

Minutes - Public Meeting of Witless Bay Town Council

Town Hall - 7:30 p.m.
November 26, 2013

Attending: Mayor Sébastien Després, Deputy Mayor Jeff Swain, René Estrada, Dena Wiseman, Kevin Smart, Ralph Carey, Tommy Crocker

Also Attending: Geraldine Caul, Barb Harrigan

1. The meeting was called to order at 7:30 p.m. by Mayor Sébastien Després.
2. Adoption of November 26/13 agenda - Sébastien listed a number of items he wished to add and asked for a motion to amend the agenda to reflect the additions.

2013-217 - Dena Wiseman/René Estrada

Be it resolved Council adopt the November 26/13 agenda as amended to include:

5 d) Discussion on unpaved cul-de-sacs

5 e) Notice of Motion to ratify the proposed Regulations on Permits

5 f) Notice of Motion to reschedule or cancel December 24th Meeting

5 g) Document storage & management and records protection solutions

Motion carried unanimously.

3. Adoption of November 12/13 Minutes of Meeting - Sébastien called for a motion to adopt the minutes.

2013-218 - Tommy Crocker/Jeff Swain

Be it resolved Council adopt the November 12/13 Minutes of Meeting as presented.

Motion carried unanimously.

4. Business Arising from Minutes;
 - a) Motion to reconsider motion 2013-202 from Nov. 12/13 meeting relating to subdivision on Gull Pond Road - Sébastien explained that following the Nov. 12 public meeting a motion was found regarding a moratorium on the approval of subdivisions. He said it states that no subdivision proposal will be approved until the proposed Town Plan is in effect. He said for this reason he was proposing an amendment to Jeff's motion made at the last meeting, because the subdivision proposal needed to adhere to all requirements of the new town plan, not just the 3/4 acre lot size.

Dena asked Council if she and Ralph were in conflict on this matter due to their land bordering the area included in the subdivision proposal. Sébastien referred to the Municipalities Act (Sections 207, 208, and 209), and explained that when a similar case had been put to Council in the past, it was decided that there is no conflict. As per Section 209 of the Municipalities act, which reads, "Where a councillor is in doubt as to whether or not he or she has a monetary interest that is a conflict of interest under section 207, he or she shall make a disclosure and the council may decide the question by majority vote and its decision on the matter is final," Dena Wiseman and Ralph Carey left the chamber at 7:48 p.m. to allow Council to vote on the conflict issue.

Sébastien called for Council's vote on whether Dena and Ralph were in conflict relating to this subdivision proposal.

Councillors for conflict: Tommy Crocker, René Estrada

Councillors against conflict: Sébastien Després, Kevin Smart, Jeff Swain

Councillors Dena Wiseman and Ralph Carey were declared as not to be in conflict. They returned to the chamber at 7:51 p.m.

Sébastien vacated the chair at 7:51 to make the following motion:

2013-219 - Sébastien Després/Kevin Smart

Be it resolved that Council reconsider motion 2013-202 relating to the subdivision on Gull Pond Road, to amend the amendment made by Jeff Swain, and instead of simply referring to the proposed Town Plan's 3/4 acre minimum requirement, the motion should state that Council will expect this proposal to abide by all of the standards set in the proposed Town Plan.

Motion carried unanimously.

Sébastien returned to his chair at 7:55.

- b) Track Road & Harbour Drive - Jeff Swain explained that both projects contain cost overruns, and the town's engineer suggests we use the gas tax funding from the Harbour Road project toward extending Track Road. This would eliminate cost overruns related to the Harbour Road project and complete Track Road just past the entrance to the Community Centre. Jeff suggested Council accept Tom Kendall's recommendation.

2013-220 - Jeff Swain/Ralph Carey

Be it resolved Council approve the recommendation of the town engineer to extend work on Southside Track using the gas tax funding allocated for Harbour Road, and that the Harbour Road project be put on hold for future consideration.

Motion carried unanimously

Jeff explained also that the septic system for the Witless Bay Community Centre was initially supposed to be installed in front of the recreation building, but Services NL wouldn't approve this location. He said there were a couple of options such as trenching out and placing it either within the ball field, or outside the basketball field. He said there might be a possibility of using a reed bed, which would be a more environmentally-friendly solution and which would eliminate ditching, but more information was needed on this.

2013-221 - Jeff Swain/Ralph Carey

Be it resolved Council approve trenching for the septic field pending cost of the reed bed.

Amendment: Dena Wiseman/Ralph Carey

Be it resolved Council approve trenching for the septic field pending cost of the reed bed, and that the Public Works & Compliance be authorized to make a decision on behalf of Council once clarification is received on the price of a reed bed and the time frame involved.

Amendment carried unanimously.

Motion carried unanimously.

- c) 20-22 Hillsway Drive Variance - The two letters received pertaining to the variance were discussed. It was noted there was a request from one of the residents for Council to guarantee

they would accept responsibility should there be an issue with contamination in the future. It was clarified that Council could not grant this guarantee since it was Services NL who signed off on septic disposal systems and not the town.

2013-222 - Ralph Carey/Jeff Swain

Be it resolved Council accept the development application for 20-22 Hillsway Drive and approve the proposed development in principle, subject to approval from Services NL.

Motion carried unanimously.

- d) Engineer approved subdivision (Emerald Estates) - Sébastien explained this item was tabled because Council was unsure of its role in the approval process. He said Council had already pre-approved the subdivision and therefore, Council was accepting the town engineer's recommendation for approval.

2013-223 - Jeff Swain/Ralph Carey

Be it resolved Council approve the subdivision in Emerald Estates as submitted and recommended for approval by the town's engineer.

Motion carried unanimously.

- e) Southern Shore Arena - Stabilization fund - Sébastien explained that Council received a copy of funds donated by councils but that no Local Service Districts contributed. He said the funds seem to be in proportion with the towns. The Southern Shore Arena was asking for funding support in the same amount the town had given the previous year, which was \$6,527.

2013-224 - Jeff Swain/Dena Wiseman

Be it resolved Council grant the funding request from the Southern Shore Arena to the amount of \$6,527.

Discussion: Dena asked if this was a group Council would need to ratify. Sébastien explained that once the Proposed Regulations for Associations Seeking the Support of Council have been ratified by Council, the arena would need to apply to be ratified in order to get the support of Council. He added that since Council has not yet ratified these new Regulations, this decision falls under the old rules.

Motion carried unanimously.

- f) Meeting with Jamie Hunt of Municipal Affairs re Recreation Revitalization Project - Geraldine to check with Mr. Hunt on his availability, preferably in the evening.
- g) Notice of Motion to ratify the proposed regulations governing requests for the support of Council - Sébastien said he developed a proposal which was in Councillor's packages, and that each item will be discussed at the next meeting, in order to be ratified by Council. He asked that Council give their feedback by December 4th 2013 so that amendments can be made prior to the release of the Agenda for the next Council meeting.

- h) BBBAA - Funding request -

2013-225 - Jeff Swain

Be it resolved Council accept the BBBAA's funding request.

Seeing no seconder, Sébastien declared the motion as having failed.

Discussion: Sébastien vacated his seat at 8:25 p.m. and was replaced by Jeff.

Sébastien explained that the BBAA has requested \$37,000 of our residents' monies to support recreation infrastructure development and toward the development and delivery of recreation programs in the Bay Bulls to Bauline East area. He continued to say the request puts Council in a sticky situation because the town's ability to extract monies from its residents should not make it responsible for financing the recreation programming for the entire area. Given the current structure, the generosity of the residents of Witless Bay would not be properly recognized. Sébastien explained that governments very rarely fund the day-to-day administrative costs of organizations not in their control. Instead, governments fund "projects" and "programs" so that the contributions of their taxpayers are properly recognized.

Sébastien said the BBAA has made many things happen in our area, and it would be shame to simply abandon the project. He said he met with the Mayor and Deputy Mayor of Bay Bulls proposing an idea of subsuming the BBAA as a department of our joint Councils. He explained that in their funding request, the BBAA requested monies for a number of things that would bear much less cost if it operated as a Department of our Joint Councils. There may also be the possibility of other cost-saving measures, such as seasonal employment for the Joint Councils Recreation Director's position.

Sébastien proposed Council deny the funding request and enter into a joint venture with Bay Bulls to take over administration of the organization, explaining that the Joint Councils would not be dismissing the BBAA, but instead subsuming them, thus making them a part of our operations.

Dena recommended we set up a meeting with Bay Bulls Council for next week.

Sébastien returned to the chair at 8:45 p.m.

2013-226 - Jeff Swain/Ralph Carey

Be it resolved Council submit a proposal to BBAA with an offer to subsume administration instead of paying them \$37,000. Be it further resolved that should the BBAA refuse the offer, Witless Bay enter into a joint venture with Bay Bulls to take over the recreation programs. For the amendment: Sébastien Després, Dena Wiseman, Jeff Swain, Tommy Crocker, Ralph Carey, Kevin Smart.

Against the amendment: René Estrada

Motion carried.

2013-227 - Dena Wiseman/Ralph Carey

Be it resolved Council meet with the Bay Bulls and BBAA board members early next week.

Motion carried unanimously.

5. General Business:

- a) Notice of motion: To rescind motions, omnibus, relating to former Rules of Procedure. Sébastien explained that Council has now adopted new Rules of Procedure, but that the former ones had not yet been rescinded. The motion for which notice is being given will rescind all motions relating to the agenda, the process for calling meetings of Council, and what goes on during meetings of Council that were made prior to October 9, 2013. Sébastien said he received confirmation from Municipal Affairs that this is the correct process.
- b) Ralph and Tommy visited the resident who had concerns about excavations taking place without permits, and water contaminations resulting from this practice in the past. She was assured Council would look into her concerns.

2013-228 - Ralph Carey/Kevin Smart

Be it resolved Council table this item for the next town meeting.

Motion carried unanimously.

- c) Municipal Assessment Agency's Avalon Director's election -

2013-229 - Jeff Swain/Kevin Smart

Be it resolved Council invite candidates to submit their biographies so Council can vote at the next public meeting of Council.

Motion carried unanimously.

- d) Discussion on unpaved cul-de-sacs - Sébastien explained he had been looking into possible solutions to the quandary of unpaved cul-de-sacs such as the end of Bear's Cove Road, Maraties Lane and John C's Grove. He said Council cannot approve any further development on these roads until they are brought up to Town Standards. However, Council does not have the resources needed to bring of these roads to Town Standards. Sébastien explained that while there's little reason for everyone else in the Town to be paying for the construction of these new roads, the expectation that the first person to apply to develop land in an area should be responsible for building a road meeting Town Standards is onerous and unfair, since every subsequent developer then benefits from a free road.

Sébastien said the solution to the problem is clearly spelled out in the Municipalities Act, Sections 149 and 150. (See Appendix A). Sébastien said he spoke to Municipal Affairs and the Town Planner and that he received other resources relating to projects such as this. Sébastien said the Town could consider paying a portion and make up the rest in Local Improvement Assessments and Service Levies. Sébastien also explained that there may be a possibility of applying for gas tax and 90-10 projects. The Town could facilitate the project by paying at first and assessing the cost for a number of years. Sébastien said if the Engineer provides a costing, the Town could go by a referendum and get the residents to initiate a request, but if it was to be done, the application has to be submitted by December 13/13.

- e) Notice of motion to ratify Regulations on Permits - Sébastien said the proposed Regulations were on his website and if residents wanted to provide input, they should do so by no later than the morning of December 4/13. The Regulations would be coming back to the next council meeting for ratification.
- f) Notice of motion to re-schedule or cancel December 24 meeting of Council.

2013-230 - Jeff Swain/Dena Wiseman

Be it resolved Council temporarily suspend its rules and cancel the December 24th meeting of Council.

Motion carried unanimously.

- g) Document storage & management and records protection solution - Sébastien said he invited RICOH to submit a proposal relating to the protection of the town's files. He said this company had good representation here, and added that a few of the municipalities are currently using this, including Mount Pearl. He said this is a notice of motion and will be brought back to the next public meeting of Council.

6. Presentation by Individuals & Delegations - There were none at this meeting.

7. Committee Reports

Finance:

- a) Cash Flow Analysis Report - Information only
- b) Payables - Information only (this information was available to the public and attached to the agenda that was generated)
- c) Tax Structure - Information only.
- d) Tendered cost for repairs to Tamarack Drive - It was noted this was the only bid received.

Public Works & Compliance:

- a) Dean's Road property flooding - Jeff reported that public works checked it out but there was a question of whether Council has the authority to tear up a culvert. It was noted the pipe extended to the ditch in the road, and in addition, he said if Council were to fix this particular one, there were many others in the community that might need to be assessed for repairs.

2013-231 - Jeff Swain/Tommy Crocker

Be it resolved Council refer this item to the town's engineer for clarification on responsibility.

Motion carried unanimously.

- b) Clean-up of Irishtown Road property -

2013-232 - Tommy Crocker/Dena Wiseman

Be it resolved Council table this item for the next public meeting of Council.

Motion carried unanimously.

- c) Tamarack Drive culvert requirement - Sébastien said that the Municipalities Act very clearly stipulates that the filling of a ditch without a permit is forbidden (Section 404, k). Sébastien said he drafted a proposal for Regulations on Permits, and once ratified, the proposed regulations would specify what must be done in cases such as this. Sébastien read the proposed regulation: "There shall be no unauthorized ditch filling or altering. Building on any watercourse constructed as a public storm sewer or ditch without prior approval from Town Council is an offence. Written notice will be given to the property owner that the installation will need to be removed upon the Town identifying, at its discretion; i) a potential detrimental effect to Town-owned infrastructure, ii) unsafe or failed conditions, or iii) the installation as a contributing cause to drainage issues. The property owner will be given five weeks (35 days) to remedy the issue. If the issue is not resolved within 35 days, the Town will rectify the issue at the owner's expense."

2013-233 - Jeff Swain/Tommy Crocker

Be it resolved that the property owner is notified that the extension to the culvert must be removed, that the site must be put back to its original state within 35 days, and failure to do so will result in the Town having the required work done at the property owner's expense.

Motion carried unanimously.

- d) Northside Track culvert requirement - There was a brief discussion on whether a culvert was needed, or if the area needed to be ditched only.

2013-234 - Jeff Swain/Tommy Crocker

Be it resolved that the applicant is notified that he will have to place a ditch in front of his property.

Discussion: There was a question of what ditch regulations would be required for this.

Amendment: Jeff Swain/Tommy Crocker

Be it resolved the applicant is notified that he will have to place a ditch in front of his property in accordance with the Department of Works Services & Transportation standards.

Amendment carried unanimously.

Motion carried unanimously.

- e) Crown land application - Southern Shore Highway -

2013-235 - Jeff Swain/Tommy Crocker

Be it resolved Council table Crown land application for Southern Shore Highway for the next meeting.

Motion carried unanimously.

- f) Extension to existing garage - 135 Southside Track -

2013-236 - Jeff Swain/Tommy Crocker

Be it resolved Council approve application for extension to existing garage on 135 Southside Track subject to it meeting town regulations.

Motion carried unanimously.

- g) Relocating existing driveway -

2013-237 - Jeff Swain/Tommy Crocker

Be it resolved applicant is notified to follow up with NL Power and the Department of Works Services & Transportation for approvals, then bring the application back to Council.

Motion carried unanimously.

- h) Renovations on 45 Gallows Cove Road - Sébastien read item numbers 2 & 3 from his proposed Regulations on Permits to bring awareness to how this type of permit will be handled in the future, **pending approval of the proposal.**

Number 2 on the proposed regulations on permits states:

"No development, construction, renovation, demolition, excavation, grading, clearing or grubbing is to take place without a permit from the Town."

Number 3 on the proposed regulations on permits states:

"Development applications which conform to the specifications and requirements of the Town Plan, which are in full compliance with the town's development regulations, and which are less than or equal to \$5,000 in value, may be processed without delay after a thorough review by the Town Clerk-Manager. In such instances of full compliance, a copy of the development application, receipt of fee payment, copy of the permit, background materials, maps, drawings and other documentation relating to the development will be filed and retained. In such situations specific prior approval of council is not required prior to issuing a permit. The approved development applications must be presented to council at the next public meeting of council. The purpose of such approval is to ensure that council is aware of all building and development activity approved within the town, and to seek information or clarification from staff as may be necessary. Council may not rescind development applications or building permits which meet the criteria of the Town Plan and which fully conform to the town's Building and Development Regulations."

Jeff Swain declared conflict on this item and left the chamber at 10:00 p.m.

2013-238 - Dena Wiseman/René Estrada

Be it resolved Council approve application for renovations on 45 Gallows Cove Road.

For the motion: Sébastien Després, René Estrada, Dena Wiseman, Tommy Crocker, Kevin Smart, Ralph Carey.

Abstained: Jeff Swain

Motion carried.

Jeff Swain returned to the chamber at 10:01 p.m.

- l) Shed on 4 Island View Place - Jeff and Ralph did a site visit on this property and recommended it for approval.

2013-239 - Jeff Swain/Dena Wiseman

Be it resolved Council approve application to develop shed on 4 Island View Place.

Discussion: There was a brief discussion on frontage, setback and maximum height but it was determined the applicant was within the regulations.

Motion carried unanimously.

- j) New home construction on Maraties Lane - Jeff Swain stated that at the end of the day Maraties Lane was not a town road and this did not qualify as a back lot development.

2013-240 - Jeff Swain/René Estrada

Be it resolved Council approve in principle the application to develop on Maraties Lane **with the condition that the applicant bring the road up to current town standards, and subject to approval from Services NL.**

Motion carried unanimously.

Heritage - Kevin reported that there was a problem with access to the graveyard, that it needs to be cleaned up. He said the Heritage Committee is looking at installing story boards and that they are working on a booklet which includes interviews with elders for stories, possible recipes, etc. and hope to have it ready by early December. They are looking at having a Christmas card out as well, one that depicts a heritage site. He also mentioned that they would like to see the town bring back the road signs with puffins on them.

Sébastien declared conflict and left the chamber at 10:09 for discussions on the clean-up of the access leading to the graveyard.

Kevin explained that access to the graveyard was impossible due to the amount of junk sitting on the site, and Dena confirmed there were three trailers parked along the fence.

2013-241 - Kevin Smart/Dena Wiseman

Be it resolved Council take action and begin the process of getting the old graveyard site cleaned up.

Motion carried unanimously.

Sébastien returned to the chamber at 10:15 p.m.

- 8. **2013-242** - René Estrada/Jeff Swain

Be it resolved Council adjourn at 10:15 p.m.

Motion carried unanimously.

Councillor: _____

Clerk: _____

**Method
and levies**

**PART VI
ASSESSMENTS AND LEVIES**

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149. (1) A council may assess its cost or a portion of its cost, together with financing charges, upon real property that is directly benefited by a public work of the council, including

- (a) the construction of water lines, sewer lines, storm systems and the service connections of storm systems; and
- (b) the construction of curbs, gutters, sidewalks or streets or the upgrading or paving of streets,

and this cost shall be known as "the local improvement assessment".

(2) Where a public work of a council or an action of a council on or off a real property designed to

- (a) develop municipal services; or
- (b) expand the capacity of municipal services;

makes that real property

- (c) capable of being developed;
- (d) have an increased density of potential development; or
- (e) have an enhanced value,

that council may impose a charge on that real property to be known as a "service levy".

(3) A service levy shall not exceed the cost or estimated cost, including financing charges to the municipality of improving or constructing the public works referred to in subsection (2) that are necessary for the real property to be developed in accordance with the standards required by the council and permitted by that council on that real property.

[1999 cM-24 s149](#)

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150. (1) Local improvement assessments made under subsection 149(1) shall be assessed according to the frontage of the real property abutting the highways directly benefited by the public work.

(2) The amount of the local improvement assessment against each portion of real property shall bear the same ratio to the total cost to the council of the public work, together with financing charges, that the frontage of that portion bears to the total of the frontages to be assessed.

(3) Where the portion of real property to be assessed is a corner lot or an irregularly shaped lot, the council may consider the length of frontage for local improvement assessment purposes to be more or less than the actual frontage directly benefited by the public work.

(4) A service levy imposed under subsection 149(2) shall be assessed on the real property based upon the

- (a) amount of real property benefited by the public work related to the total of the real property that is benefited; and

(b) density of development made capable or increased by the public work.