



THE CORPORATION OF THE CITY OF COURTENAY

STAFF REPORT

To: Council

File No.: 5040-20

From: Chief Administrative Officer

Date: Sept. 19, 2016

Subject: Braidwood Affordable/Supportive Housing Project Update and MOU






PURPOSE:

The purpose of this report is to:

1. Update Council on the status of the Braidwood Affordable/Supportive Housing Project located on a City-owned property at 810 Braidwood Road; and
2. To obtain Council approval to enter into a Memorandum of Understanding (MOU) between the City of Courtenay and Wachaiy Friendship Centre Society and M'akola Group of Societies.

POLICY ANALYSIS:

The selection of a qualified proponent to build and operate the Braidwood Affordable/Supportive Housing Project was identified as Council's number one priority in the City's 2015 Strategic Priorities Report. The City's 2016-2018 Strategic Priorities that relate to the Braidwood Housing Project fall under the theme: "**We support diversity in housing and reasoned land use planning**" and specifically the two categories identified in the graphic below.

| | |
|---|---|
|  Support initiatives and incentives to encourage lower cost housing |  Area of Control The policy, works and programming matters that fall within Council's jurisdictional authority to act. |
|  Proactively pursue housing diversity and advocate for senior government support |  Area of Influence Matters that fall within shared or agreed jurisdiction between Council and another government or party. |
| |  Area of Concern Matters of interest outside Council's jurisdictional authority to act. |

RECOMMENDATION:

THAT based on the September 6, 2016 staff report "Braidwood Affordable/Supportive Housing Project Update and MOU", Council proceed with OPTION 1 and approve the proposed "Memorandum of Understanding Braidwood Housing Project" between the City of Courtenay, Wachaiy Friendship Centre Society and M'akola Group of Societies.

Respectfully submitted,

David Allen, BES, CLGEM, SCLGM
Chief Administrative Officer

BACKGROUND:

At a council meeting held on August 17th 2015, Council unanimously passed a series of resolutions to develop a City-owned property located at 810 Braidwood Road to design and construct a supportive/affordable housing project. This included appointing the M'akola Group of Societies and the Wachaiy Friendship Centre Society as the joint sponsors of the Braidwood housing project for a 5-year term.

On October 13th 2015 the City sent a letter to the M'akola Group of Societies and the Wachaiy Friendship Centre Society to officially notify the sponsors of Council's resolution and to request a meeting to discuss how to proceed with the project. A copy of this letter (including the complete Council resolution from August 17th 2015) is attached to this report.

On October 28th 2015 the Braidwood Project Development Team held a kick-off meeting to consider how to proceed with the due diligence tasks for the property, financing, development processes and schedule, initial development objectives, and the selection of an architect.

In the subsequent months since then a number of tasks have been completed, and a schedule of work to date (to the end of June 2016) provided by M'akola is outlined below.

- ✓ Request for Proposals Issued for Due Diligence Work *December 4th, 2015*
- ✓ Contracts Awarded for Due Diligence Work *January 18th, 2016*
- ✓ Due Diligence Reports Completed *March 24th, 2016*
- ✓ Invitation to Interview Issued for Architectural Services *May 3rd, 2016*
- ✓ Interviews for Architectural Services Conducted *May 6th, 2016*
- ✓ Contract Awarded for Architectural Services *May 15th, 2016*
- ✓ Preliminary Design Concept Developed by Joe Newell Architect Inc *May 24th, 2016*
- ✓ Provincial Investment in Affordable Housing Expression of Interest Submitted *June 15th, 2016*

Aboriginal Provincial Investment in Affordable Housing Expression of Interest due *September 19th, 2016*

DISCUSSION:

On June 29th 2016 the City received a final draft of a proposed MOU for the Braidwood Housing Project between the City of Courtenay and Wachaiy Friendship Centre Society and M'akola Group of Societies. The MOU sets out the terms and conditions of the partnership between the parties as intended to guide the development planning process up to the commencement of the construction on the project on the site at 810 Braidwood Road. While the MOU does not establish legal rights or obligations, it is intended to provide the parties with a clear understanding of their respective roles and responsibilities, commitments, and communications.

Following a review by staff and the City's legal counsel, and discussions with staff from M'akola, the MOU was revised to allow for the City to transfer ownership of the property at 810 Braidwood, and to base this on

entering into a housing agreement with M'akola and BC Housing. The MOU was also revised to clarify the City's commitments respecting Development Cost Charges (DCC) and monthly progress reports. A copy of the MOU is attached to this report.

The following is an overview of the main components of the MOU.

1. Roles and Responsibilities

- **M'AKOLA** is the lead project manager and development consultant for the Braidwood project.
- **WACHIAY** is the primary partner on the Braidwood project and will work with M'akola to ensure the design and development of the project meets the specific needs of the local tenant population to be served by the project.
- **THE CITY** appoint the CAO as the City's project manager for the Braidwood project to ensure that development planning for the project proceeds expeditiously, including discussions with BC Housing and others on funding and on-going liaison with the joint project sponsors to ensure that the City is providing adequate and appropriate assistance to the project sponsors in addressing municipal issues such as zoning, development permit variances and building permit applications, as well as good neighbour agreements and housing agreements both of which require municipal initiatives

2. Commitments

- **THE CITY** is offering the following assistance and support towards development of the project:
 1. Freehold ownership of the site to be granted to M'akola subject to BC Housing final project commitment and based on entering into a housing agreement under section 483 of the Local Government Act; and,
 2. City levied DCC's will be minimized by ensuring that as many units as possible are no larger than 29 square meters and/or through an amendment to the City's DCC Bylaw; and,
 3. Forgiveness of all municipal fees, charges, levies, and costs up to a maximum as approved by City Council.
- **M'AKOLA**, will enter into a promissory note with BC Housing Management Commission in order to access the \$40,000 Proposal Development Funding loan that BC Housing has approved.
- **M'AKOLA**, one of the two joint sponsors, has committed \$250,000 in sponsor equity towards the capital cost of the project.
- **WACHIAY**, one of the two joint sponsors, has committed \$30,000 to \$40,000 in non-operating funds to sponsor equity towards the capital cost of the project.

3. Communications

- **THE CITY's** Braidwood Project Lead will report back to Council at least quarterly on the status of the project, including challenges and constraints, and recommend Council action which may be necessary and appropriate from time to time to ensure that project planning and development is proceeding as it should be. Monthly reports will be provided to BC Housing and the City's Project Lead by M'akola Development Services.

The MOU is based on discussions and input from all the parties, and also on a recent legal review by the City's counsel, Don Lidstone. Staff has confirmed that this review does not contain any confidential or prejudicial information, and in order to provide greater transparency a copy of the review is attached to this report.

FINANCIAL IMPLICATIONS:

Should Council approve turning over freehold ownership of the City property at 810 Braidwood Road, the current market value is appraised at \$289,000. There is also \$85,000 remaining in the Land Sale Reserve left

over from the funds given to the City by the CVRD for the specific purpose of assisting the City in funding a Supportive Housing project (i.e. Braidwood). The City also is holding \$100,000 in funds provided by the Vancouver Island Health Authority (VIHA) in support of the Braidwood Housing Project.

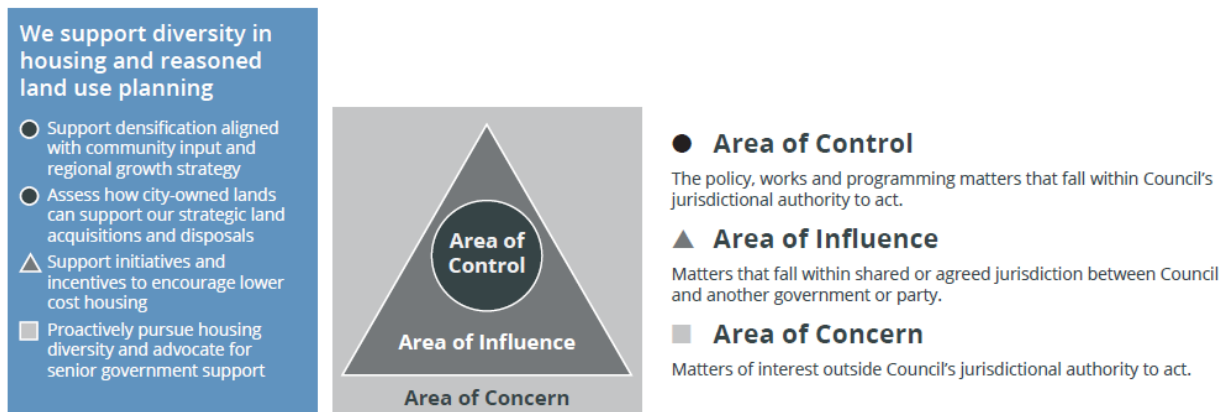
Collectively this represents a total of \$474,000, of which \$185,000 remains to offset all municipal fees, charges, levies, and other associated costs.

ADMINISTRATIVE IMPLICATIONS:

The CAO is the project lead, and works directly with the consultant. Additional support is received from Development Services staff and was included in the 2015 corporate work plan. Approximately 15 hours of staff time have been spent so far this year. Future staff time required for the remainder of 2016 is estimated to be approximately 10 hours.

STRATEGIC PLAN REFERENCE:

The Braidwood Housing Project is included in the City of Courtenay's 2016 – 2018 Strategic Priorities as outlined in the graphic below.



OFFICIAL COMMUNITY PLAN REFERENCE:

- ✓ The provision of non-profit housing as a means of increasing the supply of rental housing is strongly encouraged. Preference is for affordable and social housing to be dispersed throughout the City and not concentrated in one area.
- ✓ Ensure the provision and integration of special needs and affordable housing.
- ✓ Encourage housing opportunities and convenient community services for individuals having special housing requirements.

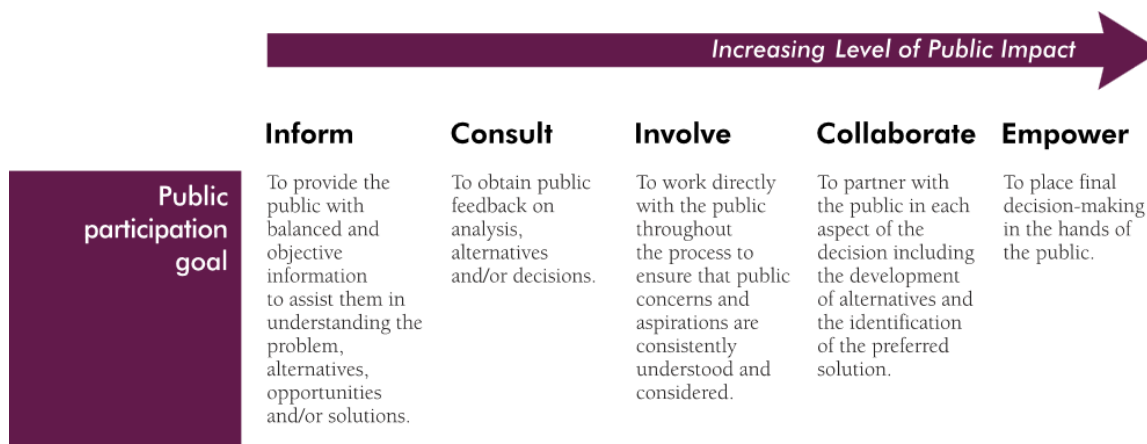
REGIONAL GROWTH STRATEGY REFERENCE:

- ✓ Ensure a diversity of housing options to meet evolving demographics and needs.
- ✓ Encourage residential multi-unit or multi-lot developments to contribute to affordable housing options including, but not limited to a range of unit sizes and types, lot sizes, multifamily or attached-unit buildings, rental units and secondary suites. These contributions could take the form of land, cash, buildings or other such items as supported by the local governments.

PUBLIC ENGAGEMENT:

The City's Social Planning consultant, John Jessup, **consulted** with the public during two Braidwood neighbourhood Open Houses on April 23 and 24, 2014.

Additional public engagement will be undertaken as required by M'akola Development Services, the lead project manager and development consultant.



OPTIONS:

OPTION 1 –

THAT based on the September 6, 2016 staff report “Braidwood Affordable/Supportive Housing Project Update and MOU”, Council proceed with OPTION 1 and approve the proposed “Memorandum of Understanding Braidwood Housing Project” between the City of Courtenay, Wachaiy Friendship Centre Society and M’akola Group of Societies

OPTION 2 –

That Council direct staff to amend the MOU based on other specific conditions and report back to Council.

Prepared by,

David Allen, BES, CLGEM, SCLGM
Chief Administrative Officer

Attachments:

1. *Letter – Appointment of Joint Sponsors to Develop 810 Braidwood Road Supportive/Affordable Housing Site, October 13th 2015*
2. *Braidwood MOU FINAL revised Sept 19th 2016*
3. *Email D. Lidstone re Braidwood Housing MOU September 1st 2016*

THE CORPORATION OF THE CITY OF COURTENAY

Office of the C.A.O.
830 Cliffe Avenue
Courtenay, B.C.
V9N 2J7



Phone 250-334-4441
Fax 250-334-4241
email: info@courtenay.ca

October 13, 2015

M'akola Group of Societies
2009 Fernwood Road
Victoria, BC

Attention: Kevin Albers, CEO

Wachiay Friendship Centre
1625-B McPhee Avenue
Courtenay, BC

Attention: Roger Kishi, Director Homeless & Housing Programs

Dear Mr. Albers & Mr. Kishi:

**Subject: Appointment of Joint Sponsors to Develop City-owned 810 Braidwood Road
Supportive/Affordable Housing Site**

At its regular meeting of August 17, 2015, Courtenay City Council unanimously passed the following resolutions:

- A. THAT Council appoint the M'akola Group of Societies and the Wachiay Friendship Centre as the joint sponsors of the Braidwood housing project for a 5-year term beginning on the date of approval of this recommendation and THAT no legal rights or obligations are hereby created and none shall arise hereafter except upon execution of all of the documents by all of the parties related to development of the City-owned 810 Braidwood Road site;
- B. THAT Council proceed forthwith to undertake the due diligence tasks identified in this report at the City's cost at the earliest possible date;
- C. THAT Council appoint the CAO as the City project manager for the Braidwood project to ensure that development planning for the project proceeds expeditiously, including discussions with BC Housing on funding and on-going liaison with the joint project sponsors to ensure that the City is providing adequate and appropriate assistance to the project sponsors in addressing municipal issues such as zoning, development permit variances and building permit applications, as well as good neighbour agreements and housing agreements both of which require municipal initiative.
- D. THAT THE City Braidwood Project Manager report back to Council quarterly on the status of the project, including challenges and constraints, and recommend Council action which may be necessary and appropriate from time to time to ensure that project planning and development is proceeding as it should be.

The purpose of this letter is to officially notify the joint sponsors of Council's resolution and to request a meeting at the City at the earliest possible date to discuss how we are going to proceed with next steps, including entering into a Memorandum of Understanding between the City, BC Housing and the joint sponsors.

The MOU will outline the terms and conditions of the partnership between the parties and guide the development planning process up to the commencement of construction of the project on the site.

For the City's part, the City is offering the following assistance and support towards development of the project:

1. A 60-year lease of the site at nominal rent;
2. Forgiveness of 100% of City levied DCC's; and,
3. Forgiveness of all municipal fees and charges.

Further, the City will at its own cost undertake the following surveys and assessments relating to the 810 Braidwood Road site:

1. A Phase 1 Environmental Site Assessment (ESA) of the site;
2. A Hazmat Survey of the existing building on the site;
3. A geotechnical survey of the soils conditions on the site; and,
4. A civil engineering analysis of the present capacity of existing water main, storm drain and sanitary sewer systems servicing the site.

In return, BC Housing has approved \$40,000 in additional Proposal Development Funding to assist the joint sponsors in proceeding with preliminary development planning. The joint sponsors will be required to enter into a promissory note in order to access this PDF loan.

Finally, M'akola and Wachaiy, the joint sponsors, have committed \$250,000 and \$30,000 to \$40,000 respectively in sponsor equity towards the capital cost of the project.

All of these factors including others which may be identified during early discussions of the MOU will have to be incorporated into this founding document.

As the City Project Manager, I welcome you as our development partners, and propose that we all meet, including BC Housing staff and our Social Planning Consultant, Mr. Jessup, at the City at your earliest convenience, to begin our discussions on the MOU and any other matters which may arise, in order to begin the development planning stage for the Braidwood project.

Please call me to propose a convenient time for this meeting.

Yours sincerely,



David Allen, BES, CLGEM, SCLGM
Chief Administrative Officer
Project Manager, Braidwood Project

Copies to:

Ms. Candice Koo, Senior Project Officer, BC Housing
Mr. Scott Kingham, Senior Building Technologist, BC Housing
Mr. John Jessup, City Social Planning Consultant

**THE CORPORATION OF THE CITY OF
COURTENAY
AND
WACHIAY FRIENDSHIP CENTRE SOCIETY
AND
M'AKOLA GROUP OF SOCIETIES**

**MEMORANDUM OF UNDERSTANDING
BRAIDWOOD HOUSING PROJECT**

MEMORANDUM OF UNDERSTANDING

THIS AGREEMENT dated for reference the 19th day of September, 2016

BETWEEN:

THE CORPORATION OF THE CITY OF COURTENAY

(“THE CITY”)

AND:

WACHIAY FRIENDSHIP CENTRE SOCIETY

(“WACHIAY”)

AND:

M’AKOLA HOUSING SOCIETY

(“M’AKOLA”),

WHEREAS the purpose of this Memorandum of Understanding is to outline the terms and conditions of the partnership between the parties and guide the development planning process up to the commencement of construction of the project on the site.

AND WHEREAS the CITY appoint M’AKOLA and WACHIAY as the joint sponsors of the Braidwood Housing Project for a 5-year term beginning on August 17, 2015.

AND WHEREAS no legal rights or obligations are hereby created and none shall arise hereafter except upon execution of all of the documents by all of the parties related to development of the 810 Braidwood Road site;

1. Roles and Responsibilities

- **M’AKOLA** is the lead project manager and development consultant for the Braidwood project.
- **WACHIAY** is the primary partner on the Braidwood project and will work with M’akola to ensure the design and development of the project meets the specific needs of the local tenant population to be served by the project.
- **THE CITY** appoint the CAO as the City’s project manager for the Braidwood project to ensure that development planning for the project proceeds expeditiously, including discussions with BC Housing and others on funding and on-going liaison with the joint project sponsors to ensure that the City is providing adequate and appropriate assistance to the project sponsors in addressing municipal issues such as zoning, development permit variances and building permit applications, as well as good neighbour agreements and housing agreements both of which require municipal initiative.

2. Commitments

- **THE CITY** is offering the following assistance and support towards development of the project:
 1. Freehold ownership of the site to be granted to M'akola subject to BC Housing final project commitment, and based on entering into a housing agreement under section 483 of the Local Government Act; and,
 2. City levied DCC's will be minimized by ensuring that as many units as possible are no larger than 29 square meters and/or through an amendment to the City's DCC Bylaw; and,
 3. Forgiveness of all municipal fees, charges, levies, and costs up to a maximum as approved by City Council.
- **M'AKOLA**, will enter into a promissory note with BC Housing Management Commission in order to access the \$40,000 Proposal Development Funding loan that BC Housing has approved.
- **M'AKOLA**, one of the two joint sponsors, has committed \$250,000 in sponsor equity towards the capital cost of the project.
- **WACHIAY**, one of the two joint sponsors, has committed \$30,000 to \$40,000 in non-operating funds to sponsor equity towards the capital cost of the project.

3. Communications

- **THE CITY's** Braidwood Project Lead will report back to Council at least quarterly on the status of the project, including challenges and constraints, and recommend Council action which may be necessary and appropriate from time to time to ensure that project planning and development is proceeding as it should be.
- A monthly report will be provided to BC Housing and the City's Project Lead by M'akola Development Services.

**Email sent September 1st 2016 at 6:01 PM from Don Lidstone re Braidwood Housing MOU
legal review – for consideration at the September 6th Closed Council Meeting**

Hi David and John

This confirms my telephone advice to you today that:

1. From a legal perspective, it is my view that the City may proceed with the Braidwood Housing Project Property disposition by way of a transfer of the fee simple title for nominal consideration, instead of by way of a long term ground lease, because:
 - (a) A long term ground lease containing the BC Housing provisions is tantamount to a transfer of title, so for practical purposes, the City is not giving up equity by transferring title in lieu of this long term ground lease;
 - (b) By transferring title for nominal consideration, the City is not unlawfully assisting a business (s. 25(1) CC), because the transferee is a non-profit entity that is not carrying on a business in the sense of the definition in the CC;
 - (c) The transfer of title, versus a lease, will increase the likelihood of, and facilitate, a BC Housing grant to the entity;
 - (d) The transfer of title, versus a lease, will reduce the City's involvement in administration (in regard to additional rent, insurance, defaults, notices, building destruction, etc.);
 - (e) The transfer of title, versus a lease, will eliminate any potential claims involving the property where the City would normally be named as a defendant if it holds title; and
 - (f) The City's interests can be protected in a housing agreement under section 483 LGA in the absence of a long term lease [to protect the City's interests in regard to the form of tenure (e.g., rentals versus strata ownership), the definition of "affordable", and the definition of who is eligible (noting that none of these things can be controlled by zoning or a covenant)].
2. If the City proceeds by way of a transfer of title in lieu of a long term lease, then:
 - (a) The City must give notice of assistance under section 24(1)(a) CC;
 - (b) A partnering agreement is not required, because the entity is not a business;
 - (c) The City must give notice of disposition under section 26(3), as it would in the case of a long term lease;
 - (d) The City should proceed with a housing agreement under section 483 LGA to control the form of tenure (e.g., rentals versus strata ownership), the definition of "affordable", and the definition of who is eligible (noting that none of these things can be controlled by zoning or a covenant).
3. In regard to the proposed DCC waiver:
 - (a) The project is DCC-exempt if the each unit in area is less than 29 square metres (under section 561(7) LGA and subject to the residential controls);
 - (b) If there are units having an area in excess of 29 square metres, then the City and regional district would be best advised to amend the DCC bylaws under section

**Email sent September 1st 2016 at 6:01 PM from Don Lidstone re Braidwood Housing MOU
legal review – for consideration at the September 6th Closed Council Meeting**

561(8) or 563(3) LGA to authorize the waiver of DCC's, since there is no regulation under section 561(11)(a). [There is also the argument that the diction of section 561 is such that there is an automatic statutory exemption for the units under 29 square metres and that DCC's are payable only for the larger units, although there is also an argument the larger units trigger DCC's for the building as a whole – we have not finalized an opinion on this issue as you have indicated that DCC bylaw amendments might be the optimal route].

4. Further to our discussion today, in order to address these issues, the parties would amend the MOU to provide for the transfer of title in lieu of a long term lease, the housing agreement, and the contractual monthly reporting to the CAO. Please advise if you want me to send you these revisions.

- Don

Don Lidstone, Q.C.
LIDSTONE & COMPANY
Barristers and Solicitors
Suite 1300 - Sun Tower
128 Pender Street West
Vancouver, BC V6B 1R8
604.899.2269 P
604.899.2281 F
604.999.1131 C
www.lidstone.info

Please consider the environment before printing this email and any attachments.