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better
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Observations on Proposed Agreement Between SNI and City of Buffalo

The following constitutes initial observations on the proposed agreement (submitted to the Buffalo Common Council by Mayor Brown under letter dated October 12, 2006) between the Seneca Nation and two of its corporations¹ and the City of Buffalo. If executed and used as the basis to transfer Fulton Street or to facilitate development of a casino, this agreement has the potential to lead to the irretrievable abandonment of all land use controls by local City and County government, now and for all future generations, over the property, if Seneca claims regarding the effects of their ownership of the land turn out to be correct.²

The key provisions the City cites as negotiated terms benefiting the City are completely illusory; enforcement of them in the practical sense would be very problematic and perhaps ultimately unsatisfactory. They are stated to be mere “intentions” creating “no legal obligations of each to the other.” The Seneca maintain their claims of “sovereign immunity” and this could leave the City with little recourse over most issues or a procedural morass that could delay and frustrate enforcement. There is an arbitration provision but its applicability is extremely limited.

This agreement has no teeth to force the Seneca entities to keep their “promises;” the “promises” are illusory; and the agreement abdicates City responsibilities to its citizens.

Citizens for a Better Buffalo has prepared this statement of observations for purposes of enhancing public discussion of the issues raised by the proposed agreement and by the casino project.

¹ Hereafter generally referred to as the Seneca. Actually, the Nation is a party to the agreement for only very limited purposes, apparently.

² These matters are in dispute in federal court in Buffalo.

Specific Comments are:

1. ***The proposed agreement fails to protect the City's hospitality, entertainment, restaurant and other leisure-based businesses. This is in expressed violation of promises by the City Administration.***

Several years ago the City Administration attempted to obtain consensus support for the casino from downtown business owners. It promised a stand-alone casino that would not compete unfairly with restaurateurs, entertainment venues and others. The present agreement breaks this promise. Indeed, recent federal trademark filings of the Seneca indicate their intention to establish restaurants, retail, theater and even convention facilities in their Cobblestone District casino complex.

In fact, even local businessman and developer Carl Paladino, a former casino booster, now decries the proposed agreement.

Here's his recent letter to *Artvoice*:

Dear Editor:

When the Senecas first proposed the compact, Mayor Masiello expressed concern about competition with our downtown Buffalo hospitality businesses, its hotels, restaurants and retail. President Schindler promised the mayor unequivocally that the intention of the Senecas was solely to operate a stand-alone casino in downtown Buffalo with no gourmet restaurants, hotels or retail.

He stated that his promise on behalf of the Senecas was sufficient, but in any event he would sign a Memorandum of Understanding.

He wanted the casino to be a win-win for the citizens of Buffalo and the Senecas. In reliance on the promise, governmental and private sector leaders agreed to support the compact in Albany.

Schindler left office and the subsequent regimes have sought to abrogate those promises. We sued to stop them from building a new Seneca City on 135 acres in Cheektowaga in favor of downtown where the casino will share growth with the other venues and give the community some upside.

The current proposal to settle the Buffalo casino issue is devoid of any reference to protecting our downtown hospitality businesses and tax base. To allow the Senecas to expand their casino franchise to the hospitality industry, in which they compete unfairly (being exempt from sales, bed and real estate taxes) would be shameful. Such unfair competition is destroying the tax base in Niagara Falls.

Now is the time to confront the issue.

The Senecas should be made to keep their promises.

Very truly yours,

Ellicott Development Company

2. ***The agreement does NOT prevent the Seneca from acquiring more Buffalo land.***

See Section 9 of the agreement. The Administration of Mayor Brown made no-more-Seneca-land-acquisition a touchstone of further negotiations. The agreement does not

limit the Seneca land purchases to the already-acquired ±9 acre “casino” site. The Brown Administration has misrepresented this aspect of the agreement.

First, nothing in this section is binding; the section merely expresses “good faith intentions” that are “with no legal obligation.”

Second, it says only that the Seneca will not acquire more land *to implement the casino compact*.

3. ***There is no enforceable commitment on the part of the Seneca to build and maintain a safe and defined structure that will not endanger the neighborhood, the general public and or emergency responders.***

The agreement that the State’s uniform building codes will not apply appears to conflict with the findings and intent of the Legislature of a need to assure that buildings are designed, built and maintained pursuant to a uniform set of codes to protect peoples’ lives. The codes have been adopted by the City, and have been made applicable by the Executive Law to all jurisdictions within the State that do not have their own building and fire codes. The building codes should be mandatory. There is no action before the City which acknowledges removal of the property from the boundaries of the City or State of New York. At a minimum, the City should have, but failed to, obtain Seneca agreement to implement building codes equivalent to those of the City and State.

More importantly as a matter of public policy it is egregious to put the lives of the public-at-large, firefighters and other emergency personnel at risk by relaxing or disabling enforcement of the uniform fire prevention and building codes. Assuring buildings are safely built and maintained is a fundamental responsibility of government. That is the reason for the very code review and enforcement which has been written out of the agreement by the drafters.

Most unconscionable is that removing enforceability of basic safety standards is being done with the knowledge that, after the structures of unknown dimensions and engineering detail are built, thousands of people will be invited onto the premises on a daily basis. Buffalo Fire Department personnel and other emergency responders will then be expected to provide critical services within the structures without first being able to assure the safety of access and egress points as well as of the structure and its materials. The City certainly should have secured binding assurances (on the City’s *own* terms) that its personnel and citizens will be safe and that the City would be compensated for the services of its personnel.

The deliberate frustration of the enforceability of basic safety codes is intentionally creating the potential for catastrophe.

4. ***The promise to build and maintain landscaped area as parkland is absolutely an unenforceable illusory promise.***

Under State laws there is a basic principal that parkland is held in trust for the benefit of the public. Once so dedicated, parkland cannot be alienated without an act of the State, which normally requires replacement parkland of equal or better value in close proximity. This “agreement” lacks any protections requiring the land to be so held in trust, and it

fails to impose any enforceable duties on the landowner. Without such protection, the “parkland” can be removed from public enjoyment, or even built over for future expansion.

There is not even an enforceable promise to build a park in the first place or a remedy if it is not built. The Seneca present claims of “sovereignty” (to which the City Administration seems to be acquiescing), rendering problematic whether the City can, for example, readily deny a Certificate of Occupancy until what the Seneca represent will be built is actually built.

5. ***The Fulton Street purchase price was not based on an independent appraisal, nor has there been a public valuation by a person with a duty to the City and its citizens, retained after council resolution requesting same. The appraiser appears to have acted solely as an agent representing the interests of the Seneca.***

The appraisal was prepared by the professional appraiser acting at the behest of the Seneca Gaming Corporation. The individuals preparing it had no apparent professional responsibility to the City, and the City has no reason to rely on the price as being reflective of the unique actual value of Fulton Street as the final piece of a development “assemblage.”

6. ***The City may be limited in the ability to “lease out” its police force. Further review is required more fully to understand its limitations in this regard.***

This basic concept may be precluded by General City law. Further review is required, and public input should be obtained.

7. ***The City, the Sewer Authority and Water Authority have no clear duty to provide water and sewer services to a non-resident “foreign” jurisdiction, which is what the Seneca and City have agreed will own the land.***

The agreement assumes a duty in this regard under Federal Law but does not state its basis. Research indicates the municipality’s clear duty is to City residents. To date the Seneca Gaming Corp. and the Seneca deny being City “residents.” While there is federal case law (and some state law) addressing discrimination in the provision of such services, there is no absolute obligation on the part of the City to provide such services to a “sovereign” nation, which claims to be for all legal purposes outside the City’s corporate limits and out of the reach of the City’s laws.

Any such service would be discretionary on the City’s part, possibly with some very limited exceptions relating to discrimination. Based on the City’s ability to exercise its discretion in determining whether to provide the resources, any City commitment would be required to comply with SEQRA prior to approval.

8. ***The transfers and other actions require an environmental review of their full purpose, intent and impact before any of them may occur.***

The transfer of property and any other City discretionary action requires a full environmental review of the purpose, intent and impact of the action, which is to

facilitate the Project. The simple need for council votes on the agreement and land transfer requires review of the full project, and as well as its impacts on the environment.

Unfortunately the plans for the proposed “Casino” lack sufficient detail to facilitate the requisite environmental review. There is no limit on the size or nature of the development so as to limit its potential significant adverse impacts on the environment.

9. *The Seneca Entities and the City are wrong in assuming the Seneca are not subject to Federal, State or local environmental laws.*

There are clear rulings rendered under virtually every Federal environmental statute to the contrary.

10. *Paragraph 8 appears to contemplate future diversion of what the City assumes will be its fraction of gambling revenues under the Nation-State Gambling Compact.*

Paragraph 8 states the Nation will designate an individual to serve on the board (created by section 6(c)) that will consult and advise the City as to how to spend a percentage of the “host community” share of payments that are specifically designated in section 6(c) for improvements to the Inner Harbor Area only. The Board consists of 4 members, one from the Nation and one from the Corporation. The City must deposit a percentage of the annual Host Community Share payments into a separate account for the sole purposes of stimulating development in the Inner Harbor Area.

The intent seems to be to create another level of shadow government, possibly serving the purposes of a for-profit tax exempt entity. It further moves control of the City’s fiscal resources beyond the reach of the legislative branch. The Common Council should scrupulously question this aspect of the agreement, as well as question why the Seneca should be given a role in determining how the City spends the “host community” share of payments.

11. *The MWBE workforce portion of the agreement at paragraph “7(e)” has no enforcement mechanism and is disavowed as a binding term in paragraph 9; and*

12. *In paragraph “9” the Seneca expressly disavow any legal obligation to:*

- a. be a good neighbor;
- b. achieve employment requirements in numbers or local work force;
- c. comply with the state building codes to assure the building is safe for the public and emergency responders; and
- d. restrict acquisition of future land to be held in restricted fee status in the City.

The Mayor’s representations of the “key negotiated elements” of the agreement in his October 12 letter to the Common Council Members are not binding terms within the Agreement. The Seneca and their for-profit entities explicitly disavow their commitment to be contained in the scope of their development, to build safe structures, to employ City residents, or to even be a “good neighbor.”