



**THE CORPORATION OF THE UNITED TOWNSHIPS OF  
HEAD, CLARA & MARIA**  
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Monday, January 15, 2018

Craig Kelly and Jason Davis  
Via Email

RE: Algonquin Trail and Head, Clara & Maria Concerns

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Gentlemen

Ultimately, any decision is a decision of our local council however; as a municipal employee I have legislated obligations to serve the Council and residents of our municipality which I take quite seriously. The reports provided to Council and well as questions posed to County staff, committee and Council are intended to provide and obtain specifics of the issues posed by the use of the rail corridor through Head, Clara & Maria as the Algonquin Trail.

My job description includes in part:

- “Provides well researched reports to Council advising on policy development noting various options and administrative and financial implications of those options in areas of municipal jurisdiction.
- Drafts by-laws, policies and resolutions for consideration by Council, conducting necessary research and analysis submitting reports to Council for consideration, amendment and adoption.
- Responsible for researching and reporting to Council on all Planning matters respecting short and long range planning and development policy and the County Official Plan.
- Fulfills duties and obligations of Zoning Administrator under the Zoning By-law and the Planning Act.
- Protects and represents the Municipality’s interests in all business activities and administrative functions.”

In recognition of those statements, I would be negligent to not fully investigate and report on the issue of the use of the rail bed within Head, Clara & Maria to protect the interests of our council, our residents and our municipal corporation simply because it is a controversial political issue. That is precisely my duty to this municipality.

I am certain you are each aware of the challenges we are currently experiencing within our community and with our Council over the past year due in a large part to the way that access to the trail through Stonecliffe has been provided to the local Missing Link Snowmobile Club without municipal consultation.

I am certain you are also aware of the emails exchanged recently including that sent by Mr. Hutton dated December 21, 2017. (I have been told by Mr. Hutton that the points included in that email were those of the committee and not his personally.) As well as with the entire process of rolling out this trail purchase, determination of use and draft management plan; there are a number of inconsistencies and errors within that email which I would appreciate, on behalf of our Council, your consideration of and response to. I don't intend to get into a public debate with Mr. Hutton. My only wish is to protect the municipality in which I work.

Additional information and questions for your consideration and that of Head, Clara & Maria Council for policy direction at its January meeting is included in this letter and the attached Report to Council provided for your reference. Please feel free to share publicly as this municipality takes its responsibility to accountability and open and transparent governance quite seriously.

Awaiting your thoughtful and thorough response.

Respectfully and on behalf of Council

Melinda Reith, D.M.M. AMCTO  
Municipal Clerk and CAO

## **Response to Mr. Hutton's Email (On behalf of the Trails Committee)**

(Mr. Hutton's comments are in blue)

Mayor and Council of the United Township of Head, Clara & Maria, I received the e-mail below (including attachments) from Melinda Reith, Clerk and Chief Administrative Officer regarding the Algonquin Trail in the County of Renfrew and I have the following concerns with the accuracy and content of the e-mail:

1. Land Use Planning - Resolution no 12/12/009 indicates that a motorized trail is not compliant with the Provincial Policy Statement and the County's Official Plan and is contrary to HCM's Zoning By-law. The Report and Background/Executive Summary attached to the e-mail and prepared by Melinda Reith only contain selective excerpts from the County's Official Plan and the Provincial Policy Statement. Ms. Reith then goes on to make recommendations to Council based on the selected excerpts. I am not aware that Ms. Reith is an experienced land use planner or is a Member of the Canadian Institute of Planners or a Registered Professional Planner in Ontario. As a MCIP and an RPP in Ontario I find the report in terms of its advice related to land use planning very unprofessional. I can assure you that we have reviewed the Provincial Policy Statement, Renfrew County's Official Plan and the Township's Zoning By-law and do not come to the same conclusions as Ms. Reith. Our experience in dealing with land use issues that arise from time to time near trails is that there are many means of mitigating land use issues, including noise and dust. <sup>1</sup>

Response

- a. <sup>1</sup>Legal counsel for the United Townships of Head, Clara & Maria confirmed the following in an email provided in the fall of 2017...

"I reviewed the Township's Zoning By-law. Section 3.18 provides:

The provisions of this By-Law shall not apply to prevent the use of any land or the erection or use of any building or structure for the purpose of public service by the Municipality or by any local board thereof defined by the Municipal Affairs Act, any telephone, gas, or telegraph company, and department or agent of the Government of Ontario or Canada, including Hydro One, provided that: With the exception of a public utility, the lot coverage, setback and yard requirements prescribed shall be complied with.

The trail proposed on County owned land is not a "Public Use" and would not be permitted as of right under the by-law. It is my opinion that the County must comply with zoning in order to have the trail used as proposed.

There are no specific provisions in the County OP that speak to this trail use. Section 13.2 provides:

(7) The development of recreational trails that allow for pedestrians and/or cycling will be encouraged and supported.

If the County OP did have direct policy, the obligation of the Township would be to amend its zoning for those lands accordingly. Absent that specific policy, there is no obligation on the Township to re-zone trail lands.

The only disagreement I have with the content of Report #14/11/17/1102 is the preamble, specifically:

AND WHEREAS use of a motorized trail through HCM is contrary to the current Zoning By-Law, the current Renfrew County Official Plan and the Provincial Policy Statement as they speak to the importance and preference of active transportation including pedestrian and cycling over motorized trails;

In my opinion, while the PPS does speak to active transportation, it is not correct to say that motorized trail use would be contrary to the PPS." Cunningham/Swan

- b. Based on this email, the resolution was changed from "**would be contrary to**" to "**not strictly compliant with**". As noted above, the OP and PPS do not specifically speak to motorized trail use. The PPS and the OP speak to active transportation and trails; not motorized trails even though the OP does note that it would pursue the purchase of any abandoned rail corridors.
- c. Further, to some of the questions still unanswered to Council's satisfaction is the ownership of road allowances. Again, we have obtained preliminary legal advice and have been provided with the following. Has the County obtained different advice? Can CP Rail provide evidence of ownership of municipal roads and unopened road allowances?

Finally, with respect to the issue of whether the municipal road is owned by the owner of the rail bed, without conducting a title search and understanding the factual background it is difficult to provide any opinion on this issue. I can say as a general matter that all municipalities have "forced roads", and the paper title to these roads is often not in the name of the municipality. The *Municipal Act* provides that a road is owned by the municipality regardless of who has "paper title" to the land upon which the road is located. Unless this becomes a significant issue, I am not concerned about claims to ownership of a municipal road by others. If this becomes a contentious matter, we would be pleased to look at the underlying title and the historical maintenance of these roads and provide an opinion specifically on that issue.

- d. Although Mr. Kelley's email of August 1, 2017 to Councillor Foote suggests that CP owns road crossings over municipal roads, our solicitor suggests otherwise.
- e. Should the landowner (the municipality) not have a say in how the use of its roads and unopened road allowances are governed/determined? Since the County is leasing crossings to private users, should the municipality not also be in a position to lease its crossings to the County for trail use?
- f. As to Zoning...Once the rails and ties have been removed the status of the rail line changes; taxes paid are affected, local zoning by-laws apply to what were once federally regulated lands but are no longer.
- g. Please review the attached email from our solicitor dated August 15, 2017.

"Once the County owns the lands you are correct that the lands are subject to local zoning controls. If the Township elects to zone the lands to prohibit a trail, the County could appeal that decision to the OMB (depending on when the appeal is filed and what the appeal rules look like at that point in time). County ownership is not superior to zoning – they must comply with your zoning. As with all matters of land use, PPS, OP and what is good land use planning are what governs."

Again, Council does not wish that the trail not occur, but does request that the process, use and management respect the by-laws and wishes of the lower tier. Consultation prior to this point would have gone a long way in resolving these issues before the entire trail has become such a contentious issue in our community.

- h. As to mitigating noise and dust issues; we agree that there are steps which may be taken to accomplish that goal. We were simply asking to be consulted on what and when those tools might be applied to the trail sections already being authorized for use.
- i. Our residents have already been exposed to one winter of snowmobiling and one summer of 4-wheeling and have not seen any steps taken to alleviate their concerns. The rail purchase may not yet be completed and the management plan not yet approved however; permission for use within our municipality has been provided by the County and the challenges our residents are facing are real and have been since January of 2017.

- j. Has prudent Land Use planning and compatibility been practised during this purchase process concerning sensitive land use, change of use and adverse effects from release of contaminants such as noise, dust, vibration and exhaust fumes?
- i. “A recognized factor and principle of good land use planning, whereby land uses which are known or expected to cause environmental problems for one another, when in proximity, are deemed incompatible and are protected from one another by separation and/or other means during the planning stage”.
  - ii. The Planning Act may require the provision of information in order to assess the effects of noise emissions from potential sources and the impacts on noise sensitive land uses when changing land use or considering severance. Were sensitive use issues given proper consideration in this plan?
  - iii. The Provincial Policy Statement directs that healthy, liveable, and safe communities are sustained by, among other things, avoiding development and land use patterns that may cause environmental or public health and safety concerns. How is motorized and non-motorized shared trail use, noise, emissions, vibrations, and uncontrolled speeding considered to be protecting public health and safety?
  - iv. Under the *Environmental Protection Act R.S.O. 1990* there is a responsibility when considering new uses of properties to protect sensitive users (residential properties) from adverse effects from the release of contaminants. The Quebec court case referenced in the attached report to Council found that noise, vibrations and fumes from snowmobiles fell into this category. How has the County planned to account for these protections?
  - v. Clause 7 section (a) of the OFSC agreement included in your draft Management Plan, states “The Licensee and Co-Licensee agree that they shall immediately carry out all measures necessary to keep the licensed premises free and clear of all environmental contaminants or residue (hereinafter referred to as “environmental contamination”),...”

Environmental contaminants are defined under the *Environmental Protection Act* ““contaminant” means any solid, liquid, gas, odour, heat, sound, vibration, radiation or combination of any of them resulting directly or indirectly from human activities that causes or may cause an adverse effect; (“contaminant”)”.

The class action law suit referenced in the Report to Council # 23/01/18 – 1101, out of Quebec provides evidence that alleviating noise, odour and vibration issues are more easily said than done. The resolution to the issue in that location was to limit motorized use in proximity to residences. It should also be noted that the insurance companies providing coverage for that County were not found liable, only the County was held responsible. Again, with joint and several liability, HCM staff

are bringing to Council's attention, the potential for liability to our municipality, simply because the trail runs through our community. Let's work together to alleviate these concerns now.

Unilaterally dictating that lower tiers who wish alleviation of these contaminants for their residents have to pay for by-passes is less than democratic.

The Draft Management plan states that the Licensee or co-licensee is responsible to correct environmental contamination. Are the OFSC clubs willing to pay for berms? Walls? Etc.? Will they pay for increased policing to ensure compliance with speed limits posted on their signs? Otherwise, we have learned from past experience that signs simply are not effective. Finally, should these "measures" not have been installed prior to trail use?

2. Consultation with Head, Clara and Maria – The County went through extensive consultation regarding the Algonquin Trail in the fall of 2016. Six open houses were advertised and held in six locations along the Trail and the open houses were open to elected officials, staff and members of the public. The Open houses were well attended with approximately 450 people attending.<sup>2</sup>

Additionally the Trail has been the subject of numerous committee meetings and meetings of County Council. The former Mayor of Head, Clara and Maria was a member of the Development and Property Committee and of course, was a member of County Council and spoke several times on the Algonquin Trail at meetings of committees and County Council. Numerous resolutions were passed both at the committee level and County Council prior to the project proceeding.<sup>3</sup>

#### Response

- a. <sup>2</sup>It is questionable whether six open houses conducted throughout the entire County of Renfrew advertised as "public information sessions" and inviting "county residents" constitutes "extensive consultation". The email address referenced in Mr. Kelley's email, was not advertised in this notice. In fact, I only learned of it through that email dated August 24, 2017. Further, there was no indication that the October 2016 open houses would be the only consultation available throughout the entire process: purchase, use and/or management planning.
- b. Based on the fact that the 2016 County Trails Strategy mentions consultation with **municipalities and stakeholders** numerous times; it was assumed that the ad inviting residents to ask questions and have them answered by County staff was significantly different than "municipal consultation". As there was no specific invitation to Council members, or staff; it was expected that would come at a later date.
- c. To date, the only consultation staff or Council of Head, Clara & Maria has received is included in the email request from Craig Kelley dated July 19, 2017 to apply for the Cycling grant and "That your Public Works department give consideration to assisting us with the work needed on the Trail - whether that assistance is in the form of paid or in-kind, or through the loaning/renting of municipal equipment (brushing heads, graders, etc.)."

- d. It is interesting to note that the local ATV clubs have been consulted. As noted on their web site **“Renfrew County ATV Club is proud to be a partner and stakeholder on the new Ottawa Valley Recreation Trail (formerly the CP Rail line) through Renfrew County. We continue to work with our other motorized and non-motorized trail user groups, landowners, and municipalities to help see a successful and respectful multi-use trail system.”** <http://www.renfrewcountyatv.ca/trails/ottawa-valley-recreation-trail-ovrt/>. It is quite obvious to HCM Council and staff that the local MLSC has been consulted.
- e. How is an open house, with a broad invitation to the general public, considered “consultation” with lower tier Council? It is difficult to believe that the Council members and staff of the lower tiers of Laurentian Hills and Head, Clara & Maria were expected to attend the public meeting in Chalk River and have their concerns addressed in the same manner as the general public.
- f. Further, according to Mr. Hutton’s email above, approximately 450 persons attended the six sessions. Is it responsible to make such an important, far reaching and costly decision which will affect the finances of County ratepayers well into the future with just 450 out of 97,545 people consulted? This represents just less than half of 1% of the population. Are County Council and staff satisfied that this is considered as “extensive consultation”?
- g. When a public meeting was hosted by Head, Clara & Maria Council in September of 2017 to discuss the use of the Stonecliffe section of the rail corridor by the local snowmobile club, over 60 people, representing nearly 25% of our permanent population was in attendance. Many who couldn’t attend sent emails, made phone calls and spoke with staff and Council in person. That might be considered extensive consultation.
- h. <sup>3</sup>As for committee meetings and meetings of County Council; it is a well-known fact that a person sitting on the Council of an upper tier government does not have to vote as his/her Council or community would have them vote. They are in fact a representative of the municipality on the upper tier and not a representative of the local Council. That being said, relying on the decisions and statements of such an upper tier council member is not in fact consultation with the lower tier Council or the community if that person has not made the issue public or obtained input from members of the public but instead votes his/her own conscience. It can be; often it is not.
- i. This fact was stated quite publicly at a training session by Fred Dean, I believe sponsored by the County, held at Miramichi Lodge back in February of 2014; many County and lower tier representatives and employees were in attendance. A member of an upper tier has no obligation to vote the way his/her council or community wish him/her to. Relying on this representation as evidence of consultation with a lower tier municipality is inadequate.
- j. Over the past number of years, then Mayor Gibson did make comments to HCM Council that the rail purchase was moving through and nearly every time such a conversation occurred,

other Council members expressed their dissatisfaction with that fact restating that “we didn’t want this trail”. Apparently County Councillor Gibson did not bring this Council’s position forward at the County level.

- k. Further courts cases in Ontario have decided that “A mayor may bind the municipal council only if his or her actions are authorized by a majority of council.” *Severn (Township) v. 934335 Ontario Ltd.1994.*
- l. On May 19, 2016 an email between Mr. Emon and Mr. Gibson speaks to the possibility of a predetermination by members of the Trails Committee on the use of the trail, prior to any public consultation in Renfrew County occurred. Was the process of holding 6 public meetings a pretense? It appears ultimate use was already a foregone conclusion?
- m. Additionally, there are numerous quotes from representatives of the Trails Advisory Committee stating that use had not been determined but many uses would be considered and not forced on lower tiers. At the same time, they state that trail proponents and advisory committee members have always spoken of a multi-use four season trail. The two cannot both be true. Is this evidence of bias?
  - i. <http://www.hometownnews.ca/lanark-county-track-ottawa-valley-recreation-trail/>
  - ii. “Nothing is cut in stone at the moment,” Greaves said, adding that there is no timeline as to when the trail is opening. “We still don’t know who would be using the trail.”
  - iii. “Please send us your comments. We’ll be taking them into account as we create our management plan,” Greaves said. The management plan will be a living document, meaning changes can be made to it as things come up in the future.
  - iv. <https://www.insideottawavalley.com/news-story/6951268-multi-use-trail-to-boost-economy-renfrew-county-officials/>
  - v. “We are not going to impact the tax rate,” Sweet said. “The partners and CP are pleased with the outcome of this agreement that will benefit our communities for generations to come.”
  - vi. He (Sweet) spoke at every meeting to date, and said about 70 to 100 people attended each; the vast majority representing snowmobile and other groups who support the idea.
  - vii. **“If at the end of the day a local council has made a decision – it will be honoured,” Sweet said. “We are not going to tell municipalities what can happen in their jurisdiction.”**
  - viii. <https://www.insideottawavalley.com/news-story/7161914-concerns-over-county-s-proposed-multi-use-trail-continue-in-mississippi-mills/>
  - ix. “It (OVRT) does present some challenges,” he admitted. “Motorized vehicles and passive recreation are not compatible. In our analysis, we’re looking for two sets of trails. The trail is 90 feet wide so it’s quite possible to do that if we wanted to.”

- x. One attendee felt that the multi-use issue of the trail was already predetermined. “That’s a good point,” Greaves commented. “The thing about this trail is that we’ve been talking about it for seven years at county council. We always wanted it to be a multi-use trail, but we wanted to have these meetings ... is there a potential to have two trails? Yes, there is lots of potential.”
- n. The email of June 23, 2017 from then Mayor Jim Gibson to fellow HCM Council states how he intends to vote on the rail use issue, even though at local Council, he insisted on deferring any public discussion, public meeting or public consultation until September 2017; long after the County decision would be made. He resigned shortly after that vote was taken.
- o. Is it not true that the Development and Property Committee is and was composed of only 7 lower tier members? And the Trails Advisory Committee composed of only 3? Is it possible that with such a small group these decisions were made without “extensive consultation” of the communities who would ultimately be affected? Why was the format used in the K&P trail decisions not replicated here? That would more realistically be considered to be extensive consultation.
- p. Certainly there has been consultation with members of the lobby groups wishing to push their own agenda, but aside from them; has there been any serious information provided to members of the public? Do County residents know what this will cost into the future? Are they aware of the potential for liability? Do they understand how their taxes may be affected?

Despite these valid arguments, Head, Clara & Maria, with their limited influence on County Council were certainly not going to change the decision to purchase the rail corridor. It must be repeated that HCM Council does not outrightly reject the purchase or establishment of a trail. Council members, residents and staff did however; expect that there would be consultation on the use of the trail within our municipal borders and in proximity to our residences.

Once the purchase was approved, it was fully expected that sincere dialogue between planners and HCM would occur; to ensure the best use of this resource within our community, while having respect for the wishes of the community as was outlined in the K&P Management Plan and the County Trails Strategy Document and media releases which were used by HCM staff as providing precedent.

- q. The July 5<sup>th</sup> 2017 news release states “Chair of the Algonquin Trail Advisory Committee and the Development & Property Committee, Councillor Bob Sweet states, *“The County Council resolution enables the County to move forward with the creation of a Management Plan and **also allows the local municipalities to explore options for use in their jurisdiction.**”* This would lead those of us in lower tier municipalities to think that perhaps some consultation might be provided to discuss the creation of the Management Plan and use in our jurisdiction.
- r. It further states “This motion **follows the original intent of the use of the corridor** and provides direction on the future use of the Algonquin Trail within the Management Plan.” Again, the

“original intent” was approved no matter the input from those who have opposing views and without consultation as per the County’s own Trail’s Strategy of May 2016.

Based on the following excerpts from the Trail’s Strategy, municipal staff fully expected that consultation with HCM staff and/or Council would occur prior to major decisions as to use within our borders would be made. That document speaks on over 7 occasions of stakeholders, municipal partnerships, consultation and collaboration:

- i. “A successful linked trails system requires **collaboration and partnerships** with a variety of groups and stakeholders ranging from **municipalities...**”
- ii. “That **the association collaborate with municipalities both inside** and outside the County of Renfrew on a variety of trail issues such as linkages, trailheads, promotion, and maintenance;”
- iii. “**Undertake municipal and public consultations to determine use and management objectives**”
- iv. “Subsequent to the purchase of the corridor, the County of Renfrew established the K&P Management Advisory Committee (composed of elected officials and lay persons) to undertake **a public consultation process** and to make recommendations to the County Development & Property Committee regarding the most appropriate uses of the corridor.”
- v. “...and other destinations as **identified through consultation with the local municipalities and members of the public**”
- vi. “The **County will have to work collaboratively with many stakeholders** to have a successful linked trail system. The stakeholders include volunteers, **local municipalities**, local businesses, public health unit, and other trail organizations (i.e. snowmobile/ATV clubs, cycling associations).”
- vii. And finally...“**The first and most important partnership is the local municipalities.** As discussed earlier in this report, the local municipalities are responsible for providing the majority of recreational facilities. They have boots-on-the-ground knowledge of their municipality and the needs of their ratepayers. Without the co-operation and partnership with the locals, the creation of linkages and a regional trails plan will not materialize.”

You know the document, you get the point.

- s. It seems that the K&P Management Plan is a much fairer document, considering consultation and the input of the applicable lower tiers and resident groups; why was this format not used with the Algonquin Trail?
3. Meeting on December 12, 2017 – As you know, County staff was to meet with the Council of Head, Clara, Maria on December 12, 2017. Unfortunately the meeting was cancelled by the Township due to inclement weather. Prior to the scheduling of the December 12th meeting numerous attempts have been made by County staff to meet with your Council but to no avail. Another meeting has been scheduled for January 23, 2018. It is disappointing that this resolution came forward prior to our

meeting with Council as it was our understanding that Council wanted to meet with County staff prior to the issue being discussed. <sup>4</sup>

#### Response

- a. <sup>4</sup>April 4, 2017 – Mr. Davis and Mr. Kelley were made aware of challenges we were having with the use of the rail corridor by snowmobilers throughout HCM via email from Steve Boland, County Public Works whom I had contacted for advice for trail traffic calming methods used elsewhere in the County.
- b. On April 19, 2017 I spoke with Mr. Davis on the phone and we had a conversation about the use of the rail corridor through Stonecliffe and resident, Council and staff concerns. When asked why there hadn't been any consultation re: the use of the corridor; Mr. Davis stated "well, they always said it would be a motorized trail right from the beginning". The Clerk's comment was "just because they've been saying it, doesn't mean that it was accepted by residents."
- c. Later that same day, letters of concern received in our office from HCM residents were emailed to Jason for Committee consideration.
- d. On July 21, 2017 I expressed to Craig Council's view and only formal vote on the use of the rail corridor indicating that it did not wish to support the purchase of the corridor as it was not desired in this community.
- e. On August 13, 2017 an email containing a request for information was forwarded to Craig. It and his response are included in the supporting documentation.
- f. There was no attempt for anyone from the County to speak with our staff or council until on September 7, 2017 via email to Craig Kelley, I asked for consultation between County staff and Council. An original presentation was scheduled for the October meeting.
- g. That October meeting was cancelled on the advice of Mr. Hutton based on a report and resolution in the HCM Council package, as per Mr. Kelley's email dated October 17, 2017 attached.
- h. County staff was again asked to attend the December 12<sup>th</sup> meeting. Due to weather concerns and in a large part, the safety of County staff driving at night, the meeting was cancelled to be rescheduled the next week – December 19<sup>th</sup>. Understandably, on short notice, County staff was not available.

The statement "*numerous attempts have been made by County staff to meet with your Council but to no avail*" is simply false. All requests for consultation were made by HCM staff.

4. References to the Municipal Act – [Similar to the excerpts from the land use planning document](#), [selective excerpts from the Municipal Act have been included in the Background/Executive Summary](#)

Report to Council. For instance, even though section 11.(11) of the Municipal Act indicates that all upper tiers have non-exclusive jurisdiction over culture, parks recreation and heritage (which would include trails), this section was not included in the Report.<sup>5</sup>

Response

- a. <sup>5</sup>There was no need for that section to be included in the Report to Council as there is no question that the County has the authority to pass by-laws in relation to Culture, Parks, Recreation or Heritage. That is a given. What is being questioned is the lack of consultation as well as the ability of such by-laws to be contrary to local zoning by-laws, passed under the Planning Act not the Municipal Act. HCM does not wish there to be no trail, what Council, residents and staff have been respectfully requesting, to not avail, is consultation – as a stakeholder to be a part of the process and not simply have final decisions thrust upon us. Council is asking for respect for consideration of the wishes of the lower tier as is touted in many County media releases and documents.
- b. Without that consultation, there appear to be quite serious concerns which have been not given the attention required to adequately protect the lower tiers through which these trails run.
- c. The OFSC trail agreement located in the Draft Management Plan indicates at clause 4. “The Licensee and Co-Licensee agree to use and maintain the licensed premises at their sole risk and expense, all to the satisfaction of the County, **and in compliance with all laws, by-laws**, orders, rules and regulations of lawful authorities whether federal, provincial, municipal or otherwise; such maintenance to include, but not be limited to:...” Currently, motorized use is not in conformance with the Township’s Zoning By-Law; both the County and the MLSC have ignored this fact and direction from HCM staff.

To date, decisions have been made without public consultation, which have had a significant effect on the residents, Council and staff of this municipality. Had the County consulted with these groups prior to making decisions which directly affect their lives it would have gone a long way to avoid the challenges we are in the midst of. With the way that this project has been rolled out, (with little to no lower tier consultation, but consultation with user groups instead) a rift has been created within our community. There are two distinct groups with quite opposing views, one receiving significant consultation and input from County staff and the municipality and Council’s position, largely being ignored.

5. Future workshop re recent cycling funding from the Province of Ontario – A workshop has been scheduled for January 18, 2018, at the county building to discuss the County’s workplan for 2018 related to the \$712,000 recently received by the County of Renfrew. Staff from the municipalities along the Algonquin Trail in the County of Renfrew will be invited to attend the workshop and provide input. There will also be an opportunity to ask any other questions you may have regarding the Algonquin Trail.<sup>6</sup>

Response

- a. <sup>6</sup>Thank you.
  - b. Congratulations on receiving the funding for cycling trails.
  - c. Has a budget been set for improvements to trails to alleviate nuisances created by motorized use? As one of the first sections of the rail to be open to motorized use, is the County willing to provide the funds necessary to mitigate the problems caused in these areas? Has consideration been given to the fact that we are quite restricted in resources, both physical, financial and human?
  - d. Should buffers, sound barriers, traffic calming devices etc. not already be installed prior to trail use in proximity to residences?
6. I have attached the presentation that was going to be delivered by County staff at the December 12th meeting and that will now be presented at the meeting on January 23, 2018. Sincerely, W. James Hutton, MCIP, RPP CA0/Clerk, County of Renfrew<sup>7</sup>

#### Response

- a. <sup>7</sup>There is nothing in this presentation that could be considered to be consultation, instead its simply sharing what has already been decided. There is little new information.
- b. Mr. Hutton's email speaks to limited excerpts from legislation being quoted in the Clerk's Report to Council... the following quote from the *Municipal Act* is from the County presentation referred to above as explanation of the County's position.

### GENERAL RESTRICTIONS

#### **Conflict between certain by-laws**

**13 (1)** If there is conflict between a by-law passed by a lower-tier municipality under subsection 11 (3) and a by-law passed by its upper-tier municipality under subsection 11 (3), the by-law of the upper-tier municipality prevails to the extent of the conflict. 2006, c. 32, Sched. A, s. 9.

With respect to the conflicts under subsection 11 (3) – the Municipal Zoning By-Law is not passed under section 11 of the Municipal Act but instead under the Planning Act. Therefore, section 13 (1) has no bearing on the matter. The use of the trail for motorized use is contrary to the Zoning By-Law of the municipality. Under section 129 of the Municipal Act, a municipality may pass a by-law with respect to noise, odour, dust etc. There are a number of tools available to lower tier municipalities to prevent the pre-determined use of this trail should the county insist on not consulting and considering the wishes of the lower tiers.

I would like to reiterate; HCM Council does not have a problem with the County passing a by-law creating a trail. The challenge is with the way that this entire process has been rolled out – with lack of consultation and respect for the lower tiers through which it will travel. Residents, Council and staff do have some significant challenges with public safety and the use of the same space for motorized and non-motorized use and would be derelict in our duty to our residents to not make our concerns known. They do not wish

to have motorized trails in their backyards. We feel that there are too many unanswered questions when permissions for use have already been provided without consulting the local municipality.

Further, we question that the County resolution passed to require municipalities to pay for by-passes is legal and in fact may be ultra vires. Please provide statutory authority for imposing these types of financial burdens on a lower tier who is attempting to protect its residents under various sections of the Municipal Act as well as the Environmental Protection Act. We have over 35 residences within less than 100 m of the trail who would be adversely affected by contaminants. We have a duty to protect them.

Is it in fact lawful for an upper tier to force a lower tier to finance the creation and maintenance of trails to correct a problem the upper tier created? Our Council would appreciate an answer to this specific question.

It is questionable that an upper tier municipality can unilaterally implement unwanted changes in a lower tier and then dictate to its residents that they must follow the rules imposed on them or use municipal property taxes to fix a problem the upper tier has created.

It is the job of municipal council members to represent the wishes of their residents. We have heard from ours and many do not want this motorized trail in their backyards. It is unfair to think that they are the ones who will ultimately have to pay to reroute it. Especially when one of your primary proponents is publicly quoted as saying *"We are not going to impact the tax rate,"* Sweet said. *"If at the end of the day a local council has made a decision – it will be honoured,"* Sweet said. *"We are not going to tell municipalities what can happen in their jurisdiction."*

The foregoing contains information, opinion but most importantly questions.

Head, Clara & Maria Council, staff and residents would appreciate serious consideration of and response to their questions.