

Common Ground Council Status Report – November 18, 2010

PURPOSE

The purpose of this report is to provide a status report on the City's interests with respect to moving forward the Common Ground initiative. Specifically, based on the advice of the City Solicitor, City Council is concerned that there be a dispute resolution mechanism in by-law #1 of the Common Ground Rat Portage Conservation Organization (CGRPCO) – Common Ground.

Background

In 2000, a Memorandum of Understanding was signed to advance the common ground agenda. Since that time, all Councils have abided by the terms and progress has been made over the years up to the present

On November 8, 2006, the City of Kenora, Grand Council Treaty #3 and Abitibi Consolidated signed a historically significant Memorandum of Understanding (MOU). The MOU signaled Abitibi's intent to gift over 300 acres of green space with an estimated value in the millions, in the middle of the City of Kenora to the Common Ground Stewardship Group. The Common Ground Stewardship Group was comprised of representatives from the City and the Grand Council and three neighbouring First Nation communities of Wauzhusk Onigum, Ochiichagwe'Babigo'Ining and Obashkaandagaang Bay. One of the conditions contained within the MOU was that a legal entity must be created within two years by the project partners to manage the area or the partners would return the lands to Abitibi.

On March 30, 2007, the Tunnel Island portion of the lands was transferred to the City of Kenora in trust on behalf of the Common Ground Stewardship Group.

In October 2008, the Rat Portage Common Ground Conservation Organization was incorporated. The Organization has an 8 member Board of Directors with representation from the City of Kenora, the Grand Council and the three partner communities. The intent is for this organization to manage the Common Ground initiative.

In November 2008, representatives from the Common Ground Stewardship Group met with the Ministry of Aboriginal Affairs (MAA) officials to present a proposal for legal costs, land use planning, economic development and communications support for the project. Grand Council Treaty #3 and the City of Kenora received notification of funding support from MAA for legal costs.

Following the corporate organizing documents being drafted, the next steps for the newly incorporated Company would be to develop an Action Plan for its first year or so of operation. The Board will then direct staff to prepare applications for funding to implement the plan.

The City's main priority at this time is the inclusion of a dispute resolution mechanism. The City solicitor will advise council if an acceptable mechanism can be supported. As will be noted the City has been and continues to be open to relationship building which does include a consensus approach to problem solving through meetings and discussions.

The Mayor, members of Council, the City Solicitor and, at one point, Mr. Dennis Wallace have been engaged in discussions and exchanged correspondence with representatives of Grand Council Treaty #3 in attempts to find a workable dispute resolution mechanism.

The City of Kenora has been and remains committed to moving this initiative forward. Through the actions of Mayor Compton, city staff, council, city solicitor and Mr. Wallace concerted time and effort has been expended to move the Tunnel Island project forward through the CGRPCO. By-law #1 is approved in principal with the exception of the dispute resolution provision.

To date, the project remains at an impasse because an agreement cannot be reached with our First Nation partners as to the inclusion of a Dispute Resolution mechanism in the new incorporation documents.

As the representative for the City on this project I believe that an agreeable dispute resolution mechanism acceptable to all partners needs to be in place for this initiative to move forward.

Over the period July 2009 to present numerous requests have been put forth by the City to meet for the purpose of addressing this outstanding issue, seek a resolution and move forward. On a parallel basis the City Solicitor has acted on behalf of the City in an attempt to address resolution by inclusion of an Arbitration clause based on direction from council in January 2010. Appendix 1

The City has met with Minister Bryant's representative; Minister Brad Duguid and his senior staff in Kenora and Minister Chris Bentley. These meetings, exclusive of the meeting in Kenora with Minister Duguid, occurred at the Association of Municipalities of Ontario (AMO) in August 2009 and at the Ontario Good Roads Conference in February 2010. The meeting with the then Minister of Aboriginal Affairs (MAA) Chris Bentley was to seek the Ministry's assistance for two items namely to provide funding for the next stage of the project and, requesting their assistance to finalize a dispute resolution mechanism within the organizing documents.

On October 19.09 a meeting took place with Minister Brad Duguid and his senior staff in Kenora and a request was made for his Ministry's assistance in forwarding Dispute Resolutions mechanisms previously used within Aboriginal organizations.

Based on the information received by the Ministry it was forwarded to the City solicitor for review.

In March 2010, a copy of the Dispute Resolution mechanism was forwarded to the City Solicitor for review. The actions and steps taken by the City solicitor are outlined in the attached correspondence.

With respect to meetings, a request to the Grand Chief was made on December 9.09 by Mayor Compton seeking consensus on a dispute resolution mechanism. A further follow-up took place on December 18.09 seeking resolution to this outstanding issue.

On February 2, 2010 Mayor Compton made a further request to the Grand Chief seeking input on continuing to move the project forward. A response was received from the Grand Chief expressing interest in keeping the project moving forward with a suggestion to get together and remain in contact.

On behalf of the City Mr. Dennis Wallace was asked to assist (pro bono) in resolving the outstanding issue by coordinating meetings between the City and Grand Council Treaty #3. Mr. Wallace agreed to assist the City based on his commitment to see this important initiative continue to move forward. A summary of Mr. Wallace's involvement is attached. Appendix 2

Moving Forward

The City remains committed to moving forward on this initiative. The City Solicitor is awaiting a response from the Solicitors acting for Grand Council Treaty #3. The City hopes that Grand Council Treaty #3 will consider a dispute resolution mechanism based on the principals contained in the Tsawassesn agreement. It is noted that other First Nations across Canada have adopted this approach and the city is hopeful that this proposal will form the basis of an agreement between the City and Grand Council Treaty #3.

The present council, on the advice of the City solicitor, will recommend to the newly elected council that a dispute resolution mechanism continue to be pursued and included within by-law #1 for the reasons outlined within the attached report from the City solicitor.

It is in our collective interests to be clear. We must think about the future and this can be addressed through the inclusion of a dispute resolution mechanism. The City awaits a response re the proposed draft dispute resolution clause. The City has an interest in pursuing an approach to a partnership that speaks to communities working together. It will protect and share a very special treasure – the lands on Tunnel Island, its history and the flora and fauna. Tunnel Island is a national treasure.

Appendix 1 - Reference letter from City Solicitor

Appendix 2 - Reference letter from Mr. Wallace