

**Minutes of a Special Meeting of Amherst Town Council
Held in Council Chambers
Thursday, December 9, 2010 at 4:00 PM**

PRESENT: Mayor Robert Small
Deputy Mayor George Baker
Councillor Robert Angel
Councillor Robert Bird
Councillor Dale Fawthrop
Councillor David March
Councillor Terry Rhindress
Greg Herrett, CAO
Vince Arbing, Treasurer
Jason MacDonald, Director of Planning and Development
Roger MacIsaac, Director of Community and Economic Development
Rebecca Purdy, Executive Assistant
Kim Jones, Executive Assistant

REGRETS:

1. CALL TO ORDER

This special meeting of Amherst Town Council was duly called and advertised. The purpose of the special meeting is to allow Council to consider the following two issues:

- *Agreement of Purchase and Sale, Dominion Public Building and former Bank of Montreal Building*
- *Amendments to the Land Use By-Law and Municipal Planning Strategy, 1st Reading*

**1.1 Approval of the Agenda M-1012-01
Moved by Councillor Rhindress, seconded by Councillor March to approve the agenda as circulated.**

MOTION CARRIED

2. REQUEST FOR DECISION

**2.1 Agreement of Purchase and Sale, RFD#2010107 M-1012-02
Moved by Deputy Mayor Baker, seconded by Councillor Fawthrop that Council approve the agreement of purchase and sale for both the Dominion Public Building and former Bank of Montreal building and three related parcels of land on LaPlanche Street (parking lots) at a total price of \$350,000 with all outstanding taxes and charges related to these properties up to the closing date being paid by the vendor.**

MOTION CARRIED

The CAO explained that the purchase will be financed at the present time from Capital Reserves.

THIS AGREEMENT OF PURCHASE AND SALE is made the 7th day of December, 2010.

BETWEEN:

TANG DYNASTY INVESTMENTS LIMITED, a body corporate duly incorporated under the laws of the Province of Nova Scotia with head office located in Dartmouth, Nova Scotia (Hereinafter called the "Company")

~and~

SHU WEI CHEN, (aka Lisa Chen) of Dartmouth, in the Regional Municipality of Halifax and Province of Nova Scotia (Hereinafter called "Chen")

~and~

CHIEN CHUNG TANG, (aka Alex Tang) of Dartmouth, in the Regional Municipality of Halifax and Province of Nova Scotia, (Hereinafter called the "Tang"),

-and-

TOWN OF AMHERST, a Municipal body in the Province of Nova Scotia, (hereinafter called the "Purchaser")

WHEREAS the Company, Chen and Tang (herein jointly and severally referred to as the "Vendor") are owners of lands and premises located in the Town of Amherst, Province of Nova Scotia as follows:

BMO Building

- (a) 100 Victoria Street, Amherst and being identified as PID 25005547;

Dominion Building

- (b) 98 Victoria Street, Amherst and being identified as PID 25005539;

Parking Lots

- (c) Parcel A, LaPlanche Street, Amherst and being identified as PID 25445610;
 (d) 10 LaPlanche Street, Amherst and being identified as PID 25022880; and
 (e) Parcel C, LaPlanche Street, Amherst and being identified as PID 25451790,

AND WHEREAS the Vendor wishes to sell the Properties and the Purchaser wishes to purchase the Properties with all of the buildings and improvements thereon erected, and all of the rights, warranties, benefits and appurtenances thereto.

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT:

1. The undersigned Purchaser, hereby agrees to purchase from the Vendors and the Vendors hereby agree to sell to the Purchaser, upon and subject to the terms and conditions hereinafter set forth, the following properties:

BMO Building

- (f) 100 Victoria Street, Amherst and being identified as PID 25005547;

Dominion Building

- (g) 98 Victoria Street, Amherst and being identified as PID 25005539;

Parking Lots

- (h) Parcel A, LaPlanche Street, Amherst and being identified as PID 25445610;
 (i) 10 LaPlanche Street, Amherst and being identified as PID 25022880; and
 (j) Parcel C, LaPlanche Street, Amherst and being identified as PID 25451790,

with all of the buildings and improvements thereon erected, (herein collectively called the "**Lands**") and all of the rights, warranties, benefits and appurtenances thereto. There is included in the sale all of the apparatus, equipment and fixtures which serve the proper functioning of the Lands, such as, heating, air conditioning and ventilating equipment, mechanical, electrical and plumbing equipment and fixtures, elevators, loading and shipping facilities, if any, as well as all other chattels and tangible personal property of every kind which are owned by the Vendor and relate to the Lands. All of the property and the Lands hereinbefore referred to is collectively referred to in this Offer as the "**Property**".

2. The Purchase Price for the Property shall be **Three Hundred and Fifty Thousand Dollars** (\$350,000.00) in Canadian money paid at the time and satisfied in the manner following:
- (a) The sum of One Thousand Dollars (\$1,000.00) by means of a deposit to be held by the Vendor's solicitor upon execution of this Agreement;
- (b) The balance of the Purchase Price to be paid by the Purchaser to the Vendor's solicitor, in trust, at the time of closing, subject to adjustments for real property taxes only. The Vendor shall be responsible for all real property taxes, including arrears, all charges, rates, fees and levies owing to the Town of Amherst, including, but not limited to, all fees, costs and charges incurred by the Town of Amherst with respect to actions taken by the Town of Amherst under the dangerous and unsightly premises provisions of the *Municipal Government Act*, and for all water and sewer charges up to the time of closing, all of which shall be adjusted for or paid before the time of closing.
3. The Purchase Price shall be allocated as follows:
- \$50,000.00 for 100 Victoria Street, Amherst (PID 25005547);
- \$300,000.00 for 98 Victoria Street, Amherst (PID 25005539), Parcel A (PID 25445610) and 10 LaPlanche Street, Amherst (PID 25022880) and Parcel C (PID 25451790).
4. The Vendor and the Purchaser agree that:
- a. The Purchaser shall have the right to cancel this agreement and have its deposit, returned to it and neither party shall have any further recourse, in the following events:

1. the Vendor is unable to convey good and marketable title to the Property, free and clear of all encumbrances, save for utility and service easements which do not affect the use of the Property or its marketability; or
 2. the conditions for the benefit of the Purchaser set out in Section 6 are not met.
- b. In the event the Vendor is unable to convey good and marketable title free and clear of all encumbrances, save for utility and service easements which do not affect the use of the Property or its marketability to one of the Properties but is able to convey good and marketable title to one or more of the other Properties, or the Purchaser is not satisfied with its investigations and the conditions of all of the Properties, but is satisfied with one or more of the Properties, the Purchaser may, at its sole discretion, purchase only the satisfactory Property or Properties for a Purchase Price equal to the allocation set out in Section 3 hereof;
 - c. If the Vendor does not have title to Parcel C (PID 25451790), the Vendor will quit claim any rights it has to the said property to the Purchaser and will assign to the Purchaser any leases or licences it has in relation to the said property.
 - d. The Purchaser shall have the sole right to waive any of the conditions for its sole benefit herein contained at its sole discretion.
 - e. At any time during the currency of this Agreement, the Purchaser, or its authorized agents, may enter upon the Property for the purpose of making such soil tests, environmental tests and studies and other such tests as the Purchaser deems necessary.
 - f. The Purchaser may have surveyors enter upon the Property for the purpose of making such legal, topographical and other surveys as the purchaser deems necessary.
 - g. The Purchaser may have the buildings inspected.
 - h. The buildings on the Property shall be and remain until the time of closing at the risk of the Vendor. Pending closing, the Vendor shall hold all insurance policies, if any, and the proceeds thereof in trust for the parties as their interests may appear and in the event of damage to the Property, the Purchaser may, at its option:
 - (i) terminate this Agreement and have all monies paid returned without deduction,
 - (ii) take an assignment of the proceeds of any insurance and complete the purchase, or
 - (iii) extend the closing date until the insurance proceeds are paid by the Vendor's insurer and then take an assignment thereof and complete the purchase.
5. The time of closing, hereinbefore and hereinafter called the "time of closing", shall be any time agreed upon by the parties hereto on or before **December 21, 2010 at 12:00 pm**.
 6. The Purchaser's obligation to accept title to the Property and complete this transaction shall be subject to the following conditions:
 - i. that the Purchaser shall have received from its legal counsel an opinion that it has conducted a search of title and that the Vendor holds good and marketable title in fee simple free and clear from all encumbrances subject only to utility and service easements that do not affect the marketability of the Property, which condition is for the sole and exclusive benefit of the Purchaser;
 - j. the Purchaser shall be satisfied with its investigations of the Property, including, its environmental investigations.
 7. The Vendor hereby jointly and severally represents to the Purchaser that, as of the date hereof and at the time of closing:
 - k. the Vendor, Tang Dynasty Investments Limited is a company duly incorporated, validly existing and in good standing;
 - l. the Vendor consists jointly of individuals and a Nova Scotia Limited Company having capacity to enter into this agreement;
 - m. the execution and delivery of this agreement and the consummation of the transaction herein contemplated has been or will be duly and validly authorized by all necessary corporate action on the part of the Vendor;
 - n. the execution and delivery of this agreement shall be in all respects done in a due and proper manner;
 - o. this agreement constitutes a legal, valid and binding obligation of the Vendor and is enforceable against the Vendor in accordance with its terms;
 - p. the Vendor is not and will not be a non-resident of Canada within the meaning of the *Income Tax Act* (Canada) as of the time of closing

- q. there are no outstanding work orders, notices, notices of deficiency, notices of violation or other similar notices issued by or on behalf of any governmental authority in respect of the Property of which the Vendor is aware; and
 - r. the execution, delivery and performance of the Vendor's obligations under this Agreement by the Vendor do not constitute a default under any agreement or other instrument to which the Vendor is a party or to which it is subject or violate any judgment, injunction or decree of any court to which the Vendor, as the case may be, is subject.
8. The Vendor will be responsible to pay any and all fees in relation to any broker or agent with respect to this transaction and hereby agrees to indemnify and hold the Purchaser free and harmless from any claims from any broker, agent or other intermediary.
 9. The Vendor makes no representations as to the environmental condition of the property and **the Purchaser takes the property "as is, where is"**.
 10. The Vendor shall be solely responsible to migrate the properties not yet on the Land Registration Act System to the Land Registration Act System at least 2 days before the Closing Date. Failing registration, the Purchaser may terminate this agreement.
 11. In the event that the Purchaser defaults in its obligations hereunder, the deposit shall be forfeited to the Vendor as liquidated damages and not as a penalty and the Vendor will have no further recourse against the Purchaser.
 12. Time shall be of the essence of this Agreement.
 13. There are no representations, warranties, collateral agreements or conditions relating to the purchase and sale of the Property except as specified herein.
 14. Documents necessary to transfer title shall be prepared by the Vendor's solicitor in form satisfactory to the Purchaser's solicitor.
 15. This Offer may be assigned by the Purchaser at the Purchaser's sole discretion.
 16. Tender of documents or money may be tendered by bank draft or solicitor's trust cheque.
 17. This agreement and everything herein contained shall enure to the benefit of and be binding upon the parties hereto, their respective heirs, executors, administrators, successors and permitted assigns.
 18. This Agreement may be transmitted by facsimile and executed in any number of counterparts with the same effect as if all parties had signed the same document. All counterparts shall be construed together, and shall constitute one and the same Agreement.

Dated at Amherst, Nova Scotia, this 7th day of December, 2010.

2.2 Amendments to the Land Use By-Law and Municipal Planning Strategy with Respect to Establishing an Architectural Heritage Area M-1012-03 & M1012-04

Moved by Councillor March, seconded by Councillor Bird that Council approve first reading of a By-Law to amend the Municipal Planning Strategy By-Law, P-1-4, by adding the policy: Architectural Heritage, RP-20 to section 3.2 (Residential) of the MPS.

MOTION CARRIED

**Town of Amherst
By-Law to amend the Municipal Planning Strategy By-Law, P-1**

The Town of Amherst Municipal Planning Strategy is hereby amended as follows:

Add the following policy to **section 3.2** (Residential) of the MPS:

Architectural Heritage Area, RP-20

Within the Architectural Heritage Area of the General Residential Designation, it shall be the intention of Council to require new building construction to be subject to a Development Agreement and designed in a sympathetic and sensitive manner to the general streetscape in the area. In negotiating such an agreement Council shall:

- (a) reinforce the character of the area, by requiring the design of new buildings to generally conform to the height and alignment of the streetscape.
- (b) ensure that the architecture of the building is sympathetic to the existing historic development in the area, specifically height, façade, roof form, colors, materials and other architectural details.
- (c) ensure that the structure is located on the lot in such a manner as to limit potential impacts on surrounding low density residential developments;

- (d) ensure that the development provides sufficient on-site parking, and appropriate access to, and egress from the street;
- (e) ensure that the location of parking facilities does not dominate the surrounding area, including the utilization of vegetation and fences to mitigate the aesthetic impacts of parking lots;
- (f) ensure that any on site outdoor lighting does not negatively impact the surrounding properties;
- (g) ensure that any signage on the property is sympathetic to the surrounding residential properties;
- (h) require the use of vegetation to improve the aesthetic quality of the development;

Moved by Councillor Fawthrop, seconded by Councillor March that Council approve first reading of a By-Law to amend the Land Use By-Law, P-2-12, by adding a policy to section 7.2.2 (Permitted Uses by Development Agreement) that states: *All new main building construction within the Architectural Heritage Area of the General Residential Designation, in accordance with policy RP-2*, and further, that the Architectural Heritage Area be added to the existing Schedule A – Zoning Map.

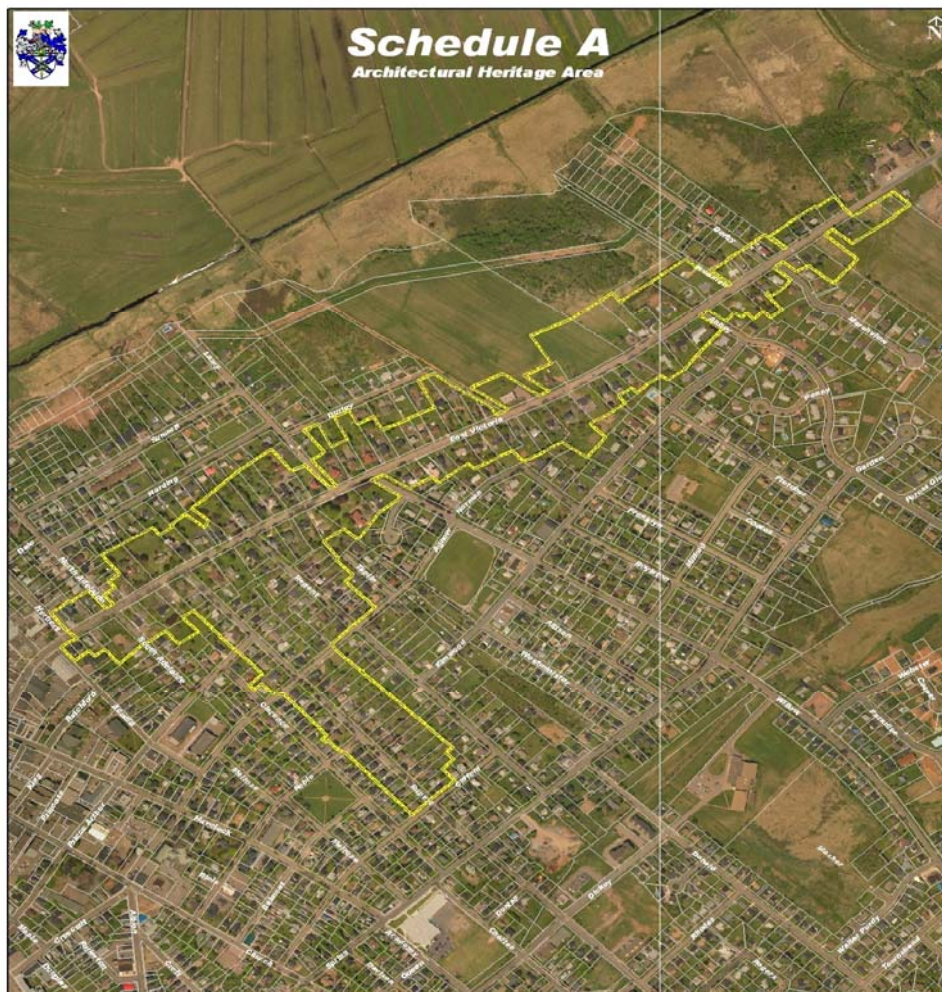
MOTION CARRIED

**Town of Amherst
By-Law to amend the Land Use By-Law, P-2**

The Town of Amherst Land Use By-Law is hereby amended as follows:

1. Add the following policy to **section 7.2.2** (Permitted Uses by Development Agreement):
 - (f) All new main building construction within the Architectural Heritage Area of the General Residential Designation, in accordance with policy RP-20.
2. Add Architectural Heritage Area (*attached*) to the existing Land Use By-law Zoning Map (**Schedule A – Zoning Map**):

Architectural Heritage Area identified on Schedule A – Zoning Map



3. ADJOURN

On motion by Councillor Rhindress, the meeting adjourned at 4:15 PM.

APPROVED BY:

Gregory D. Herrett, CA
Town Clerk and Chief Administrative Officer

Robert Small
Mayor