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Halifax Public Gardens Foundation



Halifax Regional Council
June 15, 2004

TO: Mayor Kelly and Members of Halifax Regional Council

SUBMITTED BY:


George McLellan, Chief Administrative Officer

DATE: June 15, 2004

SUBJECT: Public Gardens Restoration - Update

ORIGIN

On October 21, 2003 Halifax Regional Municipality Council approved the establishment of the Halifax Public Gardens Restoration Foundation to make use of the funds raised by the Maritime Broadcasting Systems radiothon on October 13th. It was indicated that a formal Memorandum of Association and Bylaws would be brought forward to Council for approval at a later date.

Following Council approval at the Oct. 21st meeting, an interim working group was established consisting of the Mayor, CAO, Councillor for the District, members of the business community, the Chair of the Friends of the Public Gardens, a representative from Parks Canada, with several internal HRM staff providing technical expertise and support to the group. Robert Pace is Chair of the working group, and we are in the process of incorporating the Halifax Public Gardens Restoration Foundation under the N.S. Societies Act.

RECOMMENDATIONS

It is recommended:

- that Council approve the attached Memorandum of Association and By-laws for the Halifax Public Gardens Foundation, to be incorporated under the N.S. Societies Act.

BACKGROUND

Funds raised by the Maritime Broadcasting Systems radiothon on October 13th are the main funding source for restoration of the Public Gardens. The memorandum of association and by-laws

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necessary to incorporate the Halifax Public Gardens Restoration (HPG) Foundation were developed in cooperation with Maritime Broadcasting Systems and McInnes Cooper Robertson. It is intended that HRM will coordinate any initiatives involving HRM property and that the ongoing and regular maintenance of the Public Gardens will remain an HRM responsibility. The HPG Foundation will provide recommendations and direction regarding the restoration of the Gardens and ongoing capital improvements.

DISCUSSION

Much of the damage in the Public Gardens that is being repaired is the result of the aging of the Gardens and a maintenance deficiency in recent years. Hurricane Juan caused substantial damage to many of the trees in the Public Gardens, and the requirement to repair the Hurricane damage afforded us with an opportunity to address the broader issues in the Public Gardens which pre-date Hurricane Juan, such as drainage problems, hydrological issues around the duck pond, deterioration of the gates and fence, and lack of appropriate washroom facilities.

Vollick McKee Petersmann and Associates were awarded the contract to develop the Phase I restoration plan for the Public Gardens, and have been meeting with HRM staff and the Halifax Public Gardens Foundation group on a weekly basis to share information and receive direction. The Halifax Public Gardens will be open to the public on July 1st, however restoration will not be fully complete at that time. Estimates to fully restore the Public Gardens indicate several seasons of work with a price of approximately three million dollars. Restoration of key features involved in Phase I such as the gates, fencing, pond, benches, light standards, walkways, will be complete for July 1st. Later phases involve the possibility of continued drainage, irrigation and electrical upgrades, restoration of Horticultural Hall, washroom improvements and restoration of horticultural and lost elements within the historic gardens.

BUDGET IMPLICATIONS

The restoration of the Public Gardens will be funded through a variety of sources. Some expenditures will be recoverable under the federal Disaster Financial Assistance program, some expenditures will come from the Parks operating budget, and capital projects pertaining to restoration and improvement will be paid from the donations to the Halifax Public Gardens Restoration Foundation. The full commitment of \$1,050,000 in cash and in-kind donations from the the Maritime Broadcasting Radiothon have been fully realized.

FINANCIAL MANAGEMENT POLICIES / BUSINESS PLAN

This report complies with the Municipality's Multi-Year Financial Strategy, the approved Operating, Capital and Reserve budgets, policies and procedures regarding withdrawals from the utilization of Capital and Operating reserves, as well as any relevant legislation.

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ALTERNATIVES

None - the activities of the Public Gardens Restoration Foundation in restoring the Public Gardens will impact the appearance of the municipality and quality of life of the residents, and community groups such as the Friends of the Public Gardens have been clear in expressing their desire for an independent organization to advise HRM on the restoration and ongoing operation of the Public Gardens.

ATTACHMENTS

Attachment A - Memorandum of Association and By-Laws

Attachment B - Update on work conducted to date

Additional copies of this report, and information on its status, can be obtained by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by: Cathie O'Toole, CGA - Executive Assistant, CAO's Office

**BY-LAWS
OF
PUBLIC GARDENS FOUNDATION**

1. In these By-laws unless there be something in the subject or context inconsistent therewith

(a) "Board" or "Board of Directors" means the Board of Directors of the Society.

(b) "Society" means Public Gardens Foundation.

(c) "Registrar" means the Registrar of Joint Stock Companies appointed under the *Companies Act* (Nova Scotia).

(d) "Special Resolution" means a resolution passed by not less than three-fourths of such members entitled to vote as are present in person or by proxy, where proxies are allowed, at a general meeting of the Society of which notice specifying the intention to propose the resolution as a special resolution has been duly given.

MEMBERSHIP

2. The subscribers to the Memorandum of Association and such other persons as shall be admitted to membership in accordance with these By-laws, and none others, shall be members of the Society, and their names shall be entered in the Register of Members accordingly.

3. Membership in the Society shall not be transferable.

4. The members of the Society shall be individuals who are admitted as members from time to time by resolution of the Board.

5. Every member of the Society shall be entitled to attend any meeting of the members of the Society and to vote at any meeting of members of the Society and to hold any office but there shall be no proxy voting.

6. No formal admission to membership shall be required and the entry in the Register of Members by the Secretary of the name and address of any individual shall constitute an admission to membership in the Society.

7. Membership in the Society shall cease upon the death of a member, or if, by notice in writing to the Society, he or she resigns his or her membership, or if he or she

ceases to qualify for membership in accordance with these By-laws, or if the Society by Special Resolution removes the member.

FISCAL YEAR

8. The fiscal year of the Society shall be the period from April 1 in any year to March 31 in the year next following.

MEETINGS

9. (a) The ordinary or annual general meeting of the Society shall be held within three months after the end of each fiscal year of the Society.

(b) An extraordinary general meeting of the Society may be called by the Chairperson or by the Board at any time, and shall be called by the Board if requisitioned in writing by at least seventy-five per centum (75%) in number of the members of the Society.

10. Fourteen (14) days' notice of a meeting, specifying the place, day and hour of the meeting and, in the case of special business, the nature of such business, shall be given to the members. Notice shall be given in writing and by sending it through the post in a prepaid letter addressed to each member at his/her last known address. Any notice shall be deemed to have been given at the time when the letter containing the same would be delivered in the ordinary course of post. In proving such service it shall be sufficient to prove that the envelope containing the notice was properly addressed and placed in the post office. The non-receipt of any notice by any member shall not invalidate the proceedings at any general meeting.

11. At each ordinary or annual general meeting of the Society, the following items of business shall be dealt with and shall be deemed to be ordinary business:

- ... Minutes of the preceding general meeting;
- ... Consideration of the annual report of the directors;
- ... Consideration of the financial statements, including balance sheet and operating statement and the report of the auditors thereon;
- ... Election of directors for the ensuing year;
- ... Appointment of Auditors.

All other business transacted at an ordinary or annual general meeting shall be deemed to be special business and all business shall be deemed special that is transacted at an extraordinary general meeting of the Society.

12. No business shall be transacted at any meeting of the Society unless a quorum of members is present at the commencement of such business and throughout such business. A quorum at all meetings of members of the Society, whether extraordinary or general, shall consist of four (4) members present in person.

13. If within one-half hour from the time appointed for the meeting, a quorum of members is not present, the meeting, if convened upon the requisition of the members, shall be dissolved. In any other case, it shall stand adjourned to such time and place as a majority of the members then present shall direct and if at such adjourned meeting a quorum of members is not present, it shall be adjourned *sine die*.

14. (a) The Chairperson of the Society shall preside as Chairperson at every general meeting of the Society.

(b) If there is no Chairperson, or if at any meeting he or she is not present at the time of holding the same, the Vice-Chairperson shall preside as Chairperson.

(c) If there is no Chairperson or Vice-Chairperson, or if at any meeting neither the Chairperson nor the Vice-Chairperson is present at the holding of the same, the members present shall choose someone of their number to be Chairperson.

15. The Chairperson shall be entitled to vote as a member and, in the case of an equality of votes, he or she shall have a casting vote in addition to the vote to which he or she is entitled as a member.

16. The Chairperson may, with the consent of the meeting, adjourn any meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting, other than the business left unfinished at the meeting from which the adjournment took place, unless notice of such new business is given to the members.

17. At any general meeting, unless a poll is demanded by at least three members, a declaration by the Chairperson that a resolution has been carried and an entry to that effect in the book of the proceedings of the Society shall be sufficient evidence of the fact, without proof of the number or proportion of the members recorded in favour of or against such resolution.

18. If a poll is demanded in manner aforesaid, the same shall be taken in such manner as the Chairperson may prescribe and the result of such poll shall be deemed to be the resolution of the Society in general meeting.

19. (a) A resolution, including a Special Resolution, in writing and signed by every member is as valid as if it were passed by such members at a meeting.

(b) A copy of every resolution referred to in subsection (a) shall be kept with the minutes of proceedings of members.

VOTES OF MEMBERS

20. Every member shall have one vote and no more.

DIRECTORS

21. The number of directors shall be fourteen (14). The subscribers to the Memorandum of Association of the Society shall be the first directors of the Society.

22. The Board of the Society shall consist of the following individuals:

- (a) The Mayor of the Halifax Regional Municipality for the time being or his or her designate;
- (b) The Councillor representing the Polling District Number of the Halifax Regional Municipality in which the Public Gardens are situated;
- (c) The Chief Administrative Officer of the Halifax Regional Municipality or his or her designate;
- (d) One (1) individual nominated by the Friends of the Public Gardens Society; and
- (e) Ten (10) individuals elected by the members from among their number.

23. The directors of the Society described in subparagraph 22(e) shall be appointed and shall retire in rotation. At the first meeting of members four (4) such directors shall be appointed to hold office until the close of the third annual meeting of members after that date, three (3) to hold office until the close of the second annual meeting after that date and three (3) to hold office until the close of the next annual meeting after that date. Subsequently at each annual meeting the directors appointed to replace the directors whose term of office expires at the close of such meeting shall hold office until the close of the third annual meeting after such director's appointment. Upon expiration of their term each director shall retire from office but shall hold office until the dissolution of the meeting at which their successors are appointed and retiring directors shall be eligible for re-appointment.

24. If a director resigns his or her office or ceases to be a member of the Society, whereupon his or her office as director shall *ipso facto* be vacated, the vacancy thereby created may be filled for the unexpired portion of the term by the Board of Directors subject to compliance with paragraph 22 of these By-laws.

25. The Society may, by Special Resolution, remove any director before the expiration of the period of office and, subject to compliance with paragraph 22 of these By-laws, appoint another person in his or her stead. The person so appointed shall hold office during such time only as the director in whose place he or she is appointed would have held office if he or she had not been removed.

26. Any director that is not re-elected pursuant to paragraph 23 of these by-laws or that ceases to be a director pursuant to either paragraph 24 or paragraph 25 of these by-laws shall immediately resign as a member of the Society.

27. Meetings of the Board of Directors shall be held as often as the business of the Society may require and shall be called by the Secretary. A meeting of the Board may be held at the close of every ordinary or annual general meeting of the Society without notice. Notice of all other meetings, specifying the time and place thereof, shall be given either orally or in writing to each director within a reasonable time before the meeting is to take place, but non-receipt of such notice by any director shall not invalidate the proceedings at any meeting of the Board of Directors.

28. No business shall be transacted at any meeting of the Board of Directors unless at least five (5) of the directors are present at the commencement of such business. Notwithstanding the foregoing, if at any meeting of the Board of Directors a quorum is not present, the meeting shall stand adjourned and shall be automatically reconvened without the requirement to give any further notice seven days later at the same time and place and the quorum for such reconvened meeting shall be those directors present at such reconvened meeting.

29. The Chairperson or, in his or her absence, the Vice-Chairperson or, in the absence of both of them, any director appointed from among those directors present shall preside as Chairperson at meetings of the Board.

30. The Chairperson shall be entitled to vote as a director and, in the case of an equality of votes, he or she shall have a casting vote in addition to the vote to which he or she is entitled as a director.

31. A director may, if all the directors consent, participate in a meeting of the Board of Directors by means of such telephone or other communications facilities as permit all persons participating in the meeting to hear each other and a director participating in such

a meeting by such means is deemed for the purposes of these by-laws to be present at that meeting.

32. (a) A resolution in writing and signed by every director who would be entitled to vote on the resolution at a meeting is as valid as if it were passed by such directors at a meeting.

(b) A copy of every resolution referred to in subsection (a) shall be kept with the minutes of proceedings of the directors.

POWERS OF DIRECTORS

33. The management of the activities of the Society shall be vested in the directors who, in addition to the powers and authorities by these By-laws or otherwise expressly conferred upon them, may exercise all such powers and do all such acts and things as may be exercised or done by the Society and are not hereby or by Statute expressly directed or required to be exercised or done by the Society in general meeting. In particular, the directors shall have power to engage a coordinator and to determine his/her duties and responsibilities and his/her remuneration. The directors may appoint an executive committee, consisting of the officers and such other persons as the directors decide.

34. The Board may delegate to an Executive Committee consisting of the officers of the Society and such others, if any, as the Board may from time to time appoint, the power to conduct the general business of the Society arising between meetings of the Directors provided that the business conducted shall be taken before the Directors at their next ensuing meeting for their consideration and approval. Non-approval of the Directors shall not, however, invalidate any business conducted insofar as third parties are concerned.

OFFICERS

35. The officers of the Society shall be a Chairperson, a Vice-Chairperson, a Treasurer and a Secretary. The offices of Treasurer and Secretary may be combined.

36. The Chairperson of the Society shall be appointed by the directors from among their number. The Chairperson shall have general supervision of the activities of the Society and shall perform such duties as may be assigned by the Board of Directors from time to time.

37. The directors shall also elect from their number a Vice-Chairperson. The Vice-Chairperson shall, at the request of the Board and subject to its directions, perform the duties of the Chairperson during the absence, illness or incapacity of the Chairperson, or during such period as the Chairperson may request to do so.

38. (a) There shall be a Secretary of the Society who shall keep the minutes of the meetings of members and directors and shall perform such other duties as may be assigned to him or her by the Board. The Board shall appoint the Secretary and may also appoint a Treasurer of the Society to carry out such duties as the Board may assign. If the directors think fit, the same person may hold both offices of Secretary and Treasurer.

(b) The directors may appoint a temporary substitute for the Secretary who shall, for the purpose of these By-laws, be deemed to be the Secretary.

39. The officers of the Society shall continue to hold office until they resign or are replaced by the Board.

AUDIT OF ACCOUNTS

40. An auditor of the Society shall be appointed annually by the members of the Society at the ordinary or annual general meeting and, on failure of the members to appoint an auditor, the directors may do so.

41. The Society annually shall make a written report to the members as to the financial position of the Society and the report shall contain a balance sheet and shall be filed with the Registrar within fourteen days after the annual meeting in each year, as required by law.

42. In conducting their audit, the auditors shall have all the rights, powers and immunities conferred upon auditors by the *Companies Act*.

INDEMNITY

43. Every director and officer of the Society shall be indemnified by the Society against, and it shall be the duty of the Board of Directors out of the assets of the Society to pay, all costs, losses and expenses which any director or officer may incur or become liable to by reason of any contract entered into, or act or thing done by him/her as such director or officer, or in any way in the discharge of his/her duties, including travelling expenses, and the amount for which such indemnity is proved shall immediately attach as a lien on the assets of the Society.

44. No director or officer of the Society, in his/her capacity as a director or officer, respectively, shall be liable for acts, receipts, neglects or defaults of any other director or officer, or for joining in any receipt or other act for conformity, or for any loss or expense happening to the Society through the insufficiency or deficiency of title to any property acquired by order of the Board of Directors for or on behalf of the Society or through the insufficiency or deficiency of any security in or upon which any of the moneys of the Society

shall be invested, or for any loss or damage arising from the bankruptcy, insolvency or tortious act of any person with whom any money, securities or effects shall be deposited, or for any loss occasioned by error of judgment or oversight on his/her part, or for any other loss, damage or misfortune whatever which shall happen in the execution of the duties of his/her office or in relation thereto, unless the same happen through his/her own dishonesty.

REPEAL AND AMENDMENT OF BY-LAWS

45. The Society has power to repeal or amend any of these By-laws by a Special Resolution passed in the manner prescribed by law.

MISCELLANEOUS

46. The Society shall file with the Registrar with its Annual Statement a list of its directors with their addresses and occupations, and within fourteen days of a change of directors, notify the Registrar of the change.

47. The Society shall file with the Registrar a copy in duplicate of every Special Resolution within fourteen days after the resolution is passed.

48. The seal of the Society shall be in the custody of the Secretary and may be affixed to any document upon resolution of the Board of Directors.

49. Preparation of minutes, custody of the books and records, and custody of the minutes of all the meetings of the Society and of the Board of Directors shall be the responsibility of the Secretary.

50. The books and records of the Society may be inspected by any member at any reasonable time within two days prior to the annual general meeting at the registered office of the Society.

51. Contracts, deeds, bills of exchange and other instruments and documents may be executed on behalf of the Society by the Chairperson or Vice-Chairperson and the Secretary, or otherwise as prescribed by resolution of the Board of Directors.

52. The borrowing powers of the Society may be exercised by Special Resolution of the members.

WE, the undersigned, the subscribers to the Memorandum of Association of the Society, do hereby agree upon the preceding By-laws as being the by-laws for the administration of the Society.

DATED at Halifax, Nova Scotia, this day of , 2004.

His Honour Mayor Peter Kelly

Robert Pace

Robert Salah

Dawn Sloane

Tony Blom

George McLellan

William Jordan

Dulcie Conrad

James Gray

Cedric Ritchie

Karen Oldfield

Barbara Presse

Fae J. Shaw

Harold Verge

**MEMORANDUM OF ASSOCIATION
OF
PUBLIC GARDENS FOUNDATION**

1. The name of the Society is **Public Gardens Foundation**.
2. The objects of the Society are:
 - (a) To provide financial and other support to assist:
 - (i) in the protection, improvement and preservation of the Public Gardens; and
 - (ii) with the capital costs of ongoing enhancements and improvements to the Public Gardens;
 - (b) To acquire by way of grant, gift, purchase, bequest, devise, or otherwise, real and personal property and to use and apply such property to the realization of the objects of the Society;
 - (c) To buy, own, hold, lease and convey such real and personal property as may be necessary or desirable in the carrying out of the objects of the Society; and
 - (d) To do all other acts and things as may be necessary or desirable, in the opinion of the Directors of the Society, for the attainment of the foregoing objects.

PROVIDED that nothing herein contained shall permit the Society to carry on any trade, industry, or business and the Society shall be carried on without purpose of gain to any of the members and that any surplus or any accretions of the Society shall be used solely for the purposes of the Society and the promotion of its objects;

PROVIDED, further, that if for any reason the operations of the Society are terminated or are wound up, or are dissolved and there remains, at that time, after satisfaction of all its debts and liabilities, any property whatsoever, the same shall be paid to the Halifax Regional Municipality for use by the Halifax Regional Municipality solely for the purposes described in paragraph 2(a) above.

3. The activities of the Society are to be carried on in the Province of Nova Scotia.
4. The Registered Office of the Society is at 1601 Lower Water Street, Halifax, Nova Scotia B3J 3P6.

We, the several persons whose names, addresses, and occupations are subscribed, desire to be formed into a Society, in pursuance of this Memorandum of Association.

DATED at Halifax, Nova Scotia this day of , 2004.

<u>Name</u>	<u>Address</u>	<u>Occupation</u>	<u>Witness</u>
_____ His Honour Mayor Peter Kelly	26 Nottingham Street, Bedford, NS B4A 3A5	Mayor of Halifax Regional Municipality	_____
_____ Robert Pace	12 Saraguay Place, Halifax, NS B3P 2N9	Businessman	_____
_____ Robert Salah	941 Ivanhoe Street, Halifax, NS B3H 2X2	Businessman	_____
_____ Dawn Sloane	2126 Creighton Street, Halifax, NS B3K 3R4	Councillor Halifax Regional Municipality	_____
_____ Tony Blom	5837 Almon Street, Halifax, NS B3K 1T7	Businessman	_____
_____ George McLellan	5784 Ogilvie Street, Halifax, NS B3H 1C2	Chief Administrative Officer, Halifax Regional Municipality	_____
_____ William Jordan	309 - 5670 Spring Garden Road, Halifax, NS B3J 1H6	Businessman	_____

_____	6138 Pepperell Street, Halifax, NS B3H 2N9	Community Volunteer	_____
Dulcie Conrad			
_____	D1002 - 500 Eau Claire Ave. - S.W., Calgary, AB T2P 3R8	Businessman	_____
James Gray			
_____	5 Silverdale Crescent, Don Mills, ON M3A 3G9	Businessman	_____
Cedric Ritchie			
_____	81 Brook Street, Halifax, NS B3N 3E9	Businesswoman	_____
Karen Oldfield			
_____	6465 Jubilee Road, Halifax, NS B3H 2H2	Educator, Community Volunteer	_____
Barbara Presse			
_____	1601 Lower Water Street Halifax, NS B3J 3P6	Lawyer	_____
Fae J. Shaw			
_____	Apt. 310 21 Bedford Hills Road, Bedford, NS B4A 1J6	Community Planner	_____
Harold Verge			

Public Gardens Update - Work being conducted in Phase I

Phase I work concentrates on repair of damage caused by Hurricane Juan and restoration of the pond and brook system as a major feature within the Gardens. This requires the largest amount of work to occur in the Southeast Quadrant of the Gardens and Griffins Pond. Included are substantial fence and gates work and a good deal of infrastructure which has been in need of repair for several years. Design work has been undertaken for the entire Gardens and will be used for future phases

1. Clean-up of Hurricane Juan - 80 damaged trees and stumps removed and grounds repaired
2. Three week clean-up of hurricane damaged grounds
3. Regrading and replanting of Bandstand area to match historic records
4. Existing drainage system cleaned and repaired
5. Southeast Quadrant drainage and electrical system installed
6. Ponds drained and cleaned of debris and organics
7. Brook re-built and replanted
8. Duck House rebuilt
9. Ponds and brook pumping and water treatment system installed
10. Griffins Pond, Lilly Pond and Lower Pond rebuilt and replanted
11. Damaged areas re-sodded
12. Pathways re-laid and edged
13. Grotto Pond replanted
14. Main Gates lifted repaired and re-installed to functional condition
15. Fence panels damaged by Juan replaced
16. Fence scraped, painted and spot repairs
17. Swing Gates made accessible for disabled, elderly and small children
18. Main Entrance at Spring Garden redesigned and replanted
19. Historic benches restored and rebuilt

All work is being carried out in keeping with the historic nature of the Halifax Public Gardens and under the guidance of Parks Canada Advisors.