June 20, 2003

The Honorable Bennie Scott, Mayor
City of Lexington
33 1st Street
P.O. Box 87
Lexington, Tennessee 38351

Dear Mayor Scott:

This is written concerning the damaged culvert on Colonial Street, which carries the flow from a drainage ditch above Colonial into the drainage swale between the two citizens who have requested assistance.

I understand that, in addition to the repair of the culvert and the right-of-way slope above it, these citizens have requested that the City do extensive grading in the swale, extend the culvert across the extent of their common property line in the swale and fill over it; or build a pond, fed by the culvert, on their property.

This is MTAS’s opinion regarding the culvert extension and/or the pond construction:

“'It is my understanding that the city did not cause the problems that are proposed to be addressed and that the general public will derive little or no benefit from the city doing the work. In my opinion this would be a questionable use of public resources.'

Article II, § 29, of the Tennessee Constitution provides that “The General Assembly shall have power to authorize the several counties and incorporated towns in this State, to impose taxes for County and Corporation purposes, respectively....” From this language has grown the public purpose doctrine, which dictates that public funds can be used only for public purposes. Courts have reasoned that, since taxes can be levied for only corporation or public purposes, expenditures can legally be made for only those same purposes. A public purpose is generally anything that promotes the public health, safety, welfare, morals, security, prosperity, or contentment of the residents of the municipality. Shelby Co. v. Exposition Company, 96 Tenn. 653, 36 S.W. 696(1896). Incidental benefit to an individual or individuals will not invalidate an expenditure, but its primary purpose must be to benefit the public. City of Chattanooga v. Harris, 223 Tenn. 51, 442 S.W.2d 602 (1969).
From information that has been provided to me, it appears the primary purpose of the expenditure of public resources in the case at hand would be for the private benefit of the property owners and not for the general public. ...Therefore, it is my opinion that this expenditure would be held invalid if challenged.” (Dennis Huffer, MTAS Legal Consultant)

That being said, however, there is certainly a valid case for the repair of the existing culvert and the surrounding slope.

You and I discussed several things about the repairs and improvements that would be in order and would certainly be legitimate use of public funds.

1. The storm damaged end portion of the existing galvanized corrugated metal culvert should be cut off, and replaced with a standard galvanized metal flared end section.

2. The slope below the flared end section should be graded to the appropriate slope and sustainable vegetative ground cover established.

3. The slope above the flared end section, between the flared end section and the edge of the road, should be dressed and graded appropriately, and a sustainable vegetative ground cover should be established.

4. If an agreement is reached with these citizens and curb and gutter is installed on their side of the street, the slope between the flared end section and the back of the curb would best be protected by installing a drop inlet at the sag point of the gutter above the culvert, and tying it into the culvert, similar to the existing curb, gutter, and inlet directly across the street from the point in question.

5. The citizens should be discouraged from removing the existing undergrowth from the swale’s drainage channel. This removal would accelerate the velocity of the water flow and lead to soil erosion problems on their property. The City should not install any rip-rap on this private property, as previously stated. The current covering of vegetative matter apparently slows the flow of water enough to prevent erosion.

At this point in time, the City has no obligation to the property owner downstream from the two citizens on Colonial. It is unfortunate that some one in the past was allowed to build a home in a drainage swale, such that the swale drains by the house and down the drive, but this is a pre-existing condition and no fault of the City. Unless the City were to take some action, such as the
“piping” of the swale, that would aggravate the drainage problem, the City has no responsibility, nor right, nor authority to do any drainage work in conjunction with this situation on this property.

I hope this has been of some help. Please let me know if I can provide further assistance.

Sincerely,

MUNICIPAL TECHNICAL ADVISORY SERVICE

John C. Chlarson, P.E.
Public Works/Engineering Consultant

pc: Ronnie Neill