

Amherst Town Council

Regular Council Meeting

Minutes

Date of Meeting: Monday, January 30, 2012
Location: Council Chambers, Town Hall

Members Present: Mayor Robert Small
 Councillor George Baker
 Councillor Robert Angel
 Councillor Robert Bird
 Deputy Mayor Dale Fawthrop
 Councillor David March
 Councillor Terry Rhindress

Staff Present: Greg Herrett, CAO
 Vince Arbing, Treasurer
 Ben Pitman, Director TPW
 Jason MacDonald, Director Planning
 Bill Crossman, Fire Chief
 Rebecca Purdy, Executive Assistant
 Kim Jones, Policy and HR

1. O'CANADA

1.1. Moment of Silence in Honour of the late Francis Smith

2. HEARINGS / PRESENTATIONS / PETITIONS

2.1. Canadian Cancer Society re Smoke Free Recreational Spaces

Mayor Small signed a proclamation for Relay for Life Kick Off. Council was photographed with members of the Relay team and the Smoke Free Spaces presenters.

Claire Richardson from the Canadian Cancer Society and Sarah MacPherson from Public Health made a presentation on Smoke Free Outdoor Spaces. The presentation focused on asking Council to consider enacting a bylaw to prohibit smoking in Town owned recreational facilities.

3. CALL TO ORDER

3.1. Amendments to the Agenda

3.2. Approval of the Agenda

Moved by Councillor George Baker
 Seconded by Councillor David March
 That the agenda be approved as circulated.

Motion Carried

3.3. Approval of Minutes

Moved by Councillor Terry Rhindress
 Seconded by Councillor George Baker
 That the minutes of the December 19, 2011 regular meeting of Council be approved as circulated.

Motion Carried

4. REQUESTS FOR DECISION**4.1. Development Agreement - 155 East Victoria Street****Moved by Councillor David March****Seconded by Deputy Mayor Dale Fawthrop****That Council approve first reading of development agreement to permit a 32 unit multi-family residential building on property located at 155 Victoria Street East, and that a public hearing on this Development Agreement be scheduled for February 27, 2012 at 7:00 PM in Council Chambers.****Motion Carried**

Case No. DA-2012-01

This Agreement made this _____ Day of _____ 2012.

Between:

3227967 Nova Scotia Limited, Owners of property located at 155 East Victoria Street (PID 25034091), hereinafter called the Owners, Of the one part - and-

The Town of Amherst, a body corporate hereinafter called the Town, Of the other part

WHEREAS the Owner wishes to obtain permission pursuant to Policy RP-8 of the Municipal Planning Strategy of the Town of Amherst, to construct a 32 condominium type development on property located at 155 East Victoria Street.

AND WHEREAS a condition of the granting of approval of Council is that the Owner enter into an agreement with the Town;

AND WHEREAS the Council of the Town, at its meeting on the _____ Day of _____ 2012, approved the said development agreement subject to the registered owner of the land described herein entering into this agreement;

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT in consideration of the granting by the Town of the development agreement requested by the Owner, the Owner agrees as follows:

- 1) That the Owner is the registered owner of the aforesaid lands in the Town of Amherst, hereinafter called the lands. The aforesaid lots are the only lands in the Town of Amherst to which this agreement applies, and the lands are illustrated in the plan shown on Schedule B attached hereto and forming part of this agreement.
- 2) That the owner may construct a multi-family residential development up to a maximum of 32 units on the said lands, subject to the following Schedules A, B and C attached.
- 3) Any failure of the Town to insist upon strict enforcement of any requirements or conditions contained in this agreement shall not be deemed a waiver of any rights or remedies that the Town may have and shall not be deemed a waiver of any subsequent breach or default in the conditions or requirements contained in this agreement.
- 4) Should the owner fail to act in accordance with any aspect of this agreement, the Town shall retain the right to discharge the agreement upon 30 days notification and / or enter the property and conduct the required work. The cost of the said work will become a lien on the property tax bill.
- 5) The Town shall issue the necessary permit for the development upon the expiration of the appeal period specified for development agreements in the Municipal Government Act, Section 249, as the same may be amended from time to time, or upon the withdrawal or dismissal of any appeal which may be taken.
- 6) The applicant shall apply for the necessary building and development permits within 5 years of Council's approval of this Agreement.

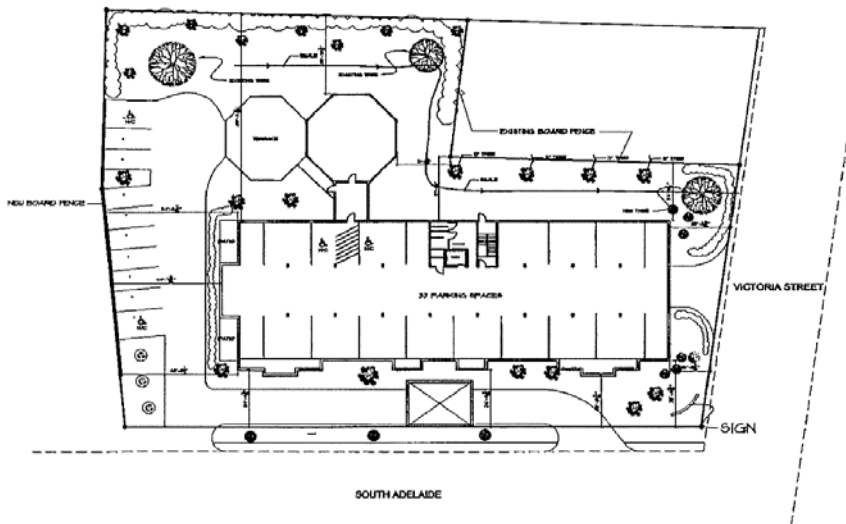
SIGNED, SEALED AND DELIVERED

Schedule A - 155 East Victoria Street - Development Agreement - Terms and Conditions:

1. The use of the property be limited to a multi-family residential development with a maximum of 32 units;
2. The building be limited to a maximum of 4 floors and 12 metres in height;
3. The location of the buildings be generally in accordance with Schedule B;
4. Street access to be substantially in accordance with the attached Schedule B, and to the satisfaction of the Development Officer;

5. A minimum of 32 underground parking spaces be provided for residents as well as 10 surface parking spaces for visitors, generally in accordance with schedule B;
6. The exterior design of the buildings shall be generally in accordance with Schedule C;
7. The first floor exterior cladding of the main building shall be sandstone type block and the upper floors shall be horizontal cement composite boards (Hardy Board) and generally in accordance with Schedules C;
8. All driveway and parking areas be maintained with asphalt and kept clear of snow and otherwise be unobstructed at all times so as to be passable by emergency vehicles;
9. Water, sanitary sewer and storm sewer services be provided in accordance with the Town of Amherst Subdivision Bylaw & Development Standards and the National Building Code;
10. A stormwater management plan be prepared by a qualified professional and submitted prior to the issuance of a building permit, such plan shall ensure that storm water on the site is channeled so as to not impact adjacent properties and so as not to flow directly onto adjacent public streets and sidewalks;
11. Signage on the property be limited to one free standing sign a maximum of 1.6 square metres in size and one fascia wall sign with a maximum height of 0.6 metres. Such signage are not to be internally illuminated;
12. Usual residential outdoor recreation apparatus shall be permitted on the property, subject to the applicable town bylaws and regulations;
13. Garbage pickup will be private, and the responsibility of the owner;
14. Landscaping will be provided in accordance with the following:
 - a. A one metre high evergreen buffer be planted along the entire length of any property line adjacent to at grade surface parking.
 - b. A minimum of 3 deciduous trees be planted at approximately equal intervals along the East Victoria Street frontage of the property, such trees to be a minimum of 1.5 in height at the time of planting.
 - c. A minimum of 8 shrubs or trees be planted along South Adelaide frontage of the property, or two 'flower gardens' be planted in the front yard.
 - d. Grass or other suitable landscaping material be maintained in all areas of the property not utilized for buildings, parking or walkways.
 - e. Such planting is to take place within one growing season of the construction of the said unit.
 - f. Existing trees on the property which are maintained after the development may be used to offset the number of trees / shrubs required above.

SCHEDULE B



Schedule C



4.2. Write Off Uncollectible Accounts

**Moved by Councillor George Baker
Seconded by Councillor David March
That Council authorize staff to write-off uncollectible accounts in the amount of \$42,319.53.**

Motion Carried

4.3. DED Tree Removal

**Moved by Councillor Terry Rhindress
Seconded by Councillor Robert Angel
That Council award the contract to remove 36 Dutch Elm Disease trees prioritized for removal to Ken Gilbert in the amount of \$53,800 plus HST, which represents the lowest compliant proposal received.**

Motion Carried

4.4. Heritage Gas Agreement

**Moved by Councillor Robert Bird
Seconded by Deputy Mayor Dale Fawthrop
That Council approve entering into an operating agreement with Heritage Gas and authorize the Mayor and CAO to sign on behalf of the Town.**

Motion Carried

**MUNICIPAL OPERATING ACCESS AGREEMENT BETWEEN:
TOWN OF AMHERST (hereinafter called the "Town") -and-
HERITAGE GAS LIMITED (hereinafter called "Heritage")**

WHEREAS the award of the natural gas distribution franchise to Heritage by the Nova Scotia Utility and Review Board was approved by the Province of Nova Scotia by Order in Council dated February 21, 2003 granting Heritage a full regulation class franchise for the construction and operation of a natural gas distribution system in certain areas of Nova Scotia;

AND WHEREAS the Town holds title to the Streets within the Town which it maintains;

AND WHEREAS Heritage wishes to use municipal streets for the installation and operation of a Gas Distribution System;

AND WHEREAS the Town approved in May, 2005 the terms and conditions of the first Municipal Operating Access Agreement ("MOAA") for the period June 1, 2005 to December 31, 2010;

AND WHEREAS the Town and Heritage wish to enter into a new MOAA for a further period of time;

THEREFORE, in consideration of the mutual terms, conditions and covenants contained herein, the parties agree as follows:

Definitions

1. In this Agreement,
 - a. "Engineer" means the Engineer as defined by the Municipal Government Act (Nova Scotia).
 - b. "Gas Distribution System" includes any pipe, pipeline, main, service, trap, vent, vault, manhole, meter, gauge, regulator, valve, appliance, attachment, and any other property located or to be located in, upon, along, across, under or over the Streets of the Town and used or useful in transportation, transmission or distribution of natural gas.
 - c. "Locate" means the preventive maintenance work conducted by Heritage to determine the underground location of a natural gas pipeline prior to excavation or disturbance of earth and soil.
 - d. "NSUARB" means the Nova Scotia Utility and Review Board.
 - e. "Permit and Locate Form" means that form used by Heritage to identify specifics and location of infrastructure for customer service connections.
 - f. "Project" refers to planned annual construction programs of natural gas pipelines by Heritage.
 - g. "Street" means Street as defined by the Municipal Government Act and for the purposes of this Agreement includes the public streets, street right of ways, highways, roads, lanes, sidewalks, and thoroughfares as the same now or may hereafter exist within the Town.
 - h. "Town" means the Town of Amherst.

License and Consent

2. (1) The Town hereby grants Heritage an exclusive encroachment license for use of its Streets for the purpose of constructing, operating and maintaining the Gas Distribution System.
- (2) This Agreement does not grant a right to attach gas lines to municipally owned bridges; such attachments are subject to the approval of the Engineer on a case by case basis.
- (3) The grant of the license is subject to the terms and conditions of this Agreement, and compliance with all federal, provincial and municipal laws including CSA Code Z662, Pipeline Regulations (Nova Scotia), and applicable By-laws of the Town as amended from time to time.
- (4) To the best of its ability, the Town shall endeavour to notify Heritage well in advance of any proposed municipal law changes that affect this Agreement, and to facilitate consultations between Heritage and the Town regarding the contents of such municipal law changes.
- (5) Without limiting the generality of the foregoing, Heritage confirms that it will comply with all requirements of the Nova Scotia Occupational Health and Safety Act with regard to its Gas Distribution System.

Term of Agreement

3. (1) This Municipal Operating Access Agreement shall be for a period of five (5) years (the "Term") commencing on the January 1, 2011 until December 31, 2016, subject to the earlier abandonment of said franchise, in which case this Agreement shall automatically terminate on the date of the abandonment except as otherwise provided by this Agreement.
- (2) Six months prior to the expiry of the Term, the parties shall enter into negotiations to renew this Agreement upon such terms and conditions as may be agreed. In the event parties do not agree on the terms and conditions of a renewal agreement prior to one month before the end of the Term, the matter shall be determined by the NSUARB pursuant to Section 78 of the Public Utilities Act (Nova Scotia) and Section 9 of the Gas Distribution Act (Nova Scotia). The parties agree that in the interim, in such case, the terms and conditions of this Agreement shall govern until such time that an order is issued on the matter by the NSUARB.

Training

4. Heritage commits to providing training at no cost to the Town with respect to natural gas awareness and emergency response issues for appropriate Town engineering and operations staff, building/street inspectors and emergency services including fire and police personnel relating to the Gas Distribution System.

Construction Schedule

5. (1) The Town and Heritage each recognize the benefits of joint infrastructure planning between the Town and Heritage. Heritage shall continue the open dialogue process with the Engineer to ensure natural gas project planning is current and the Town shall continue the open dialogue with Heritage to ensure project planning is current. At a minimum, Heritage shall meet with the Engineer, before December 31st of each year, for the purpose of exchanging known or proposed plans of both the Gas Distribution System and the Town's service systems for the following year.
- (2) The Town and Heritage shall jointly promote the "Call Before You Dig" safety program within each organization and the public during the annual construction season and on any other pertinent occasion. The Town shall, at no cost to Heritage, take an active role in promoting Call Before You Dig and excavation safety both within municipal departments and to third parties working in the Street.
- (3) Unless with express approval from the Engineer, no construction shall take place in the travelled portion of the Town's right-of-way after October 31 of each calendar year.

Design

6. (1) The Engineer shall be the final approval authority for the location of all portions of the Gas Distribution System located within municipal Streets, which approval shall not be unreasonably withheld. The location and installation of the Gas Distribution System shall be consistent with applicable Canadian gas codes including CSA Z662 as amended from time to time.
- (2) Heritage is responsible to restore Streets in accordance with the Town's policies, applicable to Heritage operations, as amended from time to time. Notwithstanding the generality of the foregoing, where a pavement cut is made on a Street that has been paved within the previous five (5) years, the Town may, at the sole discretion of the Engineer, apply more stringent specifications to the surface restoration requirements for that Street.

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Permits

7. (1) In accordance with the Town's permitting requirements, Heritage shall annually obtain a Street Breaking Permit for every project where the Gas Distribution System is proposed to be installed within the Town. A Street Breaking Permit will remain in force until the project is completed.
- (2) Notwithstanding any other provision herein, Heritage or its contractor shall also provide refundable performance security to the Town in the estimated amount of Street restoration costs to guarantee the restoration of Streets to the satisfaction of the Engineer.
- (3) With respect to construction scheduling, the Town will require Heritage or its contractor to follow the Town's policy that will minimize potential traffic and related disruptions to businesses. Construction should be coordinated with the Town's capital budget projects.
- (4) If service connections are not installed during initial construction of the Gas Distribution System on a Street, then Heritage will submit to the Town a copy of Heritage's Permit and Locate Form prior to the construction and installation of the customer service connection. This Form shall be submitted to the Town, on a best effort basis, 10 days prior to the construction of the customer service connection.

Fees

8. (1) In accordance with section 7 above, the following fee structure will apply and supersede the Town's Street Breaking Policy as it relates to fee for the issuance of Street Breaking Permits to Heritage. The following fees reflect the Town's costs related to the Engineering, administration and inspection of natural gas project conducted by Heritage within the Town:
 - (a) The Street Breaking Policy fee structure of \$500.00 for each Street cut will apply to the installation of natural gas pipelines;
 - (b) No Street Breaking fee shall be applied to the construction of a service line that is installed at the same time as the natural gas pipeline to which it is connected; and
 - (c) Total Street Breaking fees applied to service line installations shall not exceed \$5,000.00 for a given year.

Damage to Municipal Property

9. (1) If any portion of any Street or municipal infrastructure is damaged by reason of defects in any portion of the Gas Distribution System, or by reason of any other cause arising directly from the installation or presence of the Gas Distribution System, Heritage shall, at its own cost and expense, immediately repair any such damage and restore such portion of such damaged Street to as good or better condition than existed before such defect or other cause of damage occurred, such work to be done under the direction and to the satisfaction of the Engineer.
- (2) Heritage agrees that trees on municipal property are to be protected at all times. The Gas Distribution System is to be designed on the premise that, unless approved by the Engineer, municipal trees are not to be adversely affected by the installation or operation of the Gas Distribution System.
- (3) If any tree is damaged or destroyed by reason of a defect in any portion of the Gas Distribution System, or by reason of any other cause arising directly from the construction or the operation of the Gas Distribution System, Heritage shall, at its own cost and expense, repair such damage or replace such trees under the direction and to the satisfaction of the Engineer.

Emergency Response

10. (1) Heritage shall provide:
 - (a) to the Engineer a list of emergency contact personnel from Heritage available at all times and shall ensure that the aforementioned list is always current;
 - (b) a copy of Heritage's Emergency Response Manual; and
 - (c) a person to liaise in developing the joint Emergency Measures gas response program.
- (2) It is agreed that the Emergency Measures gas response program shall be reviewed periodically by appropriate representatives of the Town and Heritage.

Record Information and GIS

11. (1) Heritage shall provide, at its expense, to the Town record drawings in hard copy form and in an electronic format compatible with the Town's corporate geographic information system (GIS) within three (3) months of completing the installation of any portion of the Gas Distribution System.
- (2) Both parties are aware that the steel pipelines constructed by Heritage are located in xyz Geographic coordinate system using total station surveying equipment and/or Global Positioning System, whereas PE mains are located only in xy coordinates by measuring offsets from above-ground landmarks.
- (3) The Town shall provide, at its expense, to Heritage existing GIS information that may assist in the development of the natural Gas Distribution System. The GIS information will be used solely by Heritage for the planning and construction of natural gas pipelines and shall not be distributed to any party not associated with Heritage projects within the Town.

Locate Requirement

12. (1) The Town shall request line locates for all municipal activities associated with ground disturbance, soil excavation or sign installations that could result in damage to buried natural gas pipelines, including but not limited to light standard and sign installation, traffic loop modifications, tree planting, and any other municipal project undertaken by the Town.
- (2) Upon receiving a request from the Town, Heritage shall, at no cost to the Town and using reasonable best efforts, provide locations of its Gas Distribution System:
- (a) Within one (1) hours in the event of an emergency;
- (b) Within twelve (12) hours in the event of a priority request;
- (c) Within forty-eight (48) hours in all other cases.

Relocations

13. (1) Subject to 13(2) upon receipt of one hundred and twenty (120) days notice from the Town, Heritage, at its own expense, shall relocate its Gas Distribution System within a Street, or perform any other work in connection with the Street as may be required by the Town for municipal purposes or by law. In case of an emergency, Heritage shall respond promptly in accordance to the provisions of its Emergency Response Manual referred to in section 10 above.
- (2) Where any part of the Gas Distribution System relocated in accordance with this section is located other than on a bridge, viaduct or structure, the costs of relocation shall be shared between the Town and Heritage on the basis of the total relocation costs, excluding the value of any upgrading of the Gas Distribution System, and deducting any contribution paid to Heritage by others in respect to such relocation as follows:
- (a) where the relocation is a result of Streets work or conflicts in elevation with any sewer or water main crossing(s) and occurs within two years of the installation of the portion of the Gas Distribution System to be relocated, the costs shall be paid 100% by the Town;
- (b) where the relocation is a result of Streets work or conflicts in elevation with any sewer or water main crossing(s) and occurs after the end of the second year following the installation of the portion of the Gas Distribution System to be relocated, but not more than five years, the costs shall be shared 65% by Heritage and 35% by the Town;
- (c) where the relocation is a result of Streets work or conflicts in elevation with any sewer or water main crossing(s) and occurs after the end of the fifth year following the installation of the portion of the Gas Distribution System to be relocated, the costs shall be paid 100% by Heritage; and
- (d) where the relocation is a result of any municipal infrastructure other than Streets work or conflicts in elevation with any sewer crossing(s), the costs shall be paid 100% by the Town.
- (3) Heritage shall not be required to bear the expense of any removal or relocation made at the request of the Town on behalf or for the benefit of any private developer or other third party.
- (4) At the request of the Engineer, Heritage shall structurally support any portion of its Gas Distribution System as its own cost, where necessary, as part of the process of implementing any municipal improvements, except those carried out within 5 years of receiving a Permit.

Warranty Concerning Condition of Streets

14. The Town has made no representations or warranties as to the state of repair of the Streets or the suitability of the Streets for any business, activity or purpose whatsoever and Heritage hereby agrees to install pipelines within Streets on an "as is" basis.

Liability

15. (1) Except for the gross negligence of the Town, Heritage agrees that the Town is not responsible, either directly or indirectly, for any damage to the Gas Distribution System that may result from the activities of the Town, its officers, employees, contractors or agents. The Town assumes responsibility and will reimburse Heritage for any and all loss or damage caused to the Gas Distribution System due to the Town's own gross negligence.
- (2) Except for the negligence of Heritage, the Town agrees that Heritage is not responsible, either directly or indirectly, for any damage to the Municipality's facilities located on, in or under the Street that may result from the activities of Heritage, its officers, employees, contractors or agents. Heritage assumes responsibility and will reimburse the Municipality for any and all loss or damage caused to the Street due to Heritage's own negligence.
- (3) Gross negligence as referred to in subsection 15(1) shall include situations where the Town neglects to request locate information as required by the Regulations made pursuant to the Pipeline Act.
- (4) Notwithstanding subsections (1) and (2), Heritage and the Town are not liable one to the other either on the basis of gross negligence or on any other basis for any consequential or economic losses due to the actions of the other party, its agents or employees working in, under, over, along, upon or across the Streets and roads or other owned or occupied property of the Town, or to the Gas Distribution System.

Indemnification

16. (1) Save and except for loss or damage caused by the gross negligence of the Town, Heritage covenants and agrees to indemnify and save harmless the Town's agents, officers, elected officials, employees and assigns from any and all losses, claims, including any claim for injurious affection, charges, damages and expenses which the Town may at anytime bear, sustain or suffer, by reason, or on account of the placement, installation, relocation, maintenance or use of Heritage facilities in, on, under, over, along or across a Street or road, and Heritage will, upon demand and at its own sole risk and expense, defend any and all suits, actions or other legal proceedings which may be brought or instituted by third persons against the Town on any such claim, demand or cause of action, and will pay and satisfy any judgment or decree which may be rendered against the Town for any and all legal expenses incurred in connection therewith. Heritage's obligation to indemnify and save harmless the Town shall survive the termination of this Agreement.
- (2) Subject to the provisions of this Agreement, the Town covenants and agrees to indemnify and save harmless Heritage's agents, officers, employees and assigns from any and all losses, claims, including any claim for injurious affection, charges, damages and expenses which Heritage may at any time bear, sustain or suffer, by reason, or on account of the gross negligence of the Town and the Town will, upon demand and at its own sole risk and expense, defend any and all suits, actions or other legal proceedings which may be brought or instituted by third persons against Heritage on any such claim, demand or cause of action, and will pay and satisfy any judgment or decree which may be rendered against Heritage for any and all legal expenses incurred in connection therewith. The Town's obligation to indemnify and save harmless Heritage shall survive the termination of this Agreement.

Insurance

17. Heritage confirms that it has and shall maintain insurance in sufficient amount and description as will protect Heritage from claims for damages, personal injury including death, and for claims for property damage which may arise from Heritage's operations in the Town under this Agreement, including the use or maintenance of its Gas Distribution System in its Streets or any act or omission of Heritage's agents or employees while engaged in the work of placing, maintaining, renewing or removing any portion of its Gas Distribution System and such coverage shall include all costs, charges and expenses reasonably incurred with any injury or damage. Heritage confirms that the insurance that it presently has meets the requirements of the terms and conditions of its franchise grant pursuant to the Gas Distribution Regulations. A copy of the Heritage's insurance policy will be made available upon written request of the Town.

Abandonment or Discontinued Use of Pipeline Infrastructure

18. In the event of the abandonment or the discontinued use of all or any part of the Gas Distribution System, any removal is subject to the consent of the Town but subject always to any overriding direction or order of the NSUARB.

Assignment

19. This Agreement may be transferred or assigned by Heritage with the approval of the NSUARB and with the consent of the Town, which consent shall not be unreasonably withheld.

Breach

20. The Town and Heritage agree that should Heritage or the Town materially fail to carry out any of the terms, covenants and conditions herein contained or default in any of its obligations under the terms hereof and fail within thirty (30) days after receiving written notice from the other party to correct any such failure which is capable of correction, then this Agreement may, at the option of the non-defaulting party, and subject to the approval of the NSUARB, thereupon be terminated by giving written notice to be effective upon receipt, provided that Heritage shall continue to be liable to the Town for all payments due and obligations incurred under this Agreement prior to such termination.

Agreement Interpretation

21. Subject to the right of either party to apply to the NSUARB for the resolution of disputes arising under this Agreement, the Town and Heritage agree that any disputes concerning the interpretation or application of this Agreement shall be resolved through arbitration pursuant to the terms of the Commercial Arbitration Act, Stats. N.S. 1999, c.5.

Termination

22. Subject to the approval of the NSUARB, if this Agreement is terminated by the Town pursuant to section 20, all the unfulfilled covenants, indemnities and obligations of Heritage hereunder shall survive such termination.

Confidentiality

23. Heritage agrees that this Agreement is a public document and to the extent that the Freedom of Information and Protection of Privacy provisions of the Municipality Government Act S.N.S 1998, c.18 apply, such provisions are hereby waived.

Notices

24. Any notice required or permitted to be given hereunder or any tender or delivery of documents may be given by personal delivery or, if other than the delivery of an original document, by facsimile transmission to:

the Town: Town of Amherst
PO Box 516
Amherst, NS B4H 4A1
Fax: (902) 667-3356

Heritage: Heritage Gas Limited
Suite 200 – 238 Brownlow Avenue
Dartmouth, Nova Scotia B3B 1Y2
Fax: (902) 466-2140

Entire Agreement

25. This Agreement is the entire agreement between the Town and Heritage regarding the subject of this Agreement and it can be amended or supplemented only by a document executed in writing by both the Town and Heritage.

Binding

26. This Agreement benefits and binds the Town and Heritage, their assigns and the successors of each of them.

Waiver

27. (1) No alleged waiver or breach of this Agreement is effective unless it is an express waiver in writing of the breach in respect of which it is asserted against the party alleged to have given the waiver. No waiver by a party of any breach of this Agreement operates as a waiver of any other breach of this Agreement.
- (2) The parties to this Agreement shall be entitled to resort to any remedies available to them in law or in equity in some or all combination in their discretion. No delay or failure of either party to exercise any right or remedy will operate as a waiver thereof, except where specifically provided herein to the contrary.

Unenforceability

28. In the event that any covenant or provision herein shall be determined to be void or unenforceable in whole or in part for any reason whatsoever, such unenforceability or invalidity shall not affect the

enforceability or validity of the remaining covenants or provisions or parts thereof contained in this Agreement and such void or unenforceable covenants or provisions shall be deemed to be severable from the others herein provided.

Time

29. Time shall be of the essence of this Agreement and of each and every part hereto.

Interpretation

30. In this Agreement, unless the context otherwise requires, the singular includes the plural and the masculine includes the feminine gender and a corporation.

Conflict of Laws

31. This Agreement shall be construed and enforced in accordance with the laws of the Province of Nova Scotia and the laws of Canada applicable hereto and the parties irrevocably attorn to the jurisdiction of the Courts of Nova Scotia.

IN WITNESS WHEREOF the parties hereto have executed this Agreement by their duly authorized representatives on the day first above written.

4.5. Returning Officer for 2012 Municipal Election

**Moved by Councillor Robert Angel
Seconded by Councillor Terry Rhindress
That Council appoint Kim Jones as the Town of Amherst's Returning
Officer for the 2012 municipal election.**

Motion Carried

4.6. Wi-Fi in the Downtown

**Moved by Deputy Mayor Dale Fawthrop
Seconded by Councillor David March
That Council approve a Memorandum of Understanding with Downtown
Amherst Revitalization Society for ownership and operation of a Downtown
Wi-Fi network and authorize the Mayor and CAO to sign on behalf of the
Town.**

Motion Carried

**Memorandum of Understanding Between
Town of Amherst and Downtown Amherst Revitalization Society**

Whereas the Downtown Amherst Revitalization Society ("DARS") is purchasing and installing a public Wi-Fi system in the area identified in Schedule A; and

Whereas the Town of Amherst ("the Town") has committed to accept ownership of this equipment and provide ongoing maintenance and operational services for this system;

Therefore it is agreed that;

1. The DARS will relinquish ownership of the Wi-Fi system to the Town of Amherst free of charge.
2. The outdoor Wi-Fi system will be operational and in good working order at the time the Town accepts ownership of such.
3. The Town will commit to maintain and operate such equipment for a minimum of five (5) years.
4. The Town and DARS will commit to work together toward the installation of a web cam system for Downtown.
5. The Town will have full control over the use and operation of the system in all respects including but not limited to the authority to: limit public usage; allow for paid or unpaid advertising by any party; repair, maintain, replace, expand or otherwise make changes to the system; develop and enforce policies, procedures or bylaws required for the maintenance, operation and policing of the system.
6. The Town will acknowledge the contribution of the system by DARS at a public Council meeting or other public event as well as on the 'opening splash page' of the system itself for a minimum of the initial five year operation of the system.

7. Following the transfer of ownership the Town will not, directly or indirectly, make any claim against the Downtown Amherst Revitalization Society, its board of directors or its members, with respect to any liability, claim or otherwise, in relation to the Wi-Fi system.
8. The Town will fully indemnify and save the Downtown Amherst Revitalization Society, its Board of Directors and its members harmless from any and all claims from any party, with respect to any matter relating to the Wi-Fi system.

4.7. Salary Administration Policy

Moved by Councillor David March

Seconded by Councillor Robert Bird

That Council approve amendments to the Salary Administration Policy #4530-01, Appendix B – Classification Grid, to delete Public Works Foreman and add Operations Manager, to delete the CET position and add Procurement Officer, and minor housekeeping edits to the policy.

Motion Carried

APPENDIX B POLICY 4530-01 – Salary Administration - Job Classifications

Level 12	Vacant
Level 11	Town Treasurer Director - Community & Economic Development Director of Planning & Engineering Services Director of Transportation & Public works
Level 10	Fire Chief Operations Manager
Level 9	Vacant
Level 8	Engineering Services Manager Planner
Level 7	Community Program Director Building Inspector Technology Officer Transportation Foreman Accountant
Level 6	Executive Assistant - Executive Office Administrative Assistant – Policy, Research, Human Resources & Special Projects Firefighters/Inspectors Business Development Officer Geographic Information Systems Technician Building Inspector II Procurement Officer
Level 5	Revenue Officer Firefighters Executive Assistant - Corporate Services Executive Assistant – Planning & Engineering Services Executive Assistant - Community & Economic Development Maintenance Supervisor - Recreation Facilities Physical Activity Coordinator
Level 4	Transportation & Public Works Clerk/Secretary Human Resource Officer Accounts Payable Clerk Water/Sewer Billing Clerk Arts, Culture and Heritage Coordinator
Level 3	Cashier/Receptionist - Corporate Services Technology Assistant Dispatcher By-law Enforcement Officer
Level 2	Vacant
Level 1	Vacant

4.8. Appointments to Police Commission

Moved by Deputy Mayor Dale Fawthrop

Seconded by Councillor David March

That Council appoint Ned Douglas and Andrew Wallis to the Amherst Board of Police Commissioners for further one-year terms expiring December 31, 2012.

Motion Carried

5. INFORMATION / DISCUSSION ITEMS

5.1. Victorian Christmas

Councillor Angel presented the following Victorian Christmas report and addressed enquiries from Council. In terms of the funding partners, he reported that efforts are underway to determine the funding levels of all the partners (Chamber of Commerce, DARS, CREDA and the Town). Unfortunately, he said, the Chamber withdrew its financial support for the parade this year, representing approximately \$800 for the other funding partners to make up. It is hoped this can be renegotiated, as the Chamber represents many of the businesses in the community.

Victorian Christmas celebrations were very successful in 2011. The light up, sing-a-long and reading at Dayle's were extremely successful on the Friday night. On Saturday the Y Service Club Parade drew thousands of spectators to see over 60 floats weave their way through Amherst.

There were some challenges with LED lighting, trees in "Mural Square" as well as the sound in Victoria Square which have either been corrected or are in the process of being worked on. Looking forward to 2012, several issues need to be addressed including more events in the weeks leading up to Christmas and figuring out some solutions to the lighting problems, as well as dealing with some logistical and committee structure issues.

The committee is looking into the possibility of dropping "Victorian" from the Christmas Celebrations as the Victorian theme is no longer reflected in the events that take place. Efforts are underway to confirm funding commitments from all partners going forward

The planning committee, in consultation with the Town has moved the events to the fourth weekend of November (23-24) due to the fact that Remembrance Day, November 11, falls on a Sunday and Monday will be a holiday. The move will allow Town crews sufficient time to erect the Christmas decorations.

The theme for the parade is under discussion and will be announced in the near future in response to inquiries already received.

6. STRATEGIC PRIORITIES

7. INTERNAL COMMITTEE REPORTS

7.1. Planning Advisory Committee

Councillor March presented the following report on behalf of the Planning Advisory Committee.

The Planning Advisory Committee met on January 16th, addressing the following items:

- A public Participation Opportunity to address an application to renew a Development Agreement at 155 East Victoria Street. The Development Agreement expired on November 30, 2011 and the owner applied to have it renewed. The renewal has been recommended to Council with unchanged terms from the previous agreement, except the inclusion of a new time commitment of five years.
- Policy amendments to implement the Centre First Strategy
The Committee received a report from staff summarizing the changes to the Municipal Planning Strategy and Land Use Bylaw which will implement the Centre First Strategy. The Committee recommended an additional definition, which will be included when the document is presented at a Public Participation Opportunity on February 6, 2012. A summation of the proposed amendments will be released to the public and posted on the Town's website in advance of the meeting, along with the Design Guidelines, to help generate discussion with the public. Following this, the next step will be first reading of the suite of amendments by Council.

7.2. Amherst Board of Police Commissioners

7.3. Dangerous and Unsightly Premises Committee

7.4. Youth Advisory Council

Councillor Bird acknowledged the attendance of three members of AYTC this evening, and presented the following report on behalf of the Youth Advisory Council:

The Amherst Youth Town Council met last on January 9 in Council Chambers. In accordance with the policy, to gain a greater familiarity with workings of local government through education, AYTC will host a different department each month to learn more about municipal services. This month AYTC members were joined by CED staff for an information session to gain perspective on service delivery within the department, to meet staff, and learn more about individual positions.

Members focused on coordination of activities that the AYTC will host during the 24 Hour Physical Activity Day on February 25. Their proposed activities will range from organizing an event for younger children to working with special needs population, as well as organizing events specific to their target age group.

Other areas of discussion during the meeting related to preparation for the next Amherst Youth Town Council meeting on February 6 that Town Council has been invited to. This meeting will provide an update to Council and highlight action items for the upcoming year.

7.5. Tree Advisory Committee

Deputy Mayor Fawthrop presented the following report on behalf of the Tree Advisory Committee:

A Tree Committee meeting was held on January 16 in the Amherst Stadium Heated Room. All committee members were in attendance for this meeting. Members welcomed Nova Scotia Power Inc. Forestry Coordinator, Ross Rankine, to this meeting.

The 2011 Tree Cutting Program was discussed. There was agreement for Roger MacIsaac to proceed with a recommendation to Town Council to award Ken Gilbert as the successful compliant bidder for the 2012 Tree Contract.

There was discussion of inviting an arborist to train staff. This would allow for an analysis of percentage completion and overall stock remaining. This training will be set up for May 2012. It was noted that, while we are on a downward slope, it will be an estimated five years before eradication of the disease. A report from an arborist would update residents on the status of the tree cutting program. It would further facilitate public education on Dutch Elm Disease (DED) trees and encourage residents to look at dead trees in their backyards with the hope of identifying more trees that have not been scheduled for destruction through our program.

7.6. Heritage Advisory Committee

8. EXTERNAL COMMITTEE REPORTS

8.1. Cumberland Public Libraries

Councillor Angel presented the following report on behalf of Cumberland Public Libraries:

Closure for renovations and redecoration

The Four Fathers Memorial Library closed on January 26 to prepare for renovations and redecoration. Workers will be in the library during the month of February to paint, lay new carpeting and install a new circulation desk. Other work, such as replacing heat pumps and damaged tile will also take place during the closure. The library headquarters will be open as usual in the upstairs of the building and Amherst library staff have been temporarily moved to headquarters. The library is planning to re-open in early March.

Temporary Branch

A temporary branch will be open (starting on January 31st) in the boardroom of Amherst Town Hall. There will be reduced hours but it will be a full service branch with books, movies, magazines and public computer access. All library programs will be held in Trinity-St. Stephen's Hertz Hall for the month of February.

E-reader classes

A very popular 'Getting to know your e-reader' class was held in the month of January. More classes about e-readers and how to use the library's Overdrive system to borrow e-books will be scheduled when the branch re-opens in March.

8.2. Cumberland Regional Development Authority

Councillor Fawthrop presented the following report on behalf of the Cumberland RDA; he stated that he would like to show Council a tourism video at the next Committee of the Whole meeting

Regional Marketing Strategy- Form Media and Solutions Inc. selected to develop a fully integrated Regional Marketing Strategy for Cumberland County. Consultants currently wrapping up interviews with Municipal leaders and other stakeholders. Project to be completed in February.

Sportsplex Needs Assessment- The St. Mary's University Business Development Centre selected to conduct a \$23,000 Needs Assessment Study to determine if a Sportsplex facility is feasible to serve Amherst and the northern Cumberland County area. The study has determined that a multi-purpose turf field with lights would meet the needs of Cumberland County residents and is strongly supported by the community. Saint Mary's was asked to complete the needs assessment by the Cumberland RDA and the Cumberland Sportsplex Development Society. Research was conducted through telephone and online surveys with 505 residents as well as focus groups and interviews with key stakeholders and existing Sportsplex facilities. The research was conducted between November 18th and December 13th, 2011.

Thinkers' Lodge National Historic Site- Phase 3, restoration of the Lobster Factory/Dining Hall scheduled to get underway shortly pending final funding approvals. Thinkers' Lodge was part of the very successful Home for Christmas House Tour on December 10th in partnership with Pugwash Communities in Bloom.

WiFi Project for Downtown Amherst – Town staff, DARS and CREDA are finalizing details for project initiation by the end of the current fiscal year.

All five municipal units are partnering with CREDA on additional promotional videos, including ones on tourism, quality of life and energy. Similar to the already completed Industry Video, these videos are suitable for Trade Shows, web sites, etc.

8.3. Cumberland YMCA

Councillor Fawthrop presented a verbal report on behalf of the Cumberland YMCA; today was the opening of the new child care center at the YMCA. There were a number of people touring the new facility, which now has 96 children in full day care and 60 in the after school program, with 22 jobs. This facility received a grant of \$1.3 million from the Province, 75% of which was forgivable. The YMCA Strong Kids campaign currently underway encourages people across the country to invest in YMCA programs that provide more opportunities for children. It is aimed at raising public awareness and much needed financial support for the work that the YMCA does to provide children, teens and families with the values and life skills they need to succeed.

The Y's Capital Campaign is underway for the third phase, the pool area, and the Y is hosting a meeting in Oxford tomorrow to gauge that community's interest in having a Y branch.

8.4. Downtown Amherst Revitalization Society

8.5. Cumberland Joint Services Management Authority

Councillor Rhindress presented the following report on behalf of the CJSMA:

A meeting of the CJSMA Board was held in Springhill on January 26, 2012. The following are some highlights from that meeting:

- The audited financial statements were presented to the Board by Gary Bickerton. The Board will consider the approval of the statements at its March meeting;
- The Board passed a motion to award the tender for a new tractor to Fort Equipment. The tractor was included in the current year's Capital budget.
- The Board passed a motion to recommend the 2012/13 operating budget to each participating unit for approval.

8.6. Northern Region Solid Waste Committee

8.7. L. A. Animal Shelter

Councillor Angel presented the following report on behalf of the L. A. Animal Shelter:

The Lillian Allbon Animal Shelter was incorporated June 1, 1987. This June the Shelter will be celebrating its 25th Anniversary. The board and Shelter members are beginning plans to celebrate the anniversary throughout the month of June. As plans are formalized the public will be informed of the events.

BOARD MEMBERS: President: Corinne Burke, Vice President: Paul Carr, Secretary: Raine Phythian, Treasurer: Nancy Burke. Members at large are: Sophia Gould, Beth Clinton, Theresa Ellis, Greg Brennen, Robert Angel (Town Of Amherst). A representative from the Municipality of Cumberland and the Town of Springhill will be appointed in the near future.

SHELTER EVENTS: In November a two day Cat Adopt-a-Thon was held at the shelter. With the assistance of numerous volunteers and the three staff members, homes were found for 21 cats. During the month of December, 15 cats and eight dogs were taken in with five cats and four dogs being adopted. At the time of writing this report last week, three more dogs were adopted. You are encouraged to contact the shelter for information on adopting a dog or cat. If you are unable to adopt an animal but would like to assist by being a "foster parent" to a cat or dog, please contact the shelter.

Volunteers are welcome at the shelter to assist with the care and exercise of the animals. During the month of December 54 visits were made by volunteers.

FUND RAISING: On line auction items are continually being added. To see the items and make a bid or to view the shelter's facebook page, go to: laanimalshelter.ca. Click on "On-Line Auction or "Fan Club" page. Don't forget to look us up on facebook for more information and on availability of dogs and cats.

A very successful fundraiser was held in November with the sale of 1,934 tickets on a SNOW THROWER, REALIZING A PROFIT OF \$2,370.00 This effort was chaired by volunteer shelter member Carol I McCormick.

It was with deep regret that the board members were informed that Carol passed away suddenly on December 18th 2011 as the result of a brain aneurysm. The Board meeting passed a motion at its January to commemorate Carol by dedicating a plaque in her memory to be placed in an appropriate place in the shelter.

The Board decided not to participate in a telethon this year. It is presently preparing a general solicitation list requesting business and interested citizens to make a monetary donation to the shelter. This project will be launched in the near future and all donors will be acknowledged during a radio-thon on the Tantramar FM Community Radio station 107.9 on Saturday, June 2nd as part of the Anniversary month celebrations.

SHELTER VOLUNTEERS: Watch and listen through the local media for information on how you can join the growing list of "SHELTER FRIENDS". A data base is being developed to keep all "Shelter Friends" informed of Shelter events through a new NEWSLETTER that is being developed. By submitting your e-mail address to the "SHELTER FRIENDS" list you will be kept directly informed of all shelter activities and events with no obligation or commitments unless you so desire to assist the shelter.

8.8. Victorian Order of Nurses

Deputy Mayor Baker advised that the major fund raiser for VON will be held on February 4, 2012, and encouraged everyone to come out and support that organization.

9. ADJOURNMENT

Before adjournment, Mayor Small asked the CAO to look at the potential for a smoke free places bylaw. He explained that our internal evaluation has resulted in major changes in the organization, which are expected to enhance our services. He extended appreciation to Brodie Callaghan from Eastlink and the AYTC for the video recording of our proceedings, as well as other media representatives.

On motion by Councillor Rhindress, the meeting adjourned at 8:25 PM.

Gregory D. Herrett,CA
Town Clerk and CAO

Robert Small
Mayor