

# COMMUNITY INVOLVEMENT AND ACCEPTANCE

## *Garden River First Nations Highway and Land Agreements*

>> >> >> << << <<

Alice Corbiere

The Shke-Sahkehjewaosa Community Centre on August 12, 1994, was the gathering place for a celebration of the ratification of land and highway issues, and for the official signing ceremonies of four separate agreements. After some twenty years of sporadic discussions, the Garden River First Nation (GRFN) ratified four tri-party agreements that included transfer of lands, compensation packages, highway design and construction and a highway maintenance service. The political will of the GRFN government, the Ontario government and the Federal government was finally conducive to creating an atmosphere for consensus. Bud Wildman, Ontario Member of Parliament and Minister responsible for Native Affairs was present along with Ron Irwin, Federal Member of Parliament and Minister for Indian and Northern Affairs Canada (INAC) to endorse the documents with Dennis Jones, Chief of Garden River First Nation.

The agreement package included seven million dollars in compensation, additions of lands totalling over twenty four thousand acres, a forty million dollar highway construction contract, the sale of sand and gravel for construction purposes, and a maintenance contract for the existing and the proposed highway. Chief Jones

stated "These agreements address economic issues as well as land issues that are important to our people. Employment opportunities will be available within our own lands, as well as the opportunity to acquire new and valuable skills. We are very pleased that after years of continued negotiations and hard work by all our previous Chiefs and Councillors, the elements of the agreements were ratified by Garden River First Nation Members through Band Custom." GRFN Agenda Aug 12, 1994.

Garden River and the Ministry of Transportation (MTO) held various discussions, since 1973, on the development of a four-lane roadway. The meetings always ended in stalemates and disagreements. Continuation of the dialogue was always prompted by increased traffic flow and the safety of the general public. A public report titled "*Highway 17 Feasibility Study — Sault Ste Marie to Desbarats*" completed in March 1975 recommended a new alignment and also a four-lane artery. Since this 1975 study Highway 17, to the east and west of Garden River, has been widened to four lanes. This results in a funnel effect for the traffic entering Garden River and the eastern town of Echo Bay. The volume of traffic through the Garden River and Echo Bay

communities highly increased the danger to the people of these two communities resulting in a number of fatalities and accidents.

In 1988 newly elected Chief Jones obtained a directive from his Council to initiate discussions for renewed negotiations after approaching the local MPP, a member of the New Democratic Party that formed the Ontario Government. The Federal Liberal MP of Sault Ste Marie, Garden River's neighbouring city, was the Minister for INAC. Jones obtained a confirmation from MP Irwin and with MPP Wildman of their respective governments' commitment to interact in meaningful meetings and activities to reach an agreeable and respectful solution on the highway and land issues relating to GRFN.

To form a GRFN negotiating team Jones solicited commitments from seven individual members who represented the main family groupings within the community. The team included two members of Council (Arnold Solomon and Jim Lewis), a former Chief (Noel Jones), an elder (Wallace Belleau) and a university student (Candice Zack). The Chief and Council gave the team a mandate to handle the required discussions for a proposed new highway corridor, land issues, right-of-way permits and also to communicate activities and results with community members. A coordinator (Alice Corbiere) was hired and a lawyer from Sudbury (Stephen O'Neil) was retained which resulted in nine people on the negotiating team. This team was the main driver in coordinating the required complex discussions that resulted in the GRFN community members accepting the four tri-party agreements by referendum on June 30, 1994. Over 76 percent of the votes cast were in favour of the agreements.

The negotiating team opened all meetings to the general membership. An office trailer was established next to the Garden River Band Office as a headquarters for communicating to GRFN membership the negotiating activities. Residents were welcomed to visit or phone in order to discuss issues with the staff and team members or to review documents and share information. News bulletins were delivered to each home and mailed to off reserve members. Visits to individuals in their homes were undertaken as requested. The proposed agreements were summarized in a *Lands and Highway Negotiations Information Kit* composed by the negotiating team and distributed to all members of GRFN. Four formal membership information sessions addressing the draft agreements were

held at different times over two days at the Community Centre in order to accommodate members' work or family schedules.

The negotiating process included working with officials from the INAC Federal and Provincial Land Departments and the Ministry of Natural Resources (MNR). All sections and parcels of land designated to GRFN in the 1850 Robinson-Huron Treaty and the subsequent 1859 Pennefather Treaty were identified and researched. This included lands and beds of water within the existing Garden River Reserve and within its original boundaries that include what is now known as the Townships of Kehoe, MacDonald, Meredith, and Laird in the district of Algoma. Lists and colour-coded maps were prepared showing crown lands, unsold surrendered lands, permits and third party interests that were on continuous display in Council Chambers.

The GRFN community position over the years was to deal with historical land issues before proceeding to the release of any further right-of-way through their diminishing land base. There were several grievances concerning past loss of lands or of land use permits dealing with right-of-ways. The Ministry of Transportation Ontario's (MTO) initial position was that these past dealings were not within their departments mandate. Garden River was firm and maintained that they were dealing with the Crown as the government regardless of whether or not the issues were labelled under various departments or corporations of Canada or Ontario.

GRFN's position was that its unsold surrendered lands be returned. These lands, including beds of water, had been surrendered for sale in 1859 to Canada and remained unsold. In short GRFN wanted to take their lands off the market. A 1924 federal and provincial Lands Agreement, implemented without input from First Nations, gave the power of sale over these lands from Canada to Ontario. To enable return of unsold surrendered lands to Reserve Status, the Indian Lands Agreement, enacted in 1986, became the vehicle whereby First Nations, Ontario, and Canada could enter into specific agreements for return of lands that had been put up for sale and remained unsold.

Another issue included a gravel pit located in the centre of the Garden River community that had been taken by the Canadian Pacific Railway for granular resources to build the railway line through the GRFN. The methods used by the CPR and INAC in taking possession of

these lands were viewed as an historical injustice by Garden River members. The First Nation demanded ownership of this land before an agreement could be settled for a new highway. The Garden River team convinced the CPR to return some 71 acres to Canada who, through INAC's Addition to Reserves Policy, would add these lands to GRFN Reserve status.

The firm of Centra Gas Ontario Inc. had built their natural gas line, in 1985, through Garden River with a permit drafted by INAC but not approved by GRFN. Centra Gas was paying annual payments to INAC that INAC held in a suspense account for Garden River. INAC would not release these finances without a permit approval by GRFN. For highway construction purposes parts of this natural gas line required rerouting. The Garden River negotiating team became involved with Centra Gas, INAC and the GRFN council in negotiating an acceptable permit that included increased compensation, and the construction of infrastructure gas lines to service the community along with employment considerations for Garden River members. As municipalities collect taxes from companies with right-of-ways, the concept of a payment in lieu of taxes was negotiated with the gas company for GRFN.

A similar issue existed over the Great Lakes Power Company's three transmission lines that crossed through Garden River. Permits existed that were approved by INAC. Discussions at subsequent meetings resulted in a new permit that compensated for past use and occupation, increased the annual rent, and also included an annual grant in lieu of taxes with a five-year renewal process. The team's negotiations with the Shaw Cable Co. resulted in the acceptance of a new permit. Research also revealed that Bell Canada's lines traversed through the existing MTO corridor that was for highway purposes only. A land use appraiser was contracted to assist in discussions for a permit with Bell Canada and GRFN.

Verbal information and paper trails indicated that Ontario sold lands without due regard to right-of-way allowances resulting in some cottages and homes built on road and shore allowance lands in which GRFN held interest. Cottage owners along Echo Lake in the Kehoe Township did not have clear title to their lands. Ontario and Canada officials were very concerned about these third party interests. To address these matters Garden River Chief and the negotiating

team invited members of the Echo Lake Cottage Association to a community meeting. Approximately 75% of the 130 members filled the GRFN community centre to listen and to ask questions. Garden River team members, including elders, gave a presentation that included the history of treaties and land dealings with Canadian and Ontario governments. Some initial questions from the floor were heated, however after meaningful dialogue, an unexpected outcome occurred. The Association passed a motion to support the GRFN position in the land negotiations with Canada and Ontario including a request to the MTO and the Ontario Native Affairs Secretariat for a speedy conclusion. An objective was to clear the land titles and for Ontario to grant GRFN specific crown lands as compensation. Due to the sensitivity of the negotiations extreme caution was shown. Contact with the media was planned only when a satisfactory agreement was reached.

Due to the complexity of the issues Ontario, Canada and the First Nation agreed to divide the tri-party agreements into four manageable documents. The first agreement, the *Phase I Specific Lands Agreement*, July 25, 1994, spoke to the 14,400 acres of unsold surrendered land within Kehoe Township be returned by Ontario to Canada for the purpose of being added to Garden River Reserve #14. The *Phase II Specific Land Agreement* included the financial compensation paid by MTO for the highway right of way lands, five highway crossings within Garden River, and the transfer of some 8,700 acres of Crown Lands within Chesley and Anderson Townships to Garden River. The *Design and Construction Framework Agreement* set out the process for the establishment of a construction firm owned by GRFN to build the new 4-lane highway including the sale of sand and gravel from Garden River pits for construction purpose. The fourth agreement, *Highway Maintenance Services*, included the provisions of MTO to train up to six members in the conduct of maintenance equipment and operations. Following training MTO will contract with the First Nation for maintenance services for the existing highway and for the new highway once open to traffic.

As negotiations proceeded on the details of the highway design and construction requirements a sub committee was formed called the Highway Contract Working Group that included additional community members along with Joe

Corbiere, a representative from the North Shore Tribal Council. This group was mandated to work with MTO on the details and particulars of the highway alignment and granular material pricing. The working group was also responsible for the selection and the agreement of a joint venture partnership for the formation of a Garden River Construction Company required for the highway contracts with MTO.

In reviewing the negotiation process one has to acknowledge that Chief Jones recognized the unique opportunity to reach a settlement with the Federal Minister of Indian Affairs living in the city of Sault Ste Marie, that touches the GRFN western border, and the Ontario Minister responsible for Native Affairs living in the eastern border community of Echo Bay. A key to a satisfactory outcome was inviting members of the various family groups to become negotiating team players for Garden River. This team's dedication and contribution of communication to community members and back to the team was a principal factor in the successful outcome.

A highlight of the negotiation was the community meeting with the Echo Lake Cottage Association. Their consensus to support the Garden River position assisted in the resolutions of Ontario's concerns about third party land interests. The one area that may have been improved was communicating the length of time to complete land surveys, and the highway align-

ment and design activities as GRFN community members had high expectations for immediate employment opportunities. Overall, communication and inclusion of the community and its members were the critical factors in successful negotiations and community acceptance, by referendum, of long outstanding issues affecting a whole community.

#### REFERENCES

- Garden River First Nation (1994). Her Majesty The Queen In Right of Ontario and Her Majesty The Queen In Right of Canada. *Phase I Specific Agreement*. July 25.
- Garden River First Nation (1994). Her Majesty The Queen In Right of Ontario and Her Majesty The Queen In Right of Canada. *Phase II Specific Agreement*. July 25.
- Garden River First Nation (1994). Her Majesty The Queen In Right of Ontario. *Design and Construction Framework Agreement*. July 25.
- Garden River First Nation (1994). Her Majesty The Queen In Right of Ontario. *Highway Maintenance Services Agreement*. July 25.
- Garden River First Nation (1994). *Lands & Highway Negotiations Information Kit*. June.
- Garden River First Nation (1994). *Community Celebration Agenda*. August 12.
- Jones, Dennis (2002, April). Personal communication.
- Jones, Noel (2002, March). Personal communication.
- O'Neil, Stephen (Ontario Judge). May 2002.