

**TOWN OF SAINT ANDREWS
W. C. O'NEILL ARENA COMPLEX THEATRE
Special Council Meeting
MINUTES
March 27, 2017 at 8:00PM**

A Special Meeting of the Town of Saint Andrews Council was held at the W. C. O'Neill Arena Complex Theatre beginning at 8:00PM with the following members present: Mayor Doug Naish, Deputy Mayor Edie Bishop, Councillors Dan Boyd, Guy Groulx, Kurt Gumushel, Andrew Harrison and Brad Henderson. Also present were: Angela McLean, Clerk, Chris Spear, Treasurer, Hap Stelling, Manager of Planning and Gail McLaughlin, Administrative Assistant.

APPROVAL OF AGENDA

It was moved by Councillor Henderson, seconded by Councillor Boyd and carried to approve the Agenda as presented.

DISCLOSURE OF CONFLICT OF INTEREST

NONE

PRESENTATIONS-

Jay Remer presented his comments to Council regarding the Indian Point Land Lease. A copy of his presentation is attached as Schedule "A".

Sharon McGladdery presented comments on behalf of the Kiwanis Club of Saint Andrews. A copy of a presentation submitted to the Town by David Bartlett is attached as schedule "B".

COMMUNICATIONS

NONE

INTRODUCTION, CONSIDERATION AND PASSING OF BYLAWS AND MOTIONS

It was moved by Councillor Boyd, seconded by Deputy Mayor Bishop *that Council direct the CAO to prepare and initiate an RFP process for the land lease at Indian Point, with the new lease to take effect January 1, 2018, and that the Kiwanis Club be allowed to continue to operate the campground on that site for the 2017 summer camping season, subject to conditions set by the CAO.*

At this point, each Councillor and the Deputy Mayor read their prepared statements with Councillor Henderson suggesting in his statement that Council table the proposed motion to a later date until the Kiwanis Club provided Council with a financial statement of the campground's yearly income. Councillor Groulx asked to introduce an "amendment" to the motion to read that *"Council direct the CAO to prepare a lease to the Kiwanis Club for a 25year term with an option of extension of 25 years with the same terms and conditions as the current lease and that it be completed by May 1, 2017."* Mayor Naish stated that this would be considered a new motion not an amendment and that the first motion needed to be dealt with first.

Following further discussion, it was moved by Councillor Henderson, seconded by Deputy Mayor Bishop that Council table the initial motion. Following further discussion *it was moved by Councillor Henderson, seconded by Councillor Groulx "that Council table the initial motion which stated, that Council direct the CAO to prepare and initiate an RFP process for the land lease at Indian Point, with the new lease to take effect January 1, 2018, and that the Kiwanis Club be allowed to continue to operate the campground on that site for the 2017 summer camping season, subject to conditions set by the CAO" but that Council now directs the CAO to commence negotiations with the Kiwanis Club as soon as possible and that the Kiwanis Club be allowed to continue to operate the campground on that site for the 2017 summer camping season.* Motion Carried unanimously.

QUESTION PERIOD

A few comments but no questions

COUNCILLORS` AND DEPUTY MAYOR`S COMMENTS

See attached schedules: Schedule "C", Deputy Mayor Bishop; Schedule "D" Councillor Gumushel; Schedule "E" Councillor Groulx;

MAYOR'S COMMENTS**ADJOURNMENT**

At 9:21PM, it was moved by Councillor Gumushel, seconded by Councillor Boyd and carried that the meeting be adjourned.



Doug Naish, Mayor



Angela McLean, Clerk

Schedule "A"**PRESENTATION BY JAY REMER TO COUNCIL OF****THE TOWN OF SAINT ANDREWS****MARCH 27, 2017****RE: INDIAN POINT LAND LEASE****A valuable public asset:**

- Indian Point Campground is located on land owned by the Town of Saint Andrews.
- The Indian Point Campground is a prime revenue-generating asset. The Town has a duty, both legal and moral, to manage that asset in a way that maximizes the benefits to the citizens of the Town.

The current lease:

- The Town of Saint Andrews has in the past leased the Indian Point land to the Kiwanis Club for only \$1 per year.
- The most recent lease agreements between the Town and the Kiwanis Club terminated on April 30, 2012 and Town staff advises that the leases were not renewed. As a result, the Kiwanis Club has been leasing the Town's land on a month-to-month basis since April 30, 2012.
- It is therefore open to the Town to award the lease of the land to another operator or to assume control of the operation itself on one month's notice to the Kiwanis Club.

The decision on the future of this public asset must be open, fair, and transparent:

- In light of the expiry of the Kiwanis Club lease, the Town has the opportunity to engage in an open, fair, transparent process to determine how the Indian Point land will be managed for the benefit of the citizens of the Town going forward.
- This, at a minimum, requires the Town to issue a Request for Proposals for the lease or operation of the Indian Point land and to give a fair hearing to the proposals that it receives.

- The Kiwanis Club will not disclose how much revenue it generates from the Indian Point Campground, but a group of concerned citizens have estimated based on the rates charged for rentals that the gross revenue is likely in the \$500,000 - \$750,000 range. The Town sees only a small fraction of this revenue returned to it. An open and fair tendering process could result in a much better arrangement for all of the citizens of the Town.
- Should the Town enter into another lengthy lease with the Kiwanis Club without considering its other alternatives through an open tendering process, and without receiving fair market rent for the land or a reasonable percentage of the Campground revenues, it will have failed to act in accordance with the principles of procedural fairness, good corporate governance, and most fundamentally, it will have breached its duty to manage this public asset in the best interest of the citizens of Saint Andrews.

Procedural By-Law requires an open procurement process:

- The Council has mandated in its Procedural By-Law just recently adopted on March 13, 2017, at section 41, that the Town shall follow the *Procurement Act* for procurement of goods and services over certain thresholds. For those transactions not covered by the *Procurement Act*, the Town shall follow the Procurement Policy adopted by Council.
- The value of the Indian Point Land Lease surely exceeds the threshold for services requiring a proper procurement process in compliance with the By-Law. If Council does not follow a proper procurement process in considering a new lease or agreement for the operation of the land, it opens itself to a legal challenge based on a breach of its own by-law.
- The Town recently issued a Request for Proposals for the Niger Reef Teahouse. It should follow that example of due process and a fair tendering process in requesting proposals for the operation of the Campground.

A fair process requires avoidance of conflict of interest:

- Certain members of Council are also members of the Kiwanis Club. At least one member of Council is also on the Board of Directors of the Kiwanis Club.
- These Kiwanian members of Council should, as a matter of procedural fairness and good corporate governance, take no part in Council's

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deliberations over the future of the Indian Point land lease. The Kiwanis Club's own interest in the Campground may conflict with the best interests of the Town.

- While the *Municipalities Act* does contain an exemption from the conflict of interest rule for members of a service club that receives a benefit from the Town, the scale of the benefit that would be conferred on the Kiwanis Club if its lease were renewed at \$1 per year is far beyond what the Act could have intended.
- Further, the Act does not exempt Councillors from a conflict of interest where a service club proposes to enter into a *contract* with the Town.
- If the Kiwanian members of Council participate in the decision on the future of the Indian Point land lease, they open that decision to legal challenge on the basis of conflict of interest. More importantly, the citizens of Saint Andrews would view that conflict of interest as unfairly tainting the process in favour of the Kiwanis Club.

Request on behalf of concerned citizens:

- In summary, all we ask is that the future of the Indian Point land lease be opened to a fair, open, and transparent tendering process, so that the Town has the opportunity to achieve the maximum benefit from this public asset.

Schedule "B"



Kiwanis Club
of St Andrews



AND THE LAND LEASE AT 550 WATER STREET

THE LAND LEASE

- Campground was established about 1950 with the consent of the Town
- A formal 25 year lease was established in 1988 which allowed Kiwanis to run the camp-ground and make substantial investments on the land
- After expenses and reinvestment, all revenues are returned to our community
- In 2012 the Kiwanis Club exercised its option to renew the lease but this has not been confirmed by the Town

THE KIWANIS CLUB OF ST ANDREWS

- Kiwanis is a non-profit volunteer club which has provided over 80 years of continuous service to our community
- We have operated the campground for almost 70 years
- All net revenues are donated back to our community
- We have developed a "Destination" campground that brings much business into the town.
- We are planning additional costly upgrades for this summer.
- The value of the infrastructure now installed on the land is well over one million dollars

KIWANIS ARE UNPAID VOLUNTEERS

- The operation and supervision of our campground is led by unpaid Kiwanis volunteers
- The staff of our campground are prohibited from being Kiwanis members and cannot be related to current Kiwanis members and all costs of staff and improvement are paid from the revenues.
- Planning and supervision of improvements / upgrading is by Kiwanis volunteers with paid professional non-member help when needed.
- Minor repair work is carried out by Kiwanis volunteers and equipment with paid non-member help when needed.

DIRECT BENEFITS TO THE TOWN

- The Campground brings around 500 people to the Town per night at peak season.
- We employ 2 full time and several part time employees including summer students who are also unrelated to Kiwanis members
- The oversight of the campground is done on a volunteer basis.
- We pay over \$15,000 a year in water and sewer and \$9000 in property taxes in 2016.
- We contributed approximately \$25,000 to alleviate storm water and drainage issues on adjacent Town lands as a side benefit of the Van Horne Trail Project – Phase 1.
- The campground has been run sustainably with a focus on the future.

Schedule "B" continued

DISTRIBUTION OF CAMPGROUND PROFITS

- The Club makes donations of around \$50,000 each year to local groups and individuals
- The Club supports community projects, events financially and as volunteers
- The Club has also raised some \$160,000 from other sources recently
- In 2015 the Club distributed \$186,000 in grants and donations
- The Club offered a cheque for \$50,000 to the Town in late 2016 towards roof repairs for the Arena but the offer was not accepted at that time.

CAMPGROUND PROFITS

- Over the last 5 years Kiwanis has provided, for example:

Sunbury Shores	\$44,500	SIDA	\$37,500	Youth Centre	\$8,500
Minor Hockey	\$3,000	VMES	\$22,150	Sea Cadets	\$4,000
Arts Council	\$15,000	Dragonfly Autism Centre	\$3,000		

- The Club supports community projects financially and as volunteers

Passamaquoddy Lodge	\$10,000	Huntsman Aquarium	\$25,000
Playground Emergency	\$15,000	Ministers Island Emergency	\$ 5,000
Van Horne Trail	\$200,000	Curling Club (National Youth Borsple)	\$ 20,000

- The Club supports community events financially and as volunteers

Costume Carnival	Easter Egg Hunt
Fathers Day Road Race	Canada Day Celebrations
Triathlon	Christmas Baskets for Single Seniors

LEASE RENEWAL REQUESTED

- Since April 2012 the club has sought new terms for the current lease with the Town and believed that an agreement had been established with the previous Town Council.
- The Town made a proposal in 2015 and the club signed a modified version and submitted it to the Town's consideration in Sept 2015.
- The Club presented a check for \$5,000 for the rental payment in accordance with the terms of the new lease. This was not accepted by the Mayor.
- The club awaits word from the Town on their agreement, or rejection, or wish for further negotiations.
- The club feels confident that a mutually acceptable agreement can be reached through negotiation without legal cost to either party.

NEXT STEPS

- If a new long term lease is agreed by the Town and the Club the proposed capital improvements can proceed this spring (estimated cost in excess of \$100,000.)
- If the Town wishes to negotiate further on a new lease the club will continue to negotiate.

Schedule "B" Continued

IF KIWANIS LEASE NOT RENEWED

- The Kiwanis will no longer have the resources to support the community as it has been doing.
- The Town and the Club will have to consider how to return the land to the Town "in its original condition" as per the lease, or
- How to recover the value of the club's investment in the campground
- These could be difficult negotiations for the transfer of Kiwanis Club assets to a third party.

THE KIWANIS CLUB OFFER

- The Kiwanis club has made it clear that it hopes to continue providing services to our community by operating the campground it has developed on the Town's land over the last 70 years
- We therefore request, in the interests of transparency, that the Town will complete the negotiation of the lease with us as soon as possible for another 25 years of continued partnership
- So that we may continue to invest in the campground and the community by:
- Continuing to operate this successful business on behalf of the community on an entirely volunteer basis with no administration cost.

Schedule "C"

March 27, 2017

Lease

Kiwanis Club and Town of St. Andrews

As a member of Town Council for the Town of St. Andrews for many years now;

I am aware of some of the problems and challenges that the Town of St. Andrews has encountered

In a search for a solution to why we are here tonight

I know a great deal of and about the Kiwanis Club of St. Andrews; over the years since 1974

My Husband Raymond Bishop was a member of the Kiwanis Club for many years and he was the President of the Kiwanis Club along with other notable members such as Albert MacQuoid and Billy Harmon and others.

During those days, Raymond and Billy and Albert would spent many hours preparing for the Kiwanis Auction and many many other events.

The Campground at the Point has always been an important part of the Kiwanis Club and a very important part of the life of our Town.

In the early days, the Town and the Kiwanis Club would sit down and discuss and solve a number of issues and challenges,

BOTH PARTIES were always working for the betterment of the TOWN and the CITIZENS of the TOWN.

In recent years there has not been that same willingness and cooperation.

Best case scenario:

My position as a TOWN COUNCILLOR has been and continues to be

If there is a willingness to continue to work for and on behalf of the citizens of the Town

The two parties should sit down and work out an arrangement (lease) that is

Firstly in the best interest of the citizens of the Town

If thereby so doing, the arrangement is also in the interest of the second party (be it Kiwanis Club or other group) then that is wonderful as well

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After the previous Council sub-committee tried to work with Kiwanis Club to bring a satisfactory lease document to conclusion; it did not happen.

Council changed in May 2016.

Present Council established another sub-committee to bring this matter to conclusion.

Numerous attempts did not result in a lease document that was satisfactory to both parties.

Today we potentially have three parties interested in running the Campground.
 And to be fair to all parties interested, which is why we are recommending the RFP (Request For Proposal) route.
 Also, the procurement Act also requires the Town to go this way.

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The day should be long past when the Kiwanis Club and the Kiwanians that are members of the Town Council
 ARE ABLE TO SIT AROUND THE TABLE OF THE TOWN COUNCIL AND SAY IN WORDS AND WRITE IN EMAIL FORM
 THAT THEY AS MEMBERS AND THEY AS A KIWANIS CLUB INTEND TO CONSIDER LEGAL ACTION AND EVEN SUE THE
 TOWN AND THE CITIZENS OF THE TOWN.

I wanted these comments recorded in the records from this meeting of the Town Council.

Edith C Bishop

Councillor

Schedule "D"

RE: Land Lease at Passamaquoddy Point:

Thanks to everyone for coming. I will be brief. In thinking about Kiwanis Campground and RV Park, I couldn't help but be reminded that the land is indeed a Park. Like Centennial Park. St. Andrews has a well deserved reputation as a community with a green thumb and we are well known far and wide as good gardeners. Stewards. Caretakers. Unlike Centennial Park which was opened with great fanfare by the Queen Mother, Kiwanis Park had more meager beginnings 67 years ago. I will repeat that - 67 years. I have heard it said that in the early years, campers left their money behind in a tin cup on the honor system. Things have certainly grown since then. And it's certainly not a stretch to think of the park as a garden, and the original Kiwanians as gardeners, who sowed the seeds, cared for the park, watered it, and maintained it for nearly three generations. They did and continue to do this without getting paid or receiving any financial benefits from the park. I could go on for hours about some of the great Kiwanians who gave a lifetime of service to the campground, building picnic tables, shoveling dirt, and giving their free time working at the campground. We owe a debt of thanks to those original Kiwanians who had the vision to try and build a gift to the future in the service of their community. Our community. And now that everything is in place, now that the park, the garden, is mature and is producing revenue and fruit - which is then fed back into the community - it is at this point that other groups have come forward to take over the garden. To this I say no.

I graduated from SJDA 30 years ago this year. 30 years. At the graduation service I was awarded the Kiwanis Club of St. Andrews Bursary for Altruistic Service. When I went to the club in 2001 to ask for some money for grass seed to fix up the high school soccer field, and they asked me to join the club and gave me the grass seed. And they didn't stop at contributing grass seed, a few years later, they built a brand new soccer field with a \$75,000 contribution to the town. In fact, I can't think of any community driven initiative that the Kiwanis Club has not sponsored over the past couple of decades. Certainly as a young boy, I benefitted from their contributions to minor hockey. As a kid, I remember my friend Donnie Chute - his sister was handicapped and had a special tricycle to ride around on. Long time residents will remember her riding around town, her name was Genie. "Where did she get the cool bike?" I wondered as a young boy. Well, I remember the answer to this day since it was the first time I heard the word Kiwanis. In fact, the list of families, seniors, community groups, non profits and community events which have benefitted from the service, the unpaid service, of the Kiwanis Club of St. Andrews is too lengthy to list here. As a lifetime resident of St. Andrews, I'm certainly not going to be part of any decision to undermine something - like the Kiwanis Park - which I believe is good for our Town. It seems we are at a crossroads not unlike when a Town Council in the past disregarded all of the contributions of Lady Beaverbrook and we lost a great patron to the town. What an unthankful council that was. What's good for the Kiwanis Club of St Andrews is good for everyone in this room because the Kiwanis Club serves this community, it's our original community garden.

I think that every community is unique and different, and it is the Kiwanis Club of St. Andrews which enriches this community and makes it a better place to live. I think that people who question the arrangements between the Kiwanis Club and the Town are not in touch with the history of our Town, our needs, our values or the feelings of our residents. In conclusion, I think that it would be completely wrong to consider other people or groups coming in and taking over the Park which the Kiwanis has worked hard to maintain and improve over the past 67 years in the service of this community. Thank you. - **Kurt Gumushel - March 27, 2017**

Indian Point Land Lease - Schedule "E"
Councillor Guy Groulx- March 27, 2017

I will preface my remarks by addressing Mr Remer's remarks on conflict of interest. The Municipalities Act specifically states that members of a service clubs are NOT in a conflict of interest...this is crystal clear and the same provision is in the new Local Governance Act. I will always act in the best interests of our Town and in this case I believe that supporting our community groups whether it be Sunbury Shores, Fundy Community Foundation, Spin Drifters and even Kiwanis makes for a better stronger community. Mr Remer implies that there is a benefit to the Kiwanis from a \$1 per year lease...the fact of the matter is that the operators of the campground derive NO BENEFIT from the low rental payment since 100% of campground profits are donated to the community. If the rent was higher the donations would be lower...The real beneficiaries of the low lease rate are the children, seniors and all the recipients of donations.

I have some very serious questions about the way that this entire matter has been handled by the Town.

- The Town should be encouraging and promoting the activities of charitable and not for profit groups NOT fighting with them. These groups make our Town richer and a better place to live and raise a family.
- This is a manufactured problem...the Town only advised the Kiwanis that they felt the lease had expired in April 2015 ...**THREE** years after the lease had expired. The Kiwanis Club has leased this land for over 70 years without problem.
- The Town was told in April 2015 that the lease had been renewed but there was no supporting documentation. A request was made to find this lease documentation through the right to access to information process but this was denied by the Town.
- At the same time in July 2015, the Town had NO problems giving a COMMERCIAL for profit call center in the arena a 7 year lease for \$1/year even though this lease was valued at \$200K...there was no Request for Proposals... it was just done
- In its negotiations, the Town has been less than open and has not demonstrated good faith in negotiations. Specifically:
 - Spring 2015 - 5 year retroactive to 2012
 - Summer 2015 - 10 year lease retroactive to 2012
 - Fall 2015 - Town lawyer sent a letter threatening eviction
 - May 2016 -Last Council offered a 25 year starting in 2016 which Kiwanis was negotiating with the Town
 - In Aug 2016 - Kiwanis provided a signed lease to the mayor agreeing to lease payments from the Town's offer from May 2016
 - Fall 2016 - Town had adopted a position of a Request for Proposals was necessary
- To address these concerns a sub-committee of Council led by the Mayor with the deputy mayor and Councillor Henderson was formed in July 2016 to negotiate a lease with the Kiwanis and report back to Council.
- Unfortunately, this sub-committee
 - has made no reports to Council other than one dated 27 Mar 2017;
 - has never **EVEN** met with the Kiwanis once to negotiate;
 - rejected a **SIGNED** lease offer without bringing this to the attention of Council or even notifying the Kiwanis that the offer was rejected; and
 - returned a \$5,000 lease payment cheque without telling Council.
- The land lease at Indian Point is just that a land lease...the fixtures such as buildings, utilities, landscaping, roads etc. were all built by the Kiwanis and the lease specifies that they are owned by the Kiwanis. The Town could buy the fixtures from Kiwanis but no such discussions have ever taken place. A rule of thumb in the industry is \$8,000 US per site or about \$2 million which is significant.
- The **ONLY** way to have a fair, open and transparent RFP would be if the Town of Saint Andrews were to purchase these fixtures from the Kiwanis Club and then run an RFP to operate a campground. This way all bidders would be on an even footing in bidding on the RFP. I am not sure the Town really wants to spend \$1.5 to \$2 million to get into the campground business as this is not a core municipal function.
- The lease also specifies that the Kiwanis must deliver **VACANT** possession of the land on termination of the lease. If Kiwanis do not win the RFP then according to the lease, they must remove all fixtures...so no more campground.

- Loss of the campground would be devastating to the Town with significant impacts to local businesses and the Town in general. The loss of the donations to the arts and cultural community would be significant and many community events would simply disappear.
- There has been much talk of fairness in opening up the lease for another operator to assume control of the campground but this fails to realize that this is a land lease only and that the Kiwanis owns all the fixtures and equipment that make the land a campground. It does not seem fair or equitable to me that a third party could just walk in and take over a business that has been developed through 70 years of sweat equity and well over \$1.5 million in investments.
- There has been talk about large sums of money being made at the campground but there has been no mention of the significant operating costs and capital improvements needed to operate a campground. I think it is important to recognize that 100% of the profits are donated to the community and Kiwanis does not keep a penny.
- Other Communities are giving away and leasing land to Not for Profit Groups without the need for Request for Proposals or RFP.
 - St Stephen has given land to:
 - Roman Catholic Church
 - Habitat for Humanity
 - Fundy Region Transition House
 - The Town of Dalhousie is giving away 28 properties up to 50 acres in size for FREE with no need for an Request for Proposals.
 - The City of Saint John awarded a 66-year lease for the Reversing Falls restaurant without a competitive process
- In addition, the new **Local Governance Act** para 104 which comes into effect on 1 Jan 2018 states that *local governments may encourage economic development in any manner it considers appropriate including the sale or lease of land within its territorial limits at a price below market value.*

There is no disputing that the Oceanfront Campground is a major contributor to economic development in St Andrews and Council would be well within its authority to lease land at a rate below market value without going to an RFP under the new Local Governance Act.

- Councillor Harrison who is a lawyer has already indicated that there is no legal requirement for the Town to proceed with a Request for Proposals. There are ample precedents by the Town of St Andrews, other Towns and cities backed up by the Municipalities Act and new Local Governance Act to justify awarding a lease to the Kiwanis Club as has been done for the past 70+ years.
- It has also been pointed out that the Town must follow the Procurement Act for procurement of goods and services but this is NOT a procurement...this is a lease of Town land by the Town. In any case, the Procurement Act, specifically exempts any purchases from not for profit organizations so this argument does not apply.
- It should also be pointed out that no other lease in the Town of St Andrews has EVER gone to an RFP and this may set a precedent for all future leases that may unnecessarily complicate lease administration within the Town of Saint Andrews. Going through a Request for Proposals is a complicated process with a high risk of legal challenges. The cost of defending these challenges in Court could be very very costly to the Town and to what end.
- I would submit that going through a complicated, unnecessary RFP process is an unwarranted risk that may result in the loss of the campground much to the detriment of the Town, the business community and the many groups and individuals that receive the profits from the campground. I cannot see how taking a risk with such a valuable asset can be in the best interests of the Town.
- Councillors are here to make decisions in the best interests of our community and apply a measure of common sense to the issues facing our Town. Councillors, I beseech you to act in the best interests of our Town and do not roll the dice by going to an unnecessary RFP that could result in significant negative consequences. We have the power and authority to resolve this issue here and now by passing the following amendment.

" I Move that Council direct the CAO to prepare a lease for the land at Indian Point to the Kiwanis Club of St Andrews for a 25 year term with a 25 year extension under the same terms and conditions as the previous lease to take effect the 1 May 2017."
The decision is now in your hands...