasonable efforts to achieve a mutually acceptable resolution. To achieve this, each party must find him trustworthy. As a result, matters received in confidence must be kept confidential.

What matters (2) could be kept "secret"? (Or why?)

[This knowledge could later be working against a party as it is on record with the Environmental Assessment Board and possibly the other party.]

The mediator must make every effort to know and understand each of the parties, their respective attitudes towards one another, how they view their relationship with one another, their views on the issues in dispute, their views on the importance of settlement, how they prioritize the matters in dispute in terms of importance, the alternative available to each, and what compromise each is prepared to make to settle the dispute including adverse affects of delay in reaching an agreement. To learn these and other matters, the mediator must be allowed by agreement to meet separately with the parties (Lake, 1977; Shorett, 1980).

4. Example of a Mediation Agreement

The Northern Manitoba Hydro Dispute is one of several Canadian related Environmental Mediation resolutions. In this particular dispute, the mediation agreement contained the following (Mitchell, 1983):

1. A broad statement of the issue to be resolved.
2. A mediator was appointed to mediate the issues.
3. The mediator was empowered to:
 - a) convene meetings after a minimum 48 hours notice.
 - b) propose further studies and possible solutions to the issues.
 - c) meet separately with any one or more of the parties to discuss their positions.
 - d) adjourn or postpone meetings for a maximum of one week.
4. The parties undertook at the request of the mediator:
 - a) to make available to one another or the mediator their experts.
 - b) to make available to one another or the mediator documents but no confidential information.
5. The issues to be negotiated were defined as: compensation for damages, monetary or other forms and remedial measures arising out of or attributable to the project.
6. The parties undertook to negotiate in good faith and conclude an agreement in 2 months or such later date as may be agreed to by the parties.

7. The mediator was permitted at his discretion to make public a report presenting his analysis of the outstanding issues and the reasons for failing to reach a settlement.
8. The participation in these negotiations was agreed to be without prejudice to any of the rights at law by any party.

5. Cases (Suitable for Mediation)

The mediator must determine whether the dispute at hand is suitable for mediation and worth pursuing. In doing so, the following criteria must be met (Haussmann, 1983):

- (Gauging up on undersdog 2)
1. All parties who have a stake in the outcome of the negotiations or who could prevent an agreement from being carried out must be identified. That could mean dealing with ten or twenty separate groups.

(Workable: 3 to 4 maximum)

2. All parties must be willing to enter into mediation in good faith. And under what circumstances are parties likely to agree to mediation? Experience suggests that one of three situations is likely to prevail if mediation is being seriously considered:

- Key parties to the dispute face lengthy and costly procedures without certainty of victory in the outcome.
- Parties face an imposed solution designed by a regulatory body which most certainly will incorporate compromise positions and which may leave all parties dissatisfied; or
- Parties to the dispute must maintain an ongoing relationship as members of the same community or industry, and do not wish to risk complete polarization and communication breakdown between their memberships.

3. The mediator must have the complete trust and confidence of all parties to the dispute. This criterion requires that the mediator be financially independent of all interests in the dispute. It also suggests that a mediation team may be employed in large, complex cases in which it may be difficult to find one, universally acceptable mediator.

4. Government authorities must provide reasonable assurances that they will co-operate with the mediation process. It is quite conceivable that regulatory agencies will not wish to participate in the mediation process, for fear of compromising their statutory obligations. In such instances, the mediator will have to ensure their requirements are met by any agreement. It is particularly helpful here to have the support of the senior government politician behind the mediation effort.

(?) → Need commitment by the authority

5. The issues under dispute must be amenable to a compromise solution. This usually means that the dispute does not centre on differences of value systems, but differences of interpretation of fact. For example, it is impossible to develop a compromise position between a seal hunter and those opposed to sealing on the grounds that it is immoral and brutal to kill cute baby seals. It is possible, however, to develop such a compromise position if opposition is based on the claim that the seal hunt threatens the seal population. The difference between the two opposing positions is that one turns on a question of fact, the other on a question of belief or moral conviction.

to abide by decision

the Piche does not agree here

The mediation process is most appropriate at the point in a dispute when the issues have been defined, the parties are visible and highly involved, and there is some sense of urgency in resolving the conflict. Such circumstances usually occur near the point of impasse (Cormick, 1977).

If a framework agreement like the one above is achieved, then there is a good chance that the mediation process will succeed as this is one of the most difficult stages of the process.

6. Where Should the Responsibility to Mediate a Dispute Originate?

A mediator may be appointed by the Minister or the relevant regulatory body to meet with parties who have made an application for a hearing and to investigate the possibilities for mediation (Hausmann, 1983). In this way, disputes suitable for mediation could be identified before lengthy hearings are initiated. Even if all the issues are not successfully resolved through negotiation, a partial agreement could be submitted for adoption by the hearing Board, leaving the remaining issues to be evaluated directly by the Board. Many days of expensive hearing time can be saved and a more participatory settlement achieved.

7. Funding Issues

The method of payment to the mediator must leave him independent of the parties to the dispute. The mediator must be paid by public funds or through a trust fund established by the parties. The latter case is not likely to exist (see Busterud, 1980).

In the long term, funds must originate either directly from a legislated environmental mediation program or funds for mediation must be made available to the regulatory agencies who decide the issues. These agencies could then disburse the funds to appointed mediators as required. It must be stressed that the source of funding for the mediator must be strictly independent of any party to the dispute.

8. Summary

There have been many instances where environmental mediation has been used in disputes in the United States and just recently in Canada. In many cases, environmental mediation has been used in negotiating landfill disputes in the United States (Bellman, 1980) and in Canada (Hausmann, 1983). Not only is environmental mediation useful in landfill disputes, but endangered species, land use, energy resources, facility siting, pollution abatement and highway and powerline locations have the potential of being resolved through the same process (Fanning, 1979; Clark, 1977; Kinsey, 1977). Some of the advantages of environmental mediation are:

1. It can provide citizens with a means of weighing alternatives, voicing public concerns and altering plans for major facilities with actual or potential environmental impact.
2. It could provide citizens and decision makers with a basis for making rational decisions.
3. If cases reach the courts, mediation could supplement the courts' actions and focus attention on the real issues.
4. It can be an educational experience for all.
5. It can reduce the emotional and adversarial stances often taken by both sides and therefore shorten the resolution time with less stress.

6. An opportunity is provided for a fair compromise acceptable to all sides rather than a winner - loser outcome.
7. Understanding is improved through closer communication leading to better solutions.
8. The setting is informal so citizens are more comfortable with participating.
9. All parties have the power to set the rules and decide the conditions of settlement.

Some Disadvantages of Environmental Mediation are:

1. It may be very difficult to have all parties concerned volunteer to participate in mediation. There is no mandatory requirement and volunteering is a prerequisite.
2. A decision is not necessarily forthcoming. The parties may never reach agreement.
3. The mediator has no authority to impose a settlement.
4. The parties have to trust in the process and continue this trust throughout or the mediation can fail at any time.
5. There may be too many (indirectly) affected parties (how is the number limited?)
6. The governing authority can still overturn an agreed solution, unless the gov't authority (not only one politician!) agrees to accept the outcome.
7. As with Hearings, can citizens get financial support to obtain expert advice?

Selected References

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