

HALIFAX REGIONAL MUNICIPALITY

HALIFAX REGIONAL COUNCIL MINUTES June 14, 2011

PRESENT: Mayor Peter Kelly
Councillors: Steve Streach
Barry Dalrymple
David Hendsbee
Lorelei Nicoll
Gloria McCluskey
Darren Fisher
Bill Karsten
Jackie Barkhouse
Mary Wile
Jerry Blumenthal
Dawn Sloane
Sue Uteck
Jennifer Watts
Russell Walker
Debbie Hum
Linda Mosher
Stephen Adams
Brad Johns
Robert Harvey
Tim Outhit
Reg Rankin
Peter Lund

REGRETS: Deputy Mayor Jim Smith

STAFF: Mr. Richard Butts, Chief Administrative Officer
Ms. Mary Ellen Donovan, Municipal Solicitor
Ms. Cathy Mellett, Municipal Clerk
Ms. Sherryl Murphy, Acting Municipal Clerk
Ms. Chris Newson, Legislative Assistant
Ms. Sheilagh Edmonds, Legislative Assistant

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1. CALL TO ORDER

The Mayor called the meeting to order at 1:45 p.m. with the Invocation being led by Councillor Outhit.

2. SPECIAL COMMUNITY ANNOUNCEMENTS & ACKNOWLEDGEMENT

Councillor Sloane invited everyone to attend the Beautification Day and BBQ at Uniacke Square on Saturday, June 18th.

Councillor McCuskey, on a point of personal privilege, apologized to HRM's Legal Services for comments she had made on the MAINSTREET radio program in regard to contracts involving the concerts on the North Common. She recently learned that the CAO and DCAO could write/change contracts without bringing them to legal or to Council and that neither HRM's Legal Services nor Council were aware of the content of those contracts.

Councillor Blumenthal announced the following upcoming events:

- Wednesday, June 15th : Alta Gymnastics Open House at St. Andrews Centre
- Wednesday, June 22nd: Imagine Bloomfield AGM at the Bloomfield Centre
- Monday, June 27th: Ward 5 AGM at St. Mark's Church.

Councillor Adams announced the annual Spryfield flower bed planting at the end of the North West Arm Drive/Old Sambro Road to be held on Saturday, June 18th.

Councillor Wile announced the Halifax Police Department's second Crime Prevention session to be held at the Canada Games Centre on Wednesday, June 15th .

Councillor Johns announced that the 8th annual *Relay for Life* for Sackville, Bedford, Waverley and Fall River was held at the Met Field in Sackville on Saturday, June 11th; over \$1 million has been raised over the eight years.

Councillor Dalrymple thanked all involved with the Waverley Sports Park work party held on Saturday, June 11th. He then announced the following upcoming events:

- Thursday, June 16th: Waverley Rate Payers AGM at the Waverley Legion; the area Traffic Calming report/study will be presented.
- Thursday, June 23rd: Beaver Bank Kinsac Community Centre Board AGM at the H. T. Barrett School.
- the tender for the building of the new Beaver Bank Kinsac Community Centre will close on Wednesday, June 15th.

Councillor Hendsbee announced the annual Orenda Canoe Club's Father's Day Brunch to be held on Sunday, June 19th at the Lake Echo Fire Hall.

Councillor Watts announced the following events to be held on Saturday, June 18th:

- Duncan, Lawrence and Allen Streets Annual Yard Sale, Halifax
- Ecumenical Group Kairos' Spiritual Ceremony at Cornwallis Park to support the United Nations' declaration on the rights of Indigenous people
- Social Heritage Strategy Public Workshop at the Bloomfield Centre.

Councillor Mosher announced the grand opening of the Chain of Lakes Trail, hosted by COLTA (Chain of Lakes Trail Association), on Saturday, June 18th.

Councillor Barkhouse announced the opening of the outdoor gym on Friday, June 17th at the Community Garden adjacent to the Tallahassee Recreation Centre.

Councillor Rankin announced that the one year anniversary celebration of the Prospect Road Community Centre will be held on Saturday, June 18th.

Councillor Lund thanked all organizers and participants in The Bay *Relay for Life* event held two weekends ago; over \$300,000 has been raised over a six year period.

Councillor Nicoll announced that the newly formed Association for Business in Cole Harbour (ABCH) launch will be held on Saturday, June 18th.

Councillor Blumenthal thanked the Greek Community and all volunteers who participated in the Greek Fest held on the weekend.

Councillor Sloane announced that the grand opening of the Baton Rouge restaurant was held on Monday, June 13th in the renovated, historic building in downtown Halifax.

Councillor Karsten announced that a Household Hazardous Waste Pick-Up will be held at Mic Mac Mall on June 25th; more information is available by calling the HRM Corporate Call Centre at 490-4000.

3. APPROVAL OF THE MINUTES - NONE

4. APPROVAL OF THE ORDER OF BUSINESS AND APPROVAL OF ADDITIONS AND DELETIONS

Deletion: 10.2.1 Cushing Hill Comprehensive Development District (CCDD)

Additions: 12.1 Councillor Mosher – Motion re: Auditor General Report – Concerts on the North Common

Ms. Mary Ellen Donovan, Municipal Solicitor, advised that upon further review and clarification, Item 12.1 was determined not to be a personnel matter and could be added to the regular Council agenda.

Councillor Karsten requested that Item 12.1 be dealt with first on the agenda.

MOVED by Councillor Hum, seconded by Councillor Watts that Item 12.1 be moved to a Committee of the Whole session to permit members of Council ample time for debate, and; that Council move immediately into Committee of the Whole on this item.

Councillor Watts commented that referring the matter to the Audit and Finance Standing Committee does not provide for a public debate nor would all members of Council be able to attend the meeting to have their concerns addressed, therefore; she was in support of moving the matter to Committee of the Whole for discussion.

In response to a concern raised by Councillor Sloane, Ms. Mary Ellen Donovan, Municipal Solicitor advised that the motion of Councillor Mosher is distinct from the previous motion of Council (June 7, 2011) to refer the matter to the Audit and Finance Standing Committee and therefore rescission of that previous Council motion was not required.

Councillor Streach noted that the public wanted this matter addressed at Regional Council. The matter should be addressed at this time with the media in attendance.

Councillors Johns and Dalrymple advised that they would support moving to Committee of the Whole today on condition that the regular Council agenda is dealt with first.

Councillor Hum commented that a Committee of the Whole session would offer opportunity for Members of Council to expand their discussion rather than being limited to the five minute and three minute timelines of a regular Council meeting.

Mayor Kelly clarified that Council could suspend the rules of a regular Council meeting to allow Members of Council unlimited time for discussion.

Councillor Fisher noted that five minutes and three minutes for each Member of Council would provide three hours of questioning which he felt was sufficient time to have concerns addressed.

Councillor Harvey commented that Council wants to ask questions of the Mayor and that the Mayor should respond to those concerns from the podium. Council and the public are seeking political accountability.

In response to Councillor Harvey, Mayor Kelly advised that under Section 12.1 of the HRM Charter, the Mayor presides over all sessions of Council.

MOTION DEFEATED.

Move: Item 12.1 to be dealt with first on the agenda.

MOVED by Councillor Sloane, seconded by Councillor Streach that the agenda, as amended, be approved. MOTION PUT AND PASSED.

12.1 Councillor Mosher – Auditor General’s Report

A written submission from Councillor Mosher was before Council.

Written submissions from the following persons were before Council: Wayne Mason, Patricia Kidd, John Wesley Chisholm, Aubrey Fricker, James Hoskins, Bruce Spears and Gerald Barbor.

MOVED by Councillor Watts, seconded by Councillor Johns that Council suspend the rules of procedure to allow for unlimited debate on this matter.

A recorded vote on the motion was called for.

Mayor Kelly noted that a 2/3 majority (16) was required for the motion to pass.

MOTION DEFEATED.

Those voting for the motion were Councillors: Adams, Barkhouse, Fisher, Harvey, Hum, Johns, Mayor Kelly, Lund, Mosher, Nicoll, Outhit, Sloane, Uteck, Walker and Watts.

Those voting against the motion were Councillors: Blumenthal, Dalrymple, Hendsbee, Karsten, McCluskey, Rankin, Streach and Wile.

Those absent for the vote: Deputy Mayor Smith.

Mayor Kelly, on a point of personal privilege, assured Council that he was not opposed to any questions that may come forward on this matter. He encouraged Council, or a member of the public, to consider their options such as referring the matter to Police. He advised that the bill from the Trade Centre Limited has not yet been paid and that it be

referred to legal service. If it is determined that the matter was contrary to process, he recommends that the bill not be paid.

Councillor Mosher explained that she amended the motion sent last night which now reads as follows: **MOVED by Councillor Mosher, seconded by Councillor Sloane that Regional Council request that the Municipal Auditor General outline the outcomes with regard to the report including but not limited to consultation with a police agency to determine what would be the remedies or possible outcomes with respect to any breach of criminal code; an investigation by an arms length police agency if deemed warranted, and other options such as seeking external advice as deemed appropriate.**

Councillor Mosher explained that she was in support of forwarding the matter to the Audit and Finance Standing Committee to review and implement the fifty-two (52) recommendations, however; the public want to know what happens now; what options are available to Council. This is a very public issue involving public funds and it is incumbent upon Council to bring forward the concerns of residents. Leaders are to exercise good judgment and in this instance that did not occur and she has not seen any accountability thus far. She requested that the Municipal Auditor General speak to the options available to Council in order to pursue this issue on behalf of the public.

Mr. Larry Munroe, Auditor General, explained that his perspective of the roll of the Auditor General is to: review how the situation took place; what might be learned; what systems need to be improved; and, make recommendations. A report has been submitted with fifty-two (52) recommendations to be acted upon which fulfills his responsibilities as Auditor General. In regard to additional responsibilities with respect to any criminal matters/activities, Mr. Munroe explained that he sought external legal advice and was advised that in respect to the Criminal Code Breach of Trust provisions, as interpreted by the Supreme Court of Canada, there is a requirement for a burden of proof or proof of personal financial benefit. At this point, there is no objective basis to refer the matter to a criminal investigation. The office of the Auditor General is ready to review any additional information that may come forward. In regard to options available to Council, the Council may take what ever action they choose such as requesting a judicial review or the generation of a Review Committee. Mr. Munroe then referred to the Municipal Solicitor to clarify the legal/procedural matters in regard to what further action Council may take.

Ms. Mary Ellen Donovan, Municipal Solicitor, explained that Council has two potential approaches in respect to undertaking a review: 1. A review or inquiry which would be an internal process wherein management would deal with an issue using the tools available, however; those issues would typically not have the profile, consequences and reputational impact of this particular situation which may require a more robust and

structured review exercise. 2. The legislation, as outlined in Sections 9 and 12 of the Municipal Conflict of Interest Act indicates that Council or an Elector may initiate a process for an external inquiry. Section 455 of the Municipal Government Act (MGA) provides that the Minister, in this instance the Minister of Service Nova Scotia and Municipal Relations, may examine any municipality or person at any time and for this purpose has the same power, privileges and immunities as a Commissioner appointed under the Public Inquiries Act. She then referred to Mr. Richard Butts, Chief Administrative Officer, for comment in regard to the cost of an inquiry as the cost may outstrip the municipal exposure, if any, with respect to the monies that have been discussed in relation to this matter.

Mr. Richard Butts, Chief Administrative Officer, explained that the costs for such an inquiry could be quantified for Council if a decision were made to proceed beyond this chamber.

Discussion ensued on the motion.

Councillor Streach commented that a public inquiry could cost up to \$2 million and he was not prepared to go that route. The innuendo is that Council should demand the Mayor's resignation because of criminal intent or activity, however; the Auditor General has advised that he sought outside advice and there has been no evidence, to date, of criminal activity that needs to be pursued. HRM and its taxpayers should not pay the \$359,000 invoice from TCL. Councillor Streach advised that he is not in support of forwarding the matter to an external police agency.

In response to a question of Councillor Streach, Mayor Kelly explained that if he could go back and change things he would. There were processes that should have been better scrutinized or more questions asked. Mayor Kelly apologized to the public and all involved for the error of not seeking greater clarity. He advised that he fully supports the fifty-two recommendations, as presented by the Auditor General, so that this type of event never happens again.

Councillor Karsten clarified that since the onset of this issue in early March discussions have been held in open Council in the public eye including the release of the Auditor General's report.

Councillor Outhit commented that although no law resulting in a criminal charge was broken the HRM Charter was violated and Council has not taken any action in regard to repercussions for the Charter violation. There is a misconception that a free discussion could take place on this issue at Council yet specifics on who participated in the 'groupthink' would not be permitted as it would be considered a personnel matter. This is not a personnel matter, it is a public report presented by the Auditor General that should be debated in public. Councillor Outhit then raised the following questions:

- how would the taxpayer (HRM) suing the taxpayer (TCL) solve anything
- why is there an assumption that a public inquiry would cost too much when retired judges, police, municipal staff could be approached to undertake such an inquiry
- what action can Council take in regard to the Charter violation

In response to questions raised by Councillor Outhit, Ms. Donovan explained that at the present time, consideration is being given to not paying the invoice submitted to the municipality. There has been no discussion of one party suing another. With respect to setting up an inquiry, the CAO indicated that he would be prepared to provide a report upon examining the potential costs of that approach. Historically, these inquiries have incurred considerable cost.

Councillor Watts questioned the concept that this situation was the result of “groupthink” and that issues of risk were not being raised as questions were being asked by Members of the Peninsula Community Council, Regional Council and the public since 2009. She provided a chronology of questions that were being asked but not answered such as:

- the status of funding for projects
- requests for an economic analysis of the concerts and what the impact would be
- concerns expressed in regard to future improvements to the commons without more information on the concerts (economic analysis) being provided
- information requested on who was making decisions on the concerts and where and how the concerts were being scheduled
- a motion requesting information on how Moncton, NB publicly reported on the financial aspect of their concerts
- request that the then Deputy Chief Administrative Officer provide a report on the process of how major concerts were decided for which location in the city as well as the mechanism to monitor ticket sales leading up to the event. Information was received on this matter but was very thin in regard to the process of decision making.
- request that there be a policy in regard to the sign-off for concerts and that the concerts be more widely reviewed
- request that actual attendance at concerts/events be tracked
- request for clarification on how much advance notice is to be provided to the Promoter before an event is moved from the commons to another location
- concern expressed in regard to the development and impact of the electrical station on the North Commons
- request by Councillor Watts that Council consider moving concerts off the North Commons to the Garrison Grounds
- questions in regard to the economic viability of the concerts were again asked when the Events Strategy was presented to Regional Council

- concern expressed that the only reporting to Council by TCL is done annually
- she then questioned what mistakes, specifically, does the Mayor feel he made.

In response to a question by Councillor Watts, Mayor Kelly explained that the mistakes he made were in not asking for a more defined process; not asking enough questions, and; not ensuring the response to questions raised came back in a timely manner. "Groupthink" probably added to the process in terms of wanting to achieve for the Municipality, concerts that the public wanted and enjoyed.

Mr. Munroe clarified that comments in regard to "groupthink", page 11 of the Auditor General's report, do not extend to Council as it is clear that there was a defined system yet activities/transactions were taking place outside that system.

Councillor Uteck noted that there was a process/policy in place that was ignored. Her belief is that the Chair is in a conflict of interest: although he did not gain monetarily from the concerts, he does stand to gain or lose reputation wise in these proceedings. Under the MGA there are two specific acts in regard to the role of the Mayor; 1. To monitor the administration and government of the municipality; 2. To communicate such measure to Council as to improve the finances of the administration and that of the municipality. She then posed the following questions to Mayor Kelly:

- is the Office of the Mayor not aware that the HRM Charter does not allow monies to private business
- when did the Office of the Mayor become aware of the advances, after the first advance, second advance, or the third advance
- when the Office of the Mayor signed the contracts, was he not aware that this type of expenditure was to come to Council for approval
- Is the Office of the Mayor acknowledging that page 28 of the Auditor General's report, in regard to cash advances and the numerous agreements entered into by the CAO between 2008 and 2010, is wrong and that the CAO acted alone?
- if Council only has the authority to advance those funds in that direct fashion, why was Council kept in the dark since 2008
- which advance was the Office of the Mayor aware of, and; of how many advances was the Office of the Mayor aware
- Council gave specific direction in regard to the role of the Mayor and CAO in regard to being the lead for concert venues only; why was the direction of Council ignored
- was it not a conflict of interest to be on the board of TCL and at Council.

Councillor Uteck directed the following question to the CAO; why would HRM pursue the taxpayer vs. taxpayer when it was clearly the fault of those in charge.

Councillor Uteck then noted that the Mayor had apologized to all with the exception of his colleagues at Council.

In response to questions posed by Councillor Uteck, Mayor Kelly explained that:

- He is aware that the municipality is not to provide funds to the private sector, however; he did not dictate nor direct any member of staff to do that. He was aware after the fact. He did not give permission nor tell any member of staff to do so.
- Under the contract, advances are permitted to take place. TCL and staff will have to answer to the advances given by them as he did not direct, nor give anyone the authority, nor advise them to do so.
- Council gave direction to the Mayor and CAO to deal with the contracts; the contracts were vetted partially by Legal and partially by the CAO. He expects that when a document comes for his signature there is an understanding of the direction they are to take.
- as Mayor, he did not give direction nor authority to staff to give cash advances; the contract allows for the forwarding of some contributions from the concert proceeds. Mr. Anstey has already indicated that he made that decision. Contracts allowed TCL and staff to work in that direction which they did.
- Only high level matters are brought to the TCL Board not these kinds of detail; the details are in the hands of the CEO of that Corporation.
- he acknowledged that the requested information should have come sooner to Council and for that not occurring, he apologized.

In response to Councillor Uteck, Mr. Butts explained that it is Council's decision as to whether the outstanding receivable is to be paid.

Councillor Johns commented that not one member of Council has the authority to do anything independently and by the Mayor doing this he has put all of Council in a bad light.

Mayor Kelly apologized to all of Council for what they have endured as a result of this issue. He will ensure this will not happen again.

Councillor Hendsbee expressed concern with the potential costs that could be incurred if Council were to move forward with an investigation. He does not believe there was any malicious intent nor criminality on the part of the Mayor. He concurred that HRM should not pay the outstanding invoice to the TCL. Councillor Hendsbee then raised the following questions:

- what accountability does the TCL Board, and the Councillors serving on that Board, have in regard to the financial accounting of TCL

- how, and why, was the Metro Centre Box Office moved over to the TCL/Ticket Centre Atlantic without a motion by Regional Council
- is HRM able to take back the Box Office

In response to a question raised by Councillor Hendsbee, Mr. Munroe advised that his office is working on the Metro Centre Box Office/Ticket Centre Atlantic matter and a report will be submitted to the Audit and Finance Standing Committee.

Councillor Adams advised that he was not in support of a police investigation nor inquiry. He then posed the following questions:

- if someone were to pursue a police investigation/inquiry, what would the process be and what information would be required to launch that investigation
- has the municipal Auditor General contacted the provincial Auditor General
- what are the remedies for a Charter violation and is there anything that Council can do
- what would be the outcome of an inquiry other than the information already presented in the Auditor General's report.

In response to a question by Councillor Adams, Mr. Munroe advised that the provincial Auditor General has been provided with a copy of the report and there will be ongoing discussion between the two offices.

In response to questions by Councillor Adams, Ms. Donovan explained that any member of the public could refer this matter to the police, however; it is hoped that they would have a solid foundation prior to taking that step as the person who is the subject of the complaint would be placed in some jeopardy. In regard to a violation of the Charter, typically the remedy would be to prosecute, however; she has not heard of a prosecution with respect to an issue of this sort as there would be a lot of effort to achieve little result. As to what would be uncovered as part of an inquiry that has not already been revealed, is a question no one can answer as you cannot speculate on the unknown.

Mr. Munroe clarified that the report submitted was not intended to be an inquiry, it was to provide an understanding of the circumstances and to provide recommendations to improve the failed systems. The scope of this work could be changed to try and uncover additional information but it would require more time.

Councillor Barkhouse commented that HRM should not pay the outstanding TCL invoice. She then posed the following questions:

- did the Auditor General's report go back far enough and should it have included a review of the Commonwealth Games Bid, around the time of the Rolling Stones

concert in 2006, as the then CEO of the Trade Centre Limited and former CAO of HRM were members of the Commonwealth Game Board.

- how was the Rolling Stones concert funded and was Commonwealth Games money used to fund that concert.

Mayor Kelly, Mr. Munroe, Ms. Donovan and Mr. Mike Labrecque, Deputy Chief Administrative Officer, responded to questions of Councillor Barkhouse explaining that:

- HRM was not involved with the Rolling Stones concert other than providing some services
- the Rolling Stones concert was dealt with by Events Halifax with no other involvement by HRM other than the use of the North Commons. To the knowledge of the Auditor General's office, no Commonwealth Game funding was used for the Rolling Stones concert.
- meticulous accounting was done in regard to the Commonwealth Games Bid with a report presented to Regional Council
- the remaining funds from the Commonwealth Games were used for the Canada Winter Games.

Councillor Lund posed the following questions:

- if the breach of trust, in regard to the Charter violation, is not considered criminal what is it considered
- the procedures put in place by Regional Council were not followed, was the "breach of trust" broken, who broke it, and what are the repercussions/results, or is this an ethical issue
- in regard to fiduciary obligations, a motion of Council from 2007 delegated joint authority to the CAO and Mayor to enter into contracts with Promoters provided that any funding be through the civic events Marketing Levy Reserve: is that fund considered part of the Metro Centre or is it misappropriation of funds if the money was coming out of a fund that was not the civic events Marketing Levy.
- is there a maximum amount mentioned in the contracts and what were the terms of who would pay
- does HRM require an Ethics Commissioner or a Review Committee to deal with such situations.

Councillor Lund noted that beginning in 2007 the process was followed and then was gradually ignored with reports not being sent through the Municipal Clerk's office for stamping.

In response to Councillor Lund's questions, Ms. Donovan explained that:

- Section 122 of the Criminal Code, in regard to Breach of Trust, is interpreted by the courts to mean a certain thing for which certain criteria must be met before that is triggered and is not necessarily a breach of trust in other contexts.

Section 12 of the Municipal Conflict of Interest Act has a slightly different concept of what is meant by breach of trust.

- the Auditor General's report highlighted the issue of the single account for both the TCL and Metro Centre and the recommendations indicate that the relationship needs some attention. The analysis to be provided by the CAO will provide specifics and clear suggestions on how to manage that.

Councillor Nicoll commented that this is a breach of trust matter with no criminal intent. Public administration is complex and how it has been administered has caused her some worry as the over riding business culture of HRM has not always been one of inquisitiveness, questioning nor challenging of actions that do not appear to be reasonable. This situation is one of pressure placed on the Mayor and former CAO/DCAO to continue giving the people what they wanted/expected. After the Rolling Stones concert, Council advised that they wanted to continue with the concerts, however; no reporting came back to Council after that concert. The Community Planning and Economic Standing Committee is reviewing the economic impact of the concerts. Councillor Nicoll then posed the following question: why did the Office of the Mayor feel he had to act as an Event Planner; were there no avenues in the organization itself to do the event planning.

In response to questions by Councillor Nicoll, Mayor Kelly explained that he did reach out to several contacts throughout New York, London, and Quebec trying to provide opportunities for the North Commons venue to be used for concerts. Hearing from the public that they wanted more concert opportunities he reached out to try and bring those elements in and to form those partnerships by meeting with many individuals and groups to see how to make it work and hopefully line up with staff and others in the industry to make those partnerships a reality. In this case, it did not work. The public still has an appetite for this if done in the realm of affordability by a Promoter, not the taxpayer.

Council recessed at 3:46 p.m.

Council reconvened at 4:03 p.m.

Councillor Fisher commented that the situation as outlined in the Auditor General's report goes beyond bad judgment and inappropriate behavior for all involved as there were numerous opportunities for them to pull back and bring it to Council. Everyone involved was aware of the financial problems of the Promoter yet they continued to provide assistance with at risk taxpayer's funds. The direction of Council was clear in that Council did not wish to expose taxpayers to *any* risk. The assistance was to come from the Market Levy Reserve and all in kind contributions to be capped at \$150,000.

Only one concert came in under the \$150,000. Councillor Fisher then posed the following questions:

- funds for advanced ticket sales are to be held in an account in case the event is cancelled, therefore; the money belongs to Ticket Centre Atlantic so why would Ticket Centre Atlantic request authority from HRM's DCAO to forward those funds to the Promoter; why was that line crossed.
- if the province guaranteed the \$3.5 million for the Paul McCartney concert, why did TCL request that the money be given directly to the Promoter.

Councillor Fisher commented that the issue of the "culture" of not questioning in HRM has to be addressed.

In response to concerns/questions raised by Councilor Fisher, Mr. Munroe explained that:

- the parties involved did not fully understand the implications of the co-mingled TCL/Metro Centre account: there was a belief that the funds were in fact Metro Centre funds.
- in regard to the request to forward the funds directly to the Promoter, the then CAO requested that the money be placed in escrow which suggested a greater level of protection to ensure the funds did go directly to Mr. McCartney yet that did not appear to happen.

Councillor Rankin commented that there is no discernable criminal activity that would constitute laying of charges in this instance. The motion on the floor is superfluous as the Office of the Auditor General continues to be open to any new information that may come forward. Council has not dealt with how best to deal with the recommendations outlined in the report. Council could request that contracts, in future, be written in such a way as to limit HRM's contribution to a maximum approved by Council. There was a culture fraught with errors in judgment and this Council can render their responsibility to ensure the Mayor is accountable to the community. The Audit and Finance Standing Committee will begin the process to engage the recommendations.

Councillor Blumenthal noted that it was time to get to work on the recommendations. He added that the North Commons is the wrong place for holding concerts and Council should consider using the "pit" area in the north end. He expressed concern that although requested many times, no information was provided to Council in regard to the economics of the concerts. If Council had known, there would not have been as many concerts. Council must work as a team to get answers for the residents.

Councilor McCluskey commented that hopefully residents will be satisfied that all questions have now been answered. She advised that she stands by her original

comment in regard to concerts in that if one could not be put on without HRM's money then they should not come. She then posed the following questions:

- in regard to the former Acting CAO changing/rewriting contracts and the agreements that were signed by him alone, which were not seen nor signed by the Mayor, are those contracts/agreements binding and what sort of contracts/agreements were they.

In response to a question by Councillor McCluskey, Mr. Munroe and Ms. Donovan advised that the agreements were in respect to some of the advances and the grant at the end. In the view of HRM Legal Services, the contract dated July 21, 2010 is not a valid contract.

Councillor McCluskey noted that the municipality has been very transparent in regard to this matter from when it was first brought to her attention in early March as Chair of the Audit and Finance Standing Committee up to and including today's discussion. The process of implementing the Auditor General's recommendations will commence with the Audit and Finance Standing Committee's meeting scheduled for June 15th.

Councillor Dalrymple noted that he served 33 years in the RCMP and for part of that time was in charge of the Major Crime Unit which handled these types of investigations. The first question the police will ask is: what is your evidence, what are you presenting and what do you want investigated. The Auditor General and legal have advised that there is no evidence of criminal wrong doing. It is time to move forward and implement the recommendations.

Councillor Hum commented that the concert scandal has reflected poorly on the municipality and everyone who played a part as there has been incredible damage to HRM's reputation. She then posed the following questions:

- who reviewed the Auditor General's report prior to it coming to Regional Council; did anyone implicated in the report see the entire report.
- clarification was requested in regard to the difference between a public inquiry and a police inquiry
- will the inappropriate activity be further investigated; who would be investigated
- if there was an Ethics Commissioner/Citizen Board what would their responsibility be.

In response to a question by Councillor Hum, Mr. Munroe explained that in the interest of being factually correct, people were asked to review the report only in context to factual accuracy. He noted that the report had not been changed.

Councillor Walker commented that Council has already been advised what the options are in regard to not paying the bill; HRM could pay it now or pay it later as the bill would

be a deficit to the Metro Centre and HRM would pay it. He also reminded Council that there is a Minister above the municipal unit who could force HRM to pay the bill. In regard to signing authority, one has to have faith and trust that what is being brought to you for signing has been thoroughly reviewed by staff and is all right. HRM has to have faith that the CAO will bring matters to Council. He noted that he was not in support of the motion. He commented that this was not the first time HRM had violated the Charter as they did so when providing funding for the Farmer's Market.

Councillor Harvey posed the following questions to the Mayor:

- Did the Mayor and the former Acting CAO exceed the direction given to them by Council in the motion of November 13, 2007 that capped the financial exposure that was to come from the Hotel Tax Levy.
- Did you, as Mayor, retain your role as directed by Council, to promote the North Commons as a venue rather than become a Concert Promoter.
- Why did the Mayor, as communicated to Council, not advise Council prior to March 15, 2011 of the \$359,000 forgivable grant that exceeded the authority of the municipality and the CAO.

In response to questions raised by Councillor Harvey, Mayor Kelly explained that:

- the direction given by Council had been exceeded, however; he did not give that direction to staff.
- he approached many individuals and companies to consider the North Commons as a concert venue.
- he approached the province seeking support.
- in regard to the September invoice, it was thought that there may be additional dollars coming forward from Ticket Centre Atlantic to offset those costs; the bill was not brought forward to Council as the net cost was not known until March.
- the outstanding bill has not been paid, and if there is a legal element that it not be paid, he recommends that HRM not pay it if against the Charter or law.

Councillor Harvey commented that following the November 13, 2007 motion of Council, some people took a liberal view of what that allowed rather than a conservative, strict view. He noted that there comes a tipping point where the good of Council or the municipality outweighs the political position or career of an individual. If there is no acceptable act of political accountability to come, if Council cannot move forward from this, there is risk of provincial intervention.

Councillor Sloane questioned that when Council gave the Chain of Command to the Mayor and CAO and the CAO then gave it to the Deputy CAO, did the CAO not take that command back and did it continue when the Deputy became the Acting CAO. She noted that she blamed herself for not following through on the questions previously

asked. There was a breakdown in process and communication. She then posed the following questions:

- why was Council not informed that their asset, the Metro Centre Box Office, had been transitioned into the Ticket Centre Atlantic and no longer under their control
- has HRM's money been used for other things and then put back at the end of the year
- an attendance tracking process for events is required to assist in validating when funding is provided to events; the question is asked repeatedly yet staff have no process to capture that information.

On a point of personal privilege, Councillor Johns advised that he was a member of the TCL Board at the time the concert issue was taking place yet he knew nothing about it and doubts that any of the TCL Board were aware.

In response to questions raised by Councillor Wile in regard to Items #26 to 28 of the report, Mr. Munroe explained that:

- Ticket Centre Atlantic is part of the TCL; HRM was not interested in a new ticketing system for the Metro Centre Box Office yet others were prepared to make that investment so they invested in the new system and this is how the transition appears to have occurred.
- an old bank account used by the Metro Centre continued to be used to collect advance ticket sales; TCL has now separated the accounts
- tickets are sold by Ticket Centre Atlantic and the Metro Centre is only for renting the venue.

Councillor Wile commented that there was nothing criminal done and in an effort to make things work people made some decisions that were maybe out of their mandate. HRM should not be involved in concerts. She requested that research be done to determine how other municipalities have done concerts.

In response to a question by Councillor Karsten on whether or not the Mayor supported the motion to hire a municipal Auditor General, Mayor Kelly responded that he was absolutely in support of that motion.

Councillor Karsten noted that the "culture" began to change with the hiring of a municipal Auditor General as the request was based on a desire to provide clearer transparency for the municipality. The decision to hire a CAO from outside the organization was another move to bring refreshed, positive change to the culture of this municipality.

Councillor Watts requested a response to the following questions/concerns:

- clarification requested in regard to the relationship around the Promoter and the procurement policy: it appears the Promoter was telling HRM what they should do/when someone should be scheduled
- what is the process for future concerts on the commons; who is involved in pre-planning and how will that information come to Council
- how are staff addressing the previous motion that the CAO address the issue of questions posed at the Community Council level not being addressed
- why did the Mayor not bring the issue of the September 20th invoice to Council when Council, in regard to budget discussions, was considering cuts yet no mention was made of the outstanding liability.

Councillor Uteck posed the following questions:

- why did the Mayor not bring the matter of the advances to Council after receiving an e-mail dated September 20th from Mr. Anstey that the auditors may raise the issue of advances to Power Promotions. She noted that no members of the TCL Board were aware of the advances.
- why Council and legal services were not informed in October 2010 that Mr. McKay had contacted the Mayor's office advising that he had secured another artist but was facing financial problems and needed to talk at which time Mr. Anstey advised him that the days of advances were over.
- page 66 of the Auditor General's report indicates discussions were held in regard to advances and serious concerns expressed that the event might be cancelled; why was an additional \$200,000 advanced after the Mayor contacted Minister Paris.

In response to concerns/questions raised by Councillor Uteck, Mayor Kelly explained that HRM had advised that they would continue to reach out to the province.

Councillor Lund questioned whether the Mayor had been included in the e-mails outlined on page 67 of the Auditor General's report in regard to another advance being provided to the Promoter in August after meetings had been held in July in the Mayor's office in regard to the number of concerns raised with concerts such as perceived low attendance numbers; low ticket sales.

- are the agreements associated with the advances valid
- by July 26th there were no ticket sales showing and yet on August 5th another \$500,000 was advanced; that is a red flag
- if concerts are only supposed to be held on the North Commons for events of over 30,000 attendees, why were the concerts still held on the North Commons.
- where did the invoice sit for 5.5 months after the offices of the Mayor and CAO knew of the invoice in September
- Is the provincial Auditor General looking into the TCL in regard to this situation

In response to questions raised by Councillor Lund, Mayor Kelly advised that all e-mails requested by the Auditor General were forwarded to him. At no time was staff directed to make the advances.

Councillor Hum commented that the Mayor and CAO should have known that something was out of the ordinary and asked more questions. Council, and the public, need to see that the Mayor is at the level of integrity and best interest of the municipality in providing transparency.

Councillor Streach commented that the motion is moribund at this point. It is time for the previous motion of Council (June 7, 2011) to have the Audit and Finance Standing Committee and the CAO implement the recommendations. There has been open and frank discussion today, questions have been answered and apologies made to the public and Council colleagues.

Councillor Harvey apologized as a Member of Council for stepping back from reviewing the concerts and promoting the venue of the North Commons for concerts by the passing of the November 13, 2007 motion putting his trust in the Mayor and Acting CAO.

Councillor Wile requested that, if HRM continues with concerts, background checks be done on the Promoters in regard to their successes/failures/business associations and financial situation as the Promoter involved in this instance constantly requested advances which should have been a red flag.

Councillor Outhit requested a friendly amendment to the motion to include consideration of a public inquiry. He then requested clarification from legal in regard to the comment that HRM had violated the Charter by providing funding for the Farmer's Market as he had been assured at the time what was done was permitted.

In response to a concern raised by Councillor Outhit, Ms. Donovan explained that to her recollection, the transfer of those funds in regard to the Farmer's Market was in accordance with the Charter as care and thought was taken around that issue to ensure there were no violations of the Charter.

Councillor Mosher suggested a Charter amendment to permit Council to deal with an elected official in the situation of a breach of the Charter. Council had approved up to \$150,000 from the Marketing Levy and that was not adhered to and was only discovered because not enough tickets were sold otherwise Council would not have known about this. She noted that she did not want the municipality to be involved with concerts.

Councillor Uteck retired from the meeting at 5:30 p.m.

Councillor Adams clarified that the Farmer's Market funds were forwarded to the Waterfront Development Corporation for leasehold improvements; those funds did not go directly to the Farmer's Market.

Councillor Hendsbee requested a recorded vote.

MOVED by Councillor Mosher, seconded by Councillor Sloane that Regional Council request that the Municipal Auditor General outline the outcomes with regard to the report including but not limited to consultation with a police agency to determine what would be the remedies or possible outcomes with respect to any breach of criminal code; an investigation by an arms length police agency if deemed warranted and other options such as seeking external advice as deemed appropriate.

Discussion ensued on the validity of the motion; whether or not it was necessary following the discussion held, and; what would be the potential cost and the ramifications for approving the motion.

Ms. Donovan advised that the three part motion before Council was still able to be voted upon.

Councillor Mosher clarified that the motion circulated last evening was amended to remove the referral to the provincial Auditor General as it was redundant considering that the municipal Auditor General has already been in contact with the provincial Auditor General.

MOVED by Councillor Johns, seconded by Councillor Sloane that the motion be deferred pending receipt of a report from the Audit and Finance Standing Committee and CAO as per the direction of Regional Council of June 7, 2011 as there may be validity to move forward with this motion at that time.

Councillor Walker clarified that the motion is out of order as the response from the Audit and Finance Standing Committee will not be going through the Auditor General which the motion is demanding.

Councillor Mosher supported the motion to defer as Council would then have the option to deal with any new information that may arise from the Audit and Finance Standing Committee meeting/report. The Auditor General has confirmed that he is open to review any additional information that may come forward.

Councillor Rankin commented that the motion to defer was out of order as the only matter under consideration at this time was the request for a recorded vote and there is to be no consideration of any other motions once the call for the vote is made.

Mayor Kelly confirmed with the Solicitor that the **motion to defer is out of order** as Council has entered the process of voting and that process is not to be interfered with.

A recorded vote was then taken on the main motion.

MOTION DEFEATED.

Those voting in favour of the motion were Councillors: Barkhouse, Hum, Mayor Kelly, Lund, Mosher, Nicoll and Sloane,

Those voting against the motion were Councillors: Adams, Blumenthal, Dalrymple, Fisher, Harvey, Hendsbee, Johns, Karsten, McCluskey, Outhit, Rankin, Streach, Walker, Watts and Wile.

Those absent for the vote were: Deputy Mayor Smith and Councillor Uteck.

Council recessed at 5:39 p.m.

The meeting reconvened at 6:30 p.m.

5. BUSINESS ARISING OUT OF THE MINUTES - NONE

6. MOTIONS OF RECONSIDERATION – NONE

7. MOTIONS OF RESCISSION – NONE

8. CONSIDERATION OF DEFERRED BUSINESS – NONE

9. CORRESPONDENCE, PETITIONS & DELEGATIONS

9.1 Correspondence

9.1.1 Request for Ceremonial Fly-Past – Halifax-Dartmouth Canada Day Committee

A letter dated May 24, 2011 from Mr. Jeff Wall, Chair, Halifax-Dartmouth Canada Day Committee, was before Council.

MOVED by Councillor Sloane, seconded by Councillor Fisher that Halifax Regional Council grant permission for a flypast by aircraft from 12 Wing Shearwater for aircraft to fly at levels of less than 500' for the Opening Ceremonies of the Halifax-Dartmouth Canada Day Celebrations at Citadel Hill National Historic Site on July 1, 2011. MOTION PUT AND PASSED.

9.2 Petitions - None

10. REPORTS

10.1 NORTH WEST AND MARINE DRIVE, VALLEY & CANAL COMMUNITY COUNCILS

10.1.1 Crosswalk Flag Program

A May 31, 2011 North West Community Council report was before Council.

A May 26, 2011 Marine Drive, Valley & Canal Community Council report was before Council.

A copy of the Waverley Road Crosswalk Flag Program brochure, report, and letter dated February 5, 2009 from Gayle & Norm Collins and Brian Slaunwhite was before Council.

The following extracts were before Council:

An extract of the February 10, 2009 Regional Council minutes was before Council.

An extract of the September 8, 2009 Regional Council minutes was before Council.

An extract of the September 29, 2009 Regional Council minutes was before Council.

An extract of the October 6, 2009 Regional Council minutes was before Council.

Correspondence, as follows, was before Council:

February 25, 2009 letter from Mayor Kelly to Sandra Mjkic, TAC Secretariat, Transportation Association of Canada, was before Council.

May 27, 2009 letter from Sarah Wells, Director, Technical Programs, Transportation Association of Canada, to Mayor Kelly was before Council.

September 16, 2009 letter to the Honourable Minister Bill Estabrooks, Department of Transportation, from Mayor Kelly was before Council.

MOVED by Councillor Dalrymple, seconded by Councillor Fisher that Halifax Regional Council not object to local community groups/organizations installing, maintaining, and using crosswalk flags at marked crosswalks or traditional sites of significant pedestrian crossing within their community, provided there will be no cost implications to HRM *with the exception of Councillor's funds*. MOTION PUT AND PASSED.

Councillor Dalrymple advised that both Community Councils involved held presentations and 'Question and Answer' sessions and subsequently voted unanimously to forward this motion to Council. He added that the program may not be suitable for every district in HRM but it provides one more tool to use for road and pedestrian safety. Councillor Dalrymple also noted that the Provincial Traffic Authority supports the concept in certain areas, although HRM's Traffic Authority opposes the idea.

Councillor Wile indicated that she felt the crosswalk flags would be a help in certain areas of her district, and she questioned what the legal ramifications would be if a community were to establish a crosswalk flag program.

In response, Ms. Mary Ellen Donovan advised that this matter is outside the jurisdiction of Council and, therefore, the motion is out of order.

Based on the Solicitor's advice, **the Mayor ruled the motion Out of Order**. He advised that, if Council wished, it could seek input from the Province with regard to changes to the Charter to allow such a program.

Councillor Dalrymple suggested that this was contrary to what the Provincial Traffic Authority has advised, and he restated that it was his understanding that Council has the authority to allow this program.

Mr. Ken Reashor, Director of Transportation and Public Works/Traffic Authority addressed Council and advised that the Traffic Authority is responsible for determining what is necessary from a traffic control perspective, e.g. signs, markings and other things that are used within the system. Mr. Reashor noted that staff has reviewed this matter with Legal Services, and although the Provincial Deputy Minister said that he had no objection to crosswalk flags being used by pedestrians, he is not suggesting that they be allowed as a measure within the right-of-way. Mr. Reashor advised that the Traffic Authority authorizes what will be used within the right-of way, adding that people can make individual choices about how they want to cross the street.

Mr. Reashor pointed out that staff sought a legal opinion on this issue and it was presented to Harbour East Community Council, and the opinion is that this clearly lies under the responsibility of the Traffic Authority.

Mr. Reashor explained that the Transportation Association of Canada (TAC) is reviewing the matter of crosswalk flags and a report will be presented at the fall session of the TAC Conference. He advised that if the Association makes a recommendation which differs from his decision, then he would take this into consideration. Mr. Reashor added that there is an opportunity for future debate on this matter when that information comes forward.

Mr. Reashor responded to further questions from Council.

At the suggestion of the Mayor, **there was general consensus to refer this matter to the Transportation Standing Committee for review and response back to Council, once the report on this matter being prepared by the Transportation Association of Canada is issued.**

10.2 NORTH WEST COMMUNITY COUNCIL

10.2.1 Cushing Hill Comprehensive Development District (CCDD)

This item was deleted from the agenda during the approval of the order of business. See page 4.

10.3 ADMINISTRATIVE STANDING COMMITTEE

10.3.1 Change of Name of Administrative Standing Committee

A June 1, 2011 Administrative Standing Committee report was before Council.

MOVED by Councillor Johns seconded by Councillor Karsten that Halifax Regional Council change the name of the Administrative Standing Committee to the Executive Standing Committee. MOTION PUT AND PASSED

10.3.2 Appointments to Halifax International Airport Authority

A May 20, 2011 Administrative Standing Committee report was before Council.

MOVED by Councillor Rankin, seconded by Councillor Karsten that Halifax Regional Council request the Halifax International Airport Authority Board change its membership provisions so that HRM puts forth a sole nominee for each vacancy for which they are to nominate. MOTION PUT AND PASSED.

10.4 TRANSPORTATION STANDING COMMITTEE

10.4.1 Winter Parking Ban

A May 27, 2011 Transportation Standing Committee report was before Council.

MOVED by Councillor Rankin, seconded by Councillor Watts that Halifax Regional Council:

- 1. Support the option provided by the Traffic Authority to consider a trial period during which the overnight winter parking regulations would only be enforced during declared snow and ice operations.**
- 2. Accept that existing snow and ice operational service standards may be impacted without the continuous overnight winter parking regulations in place.**
- 3. Approve the expenditure of up to \$80,000 from the Winter Works budget for overtime costs associated with the increased enforcement of the overnight winter parking regulations by Halifax Regional Police and, if required, fund this expense through the Snow and Ice Reserve Q309.**

A discussion ensued with Mr. Ken Reashor, Director of Transportation and Public Works/Traffic Authority responding to questions. The following concerns and comments were noted:

- Concern was expressed that there is the potential for roads to remain unclear for a couple of days.
- It is important for HRM to be very clear in its information to the public on this trial, whether it is on the website or with the Call Centre, etc.
- Staff anticipate providing two day's notice of when the ban will be on; notification will be done through public service announcements, web page, and the HRM Call Centre; with a shorter notification period, newspapers will not be utilized as it would not be effective.
- The Province has their own winter parking ban (December 15 – March 31), but they have agreed to alter their hours to coincide with HRM's (1:00 a.m. to 6:00 a.m.)

- Concern was expressed that quick changes in the weather could result in streets requiring salting immediately, and it could be problematic if the ban is not in effect.
- The Traffic Authority has the ability to suspend the trial if he feels there is a safety issue.
- Staff was requested to begin public communication of the trial by September 1, 2011.
- It was noted that advising the public when the ban is lifted is as important as advising when it is in effect; the residents who are excluded from the ban because they live on Provincial roads in HRM need to be advised.
- It was noted that Section 139 of the Motor Vehicle Act gives the Traffic Authority the ability to ticket and tow during any event, any time of the year.
- Staff was requested to ensure the Downtown Business Improvement Commissions and business associations were well informed of the trial.
- It was suggested that the time of 3:00 a.m. to 5:00 a.m. for the ban would be more practical for the people working in the downtown restaurants and pubs, and those working at the hospitals; however, Council was informed that it would not provide sufficient time to carry out the required work.
- The messaging on the trial should state that the winter parking ban will be in effect but it will be relaxed and unenforced during non-snow events.

A recorded vote was requested

MOTION PUT AND PASSED.

Those voting in favour of the motion were:

Mayor Peter Kelly, and Councillors: Dalrymple, Hendsbee, Nicoll, Fisher, Barkhouse, Wile, Sloane, Watts, Hum, Mosher, Harvey, Rankin and Lund

Those voting against the motion were:

Councillors: Walker, Adams, and Outhit.

Deputy Mayor Smith; and Councillors: Streach, McCluskey, Karsten, Blumenthal, Uteck, and Johns were absent for the vote.

11. **MOTIONS:** None

12. **ADDED ITEMS:**

12.1 **Councillor Mosher – Motion re: Auditor General Report – Concerts on the**

North Common

This item was dealt with earlier in the meeting. See page 4.

13. NOTICES OF MOTION:

13.1 Councillor Wile

Take notice that at the next Regional Council meeting to be held on June 21, 2011 I will introduce a motion requesting Council's support to consider amendments to Bylaw A-300 to allow Bylaw Officers more discretion by amending Bylaw A-300 s.12(2) to read:

s.12(2) No person shall emit or cause to permit the emission of sound resulting from persisting barking, calling or whining or other persistent noise making by any animal kept or used for any purpose at all times.

14. ADJOURNMENT

The meeting adjourned at 8:03 p.m.

Cathy J. Mellett
Municipal Clerk

The following information item was submitted:

1. Memorandum from the Municipal Clerk dated June 7, 2011 re: Requests for Presentation to Council – Sunrose Land Use Consulting re: Texpark Site