

Minutes of an Amherstburg Municipal Council Meeting held on Monday, October 6, 2008 at 7:00pm in the Council Chambers

PRESENT:

Mayor Wayne Hurst
Deputy Mayor Robert Bailey
Councillor Rick Fryer
Councillor Robert (Bob) Pillon
Councillor Paul Renaud
Councillor John Sutton
Councillor Rosa White

ALSO PRESENT:

Pamela Malott, Chief Administrative Officer
Kevin Atkinson, Sewer and Watermain Superintendent
Carol Bendo, Manager of Human Resources
Paul Beneteau, Treasurer
Lory Bratt, Planning Coordinator
David Carpenter, Manager of Information Technology
Tony DeThomasis, Roads and Parks Superintendent
Ron Dzombak, Manager of Recreational Services
Ivano Fregonese, Supervisor of Budget Services
Cindy Hazael-Gietz, Deputy-Clerk
Dwayne Grondin, Public Works Inspector/Coordinator of Development Services
Richard Murray, Fire Chief
B.J. Wilder, Community Standards Officer

ABSENT WITH NOTICE: Stephen Brown, Chief Building Official
Lou Zarlenga, Manager of Public Services

CALL TO ORDER

The meeting was called to order at 7:00 P.M.

Mayor Hurst thanked all those involved with the Fountain and Cenotaph Projects and commended the community on their hard work and dedication to this project.

PRAYER

Cindy Hazael-Gietz, Deputy-Clerk, said prayer.

DISCLOSURE OF PECUNIARY INTEREST

Councillor White declared a conflict with the Committee of Adjustment Minutes contained under Consent Minutes.

MINUTES OF PREVIOUS MEETING

Moved by Councillor Fryer
Seconded by Councillor Renaud

That the minutes of the following Amherstburg Municipal Council meetings be adopted as circulated:

1. In-Camera meeting held at 8:00 am on Monday, September 15, 2008;
2. In-Camera meeting held at 9:45 am on Monday, September 15, 2008;
3. In-Camera meeting held at 4:50 pm on Monday, September 22, 2008;
4. Public meeting held at 7:00 pm on Monday, September 22, 2008;
5. In-Camera meeting held at 11:00 am on Friday, September 26, 2008;
6. and Special Public meeting regarding the Budget held at 1:00 pm on Friday, September 26, 2008.

Motion Carried

DELEGATIONS

Delegation # 1

Mr. Brian Matz, Director of Close to Home Community Organization and Robert Klinck addressed Council regarding annual support from all Community groups. Mr. Matz gave a brief description of programs currently running in McGregor and indicated that the participation has increased over the past year. Mr. Matz stated that monthly expenses are approximately \$350.00 and indicated that the organization is seeking financial assistance from the Municipalities of Amherstburg and Essex. Mr. Klinck added that the computer program that is being run out of the Lucier Estates Community Room is not only for children but also for seniors. Mr. Klinck stated the organization is in need of computers, printers and operating funds.

Moved by Councillor Renaud
Seconded by Councillor Sutton

That the delegation by Brian Matz and Robert Klinck be received and the request for financial assistance be deferred to 2009 budget deliberations.

Discussion:

Councillor Pillon asked the delegation if they are requesting surplus computer equipment to be donated by the Town. Councillor Sutton referred the delegation to administration for details regarding our grant application and budget process.

Motion Carried

Delegation # 2

Mr. Mike Vossen and Mr. Carl Gibb addressed Council regarding Amherstburg Rotary Club's 75th Anniversary Party. A copy of the delegation report is attached and forms part of these minutes.

Moved by Councillor Renaud
Seconded by Councillor Pillon

That the delegation by Mike Vossen and Carl Gibb be received and that Council be encouraged to attend.

Discussion:

Mayor Wayne Hurst thanked the Rotarians for their continued service to our community.

Motion Carried

Delegation # 3

Mr. Paul Jones and Mr. Rennie Rota on behalf of the Amherstburg Chamber of Commerce addressed Council regarding the Jimmerfield Mailloux Properties Parking Lot Use.

Mr. Jones indicated that he was impressed with the Town's decision to purchase the property and continue improvements of the Downtown Area and viewed this as one more step in the beautification process. Mr. Jones referred to the Parking Study undertaken by the town and quoted page 3 & 4 which verified the saturation with respect to 80% usage of available parking during peak periods. Mr. Jones stated the need to develop a paved parking lot which would enhance new development initiatives in the core area while appealing to tourists and residents alike.

Mr. Rota brought forward concerns from the directors of the Chamber of Commerce with respect to the development of an outdoor market on this site. Mr. Rota stated that with the limited season for this application, the Town may find it prudent to investigate other options with respect to this site. Mr. Rota also discussed the undue pressure this market may assert on the current business community if activities like mass sales of holiday merchandise or the like were to take place. Mr. Rota indicated that services such as hydro, electricity, washroom facilities, etc. would pose difficulties and unnecessary financial burden upon the Town. Mr. Rota stated that, most importantly, the cost and cost recovery become the determining factor when examining the options. In closing, Mr. Rota referenced the completed parking study which clearly states the necessity for public parking far outweighs the outdoor market place concept. Mr. Rota indicated that some of the features of the outdoor market may still be incorporated in the parking lot; however, the Town should revisit the outdoor market concept.

Report #1 brought forward after Delegation #3

Moved by Councillor White
Seconded by Deputy Mayor Bailey

That report # 1 be brought forward after delegation # 3.

Motion Carried

Moved by Councillor White
Seconded by Deputy Mayor Bailey

That the delegation by Paul Jones be received;

That the report by Carol Bendo, dated September 24, 2008 regarding the re-use of Ramsay/Richmond Properties be received;

That Council direct Administration to prepare a complete business case for a Downtown Market concept with a full public consultation process at an estimated cost of \$ 5,000.00 using student assistance;

And further that the vacant Ramsay/Richmond lots be upgraded as a short term parking area with **Option # 1** while Administration pursues other development opportunities.

Discussion:

Council had discussion regarding the delegation and was in agreement that the Town should not be subsidizing competition at lower rates. Council will seek public input regarding the property and its proper use as the process moves forward.

A recorded vote was taken:

Member of Council	Yea	Nay
Deputy Mayor Bailey	X	
Councillor Fryer		X
Councillor Pillon	X	
Councillor Renaud	X	
Councillor Sutton	X	
Councillor White	X	
Mayor Hurst	X	

Motion Carried

Delegation # 4

Ron Sutherland, President and Lynne Matthews Secretary of the Ranta Marina Boaters' Association addressed Council regarding the Operation of the Marina for the 2009 Season. Mr. Sutherland indicated that the Association has operated the marina with great success feeding back to the town \$11,000 in revenue which is an increase over the 2007 season. Mr. Sutherland stated that staffing of the facility was assisted through the student government program. Mr. Sutherland stated that he was confident with an extended lease agreement the association would increase the revenues in the future due to increased rentals; both seasonal and transient. Mr. Sutherland proposed a 5 year lease agreement in order that the organization be able to create a business plan. Mr. Sutherland stated that the window of opportunity for securing rentals for the next season is coming quickly to a close and while the association has garnered another 8 new boats of larger size, there is more work to be done in marketing the marina. Mr Sutherland requested Council authorize the Town to enter into a 5 year lease agreement with the Boaters Association.

Moved by Councillor Sutton
Seconded by Councillor White

That the delegation by Ranta Marina Boaters' Association be received;

That the Town of Amherstburg declare Ranta Marina surplus to the Town's needs;

That the Town dispose of Ranta Marina as per its Disposition of Real Estate policies;

And further that the Town enter into an agreement with the Ranta Marina Boaters Association (RMBA) to operate Ranta Marina for the 2009 boating season.

Discussion:

Council discussed the increasing debt load and costs of servicing this debt and although the boaters association is contributing monies to the Town, they fall far short of what is required to operate the Marina on a yearly basis. Council discussed the history of the Marina and the issues surrounding the debt load. Council stated that the Town cannot continue to leave this situation unchecked.

A recorded vote was taken:

Member of Council	Yea	Nay
Deputy Mayor Bailey	X	
Councillor Fryer		X
Councillor Pillon		X
Councillor Renaud	X	
Councillor Sutton	X	
Councillor White	X	
Mayor Hurst	X	

Motion Carried

REPORTS OF MUNICIPAL OFFICERS

Report #1 brought forward after Delegation #3

Report #2

A report by Ron Dzombak and Pamela Malott regarding the Parks and Leisure Master Plan and Amendment to the 2003 Larry Bauer Park Master Plan.

Moved by Councillor Fryer
Seconded by Councillor White

That the report by Ron Dzombak and Pamela Malott, dated September 25, 2008 regarding the Parks and Leisure Master Plan and Amendment to the 2003 Larry Bauer Park Master Plan be received;

And further that Council defer the request to the 2009 Budget Deliberations.

Motion Carried

Report #3

A report by Ron Dzombak and Pamela Malott regarding a "Leash Free" Dog Run Park area in Larry Bauer Park.

Moved by Councillor White
Seconded by Deputy Mayor Bailey

That the report by Ron Dzombak and Pamela Malott, dated September 26, 2008 regarding a "Leash Free" Dog Run Park area in Larry Bauer Park be received;

And further that Council defer the request to the 2009 Budget deliberations.

Discussions:

Councillor Renaud indicated that he was opposed to that motion due to safety concerns.

Motion Carried

Report #4

A report by Ron Dzombak regarding Toboggan Hill Development in Larry Bauer Park.

Moved by Deputy Mayor Bailey
Seconded by Councillor White

That the report by Ron Dzombak dated September 25, 2008 regarding Toboggan Hill Development in Larry Bauer Park be received;

And further that Council defer the request to 2009 Budget Deliberations.

Motion Carried

Report #5

A report by Tony DeThomasis regarding the Pathway from the Pavilion to the Sidewalk at Toddy Jones Park.

Moved by Councillor Renaud
Seconded by Councillor White

That the report by Tony DeThomasis, dated September 25, 2008 regarding the Pathway from the Pavilion to the Sidewalk at Toddy Jones Park be received;

And further that Council approve the installation of a continuous 8'0" wide asphalt pathway from the Pavilion to the existing asphalt pathways running through the park and a 5'0" wide poured concrete sidewalk around the south and west side of the Pavilion to coincide with the work on the south side of North Street.

Motion Carried

Report #6

A report by Kevin Atkinson regarding a proposed watermain on South Sideroad, 9th Concession, Malden Colchester South Townline Road.

Moved by Councillor White
Seconded by Councillor Fryer

That the report by Kevin Atkinson dated September 25, 2008 regarding a proposed watermain on South Sideroad, 9th Concession, Malden Colchester South Townline Road be received;

That Council receive the report from Bruce Crozier Engineering and direct Administration to advise the petitioners of the costs;

That Council authorize the installation of fire hydrants and looping of the watermain if the project moves forward;

And further that Council direct administration to set up a meeting with all the residents on the road to gain their input.

Motion Carried

Report #7

A report by Kevin Atkinson regarding the purchase of a new 2007 GMC C5500 Dump Truck.

Moved by Councillor Renaud
Seconded by Councillor White

That the report by Kevin Atkinson dated September 25, 2008 regarding the purchase of a new 2007 GMC C5500 Dump Truck received;

And further that Council authorize the purchase of a new 2007 GMC C5500 Dump Truck from GMC Medium Duty Trucks of Windsor.

Motion Carried

Report #8

A report by Kevin Atkinson regarding the replacement of 6" cast watermain with 12" PVC on Dalhousie Street.

Moved by Councillor Sutton
Seconded by Councillor White

That the report by Kevin Atkinson, dated September 25, 2008 regarding replacement of 6" cast watermain with 12" PVC on Dalhousie Street be received.

Motion Carried

Report #9

A report by Dwayne Grondin regarding requests for Abandonment of Municipal Pumps.

Moved by Councillor Fryer
Seconded by Councillor Sutton

That the report by Dwayne Grondin, dated September 23, 2008 regarding requests for Abandonment of Municipal Pumps be received;

That Council appoint an engineer to provide new assessment schedules detailing the distribution of costs associated with all the Municipal Drainage Pumps;

And further that these schedules specify that the yearly maintenance costs under \$2,500.00 will be assessed to the Municipality and all major repairs or replacements above \$2,500.00 will be assessed to landowners located within the watershed.

Motion Carried

Report #10

A report by Carol Bendo regarding the Tourism and Special Events Committee Stakeholder Forum.

Moved by Deputy Mayor Bailey
Seconded by Councillor White

That the report by Carol Bendo, dated September 12, 2008 regarding the Tourism and Special Events Committee Stakeholder Forum be received;

That Council approve the Tourism and Special Events Committee Stakeholder Forum to be held on October 16, 2008 at the Gibson Gallery;

And further that the Mayor and Council members be encouraged to attend.

Motion Carried

Report #11

A report by Lory Bratt, Planning Coordinator regarding the Hunt Club Creek Subdivision.

Moved by Councillor Fryer
Seconded by Councillor White

That the report by Lory Bratt, dated September 29, 2008 regarding Hunt Club Creek Subdivision be received;

That Council concur with the draft plan of subdivision as received/revised September 29, 2008;

And further that Administration be directed to forward the proposed conditions of draft plan approval as presented in the Planning Coordinator's report dated September 29, 2008 to the County of Essex.

Motion Carried

Report # 12

A report by Stephen Brown regarding Animal Control/Dog Catching Services.

Moved by Councillor White
Seconded by Councillor Pillon

That the report by Stephen Brown, dated September 25, 2008 regarding Animal Control/Dog Catching Services be received;

And further that Council direct Administration to develop animal retrieval policies and prepare a Request for Quotations (RFQ) for the services of a Dog Catcher/Animal Control Officer on a contract basis for all animal retrievals in the municipality based upon policies developed.

Motion Carried

Report #13

A report by Paul Beneteau regarding the Tile Loan Application by Serran Farms.

Moved by Councillor Sutton
Seconded by Councillor Fryer

That the report by Paul Beneteau, dated September 24, 2008 regarding the Tile Loan Application by Serran Farms be received;

And further that **By-Law 2008-67**, being a by-law to impose special annual drainage rates upon land in respect of which money is borrowed under the Tile Drainage Act be taken as having been read three times and finally passed and the Mayor and the Clerk be authorized to sign same and affix the Corporate Seal thereto.

Motion Carried

CONSENT AGENDA

Consent Reports

Moved by Deputy Mayor Bailey
Seconded by Councillor White

That the following reports be received:

1. A report by Paul Beneteau, dated September 25, 2008 regarding Taxes Receivable
2. A report by Paul Beneteau, dated September 25, 2008 regarding properties eligible to be registered for tax sale
3. A report by Paul Beneteau, dated September 24, 2008 regarding the Province Wide Reassessment by MPAC for taxation years 2009-2012.

Motion Carried

Consent Correspondence

Moved by Councillor Fryer
Seconded by Councillor Sutton

That the following correspondence be received:

1. Thank you letter for the donation and support dated September 17, 2008 from the Shores of Erie International Wine Festival;
2. Conservation and Demand Management Report dated September 15, 2008 from Hydro One;
3. Expression of Interest in Sport Housing Events for 2009-2010 dated September 10, 2008 from the Ministry of Health Promotion;
4. AMO Seeking Comment on its Immigration Paper dated September 19, 2008 from AMO Alert No. 08/042;
5. Request for Solar Lighting dated September 23, 2008 from the County of Essex;
6. Homelessness Action Week Soup Day dated September 26, 2008 from the Homeless Coalition of Windsor Essex County;
7. Smart Meters dated September 25, 2008 from the Hydro One;
8. Support for the Brandie Wood Burning Ban dated September 16, 2008 from Clean Air Revival Inc.;
9. AMO's 2007 Annual Report dated September 23, 2008 from AMO President Peter Hume;
10. Ontario Energy Board Order regarding Distribution Rates for Street Lights dated September 26, 2008 from Essex Power Lines;
11. Federal Election 2008 and Ontario Municipalities dated September 22, 2008 from AMO Alert No. 08/043;
12. Emission of Smoke By-Law Request email dated October 1, 2008 from Shirley Brandie and
13. Local Government Week Events from October 19-25th dated September 15, 2008 from AMCTO.

Motion Carried

Consent Business Licences

Moved by Deputy Mayor Bailey
Seconded by Councillor Fryer

That the taxi vehicle licence applications from the following individuals (new drivers) be received and approved subject to compliance with all agencies and regulations:

1. Trudi Deneau and
2. Wally Mallat.

And further that the business licence application from Elizabeth Muldoon to operate a women's clothing and gift boutique under the name of Star Molly Boutique be received and approved subject to compliance with all agencies and regulations.

Motion Carried

Councillor White vacated to her seat.

Consent Other Minutes

Moved by Councillor Sutton
Seconded by Councillor Pillon

That the following minutes be received:

1. Meeting held on August 26, 2008 by the Committee of Adjustment;
2. Meeting held on September 8, 2008 by Co-An Park and
3. Meeting held on September 25, 2008 by Co-An Park.

Motion Carried

Councillor White returned to her seat.

CORRESPONDENCE

Page **Item #1- Poppy Drive and Remembrance Day Parade – The Royal Canadian**
203 Legion

Moved by Councillor Fryer
Seconded by Councillor Sutton

That the correspondence regarding the Poppy Drive and Remembrance Day Parade dated October 1, 2008 from the Royal Canadian Legion Branch 157 be received;

That the following permission be granted:

- 1) flying of the Poppy Flag at the Town Hall during the Poppy Drive, from November 2nd through to November 11, 2008;
- 2) to hold the Remembrance Day Parade on Saturday, November 11, 2008 from 10:30am until after the service at the Cenotaph;
- 3) the pinning of Poppies be done on November 6th, 7th and 8th and
- 4) hanging of the November 11th Banner across the road, prior to November 1st;

That all members of the current Amherstburg Council be invited to participate in the Parade;

And further that November 5th to November 11th be proclaimed Veteran's Week.

Motion Carried

Mayor Hurst proclaimed the week of November 5th to November 11th Veteran's Week.

UNFINISHED BUSINESS

Page 205 Listed below are the unfinished business items as of October 6, 2008:

Brought Up By:	Item Description:	Due Date
R. Fryer / R. Pillon	Paving the parking on North Street at Toddy Jones Park (PWD)	October 2008
J. Sutton / R. White	Correspondence to Bruce Crozier regarding expected Level of Funding for Smart Meter Legislation (Admin)	October 2008
Dep. Mayor Bailey	Snow removal on Beneteau Drive (PWD)	November 2008
Dep. Mayor Bailey / R. White	Notice to residents and enforcement of clearing parked vehicles during period of Snow Removal (Clerk's)	November 2008
J. Sutton / R. White	Resident request for Emission of Smoke By-Law (Dev Sev) (Need to wait for litigation to be resolved)	TBD

Councillor Renaud requested that the following items be removed from the Unfinished Business List: Snow removal on Beneteau drive and Notice to Residents.

Councillor Pillon requested that the item regarding paving the parking on North Street at Toddy Jones Park.

NEW BUSINESS

Nustadia Agreement

Moved by Councillor Sutton
Seconded by Councillor White

That Council support in principal a new inclusive Multi-Use Community Recreation Complex or Twinning of the existing Arena in promotion of a healthier community; inclusive sports for persons with disabilities; commitment to the additional needs of the current user groups; equal access to programming for women's groups; opportunities for Sports Tourism; and growth of recreational and leisure programming;

That the proposal be provisional based on the Town's ability to secure grant funding and proceeds from Community fundraising activities totaling a minimum of seven million dollars (\$7,000,000);

And further that **By-law 2008-68** be given three readings and be finally passed authorizing the execution of the Agreement for Development Management Services with Nustadia Recreation Inc. as finally reviewed and approved by the Town Solicitors.

Motion Carried

Amherstburg as a Senior Destination

Moved by Councillor White
Seconded by Councillor Fryer

Given that Amherstburg promotes itself as a 'Senior Destination' with attractive infrastructure and natural beauty;

Given that Council financially supports various Charitable Groups that strive to meet the needs of seniors in our Community;

Given that it is important that we measure the satisfaction level of the Seniors in our Community on issues such as Transportation and Recreation to determine if their needs are being met as compared to similar sized Municipalities;

Be it resolved that Council direct Administration to perform with the assistance of a Student Staff a 'Seniors' Survey' using the Town Website, limited select mailing, and the Amherstburg Echo page for advertising of the survey

And further that the results be reported back to Council.

Discussion:

Councillor White indicated that Council and the Town Administration should be aware of all services being provided within our community and to that end has put forth this motion.

Motion Carried

Items for Traffic Committee

Council directed administration to refer to the Traffic Committee the following items:

1. The corner of Gore Street and Bock Street for the possibility of creating four ways stops;
2. The parking spot in front of the post office, last one to the east, abuts the parking lot behind and there have been several accidents at this location;
3. Concerns with respect to traffic congestion, loading and unloading of students from buses and private vehicles in the area of the new French Language School, St. John the Baptiste.

MPAC Open House

Paul Beneteau, Treasurer of the Town of Amherstburg announced the upcoming Open House the Municipal Property Assessment Corporation being held at the Culture Centre on Wednesday, October 21st from 1:00 - 8:00 pm.

BY-LAWS

By-Law 2008-67, being a by-law to impose special annual drainage rates upon land in respect of which money is borrowed under the Tile Drainage Act (See Report # 16)

By-Law 2008-68, being a by-law to authorize the execution of a Joint Use Agreement to engage expert services for Development Management Services in the development of a new Recreational Facility for Community use (See New Business)

Moved by Councillor Sutton
Seconded by Councillor Fryer

By-Law 2008-69 being a By-Law to confirm all resolutions of the Municipal Council be taken as having been read three times and finally passed and the Mayor and the Clerk be authorized to sign same and affix the Corporate Seal thereto.

Motion Carried

NOTICES OF MOTION

None

CLOSING COMMENTS

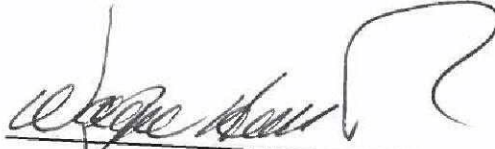
Mayor Wayne Hurst welcomed Mr. and Mrs. Hitchcock, newcomers to our community, and commended them on their volunteerism.

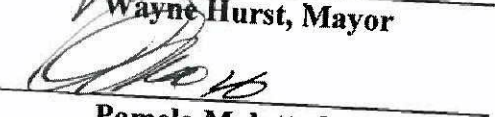
ADJOURNMENT

Moved by Councillor Sutton
Seconded by Councillor White

That Council rise and adjourn at 8:32 P.M.

Motion Carried



Wayne Hurst, Mayor


Pamela Malott, Clerk

Oct.6, 2008

Amherstburg Rotary Club Presentation to Council

Rotary is the oldest Service club, Started Feb. 23, 1905

Today 1.2 million Rotarians, 32,000 clubs in over 200 countries

Our motto is SERVICE ABOVE SELF

Rotary goes all over the world helping people (especially the youth), we have had members of our club go to Africa to help rebuild schools and hospitals. Rotary's biggest effort was the dedication of funds to eradicate Polio.

We have been focused on many local initiatives in the past few Years and from what I personally can remember was the purchase Of the Park House Museum, and today we are the major sponsor Of this museum.

Our efforts over the past few years has been well documented.

The clock in the town square, the house of hope, the Inclusive play Ground and now the Miracle Field .

WE have been very blessed to have a Town that is willing to work With us in all the projects that we have taken on. We appreciate All of your cooperation in the past and look forward to continued Joint efforts in the future.

On November 8, 2008 at the Verdi club we will be having our 75th Anniverary Party. We would be very appreciative if Council would Able to attend and join in our celebration.

I might add that this is open to the public and we welcome Everyone who would like to come.

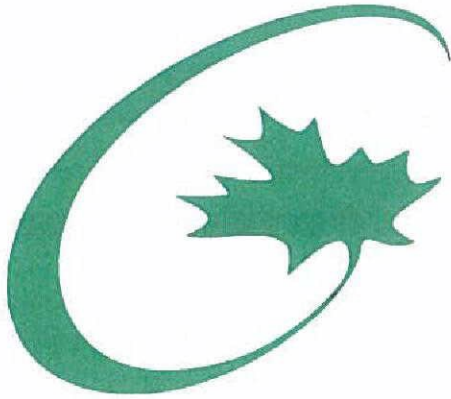
TABLE 1 PUBLIC OPEN HOUSE SURVEY

Ranking by Most Important Activity
 (Results of Open House questionnaire - 28 responses)

Ranking 1	Ranking 2	Ranking 3	Ranking 4	Ranking 5
Soccer (9)	Hockey incl. Twin Pad (7)	Soccer (5)	Hiking/Walking (7)	Picnic Facilities (5)
Hockey (9)	Soccer (4)	Baseball (5)	Baseball (4)	Hiking/Walking (5)
Football (2)	Bowling (4)	Hockey incl. Twin Pad (4)	Football (3)	Tennis (4)
Outdoor Skating Rink (2)	Football (3)	Basketball (3)	Indoor Pool (3)	Swimming Pool (2)
Basketball (1)	Hiking/Walking (2)	Football (2)	Picnic Facilities (3)	Hockey incl. Twin Pad (2)
Hiking/Walking (1)	Picnic Facilities (1)	Tennis (2)	Soccer (1)	Track (1)
Nature Education (1)	Track (1)	Picnic Facilities (1)	Tennis (1)	Skate Board (1)
	Basketball (1)	Hiking/Walking (2)	Skateboard Facilities (1)	Sand Volleyball (1)
	Badminton (1)	Roller Blade Facilities (1)	Outdoor Skating Rink (1)	Basketball (1)
	Food/Coffee Shop (1)	Skate Board (1)		
	Group Campsite (1)	Bowling (1)		
		Indoor Pool (1)		

Most popular activities/facilities (Ranked by responses)

- 1) Hockey: 87
- 2) Soccer: 78
- 3) Hiking/Walking: 38
- 4) Football: 34
- 5) Baseball: 23
- 6) Basketball: 19
- 7) Bowling: 18
- 8) Picnic Facilities: 18



PUBLICATIONS

9601

WINTER ACTIVITIES

Reprinted from January 1996
COWAN NEWS

Recreational activities increase the municipality's exposure to liability.

With the cold temperatures and an abundance of snow that many areas are experiencing this winter, enthusiasts are enjoying many outside activities. Along with the advent of these additional activities, the municipality's risk of liability also increases where they are carried out on municipally-owned property.

Regardless of the type of activity, whether it be skating on temporary outdoor ice rinks, tobogganing, snowboarding, municipally-owned premises; there are some common risk management recommendations that we encourage to minimize your exposure to liability. Some of these suggestions are as follows:

- If there is an awareness of casual use of

municipal premises for a specific recreational activity, it is appropriate to inspect the location for obvious hazards such as trees, light standards, roadways, creek beds, or anything else that may hinder the activity.

- Signage may be necessary to prohibit use in certain locations where serious hazards exist. Signs should also be posted to warn of potential dangers and hazards.
- Locations which are sanctioned or recognized by the municipality as active for winter recreational activities require considerably more study. The fact that the municipality recognizes or promotes a particular location results in absolute responsibility to safeguard the public. These locations would require removal of obvious hazards

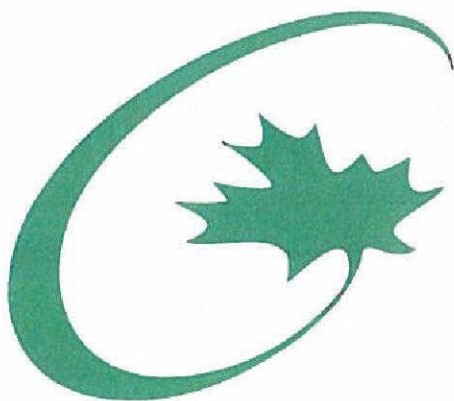
together with regular inspections and a good documentation program.

- Under the Occupier's Liability Act, the municipality has a statutory obligation to ensure that anyone entering their property is reasonably safe while on the premises. Hence, a municipal decision to permit these activities on their premises should be accompanied by a commitment to manage the risk.
- There may be a need to install barriers where appropriate and necessary (i.e. around trees). If fencing is installed, however, the municipality has a further obligation to inspect and maintain it on a regular basis.

continued =>

Frank Cowan Company Limited
Canada's Insurance & Risk Specialists
4 Cowan Street East
Princeton, ON N0J 1V0

1 800 265 4000
T/ 519 458 4331 F/ 519 458 4366
Page 19 of 24



PUBLICATIONS

9601

WINTER ACTIVITIES

*Reprinted from January 1996
COWAN NEWS*

- Use of motorized vehicles should always be kept completely separate from other activities. For example, snowmobile use should be prohibited from areas where people will be tobogganing or snowboarding.

If the municipality permits the use of their premises for any winter activities to another organization who is in control and responsible for the premises, we suggest that the following items be incorporated in their agreement:

- The permit holder should abide by the same safety precautions and standards that the

municipality would if they were to control the activity

- An agreement should be drawn up between the two parties setting out their respective duties and responsibilities
- The contract should contain a hold harmless and indemnification clause in favour of the municipality
- An insurance clause should be included which would require the permit holder to carry an acceptable limit of Commercial General Liability Insurance, including the municipality as an additional Insured

- A current Certificate of Insurance should be provided to the municipality providing proof that the necessary insurance is in place

Every year we see claims against municipalities involving death or serious injury to participants taking part in winter recreational activities. We encourage municipalities to take an active Risk Management approach in this regard. Not only is there a need to minimize your exposure to liability, but more importantly, to avoid unnecessary deaths or injuries to the public. ☺

Frank Cowan Company Limited
Canada's Insurance & Risk Specialists
4 Cowan Street East
Princeton, ON N0J 1V0

1 800 265 4000
T/ 519 458 4331 F/ 519 458 4366

ABC's of Toboggan Hills

Tobogganing is an activity that many Canadian children look forward to every winter. To make sure you protect riders, and yourself, we've put together some simple guidelines you may want to follow.

Alcohol should be forbidden

Bales of hay should be placed at all impact points

Close the hill after an ice storm

Discourage mechanical means of climbing the hill – scarves can become entangled

Encourage the wearing of helmets

Frozen bodies of water, roads and parking lots are not good end points for toboggan runs

Ground surface should be even with no rocks, trees, brush or knolls on the hill

Hours of use should be clearly defined

Inspect the area regularly and document all inspections and maintenance

Jumps and ramps should not be allowed in sledding areas

Keeep garbage off the hill by providing waste receptacles

Lighting should be provided if the hills are open at night

Mark the safe areas for tobagganing

Not everyone has a cell phone - where is the nearest telephone in the event of an accident

On busy days provide spotters at the top and the bottom of the hill

Parking area should be large enough to accommodate the vehicles but far enough away from the hill

Quality toboggan runs can only be achieved through a system of inspection, maintenance, appropriate signage and public education

Rules of Conduct should be posted at the entrance to the hill

School assemblies are a great way to educate kids and parents on toboggan safety

Twelve inches of covered snow on a hill is recommended before the hill is opened

Unsupervised hills should have signs stating this fact

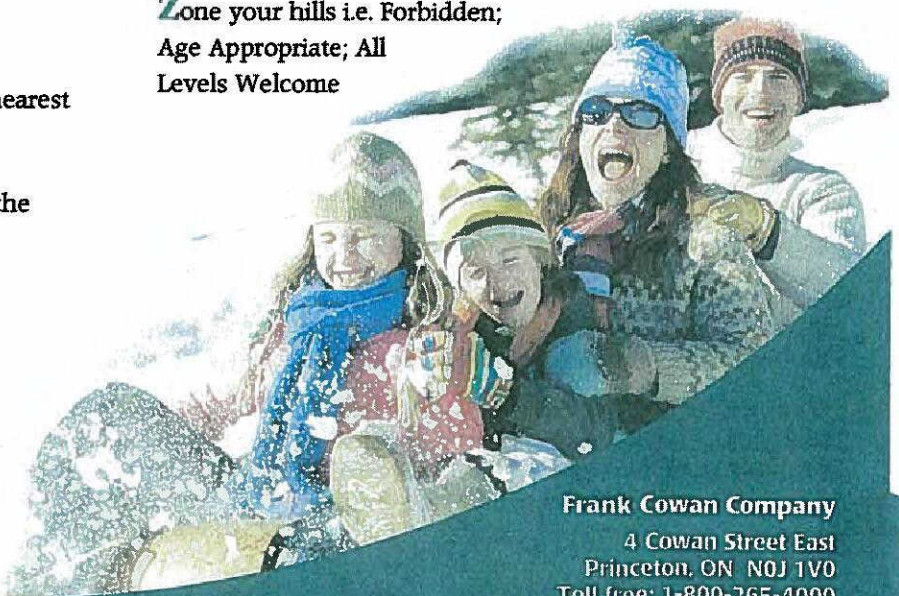
Vandals can cause damage so regular inspections are important

Waivers should be considered for special events such as school outings

Xact run lengths are difficult to measure but it's recommended that hills have run-offs long enough for a natural stop

You own the property, so you are liable

Zone your hills i.e. Forbidden;
Age Appropriate; All
Levels Welcome



Frank Cowan Company
4 Cowan Street East
Princeton, ON N0J 1V0
Toll free: 1-800-265-4000
Phone: 519-458-4331
Fax: 519-458-4366
www.frankcowan.com

What's inside

Page 1

- Documents Deadline Essential to Your Defence

Page 2

- The Risks of Winter Activities

Page 3

- Municipal Alcohol Policies/ Procedures - Why are they prudent?

Page 4

- ABC's of Toboggan Hills

DOCUMENTS DEADLINE ESSENTIAL TO YOUR DEFENCE

In defending a claim against your organization, it is critical that we work together in any way possible with the timely and prompt production of documentation and undertakings.

To date, we have not had any situations where clients who faced claims against their organization did not provide all relevant documents outside of the 60-day deadline, which came into effect as of July 1, 2006. This is good news, because it means that we were able to provide our clients with the best possible defence.

We cannot stress enough, however, how important it is to disclose or produce all relevant documents within this timeframe. Not to do so could have serious negative consequences – including not being able to provide the strongest possible defence.

The Rules

The rules that govern the handling of lawsuits are known as the Rules of Civil Procedure. The Rules of Civil Procedure require that all documents relating to any matter at issue in a legal action - that are or have been in the possession, control or power of a party to the lawsuit - be disclosed.

A document is anything that discloses information, i.e. evidence. This includes paper documents, sound recordings, videotapes, films, photographs, charts, graphs, maps, plans, surveys, books of account, etc. A party cannot pick and choose which documents to disclose; harmful documents cannot be withheld simply because they are harmful.

During the Examination for Discovery, each party will often request that additional information and/or documentation be provided. The agreement to produce additional documentation is called an *undertaking*. Undertakings are like promises. For Examinations for Discovery held after July 1, 2006 all undertakings must be compiled within 60 days. The lawyer appointed to work with you in defending the case will assist you in fulfilling these undertakings.

The duty to disclose and produce documents is an ongoing responsibility. That means if any additional documents are located, they must be disclosed.

The Consequences

As we mentioned above, the failure to disclose or produce relevant documents may have serious consequences. For example, if a favourable document is not produced, we would not be able to make use of it at trial except with leave (permission) of the trial judge. In fact, the court has the power to dismiss the action or strike out a defence for failure to produce relevant documents.

If documents are not produced in a timely fashion, it may also affect the credibility of the defence. The court and/or opposing parties may become suspicious and may not believe a party that does not co-operate in the production of relevant documentation.

It is also of great strategic importance that all relevant documents are provided at the earliest possible opportunity so that all of the strengths and weaknesses of the case are known at the earliest opportunity.

We recognize that searching for and providing the necessary documentation in a timely manner can be both laborious and time consuming. This is, however, a necessary step in the litigation process. In order to provide you with the best possible defence and ensure you have complied with your obligations set out in the insurance policy, it is imperative that this deadline be met.

We care about what you care about.

The Risks of Winter Activities

Changing leaves and a drop in temperature are both signs that winter is on its way – whether we like it or not. Even before the snow falls, many municipal residents start thinking about lacing up their skates, or getting the toboggan out of the garage for an afternoon on the hills. With the advent of these activities, the municipality's risk of liability increases when they are carried out on municipally owned property.

Every year we see claims against municipalities involving death or serious injury to participants taking part in winter recreational activities. We encourage municipalities to take an active risk management approach in this regard. Not only is there a need to minimize your exposure to liability, but more importantly, to avoid unnecessary death or injury to the public.

We have put together some suggestions that can help protect you and your residents. They are as follows:

- If there is an awareness of casual use of municipal premises for a specific recreational activity, it is appropriate to inspect the location for obvious hazards such as trees, light standards, roadways, creek beds, or anything else that may hinder the activity.
- Signage may be necessary to prohibit use in certain locations where serious hazards exist. Signs should also be posted to warn of potential dangers and hazards.
- Locations that are sanctioned or recognized by the municipality as active for winter recreational activities require considerably more study. The fact that the municipality recognizes or promotes a particular location results in absolute responsibility to safeguard the public. These locations would require removal of obvious hazards together with regular inspections and a good documentation program.
- Under many provincial Occupier's Liability Acts, the municipality may have a statutory obligation to ensure that anyone entering their property is reasonably safe while on the premises. Hence, a municipal decision to permit these activities on their premises should be accompanied by a commitment to manage the risk. Where there is no Occupier's legislation, there is still the Law of Negligence.

- There may be a need to install barriers where appropriate and necessary (i.e. around trees). If fencing is installed, however, the municipality has a further obligation to inspect and maintain it on a regular basis.
- Use of motorized vehicles should always be kept completely separate from other activities. For example, snowmobile use should be prohibited from areas where people will be tobogganing or snowboarding.

If the municipality permits the use of their premises for any winter activities to another organization that is in control and responsible for the premises, we suggest that the following items be incorporated in their agreement:

- The permit holder should abide by the same safety precautions and standards that the municipality would if they were to control the activity.
- An agreement should be drawn up between the two parties setting out their respective duties and responsibilities.
- The contract should contain a hold harmless and indemnification clause in favour of the municipality.
- An insurance clause should be included which would require the permit holder to carry an acceptable limit of liability insurance and adding the municipality as an additional insured.
- A current Certificate of Insurance should be provided to the municipality providing proof that the necessary insurance is in place.

Regardless of the type of activity, from skating on temporary outdoor ice rinks, to tobogganing and snowboarding on municipally-owned premises, these are some common risk management recommendations that we encourage you to put into practice to minimize your exposure to liability.



Municipal Alcohol Policies/Procedures – Why are they prudent?

Municipal Alcohol Policies lessen the exposure of the municipality to liability arising out of the use of municipal facilities for alcohol-related events.

The purpose of a Municipal Alcohol Policy is to ensure that there are clear and responsible guidelines to aid in the prevention of alcohol related problems and allow for the enjoyment of those renting municipal facilities. In reducing the potential for alcohol related problems, you will reduce the risk of injury and death to patrons, loss of enjoyment of the patrons, as well as the risk of liability actions.

Liability of Occupiers

As an occupier, you have responsibility for the people you allow to enter and remain on your premises, including intoxicated and troublesome individuals. You must take reasonable steps to prevent the occurrence of foreseeable events. Occupiers, however, are not required to endanger themselves in this pursuit.

The condition and suitability of the premises is also the concern of the occupier. The property must be up to code, have suitable handrails and exits that are in good condition and be free from trip and fall hazards. If serving alcohol, the property must be safe for both sober and intoxicated individuals.

Occupiers are exposed to liability for the activities they allow on their premises. If you allow unsafe activities, such as drinking contests, dancing on the tables or events such as stag and doe parties to take place unchecked, you may be liable for any unfortunate outcome.

Joint and Several Liability

Joint and Several Liability is a legal doctrine that makes each party to a claim both jointly and separately liable for any judgement of damages. Should one party not be able to fulfill their portion of the judgement, the plaintiff has the right to seek recovery from another party to the judgement that has the resources to contribute more than their portion, even if they were found to be only 1% liable. So consider the 20 year old organizing a stag: What kind of financial resources does that young adult have to pay damages if they occur?

Remedies

In order to avoid any incidents from occurring on your premises, you should:

- Operate the facility with reasonable care for the safety of all users

- Keep the facility in safe repair
- Inspect the facility for hidden hazards
- Remove hazards or warn of their presence
- Prevent or control unsafe activities on the premises
- Require a Rental Agreement from third parties
- If alcohol is to be served, provide the renter with your Municipal Alcohol Policy

Alcohol Liability Insurance Policy

An Alcohol Liability Insurance Policy provides host liquor liability for the organizer of an alcohol related event. In today's legal climate, any individual or group who hosts an alcohol related event should be required to purchase host liquor liability insurance. As the owner of the facility, the purchase of such insurance and proof of the purchase should be a condition of the rental agreement.

Suggested Guidelines for Developing Your Policy

Relevant Sections

- 1.0 Policy Statement
- 2.0 Identify Suitable Premises For Serving Alcohol
 - 2.1 Identify Events in Which Alcohol Can Be Served
- 3.0 Conditions for Serving Alcohol
 - 3.1 Rental Agreement
 - 3.2 Special Occasion Permit
 - 3.3 Alcohol Liability Insurance
- 4.0 Mandatory Personnel
- 5.0 Smart Serve Program
- 6.0 Entry and Controls
- 7.0 Sale of Alcohol and Serving Practices
- 8.0 Insurance and Indemnification
- 9.0 Procedures for Dealing with Patrons
 - 9.1 Intoxicated Persons
 - 9.2 Problem Patrons
- 10.0 Designated Drivers/Safe Transportation Policy
- 11.0 Signage
- 12.0 What is NOT Allowed

Suggested Framework

We have developed a Suggested Framework for the development of Municipal Alcohol Policies for each Province. If you would like to receive a copy, please contact your Frank Cowan Representative.