

Town of Witless Bay
Private Meeting (Friendly Hearing)
April 21, 2015

Attending: Mayor Sebastien Despres, Deputy Mayor Dena Wiseman, Councillors: Rene Estrada, Ralph Carey, Kevin Smart, Ken Brinston, Albert Murphy

Annette Conway, Kelly Hopkins (Legal Counsel representing Deputy Mayor Dena Wiseman and Councillor Ralph Carey)

Reporting: Geraldine Caul

1. Mayor Sebastien Despres called the Private Meeting (Friendly Hearing) to order at 7:30 p.m.

Introductions were made and the meeting proceeded.

2. **2015-049** Councillor Kevin Smart/Councillor Albert Murphy
Be it resolved Council adopt the Agenda of April 21, 2015 as presented.

Amendment: Councillor Albert Murphy/Councillor Rene Estrada

Be it resolved Council amend the motion to use the original agenda so that Item #4 reads:
"Private Hearing relating to the alleged Conflict of Interest relating to the snow clearing of Pond Path."

Discussion: Deputy Mayor Dena Wiseman asked that Legal Counsel for her and Councillor Ralph Carey speak on their behalf. Ms. Annette Conway read through the process for initiating the hearing. She said that Council has the responsibility to vacate the seat of a councillor in a conflict of interest, yet the process of initiating an action is challenging. Recent case law demonstrated councils must exercise due diligence and the rules of natural justice when pursuing a conflict of interest resolution. The Province's Supreme Court, in ruling on a number of recent appeals by councillors whose seats were declared vacant by their respective councils for conflict of interest, has determined that the rules of natural justice require a council to give a councillor whose seat is to be declared vacant, reasonable notice before the dismissal action is taken. This affords the affected councillor time to respond to the allegation of conflict of interest. The rules of natural justice require a council to:

1. Provide the councillor with a written document explicitly setting out the details of allegation of conflict of interest;
2. Arrange for a hearing to be held with the councillor;
3. Provide the councillor with a reasonable period of notice prior to the hearing; and
4. Permit the councillor during the hearing:
 - i. To be heard by himself or herself or through legal counsel;
 - ii. To examine and cross-examine witnesses, submit exhibits and make submissions.

Deputy Mayor Dena Wiseman asked that the record reflect her and Councillor Ralph Carey's request to postpone this hearing due to Council's failure to follow the rules of natural justice.

Mayor Sebastien Despres noted also that the amendment to the agenda that specifies “Pond Path” is not in line with what Municipal Affairs asked of Council, and perhaps not in line with what Deputy Mayor Wiseman’s and Councillor Ralph Carey’s legal counsel prepared.

Mayor Despres stated that he erred in his initial handling of the alleged conflict of interest issue, by sending a letter on behalf of the Town without having it cleared by a majority of Council, and for this reason the Town withdrew this initial letter. Council met, and a majority of Council declared the issue as closed. No further concerns relating to a conflict of interest were brought back to the table by Council or sent to the councillors in question.

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

Against the amendment: Mayor Sebastien Despres, Deputy Mayor Dena Wiseman, Councillors Kevin Smart and Ralph Carey.

Amendment failed.

For the **motion**: Mayor Sebastien Despres, Mayor Dena Wiseman, Councillors Kevin Smart and Ralph Carey

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

Motion carried [*the agenda stands as presented*].

3. A brief discussion took place on how the meeting is to proceed. Councillor Rene Estrada explained that Council is here to hear Ralph and Dena and their legal counsel speak.

Sebastien added that once they have spoken they will leave and the remaining councillors will hold a discussion, and then invite them back.

2015-050 Councillor Ken Brinston/Councillor Kevin Smart

Be it resolved the meeting proceed with a presentation by Deputy Mayor Dena Wiseman, Councillor Ralph Carey and their legal counsel. Once they have completed their presentation, they will leave the chamber and return if Council has questions, or wish to hold further discussions.

Motion carried unanimously.

4. There was a brief presentation made by Annette Conway, Legal Counsel for Deputy Mayor Dena Wiseman and Councillor Ralph Care. Points outlined are:

The issue defined by Municipal Affairs is whether Dena and Ralph were in conflict during the motions relating to snow clearing as defined in the Municipalities Act, section 207.

There were two motions made on snow clearing; one to ratify regulations on snow clearing and the second to empower public works via electronic means to award snow clearing contract for October 2014 – April 2017.

Under section 207 of the Municipalities Act, relating to monetary interest, the monetary interest would have to be in relation to the tendering of the snow clearing contract.

Legal Counsel Annette Conway continued her presentation saying that the main access to Deputy Mayor Dena Wiseman and Councillor Ralph Carey’s property is Southside Track and not Pond Path. She said that Pond Path was being cleared anyway, and was historically being cleared for years.

Ms. Conway explained that Section 207 of the Municipalities Act states that "A councillor shall not speak to a matter before the council or a committee of the council where the councillor has a monetary interest in the matter distinct from an interest arising from his or her functions as a councillor. A councillor's responsibility is to speak on behalf of its residents, and because Deputy Mayor Dena Wiseman was bringing forward a question on behalf of a resident who inquired about the snow clearing of this road for a gentleman in ill health who lived on this road, and who needed medical attention, Dena's action was within her role as councillor. The discussion came up as a result of her/their position on Council, and therefore not distinct from her function as a councillor.

Ms. Conway indicated also that in most municipalities councillors have properties accessing onto a snow cleared road.

At 8:40 p.m., Deputy Mayor Dena Wiseman, Councillor Ralph Carey and their legal counsel left the chamber.

Mayor Sebastien Despres left the Chair for discussions with Council. He explained that it's important that Council considers that if the seats of these councillors are vacated without proper cause or without following the proper process, the decision could be reversed by the courts, and that the Town could incur significant legal costs. He explained that Municipal Affairs was very clear in its directions:

"Council must decide whether or not Deputy Mayor Dena Wiseman and Councillor Ralph Carey were in a conflict of interest when they voted on the motions concerning snow clearing."

2015-051 Mayor Sebastien Despres/Councillor Kevin Smart

Be it resolved that Deputy Mayor Dena Wiseman and Councillor Ralph Carey were not in conflict when they voted on the motions concerning snow clearing.

For the motion: Mayor Sebastien Despres, Councillor Kevin Smart

Abstaining: Councillors Ken Brinston, Albert Murphy, Rene Estrada

Motion failed.

A discussion followed concerning the right of these councillors to abstain. The Municipalities Act was then read,

"A councillor shall not abstain from voting on a motion or resolution before the council unless he or she is required to abstain from voting because of a conflict of interest under section 207 or he or she has been permitted to abstain by a majority vote of the other councillors in attendance at the meeting." (Section 212,2).

"Where a councillor abstains from voting on a motion or resolution, a decision shall not be made on that motion or resolution unless the number of councillors in favor of the motion or resolution is equivalent to or more than a majority of the councillors in attendance at the meeting." (Section 212, 3)."

Councillors Brinston, Murphy and Estrada then signaled that if they were compelled to vote, they would vote against the motion. Councillor Ken Brinston asked if Council could talk to a lawyer and get his opinion before voting on this issue.

2015-052 Councillor Albert Murphy/Councillor Ken Brinston

Be it resolved Council seek advice from a lawyer pertaining to both allegations 1 and 2 (whether conflict existed during the voting of the motions relating to Town Plan and the snow clearing).

Amendment: Mayor Sebastien Despres/Councillor Kevin Smart

Be it resolved Council seek advice from lawyer pertaining to allegation 1 only (snow clearing) because a formal decision was already made relating to the Town Plan.

For the motion: Mayor Sebastien Despres, Councillor Kevin Smart

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

Amendment failed.

Motion carried.

2015-053 Councillor Ken Brinston/Councillor Albert Murphy

Be it resolved Council postpone the April 28 public meeting of Council if the lawyer isn't available before the public meeting is scheduled to take place.

Motion carried unanimously.

2015-054 Councillor Albert Murphy/Councillor Rene Estrada

Be it resolved Geraldine contact Dan Noseworthy and update him on the progress of the alleged conflict of interest issue.

Motion carried unanimously.

There was a discussion on whether both staff should be attending this private meeting. Sebastien noted that the Municipalities Act stipulates the clerk is to attend public meetings of council as well as other meetings as required by council, and in the absence of the clerk, the assistant clerk is to attend. It was noted that Council decided some time ago that it was unnecessary for the Town to pay both staff members to attend meetings, but that Geraldine requested and was granted that the assistant clerk be present during the public meetings. Geraldine explained that each staff member handles specific and separate duties, and during public meetings information may be required from the clerk and assistant clerk.

2015-055 Councillor Rene Estrada/Councillor Ken Brinston

Be it resolved the assistant clerk attend meetings pertaining to the alleged conflicts of interest.

Motion carried unanimously.

At 9:26 p.m., Deputy Mayor Dena Wiseman, Councillor Ralph Carey and their legal counsel were invited back into the chamber.

Mayor Sebastien Despres explained that no decision has been made, that there was a motion made to seek legal advice from a lawyer on allegations 1 and 2. He said the remainder of council will meet with the lawyer as soon as possible.

2015-056 Deputy Mayor Dena Wiseman/Councillor Ken Brinston

Be it resolved Council adjourn the private meeting (friendly hearing) at 9:30 p.m.

Motion carried unanimously.