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Halifax Regional Council
February 22, 2005

TO: Mayor Kelly and Members of Halifax Regional Council

SUBMITTED BY: LaJaune Naud
LaJaune Naud, Chair, Point Pleasant Park Advisory Committee

DATE: February 15, 2005

SUBJECT: **Point Pleasant Park - Establishment of Point Pleasant Park Foundation**

ORIGIN

In the fall of 2003, the PPPAC established an *ad hoc* committee to draft the Memorandum of Association and By-laws for the Foundation. These were discussed and finalized by the PPPAC, and approved in June 2004.

RECOMMENDATIONS

It is recommended that Halifax Regional Council:

1. Approve in Principle the formation of a Point Pleasant Park Foundation.
2. Refer the attached Memorandum of Association and By-laws for the Point Pleasant Park Foundation to staff for review and subsequent report to Regional Council.

BACKGROUND

The Point Pleasant Park Advisory Committee (PPPAC) is a body appointed by Regional Council to advise Council on matters related to the management of Point Pleasant Park.

Over the last few years, the Point Pleasant Park Advisory Committee has expressed concerns regarding the need for increased spending in the Park in order to maintain and repair the existing Park infrastructure, and to sponsor new studies and capital projects in the Park. Following Hurricane Juan, the need for increased spending on Park restoration and special projects, and the need for a clear management strategy for the Park has become critical.

DISCUSSION

The Point Pleasant Park Advisory Committee (PPPAC) has approved a motion to establish the Point Pleasant Park Foundation (the Foundation). The public concern towards the damage sustained by the Park was evident in the outpouring of donations to fund the restoration work. The PPPAC believes that there is a willingness among the public, local businesses and corporations to continue to donate to the restoration and sustainability of the Park. The Point Pleasant Park Foundation is a mechanism whereby fundraising for Park restoration projects can continue, and promotion of future Park initiatives can be undertaken.

A sub-committee of the PPPAC was tasked with developing a framework for the creation of the Foundation. It is envisioned that the mandate of the Foundation as described in the attached Memorandum of Association, will involve the on-going fund-raising in support of the restoration and improvements to the Park, management of any remaining funds raised as a result of Hurricane Juan, and sponsorship of individual Park improvements.

Following Hurricane Juan, HRM, through its Infrastructure Renewal Fund collected donations for the restoration of the Point Pleasant Park. These donations were received from unsolicited donors, as well as from specific fundraising events. In many cases these donations were made towards particular aspects of the renewal of the park. For example, one donation of \$150,000 was made towards the preservation and interpretation of the park's abandoned fortifications. Another donation was made towards attracting the best planning towards the renewal of the park through a competition. It is understood that the intent of these donations must be respected and acknowledged. Together with Federal and municipal funding, these donations will be used to support the restoration activities of the park. However, it must be understood that additional dollars and in-kind donations will be required over a long period to fully renew the park.

The Memorandum of Association and By-laws necessary to incorporate the Point Pleasant Park Foundation were developed following a model used for the formation of the Halifax Public Gardens Foundation. It is not intended that the Foundation assume any of the responsibilities related to the day-to-day management of the Park: The ongoing and regular maintenance of the Park would remain the responsibility of the HRM; furthermore, the HRM would continue to

coordinate and address any issues related to the current lease of the Park property. It is also recognized that HRM Council and in accordance with the lease, Parks Canada, have the ultimate determination on measures for park restoration and improvements.

BUDGET IMPLICATIONS

Approximately \$436,712 has been raised in support of the restoration of the Point Pleasant Park. The restoration of the Park has been funded through a variety of sources. Some expenditures have been recoverable under the federal Disaster Financial Assistance program, and some costs have come from the Parks operating budget. It is proposed that the balance of donations received by HRM, which have been earmarked for Point Pleasant Park, be managed by the Foundation upon its formation.

It is necessary for HRM's Financial Services business unit be involved to ensure that appropriate measures and safeguards are put in place to assure donors, the public and council that donations made in good faith are appropriately accounted for. To that end, the first Board of Directors and HRM should work together to put the appropriate measures in place.

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.

ALTERNATIVES

Council could choose not to approve the recommendation and continue to accept donations for the renewal of Point Pleasant Park.

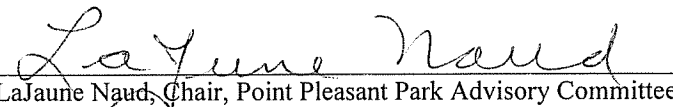
ATTACHMENTS

Memorandum of Association
Point Pleasant Park Foundation By-laws

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: Richard Donald, Point Pleasant Park Advisory Committee (423-7916)

Report Approved by:


LaJaune Naud, Chair, Point Pleasant Park Advisory Committee

**MEMORANDUM OF ASSOCIATION
OF THE
POINT PLEASANT PARK FOUNDATION**

1. The name of the Society is The Point Pleasant Park Foundation.
2. With the advice of the Point Pleasant Park Advisory Committee and the approval of the Halifax Regional Municipal Council, the objects of the Society are:
 - (a) To provide financial and other support to assist:
 - (i) in the planning, protection, improvement and preservation of Point Pleasant Park; and
 - (ii) with the capital costs of ongoing enhancements and improvements to the Point Pleasant Park;
 - (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 Board of Directors of the Society, for the attainment of the foregoing objects provided that all proposals of the Foundation be sent to the Point Pleasant Park Advisory Committee for advice and to Halifax Regional Municipal Council for approval

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 •.

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 , 2005.

Name	Address	Occupation	Witness
_____			_____
_____			_____
_____			_____
_____			_____
_____			_____

**BY-LAWS
OF
THE POINT PLEASANT PARK 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 The Point Pleasant Park 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.
3. Membership in the Society shall not be transferable.
4. The members of the Society shall be admitted as from time to time by resolution of the Board and are governed by the Board.
5. Every member of the Society shall be entitled to attend any ordinary or general meeting of the Society, vote at any such meeting, and to hold any office.
6. Payment of fees, as governed by the Board 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 percent (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, either by electronic mail or through the post in a 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 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 Board of 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 seven (7) 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. Proxy votes will be allowed.

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 Point Pleasant Park is situated;
- (c) The Chief Administrative Officer of the Halifax Regional Municipality or his or her designate;
- (d) Two (1) members of the Point Pleasant Park Advisory Committee; and
- (e) Nine (9) 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 three (3) 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. 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.

27. No business shall be transacted at any meeting of the Board of Directors unless at least seven (7) 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.

28. 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.

29. 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.

30. 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.

31. (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

32. 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.

33. 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

34. 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.

35. The Chairperson of the Society shall be elected 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.

36. 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.

37. (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.

38. The officers of the Society shall hold office for three years, shall be eligible for re-election or re-appointment, and can serve for a maximum of two consecutive terms.

AUDIT OF ACCOUNTS

39. 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.

40. 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.

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

INDEMNITY

42. 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, 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.

43. 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

44. 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

45. The Society shall file with the Registrar 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.

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

47. 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.

48. 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.

49. 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.

50. 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.

51. 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 of the Society.

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

