

Council fears loss of tax base if Six Nations expands

Posted By KAREN BEST [CHRONICLE STAFF WRITER](#), August 29 2008

When C. B. Kent Farms Ltd started buying property in 1998 near Blenheim, local residents had no idea that the company was operated by the Caldwell First Nation.

Most of the 500 acres is farmland scattered around the south Chatham-Kent area but they do own a couple of houses too, said Jack Rigby who has a mixed farm operation near Blenheim.

The community learned about the proposed reserve when the band chief said he did not need a building permit because the land he was building on would soon be in a reserve. The 180-member band has no land base.

"That's the first time we knew of it," said Rigby. "The government certainly didn't tell anyone they were proposing this."

The Chatham-Kent Community Network, a citizen group, was established to gather facts and share information. Rigby is the chair of the network that still exists but is dormant. The fifth generation farmer said efforts to lobby the federal government were futile. Network members were told to learn to live with it, he recalled.

Financed by the network, Rigby challenged the Canadian government in court in an attempt to quash an agreement in principle for the reserve. Located in the middle of the area designated for the reserve, he argued that his property rights would be disrupted especially its value and use.

The municipality of Chatham-Kent also took Canada to court with tax losses as one of their concerns. The matter went before the federal court that ruled in their favour, said Rigby. Legal battles which cost the network \$500,000, other courts. Last year, the Caldwells voted down the agreement for reserve creation.

Additions to reserves are also a contentious issue in Haldimand County. On Highway 6 outside of Caledonia, Six Nations band council purchased four farms in the 1990s. Three were purchased before 1997 so they are not taxed by the municipality. The policy changed after that year so the fourth farm is subject to taxes. Lands held in trust for a band council fall under provincial planning legislation.

Property taxes and the erosion of the property tax base is of significant concern for Haldimand County council. Presently, the federal government has a \$26 million settlement offer on the table for the Welland Canal flooding. The offer has not been accepted or rejected by Six Nations. Negotiations resume in September.

"The tax loss issue will be very significant with suggested settlements on the horizon," said Coun. Lorne Boyko. "We're in a no growth area here for pretty obvious reasons so that tax loss will be picked up by other residents."

Fearful about how much county land might be purchased, council asked Indian and Northern Affairs Canada (INAC) representatives to explain the federal Additions To Reserve (ATR) policy.

Last week, Linda MacWilliams spoke at a public meeting. She is the Ontario regional director of land claims and her unit assesses First Nations requests to add land to reserves and makes recommendations to the Governor in Council, where the final decision is made.

Of six ATR proposals by Six Nations, three currently in the works are in Haldimand County said MacWilliams. Across Canada, 110 proposals are in various stages of review. Ontario has 136 First Nations and 206 reserves.

The 36-year-old ATR policy has been revised at least once and will be up for review in the near future. Council members and residents will not be consulted about any possible changes.

In 2006, the Assembly of First Nations, which represents band councils across Canada, said the process was too lengthy. "When a legal entitlement from a claims settlement exists and is settled on a timely basis, there should be no need for an ATR," stated AFN.

Additions can be the result of court decisions, specific claim settlements, legal obligations or proposals for additional land for housing or other uses. Creation of new reserves also come under the policy.

In 2000, INAC issued a background paper stating that the Caldwell First Nation claim fell under the ATR process. If an agreement in principle was ratified, the First Nation was to receive \$23.4 million to purchase up to 4,500 acres of land within 25 years. Lands were to be purchased on a willing seller and willing buyer basis and would initially be held in fee simple which is the way, a lot is held by a home owner. Because the First Nation could not purchase a block of land, parcels were potentially to be granted reserve status. A "patch work" reserve was a concern for area farmers.

A similar concern was raised in Haldimand County when Ontario offered Crown land in Townsend and South Cayuga in 2006. The deal which required Six Nations to move out of the Douglas Creek Estates subdivision was not concluded. Six Nations Confederacy chiefs consider it as still on the table. Last fall, the Ontario government froze development for two years on those two parcels and on two provincial parks and other pieces of Crown land in the county.

Through the ATR presentation to Haldimand council, questions tightened the focus to the county and Six Nations situation. Chief administrative officer Don Boyle asked if a settlement through negotiations with Six Nations would be required to go through the policy.

"Whenever a First Nations is looking to have land afforded reserve status, that proposal is reviewed under the policy," responded MacWilliams.

In response to Coun. Buck Sloat's question, she said purchases with settlement funds will fall in the specific claims resolution.

Phil Monture, who is a Six Nations land research specialist working for the Confederacy council, said current negotiations with Canada are not under the federal specific claims policy. Under the specific claim policy, if resolution is not completed within seven years of filing the claim, the issue goes to court and when that happens negotiations cease, he added.

Butch Thomas, who is a Confederacy council bench warmer, said he learned at the meeting that the Confederacy which is in a battle to reacquire Six Nations land, is not involved. For him, the ATR policy was irrelevant. "They're handing back our own land," he pointed out.

MacWilliams said the policy is designed to balance the interests of First Nations with the interests of the Ontario government, municipal government, and third parties. Resolution can take five to seven years or even 10 years. Throughout, several stages of review take place.

Mandatory requirements include an environmental review, details about the property and consultation with third parties and the province and municipality, whose concerns must be adequately addressed. Typically they include property tax loss, municipal services, bylaw applications, land use (including drainage), land values and consultation process, said MacWilliams. Neither the provincial nor municipal government can veto an addition.

If those concerns are not settled, the proposal can be rejected by the regional director of land claims or sent to the INAC deputy minister for review.

What if the Six Nations Confederacy buys land, asked Coun. Craig Grice. In response, MacWilliams said INAC will only accept requests from band council and would not accept a proposal from the Haudenosaunee Six Nations council.

On how land will be held, Monture noted that the ATR is under the Indian Act. There are different ways of holding land including in the hands of third parties, he said.

Coun. Buck Sloat asked if public meetings would be held on a proposed addition and was told by MacWilliams that consultation is government to government and through that process public and stakeholder concerns can be relayed.

As discussion ensued, Boyko said the circumstances MacWilliams was describing were nothing like what Haldimand County is looking at. Coun. Don Ricker asked why the municipality would not talk to the federal government about tax loss instead of talking to Six Nations.

INAC facilitates consultation and requires documented evidence that it occurred. MacWilliams acknowledged that tax loss is a prominent concern and suggested an agreement be considered. A First Nation can offer to pay five times the actual tax to help the municipality adjust over a five year period, she added.

"That is how the policy provides for dealing with tax loss," said MacWilliams.

Later, Monture pointed out that if Six Nations paid property taxes, much of it would go toward education which is provided on reserves by the federal government. When Six Nations youth attend high schools off reserve, a high fee must be paid, he added.

On matters of zoning or bylaw compatibility, the municipality and First Nations can negotiate notification of development and compatibility of future uses, noted MacWilliams.

Neighbours should not have control to dictate what the land use will be, said Thomas.

In Chatham-Kent, the municipality, which was concerned about property tax loss, was told it was up to them to make an agreement with the natives, said Rigby. He was also concerned about two sets of rules and how that might impact drainage on his farm and road use in front of his home. In 2006, Caldwell band members voted in a new chief and relations are a lot better now, he said.

MacWilliams said the county can ask the First Nation for an agreement about incompatible land uses such as a pig barn beside a residential area or homes by farmland.

Sloat said Six Nations would not develop land because that would be in violation of the 1701 Nanfan treaty. He said it is what the Haudenosaunee Development Institute is advocating on development issues in the Haldimand Tract.

He also pointed out that once land is transferred to reserve status it is no longer under the Planning Act and Six Nations build a cigarette factory on a 200-acre parcel in South Cayuga and no one can stop them.

Coun. Leroy Bartlett said if Six Nations used land for farming, they would have an unfair advantage because their native competitors don't pay taxes. Monture later said non-Indian farmers earn more because they can write off expenses.

Grice pursued the possibility of municipal recourse. In response, MacWilliams said, "Setting aside land for a reserve is an exercise of the Crown's prerogative."

INAC is responsible for the ongoing administration of reserve land and under the Indian Act underlying title lies with the Crown.

Boyko wanted to know what INAC's mandate was. "The position of the federal INAC is it represents all Canadians in dealing with aboriginal issues and aboriginal interests," said federal community liaison Doug Forbes. "It's not just interested in aboriginal views and it represents Canadian views of First Nations."

Boyko said he would have more confidence in that position if the public was consulted in reviews of the ATR policy.

After the meeting, he said with the large cash settlements proposed, Canada needs to be sensitive to the non-native community. Under the existing process, the municipality is the fifth wheel unable to do anything or even to be heard, he noted.

"We are in jeopardy of our very existence," he said. "That's why it's important to make our concerns of potential changes known more..With the first major settlement (with Six Nations) you're going to see how this doesn't work."

After the meeting, Boyle spoke to a federal representative and was satisfied with what he heard. "It's a pretty thorough process that they don't take it lightly," he said.

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