



**ROTHESAY**  
COUNCIL MEETING  
Rothesay Town Hall  
**Tuesday, February 14, 2017**  
7:00 p.m.



**PRESENT:** MAYOR NANCY GRANT  
DEPUTY MAYOR MATT ALEXANDER  
COUNCILLOR GRANT BRENNAN  
COUNCILLOR PETER J. LEWIS  
COUNCILLOR TIFFANY MACKAY FRENCH  
COUNCILLOR BILL McGUIRE  
COUNCILLOR DON SHEA  
COUNCILLOR MIRIAM WELLS

TOWN MANAGER JOHN JARVIE  
TOWN CLERK MARY JANE BANKS  
DIRECTOR OF PLANNING/DEVELOPMENT (DPDS) BRIAN WHITE  
DIRECTOR OF OPERATIONS (DO) BRETT McLEAN  
DIRECTOR OF REC/PARKS (DRP) CHARLES JENSEN  
TREASURER DOUG MacDONALD  
ADMINISTRATIVE ASSISTANT LIZ POMEROY

Mayor Grant called the meeting to order at 7:03 p.m.

**1. APPROVAL OF AGENDA**

**MOVED** by Deputy Mayor Alexander and seconded by Counc. McGuire the agenda be approved as circulated, with the following additions:

Item 8.4 – 14 February 2017 Memorandum from Town Manager Jarvie

Item 9.1 – 12 February 2017 Email from Wayne Arrowsmith RE: Monday's Council meeting

**CARRIED.**

**2. APPROVAL OF MINUTES**

Regular Meeting 9 January 2017

**MOVED** by Counc. Lewis and seconded by Counc. Shea the minutes of 9 January 2017 be adopted as circulated.

**ON THE QUESTION:**

Deputy Mayor Alexander noted the motion at the top of page 8 requires revision:

“...as described in the report prepared by DO McLean RE: Church Avenue Flooding Concern dated 3 January 2017”, should read:

“...as described in the report prepared by DO McLean RE: *Dunedin Road/Horton Road Intersection* dated 3 January 2017”.

**CARRIED.**

Public Hearing 9 January 2017

**MOVED** by Counc. Wells and seconded by Counc. Mackay French the public hearing minutes of 9 January 2017 be adopted as circulated.

**CARRIED.**

- **Business Arising from Minutes**  
N/A

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## 3. OPENING REMARKS OF COUNCIL

Mayor Grant listed the events she attended since the previous Council meeting, including: the Police Commission Awards Ceremony on the 25<sup>th</sup> of January; Warm Up to Winterfest in Saint John January 29, 2017; 50+ Expo at the QPlex February 1, 2017; Oasis Fundraising Dinner February 3, 2017; the Saint John vigil for Quebec February 4, 2017; and the Chinese Cultural Association's New Year's Gala February 5, 2017. She added the Deputy Mayor attended the Premier's State of the Province event in Fredericton January 26, 2017.

Mayor Grant thanked DO McLean, and all Town staff responsible for snow removal and sidewalk clearance for their hard work. She added her appreciation for the Town Clerk's efforts with respect to keeping residents informed during the storm.

Counc. Wells noted the Town has published a call to action to encourage individuals to share ideas to help make Rothesay an Age Friendly Community. She noted community members can email or call the Town with their suggestions at rothesay@rothesay.ca or (506) 848-6600. She added it is the intention of the Age Friendly Committee to create a mailing list for residents to join to help Rothesay become an Age Friendly Community.

### 3.1 Declaration of Conflict of Interest

N/A

## 4. DELEGATIONS

### 4.1 Ellen Watters Rally

Wayne Arrowsmith

SEE ITEM 9.1

It was noted Mr. Arrowsmith was unable to attend the re-scheduled meeting date.

## 5. CORRESPONDENCE FOR ACTION

5.1 15 December 2016 Letter from Communities in Bloom RE: Canada 150 Communities in Bloom

**MOVED** by Counc. Wells and seconded by Counc. Mackay French the letter from Communities in Bloom RE: Canada 150 Communities in Bloom dated 15 December 2016 be referred to the Parks and Recreation Committee.

**CARRIED.**

5.2 9 January 2017 Letter from NB Power RE: License Renewal for Point LePreau Nuclear Generating Station

**MOVED** by Counc. Lewis and seconded by Deputy Mayor Alexander Council support the license renewal for Point LePreau Nuclear Generating Station.

**CARRIED.**

5.3 12 January 2017 Letter from the Kennebecasis Valley Fire Department Joint Board of Commissioners RE: Fund Reallocation

**MOVED** by Counc. Lewis and seconded by Counc. Wells Council approve the reallocation of \$54,000 from the forecast surplus in the 2016 Kennebecasis Valley Fire Department Inc. operating budget to pay for the 2016 approved capital purchases.

### ON THE QUESTION:

Clarification was requested. Treasurer MacDonald advised the Fire Department requires approval from the Town for certain capital expenditures. In this case, he noted the Fire Department is requesting to use operating funds from a surplus rather than capital funds for the expenditures. He noted the reallocation

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is likely to reduce surplus funds available in the future. Counc. Brenan noted the funds will be used to purchase a fire hose, two HVAC systems, and a cleansing chamber. There was a brief discussion with respect to the total surplus amount.

**CARRIED.**

- 5.4 16 January 2017 Email to resident RE: Carriage Way Flooding  
16 January 2017 Email from resident RE: Carriage Way Flooding  
10 January 2017 Email from resident RE: Carriage Way Flooding with attachments

**MOVED** by Deputy Mayor Alexander and seconded by Counc. Mackay French the email to resident RE: Carriage Way Flooding dated 16 January 2017, the email from resident RE: Carriage Way Flooding dated 16 January 2017, and the email from resident RE: Carriage Way Flooding with attachments dated 10 January 2017 be referred to the Public Works and Infrastructure Committee.

### ON THE QUESTION:

Counc. Brenan inquired as to why staff did not respond earlier to the correspondence. DO McLean advised Town staff investigated the area, and noted the residents seemed to disagree with staff's findings. Counc. Shea inquired if this issue had been discussed in the past. Deputy Mayor Alexander indicated he did not recall the issue being brought to the attention of the Public Works and Infrastructure Committee. Counc. Shea questioned if a lack of appropriate stormwater management system was the cause. DO McLean advised an appropriate underground stormwater drainage system exists in the area, however, staff are of the opinion the alteration of landscaping on private properties has created a barrier preventing the water from draining into the system properly. He noted in the past staff have suggested curbing be installed to direct stormwater into the drainage system. In response to an inquiry, DO McLean noted the installation of additional storm basins are likely to only drain excess water in specific areas. Unless the water is directed to the basins they are not likely to prove effective. Counc. McGuire inquired as to who would absorb the cost should curbing be installed. Town Manager Jarvie noted the discussion of cost may be premature without further investigation. He added the residents in the area are welcome to attend the Public Works and Infrastructure Committee on February 22, 2017 at 8:30 a.m. (the delegation to begin at 9:00 a.m.).

**CARRIED.**

- 5.5 17 January 2017 Letter from the Hon. Jocelyne Roy Vienneau RE: Canada 150 Events  
**MOVED** by Counc. Lewis and seconded by Counc. Wells the letter from the Hon. Jocelyne Vienneau RE: Canada 150 Events dated 17 January 2017 be referred to staff.

**CARRIED.**

- 5.6 17 January 2017 Letter from resident RE: Clark Road/Gondola Point Road Crosswalk  
**MOVED** by Counc. Mackay French and seconded by Counc. Wells the letter from resident RE: Clark Road/Gondola Point Road Crosswalk dated 17 January 2017 be referred to the Public Works and Infrastructure Committee.

**CARRIED.**

- 5.7 23 January 2017 Letter from the Asian Heritage Society Saint John RE: Request for Letter of Support

**MOVED** by Counc. Shea and seconded by Counc. Wells Council authorize a letter of support for Asian Heritage Month (May 2017) be provided to the Asian Heritage Society Saint John.

**CARRIED.**

- 5.8 28 January 2017 Letter from resident RE: Water By-law  
**MOVED** by Deputy Mayor Alexander and seconded by Counc. Lewis the letter from resident RE:

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Water By-law dated 28 January 2017 be referred to the Utilities Committee.

### ON THE QUESTION:

Counc. Shea requested clarification, inquiring if the Town installed laterals to the properties. Town Manager Jarvie advised laterals are installed to the property line, not the houses.

**CARRIED.**

5.9 28 January 2017 Email from Mary Schryer RE: International Women's Day March 8, 2017  
**MOVED** by Counc. Shea and seconded by Counc. Wells the email from Mary Schryer RE: International Women's Day March 8, 2017 dated 28 January 2017 be referred to the Finance Committee.

### ON THE QUESTION:

Mayor Grant gave a brief summary with respect to the history of the event. She noted the town of Quispamsis has supported the event in the past through the provision of space, refreshments, and promotion on social media. She added the request is an invitation for Rothesay to provide sponsorship for the event.

**CARRIED.**

5.10 7 February 2017 Letter from Brian Gillis RE: Cycling Safety  
**MOVED** by Counc. Wells and seconded by Counc. McGuire the letter from Brian Gillis RE: Cycling Safety dated 7 February 2017 be received/filed.

### ON THE QUESTION:

Counc. Wells inquired if the Town receives concerns related to cycling. Town Manager Jarvie advised the Town receives various concerns some of which may be directly or indirectly related to cycling. Mayor Grant noted the concerns identified in the letter were referred to the Director of Operations and solutions are being discussed.

**CARRIED.**

5.11 3 February 2017 Letter from Laurie Flood RE: 13<sup>th</sup> Annual Saint John Dragon Boat Festival August 26, 2017  
**MOVED** by Counc. Shea and seconded by Counc. McGuire Council continue to provide in-kind support to the 13<sup>th</sup> Annual Saint John Dragon Boat Festival August 26, 2017.

### ON THE QUESTION:

Mayor Grant noted the correspondence received differs from the request for in-kind support received last year. She noted the recommendation is for the Town to continue to provide in-kind support for this year's event.

**CARRIED.**

5.12 7 February 2017 Email from Harry Miller Middle School RE: Funding request for Basketball Tournament  
**MOVED** by Counc. Wells and seconded by Counc. Brennan the email from Harry Miller Middle School RE: Funding request for Basketball Tournament dated 7 February 2017 be referred to the Finance Committee.

### ON THE QUESTION:

Counc. Shea commented that the date of the basketball tournament is set for the upcoming weekend of February 18<sup>th</sup> and 19<sup>th</sup>, 2017. It was noted the next Finance Committee meeting is scheduled for Friday, February 17, 2017. Town Manager Jarvie noted it is unlikely the event will be cancelled if the Town does not provide funding.

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**CARRIED.**

### 6. CORRESPONDENCE - FOR INFORMATION

6.1 22 December 2016 M.A.D.D. Saint John Newsletter

**MOVED** by Counc. Shea and seconded by Deputy Mayor Alexander the M.A.D.D. Saint John Newsletter dated 22 December 2016 be received/filed.

**CARRIED.**

6.2 6 January 2017

Letter from Quispamsis to the Kennebecasis Regional Joint Board of Police Commissioners RE: 2017 Budget

6 January 2017

Letter from Quispamsis to the Kennebecasis Valley Fire Department Joint Board of Commissioners RE: 2017 Budget

6 January 2017

Letter from Quispamsis to the Kennebecasis Public Library RE: 2017 Budget

**MOVED** by Counc. Brenan and seconded by Counc. Mackay French the letter from Quispamsis to the Kennebecasis Regional Joint Board of Police Commissioners RE: 2017 Budget dated 6 January 2017, the letter from Quispamsis to the Kennebecasis Valley Fire Department Joint Board of Commissioners RE: 2017 Budget dated 6 January 2017, and the letter from Quispamsis to the Kennebecasis Public Library RE: 2017 Budget dated 6 January 2017 be received/filed.

**CARRIED.**

6.3 11 January 2017

Letter to the Environmental Trust Fund RE: Support for Funding Application – Hammond River Angling Association

**MOVED** by Counc. Mackay French and seconded by Counc. McGuire the letter to the Environmental Trust Fund RE: Support for Funding Application – Hammond River Angling Association dated 11 January 2017 be received/filed.

**CARRIED.**

6.4 18 January 2017

Letter from the Canadian Institute of Plumbing and Heating RE: Proclamation Request for World Plumbing Day – March 11, 2017

**MOVED** by Counc. Shea and seconded by Counc. Lewis the letter from the Canadian Institute of Plumbing and Heating RE: Proclamation Request for World Plumbing Day – March 11, 2017 dated 18 January 2017 be received/filed.

**CARRIED.**

6.5 31 January 2017

Letter from Operation Lifesaver RE: Rail Safety Week April 24-30, 2017

**MOVED** by Deputy Mayor Alexander and seconded by Counc. Lewis:

**Whereas Public – Rail Safety Week** is to be held across Canada from April 24-30, 2017;

**Whereas** it is in the public's interest to raise citizens' awareness on reducing avoidable accidents, injuries, and damage caused by collisions at level crossings or incidents involving trains and citizens;

**Whereas** Operation Lifesaver is a public/private partnership whose aim is to work with the rail industry, governments, police services, the media and other agencies and the public to raise rail safety awareness;

**Whereas** Operation Lifesaver has requested City Council adopt this resolution in support of its ongoing effort to save lives and prevent injuries in communities, including our municipality;

It is hereby **RESOLVED** to support national **Public – Rail Safety Week**, to be held from April 24-30, 2017.

#### ON THE QUESTION:

Mayor Grant acknowledged it is not typical practice of the Town to read proclamations. She noted she requested the proclamation be read last year to encourage rail safety as it is a prominent issue within the

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Town. Counc. McGuire inquired if the proclamation would result in a By-law for the Town. Town Manager Jarvie noted it would become a challenge for the Town to keep track of the many and varied days should the Town approve all proclamation requests. Counc. Shea inquired if the Town could support Rail Safety Week without setting a precedent for other proclamations. Counc. Wells suggested the Town support a Rail Safety *Awareness* Week in accordance with Operation Lifesaver's Rail Safety Week. She noted rail safety is a significant issue in Rothesay. Counc. Brenan noted if it is not typical practice of the Town to read proclamations then exceptions should not be made.

**MOTION WITHDRAWN**

**MOVED** by Deputy Mayor Alexander and seconded by Counc. Lewis Council promote awareness of Rail Safety Awareness Week in conjunction with Operation Lifesaver's Rail Safety Week April 24 – 30, 2017, on the Town's social media channels.

**CARRIED.**

6.6 8 February 2017 Email from Kara Parsons RE: March 2017 Nutrition Month Proclamation  
**MOVED** by Counc. McGuire and seconded by Counc. Shea the email from Kara Parsons RE: March 2017 Nutrition Month Proclamation dated 8 February 2017 be received/filed.

**CARRIED.**

## 7. REPORTS

### 7.0 February 2017 Report from Closed Session

#### ➤ Appeals Committee

**MOVED** by Deputy Mayor Alexander and seconded by Counc. Shea the Rothesay Appeals Committee of Council authorize the Mayor to sign the Committee's Decision from the Hearing held on Tuesday, January 31, 2017, in the matter between John Albert McKellar (142 French Village Road) and the Town of Rothesay; a draft copy of the decision being attached hereto and forming a part of the minutes; AND FURTHER THAT, the Clerk's office be directed to notify the Appellant by serving him with a copy of the signed Decision.

**CARRIED.**

### 7.1 Fundy Regional Service Commission (FRSC) Update

Mayor Grant noted the January meeting was cancelled due to the ice storm. She added the minutes from the last meeting will be provided at the March Council meeting.

7.2 16 November 2016 Kennebecasis Public Library (KPL) Board Meeting Minutes  
November 2016 KPL Librarian's Report  
31 October 2016 KPL Comparative Income Statement  
November 2016 KPL Building Maintenance Report

**MOVED** by Counc. Shea and seconded by Counc. McGuire the Kennebecasis Public Library (KPL) Board Meeting Minutes dated 16 November 2016, the KPL Librarian's Report dated November 2016, the KPL Comparative Income Statement dated 31 October 2016, and the KPL Building Maintenance Report dated November 2016 be received/filed.

### ON THE QUESTION:

Counc. Shea noted he was unable to attend the Kennebecasis Public Library Board meeting.

**CARRIED.**

7.3 23 November 2016 Kennebecasis Regional Joint Board of Police Commissioners (KRJBPC)  
Meeting Minutes  
30 November 2016 KRJBPC Statement of Financial Position

**MOVED** by Deputy Mayor Alexander and seconded by Counc. McGuire the Kennebecasis Regional

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Joint Board of Police Commissioners (KRJBPC) Meeting Minutes dated 23 November 2016, and the KRJBPC Statement of Financial Position dated 30 November 2016 be received/filed.

### ON THE QUESTION:

Deputy Mayor Alexander gave a brief summary of the meeting minutes. Council. McGuire noted Deputy Mayor Alexander was asked to resume the position of Chair for the Kennebecasis Regional Joint Board of Police Commissioners for a second consecutive year and he extended his congratulations to the Deputy Mayor, noting the Chair typically alternates yearly between Rothesay and Quispamsis. Council. Wells inquired if the Investment Advisor present at the meeting managed the organization's funds on a discretionary fee basis. Deputy Mayor Alexander confirmed the funds are managed on a transactional basis with approval required from the Board. Council. Wells suggested the funds should be managed on a discretionary fee basis which requires a licensed portfolio manager. Deputy Mayor Alexander noted he would relay the suggestion to the Board. Council. Shea inquired if the ongoing alternating of representatives of the two towns as Chair was formally agreed to by both municipalities. It was noted no formal agreement exists for the arrangement. Council. Brenan inquired if the Fire Department was approached by the Police Department to share the use of the Fire Department's ATV. Deputy Mayor Alexander noted the Fire Department indicated they are unable to share the equipment for fear of immediate need during emergencies. In response to inquiries, Deputy Mayor Alexander noted the following: the ATV has been purchased by the Police Department; uniforms are a yearly expense; and the Police Department has 39 sworn officers.

**CARRIED.**

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| 7.4 | 11 January 2017  | Kennebecasis Valley Fire Department (KVFD) Meeting Minutes |
|     | 11 January 2017  | KVFD Chief's Report  |
|     | 31 December 2016 | KVFD Response Report                                       |
|     | 23 November 2016 | Kennebecasis Valley Fire Department (KVFD) Meeting Minutes |
|     | 31 October 2016  | KVFD Statement of Operations                               |
|     | 23 November 2016 | KVFD Chief's Report  |
|     | 31 October 2016  | KVFD Response Report                                       |

**MOVED** by Council. Brenan and seconded by Council. Wells the Kennebecasis Valley Fire Department (KVFD) Meeting Minutes dated 11 January 2017, the KVFD Chief's Report dated 11 January 2017, the KVFD Response Report dated 31 December 2016, the KVFD Meeting Minutes dated 23 November 2016, the KVFD Statement of Operations dated 31 October 2016, the KVFD Chief's Report dated 23 November 2016, and the KVFD Response Report dated 31 October 2016 be received/filed.

### ON THE QUESTION:

It was noted "Vice" of Vice Chairperson was missing in the January 11, 2017 minutes, more specifically in reference to Commissioner Brenan's appointment to Vice Chair. Council. Brenan directed Council's attention to Section 10 of the January 11, 2017 minutes, and gave a brief summary of the Fire Department's actions with respect to union and non-union salaries. Council. Wells commented on the recent passing of Commissioner Brian Shanks and suggested the Town formally express condolences to his family. Council. Lewis inquired as to why the water cost for Rothesay is significantly higher than Quispamsis' share. Town Manager Jarvie advised the cost relates to the amount of active fire hydrants in each municipality. Since Rothesay has significantly more fire hydrants, the Town's share is higher. In response to an inquiry, Town Manager Jarvie noted the operating cost for Station 2 is included in the cost for rent.

**CARRIED.**

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| 7.5 | 31 December 2016 | Draft unaudited Rothesay General Fund Financial Statements |
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**MOVED** by Council. Brenan and seconded by Council. Shea the Draft unaudited Rothesay General Fund

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Financial Statements dated 31 December 2016 be received/filed.

**CARRIED.**

31 December 2016 Draft unaudited Rothesay Utility Fund Financial Statements  
**MOVED** by Counc. Brenan and seconded by Counc. Mackay French the Draft unaudited Rothesay Utility Fund Financial Statements dated 31 December 2016 be received/filed.

**CARRIED.**

27 January 2017 Draft Finance Committee Minutes  
**MOVED** by Counc. Brenan and seconded by Counc. Shea the Draft Finance Committee Minutes dated 27 January 2017 be received/filed.

### ON THE QUESTION:

Mayor Grant noted "Counc. Grant" should read "Counc. Brenan" and "CMMF" should read "CWWF". She added the Committee increased the amount of tickets purchased for the Amazeatorium from 25 to 30 to divide and distribute the tickets evenly (10 each) to the three elementary schools in Rothesay.

**CARRIED.**

### ➤ Bullying Canada Inc.

**MOVED** by Counc. Shea and seconded by Deputy Mayor Alexander Council deny the request for funding by BullyingCanada Inc. and the request be received/filed.

### ON THE QUESTION:

Counc. Lewis inquired as to why the Committee recommended the request be denied. Counc. Brenan noted it was unclear how the funds would be used in the organization. Mayor Grant added the request was not specifically related to Rothesay, and with limited funds it is difficult to provide funds to all organizations. Counc. Lewis inquired if BullyingCanada has a local branch in the area. Counc. Shea noted the national office for BullyingCanada is located in Fredericton.

**NAY vote recorded from Counc. Lewis.**

**CARRIED.**

### ➤ Clean Water and Wastewater Fund (CWWF) Funding Contribution Agreement

**MOVED** by Deputy Mayor Alexander and seconded by Counc. McGuire Council authorize the Mayor and Clerk to enter into the Clean Water and Wastewater Fund ("CWWF") Funding Contribution Agreement dated January 3, 2017, Reference Number 6990-1047.

### ON THE QUESTION:

Mayor Grant gave a brief summary noting Council approved submission of a funding application for an Inflow and Infiltration Study. She noted if the Town enters into the agreement the Town's contribution will be 25%. Counc. Wells requested clarification. Mayor Grant noted the item is related to item 9.4 which will be discussed later on the agenda.

**CARRIED.**

### ➤ Gas Tax Capital Investment Plan

**MOVED** by Deputy Mayor Alexander and seconded by Counc. Wells the document entitled Rothesay Five-Year Capital Investment Plan for the GTF Administrative Agreement 2014-2018 (Revised February 2017) be adopted.

### ON THE QUESTION:

Treasurer MacDonald gave a brief summary noting: the Gas Tax Fund is administered by the Province; every five years the Town must submit a Capital Investment Plan for the Gas Tax Fund; the existing



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plan spans from 2014 – 2018; and as a result of Council's decision to allocate Gas Tax funds to street work, the Capital Investment Plan for the Gas Tax Fund must be resubmitted with the revisions. Council Wells inquired if the reallocation of funds will be construed as a lack of interest in the Rothesay Arena project by Council. Town Manager Jarvie advised with additional funding opportunities presented through Build Canada, and Rothesay's submission of various funding applications for the Arena project, it is unlikely the reallocation of funds will be interpreted negatively. He added Gas Tax Funding is available annually and can be allocated to the Arena project at Council's wish.

**CARRIED.**

7.6 12 January 2017          Rothesay Age Friendly Committee Notes

**MOVED** by Council Wells and seconded by Council Shea the Rothesay Age Friendly Committee Notes dated 12 January 2017 be received/filed.

### ON THE QUESTION:

Council Wells noted the Committee met with the students from Dalhousie participating in the study of Rothesay as an Age Friendly Community. She added the students appear to be an enthusiastic group, eager to help the Town.

**CARRIED.**

7.7 17 January 2017          Draft Parks and Recreation Committee Meeting Minutes

**MOVED** by Council Wells and seconded by Council McGuire the Draft Parks and Recreation Committee Meeting Minutes dated 17 January 2017 be received/filed.

### ON THE QUESTION:

Council Mackay French expressed her opposition to the proposed live webcam for the Rothesay Common. She noted she does not approve of a live feed of children enjoying the Common. Council Brennan noted the January 27, 2017 Finance minutes indicated Mayor Grant would like tighter control on the Recreation budget. He added the live webcam would be a "want" not a "need", and he is unsure if there are funds available. Council Wells noted the request was from a resident. Council McGuire noted he was under the impression there was no extra cost since a webcam exists on the Rothesay Common. Council Wells added the camera is for security purposes. In response to an inquiry, DRP Jensen advised there are two existing cameras on the Rothesay Common that provide an updated image every 60 seconds, and the images can be viewed online. Council Lewis requested clarification with respect to the Rothesay Common ice schedule recommendation. Council Wells noted the schedule was changed to increase time slots for hockey in order to accommodate the Rothesay Park School activity period. She added the schedule is to remain the same with the exception of the additional time allocated for hockey. In response to an inquiry, DRP Jensen advised the flooding schedule for the Rothesay Common ice surface is followed.

**CARRIED.**

10 February 2017          Memorandum from Town Manager Jarvie

➤ Rothesay Common Skating Schedule

**MOVED** by Council McGuire and seconded by Council Lewis the recommendation for the Rothesay Common Skating Schedule be received/filed.

**CARRIED.**

➤ Rothesay Common Webcam

**MOVED** by Council Shea and seconded by Council Wells the recommendation for the Rothesay Common Webcam be received/filed.

### ON THE QUESTION:

It was noted funds have been allocated in the 2017 budget to accommodate a redesign of the Rothesay

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website.

**CARRIED.**

### ➤ Rothesay Common Lamppost Arms

**MOVED** by Counc. Wells and seconded by Counc. McGuire Council approach the Heritage Board for approval to install arms on the lamp posts on the Rothesay Common to accommodate the Legion's additional banners for a 2-3 week period, purchased strictly for the Legion.

#### ON THE QUESTION:

Town Manager Jarvie inquired as to who bears the cost of the additional arms. Mayor Grant suggested the cost be included in the motion. It was noted the arms are approximately \$80 each. DRP Jensen advised he has not yet contacted the Legion. In response to an inquiry, DRP Jensen noted roughly 8-10 additional lamp post arms are required.

**CARRIED.**

**MOVED** by Counc. Brenan and seconded by Deputy Mayor Alexander Council direct staff to approach the Legion to inquire about cost sharing for the additional lamp post arms.

**CARRIED.**

7.8 18 January 2017 Draft Public Works and Infrastructure Committee Meeting Minutes

**MOVED** by Deputy Mayor Alexander and seconded by Counc. Wells the Draft Public Works and Infrastructure Committee Meeting Minutes dated 18 January 2017 be received/filed.

#### ON THE QUESTION:

Deputy Mayor Alexander gave a brief summary of the minutes. Counc. Brenan thanked the Committee for allowing him to sit in on the meeting. He inquired if options to reduce or absorb the increased cost related to Spring Clean-Up are being explored. There was a brief discussion with respect to the different large item disposal methods for both the town of Rothesay and the town of Quispamsis. Deputy Mayor Alexander noted the service provided by the town of Quispamsis allows residents to include large items for disposal during regular curbside pick-up times contingent upon notifying the service provider beforehand. Counc. Brenan suggested the Town compare both methods to determine which is more cost effective. Counc. Lewis inquired as to why the three emails regarding the issue of parking at the Rothesay Common were not distributed to Council before the Public Works and Infrastructure Committee. There was general discussion. Counc. Lewis requested the three emails be provided to Council.

**CARRIED.**

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8 February 2017 Memorandum from Town Clerk Banks

➤ Streets and Sidewalks By-law 1-17

**MOVED** by Deputy Mayor Alexander and seconded by Council. Wells the memorandum from Town Clerk Banks dated 8 February 2017 be received/filed.

ON THE QUESTION:

Mayor Grant noted the Streets and Sidewalks By-law requires further edits and will be provided to Council at the March meeting.

**CARRIED.**

➤ Plow Truck Tenders

**MOVED** by Deputy Mayor Alexander and seconded by Council. Wells Council authorize the public tender calls for the purchase of:

1. One new and never used Tandem Plow Truck having an axle forward configuration to allow for the greatest weight distribution and subsequent flexibility of use; and
2. One new and never used Single Axle Plow Truck having an axle forward configuration to allow for the greatest weight distribution and subsequent flexibility of use.

ON THE QUESTION:

Mayor Grant inquired if the two plow trucks were included in the capital budget under fleet replacement. DO McLean advised this was correct.

**NAY vote recorded from Council. Lewis.**

**CARRIED.**

➤ Asphalt Resurfacer

**MOVED** by Deputy Mayor Alexander and seconded by Council. Wells Council authorize the direct purchase of a KM T-2 Asphalt Recycler from Saunders Equipment in Fredericton, New Brunswick for an estimated cost of \$109,000.00 plus HST.

ON THE QUESTION:

Mayor Grant noted the item is also included in the capital budget. Council. Brennan inquired if Rothesay approached Quispamsis for use of their asphalt recycler. Town Manager Jarvie advised the two pieces of equipment are different. DO McLean elaborated noting Quispamsis purchases and prepares pockets of asphalt in an Asphalt Hot Box. The Asphalt Recycler will allow Rothesay to reactivate old asphalt at a minimal cost. In response to an inquiry, Town Manager Jarvie advised the Town can investigate the possibility of obtaining used asphalt from Quispamsis for use in the Asphalt Recycler. It was noted storage may be a challenge with additional asphalt.

**CARRIED.**

➤ Diesel Storage Tank

**MOVED** by Deputy Mayor Alexander and seconded by Council. McGuire Council authorize the procurement of a firm quotation from PetroService Ltd. for the supply and installation of a 10,000 liter underground diesel storage tank at Master Drive to service the Public Works and Parks/Recreation Operations.

ON THE QUESTION:

Council. Shea inquired if it was more cost effective to purchase an above ground diesel storage tank. DO McLean advised both tanks were similar in cost, however, the underground storage tank is preferred to prevent vandalism and save space. Council. Brennan asked Deputy Mayor Alexander, as an Environmental Engineer, if there is any reason the tank should not be stored above ground. Deputy Mayor Alexander noted the underground storage tank is double walled and required to hold 110% of the product in case

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of leakage. He added he does not see a reason not to go with the underground storage tank.

**CARRIED.**

➤ Rothesay Netherwood School (RNS) streetlight

**MOVED** by Deputy Mayor Alexander and seconded by Council. Wells Council authorize the installation of a streetlight at the intersection of College Hill Road closest to the tennis court field.

### ON THE QUESTION:

Mayor Grant inquired as to who pays for the installation of the streetlight. Town Manager Jarvie advised NB Power is likely to incur the cost of installation of a dusk to dawn light. It was noted the operating cost is typically minimal. Council. Shea inquired if an accident occurred in the area to prompt the request. Council. Wells noted the headmaster of RNS indicated the lack of streetlight in the area is a safety concern. Council. Shea commented on the length of time there has not been a streetlight and the few, if any, accidents that have occurred. Council. Wells noted the campus has changed and grown over the years, and the safety of pedestrians, and drivers on campus has become more of a concern. Council. Shea expressed concern noting the installation of a streetlight in the area would be making an exception to an existing Town policy. Council. Brennan inquired if RNS could absorb the cost of installation and maintenance of the streetlight. Council. Wells noted the rate for the school may be considerably higher than the Town's rate. Town Manager Jarvie noted as other private property owners have installed dusk to dawn streetlights, he indicated the school may not have a strong case to request the Town incur the cost. It was suggested the issue be referred to staff for investigation and a recommendation to Council.

**MOTION WITHDRAWN.**

**MOVED** by Deputy Mayor Alexander and seconded by Council. McGuire the installation of a streetlight at the intersection of College Hill Road closest to the tennis court field on the RNS campus be referred to staff for a recommendation.

**CARRIED.**

7.9 18 January 2017 Draft Utilities Committee Meeting Minutes

**MOVED** by Deputy Mayor Alexander and seconded by Council. Brennan the Draft Utilities Committee Meeting Minutes dated 18 January 2017 be received/filed.

**CARRIED.**

7.10 6 February 2017 Draft Planning Advisory Committee (PAC) Meeting Minutes

**MOVED** by Council. Lewis and seconded by Council. Shea the Draft Planning Advisory Committee Meeting Minutes dated 6 February 2017 be received/filed.

### ON THE QUESTION:

Deputy Mayor Alexander noted the discussion seemed to revolve around Option C, however, the recommendation from PAC did not include a preference for Option A, B, or C. Council. Lewis noted the Committee's discussion was focused on the content of the development agreement which included the design of Option C.

**CARRIED.**

➤ 7 Hillcrest Drive  
**SEE ITEM 8.4**

7.11 January 2017 Monthly Building Permit Report

**MOVED** by Deputy Mayor Alexander and seconded by Council. Lewis the Monthly Building Report dated January 2017 be received/filed.

**CARRIED.**

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## 8. UNFINISHED BUSINESS

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### TABLED ITEMS

#### 8.1 Traffic By-law 1-14 (Tabled June 2014)

*No action at this time*

#### 8.2 Water By-law (Tabled June 2015)

*No action at this time*

#### 8.3 16 Lot Subdivision off Appleby Drive (Tabled December 2015)

*No action at this time*

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#### 8.4 7 Hillcrest Drive – Rezoning

9 February 2017	Memorandum from Town Manager Jarvie
DRAFT	By-law 2-10-27
DRAFT	Development Agreement

#### Meeting addendum

14 February 2017	Memorandum from Town Manager Jarvie
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Mayor Grant noted as Council approved 1<sup>st</sup> Reading of By-law 2-10-27 it would be consistent for Council to approve 2<sup>nd</sup> Reading of the By-law, if Council wishes to proceed.

**MOVED** by Counc. Lewis and seconded by Deputy Mayor Alexander Council give 2<sup>nd</sup> Reading by Title, to By-law 2-10-27, “A By-law to Amend the Zoning By-law”.

#### ON THE QUESTION:

Counc. Wells commented that the third recommendation from staff includes Option B as the preference for the Development Agreement. Mayor Grant noted the matter will be addressed later, Council must first decide if 2<sup>nd</sup> Reading of the By-law is to be given. Counc. Brennan inquired if the proposed By-law would conflict with the Municipal Plan. DPDS White advised the policy framework in the Municipal Plan allows for this rezoning to occur. In response to an inquiry, DPDS White agreed he would certify that his interpretation of the Municipal Plan allows Council to rezone the property. He added if the property is rezoned Council accepts his interpretation and it will be a legitimate rezoning.

**CARRIED.**

The Town Clerk read By-law 2-10-27 by title.

**MOVED** by Counc. Lewis and seconded by Deputy Mayor Alexander Council give Reading in its Entirety, to By-law 2-10-27, “A By-law to Amend the Zoning By-law”.

#### ON THE QUESTION:

Deputy Mayor Alexander requested clarification on the following: if Reading in its Entirety is given to By-law 2-10-27 without entering into a development agreement, can the property can be developed without Council’s preference of a design. DPDS White noted additional requirements need to be met before By-law 2-10-27 is enacted. In response to an inquiry, DPDS White added the property cannot be rezoned until Council authorizes the Mayor and Town Clerk to enter into a development agreement. Counc. Shea requested clarification with respect to the subject of the development agreement presented to Council. DPDS White noted the development agreement is based on Option C because Council scheduled the January public hearing to review Option C and requested a recommendation from the Planning Advisory Committee with respect to the proposed development agreement for Option C.

**CARRIED.**

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The Town Clerk read By-law 2-10-27 in its entirety.

Mayor Grant clarified the development agreement in front of Council reflects Option C whereas the recommendation from staff refers to Option B, amended to 58 units. Mayor Grant gave a brief summary noting: the Planning Advisory Committee (PAC) initially recommended Option B and, on request of Council, also reviewed Option C at its February meeting and made a subsequent recommendation; Town staff did not receive full elevations details prior to this evening's Council meeting; the plans were provided to the Fire Chief who voiced concerns with respect to the Option C proposal; the developer had previously indicated sprinklers and standpipe systems would be installed. There was a brief discussion with respect to Council's options regarding the application and clarification of the process.

**MOVED** by Deputy Mayor Alexander and seconded by Council. Shea Council defer 3<sup>rd</sup> Reading by title of By-law 2-10-27 and direct staff to generate a comparison table for Options A, B, and C that provides information related to:

1. The number of condominium units;
2. The number of town homes and unit types;
3. Base floor elevations for the large units and peak elevations;
4. The proximity of large condominium units to dwellings on Silverton Crescent, Hillcrest Drive, and Hampton Road;
5. The number of parking spots for all but the town homes;
6. The number of variances for the development and the details of those variances;
7. Provide copies of the planting plans for the three proposals;
8. Comparisons of fire protection systems proposed;
9. Comparisons of the stormwater management plans (e.g. storage volumes, etc.);
10. Comparisons of traffic studies (e.g. impacts to traffic on Hillcrest Drive, and Highland Avenue, etc.); and
11. Any other pertinent development details.

### ON THE QUESTION:

Deputy Mayor Alexander noted Council is unable to make an informed decision if the information provided is confusing and not consistent. Council Wells inquired if the Architectural Guidelines section in the development agreement should be more detailed as it may be interpreted as vague. She added "high quality" is subjective. DPDS White noted the types of shingles and other materials are included in the development agreement. He added, if the development agreement is approved, the finished product is expected to match the renderings in the development agreement. In response to an inquiry, DPDS White advised use of Town water will be measured through a meter on the property; if Town water is used for filling and maintenance of the pool, the property will be charged accordingly.

Council McGuire noted Option C appeared to be the preferred option of Council at the previous meeting and questioned what had changed. Mayor Grant noted that, although Council gave 1<sup>st</sup> Reading to By-law 2-10-27 at the previous Council meeting, there was no formal agreement on the preferred layout by Council. DPDS White advised: the elevations of the two large condominium buildings had not been provided until after the Council agenda deadline; the Zoning By-law states a building on a property zoned Multi-Unit Residential cannot exceed a height of 15 meters; and a quick review of the elevations provided on today's date indicates the most southerly condominium building has a height of 20 meters as a result of the grade of the property.

Council Wells noted she expected full renderings of the proposal to be provided before tonight's meeting. It was noted the developer is in attendance and has renderings available. Town Manager Jarvie expressed concern, noting information should be submitted to the Town before the Council agenda deadline to allow Council and Town staff to review the information prior to the meeting. Deputy Mayor

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Alexander stressed the importance of having consistent information to allow Council to make an informed decision. Counc. Lewis noted the matter has been discussed at great length and commented that information should not be provided to Council “at the eleventh hour” by the developer or staff.

Counc. Shea noted Council unanimously voted to give 1<sup>st</sup> Reading to By-law 2-10-27 but there was not unanimous support in favour of Option C. Deputy Mayor Alexander inquired as to when the additional information arrived from the developer. Town Manager Jarvie advised Town staff received the information earlier today.

Counc. Brennan requested clarification regarding the motion on the table. Town Clerk Banks read the motion.

Counc. Mackay French expressed concern noting a similar problem may arise at the next Council meeting with respect to choosing an option. She noted: Option C was preferred by the majority of Council at the last meeting; staff’s recommendation for Option B, as amended, has caused some confusion; and that Council should be presented with clear options. Counc. Wells noted she understood Option C was the subject of the development agreement presented to Council; and all pertinent information was to be provided at the present Council meeting. She questioned the benefit of having staff review the information further.

**YEA votes recorded from: Deputy Mayor Alexander and Counc. Shea.**

**NAY votes recorded from: Councils. Brennan, Lewis, McGuire, Mackay French, and Wells.**

**MOTION DEFEATED.**

**MOVED** by Counc. Shea and seconded by Deputy Mayor Alexander Council give 3<sup>rd</sup> Reading by title and Enactment to By-law 2-10-27, “A By-law to Amend the Zoning By-law” subject to the execution of a development agreement, as amended, with A.E. McKay Builders Ltd. to develop a residential 58 unit condominium complex at 7 Hillcrest Drive (PIDs 00257139 & 30048847) with conceptual design reflecting ‘Option B’.

### ON THE QUESTION:

Counc. Shea noted the Town employs staff to provide recommendations to Council based on collective expertise and Option B has been the consistent recommendation from staff. He noted he shares the concerns of the Fire Chief with respect to the layout of Option C. Counc. Lewis noted sprinklers and standpipe systems will be installed in the buildings to mitigate the Fire Department’s concerns. He added there are buildings in Saint John that cannot be attended to by a ladder truck. Counc. McGuire inquired if a secondary road can be constructed to provide access from the Arthur Miller fields. Counc. Shea noted a secondary road is not included in the present design. He added the Fire Department’s concerns are very clear and he expressed concern about potential liability. It was noted the additional information on elevations was not received until today and the Planning Advisory Committee did not have the information to review at its meeting last week.

Deputy Mayor Alexander expressed concern noting Council does not have all the details in order to make an informed decision. He noted last minute changes to the proposal could be accompanied by challenges. Deputy Mayor Alexander further commented it appeared Council was in favour of the development but agreement on the site layout required further detailed information as between Option B and Option C. Mayor Grant noted the information needs to be presented to Council prior to the meeting to allow for proper review and informed decision-making.

**YEA vote recorded from: Counc. Shea.**

**NAY votes recorded from: Deputy Mayor Alexander and Councils. Brennan, Lewis, McGuire, Mackay French, and Wells.**

**MOTION DEFEATED.**

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**MOVED** by Counc. Mackay French and seconded by Deputy Mayor Alexander Council direct staff to prepare development agreements for Options B and C and a comparison table be generated for Options B and C that provides information related to:

1. The number of condominium units;
2. The number of town homes and unit types;
3. Base floor elevations for the large units and peak elevations;
4. The proximity of large condominium units to dwellings on Silverton Crescent, Hillcrest Drive, and Hampton Road;
5. The number of parking spots for all but the town homes;
6. The number of variances for the development and the details of those variances;
7. Provide copies of the planting plans for the three proposals;
8. Comparisons of fire protection systems proposed;
9. Comparisons of the stormwater management plans (e.g. storage volumes, etc.);
10. Comparisons of traffic studies (e.g. impacts to traffic on Hillcrest Drive, and Highland Avenue, etc.); and
11. Any other pertinent development details.

## ON THE QUESTION:

Town Manager Jarvie clarified Town staff do not generate the information, it must be provided by the developer. Counc. Wells requested detailed renderings be included with the development agreements for both options.

Deputy Mayor Alexander inquired if there is an opportunity to schedule a meeting in two weeks to decide on the matter. Town Manager Jarvie advised at Council's request a special meeting of Council can be scheduled; however it may be challenging to schedule a meeting, outside of the regular Council schedule, that all members can attend. He added obtaining the additional information requested may take time. Counc. Lewis inquired if Council could approve Option C with the stipulation that a variance must be granted before issuing a development permit. Town Manager Jarvie noted challenges may arise if changes to the layout become necessary. Counc. Wells noted she would like to see renderings of the retaining walls in the information provided.

**CARRIED.**

## 9. NEW BUSINESS

### 9.1 BUSINESS ARISING FROM DELEGATIONS

#### Ellen Watters Rally

9 February 2017	Memorandum from Town Manager Jarvie
23 November 2016	Proposed Bill M-17 Motor Vehicle Act Revisions
26 January 2017	Email from Wayne Arrowsmith RE: Presentation
19 January 2017	Email from Wayne Arrowsmith RE: Ellen Watters Rally
1 January 2017	Rothsay Public Statement RE: Rally in Memory of Ellen Watters
23 November 2016	Executive Summary
12 January 2017	"A Metre Matters" Submission to the NB Minister of Public Safety on Amendments to M-17 Motor Vehicle Act

#### Meeting addendum

12 February 2017	Email from Wayne Arrowsmith RE: Monday's Council meeting
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**MOVED** by Counc. Shea and seconded by Counc. Wells Council provide support in principle to the proposed Ellen's Law and refer the proposal to the Public Works and Infrastructure Committee for a detailed assessment of its implications to Rothsay.

## ON THE QUESTION:

Counc. Wells suggested Section 179(3) "Wherever a usable path for bicycles has been provided



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adjacent to a roadway, bicycle riders shall use such path and shall not use the roadway.” remain in the Motor Vehicle Act. She added the section should include an excerpt noting all bicycle riders should travel in a single file line, except when passing. Mayor Grant expressed concern noting a lack of information with respect to the rules of bicycling on sidewalks. Counc. Shea expressed concern noting the onus is on the drivers of motor vehicles to prove the one meter distance was upheld; it is based on perception. He added the onus should be shared with cyclists. Counc. Brenan expressed concern noting roads were not designed to accommodate an additional one meter of shared space on both sides. Counc. Mackay French suggested the proposed legislation will likely increase awareness for bicycle safety. Counc. Brenan suggested the Province should increase education regarding bicycle safety. Counc. Wells noted the Town promotes active transportation and safety.

**CARRIED.**

Mayor Grant suggested the Town continue to increase awareness of bicycle safety. She noted comments in Mr. Arrowsmith’s email dated 12 February 2017 with respect to suggestions for the installation of bike racks outside of businesses, and the inclusion of allotted parking spaces for bicycles and bike racks in sizeable residential complexes, and indicated these matters should be considered when discussing new developments and the Municipal Plan.

## ADMINISTRATION

### 9.2 Heritage Bill C-323

8 February 2017

Memorandum from Town Clerk Banks

18 January 2017

Letter from Hon. Peter Van Loan, MP RE: Support Bill C-323 with attachment

**MOVED** by Counc. Wells and seconded by Counc. Mackay French Council forward a letter of support for Bill C-323, An Act to Amend the Income Tax Act (rehabilitation of historic property) to Saint John – Rothesay MP Wayne Long.

### ON THE QUESTION:

It was noted the Heritage Preservation Review Board has not had a meeting yet this year and did not review the proposed legislation. Mayor Grant suggested the item could be referred to the Heritage Preservation Review Board.

**CARRIED.**

### 9.3 Committee Appointments

6 February 2017

Memorandum from Mayor Grant

**MOVED** by Counc. Wells and seconded by Counc. McGuire Council approve the change to the composition of the Open and Transparent Government Committee to three (3) Council members and resident appointments, as necessary, on recommendation of the Nominating Committee.

**CARRIED.**

**MOVED** by Counc. Wells and seconded by Counc. Mackay French Council approve the appointment of Terry Taylor to the Open and Transparent Government Committee, with a term to expire no later than June 30, 2018.

### ON THE QUESTION:

Counc. Shea suggested since Council has final approval of committee appointments it may be beneficial to include additional details with respect to the recommended individuals to enable Council to make an informed decision. Counc. McGuire noted all the information is included in the applications submitted by the individuals and vetted by the Nominating Committee. Town Clerk Banks advised the Nominating Committee meets in Closed Session as Committee applications include personal information. Counc. McGuire noted if Councillors wished to learn more about potential committee members they can attend the Nominating Committee meetings.

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**CARRIED.**

**MOVED** by Counc. Wells and seconded by Counc. Lewis Council approve the appointment of Lisa Hrabluk to the Open and Transparent Government Committee, with a term to expire no later than June 30, 2018.

**CARRIED.**

### OPERATIONS

#### 9.4 Rothesay Wastewater Collection System Upgrades: Inflow and Infiltration Study

13 February 2017

Report prepared by DO McLean

**MOVED** by Deputy Mayor Alexander and seconded by Counc. Brennan Council authorize the Director of Operations to negotiate with Crandall Engineering to complete an Inflow and Infiltration Study of the local collector sewers in Rothesay.

#### ON THE QUESTION:

It was noted Council authorized the Mayor and Clerk to enter into the Clean Water and Wastewater Fund (CWWF) Funding Contribution agreement earlier in the meeting. In response to an inquiry, DO McLean advised stormwater runoff is permissible to be diverted straight to the river. He added a high cost exists for treating stormwater runoff within the sanitary sewer system, thus increasing the overall cost for rate payers. Town Manager Jarvie noted some jurisdictions may treat stormwater but it is not an incremental cost. Counc. Wells suggested if stormwater runoff is separated the Town should evaluate the quality of water before it is diverted to the river. Town Clerk Banks clarified the attached report prepared by DO McLean is dated February 13, 2017 not February 8, 2017.

**CARRIED.**

#### 9.5 Engineering Services: General Specifications

9 February 2017

Report prepared by DO McLean

**MOVED** by Counc. Wells and seconded by Deputy Mayor Alexander Council accept the proposal submitted by Crandall Engineering Ltd. in the amount of \$27,786.88 (incl. HST) to provide engineering services for the development of a Rothesay General Specification document and further that the Mayor and Town Clerk be authorized to execute the appropriate documentation in that regard.

#### ON THE QUESTION:

Counc. Lewis noted his request for additional detail provided to Council with respect to bids continues to be ignored. It was noted it is a request for proposals which differs from a call for tenders. Town Clerk Banks advised information submitted in response to a request for proposals may be protected by the Right to Information and Protection of Privacy Act and cannot be publicly shared.

**NAY votes recorded from: Counc. Lewis and Counc. Brennan.**

**CARRIED.**

### 10. NEXT MEETING

The next regular meeting will be held on **Monday, March 13, 2017.**

### 11. ADJOURNMENT

**MOVED** by Counc. Wells and seconded by Deputy Mayor Alexander the meeting be adjourned.

**CARRIED.**

The meeting adjourned at 9:09 p.m.

  
\_\_\_\_\_  
MAYOR

  
\_\_\_\_\_  
CLERK

ROTHESAY APPEALS COMMITTEE OF COUNCIL

BETWEEN:

JOHN ALBERT MCKELLAR

APPELLANT

- and -

ROTHESAY, a town incorporated pursuant  
to Regulation 85-6 of the *Municipalities Act*,  
R.S.N.B. 1973 c. M-22

RESPONDENT

**COMMITTEE OF COUNCIL:** Mayor Nancy Grant; Deputy Mayor Matt Alexander;  
Councilors Grant Brenan, Tiffany Mackay French, Bill McGuire, Don Shea, and Miriam Wells.

**APPEARANCES:**

For the Appellant: Himself

For the Respondent: John Jarvie

**DECISION**

The hearing comes before the Committee of Council (the “Committee”) as the result of a Notice of Appeal (Form 1) dated October 25, 2016 wherein the Appellant appeals a Notice to Comply dated October 14, 2016 issued by the By-law Compliance Officer for Rothesay pursuant to By-law 4-09, A By-Law Respecting Dangerous or Unsightly Premises (“Notice to Comply”).

The hearing took place on Tuesday, January 31, 2017 at Rothesay, New Brunswick. After hearing from both parties, and upon due deliberation, the Committee has made the following decision:

**Background**

The Committee admitted the following documents as Exhibits, which became part of the hearing record:

Exhibit R-1 Binder Containing:

Tab 1 – Parcel Information and Property Transfer

- Tab 2 - By-Law Officers Qualifications and Appointment
- Tab 3 - Complaint from Resident
- Tab 4 – Inspection of Property Report Dated June 17, 2016
- Tab 5 – Department of Finance Approval of Action
- Tab 6 - Notice to Comply
- Tab 7 - Notice of Appeal
- Tab 8 - True Copy of By-Law 4-09 “A BY-LAW RESPECTING DANGEROUS or UNSIGHTLY PREMISES”
- Tab 9 - Inspection of Property Report Dated January 5, 2017
- Tab 10 - Inspection of Property Report Dated February 8, 2013 and Compliance Letter dated February 22, 2013.

John Jarvie, appearing for the Respondent, called upon Mr. Steve Nason, Rothesay’s By-Law Compliance Officer to give evidence to the Committee. Mr. Nason gave evidence as to his credentials as By-Law Compliance Officer and that he was appointed as such by Resolution of Council dated August 10, 2009. A list of Mr. Nason’s professional qualifications and a copy of the Resolution was introduced as Tab 2 in Exhibit R-1.

Mr. Nason gave evidence to the Committee that he has been employed by Rothesay for a number of years and also serves as the Building Inspector for Rothesay. Pertaining to this appeal, Mr. Nason gave evidence to the Committee that he received a complaint from a resident of Rothesay on May 12, 2016, a copy of which was admitted into evidence as Tab 3 in Exhibit R-1 (the “Resident Complaint”). The Resident Complaint detailed that a local neighbour of 142 French Village Road was concerned that the three buildings located at 142 French Village Road (the “Property”) were unsafe and unsightly. The Resident Complaint requested that Mr. Nason inspect the Property to determine whether or not it properly complied with Rothesay’s by-laws.

Mr. Nason testified that he visited the Property on May 13, 2016, June 17, 2016 and January 5, 2017. He gave evidence to the effect that, after receiving the Resident Complaint, he visited the Property on May 13, 2016. He returned and inspected the Property on June 17, 2016 (the “First Inspection”). Following the First Inspection Mr. Nason testified that he prepared the Inspection of Property Report dated June 17, 2016. The Inspection of Property Report dated June 17, 2016 was admitted into evidence as Tab 4 in Exhibit R-1. The Inspection of Property Report dated June 17, 2016 contained 10 photographs of the Property taken at the time of the First Inspection. Mr. Nason gave evidence that he concluded that the Property was not in compliance with the Rothesay’s By-Law 4-09 “A By-Law Respecting Dangerous or Unsightly Premises” (“By-Law 4-09”) and he recommended that all the buildings on the Property be removed.

Mr. Nason further testified to the Committee that, as a result of the First Inspection, he issued the Notice to Comply dated October 14, 2016, admitted into evidence as Tab 6 in Exhibit R-1, as Section 190.01(1)(d) of the *Municipalities Act* had been contravened. The Section in question reads:

190.01(1) No person shall permit premises owned or occupied by him or her to be unsightly by permitting to remain on any part of such premises

...

(d) a dilapidated building.

Mr. Nason noted in the Notice to Comply that the condition of the Property is not in compliance with the standards provided for pursuant to By-Law 4-09 and that the conditions of the Property require that the owner demolish the main building and accessory buildings that compose the Property and clean up the demolition site. This Notice was to be complied with by the Appellant within 30 days of being served.

John Jarvie directed Mr. Nason to a number of pictures of the Property taken on January 5, 2017, admitted into evidence as Tab 9 in Exhibit R-1. Mr. Nason testified as to what was shown in each of the photographs and his professional opinion as to the quality of the Property based on those photographs. Mr. Nason noted in each picture why he believed that the Property is dilapidated and unsightly. There were 17 photographs in total. Mr. Nason confirmed to the Committee that he believes the Property to be unsightly, dilapidated, and structurally unsound.

Mr. Nason gave evidence to the Committee that he had visited the Property previously in February of 2013 when it was owned by someone other than the Appellant. At that time, Mr. Nason responded to a complaint about the premises and took some photographs of the Property. He determined that the Property was, at that time, unsightly and dilapidated as well. Mr. Nason indicated that the Appellant purchased the Property over a year after February, 2013. However, there has been no change to the Property since February, 2013.

In summary, Mr. Nason gave evidence that the Property is both dilapidated and unsightly. He has inspected the Property on a number of occasions since 2013 and has determined that, since that time, the issues with the Property have not been remediated. Furthermore, Mr. Nason gave evidence that the Property was unsafe and structurally unsound. The only remedy, in the professional opinion of Mr. Nason, would be to remove all the buildings.

The Appellant spoke next. His evidence to the Committee was that he agreed with the conclusion of Mr. Nason and explicitly admitted that the Property is in an unsightly, dilapidated, and unsafe condition, going as far as to say "I have renovated dozens of properties and it would be insane to argue." He said that he purchased the Property with the intention of renovating it for sale but ran into some financial difficulties. The Appellant asked the Committee for some leniency and said that he would like to keep the Property if at all possible and believed it to be salvageable.

The Committee reviewed the photographs in evidence and concluded that the Property is unsightly and dilapidated. For example, the Committee noted photographs showing that: 1) the house's deck is falling apart; 2) the side entrance to the house is leaning towards the ground; 3) steps from an entrance to the ground are missing; and 4) the buildings are missing walls, siding, and proper roofs, amongst other indications. This evidence has led the Committee to the conclusion that the Property is in an unsightly and dangerous condition.

### Findings

This appeal is based on a Notice to Comply which was issued on October 14, 2016 by the By-Law Compliance Officer for Rothesay pursuant to By-Law 4-09 and served on the Appellant on the same date.

The Notice to Comply stipulates contravention of By-Law 4-09 which effectively adopts Section 190.001(1) to 190.07 of the *Municipalities Act*. By-Law 4-09 reads as follows:

The Council of the Town

of Rothesay, under authority vested in it by Section 190 of the *Municipalities Act*, RSNB (1973), c M-22, and amendments thereto, hereby enacts as follows:

1. Sections 190.001(1) to 190.07 of the *Municipalities Act*, supra, applies to the whole area within the Town limits of the Town of Rothesay.
2. (1) By-Law 2-03 of the Town of Rothesay is hereby repealed.
  - (2) The repeal of By-Law 2-03 of the Town of Rothesay shall not affect any penalty, forfeiture, or liability incurred before such repeal or any proceeding for enforcing the same completed or pending at the time of repeal; nor shall it repeal, defeat, disturb, invalidate, or prejudicially affect any matter or thing whatsoever completed, existing or pending at the time of repeal.
3. This By-Law comes into effect on the date of the final enactment thereof.

...

THIRD READING BY TITLE AND ENACTED

10 August 2009

The matter is appealed under Section 190.021(1) of the *Municipalities Act*. The Section reads as follows:

190.021(1) An owner or occupier of premises or a building or structure who has been given a notice under section 190.011, other than a notice prepared under subsection 190.041(2), and who is not satisfied with the terms or conditions set out in the notice may appeal to the appropriate committee of council by sending a notice of appeal by

registered mail to the clerk of the municipality within fourteen (14) days after having been given the notice.

The appeal is determined by the appropriate Committee of Council; such Committee shall hold a hearing into the matter pursuant to Section 190.01(3). Council appointed the members of council and the mayor of Rothesay to constitute the Committee. On appeal, the Committee may confirm, modify, or rescind the notice or extend the time for complying with the Notice to Comply pursuant to Section 190.021(4).

190.021(4) On an appeal, the committee of council may confirm, modify, or rescind the notice or extend the time for complying with the notice.

The law in connection with Section 190.01(1)(d) of the *Municipalities Act*, supra, is clear that any by-law regarding dilapidated and unsightly premises must be strictly interpreted. In this case, Rothesay called Mr. Nason as a witness to speak to the current state of the Property and made his case as to why the Property should be considered unsightly and dilapidated. However, the Appellant has clearly and unequivocally agreed with the conclusions of Mr. Nason and agrees that, in its current state, the Property is uninhabitable, unsightly, and dilapidated. As a result, the Committee does not believe it is necessary to delve into the specifics of the case law of New Brunswick with regard to Section 190.01(1)(d) of the *Municipalities Act*.

### **Disposition**

The Committee finds that the buildings on the Property are dilapidated. Given the evidence presented by Rothesay and Mr. Nason, we cannot reach any conclusion other than that the Property has fallen into a state of disrepair and deterioration. We have reviewed all of the evidence, including each of the pictures that were presented and analyzed by Mr. Nason. We conclude that sufficient evidence is present to determine that the Property is dilapidated in the strictest sense of the word.

The Appellant acknowledged and admitted to the Committee during the appeal hearing that he agrees that the Property is dilapidated. As a result, the Committee finds that the Property owned by the Appellant is unsightly as he has permitted the dilapidated buildings to remain on the Property for a long time.

In our view, given the condition of the Property and its location, we find that, in its current state, it is not a desirable structure for the area. The houses surrounding the Property are of a residential and pleasant nature. The condition of the Property in its current state is simply not acceptable for its location.

As has been detailed above, on this appeal we have the power to confirm, modify, or rescind the Notice to Comply issued on October 14, 2016. We may also extend the time allowed for compliance. In this case, considering all of the circumstances, we find that the buildings are in clear violation of By-Law 4-09 and, therefore, must be removed. However, at the same time, the

Appellant has indicated his willingness to cooperate and renovate the Property on a timely basis to remediate the issues in its current state. Therefore, we are willing to afford the Appellant an opportunity to renovate the Property in compliance with Rothesay's by-laws.

In its current state, the Property is unsafe and dangerous. There are a number of openings to the buildings and there is a risk that they could collapse. As a result, it is prudent that the buildings are upgraded to ensure that it is safe to the public and anyone who may, legally or not, enter onto the premises. We will provide the Appellant with fourteen (14) days from the date of this decision to repair the Property and ensure that it is safe and no longer dangerous to anyone who may happen upon the Property (the "Repair Time Period"). If, upon inspection after the Repair Time Period, the Property is deemed to be dangerous and unsafe by Rothesay's Building Inspector, the order for demolition will not be extended any further and the Appellant will have 30 days to demolish the buildings on the Property and clean up the demolition site. A written notice of the Building Inspector's conclusion that the buildings continue to be dangerous and unsafe after the Repair Time Period shall be sufficient evidence of such determination by Rothesay's Building Inspector and such notice will be served upon the Appellant after that decision has been made.

As long as the Property has been repaired into a safe condition in the opinion of the Building Inspector within the Repair Time Period, we will extend the time limit for demolishing the buildings for ninety (90) days from the expiry of the Repair Time Period. This should allow for sufficient time to rectify the problems that exist on the Property and renovate it so that it appropriately complies with Rothesay's by-laws. This will require fixing the structural issues that have been identified with the Property and ensuring that it is not unsightly and is totally habitable. At the expiration of the 90 days, Rothesay's Building Inspector will inspect the Property and determine whether it is in compliance with the By-Law. A written notice of the Building Inspector's conclusion shall be served upon the Appellant after that decision has been made. In the event that the Appellant does not renovate the buildings within the 90 days allocated under this decision, the order for demolition will not be extended further and the Appellant shall demolish the buildings within 30 days of receiving written notice that the buildings are not in compliance after the 90 day period has expired.

DATED at Rothesay, New Brunswick this 17 day of February, 2017.



Dr. Nancy Grant, Chair