

Public Meeting of Witless Bay Council
November 17, 2015

Attending: Mayor Sebastien Despres, Councillors Kevin Smart, Albert Murphy, Ken Brinston, Rene Estrada

Reporting: Geraldine Caul & Barb Harrigan

1. The meeting was called to order by Mayor Sebastien Despres at 7:35 p.m.
 2. **2015-263** Councillor Albert Murphy/Councillor Kevin Smart
Be it resolved Council adopt the November 17, 2015 agenda.
Motion carried unanimously.
 3. **2015-264** Councillor Albert Murphy/Councillor Ken Brinston
Be it resolved Council adopt the October 13, 2015 Minutes of Public Meeting as presented.
Motion carried unanimously
 4. **2015-265** Councillor Albert Murphy/Councillor Ken Brinston
Be it resolved Council adopt the October 22, 2015 Minutes of Privileged Meeting (Friendly Hearing) as presented.
Motion carried unanimously.
 5. **2015-266** Councillor Albert Murphy/Council Ken Brinston
Be it resolved Council adopt the October 27, 2015 Minutes of Privileged Meeting as presented.
Motion carried unanimously.
 6. **2015-267** Councillor Albert Murphy/Councillor Rene Estrada
Be it resolved Council adopt the October 28, 2015 Minutes of Privileged Meeting of Council as presented.
Motion carried unanimously.
- 7 Business Arising from Minutes:
- a. Alleged conflict of interest pertaining to snow clearing on Pond Path - Mayor Despres reported that the litigation involving Deputy Mayor Dena Wiseman and Councillor Ralph Carey relating to conflict of interest in relation to snow clearing on Pond Path was concluded today. A consent order was filed this morning overturning Council's decision to vacate the seats of these councillors and restoring their places on Council as of November 18. Council unanimously agreed to a settlement in the amount of \$15,000 and to the disclosure of all legal opinions with respect to this issue.

Councillor Albert Murphy asked that the fifteen (15) pages of correspondence between the Town and Municipal Affairs retrieved from the Freedom of Information Act be also

released to the public. Mayor Despres explained it is already available to the public and is even on his facebook page.

- b. Friendly Hearing of October 22, 2015 pertaining to alleged conflict of interest pertaining to the vote on the Town Plan in its entirety -

Mayor Despres explained that a friendly hearing was held with Councillor Smart on October 22. Councillor Smart read out his statement of defense, which he presented to Council and there was then a motion made to have a lawyer's opinion, which was presented to Council. Our lawyer advised there is no conflict of interest and the point is moot because the issue has already been resolved.

Mayor Despres read the lawyer's recommendation that "any proceedings against Councillor Smart arising from this issue be ceased, and that this issue not be pursued against Councillors Carey or Wiseman. Should Council choose to continue the proceedings as against Councillor Smart, or pursue this issue with Councillors Carey or Wiseman, we are of the view that such action would subject Council to sanction from the courts, as well as exposure to legal expenses."

Councillor Ken Brinston read motion made at the October 22, 2015 Privileged Meeting (Friendly Hearing) that stated:

Be it resolved that within the next week, Council meet with Town lawyer, Peter Shea, and present him with both Councillor Kevin Smart's and the Town's position before Council votes on the alleged conflict of interest of Councillor Smart.

Councillor Brinston explained that the lawyer arrived at the meeting, and there was information sent to Peter Shea which he was not made aware of. He said the lawyer had everything determined and didn't want to listen to anything they had to say. Mayor Despres corrected Councillor Brinston saying that the lawyer actually sat and listened to what each councillor had to say for a full two hours, answering all questions very thoroughly that council asked.

Mayor Despres asked Town Clerk to provide input on the process for the preparation of this meeting with the town's lawyer. Geraldine explained that Council directed her to request a meeting with the lawyer. The lawyer then requested details relating to the issue such as background information and documented history. [This is common practice in order to be better prepared, and to offer a well-researched and educated legal opinion]. The history relating to the issue and ratified minutes of meetings were provided to the Town's lawyer as requested.

Mayor Despres explained that the Minutes of Council meetings, and Councillor Smart's statement of defense were provided to the lawyer, and based on those documents, which would be provided to the judge should this go to court, a recommendation was made, which was explained by the lawyer in great detail at the meeting of October 22.

Councillor Murphy asked why Peter Shea had the letter of opinion prepared to include Councillors Wiseman and Carey, who are not sitting members of council. He said Council was dealing with Councillor Smart at the time, and not Councillors Wiseman and Carey, so the letter should be null and void.

Mayor Despres reminded Councillor Murphy that it was Councillor Murphy himself who had specifically asked the lawyer at the previous meeting about all three councillors, despite the fact that Mayor Despres had reminded him during that meeting Council was there to discuss a whole different conflict of interest altogether.

Councillor Kevin Smart left the room at 7:55 p.m. for voting on this item.

2015-268 Councillor Ken Brinston/Councillor Rene Estrada

Be it resolved Council defer any decision on the alleged conflict of interest for further review of Councillor Smart's presentation from the Friendly Hearing in relation to Councillor Kevin Smart's vote on the Town Plan in its entirety pending a response from the lawyer to Councillor Murphy's private email on the matter.

For the motion: Councillors Albert Murphy, Ken Brinston, Rene Estrada

Against: Mayor Sebastien Despres

Motion carried.

2015-269 Councillor Albert Murphy/Councillor Rene Estrada

Be it resolved Peter Shea's opinion, because it involves two other councillors who are not sitting on council, be null and void.

For the motion: Councillors Albert Murphy, Ken Brinston, Rene Estrada

Against: Mayor Sebastien Despres

Motion carried.

- c. Alleged conflict of interest pertaining the Town Plan (Oct. 28th privileged meeting) -

2015-270 Councillor Albert Murphy/Councillor Ken Brinston

Be it resolved Council defer decision on the alleged conflict of interest pertaining to Councillor Kevin Smart's voting on the Town Plan pending response from Peter Shea.

For the motion: Councillors Albert Murphy, Ken Brinston, Rene Estrada

Against: Mayor Sebastien Despres

Motion carried.

Councillor Murphy asked the minutes to reflect that at the Friendly Hearing he asked Councillor Smart if he would answer a couple of questions and he refused.

Councillor Smart returned to the Chamber at 8:00 p.m.

- d. Community Centre update - The Community Centre is officially opened and fully functional so we will be taking bookings from community groups. We will begin discussing scheduling at the next planning meeting.

8. New Business:

- a. Notice of Motion - Motion of the Regional Emergency Management Plan - Mayor Despres gave a notice of motion that at the next public meeting in December, he will be making a motion for the adoption of the Regional Emergency Management Plan. He said this document initially started in 2006 but the process was abandoned. This committee started it again year and half ago, and has been working diligently to make the plan as comprehensive as possible. The last draft was sent to Council last week and Council members are asked to review it and make changes/additions so that the final draft of the

plan reflects our community's needs. Council was asked to pay attention to the hazard plans because those are the documents we will use in the case of an emergency.

- b. MNL Convention took place a few days ago and there was a full schedule with much offered. He said he was the only one to attend this year but hopefully all councillors would be attending next year since it will be held in St. John's.

Some of the information sessions offered were:

- * Municipal Assessment Agency relating to how they are calculating land and property values.
- * There was a conference with the Insurance Bureau of Canada on climate change, and what municipalities should do to help prevent it, and help diminish the risk that it poses. Witless Bay is one of the municipalities on the Avalon that will be most impacted by climate change. There are a group of climatologists that are looking at our town. Mayor Despres said he had an opportunity to discuss the town's emergency management plan with the representatives.
- * Workshop with Stewart McKelvey on legal issues and developments for municipalities such as regional appeals, and what the developments are the past few years.
- * Small Town Caucus meeting - there was a presentation from the FFAW Union. They have a new program called Rural Works which they will be asking municipalities to sign on to. This will be discussed further at the December public meeting.
- * There was a Regional Government Workshop where they invited municipalities to try regional governance as pilots. The Fire Department is one of the leaders in cooperative management. Witless Bay is in the process of constructing a Regional Emergency Management Plan, and we have a regional recreation director position, etc., but there are other things we can be doing. We were invited to sign up for the pilot project if Bay Bulls and the Local Service Districts to the south are interested.
- * MNL just announced they are about to launch their Community Economic Development Tool Kit. It is about helping communities assess their readiness for economic development, and this will be presented to Council at a later date.
- * There was also a session about municipal tax payments for income support clients and changes to this program. The provincial government can now arrange for the property tax payments for income support clients to be paid directly to the municipalities.
- * A new board was elected for MNL, and the Town of Witless Bay was announced as the winner of the 2015 Tidy Towns awards of excellence. That award goes to a community who has maintained the highest overall score for two consecutive years. We were also declared the 2015 category winner for environmental action. Witless Bay is the province's leader in environmental action in recognition of the Town's outstanding performance and contribution to environmentally friendly programs. The Mayor congratulated and thanked the many people who were involved in making this possible such as: The Community Enhancement Committee, residents and volunteers, the Heritage Committee, Town Council and staff, the many community groups and associations, specifically, the Kinsmen, O'Connor 50+ Club, Girl Guides, the Our Lady Star of the Sea Parish, the BBBAA, our Puffin and Petrel Control, St. Bernard's School, Mobile High School, the Regional Fire Department, with credit to the businesses who helped with our Tidy Towns bid such as the Witless Bay Home Hardware, Witless Bay Eco Tours, Needs Convenience, Independence Consultants Group, Felix's, Plan Tech Environment, Eastern Waste Management, and the team at Municipalities NL.

- c. Community Centre water test report - The water test report came back, and although there is no bacteria in the water, there is an awful smell and taste which could be a result of sulphur.

2015-271 Councillor Ken Brinston/Councillor Kevin Smart

Be it resolved Council have the water tested at the recreation building and obtain quotes for a filter system.

Motion carried unanimously.

2015-272 Councillor Albert Murphy/Councillor Ken Brinston

Be it resolved Council acquire two water dispensers for the recreation building.

Motion carried unanimously.

- d. Fire & Emergency Services - Regional Emergency Management Plan - Mayor Despres reported that in the next two or three weeks we should have a meeting of the Fire and Emergency Services Committee. That Committee will be asked to review the Regional Emergency Management Plan, but will also be making other decisions that will be brought to Committee's attention by the fire department.
- e. Request for continued use of the Community Centre on Wednesday nights by the New Hope Group - Council agreed to this request, but also agreed that in the future, requests such as this be handled by the town's office.
- f. Eastern Waste Management - Fees for 2016 - This item is for Council's information and the Town has signed a three year agreement with this company. There is no change in the fees for next year.

Councillor Murphy noted that the Fire Department can avail of \$1000 if they participated in the Household Hazardous Waste collection. Staff will remind the fire department of this program.

9. Finance:

- a. Income statement and paid invoices - Income statement is Council information and payables were provided to the general public.
- b. **2015-273** Councillor Albert Murphy/Councillor Ken Brinston
Be it resolved Council adopt the 2016 budget.
Discussion: It was noted Council had not yet identified projects that are 90/10 funded by the government and, therefore, these numbers are not reflected in the budget at this time.
Motion carried unanimously.
- c. **2015-274** Councillor Rene Estrada/Councillor Ken Brinston
Be it resolved Council accept the Tax Recovery Plan 2015 as presented and submitted along with the Tax Receivable Summary 2014 to the Department of Municipal and Intergovernmental Affairs.
Motion carried unanimously.

- d. **2015-275** Councillor Albert Murphy/Councillor Ken Brinston
Be it resolved Council donate \$1000 to the Witless Bay Kinsmen Club for the Community Christmas Parade.
Motion carried unanimously.
 - e. Southern Shore Arena - request for financial support - It was noted that this letter was a request for Council to consider the Arena for future funding when finalizing the town's budget. Council asked that the office obtain the Southern Shore Arena's financial statement, and list of contributors for the stabilization fund for the past year.
 - f. Tender quote for pothole on Southside Track -
2015-276 Councillor Albert Murphy/Councillor Rene Estrada
Be it resolved Council accept the lowest bid of \$3,100 from HTL Construction and Trucking Ltd.
Motion carried unanimously.
 - g. Invoices for O'Brien's Trucking -
2015-277 Councillor Albert Murphy/Councillor Ken Brinston
Be it resolved Council pay O'Brien's Trucking invoice for \$1604.90.
Motion carried unanimously.
2015-278 Councillor Albert Murphy/Councillor Ken Brinston
Be it resolved Council pay O'Brien's Trucking invoice for \$2668.37 **after inspection.**
Motion carried unanimously.
2015-279 Councillor Albert Murphy/Councillor Rene Estrada
Be it resolved Council pay O'Brien's Trucking for invoice for \$1846.24.
Motion carried unanimously.
2015-280 Councillor Albert Murphy/Councillor Rene Estrada
Be it resolved Council pay O'Brien's Trucking for invoice for \$836.25.
Motion carried unanimously.
2015-281 Councillor Albert Murphy/Councillor Ken Brinston
Be it resolved Council pay O'Brien's Trucking for invoice for \$209.37.
Motion carried unanimously.
 - h. BBBAA Financial Statement - Provided to Council for information only.
10. Public Works & Compliance:
- a. Tender for Municipal Driveway and Parking Lot -
2015-282 Councillor Ken Brinston/Councillor Kevin Smart
Be it resolved Council accept the lowest bid from Harbour Construction for \$43,521.95 for the municipal driveway and parking lot .
Motion carried unanimously.

- b. Application to clear land and dispose of material on 170 Gallows Cove Road -
2015-283 Councillor Albert Murphy/Councillor Ken Brinston
Be it resolved Council defer application to clear land and dispose of material on 170 Gallows Cove Road pending further review.
Motion carried unanimously.
 - c. Request for road repairs on 232 Gallows Cove Road - Councillor Murphy said this area may need to be ditched.
2015-284 Councillor Albert Murphy/Councillor Kevin Smart
Be it resolved Council defer request for road repairs on 232 Gallows Cove Road pending further review.
Motion carried unanimously.
 - d. Request to have boulders removed at entrance of Southside Track from Route 10.
2015-285 Councillor Albert Murphy/Councillor Ken Brinston
Be it resolved Council get a quote for a paving apron at the end of Southside Track.
Discussion: Once quote is received, Council will include this work with the Pothole on Southside Track tendered job that has been awarded.
Motion carried unanimously.
 - e-f. Department of Natural Resources - Renewals of quarries 0.5 km south of Witless Bay Line on Route 10, and 100m east of Black Duck Pond, Witless Bay Brook - Council had no issues with these renewals and will allow them to be automatically renewed.
 - g. Installing new pole lights at the intersection of Southside Track and Dunn's Lane, New Line Road-Harbour Road, Fisherman's Road-Maratie's Lane, 120 Country Path Drive and the intersection at Country Path Drive.
2015-286 Councillor Albert Murphy/Councillor Ken Brinston
Be it resolved Council install pole lights at the locations listed above.
Motion carried unanimously.
11. **2015-287** Councillor Albert Murphy/Councillor Rene Estrada
Be it resolved Council adjourn at 8:50 p.m.
Motion carried unanimously.