

Public Meeting of Witless Bay Council
Town Hall – 7:30 p.m.
September 08, 2015

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

Recording: Barb Harrigan

1. The meeting was called to order by Mayor Sebastien Despres at 7:30 p.m.
2. **2015-206** Councillors Ken Brinston/Kevin Smart
Be it resolved Council adopt the agenda of September 8, 2015

Amendment: Councillors Ken Brinston/Rene Estrada
Be it resolved Council adopt the agenda of September 8, 2015 as amended 5a)
Residential single family home on John C's Grove Road.

Amendment carried unanimously.

Motion carried unanimously.

3. **2015-207:** Councillors Albert Murphy/Ken Brinston
Be it resolved Council adopt the August 11, 2015 Minutes of Meeting.
Motion carried unanimously.

4. **2015-208:** Councillors Ken Brinston/Kevin Smart
Be it resolved Council adopt the August 25, 2015 minutes of Private Planning Meeting.
Motion carried unanimously.

5. Business Arising from Minutes:

- a. Residential single family home – John C's Grove Road

2015-209: Councillors Albert Murphy/Ken Brinston
Be it resolved Council rescind motion # 2015-190.

Motion carried unanimously.

2015-210: Councillor Albert Murphy

Be it resolved Council approve in principle application for single family home on conditions that they do not require the services from the Town to the existing road pending rezoning.

Mayor Despres called the motion out of order as council is not allowed to give permits for areas that are not zoned properly. Mayor Despres said that until the Town Plan comes through which would zone that area as residential; council cannot make a motion to approve in principle. Council does not have the authority to break its own rules.

Motion failed.

- b. Friendly hearing – Allegations of conflict of interest pertaining to the vote on the Town Plan in its entirety.

Sebastien left the chair at 7:38 p.m.

Kevin Smart left the chamber at 7:39 p.m.

2015-211: Mayor Sebastien Despres

Be it resolved that Council follow the advice of Stephen Penney, legal consultant for the Town of Witless Bay, in his written correspondence to the Town dated May 12, 2015.

Motion failed due to lack of seconder.

2015-212: Mayor Sebastien Despres

Be it resolved that Council makes the legal opinion drafted by the law firm of Stewart McKelvey available to the residents of the Town, who paid for this opinion to be drafted.

Motion failed due to lack of seconder.

Resolution on alleged Conflict Of Interest in relation to motions on the vote on the entirety of Town Plan.

WHEREAS Council has already formally declared that the December 9th vote on the Town Plan was not a conflict of interest;

WHEREAS Section 209 of the Municipalities Act states a decision of Council on matters of Conflict of Interest is final;

WHEREAS the Minister's office has acknowledged, in writing, that this reading of Section 209 is correct;

WHEREAS this interpretation has been confirmed by the Town's legal counsel;

WHEREAS the entirety of Council, including Councillor Smart, participated in the decision to recall the Municipal Plan from the Minister's desk in the first place;

WHEREAS none of the decisions made by this Council in relation to the Town Plan financially impacts any of the councillors who participated in the December 9th vote on the Town Plan distinct from an interest arising from their functions as councillors;

WHEREAS none of the amendments made to the Town Plan by the members of Council elected following the 2013 General Election related to the properties of the Councillors who voted on the Town Plan on December 9, 2014;

WHEREAS the process to find Councillor Kevin Smart in a potential conflict of interest was commenced while there was still a Council motion stating the contrary on the public record;

WHEREAS the official and ratified minutes of December 9, 2014 meeting clearly state the Council's intention was to vote on amendments to the Town Plan and not the entirety of the Town Plan;

WHEREAS the Minister has himself acknowledged, in a letter dated June 9, 2015, that the motions made by Witless Bay's Council on the Town Plan encompassed only the changes made to the Plan by the current Council;

WHEREAS the Minister's interpretation of the plan preparation and registration process was not made available to Council until June 9, 2015.

WHEREAS there is nothing in the Urban and Rural Planning Act stating that a vote on amendments to the Town Plan necessarily requires a vote on the entirety of the Town Plan;

WHEREAS no councillor signaled having concerns relating to potential conflicts of interest prior to the vote on the Town Plan taking place;

WHEREAS the Statement of Facts that was provided to Councillor Smart was drafted by three councillors acting alone and without quorum, and this document was distributed to Councillor Smart without a fourth member of Council (which would have constituted a quorum) ever seeing it;

WHEREAS there are serious factual errors and inconsistencies in the Statement of Facts that was provided to Councillor Smart;

WHEREAS the Statement of Facts provided to Councillor Smart directly contradicts a number of points in the correspondence received from Municipal Affairs dated August 11, 2015 which clearly states, and I quote, *"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 councillors 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."*

2015-213: Mayor Sebastien Despres

Be it resolved that Council once again declare that there was no conflict of interest in relation to the vote on the Town Plan that took place on December 9, 2014.

Resolution failed due to lack of seconder.

2015-214: Mayor Sebastien Despres

Be it resolved that Council once again declare that there was no conflict of interest in relation to the vote on the Town Plan that took place on December 9, 2014.

Motion failed due to lack of seconder.

Mayor Despres returned to the chair at 7:48 p.m.

Councillor Smart returned to the chamber at 7:49 p.m.

Councillor Smart left the chamber at 7:53 p.m.

2015-215: Councillors Albert Murphy/Ken Brinston

Be it resolved Council schedule a friendly hearing for Councillor Kevin Smart for September 22, 2015 at 7 p.m.

Be it further resolved that the facts regarding the alleged Conflict of Interest that was presented to Councillor Smart at the Private Planning Meeting that was held on August 25, 2015 be put on the Town letterhead.

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

Against the motion: Mayor Sebastien Despres

Motion carried.

Councillor Smart returned to the chamber at 7:54 p.m.

c. Town Plan – Minister Keith Hutchings meeting

The Minister Keith Hutchings called upon Council to go meet with him Monday, August 31, 2015 where he announced his decision to hold a plebiscite. All the residents of Witless Bay have been advised via a letter. The dates have been changed from what was in the letter and the residents will soon be receiving another letter explaining the change. The formal vote will be taking place on September 17, 2015.

6. New Business:

a. Salt and Sand

2015-216: Councillor Albert Murphy/Ken Brinston

Be it resolved Council empower Public Works to assess the property belonging to the Town on the Witless Bay Line and make recommendation to Council via email what work needs to be done in order to prepare the site to store the Towns salt and sand either for this year or the coming year.

Motion carried unanimously.

2015-217: Councillor Albert Murphy/Kevin Smart

Be it resolved Council call for quotes on the salt and sand for the coming season.

Motion carried unanimously.

b. Turnarounds - Deferred to Planning Meeting

c. Alleged snow clearing conflicts

Sebastien vacated the chair at 8:18 p.m.

2015-218: Mayor Sebastien Despres/Councillor Kevin Smart

Be it resolved that Council follow the directives of Peter Shea, legal consultant for the Town of Witless Bay, in his written correspondence to the Town dated September 4, 2015.

For the motion: Mayor Sebastien Despres, Councillor Kevin Smart

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

Motion failed.

2015-219: Mayor Sebastien Despres/Councillor Kevin Smart

Be it resolved that Council follow the advice of Stephen Penney, legal consultant for the Town of Witless Bay, in his written correspondence to the Town dated May 12, 2015/

For the motion: Mayor Sebastien Despres, Councillor Kevin Smart

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

Motion failed.

2015-220: Mayor Sebastien Despres/Councillor Kevin Smart

Be it resolved that Council make the legal opinion provided by the law firm of Cox & Palmer available to the residents of the Town, who paid for this opinion to be drafted.

For the motion: Mayor Sebastien Despres/Councillor Kevin Smart

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

Motion failed.

2015-221: Mayor Sebastien Despres/Councillor Kevin Smart

Be it resolved that Council make the legal opinion provided by the law firm of Stewart McKelvey available to the residents of the Town, who paid for this opinion to be drafted.

For the motion: Mayor Sebastien Despres/Councillor Kevin Smart

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

Motion failed.

Resolution on alleged Conflict of Interest to motions on the snow clearing of Pond Path.

WHEREAS the seats of Deputy-Mayor Wiseman and Councillor Ralph Carey were vacated in relation to an accusation about which they were never given an opportunity to defend themselves;

WHEREAS the wording of the motion highlights the above failure in procedural fairness, stating that Council resolves to vacate “not in respect to motions on snow clearing, but in respect to snow clearing on Pond Path”;

WHEREAS Section 207 of the Municipalities Act applies to “matters before the council or a committee of the council” and no discussion on the snow clearing of Pond Path was ever held which would fall within these parameters.

WHEREAS Municipal Affairs has advised Council that only matters discussed before Council or a Committee of Council are subject to the provisions of Articles 207 and 206 of the Municipalities Act;

WHEREAS the two lawyers hired by the Town have advised Council that only matters discussed before council or a Committee of Council are subject to the provisions of Articles 207 and 206 of the Municipalities Act;

WHEREAS no change to the status of Pond Path was ever made by this council or its members;

WHEREAS no change was made to the status of Pond Path in the Town’s snow clearing contract;

WHEREAS there is no mention of Pond Path in the snow clearing contract that was voted on by the councillors in question;

WHEREAS no change was made to the Town’s snow clearing contract that could have had a financial impact on Councillor Carey and Deputy-Mayor Wiseman;

WHEREAS no change was made to the status of Pond Path in the Town’s list of publicly-maintained roads;

WHEREAS none of the changes made to the Town’s list of publicly-maintained roads could be construed as having a financial impact on Councillor Carey and Deputy-Mayor Wiseman distinct from an interest held in common with the citizens of Witless Bay;

WHEREAS the councillors in question have not been found to have a monetary interest in the matter distinct from an interest arising from their functions as councillors;

WHEREAS the councillors in question have not been demonstrated to have a monetary interest in the matter;

2015-222: Mayor Sebastien Despres/Councillor Kevin Smart

Be it resolved Council vacate motion # 2015-149 and restore immediately the seats of Deputy-Mayor Wiseman and Councillor Ralph Carey.

For the resolution: Mayor Sebastien Despres/Councillor Kevin Smart

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

Resolution failed.

2015-223: Mayor Sebastien Despres/Councillor Kevin Smart

Be it resolved Council vacate motion #2015-149 and restore immediately the seats of Deputy-Mayor Wiseman and Councillor Ralph Carey.

For the motion: Mayor Sebastien Despres/Councillor Kevin Smart

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

Motion failed.

Mayor Despres returned to his chair at 8:30 p.m.

2015-224: Councillors Ken Brinston/Albert Murphy

Be it resolved that Council sit to discuss the advice from lawyer Peter Shea and make the proper arrangements with the lawyer pending the outcome of council's decision.

Motion carried unanimously.

d. Crown Land – See motion # 2015-216

e. Puffin Centre- Crown Land approval

The Town received the Crown Land approval for the property on the Southside Track and Vallis Surveys has been asked to survey the property for the Town.

2015-224: Councillors Kevin Smart/Albert Murphy

Be it resolved Council purchase the piece of Crown Land on Southside Track for \$1.00

Motion carried unanimously.

f. Development Appeal – Information Only

7. Public Works & Compliance:

a. **2015-225:** Councillors Albert Murphy/Ken Brinston

Be it resolved Council approve application for shed on 264 Deans Road.

Motion carried unanimously.

b. **2015-226:** Councillors Albert Murphy/Ken Brinston

Be it resolved Council approve application for garage on 63 Country Path Drive.

Motion carried unanimously.

c. **2015-227:** Councillors Ken Brinston/Albert Murphy

Be it resolved Council approve in principle single family home on 51 Country Path Drive subject to approval from Services NL and any other government agencies having jurisdiction.

Motion carried unanimously.

d. **2015-228:** Councillors Ken Brinston/Rene Estrada

Be it resolved Council approve in principle single family home on 63 Country Path Drive subject to approval from Services NL and any other government agencies having jurisdiction.

Motion carried unanimously.

- e. **2015-229:** Councillors Ken Brinston/Albert Murphy
Be it resolved Council approve in principle single family home on 43 Country Path Drive subject to approval from Services NL and any other government agencies having jurisdiction.
Motion carried unanimously.

- f. **2015-230:** Councillors Albert Murphy/Ken Brinston
Be it resolved Council approve in principle single family home on 12-14A Gallows Cove Road (Backlot Development) subject to approval from Services NL and any other government agencies having jurisdiction.
Motion carried unanimously.

- g. **2015-231:** Councillors Albert Murphy/Ken Brinston
Be it resolved Council approve in principle single family home on 58 Bears Cove Road subject to approval from Services NL and any other government agencies having jurisdiction.
Motion carried unanimously.

- 8. **2015-232:** Councillors Albert Murphy/Kevin Smart
Be it resolved Council adjourn the meeting at 9:15 p.m.
Motion carried unanimously.