



The Village of
PORT CLEMENTS
"Gateway to the Wilderness"

36 Cedar Avenue West
PO Box 198
Port Clements, BC
V0T1R0
OFFICE :250-557-4295
FAX :250-557-4568
Email : cao@portclements.ca
Web : www.portclements.ca

AGENDA

Regular Meeting of Council Monday July 4, 2016

COUNCIL CHAMBERS – 7pm

- 1. ADOPT AGENDA.**
- 2. PETITIONS, DELEGATIONS & OPENING OF SEALED TENDERS**
T-1 – Recommendation to Council for Water Study RFP
- 3. MINUTES**
M-1- June 20, 2016 Regular Council meeting minutes
- 4. BUSINESS ARISING FROM THE MINUTES & UNFINISHED BUSINESS**
- 5. ORIGINAL CORRESPONDENCE**
C-1 – Clint Campbell – privacy fence request
C-2 – Port Clements Historical Society – approval of grant
C-3 – Legal Options re: Cemetery
- 6. GOVERNMENT**
- 7. FINANCE**
F1 – Cheque Listing to June 29, 2016
- 8. NEW BUSINESS**
- 9. REPORTS & DISCUSSIONS**
- 10. ACTION ITEMS**
- 11. QUESTIONS FROM THE PUBLIC & PRESS**
- 12. ADJOURNMENT**



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Minutes of the regular meeting of the Port Clements Council held June 20, 2016 in Council Chambers.

Present:

Mayor Gould
Councillor Daugert
Councillor Cunningham
Councillor O'Brien Anderson

CAO Kim Mushynsky
Superintendent of Public Works Sean O'Donoghue

Mayor Gould called the meeting to order at 7:05 p.m.

1. ADOPT AGENDA.

2016-150 – Moved by Councillor Daugert, seconded by Councillor O'Brien Anderson
THAT Council adopts the agenda as presented.

CARRIED

2. PETITIONS, DELEGATIONS & OPENING OF SEALED TENDERS.

3. MINUTES.

M-1– June 6, 2016 Regular Council Meeting

2016-151 – Moved by Councillor Cunningham, seconded by Councillor O'Brien Anderson
THAT Council adopts the June 6, 2016 Regular Council meeting minutes as presented.

CARRIED

M-2 – May 12, 2016 Tourism Committee Minutes

2016-152 – Moved by Councillor Cunningham, seconded by Councillor O'Brien Anderson
THAT Council receives the May 12, 2016 Tourism committee minutes as presented.

CARRIED

4. BUSINESS ARISING FROM THE MINUTES & UNFINISHED BUSINESS.

UB-1 – Haida Gwaii CoAst – Enbridge extension

2016-153 – Moved by Councillor Daugert, seconded by Councillor Cunningham

THAT Council reaffirms the position in initially took in 2010 stating that Port Clements stands unified with the rest of Haida Gwaii against the proposed Enbridge Gateway project introducing tankers to the waters around Haida Gwaii, thus creating the potential for risk to our communities and habitat AND that therefore we do not support a 3 year extension on the application.

CARRIED

UB-2 – UBCM – Report to Council

2016-154 – Moved by Councillor Cunningham, seconded by Councillor Daugert
THAT Council receives the UBCM report.

CARRIED

5. ORIGINAL CORRESPONDENCE

C-1 – Cedarview Request for Grant

2016-155 – Moved by Councilor Cunningham, seconded by Councilor O'Brien Anderson
THAT Council approves this request.

CARRIED

C-2 – Port Clements Tourism Committee – request for authorization to apply to Gwaii Trust for funding

2016-156 – Moved by Councilor Cunningham, seconded by Councilor O'Brien Anderson

THAT Council authorizes the CAO to apply to Gwaii Trust for funding to support the tourism road map initiative.

CARRIED

6. GOVERNMENT

G-1 – Policy #13 – Flag Protocol

2016-157 – Moved by Councilor Cunningham, seconded by Councilor O'Brien Anderson

THAT Council adopts policy #13 with the following two amendments – add veterans to item #14 and change the exceptional circumstances authorization to read Mayor or Deputy Mayor and not Chief Administrative Officer.

CARRIED

7. FINANCE

F-1 – 2015 Annual Report

2016 – 158 - Moved by Councilor Cunningham, seconded by Councilor Daugert

THAT Council receives the 2015 Annual Report.

CARRIED

F-2 – Cheque Listing to June 15, 2016

2016-159 – Moved by Councilor Cunningham, seconded by Councilor O'Brien Anderson

THAT Council receives the June 15 cheque listing.

CARRIED

F-3 – May 2016 CIBC Statement

2016-160 – Moved by Councilor O'Brien Anderson, seconded by Councilor Cunningham

THAT Council receives the May 2016 CIBC statement.

CARRIED

F-4 – May 2016 NSCU Statement

2016-161 – Moved by Councilor Cunningham, seconded by Councilor O'Brien Anderson

THAT Council receives the May 2016 NSCU statement.

CARRIED

8. NEW BUSINESS

NB-1 – Community Forest Discussion Paper

2016-162 – Moved by Councilor Cunningham, seconded by Councilor O'Brien Anderson

THAT Council receives the Community Forest paper prepared by Councilor Daugert.

CARRIED

NB-2 – Chevron Property Report

Council had a brief discussion about this property and gave the Administrator direction to gather more information for future discussion.

9. REPORTS & DISCUSSIONS

Mayor Gould – SQCRD mtg, Gwaii Trust Vibrant Communities mtg.

Councilor Daugert – Rod & Gun Club event

Councilor Cunningham – Community Park concerns, derelict property concerns, Ruralcom concerns, relay race attendance

Councilor O'Brien Anderson – logger sports & Community Hall dance

CAO Mushynsky – Ruralcom concerns, complaints received regarding people cleaning deer at boat launch and leaving offal there.

Public Works Superintendent O'Donoghue – Community Park, Sunset Park, Biomass, Industrial Road, Small Craft Harbour, Water.

10. ACTION ITEMS

11. QUESTIONS FROM THE PUBLIC & PRESS

2016-163 – Moved by Councilor Daugert, seconded by Councilor Cunningham
THAT Council amends the agenda to include a move to in-camera.

CARRIED

2016-164 – Moved by Councilor Cunningham, seconded by Councilor Daugert
THAT Council moves to in-camera per CC Section 90(1)(c) at 9:40pm

CARRIED

ADJOURNMENT

2016-165 – Moved by Councilor Daugert, seconded by Councilor Cunningham
THAT the meeting be adjourned at 9:45pm.

CARRIED

Ian Gould
Mayor

Kim Mushynsky
CAO

MI

MI

June 8th, 2016

To:
Council of Port Clements
Village of Port Clements
PO BOX 198
36 Cedar Avenue West
Port Clements, BC
V0T 1R0

Dear Sir and Madam,

With this letter, I would like to propose permit to build privacy fence, for height 3 Meter (9 Feet 10.11 Inch), on my property no.20 Jasper, Port Clements, BC, V0T 1R0.

This fence will be built in between property line of ours with our neighbour No.24 Jasper, Port Clements, BC, V0T 1R0.

Thank you very much.

Regards,


Clinton Campbell

Section 4.3 (1) of Zoning Bylaw #184 states that a fence shall not "exceed 2.0 metres in height except for public safety and security reasons"....



PORT CLEMENTS HISTORICAL SOCIETY

P.O. Box 417 Port Clements
British Columbia Canada V0T 1R0

250.557.4576

pcmuseum@qcislands.ca

www.portclementsmuseum.ca

Village of Port Clements
PO Box 198
Port Clements, BC
V0T 1R0

June 20, 2016

Dear Village Council;

As we enter into the tourism season for 2016 the Historical Society once again will be operating the Tourist Information Center for Port Clements. The information center was very active last year with a record number of visitors between it and the museum.

Already this season has started with numbers surpassing the records set in 2015. Most popular questions so far this year are: Where is the Golden Spruce sapling, how to find the golden spruce trail, where to eat, and where can we fish!

The Historical Society greatly appreciates the \$1,800.00 received from the Tourism budget last year and would like at this time to request the same amount in support of running the Port Clements Tourist Information Site for 2016.

Thank you for your support.

Yours truly,

Shel Fjaagesund
President,
Port Clements Historical Society

MEMORANDUM

DATE: June 29, 2016
TO: Kim Mushynsky, CAO, Village of Port Clements
FROM: Madelaine Campbell, Stewart McDannold Stuart
RE: Vyse Estate Cemetery Lands
Our file 218 037

You have asked us to outline the steps that the Village of Port Clements (the "Village") may have to take in order to have the cemetery currently registered in the name of William Vyse (the "Deceased") transferred to the Village. This memorandum has been prepared for the Village and Council and should not be taken by any other person as legal advice.

In order for the Village to acquire the cemetery, either a living heir of the Deceased or the Public Guardian and Trustee will have to apply to the court to be appointed as the Deceased's personal representative. In carrying out his or her duties as personal representative and distributing the estate's remaining assets (the cemetery) to its beneficiaries, the personal representative might elect to sell the cemetery to the Village and transfer the proceeds to the beneficiaries. He or she might also decide to transfer title to the beneficiaries, who might then agree to transfer it to the Village. Because the questions raised by the circumstances of this case involve complicated matters in the law of wills and estates, we retained the law firm specializing in wills and estates to provide us with preliminary advice on work involved in distributing an intestate estate like the Deceased's, their advice has assisted us in formulating this letter.

1. History

When the Deceased died in 1960 without a will, his brother applied for the letters of administration of the Deceased's estate. This application listed all of the Deceased's personal and real property and all of the heirs to whom the property would pass; the cemetery was not included in this application. The Deceased's estate was divided into six equal shares and distributed amongst his living relatives (two brothers, three sisters, and one niece).

We know that the Deceased has at least one living descendent (or "intestate successor") who is entitled to the cemetery – his great-nephew ("Mr. E") who is now 70 years old. The Deceased may have other intestate successors, however we do not have any information on their existence or whereabouts.

2. Preliminary Matters

(a) The cemetery has not escheated

On Friday, April 1, 2016, we spoke with a solicitor with the Province of British Columbia who has had some involvement in this file. She confirmed that because the Deceased has an intestate successor who is entitled to the cemetery, it has not escheated to the Province under the *Escheat Act*.

(b) The cemetery cannot be seized via tax sale

We have determined that the Village cannot bring the cemetery to annual tax sale under the provisions of the *Local Government Act*. This is because under section 220(1)(g), land used and occupied for interment of the dead is exempt from municipal property taxes. Accordingly, the cemetery has never been subject to tax and therefore has never been the subject of a tax sale.

(c) The Director under CIFSA cannot establish a “care fund”

The *Cremation, Interment and Funeral Services Act* (CIFSA) governs the operation and care of cemeteries (“land that is set apart or used as a place of burial of human remains or cremated remains and includes any incidental or ancillary buildings on the land”) in BC. Consumer Protection BC (called the “Director” in CIFSA) has been delegated the authority to administer the provisions of CIFSA. CIFSA provides that the Director must approve of any transfers of title to a cemetery. The Director also has the power to require that care funds be established and used to maintain certain neglected cemeteries.

On May 17, 2016, we spoke with a representative from Consumer Protection BC who informed us that once a personal representative is appointed to distribute the cemetery, Consumer Protection BC would consider approving a transfer to the Village. The representative also informed us that because care funds must be established by the operator of a cemetery (the Deceased in this case), and because no care fund was ever established for the cemetery, Consumer Protection BC cannot now require that a care fund be established to maintain the cemetery.

3. Appointing a new personal representative and administering the estate

Based on our research and consultations with the firm we retained, the first step in having title to the cemetery transferred to the Village would be to ask Mr. E to make an application to the Supreme Court of British Columbia under Rule 25-12(1.2) of the Supreme Court Civil Rules to be appointed as the Deceased’s personal representative. The Village cannot apply to be appointed personal representative, as this would constitute a conflict of interest.

As mentioned earlier, the Deceased died without a will (intestate) and his brother was appointed by the Court to administer the estate as his personal representative. When a personal representative dies and leaves part of the estate (like the cemetery) unadministered a new personal representative must be appointed and a grant in respect of the unadministered estate must be issued to the new personal representative so the administration can be completed. The application must be made to the BC Supreme Court in accordance with the Supreme Court Civil Rules. Under Rule 25-14(1.2), if a deceased’s personal representative dies, a person may apply to be substituted as the personal representative by filing:

- (a) a copy of the death certificate of the personal representative (the Deceased’s brother);

- (b) an affidavit setting out the request to be substituted as the personal representative and specifying the right to be appointed as a personal representative on the basis that the person is entitled to apply for administration of the estate in accordance with section 130 of the *Wills, Estates and Succession Act*; and
- (c) an affidavit confirming delivery of the affidavit referred to in paragraph (b) to every person who was entitled to notice under the original application.

Under section 130 of the *Wills, Estates and Succession Act* (WESA), the following persons may apply to administer the estate of an intestate deceased:

- an intestate successor (a person entitled to the estate of the deceased person) other than the spouse or child of the deceased person, having consent of the intestate successors representing a majority in interest of the estate, including the intestate successor who applies for the grant of administration;
- an intestate successor other than the spouse or child of the deceased person, not having the consent of the intestate's successors representing a majority in interest of the estate, including the intestate successor who applies for a grant of administration; and
- any other person the court considers appropriate to appoint including, without limitation, and subject to the public guardian and trustee's consent, the public guardian and trustee

So in this situation, Mr. E could apply to be the personal representative who would administer the estate as he is an intestate successor. Mr. E would have to file an affidavit confirming delivery of his affidavit requesting to be appointed personal administrator to each person who was entitled to notice under the original application (made by the Deceased's brother in 1960). In this case, the Deceased's intestate successors (his brothers, sisters, and the children of his dead brothers and sisters) were entitled to notice.

For a new application, notice will have to go to the same individuals or their successors; (the Deceased's brothers', sisters', and niece's children, if any). Giving these individuals notice could be one of the more time consuming and costly parts of the application, and is further complicated by the fact that many of the Deceased's intestate successors lived in Australia and the United Kingdom at the time of his death. We have been advised that the Village would be advised to retain a private investigator to ascertain the whereabouts of the Deceased's intestate successors.

It will typically cost a few hundred dollars to have a private investigator find an individual in British Columbia. We have not yet looked into the cost to locate individuals in other countries. We have been advised that making an unopposed court application to appoint a personal representative and administrator typically costs between \$3,000 - \$3,500.

Public Guardian and Trustee

It may also be possible to make an application to the Public Guardian and Trustee of British Columbia (the "PGT") requesting that it act as the Deceased's personal representative to administer the estate. The PGT can administer an estate when an intestate successor, beneficiary or other eligible person is not able or willing to do so. The service is not free; the PGT will charge a capital commission of a minimum of \$3,500. They also charge \$75 per hour to locate, identify and prove heirs. Note, however, the PGT does not accept all applications for administration and according to its website it will not administer estates if the estimated gross value of the estate's assets are not sufficient to pay the PGT's fees. The value of the cemetery might not be sufficient to cover the PGT's fees, but we can still submit a referral form to the PGT to enquire whether it would be willing to act in this unique situation.

4. Distribution of the Cemetery

Under section 264 of the *Land Title Act*, if an individual becomes registered as the personal representative of a deceased owner of real property (like the cemetery) that person is vested with all of the title of the deceased owner. In this situation, once appointed personal representative, title to the cemetery would vest in the new personal representative. It would be up to the personal representative to elect whether he or she, acting in his or her capacity as trustee, would sell the cemetery or transfer title to the intestate successors. At this point it would be advisable to have the cemetery formally appraised in order to determine its true value.

If the personal representative elected to sell the cemetery (hopefully to the Village), the proceeds would be equally distributed amongst the intestate successors. If he or she did not sell it, then title would be transferred in equal shares to the Deceased's living (and located) intestate successors, who might elect to sell their shares to the Village. It is, of course, possible that the Deceased's intestate successors would want to keep their shares in the cemetery. Recall also that all transfers must be approved by the Director under CIFSA.

5. Conclusion

As we have discussed, acquiring the cemetery will not be a simple procedure, and (not including the cost, if any, to actually purchase the cemetery) may end up costing the Village upwards of \$10,000 in fees and costs or even more depending on how many possible intestate successors need to be found by the private investigator or the PGT. Another factor will be the number of affidavits and court applications involved. Furthermore, the personal representative will require legal representation throughout the process; he will not want to proceed unless the Village covers this cost.

We will look forward to hearing from you once you have had an opportunity to review and consider the contents of this memorandum.

Madelaine Campbell
MC/dw

VILLAGE OF PORT CLEMENTS

Cheque Listing For Council

Cheque					Invoice	Cheque
Cheque #	Date	Vendor Name	Invoice #	Invoice Description	Amount	Amount
160300	2016-06-17	AARON MARK SERVICES LTD		PAYMENT		304.34
			2070724	SMOKE DETECTOR	36.28	
			2070728	GUTTER MISC	268.06	
160301	2016-06-17	MUNICIPAL INFORMATION SYSTEMS INC		PAYMENT		305.98
			20160529	SOFTWARE SUPPORT	305.98	
160302	2016-06-17	TELUS COMMUNICATIONS INC.		PAYMENT		1,331.69
			20160429	PHONE BILL	1,331.69	
160303	2016-06-17	Black Press Group Ltd.		PAYMENT		327.99
			32887639	WHARF TENDER	177.79	
			32888018	WATER TENDER	150.20	
160304	2016-06-17	CUNNINGHAM , CHRISTINE		PAYMENT		1,013.68
			20160615	REFUND	1,013.68	
160305	2016-06-17	HAIDA GWAII FOREST PRODUCTS		PAYMENT		514.98
			2108	BIOMASS	514.98	
160306	2016-06-17	MasterCard, CUETS FINANCIAL		PAYMENT		5,959.67
			20160531	MAY M/C CHARGES	5,959.67	
160307	2016-06-17	Misty Isles Economic Development Society		PAYMENT		50.00
			319	TOURISM	50.00	
160308	2016-06-17	PORT CLEMENTS HISTORICAL SOCIETY & MUS		PAYMENT		4,000.00
			20160615	LOAN	4,000.00	
160315	2016-06-23	ESC Automation Inc.		PAYMENT		4,676.81
			15-3919-5	BIOMASS	4,676.81	
160316	2016-06-23	LGMA LOCAL GOVERNMENT MANAGEMENT AS		PAYMENT		208.95
			16609	JOB POSTING	208.95	
160317	2016-06-23	Stewart, McDannold, Stuart		PAYMENT		2,169.50
			73153	CEMETERY ISSUE	2,169.50	
160318	2016-06-23	Board of School Trustees		PAYMENT		2,387.83
			1516-120	UTILITIES	2,387.83	
160319	2016-06-23	RECEIVER GENERAL - CRA		PAYMENT		4,295.56
			201606	JUNE REMITTANCE	4,295.56	
160320	2016-06-23	ROBINSON, DONALD/EVELYN		PAYMENT		94.50
			2016010	BIOMASS FUEL	94.50	
160321	2016-06-23	Wright, Keirnan		PAYMENT		280.00
			21062016	CAMPGROUND ATTENDANT	280.00	
160322	2016-06-29	Bell-Brown, Cliff		PAYMENT		601.25
			3412	R&M SCH	601.25	
160323	2016-06-29	BLUE CROSS		PAYMENT		1,028.12
			371219	JULY PREMIUM	1,028.12	
160324	2016-06-29	Fink Machine Inc.		PAYMENT		12,559.46
			2052	HOLD BACK ON BOILER	12,559.46	
160325	2016-06-29	PORT CLEMENTS HISTORICAL SOCIETY & MUS		PAYMENT		100.00
			GC-100	APPRECIATION	100.00	

VILLAGE OF PORT CLEMENTS

Cheque Listing For Council

2016-Jun-29
9:56:50AM

Cheque					Invoice	Cheque
Cheque #	Date	Vendor Name	Invoice #	Invoice Description	Amount	Amount
160326	2016-06-29	WEIGUM, SHIRLEY	31801	PAYMENT JUNE JANITORIAL	1,175.00	1,175.00

Total 43,385.31

*** End of Report ***