

Public Meeting of Witless Bay Council  
Town Hall - 7:30 p.m.  
August 11, 2015

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

Absent: Councillor Kevin Smart

Recording: Geraldine Caul/Barb Harrigan

1. The meeting was called to order by Mayor Sebastien Despres at 7:41 p.m.

**2015-177** Councillor Ken Brinston/Councillor Rene Estrada

Be it resolved Council amend the agenda to add Adoption of the August 11/15 Agenda.

**Motion carried unanimously.**

**2015-178** Councillor Ken Brinston/Councillor Rene Estrada

Be it resolved Council adopt the August 11/15 agenda as amended.

**Motion carried unanimously.**

2. **2015-179** Councillor Ken Brinston/Councillor Albert Murphy

Be it resolved Council adopt the July 14, 2015 Minutes of Meeting.

Correction: #10 e) Motion #2015-171 to approve application for garage on 3 Gallows Cove Road was made by Councillor Albert Murphy and seconded by Councillor Rene Estrada.

**Motion carried unanimously as amended.**

3. **2015-180** Councillor Albert Murphy/Councillor Ken Brinston

Be it resolved Council adopt the August 4/15 Minutes of Private Planning Meeting.

**Motion carried unanimously.**

4. Business Arising from Minutes:

- a. Friendly Hearing - Mayor Despres explained that at the last public meeting, a motion was made to hold a friendly hearing with Councillor Kevin Smart pertaining to allegations of conflict of interest relating to the vote on the entirety of the town plan, but this meeting had been postponed. In an email received by the Town today, Municipal Affairs has made it clear that contrary to the motivation that prompted the motion in the first place, it was not the Minister's intent that Council revisit its previous decision. Mayor Despres read the message from Dan Noseworthy of Municipal Affairs:

*"It was not the Minister's intent to have Council revisit its previous decisions. It is understood that Council made its decision based on the fact, as noted in the minutes from the regular meeting held December 9, 2014, that the councilors who participated in the prior voting on the plan did so on the understanding that they were voting on the amendments, versus the plan in its entirety. A decision on the alleged conflict was made at a privileged meeting held March 24, 2015 and ratified at a regular meeting held May 12, 2015. It is also understood that having made such a decision, that based on Section 209 of the Municipalities Act the decision of Council is final (see further comment on this issue under question #2, including consulting with your legal counsel). The purpose of the Minister's letter of June 9, 2015 was to advise Council of his requirement to have Council vote on the municipal plan in its entirety, and to ensure that you determined in advance of that vote whether anyone was in conflict with respect to vote on the entire plan.*

*Section 209 clearly states that the decision of Council on whether a councilor is in conflict is final. A plain reading of that section would suggest that any such decision taken is final. However, how this section applies to your specific case requires a legal opinion and therefore it is recommended that you consult with your legal counsel for advice on the application and interpretation of this section in your specific circumstances.”*

Mayor Despres explained that this legal opinion had been sought months ago. The Town’s lawyer advised Council that the Town Plan matter did not raise a conflict of interest, since while the councillors in issue voted to adopt the Town Plan in resolution 2014-324, changes to the zoning of their respective properties were not being considered by council (although it had been considered by a previous council, the councillors in issue were not involved in council at that time). The Town’s lawyer also explained that should Council vote to vacate their seat, a Court would most likely overturn that decision. Further, based on the previous assurances that there was no conflict, it is unfair to now determine that they were now in conflict. Proceeding to court would be a significant expense to the Town. There is also a significant risk that the Court could require the Town to pay the councillor’s legal costs on a “solicitor-client” basis (i.e. reimburse them for the entirety of their legal fees.)

When Councillor Murphy invited the Mayor to read the other legal opinion received by the Town’s lawyer, Mayor Despres explained that this legal opinion was not in reference to the previous vote on the adoption of the Town Plan, but instead about the vote on the entirety of the Plan that Council has yet to make.

Mayor Despres then continued to read the responses from the Minister’s Office, which deals with the issue of holding a private hearing on an allegation of conflict of interest while there is currently a motion on the books that states that Councillor Smart was not in a conflict of interest in relation to this matter. Mayor Despres explained that for this reason, as Chair of the meeting, he would allow no further discussion to take place on this issue until the Minister reverses this decision in writing. Councillor Murphy disagreed and made the following motion:

**2015-181** Councillor Albert Murphy/Councillor Ken Brinston

Be it resolved Council hold a friendly hearing for Councillor Kevin Smart next Tuesday, August 18, 2015 at 7:00 p.m.

Discussion: Mayor Despres asked that the minutes show that he has read the entirety of the correspondence from the Minister’s Office to Council and to the public, which very clearly instructs that the matter is closed.

Councillor Murphy asked that the minutes show that “Until Minister Hutchings comes to this room and tells Council the matter is closed,” he didn’t consider it closed.

Councillor Kenny Brinston stated, “I admit that Councillor Kevin Smart was not in a conflict on the amendments, and that Councillor Estrada agrees. But when it came back on the entirety of the Plan, this is when we went back and rescinded those motions.”

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

**Against the motion:** Mayor Sebastien Despres

**Motion carried.**

**2015-182** Councillor Albert Murphy/Councillor Ken Brinston

Be it resolved Council rescind: Motions 2015-150, 2015-042, and 2015-044

Mayor Despres ruled the motion out of order, explaining that this matter is not on the agenda.

**2015-183** Councillor Albert Murphy/Councillor Ken Brinston

Be it resolved Council overturn the Chair’s ruling on the motion.

**For the motion to overrule the Chair:** Councillors Albert Murphy, Ken Brinston, Rene Estrada

**Against the motion:** Mayor Sebastien Despres

**Motion carried.**

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

**Against the motion:** Mayor Sebastien Despres

**Motion carried.**

- b. Town Plan - Council cannot address this item until Council receives a response from the Minister.
- c. Quarry outside of town boundary - Mayor Despres explained that an application was received to develop a quarry on west side of the Carter Subdivision, and to complete their phases 6-7, and 8, they want to access this quarry. Because it lies just outside of the town's boundary, at a previous public meeting, Council requested a detailed a proposal from the Carters. A proposal was submitted, but it wasn't detailed. They specified they wanted to use the quarry for materials from the subdivision.

**2015-184** Councillor Albert Murphy/Councillor Rene Estrada

Be it resolved Council send a letter to the Dept. of Mines & Energy stating the developer can go ahead with their quarry and finish off their subdivision.

Discussion: Mayor Despres said that even though it's outside of the town's boundary, once that letter is sent, the Town relinquishes all rights and controls. It was noted that even though the developer said their intent was to complete their subdivision, the application sent to Mines and Energy stated they would be using the quarry material for their subdivision and neighboring communities.

Council agreed that a Stop Work Order would be issued if the developer goes outside of Southside Track.

**Motion carried unanimously.**

5. New Business:

- a. i -ii Small Crafts & Harbours - Minister's Approval: Mayor Despres explained that a year and a half ago the Small Crafts and Harbours made an offer to the Town to acquire the finger wharves, slipway, bridge and retaining walls from the Fisheries and Oceans Dept. Council asked for, and received the Minister's approval on this project. The Town's legal counsel reviewed the Memorandum of Understanding and everything is fine. The Environmental Assessment was completed, and while there were some minor hydrocarbon exceedances identified (typical for a site of this nature), these were deemed not to be a threat to human health and, as such, no further environmental work was deemed necessary. The deal that Council finalized with DFO is to purchase the property for \$1 from the Federal Government on the condition they bring it up to perfect standards. Their engineers drew up plans for a concrete slipway, for dredging and blasting of the path leading to the slipway, and for the removal of the wooden finger wharves, and the construction of armourstone piers. The canal will be widened slightly as well.

**2015-185** Councillor Albert Murphy/Council Ken Brinston

Be it resolved Council accept the Memorandum of Agreement from the Minister of Fisheries and Oceans and the Town of Witless Bay.

**Motion carried unanimously.**

- b. Capital Works Projects not approved - Mayor Despres explained that the Town applied for several projects, and those not approved were the Harbour Road Erosion Protection, Storm Drainage and upgrades to Harbour Road/Bears Cove Road, and Modifications to the Town Garage and access. Mayor Despres noted that the Town did, however, receive approval for the largest project which is the Southside Track Phase 2 for \$770,000.

- c. Municipal Assessment Agency value changes for 2016 - Councillor Despres read correspondence from the MAA that stated they were preparing the new assessment roll for 2016 and that the values will be changed to reflect the actual property values as of January 2014. The preliminary results for Witless Bay is that the average residential property is increasing by 28.7%, and the average change in commercial value is a 10% increase. These numbers reflect averages, and individual property values will change by higher and lower amounts. Mayor Despres said this reflects on the town's bottom line if we stay with the same mill rate.
6. Finance:
    - a. **2015-186** Councillor Ken Brinston/Councillor Albert Murphy  
Be it resolved Council adopt the audited Financial Statement for 2014.  
**Motion carried unanimously.**
    - b-c. The Income Statement and Payables were presented for information purpose only. Mayor Despres announced that Council purchased ten 6 ft. length speed bumps and signage for them. They were a little over \$2000 which was less than we expected.
  7. Community Enhancement Committee - Mayor Despres congratulated all who participated in the Tidy Town and Communities in Bloom bids. The Tidy Town judges were in town for a full day and did the ECO tours and walked the Tolt, among other places. The Communities in Bloom judges were here for three days. Together they met little over 100 residents. He said the Town will hear the results of this year's competition at the MNL Convention this coming fall, and the Communities in Bloom Convention in Camloops also in the fall. Mayor Despres said the judges suggested the Town be put forward for the award for Community involvement for youth. This Town and the neighbouring region do incredible amount of work with the young people, so the 50+ Club, Girl Guides, Kinsmen, Knights of Columbus, Cadets, and even the cheerleaders all pitch in. The judges from Alberta and Montreal were astounded that we were so inclusive in all our activities for our young people.
  8. Public Works & Compliance:
    - a. Ditching & shouldering - Ditching is being done, and the tenders were gone out for shouldering and grading with a deadline of Aug. 21. Councillor Murphy said there were 2 ditches not done but should be finished soon.  
  
**2015-187** Councillor Albert Murphy/Councillor Ken Brinston  
Be it resolved Council tender for grading and shouldering.  
**Motion carried unanimously.**  
  
**2015-188** Councillor Rene Estrada/Councillor Albert Murphy  
Be it resolved Council empower public works to accept the lowest bid for grading and shouldering if they choose to.  
**Motion carried unanimously.**  
  
**2015-189** Councillor Albert Murphy/Councillor Ken Brinston  
Be it resolved that further to the recommendation by the Town Engineer relating to Maraties Lane, Council put out a tender to ditch, and add a pipe that ties into the manhole.  
**Motion carried unanimously.**
    - b. Correspondence regarding application to develop residential dwelling on John C's Grove Road –

**2015-190** Councillor Albert Murphy/Councillor Ken Brinston **Rescinded Sept.8/15 (motion 2015-209)**

Be it resolved Council approve in principle application for Amy Dunn on the condition they not require the services of the Town to the existing road, and for Council to use its discretionary authority to allow the house to be considered like the 3 other applicants on the road in similar instances.

Discussion: Councillor Murphy suggested that this road be taken over by the Town.

Mayor Despres explained that Council can't just take over a road, or add a road to the Town's road list. He said as well that this isn't on the agenda for discussion and suggested that Council discuss it at the next Planning meeting.

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

**Against the motion:** Mayor Sebastien Despres

**Motion carried.**

c. **2015-191** Councillor Albert Murphy/Councillor Ken Brinston

Be it resolved Council approve in principle residential family dwelling on 71 Country Path Drive subject to approval from Services NL.

**Motion carried unanimously.**

d. **2015-192** Councillor Albert Murphy/Councillor Ken Brinston

Be it resolved Council approve in principle residential family dwelling on 25 Tamarack Drive subject to approval from Services NL.

**Motion carried unanimously.**

e. **2015-193** Councillor Albert Murphy/Councillor Ken Brinston

Be it resolved Council approve a gazebo.

Discussion: Mayor Despres noted this was a discretionary use and subject to Council's discretion for approval.

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

**Against the motion:** Mayor Sebastien Despres

**Motion carried. RESCINDED AT DEC. 8/15 PUBLIC MEETING DUE TO APPEAL BOARD ORDER**

f. **2015-194** Councillor Albert Murphy/Councillor Ken Brinston

Be it resolved Council **deny** application for storage shed on 12-20 Tower Road because it exceeds the maximum 70 sq. meters permitted. Applicant can re-apply when the new Town Plan comes back for consideration.

**Motion carried unanimously.**

g. **2015-195** Councillor Albert Murphy/Councillor Rene Estrada

Be it resolved Council **deny** application for 124-126 Southside Track because it exceeds the maximum 70 sq. meters permitted. Applicant can re-apply when the new Town Plan comes back for consideration.

**Motion carried unanimously.**

h. Application to operate a business on 177 Southern Shore Highway - It was noted that this was a business and now it's a different proposed business.

**2015-196** Councillor Albert Murphy/Councillor Ken Brinston

Be it resolved Council approve in principle subject to approvals pertinent government departments.

**Motion carried unanimously.**

- i. Harbour Construction - setting a meeting date. Council will meet with Harbour Construction at the Planning Meeting on August 25<sup>th</sup> at 7:00 p.m.
9. **2015-197** Councillor Albert Murphy/Councillor Kenny Brinston  
Be it resolved Council adjourn the public meeting at 9:07 p.m.  
**Motion carried unanimously.**