

Regular Council Meeting Minutes

Date of Meeting: Monday, February 29, 2016
Location: Council Chambers, Town Hall
Members Present: Mayor Robert Small
 Deputy Mayor Terry Rhindress
 Councillor George Baker
 Councillor Frank Balcom
 Councillor Robert Bird
 Councillor Lisa Emery
 Councillor David March
Staff Present: Greg Herrett, CAO
 Roger MacIsaac, Director CED
 Ian Naylor, Police Chief
 Jason MacDonald, Deputy CAO Operations
 Vince Arbing, Treasurer
 Bill Schurman, Director Recreation
 Rebecca Purdy, Executive Assistant

1. CALL TO ORDER

2. O'CANADA

3. INTRODUCTION OF YOUTH COUNCIL MEMBER

Connor Scott, Deputy Junior Mayor of the Amherst Youth Town Councillor introduced himself to Council.

4. APPROVAL OF AGENDA/MINUTES

4.1. Approval of the Agenda (2735)

Moved By: Councillor George Baker

Seconded By: Councillor David March

To approve the agenda with the addition of 5.9 CCL Proposal

Motion Carried

4.2. Approval of Minutes (2738)

Moved By: Deputy Mayor Terry Rhindress

Seconded By: Councillor Frank Balcom

To approve the minutes of the following meetings: January 25, 2016

Regular Meeting, February 9, 2016 Special Meeting, and February 10, 2016

Special Meeting

Motion Carried

5. REQUESTS FOR DECISION

5.1. March Council Meeting Date (2629)

Moved By: Councillor George Baker

Seconded By: Councillor Lisa Emery

That the date of the next Regular Council Meeting be changed

from Monday, March 28 to Tuesday, March 29, in light of the 28th being

Easter Monday

Motion Carried

Mayor Small will be away that day and asked the Deputy Mayor to chair the meeting.

5.2. CJSMA Budget 2016-17 (2628)

Moved By: Deputy Mayor Terry Rhindress

Seconded By: Councillor David March

That Council approves the 2016/17 operating and capital budgets for the Cumberland Joint Services Management Authority (CJSMA) as submitted

Motion Carried

5.3. Insurance Payment to APA Union (2654)

Moved By: Councillor David March

Seconded By: Deputy Mayor Terry Rhindress

That Council approves issuance of a cheque in the amount of \$2,313.49 to the Atlantic Police Association Local 104 relating to the insurance claim from the fire of August 26, 2012

Motion Carried

5.4. Provincial Volunteer of the Year Nomination (2721)

Moved By: Councillor Robert Bird

Seconded By: Councillor Frank Balcom

That Council appoints Ken MacKenzie as the Town of Amherst Provincial Volunteer of the Year

Motion Carried

5.5. Provincial Youth Volunteer of the Year Nomination (2721)

Moved By: Councillor Frank Balcom

Seconded By: Deputy Mayor Terry Rhindress

That Council appoints Connor Scott as the Town of Amherst Provincial Youth Volunteer of the Year

Motion Carried

5.6. Former West Highlands School Property

Mayor Small declared a conflict and excused himself from the Council table for the following two agenda items related to the former West Highlands School property.

5.6.1. Terms of Reference for Committee (2374)

Moved By: Councillor Lisa Emery

Seconded By: Councillor David March

That Council approve the amended Terms of Reference for the West Highlands Park Redevelopment Committee

Motion Carried

**Former West Highlands School Property
Redevelopment Committee
Terms of Reference**

PURPOSE:

1. To establish a protocol for an ad hoc committee involving the Amherst Lions Club and the Town of Amherst to oversee the redevelopment of the former West Highlands School property into a public park space.

BASIS:

2. In February 2013, a Memorandum of Understanding between the Amherst Lions Club and the Town of Amherst included the following terms:
 - a. Both the Town and the Club will offer to sell their respective lands to the Province of the Nova Scotia for use as a new elementary school;
 - b. That the Town will convey the site of the current West Highlands School to the Club for use as a park at such a time as the demolition of the existing school is completed;

- c. That the Town and the Club will partner in the development of the new park and the Club will utilize the proceeds of the sale of their property for the development of the new park; and,
- d. That the Town will make the necessary changes to a baseball field at the Robb's Baseball Complex for use as a Bantam baseball field to replace the existing field at Lions Park. The upgraded field will be named "The Cecil Small Bantam Baseball Field".

ROLE OF THE COMMITTEE:

- 3. The role of this Committee is to:
 - a. Oversee the development and implementation of a plan to repurpose the former West Highlands School property (30 Hickman Street) into a public park.
 - b. Make recommendations for approval by the Amherst Lions Club membership and Town Council with respect to:
 - i. The overall redevelopment plan for the property.
 - ii. The respective roles and responsibilities of the Town and the Lions Club for the capital cost required to implement the redevelopment plan.
 - iii. An operation agreement which outlines the respective roles and responsibilities of the Town and the Lions Club for the ongoing maintenance and operations of the park once developed.

MEMBERSHIP:

- 4. The committee will consist of seven members, including four Lions Club members, and three Town Council members. One of the four Lions Club members will be designated as the Chair by the President of the Lions Club. Two Town employees will attend as a resource and will be non-voting members of the committee; the balance of the Amherst Lions Park Committee may also attend meetings but will not be voting members.

DECISION MAKING:

- 5. A quorum at least two Town Council members and two Lions Club members is required to pass a resolution to recommend a course of action. All recommendations will be forwarded to the Lions Club and Town Council for final approval.

EXPIRY

- 6. Once the operating agreement (paragraph 3. b. iii.) is executed, the work of this committee will be considered complete, and the committee will dissolve.

5.6.2. Agreement of Purchase & Sale (2498)

Moved By: Councillor David March

Seconded By: Councillor George Baker

That Council approves the sale of the former West Highlands School Property (30 Hickman Street) to the Amherst Lions Club for the sum of \$1 and authorize the Mayor and CAO to sign the agreement of purchase and sale on behalf of the Town

Motion Carried

THIS AGREEMENT OF PURCHASE AND SALE made this day of _____, 2016.

BETWEEN:

THE AMHERST LIONS CLUB Hereinafter called the Purchaser

- and -

THE TOWN OF AMHERST, Hereinafter called the Vendor

Property

- 1. The Vendor agrees to sell and the Purchaser agrees to purchase from Vendor a lot of land owned by the Vendor being land located at 30 Hickman Street, Amherst, Nova Scotia (PID 25041310), being the former West Highlands School property, herein called 'the property'.

Purchase Price

- 2. The purchase price of One Dollar (\$1.00) Dollar.

Deposit

- 3. The Purchaser does not submit a deposit with this offer.

Date of closing

- 4. The sale shall be completed on or before the 6th day of July, 2016.

Deed

5. The Vendor shall convey title to the property by deed without covenants. The Purchaser shall have until 10 days prior to the date of closing to examine the title and if valid objection is made in writing to the Vendor which the Vendor is unable or unwilling to remove, remedy or satisfy and which the Purchaser will not waive, this agreement notwithstanding any immediate acts or negotiations in respect of such objection shall be at an end and all monies theretofore paid shall be returned with the interest earned as described heretofore, and the Vendor shall not be liable for any costs or damages. Except for any valid objection to title made by the 10 days prior to closing, the Purchaser shall be conclusively deemed to have accepted the Vendor's title to the property.

Vendor's obligations

6. a) The completion of the purchase by the Purchaser is conditional upon the Vendor complying with Section 51 of the Municipal Government Act requiring the Vendor to hold a public meeting and adopt a Resolution approving the sale of the property to a non-profit organization.
- b) To remove the existing asphalt driveway, parking lot and play area as well as remove the existing fence surrounding the play area prior to closing, or by another date mutually agreed to by both parties.
- c) To register the property pursuant to the Land Registration Act (Nova Scotia) prior to the closing date and to be responsible for all costs associated with migrating the property;
- d) To deliver a Deed, at the time of closing, in a registerable form conveying to the Purchaser good and recorded marketable title to the property free and clear from all encumbrances;
- e) To provide documentation on the environmental cleanup conducted on the site by the Province which occurred prior to the Town taking possession of the property.

Purchaser's Obligations

7. The Purchaser covenants and agrees with the Vendor as follows:
- (a) To purchase the property on an as is basis. There are no representations, warranties, collateral agreements or conditions relating to the property except as specified herein;
- (b) The Purchaser may have surveyors enter upon the property for the purpose of making such legal, topographical and other surveys as the Purchasers reasonably deems necessary and be responsible for all survey costs associated with the transfer of the land and the subsequent development;
8. It is agreed that there is no representation, warranty, collateral agreement or condition affecting this agreement except as expressed herein.
9. Transfer of title shall be by deed without covenants prepared by the Vendor's solicitor at the Vendor's expense. The Vendor shall not provide a warranty of title except that it has done nothing to encumber the property.

Notices

10. All notices hereunder shall be in writing and shall be delivered either personally or by facsimile transmission, addressed to the parties as follows:
- To the Purchaser: The Amherst Lions Club
 Amherst, NS
- To the Vendor: The Chief Administrative Officer
 The Town of Amherst
 P.O. Box 516 Amherst, NS B4H 4A1

Time

11. Time shall in all respects be of the essence hereof provided that the time for doing or completing any matter provided for herein may be extended or abridged by an agreement in writing signed by the Vendor and the Purchaser or by their respective solicitors who are hereby expressly appointed in this regard. Furthermore, it is acknowledged by both parties that notwithstanding the closing date of July 6, 2016 it is the intention of both parties to have the closing as soon as possible.

Tender of Money

12. Any tender of documents or money hereunder may be made upon the Vendor or the Purchaser or the respective solicitors on the date of closing. Money may be tendered by bank draft or cheque certified by a Canadian chartered bank or trust company.

Telefacsimiles and Reproduction

13. The Vendor and Purchaser agree that this offer to purchase when executed and the executed acceptance thereafter may be communicated by telefacsimile and that such agreement shall be legal and binding upon the parties hereto. The Vendor and Purchaser further agree that reproduction of signatures by telefacsimile will be treated as originals.

Governing Law

14. This agreement shall be governed by and interpreted in accordance with the provisions of the laws of the Province of Nova Scotia.

Binding

15. This agreement shall be binding upon and enure to the benefit of the Vendor and Purchaser and their respective heirs, executors, administrators, successors and assigns, except as otherwise herein provided.

Headings

16. Section headings herein are for ease of reference only and shall not be considered as part of this agreement.

THIS AGREEMENT executed by the Purchaser this _____ day of _____, 2016, at Amherst, Nova Scotia

5.7. Lease Agreement - Cumberland Public Libraries HQ (2352)

Moved By: Councillor Frank Balcom

Seconded By: Councillor David March

That Council approves entering into a formal lease agreement with Cumberland Public Libraries Board for space upstairs in the Four Fathers Memorial Library building (21 Acadia Street), and authorize the Mayor and CAO to sign the agreement on behalf of the Town

Motion Carried

THIS LEASE made this ____ day of _____, 2016

BETWEEN:

THE TOWN OF AMHERST (Hereinafter referred to as the "Landlord")

- and -

CUMBERLAND REGIONAL LIBRARY (Hereinafter referred to as the "Tenant")

WITNESSES AS FOLLOWS:

Article 1 - Basic Terms and Definitions

1.1 Basic Terms

- (a) Landlord: Town of Amherst
Address: 98 East Victoria Street, Amherst, Nova Scotia, B4H 1X6
- (b) Tenant: Cumberland Regional Library
Address: Amherst, Nova Scotia
- (c) Building: 21 Acadia Street, Amherst, Nova Scotia
- (d) Premises: 2nd Floor, (approx.. 2191 of floor area), 21 Acadia Street, Amherst, NS
- (e) Leased Premises: 1866 sq. ft. of Dedicated Space together with a shared area equalling 1012 Sq. Ft. of Shared Space. The Tenant shall pay 100% of the Rent and Operating Costs of the Dedicated Space and 28.7% of the Rent and Operating Costs of the Shared Space (325 sq. ft.). The Landlord and Tenant covenant that the calculated Tenant's share of the Operating Costs of the Building is 16.2% and which percentage shall not be subject to arbitration. The Landlord's estimation of the Tenant's share of Operating costs is attached hereto as Schedule "C".

- (f) Term: The Lease term is six years. The Tenant may extend the Lease for a further Six Year Term in accordance with the Renewal Provisions in Section 2.6

Commencement Date: April 1, 2016

End of Term: March 31, 2022

- (g) Rent: Base Rent

<u>Period</u>	<u>Per Sq.Ft./Year</u>	<u>Per Year</u>	<u>Per Month</u>
Apr 1/16 – Mar 31/17	\$6.00	\$13,146.00	1,095.50

- (h) Permitted Use: Administrative offices, education classrooms, Common Area and Shared Space of the Tenant.
- (i) Lease Year: The Lease Year runs from April 1st of each year to March 31st of the next year.
- (j) Termination - Either party may terminate the Lease with cause upon ninety (90) days' notice in writing.
- (k) HST: HST shall be paid in addition to Rent, Operating Costs and Janitorial Costs.
- (l) Schedules Forming Part of this Lease:
 Schedule "A" – Plan of Leased Premises
 Schedule "B" – Monthly Lease Costs
 Schedule "C" - Leased Space Calculation

1.2 Definitions

In this Lease, the following terms have the following respective meanings:

- (a) "Building" means the building located at the address set out in Section 1.1(d);
- (b) "Common Areas" means those areas of the Building which serve or are for the benefit of all tenants of the Building and includes the lobby and entrances;
- (c) "Leased Premises" means that portion of the second floor as shown on Schedule A including the Shared Space;
- (d) "Operating Costs" means the cost of heating and air-conditioning the Premises, providing electric power, hot and cold running water, solid waste removal, sewage charges, snow removal, a monitored security system and repairs and maintenance; and
- (e) "Shared Space" means the area on the second floor of the Building to be shared between the Tenant and CAN-U (or its successors) including the kitchen, the washrooms, plus emergency use of the south end stairwell and the corridor and stairwell by the kitchen, marked as shared on Schedule "A";
- (f) "Leased Premises" means that portion of the Building illustrated in Schedule "A" to be occupied by the Tenant including the Shared Space and Dedicated Space;
- (g) "Dedicated Space" include that part of the second floor west of the CAN-U premises and the washroom as denoted on Schedule "A"; and

Article 2 – Possession and Terms

2.1 Demise

In consideration of the rents, covenants and agreements hereinafter reserved and contained on the part of the Tenant to be paid, observed and performed, the Landlord demises and leases to the Tenant, and the Tenant rents from the Landlord, the Leased Premises.

2.2 Measurement

The Landlord and Tenant acknowledge that the area of the Leased Premise and the Shared Space are as set out in the Lease and that the percentage of Operating Costs payable by the Tenant are agreed by the parties hereto and that they are not subject to change or amendment.

2.3 Term

The Term shall commence on the Commencement Date, run for the period set out in Section 1.1(f) and end on the date set out in Section 1.1(f), unless terminated earlier pursuant to this Lease.

2.4 Delay in Possession

Should the Tenant be delayed by any fault of the Landlord or any other reason (other than the fault of the Tenant) in taking possession of the Premises on the Commencement Date, then an only then shall the Commencement Date and the Term be postponed for the same number of days that the Tenant is delayed in taking possession of the Premises. Such postponement shall be full settlement of any claims the Tenant might have against the Landlord for such delay.

2.5 Over Holding

If, at the expiration of the initial Term or any subsequent renewal or extension, the Tenant shall continue to occupy the Premises without further written agreement, there shall be no tacit renewal of this Lease, and the tenancy of the Tenant thereafter shall be from month to month only and may be terminated by either party on one (1) months' notice. Rent and Operating Costs shall be payable as provided herein and the Lease in all other respects shall be as provided herein, so far as applicable, such monthly tenancy.

2.6 Renewal or Extension

The Tenant has the option to renew the Lease for one further Six (6) Year Term with terms identical to this Lease. The Tenant is obligated to give the Landlord notice in writing on or before the 1st day of January, 2022 of its intention to renew the Lease. Should the Tenant choose to renew this Lease, the Term shall commence on April 1st, 2022 for a term of six years, and end on March 31st, 2028.

Article 3 – Financial Requirements

3.1 Covenant to Pay

The Tenant covenants to pay the Rent and Operating Costs as provided in this Lease. The Rent and Operating Costs to be paid by the Tenant to the Landlord hereunder shall be paid without any deduction, set-off or abatement whatsoever, and the Tenant waives the benefit of any statutory or other right in respect of abatement or set-off in its favour at the time hereof or at any future time.

3.2 Monthly Lease

The Tenant covenants and agrees to pay, from and after the Commencement Date, to the Landlord at the office of the Landlord, in lawful money of Canada, without any prior demand, as annual Lease, the annual sum(s) set out in Schedule "B" in equal monthly installments in advance in the amounts set out in Schedule "B" on the first day of each and every month during the Term.

3.3 Operating Costs in Monthly Installments

In addition to the Rent reserved in favour of the Landlord, the Tenant shall, throughout the Term, pay to the Landlord, in lawful money of Canada, the Tenant's Proportionate Share of the Operating Costs of the building concurrently with the payment of Rent.

3.4 Realty Taxes

The Landlord acknowledges that there are no Real Property taxes assessable in regards to the Building.

3.5 Payment

Prior to commencement of each Lease Term, the Landlord shall estimate the amount of the annual Operating Costs for the facility and notify the Tenant in writing of such estimate, providing reasonable details as to the breakdown and calculation thereof. The amount so estimated shall be payable in equal monthly installments in advance on the first of each and every month over the Lease Term such that the Landlord will have in its hand an amount sufficient to pay each installment. At the end of each Lease Term, the Landlord shall re-estimate the amounts payable for the next Lease Term. In the event of a change, the Tenant shall pay in accordance with such estimates. The Tenant acknowledges that the estimated Operating Costs for the initial Lease Term is as set out in Schedule "B" annexed hereto.

3.6 Readjustment of Base Rent, Operating Costs and Janitorial

Annually, commencing on April 1, 2017, base rent, operating costs and janitorial costs as per Schedule "B" attached shall be increased by 1.5%.

3.7 Payment Method

The Landlord may, at any time and from time to time, require the Tenant to provide the Landlord either: (a) a series of monthly post-dated cheques, each cheque in the amount of the monthly installment of Rent and estimated Operating Costs; or (b) authorization and documentation required to automatically debit the Tenant's bank account for such amounts. Upon a change in the estimated Operating Costs, the Landlord may require a new series of monthly post-dated cheques or new authorization and documentation if required.

3.8 Rent Past Due

If the Tenant fails to pay any Rent or Operating costs when the same is due and payable, such unpaid amount shall bear interest at the rate of eighteen percent (18%) per annum (calculated monthly at the rate of one and one-half percent (1.5%) from the time such Rent becomes due until paid by the Tenant.

Article 4 – Control and Operation of Building**4.1 Building Operation and Repair**

The Landlord shall operate, maintain and repair the Building, its heating equipment and other service facilities to the extent required to keep the Building, equipment and facilities in a state of good repair and maintenance. For greater certainty:

- (a) The Landlord's obligations shall not extend to any matters that are the responsibility of the Tenant herein; and
- (b) The Landlord shall, at its own expense, promptly make all repairs to the Building necessitated by structural defect or weakness in the design or construction thereof, including, without limitation, the roof and roofing, windows, interior concrete slab floors and exterior walls, and the replacement of the elevator and heat pumps provided that any such repairs necessitated as a result of any wilful or negligent act or omission of the Tenant, its agents, servants, contractors, employees, or others for whom the Tenant is in law responsible shall be at the cost of the Tenant.

4.2 Water to Air Heat Pump Heating and Air Conditioning

The Landlord shall, subject to the provisions of the Lease, provide sufficient heating and air-conditioning which heating and air conditioning is supplied by water to air heat pumps to maintain a reasonable temperature in the Premises at all times except during the making of repairs, which repairs the Landlord covenants to make with reasonable diligence.

4.3 Tenant Requirements

If the use by the Tenant or the installation of partitions, equipment or fixtures by the Tenant necessitates the re-balancing of the climate control equipment in the Premises, such re-balancing will be performed by the Landlord at the Tenant's expense, upon demand.

4.4 Tenant's Responsibilities

The Tenant shall maintain the Dedicated Space of the Leased Premises to the same standard as at the commencement of the Lease term, reasonable wear and tear excepted. The Tenant shall be responsible for repairs and maintenance within the Dedicated Space. The Landlord may from time to time carry out required repairs and the cost of these repairs shall be 100% reimbursed by the Tenant to the Landlord within 30 days of the delivery of copies of the invoices for repairs and maintenance completed.

4.5 Use of Common Areas

The Tenant shall have the right of non-exclusive use, in common with others entitled thereto, for their proper and intended purposes, of those portions of the Common Areas intended for the Common use by tenants of the building. At all times, the Tenant, the employee of the Tenant, the students and teacher of the Tenant, and persons lawfully requiring communication with the Tenant, shall have access to the Building and the Leased Premises and use of the elevator only in accordance with the security requirements of the Landlord. The Common Areas shall at times be subject to the exclusive management and control of the Landlord. The Landlord reserves the right from time to time, to make changes to the building as the Landlord shall from time to time determine, subject to the obligations of the Landlord to the Tenant, subject to the requirements of the Tenant as agreed herein, and subject to adjustment of the Tenant's pro-rated share of Operating Costs.

4.6 Use of Shared Space

That Tenant's staff shall share space on the same floor as the Leased Premises as shown on Schedule "A" hereof with the staff of CAN-U (or its successor tenant). This Shared Space is the second floor washrooms, the hallway adjacent to the kitchen, janitorial closet, washrooms, the elevator and the stairway beside the kitchen.

4.7 Janitorial Services

The Tenant's share of Janitorial Costs shall be 25.290% as per Schedule "B" attached.

Article 5 – Use of Premises

5.1 Use of Premises

The Tenant acknowledges that the Premises will be used solely for the purpose set out in Section 1.1(h) and for no other purpose.

5.2 Observance of Law

The Tenant shall, at its own expense, comply with all laws, by-laws, ordinances, regulations and directives of any public authority having jurisdiction affecting the Leased Premises or the use or occupation thereof, including, without limitation, police, fire and health regulators and any requirements of the fire insurance underwriter.

5.3 Waste and Nuisance

The Tenant shall not do or suffer any waste, damage, disfiguration or injury to the Premises or permit or suffer any overloading of the floors, and shall not use or permit to be used any part of the Premises for any illegal or unlawful purpose.

Article 6 – Maintenance, Repairs and Alteration of the Premises

6.1 Maintenance and Repair of Premises

The Landlord shall maintain and keep in good condition and substantial repair, order and condition the Shared Space and Common Areas. All repairs shall be in all respects equal in quality and workmanship to the original work and materials in the Premises, and shall meet the requirements of all authorities having jurisdiction, as well as the insurance underwriters.

6.2 Inspection and Entry

The Landlord, its servants and agents shall be entitled to enter on the Leased Premises at any time on reasonable notice for the purpose of making repairs and shall work with the Tenant to accommodate the Tenant's use of the Leased Premises. The Landlord, its servants or agents may at any time from time to time on a reasonable prior notice (and without notice in the event of an emergency) enter the Leased Premises to remove and article or remedy and condition which, in the opinion of the Landlord, would be likely to lead to the cancellation of any policy of insurance. The Landlord, its servants and agents shall take responsible precautions and attempt to schedule the work so as not to unreasonably interfere with the operation of the Tenant's business, teaching or study, and so as to minimize interference with the Tenant's use and enjoyment of the Premises.

6.3 Repair Where the Tenant at Fault

If the Building, including the Premises, the elevators, controls, pipes and other apparatus (or any of them) used for the purpose of heating, ventilation or air-conditioning or operating the elevators, or if the pipes, electric lighting or other equipment of the building are put in a state of disrepair or become damaged or destroyed through the negligence, carelessness or misuse of the Tenant, its servants, agents, employees, or others for whom the Tenant is in law responsible to, the expense of the necessary repairs, replacements or alterations shall be borne by the Tenant, who shall pay the same to the Landlord forthwith on presentation of the invoices for the repair costs.

6.4 Signs

The Landlord shall permit the Tenant to install signs within the Leased Premises, related Common Areas, and public areas and in a visible location to be mutually agreed upon, between the parties hereto, to the building exterior. The size, shape, style and colours of the signs in the Shared Space, Common Areas or the exterior of the building, are subject to the approval of the Landlord acting reasonably.

6.5 Surrender of Premises

At the expiration or earlier termination of this Lease or the renewal as the case may be, the Tenant shall peaceably surrender and give up unto the Landlord vacant possession of the Premises in the same condition and state of repair as the Tenant is required to maintain the Premises throughout the Term.

Article 7 – Insurance and Indemnification

7.1 Indemnity by Tenant

The Tenant shall indemnify the Landlord and save it harmless from and against any and all loss, claims, actions, damages, liability and expense in connection with loss of life, personal injury and/or damage to property arising from or out of the occupancy or use by the Tenant of the Leased Premises or any part thereof, or due to or arising out of any breach by the Tenant of this Lease; provided however, that nothing herein contained shall constitute an indemnity by the

Tenant for the wilful and negligent acts of the Landlord, its servants, agents, employees, contractors, and others for whom the Landlord is responsible at law.

7.2 Tenant's Insurance

- (1) The Tenant shall, at its sole cost and expense, take out and maintain in full force and effect, at all times throughout the Term, the following insurance:
- (a) such insurance as the Tenant deems appropriate for the personal property in the Building owned by the Tenant;
 - (b) general liability insurance coverage for the Premises and the Shared Areas. Such policies shall be written on a comprehensive basis with coverage for any one occurrence or clam of not less than two million dollars (\$2,000,000) and proof of such insurance to be supplied with the signed Lease.

Article 8 – Assignment and Subletting

8.1 Assignment, Subletting

The Tenant shall not affect any Assignment, Transfer or Sublet without the prior written consent of the Landlord. Any Transferee may only use the Leased Premises for the uses permitted herein. No consent or other dealing shall relieve the Tenant from its obligation to pay Rent and to perform all of the covenants, terms and conditions herein contained. In the event of a Transfer, the Landlord may collect Rent and Operating Costs from the Transferee, Assignee, or Subtenant, and apply the net amount collected to the Rent hereunder. However, no such Transfer or collection from or acceptance of the Transferee as Tenant shall be deemed a waiver of this covenant.

8.2 No Advertising

The Tenant shall not advertise that the Premises or any part thereof is available for assignment or sublease or occupancy, and shall not permit any broker or other person to do so unless the text and format of such advertisement is approved in writing by the Landlord.

Article 9 – Quiet Enjoyment

The Tenant, on paying the Rent hereby reserved, and performing and observing the covenants and provisions herein contained on it part to be performed and observed, shall peaceably enjoy the Leased Premises for the Term.

Article 10 – Destruction or Damage to Building

During the Term, if and when the Building is destroyed or damaged by fire, lightning, or other perils, including malicious damage, or by a natural catastrophe or by any other casualty, the following provisions shall apply:

- (a) if the damage or destruction is such that the Building is rendered unfit for occupancy or it is impossible or unsafe to use and occupy it, and if, in either event, the damage, in the sole opinion of the Landlord, notice of which is to be given to the Tenant in writing within thirty (30) days of the happening of such damage or destruction, cannot be repaired with reasonable diligence within one hundred and eighty (180) days after the happening of such damage or destruction, or if thirty percent (30%) or more of the Rentable Area of the Building is damaged or destroyed, the Landlord may terminate this Lease by giving notice in writing to the Tenant. Should the Landlord terminate this Lease as hereinbefore provided, the Term demised shall cease and be at an end as of the date of such termination (or at the date of such destruction or damage if the Premises could not be used a result), and the rents and all other payments for which the Tenant is liable under the terms of this Lease shall be apportioned and paid in full to such date;
- (b) in the event that the Landlord does not so terminate this Lease under Section 10.2(a), or in the event of lesser damage, the Landlord shall, at its expense, repair the building to base building standards, and the Rent shall abate from the date of the happening of such damage or destruction until thirty (30) days after the Landlord has completed such repairs.
- (c) In performing any reconstruction or repair, the Landlord may effect changes in the building and its equipment and systems and minor changes in the location or area of the Premises; and
- (d) Notwithstanding anything else herein contained, in the event of damage or destruction occurring by reason of any cause in respect of which proceeds of insurance are substantially insufficient to pay for the costs of rebuilding the Building or the Premises or are not payable to or received by the Landlord, the Landlord may terminate this Lease on notice to the Tenant.

10.2 – Fitness for Occupancy

In the event of a dispute to the fitness for occupancy or as to the suitability of the Building and the Premises for the Tenant's business, the matter shall be submitted to an arbitrator in accordance with Article 12.4

Article 11 – Default

The following constitutes an Event of Default under this Lease:

- (a) to terminate this Lease by notice to the Tenant or to re-enter the Premises and repossess them and, in either case, the Landlord may remove all persons and property from the Premises and store such property in such manner as the Landlord sees fit without notice to the Tenant;
- (b) to enter the Premises as agent of the Tenant and to re-let the Premises for whatever length and on such terms as the Landlord, in its discretion, may determine, and to receive the rent therefore, and as agent of the Tenant, to take possession of any property of the Tenant on the Premises, to store such property of the Tenant at the expense and risk of the Tenant or to sell or otherwise dispose of such property in such manner as the Landlord sees fit without notice to the Tenant, and to make alterations to the Premises to facilitate its re-letting. The Landlord shall apply the proceeds of any such sale or re-letting first, to the payment of any expenses incurred by the Landlord with respect to any such re-letting or sale, second, to the payment of any indebtedness of the Tenant to the Landlord other than Rent, and third, to the payment of Rent in arrears, with the residue to be held by the Landlord and applied to payment of future Rent as it becomes due and payable; provided that the Tenant shall remain liable to the Landlord for any deficiency;
- (c) to remedy or attempt to remedy any default of the Tenant under this Lease for the account of the Tenant and to enter on the premises for such purposes. No notice of the Landlord's intention to remedy or attempt to remedy such default need be given to the Tenant unless expressly required by this Lease. The Landlord shall not be liable to the Tenant for any loss, injury or damages caused by acts of the Landlord in remedying or attempting to remedy such default, and the Tenant shall pay to the Landlord all expenses incurred by the Landlord in connection therewith;
- (d) the recovery from the Tenant all damages, costs and expenses incurred by the Landlord as a result of any default by the Tenant including, if the Landlord terminates this Lease, any deficiency between those amounts which would have been payable by the Tenant for the portion of the Term following such termination and the net amounts actually received by the Landlord during such period of time with respect to the Premises; and
- (e) to recover from the Tenant the full amount of the current month's Rent together with the next three (3) months' installment of Rent, all of which shall accrue on a day-to-day basis and shall immediately become due and payable as accelerated rent.

11.1 Distress

Notwithstanding any provision of this Lease or any provision of applicable legislation, none of the goods and chattels of the Tenant on the Premises at any time during the Term shall be exempt from levy by distress for Rent arrears.

11.2 Costs

The Tenant shall pay to the all damages, costs and expenses (including, without limitation, all legal fees on a solicitor and client basis) incurred by the Landlord in enforcing the terms of this Lease, or with respect to any matter or thing which is the obligation of the Tenant under this Lease, or in respect of which the Tenant has agreed to insure or to indemnify the Landlord.

11.3 Remedies Cumulative

Notwithstanding any other provision of the Lease, the Landlord may from time to time resort to any or all of the rights and remedies available to it in the event of any default hereunder by the Tenant, either by any provision of this Lease or by statute or common law, all of which rights and remedies are intended to be cumulative and not alternative. The express provisions hereunder as to certain rights and remedies are not to be interpreted as excluding any other or additional rights and remedies available to the Landlord by statute or common law.

Article 12 – General

12.1 Force Majeure

Notwithstanding any other provision contained in this Lease, in the event that either the Landlord or the Tenant should be delayed, hindered or prevented from the performance of any act required hereunder by reason of any unavoidable delay, including strikes, lockouts, unavailability of materials, inclement weather, acts of God or any other cause beyond its reasonable care and control, but not including insolvency or lack of funds, performance of such act shall be postponed for a period of time equivalent to the time lost by reason of such delay. The provisions of this Section 12.2 shall not, under any circumstances, operate to excuse the Tenant from prompt payment of Rent and other charges payable under this Lease.

12.2 Effect of Waiver or Forbearance

No waiver by any party of any breach by any other party of any of its covenants, agreements or obligations in this Lease shall be or be deemed to be waiver of any subsequent breach thereof or the breach of any other covenants, agreements or obligations, nor shall any forbearance by any party to seek a remedy for any breach by any other party be a waiver by the party so forbearing of its rights and remedies with respect to such breach or any subsequent breach. The subsequent acceptance of Rent by the Landlord shall not be deemed a waiver of any preceding breach by the Tenant of any term, covenant or condition regardless of the Landlord's knowledge of such preceding breach at the time of the acceptance of such Rent.

12.3 Notices

Any notice required or contemplated by any provision of this Lease shall be given in writing and addressed, in the case of the Landlord, to it at the address noted in Section 1.1(a) and in the case of the Tenant, to it at the address noted in Section 1.1(b), and delivered or sent by facsimile or by prepaid courier or by registered mail, postage prepaid, return receipt requested. The time of receipt of such notice, if mailed, shall be conclusively deemed to be the third business day after the day of such mailing unless regular mail service is interrupted by strikes or other irregularities. Such notice, if delivered or sent by facsimile, shall be conclusively deemed to have been received at the time of such delivery or the time of sending by facsimile.

12.4 Arbitration

Any disputes concerning the interpretation or application of this agreement, including but not limited to the calculation of Operating Costs, shall be settled by the arbitration, of a single arbitrator appointed jointly by the Chief Administrative Officers of the parties hereto. If the parties are unable to agree on a single arbitrator, then either party may apply to a judge of the Supreme Court of Nova Scotia for the appointment of an arbitrator. The arbitrator so appointed, shall carry out such inquires and hold such hearings that he/she deems appropriate. The cost of the arbitrator shall be paid equally by the parties hereto. No costs shall be awarded by the arbitrator. The provisions of the Commercial Arbitration Act of Nova Scotia shall apply to any arbitration pursuant to the terms of this agreement.

12.5 Entire Agreement

There are no covenants, representations, warranties, agreements or other conditions expressed or implied, collateral or otherwise, forming part of or in any way affecting or relation to this Lease, save as expressly set out or incorporated by reference herein. This Lease constitutes the entire agreement duly executed by the parties, and no amendment, variation or change to this Lease shall be binding unless the same shall be in writing and signed by the parties.

12.6 Time of the Essence

Time shall be of the essence of this Lease and every party thereof:

12.7 Successors and Assigns

All rights, advantages, privileges, immunities, powers and things hereby secured to the Landlord and to the Tenant shall be secured to and exercisable by their successors and permitted assigns, as the case may be, and all covenants, liabilities and obligations entered into or imposed hereunder upon the Landlord and the Tenant shall be equally binding upon their successors and permitted assigns, as the case may be.

Signed Sealed and Delivered**Schedule "A"**

(a drawing of the space)

Schedule "B"

	<u>Monthly Lease Costs</u>
<u>Space Calculation</u>	
Basic space using HO needs and current configuration.	1866sf
Shared Space (washrooms, staffroom, elevator, corridor)	325sf
(Based on 28.7% of total shared with Lib. HO –	1133sq ft
Total 2ndFloor space is 6500sf)	
Total square feet leased	2191sf
Lease rate	\$6.00sf
Basic lease	<u>\$13,146</u>

Share of operating cost calculation

Gross Building area	13350sf
Library HO Area	2191sf
HO share of floor area	16.2%

Operating cost for building based on 2014 \$57,994
(Includes Power, Maintenance, Insurance, Solid Waste
And Snow Removal)

Library HO Share at 16.2% \$9,395

Janitorial for Library HO

Gross Library Space	8696sf
Library HO Space	219 sf
HO Share of Janitorial Service	25.2%

Janitorial costs for Library
(\$375 @ 52 weeks) \$19,500

HO Share of Janitorial at 25.2% \$ 4,895

Total Lease and Operating Costs \$27,437

Monthly Lease Costs \$ 2,286.42 + HST

Schedule "C"

Leased Space Calculation

Library HO Lease Space Calculation

Basic Space

Offices	1775SF
Office behind kitchen (storage)	91SF
Shared Space	325SF
	<u>2191SF</u>

Shared Space

Washrooms, staffroom, corridor	1064SF
Elevator	69SF
	<u>1133SF</u>

Basic Space 1866SF
Shared Space 325SF = 1133SF x **28.7%**

Calculation of HO Share of Operating Costs

First Floor Gross Floor Area	6850SF
Second Floor Gross Floor Area	6500SF
Total Gross Floor Area of Building	13350SF
HO Floor Area	2191SF = 28.7% of 2nd floor
HO Share of total Floor Area	2191/13350 = 16.2%

Projected Operating Cost for Building based on 2014 actuals

Electric	\$ 40,366.00
Snow Removal	\$ 600.00
Solid Waste Pick up	\$ 2,700.00
Insurance	\$ 3,100.00
Building Maintenance	\$ 11,228.00
Materials/Repairs	
Elevator	
Heat Pumps	
H Vac	
Sprinkler	

Total Annual Operating Costs \$ 57,994.00

5.8. Minto Street - Quit Claim Deed (2675)

**Moved By: Councillor Robert Bird
Seconded By: Councillor Lisa Emery**

That Council approves a Quit Claim Deed for the property located at 7 Minto Street and authorize the Mayor and CAO to sign the document on behalf of the Town

Motion Carried

THIS INDENTURE OF QUIT CLAIM DEED made this ____ February, A.D. 2016.

BETWEEN:

day of

TOWN OF AMHERST, being a municipal corporation in the Province of Nova Scotia,
(Hereinafter called the "GRANTOR") Of the One Part,

-and-

ELIZABETH ANN O'BRIEN, of Amherst in the County of Cumberland and Province of Nova Scotia,
(Hereinafter called the "GRANTEE")
Of the Other Part,

WHEREAS, by title search and survey inspection recently undertaken, it has been determined that the Town of Amherst has held registered title to the lands described in Schedule "A" attached hereto since tax sale proceedings executed in 1954, however, throughout the years, the said lands have been used and occupied by the GRANTEE and her predecessors in title as a part of the property bearing Civic Address 7 Minto Street In the Town of Amherst (PID 25024191).

WITNESSETH THAT for and in consideration of the sum of One Dollar (\$1.00) of lawful money of Canada deemed hereby to have been paid by the GRANTEE to the GRANTOR, the GRANTOR hereby quits claim to the GRANTEE the property described in Schedule "A" attached hereto.

In this Quit Claim Deed and any attachments thereto the masculine gender and the singular context shall be construed to read in the feminine gender and/or plural context wherein the context so requires.

IN WITNESS WHEREOF the Town of Amherst has signed and sealed these Presents by the hands of its officers duly authorized and under its corporate seal.

SIGNED, SEALED AND DELIVERED

In the presence of:

) TOWN OF AMHERST
)
)
) Per: Robert Small, Mayor
)
)
) Per: _____
) Gregory Herrett,
) Chief Administrative Officer

SCHEDULE "A"

ALL that lot of land in the Town of Amherst of the County of Cumberland and Province of Nova Scotia, bounded and described as follows:

BEGINNING at the northerly margin of Minto Street at the southwesterly corner of land already owned by William Irvin Taylor,

THENCE northerly along Taylor's land 100 feet or until it comes to lands lately conveyed by the said Allan A. Clarke to the said Edgar Fillmore;

THENCE westerly along the line of said lands in a course parallel with Minto Street 46 feet until it comes to other lands lately conveyed by the said Allan A. Clarke to the said Edgar Fillmore;

THENCE southerly parallel with the first mentioned line 100 feet until it comes to Minto Street;

THENCE easterly along Minto Street 46 feet to the place of beginning.

BEING AND INTENDED TO BE the lot of land conveyed by Allan A. Clarke and Spouse and Edgar Fillmore and Spouse to William Irvin Taylor by Warranty Deed dated the 16th day of March, A.D., 1907, and registered at the Registry of Deeds Office for the County of Cumberland, Province of Nova Scotia, on the 24th day of June, A.D., 1907, in Book 86, at Pages 113-115.

SAVING AND EXCEPTING therefrom however, the following portion thereof conveyed by the Town of Amherst to William E. Marks by Tax Deed dated the 26th day of November, A.D., 1955, and registered at the Registry of Deeds Office for the County of Cumberland aforesaid in Book 278, at Page 22:

ALL that certain lot or parcel of land situate in Amherst in the County of Cumberland in the Province of Nova Scotia and lying on the Northerly side of Minto Street and bounded and described as follows:

BEGINNING at the southeasterly corner of land owned by William E. Marks;

THENCE running in a northerly direction along the easterly boundary of the said William E. Marks land a distance of 100 feet;

THENCE at right angles in an easterly direction a distance of 30 feet or until it reaches the northwesterly corner of lands owned by Charles Paris;

THENCE in a southerly direction along the westerly line of the said Charles Paris land a distance of 100 feet to the westerly margin of Minto Street;

THENCE in a westerly direction along Minto Street a distance of 30 feet or to the place of beginning.

5.9. CCL Proposal for CEN (2216)

Moved By: Councillor David March

Seconded By: Councillor George Baker

That Council approve in principle a funding formula for participation in the Community Enterprise Network (CEN) as proposed by Cumberland County Life (CCL) whereby costs are allocated as follows:

a) Town of Oxford \$10,000

b) Town of Parrsboro \$10,000

c) The costs to be assigned to the County of Cumberland and the Town of Amherst be allocated on a weighted average basis with 50% of the weight being assigned to commercial assessment and 50% of the weight being assigned to population

Further, that the Town agrees to the employment restrictions as proposed by the County of Cumberland that the office of the CEN will be located in the Community Credit Union Business and Innovation Centre and that the Town of Amherst will provide office space and accounting support in addition to the direct financial contribution; and

That Council's final financial approval will be subject to final approval of a contribution agreement among all parties.

Motion Carried

6. INFORMATION / DISCUSSION ITEMS

7. INTERNAL COMMITTEE REPORTS

7.1. Amherst Youth Town Council (2752)

Connor Scott, Junior Deputy Mayor presented the report included in the agenda on behalf of the Amherst Youth Town Council.

8. EXTERNAL COMMITTEE REPORTS**8.1. Cumberland Public Libraries (2753)**

Councillor Balcom presented the Cumberland Public Libraries Board report included in the agenda, and addressed comments and enquiries from Council. He said the Province will provide the same amount of funding to the Library Boards for the 2016-17 fiscal year. The Town is not expecting any significant increase or decrease in funding for the library this year. Councillor Baker asked if there is an opportunity to send surplus books left over from the annual book sales to less fortunate countries.

8.2. Cumberland YMCA (2754)

Councillor Bird presented the report included in the agenda on behalf of the Cumberland YMCA Board and addressed comments and enquiries from Council.

8.3. Cumberland Joint Services Management Authority (2755)

Deputy Mayor Rhindress presented the report included in the agenda on behalf of the CJSMA.

8.4. Northern Region Solid Waste Committee (2756)

Councillor Baker presented the report included in the agenda on behalf of the Northern Region Waste Resource Committee and addressed comments and enquiries from Council.

9. ADJOURNMENT

Moved By: Deputy Mayor Terry Rhindress

Seconded By: Councillor David March

To adjourn at 7:50 PM

Gregory D. Herrett, CPA, CA
Town Clerk and CAO

Robert Small
Mayor