

**TOWN OF SAINT ANDREWS
W. C. O'NEILL ARENA COMPLEX VIC
SPECIAL COUNCIL MEETING
November 15, 2017 AT 6:30PM**

MINUTES

RECORDING OF ATTENDANCE

A Special Meeting of the Town of Saint Andrews Council was held at the W. C. O'Neill Arena Complex VIC beginning at 6:30PM with the following members present: Mayor Doug Naish, Deputy Mayor Brad Henderson Councillors Edie Bishop, Guy Groulx, Andrew Harrison and Kurt Gumushel. Also present were: Angela McLean, Clerk and Chris Spear, Treasurer and Gail McLaughlin, Administrative Assistant.

Absent with Regrets: Councillor Dan Boyd.

APPROVAL OF AGENDA

Motion:

It was moved by Councillor Groulx, seconded by Deputy Mayor Henderson that the Agenda be approved as presented.

Following discussion, it was moved by Councillor Groulx, seconded by Councillor Gumushel and carried to Amend the Agenda by removing Item 2 under New Business - 2018 Budget Discussion.

It was moved by Councillor Groulx, seconded by Deputy Mayor Henderson and carried that the Agenda be approved as Amended.

DISCLOSURE OF CONFLICT OF INTEREST

None

PRESENTATIONS

None

COMMUNICATIONS

None

INTRODUCTION, CONSIDERATION AND PASSING OF BY-LAWS AND MOTIONS

Motion 121 - 17/11

It was moved by Councillor Bishop, seconded by Deputy Mayor Henderson and carried unanimously that the Town of Saint Andrews enters into a new 24-year Lease Agreement with the Kiwanis Club of St. Andrews for two PID's at Indian Point, being PID's 15067036 and 15160922, subject to the terms and conditions of the Letter of Intent signed November 2nd, 2017.

Mayor Naish addressed the estimated 40 individuals in attendance to explain that the next step forward will be to prepare and execute a formal Lease Agreement. He asked Angela McLean, CAO to read aloud the Letter of Intent that was voted on during this meeting.

QUESTION PERIOD

Mayor Naish asked if there were any questions on the evening's proceedings. Kanatiiio, Negotiations Coordinator Peskotomuhkati Nation at Skutik read a prepared statement on the position of the Passamaquoddy Nation and is included as *Schedule "B"* in these minutes. Lindy Townsend read a section of a prepared Statement on behalf of the Concerned Citizens Action Committee and her statement is included as *Schedule "C"*. Allan Golding spoke to his support for the Kiwanis and the good work they do for the community. Larry Lack requested a copy of the Letter of Intent that was read in the meeting when it is available. Kevin Gick commented regarding his understanding that there would be more discussion at this meeting before the vote was taken. Vaughn McIntyre spoke referring to the March 2017 meeting that was well attended with public feedback and stated that he believed this Council had done due diligence in reaching

their decision. Another individual stood up and stated he was a new resident to Saint Andrews and hoped that discussion would continue in a harmonious way between the Town of Saint Andrews and the Native People.

Lee Ann Ward suggested that Council consider opening up more discussion related to the Passamaquoddy, so they have more of a presence at the Point.

COUNCILLORS' AND DEPUTY MAYOR'S COMMENTS

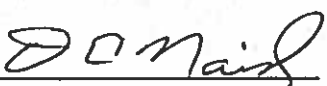
Mayor Naish asked if there were any comments from Councillors. Councillor Groulx read a prepared statement which is included as *Schedule "A"* of these minutes. There were no comments from any other Councillor.

MAYOR'S COMMENTS

ADJOURNMENT

Motion:

At 7:08 PM, it was moved by Councillor Gumushel, seconded by Deputy Mayor Henderson and carried that the meeting be adjourned.



Doug Naish, Mayor



Angela McLean, Clerk



Campground Lease

SCHEDULE "A"

249A1

Today Council finally votes on the acceptance of a tentative agreement for the land lease at the campground. Just to be clear, the lease with the Town is for the land only all the fixtures, buildings, water lines and roads are owned by the tenant and are to be removed on expiration of the lease. This new land lease has been negotiated by staff and has been ^{thoroughly} reviewed by the Town Solicitor.

As a Town Councillor, it is my responsibility and duty to represent the public in accordance to what is in the best interests of the Town. The campground has been in place for over 70 years and has served the Town well, and in my opinion the loss of the campground would be similar to losing the Algonquin in terms of its impact on the community. Specifically the campground

- brings in tens of thousands of visitors each year to our town ... on a busy weekend there are over 500 people in the campground some of whom settle here permanently
- injects millions of dollars into our local economy ... some businesses attribute 30% or more of their business volume to the campground
- supports local community groups, our schools, daycare, seniors to the tune of hundreds of thousands of dollars over the last 5 years

- 249A2
- funds the creation of projects such as ^{249A2} Passamoquoddy Lodge, boat ramps, playgrounds, skate board parks, and most recently the Van Horne Trail. Projects that local governments can't afford

These benefits are good for our small town and make St Andrews a better place to live and raise children. I will be voting in favour of this new lease because I think it is the right thing to do but more importantly I think it is how you the public would want me to vote as your representative.

SCHEDULE "B"

**Statement With Respect to the Town of St.
Andrews' Proposal to Renew a Lease with
the Kiwanis Club for Indian Point**

**Kanatlo, Negotiations Coordinator
Peskotomuhkati Nation at Skutik
Treaty Negotiations Office**

**Wednesday November 15, 2017
Check Against Delivery**



PNS Statement: Kiwanis RV Park

She:kon (Greetings):

I am Kanatiio of the Bear Clan of the Kaniienkeha:ka, often referred to as the Mohawk Nation. I am speaking to you in my capacity as Negotiations Coordinator for the Peskotomuhkati Nation Skutik: you might know them better as the Passamaquoddy Nation.

I have only a little time. My words may be sharp, because they come from a place of dark disappointment. My apologies to those whom I may hurt inadvertently. We too have been hurt.

This place's original name is Qonaskamkuk. It is the capital of the Peskotomuhkati Nation. It has been called St. Andrews, by some, since the late 1700's.

Qonaskamkuk is the place where the Peskotomuhkati would stay in the early summer each year. It is where they would hold council with other nations, and would do their great ceremonies.

Its shell middens, cemeteries and stories speak of more than 12,000 years of intimate connection between the Peskotomuhkati and the place.

PNS Statement: Kiwanis RV Park

Its history includes Peskotomuhkati Sakomak (Chiefs) welcoming Loyalists in 1784. That history includes an agreement, reached at that time, on the terms upon which you would stay here. That agreement was never honoured.

And there is another, darker, more recent history.

The location you are discussing today is called "Indian Point" for a reason. For decades, it was "the wrong side of the tracks," the place where the Town had slowly relegated the Indians to live: beside the railway yard and the garbage dump.

In the 1930s, there were over twenty Peskotomuhkati houses there. Sakom John Nicholas was an elderly, respected, well-liked member of this community.

By the 1990s, there was one family left. That is when the Town made its move. It used lawyers, the courts, and the New Brunswick Quieting of Titles Act.

It secured a declaration that the Town of St. Andrews owns Indian Point: all but five acres, which was to be divided between eight brothers and sisters.

PNS Statement: Kiwanis RV Park

The Town then built its sewage treatment plant beside Sakom Hugh Akagi's home.

It is important to understand that the land St. Andrews claims as its own is unceded Peskotomuhkati Territory. It is also important to note that the town council of the day knew the land was in dispute, as does this council.

It was heartening to receive a letter from Mayor Naish in which he stated that our rights are important and should be respected.

We recently met with the Mayor and Chief Administrative Officer. We explained that the New Brunswick court lacks the power and authority, to affect Aboriginal title.

We were looking forward to an open, honest, renewed relationship.

We viewed the expiry of the dollar-a-year Kiwanis lease as an opportunity to begin a true conversation based on mutual respect, and our shared love for this place.

PNS Statement: Kiwanis RV Park

Instead, we have witnessed a hasty attempt to tie up the land, despite the fact that the Peskotomuhkati are in Treaty negotiations and that the land is in dispute.

Based on your actions, we have every reason to believe that this Town Council never once considered the opportunity to show respect or to seek reconciliation—that fashionable word of this decade.

Of course we are deeply disappointed in you because your conduct shows a profound, continuing disrespect for us and our rights. It also tells us so much about you, and about who you are in this place.

We were prepared to make an agreement with you about what you call Indian Point that could have set an example of reconciliation, of how neighbours respect each other.

We suggested you make a one year lease. We suggested that the revenue could go to the local hospital, which can certainly use the money.

PNS Statement: Kiwanis RV Park

That would have given us the opportunity to begin the conversation we need to have with Canada, New Brunswick and your council. You have decided, instead, to disregard our rights and proceed with the deal you discussed here this evening.

I fear the opportunity for conversation will dissipate. We had agreed to meet a second time but I'm not sure there's any point now.

In this life, we are given only a few times when the decisions we make tell the world about who we really are, and what we value.

This moment in time was your moment: a chance for you to decide who and what you are.

Today, after more than 40 years of determined effort, we are finally engaged in negotiations with your government at the federal and provincial levels.

These negotiations are based on unceded Peskotomuhkati title. They are also based on a nation-to-nation treaty relationship that has existed for nearly three hundred years.

PNS Statement: Kiwanis RV Park

The Government of New Brunswick has been attending the negotiations. Its representatives tell us it is preparing to join us at the table formally.

Long after the federal and provincial negotiators have gone home, the Peskotomuhkati will continue to have you as their neighbours, as they have in the nearly two and a half centuries since you came here.

What you have decided will affect a truly delicate relationship.

It was our hope to take the path of reconciliation but, this evening, you have told us that your desire for money and development is greater than your respect for a mutual relationship with us, greater than your respect for this sacred place that is our homeland, and greater than your own self-respect.

Our children and grandchildren are watching.

Da neh thoh...

SCHEDULE "C"

November 15, 2017

Fax: 506-529-5183

Email: town@townofstandrews.ca

His Worship Mayor Doug Naish and Members of Council
Town of Saint Andrews
212 Water Street
Saint Andrews, NB
E5B 1B4

Your Worship and Members of Council:

Re: Indian Point Land Lease

We are a group of concerned citizens of the Town of Saint Andrews known as The Concerned Citizens Action Committee.

We have learned of the Special Meeting of Council to be held on November 15, 2017 at 6:30 p.m. The agenda for this meeting states that Council will consider a motion to ratify a Letter of Intent agreed to between negotiating teams representing the Kiwanis Club of St. Andrews and the Town of Saint Andrews on November 2, 2017 for the lease of the Town-owned land at Indian Point.

We require that this motion item be withdrawn from the agenda, and that the lease of Indian Point be opened to a public request for proposals, for the following reasons:

1. The active participation of three members of the Kiwanis Club of St. Andrews who are also Town Councillors (Councillors Kurt Gumushel, Guy Groulx, and another member of Council) in the deliberations of Council and the vote, on March 27, 2017, to sole-source the negotiation of the land lease at Indian Point with the Kiwanis Club was a flagrant conflict of interest on the part of these Councillors. It is our contention that the *Municipalities Act* (NB) exemption for members of service clubs does not apply in these circumstances, as the negotiation of a valuable land lease goes beyond what is intended by the exemption for service clubs in "receipt of a benefit from the municipality".

Furthermore, at the time of the March 27, 2017 Council meeting, Guy Groulx was a director of the Kiwanis Club of St. Andrews, N.B. Incorporated, with fiduciary obligations to that corporation that conflicted with his duties as a member of Council.

The decision to sole-source the negotiation of the lease, made on the basis of the conflict of interest of three of the six Councillors, taints the entire subsequent process and the purported agreement to enter into a Letter of Intent (which is as-yet undisclosed to the public) for a further lease to the Kiwanis Club. If Council considers the motion to ratify the Letter of Intent and in fact votes to ratify it, the decision will be subject to challenge in Court.

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2. We have learned that the three conflicted Kiwanian Councillors participated in the November 2, 2017 closed meeting during which a Letter of Intent to lease Indian Point to the Kiwanis Club was apparently agreed to. It was improper for these three members of Council to have participated in negotiations between the Town and the Kiwanis Club of which they are members for a valuable lease of Town land. We also note that if this November 2, 2017 closed meeting was a meeting of Council or a committee of Council, s. 10.2(5) of the *Municipalities Act* (NB) mandated that no decision other than a decision related to procedural matters, directions to an officer of the municipality, or directions to a solicitor for the municipality ought to have been made.
3. We have also been provided with a letter dated August 23, 2017 from the lawyer representing the Kiwanis Club addressed to the Mayor and Council. In that letter, the Kiwanis Club's lawyer alleges that there was a renewal of the Indian Point leases in 2012; however, the lawyer provides no evidence that such renewal occurred other than what his client told him. On that basis, the Kiwanis Club's lawyer argued that the Town's only option was to accept that the leases had been renewed for 24 years subject only to agreement on rental and a further renewal option. Further, the Kiwanis Club, through its lawyer, concluded by threatening the Town with a lawsuit if it did not agree that the leases had been renewed for 24 years.

The result is that at the same time as the Kiwanian Councillors have been actively participating in the Town's deliberations regarding the award of the Indian Point land lease to the Kiwanis Club, the organization of which they are members (and in the case of Councillor Groulx, until October 18, 2017, a director), has been threatening to sue the Town.

Should the Kiwanian members of Council again participate in the deliberations and vote of Council regarding the current motion, the decision will be subject to Court challenge based on their having acted in a conflict of interest.

4. There has been an utter lack of transparency on the part of the Kiwanis Club and the Town about the process leading to the current motion:
 - The Special Meeting of November 15th to ratify the agreement with the Kiwanis Club has been scheduled on very short notice and without prior disclosure of the terms of the agreement under consideration. Citizens of the Town have not been given the opportunity to review the terms of the proposed agreement, submit comments, or put their names forward to make presentations regarding this multi-million-dollar transaction involving Town land.
 - Contrary to the statements made on behalf of the Kiwanis Club at the March 27th Council meeting, we understand from those involved with the negotiations on behalf of the Town that there has not been full disclosure of the Kiwanis Club's financial information, including audited financial statements, relating to the Indian Point Campground. Thus, the negotiation of the rental rate for this Town land has been conducted without the appropriate factual background to ensure that the Town obtains a fair rental. According to a conservative estimate by persons involved in the negotiations, based on the number of campsites and their related fees, the Indian Point Campground generates \$1.2 million of gross revenue per year, of which \$700,000 to \$800,000 is not accounted for. Accordingly, a 24-year lease could be expected to generate in excess of \$20 million in gross revenue. To date, an accounting of the use of the campground revenues has not been provided. The use of the revenues generated from Town lands should be disclosed to the Town and its citizens in a transparent manner.
5. The Town's decision to negotiate solely with the Kiwanis Club of St. Andrews for the land lease at Indian Point, after the expiration of the Club's leases in 2012 without notice to renew having been given, appears to have been made in violation of the Town's own tendering policy as set out in the *Procedural By-Law* adopted on March 13, 2017 at s. 41, or in the alternative, in violation of the spirit of that policy and of the principles of good governance and stewardship of public assets.

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The above-noted By-Law requires the Town to follow the *Procurement Act*, or, for those transactions not covered by the *Procurement Act*, to follow the Procurement Policy adopted by Council. The *Procurement Act* applies to the procurement of goods and services by the Town and sets thresholds above which a competitive bidding process is required (\$25,000 for goods and \$50,000 for services). While the land lease at Indian Point is not likely captured by the *Procurement Act*, the Procurement Policy (which is not made available on the Town's website) appears to have been intended to cover those items not covered by the *Act*.

Although the terms of the Letter of Intent have not been publicly disclosed, we have been informed that it is for a 24-year lease, which would place its value in the millions of dollars based on the revenue-generating potential of the land in question. The value of this lease surely exceeds any reasonable threshold for submitting it to a competitive bidding process (see the *Procurement Act* thresholds of \$25,000 to \$50,000 by way of analogy).

In fact, the Town received letters from an interested party (Mr. Alex Tessmann, February 9th and 27th, 2017) seeking to submit a proposal to lease the land, but a Kiwanian Councillor personally contacted Mr. Tessmann to dissuade him from submitting a proposal on the basis that the Kiwanis lease had not expired and would continue well into the future. This intervention by a Councillor to discourage a potential bidder was inconsistent with Council's mandate to manage the Town's assets to achieve maximum value for the citizens of the Town.

The Town's failure to open the lease to a competitive bidding process subjects this decision to being quashed by the Court.

For these reasons, we require that the motion to ratify the Letter of Intent for the land lease at Indian Point be withdrawn so that a fair and open request for proposals process may be conducted to obtain the best deal for the Town and its citizens.

Should the motion not be withdrawn, and should the Kiwanian members of Council again participate in the deliberations or vote on the motion, we are prepared to commence Court proceedings forthwith challenging the decision and any resulting agreement with the Kiwanis Club and seeking costs against the Town.

Furthermore, by copy of this letter to the Chief Administrative Officer of the Town of Saint Andrews, we hereby request the following records pursuant to the *Right to Information and Protection of Privacy Act*, SNB 2009, c R-10.6:

- Minutes of the Special Council Meeting held on March 27, 2017 which, although they were approved according to the minutes of April 3, 2017, have, inexplicably, not been made available on the Town's website as is the usual practice for minutes of Council meetings.
- The Letter of Intent between the Town of Saint Andrews and the Kiwanis Club of St. Andrews agreed to at the closed meeting of November 2, 2017.
- All e-mail correspondence, correspondence by any other means, and any other documents in relation to the Indian Point campground.
- All e-mail correspondence, correspondence by any other means, and any other documents in relation to the Kiwanis Club of St. Andrews, N.B. Incorporated's lease of the land at Indian Point, the renewal thereof, and negotiations relating thereto.
- All e-mail correspondence, and correspondence by any other means, between the Kiwanis Club of St. Andrews (or those acting on its behalf) and the Chief Administrative Officer of the Town of Saint Andrews, any other member of Town staff, the Mayor, or any member of Council.

We look forward to your favourable response but are prepared to seek relief from the Court should it be necessary.

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Town of
Saint Andrews
CLERK'S OFFICE

Yours very truly.



Lindy Townsend
The Concerned Citizens Action Committee

cc: Angela McLean, Chief Administrative Officer

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