

Cape Breton Regional Municipality

Special Council Meeting

AGENDA

FRIDAY, MAY 15, 2015

10:30 A.M.

Council Chambers
2nd Floor, Civic Centre
320 Esplanade, Sydney, NS

Cape Breton Regional Municipal Council

Special Council Meeting

AGENDA

Friday, May 15, 2015

10:30 a.m.

Council Chambers, 2nd Floor – Civic Centre

ROLL CALL

1. BUSINESS ARISING:

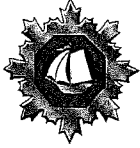
1.1 Council December 2nd & 19th, 2014:

- a) **Canadian Maritime Engineering – Purchase Archibald’s Wharf:**
Demetri Kachafanas, Regional Solicitor (See page 3)

1.2 Council Budget Session – March 25th, 2015:

- a) **CBRM Sustainability Fund:**
Marie Walsh, CFO (See page 30)

Adjournment



CBRM

A Community of Communities

Cape Breton Regional Municipality

**Office of Demetri Kachafanas
Regional Solicitor**

320 Esplanade
Sydney, Nova Scotia
B1P 7B9
Tel: 902-563-5047
Fax: 902-564-0481

e-mail: dkachafanas@region.cape-breton.ns.ca

MEMO

TO: Mayor and Council

FROM: Demetri Kachafanas, Regional Solicitor

DATE: May 13, 2015

RE: Canadian Maritime Engineering – Purchase Archibald’s Wharf

Further to the motions and direction of Council, staff has concluded negotiations with CME regarding the terms of the sale of Archibald’s Wharf.

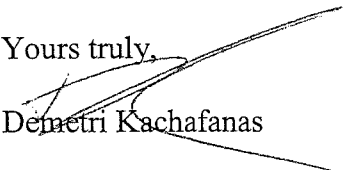
Attached please find the following documentation:

1. Agreement of Purchase and Sale;
2. Investment Agreement;
3. Motion of Council dated December 2, 2014 and December 19, 2014;
4. Letter from Jessica McDonald Acting Provincial Director of Planning indicating approval of the Minister of municipal Affairs is not required;
5. Decision of the Nova Scotia Utility and Review Board, dismissing the Appeal of Susan Whitaker re: amendment to the planning strategy.

The Province has signed off on the amendment to the Municipal Planning Strategy and the appeal of the decision to the Nova Scotia Utility and Review Board was dismissed.

Accordingly, we ask for a motion of Council approving the terms of the sale as set out in the Agreement of Purchase and Sale and supplementary Investment Agreement subject to the execution of the Investment Agreement by the parties.

Yours truly,


Demetri Kachafanas

AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT made this day of April, 2015.

BETWEEN

CAPE BRETON REGIONAL MUNICIPALITY, a body corporate and politic
in and for the Province of Nova Scotia

hereinafter called the " **VENDOR** "

-and-

CANADIAN MARITIME ENGINEERING LIMITED, a company
incorporated according to the laws of the Province of Nova Scotia;

hereinafter called the " **PURCHASER** "

1. *SALE OF PROPERTY*

The **Vendor** agrees to sell and the **Purchaser** agrees to purchase all that real property and land covered by water located at **Commercial Street, North Sydney, in the Cape Breton Regional Municipality, Nova Scotia and being PID #15690514** , as shown as Lot 97 1A attached in Schedule "A" and reserving out a lot presently referred to as a "paved parking lot" and more particularly set out in Schedule "B" attached hereto and hereinafter called the "**PROPERTY**".

2. *TERMS OF SALE*

The purchase price is for the sum of Five Hundred Thousand dollars (\$500,000.00) of lawful money of Canada, payable as follows:

- a) The sum of \$1.00 to the Vendor, as a deposit and to be credited on account of the purchase money on closing.
- b) Balance of the purchase price, subject to the usual adjustments, shall be paid by cash or certified cheque to the Vendor on closing.

- c) This Agreement is subject to the Vendor obtaining a Motion from Council approving the sale transaction pursuant to the terms and conditions herein.

- d) This offer is subject to an Environment Phase II Assessment to be completed by the Purchaser. The cost of the Assessment shall be divided equally between the Vendor and Purchaser. The Purchaser shall provide a copy of the Environment Phase II Assessment to the Vendor prior to closing and the Assessment shall be included in and form part of this Agreement as Schedule "C". The parties hereby agree that the Environment Phase II Assessment shall from a baseline for environmental liabilities and that all existing environment issues, known or unknown, shall be the responsibility of the Vendor and all environmental issues caused by the Purchaser subsequent to the closing date shall be the responsibility of the Purchaser.

- e) The Vendor shall have a right of first refusal to purchase the property should the Purchaser cease operations at the property or receives a bona fide offer to purchase from a third party, which the Purchaser is willing to accept, the Purchaser then shall provide the Vendor herein a copy of the offer to purchase within ten (10) days of the signed offer. Should the Vendor exercise the right of first refusal, the Purchaser shall have the property appraised by a licenced appraiser, of their choice, and the purchase price shall be of fair market value of lawful money of Canada, plus HST. A copy of the appraisal shall be provided to the Vendor. If the Vendor disagrees with the Appraisal, it may have the property appraised by a second appraiser and the purchase price/fair market value shall be deemed to be the average of the two appraisals. The second appraisal shall be provided to the Purchaser and the Purchaser shall then have fifteen (15) days from receipt of the appraisal to exercise their right of first refusal by notifying the Vendor in writing within the fifteen (15) day period and making full payment within thirty (30) days.

- f) The Vendor agrees to waive the right of first refusal as set out in clause 2(e) above provided the third party purchaser and the Purchaser warrants to the Vendor in the offer, that third party purchaser shall operate a business on the property and the business shall be in accordance with the land use zoning provisions in place for the property. A copy of the offer between the Purchaser and third party shall be provided to the Vendor and the Vendor shall provide the Purchaser with written notice of termination of Right of First refusal within 5 days of receipt of the offer.

- g) The Vendor shall provide notice to the CAW, Local 4285 and Joseph Musgrave indicating termination of their existing Lease and to vacate the premises prior to closing.

- h) This Agreement is subject to the Vendor obtaining subdivision approval for the creation of a parcel of land, to be retained by the Vendor, located behind the Royal Bank of Canada building and shown outlined in red on the attached map in Schedule "B" hereto. The Vendor shall have the property surveyed and submitted for subdivision approval. The Vendor shall provide a copy of the survey to the Purchaser for approval prior to submitting the subdivision application. The Vendor does hereby confirm that subsequent to the Subdivision as shown on the attached map in Schedule "B" hereto the Purchaser shall have frontage on Commercial Street, North Sydney and this Agreement is subject to the Purchaser having said frontage.
 - i) This Agreement is subject to the Purchaser granting an easement/right of way to the Vendor, for the benefit of the Purchaser and the Public over the driveway entrance from Commercial Street to the so called parking lot. The said easement/right of way shall be for maintenance and public use of the drive way entrance.
 - j) This Agreement is subject to the Vendor providing to the Purchaser a right of way over the driveway entrance and the aforementioned reserved out lot for the Purchaser to be able to have transport trucks and other vehicles cross the Vendor's property to access the Property.
 - k) The Purchaser shall have a right of first refusal to purchase the land or any portion of the land described in Schedule "B", commonly referred to as the "rear parking lot" should the Vendor decide to sell the property to a third party, the Vendor then shall provide the Purchaser with notice of their desire to sell the lands described in Schedule "B", or any portion thereof by registered mail. Should the Purchaser exercise the right of first refusal, the Vendor shall have the property appraised by a licenced appraiser, of their choice, and the purchase price shall be of fair market value of lawful money of Canada, plus HST. A copy of the appraisal shall be provided to the Purchaser and if the Purchaser disagrees with the appraisal, it may have the property appraised by a second appraiser and the purchase price/fair market value shall be deemed to be the average of the two appraisals. The second appraisal shall be provided to the Vendor and the Purchaser shall then have fifteen (15) days from receipt of the appraisal to exercise their right of first refusal by notifying the Vendor in writing within the fifteen (15) day period and making full payment within thirty (30) days.
- 3) *DATE OF CLOSING*
- Vacant possession to be given by the Vendor on or before the **31st day of March, A.D. 2015** (hereinafter called the Closing Date).

4) *DESCRIPTION AND TITLE OBJECTIONS*

- a. The Vendor, at the expense of the Vendor agrees to migrate the Property title from the Registry System under the *Registry Act* to the Land Registration System under the *Land Registration Act* at least five (5) business days prior to the Closing, and failing registration, the Purchaser, may terminate this Agreement and the deposit shall be immediately returned to the Vendor. On final registration of the Property, the Vendor shall so advise the Purchaser, after receipt whereof the Purchaser is allowed three (3) business days to investigate the title to the Property, which the Purchaser shall do at the Purchaser's expense. If within that time frame, any valid objection to title is made in writing to the Vendor, which the Vendor is unable or unwilling to remove, and which the Purchaser will not waive, this Agreement shall be null and void and the deposit herein shall be returned to the Purchaser, without interest, and without liability by the Vendor for any expenses incurred or damages sustained by the Purchaser.
- b. The Vendor shall provide to the Purchaser a copy of the existing metes and bounds description for the property within ten (10) days of acceptance of this offer.
- c. The Vendor shall provide to the Purchaser, on a without warranty basis and within ten (10) days of acceptance of this offer, a copy of any survey or Location Certificate for the Property that is in the Vendor's possession.
- d. At the time the Vendor, delivers to the Purchaser, notification that the property has been migrated the Vendor shall provide a copy of the approved legal description, a copy of the SRI, applicable restrictive covenants and that portion of any applicable approved plan showing the Property in question.

5) *SALES TAX*

If this transaction is subject to Goods and Services Tax/Harmonized Sales Tax (imposed by Part IX of the Excise Tax Act R.S.C.1985,c. E-15 as amended) hereafter referred to as G.S.T. then such G.S.T. (HST) shall be in addition to and not included in the purchase price, and G.S.T. shall be collected and remitted in accordance with applicable legislation. If this transaction is not subject to G.S.T., (HST) the Vendor agrees to provide on or before closing to the Purchaser or Purchaser's solicitor a certificate in a form reasonably satisfactory to the Purchaser or Purchaser's solicitor certifying that the transaction is not subject to G.S.T.(HST).

6) *CONVEYANCE*

The conveyance (of the property which is the subject of this Agreement) shall be of **Warranty Deed**, drawn at the expense of the Vendor to be delivered on payment of the purchase price on the closing date. The said property is to be conveyed free from dower and other encumbrances, except as to any easements, registered restrictions or covenants that affect the property and do not materially affect the enjoyment of the property and except as specifically set out in Paragraph "I" of this Agreement.

7) *INSURANCE*

All buildings and equipment upon the real property shall be and remain at the risk of the Vendor until closing. Pending completion of the sale, the Vendor will hold all insurance policies and the proceeds thereof in trust for the parties as their interests may appear and in the event of damage to the said premises, the Purchaser may either have the proceeds of the insurance and complete the purchase, or may cancel the Agreement and have all monies theretofore paid returned without interest.

8) *ADJUSTMENTS*

Interest, rentals, insurance premiums, taxes, rates and assessments are to be adjusted to the date of closing. The cost of municipal improvements (including, but without limiting the generality of the phrase "municipal improvement", betterment charges and capital charges for utility or municipal services completed as of the date of this Agreement, whether billed or not, are to be paid by the Vendor on or before the closing date.

9) *TENDER OF DOCUMENTS*

Any tender of documents to be delivered or money payable hereunder may be made upon the Vendor or the Purchaser or any party acting for him and money may be tendered by negotiable cheque, certified by a chartered bank or trust company.

10) *FORFEITURE OF DEPOSIT*

It is understood and agreed that if the Purchaser does not complete this Agreement in accordance with the terms thereof, he will forfeit the above deposit in addition to any other claim which the Vendor may have against the Purchaser for his failure to so complete.

11) *INSPECTON*

The Purchaser reserves the right to inspect the property at any time prior to the closing, upon providing reasonable notice to the Vendor, and as well reserves the right to cancel this Agreement if there is any substantial change in the property between the time of signing this Agreement and the Closing Date.

12) TIME OF ESSENCE

Time shall be in all respects of the essence in this Agreement.

13) MISCELLANEOUS

- a. This Agreement shall enure to the benefit of and be binding upon the parties hereto, their respective heirs, executors, administrators, successors and assigns.
- b. This Agreement is to read with all changes of gender or number required of the context.
- c. The Purchaser and Vendor agree that this Agreement may be communicated by a facsimile transmission and that when signed by all parties, this Agreement shall be binding on all parties.

14) NOTICE

Any notice required to be given with respect to this Agreement shall be in writing and shall be effectively given if delivered or if sent by ordinary or registered mail, telegram, fax or telex addressed to the party for whom the notice is intended. Any notice shall be deemed to have been received on delivery; any notice sent by telegram, fax or telex shall be deemed to have been received one (1) working day after being sent; any notice mailed shall be deemed to have been received five (5) calendar days after being mailed. Any notices shall be sent to the following:

For the Vendor:
Demetri Kachafanas
Regional Solicitor
Cape Breton Regional Municipality
320 Esplanade
Sydney, NS B1P 7B9
(902) 563-5045

For the Purchaser:
Stephen D. Ling
Landry McGillivray
P.O. Box 1200
Dartmouth, NS B2Y 4B8
(902) 463-8800

SIGNATURES ON PAGE 7

[Signature]
Witness

CAPE BRETON REGIONAL MUNICIPALITY
(VENDOR)

Per:

[Signature]
Cecil P. Clarke - Mayor

Per:

[Signature]
Deborah Campbell - Clerk

I HEREBY ACCEPT the above offer and agree to purchase on the terms as therein set out.

DATED at ~~Hamilton, Nova Scotia~~ ^{Berkeley} this ^{April} 21 day of March, 2015.

[Signature]
Witness Tanya DiAngelis

CANADIAN MARTIME ENGINEERING LTD.
(PURCHASER)

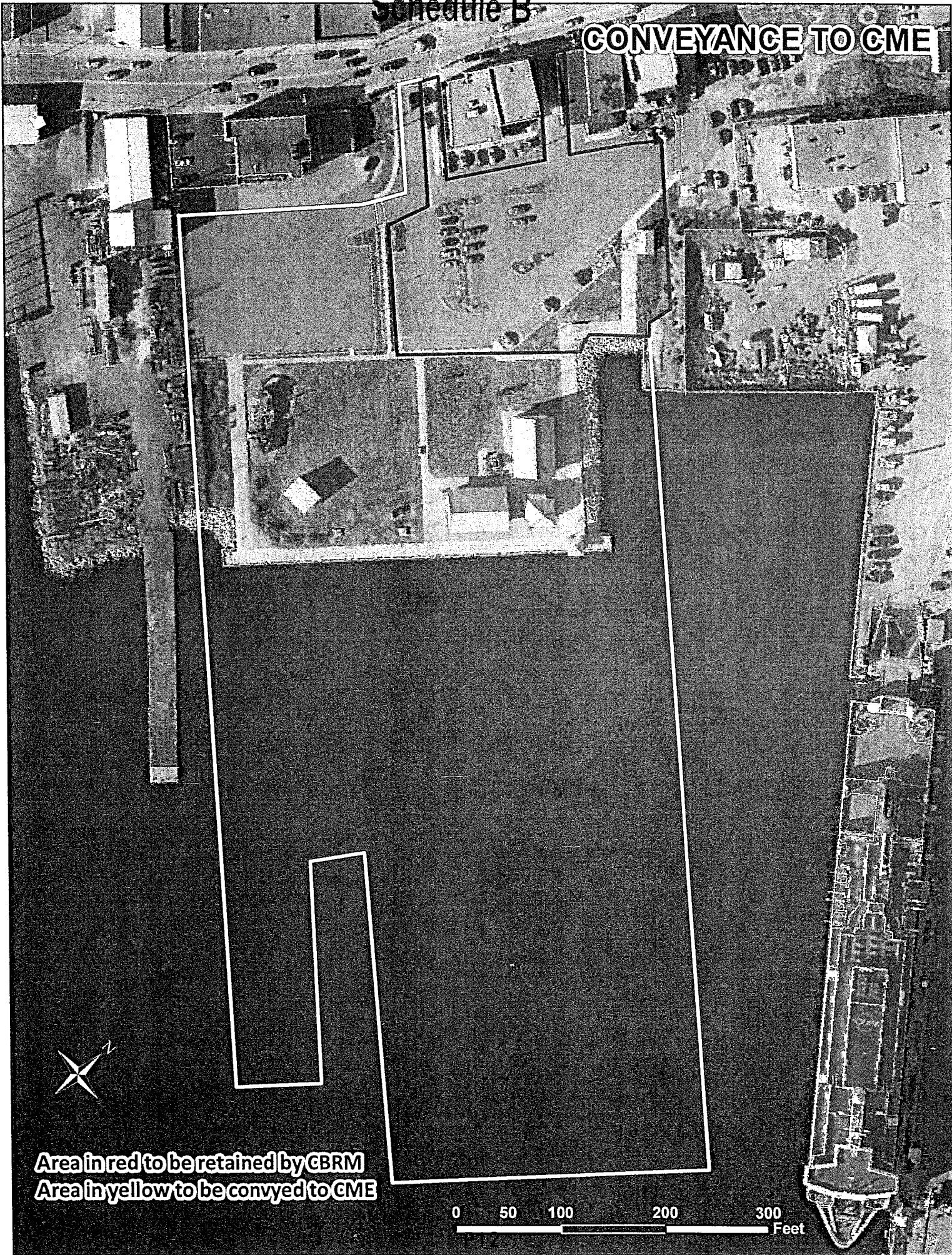
Per:

[Signature]
David Russell, CEO

Per: _____

Schedule B

CONVEYANCE TO GME



Area in red to be retained by GBRM
Area in yellow to be conveyed to GME

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AGREEMENT

THIS AGREEMENT made this day of March, 2015.

BETWEEN

CAPE BRETON REGIONAL MUNICIPALITY, a body corporate and politic
in and for the Province of Nova Scotia

hereinafter called the "**CBRM** "

-and-

CANADIAN MARITIME ENGINEERING LIMITED, a company
incorporated according to the laws of the Province of Nova Scotia;

hereinafter called the "**CME** "

WHEREAS CME wishes to purchase property in North Sydney to expand its existing business operations;

AND WHEREAS CBRM has property in North Sydney it is desirous to sell to CME;

AND WHEREAS CME and CBRM have entered or will enter into an Agreement of Purchase and Sale dated April 21, 2015 regarding the purchase of property bearing PID # 15690514;

AND WHEREAS the parties wish this Agreement in addition to forming a stand-alone agreement, to form part of the terms of sale and be incorporated into the said Agreement of Purchase and Sale attached hereto as Schedule "A";

AND WHEREAS the term "Vendor" shall also refer to CBRM and the term "Purchaser" shall also refer to CME;

NOW THEREFORE IN CONSIDERATION of the premises and the mutual promises hereinafter expressed and confirmed, and other good and valuable consideration, CBRM and CME covenant, undertake and agree with one another that:

1. *SALE OF THE PROPERTY*

CBRM agrees to sell and the CME agrees to purchase all that real property and land covered by water located at Commercial Street, North Sydney, in the Cape Breton Regional Municipality, Nova Scotia and being PID #15690514 and reserving out a lot presently referred to as a "paved parking lot" and more particularly set out in Schedule "B" attached hereto and hereinafter called the "PROPERTY" on the terms set out in the Agreement of Purchase and Sale dated April 21, 2015 and attached hereto as Schedule "A"

2. *INVESTMENT*

CME shall expend and invest monies in the amount of Five Million (\$5,000,000.00) in its North Sydney business operations **within one year of the start of the construction season which for the purposes of this Agreement is deemed to be May 1, 2015. Any investment made pursuant to this Clause and expended prior to May 1, 2015 shall be credited to CME and shall be included in the Investment calculation.** Should CME be unable or unwilling to carry out the Five Million (\$5,000,000.00) dollar Investment, CBRM has the right to repurchase the property for the amount of Five Hundred Thousand (\$500,000.00) of lawful money of Canada plus HST. In addition to the purchase price, CBRM shall reimburse CME any fixed capital expenditures they spent to acquire, renovate or upgrade the site. Such Capital expenditures shall include such things as buildings, fixed wharves, recreation equipment/facilities and the purchase of the restaurant. For the purposes of meeting the Investment provision, investment shall include but not be limited to such things as buildings, wharf improvements, salaries paid to local contractors or employees, **mutually agreeable economic benefit to local community** and the purchase of business assets such as vehicles and equipment in the local community. IF CME meets the investment commitment the right to repurchase by CBRM shall become null and void.

3. *TERMS OF SALE OF THE PROPERTY*

The parties agree that the purchase and sale of the property set out in the Agreement of Purchase and Sale attached hereto as Schedule "A" is subject to the Investment and associated right of repurchase as set out in Clause 2 of this Agreement. And Clause 2 of this Agreement shall form part of the terms of sale of the property and Clause 2 shall be incorporated as a clause into the Agreement of Purchase and Sale for the property between the parties.

DATED at Sydney, Nova Scotia this _____ day of May, 2015.

**CAPE BRETON REGIONAL MUNICIPALITY
(VENDOR)**

Witness

Per: _____
Cecil Clarke – Mayor

Per: _____
Deborah Campbell – Clerk

DATED at _____, _____ this _____ day of May 2015.

**CANADIAN MARTIME ENGINEERING LTD.
(PURCHASER)**

Witness

Per: _____

Per: _____

Port Update:

Archibald's Wharf:

Motion: Motion:

Moved by Councillor Keagan, seconded by Councillor Prince, approval of the sale of the Archibald's Wharf property to Canadian Maritime Engineering Ltd. (CME) and to include the following elements in the proposal:

- CBRM will acquire the restaurant located on site for \$25,000;
- CBRM will sell parcel PID#15690514 to CME for \$200,000 (plus an additional \$50,000 contribution to be used for local recreational purposes);
- CBRM will use \$25,000 of the funds from the sale for on-going port development costs;
- CBRM will commit the balance of net proceeds for future recreational development on the North Sydney waterfront, with the intention that this funding can be used to leverage additional provincial and federal funding;
- CBRM will provide a one year-rent-free vendor location for Chill Zone on CBRM property;
- CBRM will relocate the monument that is on the site in consultation with the North Sydney Kinsmen;
- The Bartown Office will be relocated to the Indian Beach facility;
- CBRM will maintain the public parking space on site.

And to approve the four-month port budget to the end of March 31st, 2015, as presented.

Discussion:

The Director of Planning explained that the sale of Archibald's Wharf requires an amendment to a Policy in the CBRM Municipal Planning Strategy which will therefore require a public consultation process culminating in a Public Hearing of Council.

Council acknowledged that approval of the sale is contingent on the completion of the public consultation and public hearing process with the adoption of the necessary Policy amendment. A committee comprised of the Mayor and senior administration was tasked with the responsibility of organizing and scheduling a Public Participation Program and a Public Hearing of Council.

Motion Carried

Proposed Amendments to the CBRM Municipal Planning Strategy to allow for the sale of Archibald's Wharf:

Motion:

Moved by Councillor Keagan, seconded by Councillor Prince, final approval of the amendments to the CBRM Municipal Planning Strategy by revising Recreation Policy 6 of Part 5 as outlined in the Amending Bylaw attached to the Planning Director's Issue Paper dated December 18th, 2014.

Discussion:

Councillor Rowe stated that she will not support the amendment to the policy because she felt the process was flawed. Although the Solicitor's opinion is that we followed the letter of the law, she does not believe we followed the spirit of the law.

Councillor Eldon MacDonald spoke against the motion and he believes the process is severely flawed. He did not have sufficient time to review the documentation provided. For him it is about principles and best practices. He asked the Solicitor if there is an official contract with CME regarding the concessions and investments and has it been completed. He asked for clarification as to why we are selling this property and not leasing it.

The Solicitor advised that there is no contract as of yet because we cannot enter into a contract until we can sell the property to CME.

The Economic Development Manager advised that CME did not want to lease the property; their request was to purchase the property. However there is no reason why we would have refused to entertain a lease. But in our view, given the request for a sale, the protection of the property through the right of first refusal was the way to go.

Councillor Doncaster advised that he met with the CAO to discuss the process and all of his concerns were addressed and he is ready to move forward on the issue.

Councillor Prince noted that this is certainly a passionate issue, and a matter that has been debated in many municipalities across Canada - jobs vs. development; and jobs vs. recreation. But at the outset of Council's mandate, we committed to Port development, and we did that because of the chronic unemployment in our area and the desire to tap into port-related activities. CBRM needs to restore a healthy tax base. He agrees that green spaces are gathering places that create close-knit communities and improve well-being. However unemployment rates in Cape Breton are double the national average. These jobs won't cure the chronic unemployment rate in Cape Breton, but it is a small step in the right direction.

Councillor Keagan advised that this is not an easy decision to make and the issue has weighed heavily on his mind; however he stated that we can't change the facts of what we're facing if we don't move on this proposal. The area has a lot of potential and this could be the beginning of a sustainable CBRM.

Continued...

Proposed Amendments to the CBRM Municipal Planning Strategy to allow for the sale of Archibald's Wharf (Cont'd):

Motion to Postpone:

Moved by Councillor Rowe, seconded by Councillor Eldon MacDonald, to postpone the Main Motion until the February 2015 Council Meeting to allow Council time to review all information regarding the matter.

Discussion:

Councillor Eldon MacDonald stated that he has not had enough time to digest the information and agrees with the motion to postpone.

Councillor Rowe expressed concern over the timeline in which Council received information to review on the proposed amendments and does not want Council to make a decision in haste.

Councillor Detheridge stated that it was her recollection that CBRM has made numerous pleas to the community seeking out other opportunities for the buildings on Archibald's Wharf, and up to this point we have had no interest other than CME. She asked the CFO to comment.

The CFO advised that in the past, several advertisements have been placed in the Cape Breton Post regarding lease opportunities for Archibald's wharf and there was not one reply. This year for the first time we did have interest from the Northside BIDA (in a letter from Mr. Dan Bunbury), however research had already begun on the CME initiative, thus it was not entertained.

There was some discussion around the possibility of CME retaining some green space on the Wharf, however that would be something to be decided by CME.

The Mayor then called for the vote on the motion to postpone.

Motion to postpone the Main Motion Defeated.

The Mayor then called for the vote on the main motion.

Main Motion Carried.



Department of Municipal Affairs

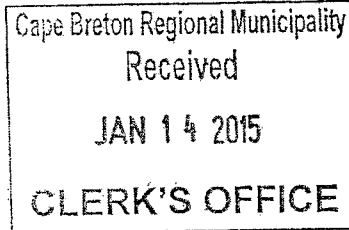
Jessica McDonald Acting Provincial Director of
Planning
14th Fl, North, Maritime Centre
1505 Barrington St.
PO Box 216
Halifax, NS B3J 2M4

Bus: 902 424-7922
Fax: 902 424-0821
E-mail: Jessica.M.Mcdonald@novascotia.ca

Our File Number: 09-04-0012
Log #: 15-001

JAN 12 2015

Ms. Deborah Campbell
Municipal Clerk
Cape Breton Regional Municipality
320 Esplanade
Sydney, NS B1P 7B9



Dear Ms. Campbell:

Re: Amendments to the Municipal Planning Strategy and Land Use Bylaw regarding Archibald's Wharf.

These Municipal Planning Strategy and Land Use By-law amendments were adopted at a meeting of the Council of the Cape Breton Regional Municipality held on December 19, 2014. I have reviewed the documents pursuant to Section 208 of the *Municipal Government Act* and have determined that the documents do not fall within any of the categories requiring approval listed in subsection 208(3), therefore the documents are not subject to approval by the Minister of Municipal Affairs. Enclosed, please find two copies of the documents for your records.

Subsection 208(8) requires that Council cause a notice to be published in the local newspaper advising that the documents are in effect of the date of the notice and stating where the documents may be inspected.

Yours truly,

Jessica McDonald
Acting Provincial Director of Planning

cc. Mr. Malcolm Gillis, Director of Planning

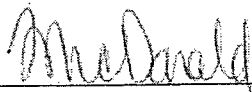
JM/

**Cape Breton Regional Municipality
Amendments to the Municipal Planning Strategy and Land Use By-law**

Adopted by Council on December 19, 2014

I acknowledge receipt of these amendments to the Municipal Planning Strategy and Land Use By-law, dealing with Archibald's Wharf, adopted at a meeting of the Cape Breton Regional Council held on December 19, 2014.

I have reviewed the documents pursuant to Section 208 of the Municipal Government Act and have determined that the documents do not fall within any of the categories requiring approval listed in subsection 208(3), therefore the documents are not subject to the approval of the Minister of Municipal Affairs.



Jessica McDonald
Acting Provincial Director of Planning

Dated: JAN 12 2015

By-law
of the Cape Breton Regional Municipality
amending the

**Cape Breton Regional Municipality's
Municipal Planning Strategy**

Pursuant to Section 205 of the Municipal Government Act of Nova Scotia, the Council of the Cape Breton Regional Municipality hereby amends the Cape Breton Regional Municipality's Municipal Planning Strategy in the following manner:

THAT: Part 5, Policy 6 is amended to read as follows:

POLICY

6. It shall be a policy of Council that the preservation for public use of beaches and shoreline along the shore of the Bras D'Or Lakes and Sydney Harbour, as well as prominent peninsulas along the shore of the Atlantic Ocean, be a recreational priority for the CBRM. This recreational priority shall be implemented by:
 - prohibiting the sale of any CBRM land associated with a waterfront public recreational park unless:
 - *the sale of the land will facilitate the expansion of a health care facility, in which case:*
 - *the site affected does not include lands actually abutting the shore of Sydney Harbour, the Bras D'Or Lake, or the Atlantic Ocean;*
 - *the land to be sold is not within 30 meters (98.4 ft.) of the high water mark of the body of water the Park abuts, nor does it include a motor vehicle or pedestrian trail, the main function of which is to provide access to the shore, and the CBRM is compensated according to the appraised value of the land;*
 - *or the site affected is in a community who's economic raison d'etre has historically been as a marine port, and the site affected has historically been the site of a marine related business development for a period of time much greater than the time it was used as a public recreational asset, and it is located in the midst of a sector of the waterfront of the community which has historically been the nucleus of the community's economic base, and the sale of the land will facilitate the expansion, or re-introduction, of a marine related business development associated with the marine port economic base of the community.*
 - the CBRM continuing to support the concept of an inter-municipal plan for the Bras D'Or Lake focused on its environmental remediation by continuing to participate in the joint planning endeavours of the three levels of government and the First Nations Reserves;
 - the Recreational and Planning Departments and Parks and Grounds Division of the Dept. of Engineering & Public Works establishing a working relationship with the Nova Scotia Departments of Natural Resources and Tourism and Culture focused on

the objective of providing more publicly accessible water frontage along the shores of East Bay and St. Andrews Channel;

- the CBRM identifying public access to the South Arm of Sydney Harbour as a recreational priority.

PASSED AND ADOPTED: by a majority of the whole Council at a duly called meeting of the Cape Breton Regional Municipal Council held on December 19, 2014.




Mayor Cecil P. Clarke



Deborah Campbell, CLERK

THIS IS TO CERTIFY that the attached is a true and correct copy of the Amending By-law of the Cape Breton Regional Municipality adopted by Regional Council during a meeting held on December 19, 2014 to amend the CBRM's Municipal Planning Strategy.



Deborah Campbell, CLERK

PA

NOVA SCOTIA UTILITY AND REVIEW BOARD

IN THE MATTER OF THE MUNICIPAL GOVERNMENT ACT

- and -

IN THE MATTER OF AN APPEAL by **SUSAN WHITAKER** to an amendment to the Municipal Planning Strategy affecting Archibald's Wharf, North Sydney

BEFORE: Wayne D. Cochrane, Q.C.

APPELLANT: **Susan Whitaker**
on her own behalf

RESPONDENT: **CAPE BRETON REGIONAL MUNICIPALITY**
Demetri Kachafanas, BA, BBA, LL.B, LL.M

WRITTEN HEARING

WRITTEN SUBMISSIONS: January 21, 2015
January 26, 2015

DECISION DATE: **March 2, 2015**

DECISION: **The Appeal is dismissed.**

I INTRODUCTION

[1] A municipal council changed a provision of its municipal planning strategy in order to enable the sale of a municipally owned waterfront recreational property, known as Archibald's Wharf, for an industrial use. A resident appealed the decision.

II ISSUE

[2] **Does the Nova Scotia Utility and Review Board have authority to reverse Council's decision?**

For reasons discussed below, the Board finds the answer to this question to be "no."

III FACTS

[3] Archibald's Wharf lies on the shore of Sydney Harbour, in downtown North Sydney. For many years, a fish processing plant operated there, but it closed in 1980, and the site lay abandoned for a number of years. The property was eventually redeveloped with the assistance of various levels of government, becoming a recreational area owned by Cape Breton Regional Municipality. As of 2014, it included a parking lot, field, playground, boardwalk and seasonal restaurant.

[4] Archibald's Wharf is located between the Newfoundland ferry terminal, to the north, and a former marine railway site to the south.

[5] The former marine railway site was bought in 2013 by Canadian Maritime Engineering Limited. CME wishes to expand its operations (which include ship building and repair) and needs more land to do so.

[6] CBRM owns the land on both the north (the Archibald's Wharf property) and south sides of CME's property, and wants to assist CME in its expansion. CME and CBRM entered into discussions for the possible sale to CME of Archibald's Wharf.

[7] As noted, Archibald's Wharf is on the north side of CME's lands. CBRM's property on the south side unfortunately does not provide a practical opportunity for the expansion of CME, because it is the access from Commercial Street to a wharf owned by the Federal Government, used in the commercial fishery. If the lot were to be sold and redeveloped by CME, the practical effect would be the loss of access to the Government wharf.

[8] Archibald's Wharf, and the area around it, is presently zoned "for manufacturing, assembly and repair associated with any marine use," and is in an area which CBRM's MPS designates for port-related business developments other than the fishery.

[9] However, CBRM's MPS also contains a provision (Policy 6 in the Recreation Part) which generally prohibits the sale of CBRM-owned waterfront recreational land.

[10] John Whalley, an economic development officer with CBRM, recommended to Council that Archibald's Wharf be sold to CME, but said that for such a sale to occur, Council would have to amend the prohibition found in MPS Policy 6.

[11] CBRM advertised the proposed change, and held an information session on December 13, 2014.

[12] A number of citizens opposed the change, forming various groups such as "The Friends of Archibald's Wharf" and "Taking Back the North Side."

[13] On December 19th, CBRM Council voted to amend the MPS.

[14] Susan Whitaker, a member of one of the citizens' groups, filed an appeal with the Board on December 31, 2014.

[15] Her appeal involved extensive documentation. It purported at least at one point to be an appeal of an amendment to a by-law by CBRM. Having evaluated all the documentation, the Board concludes that CBRM intended to, and did, amend only its MPS. It did not amend a by-law. The use to which CME intends to put the property is one which is already permitted by the existing zoning of the property in the present by-law.

IV ANALYSIS AND FINDINGS

[16] The appeal in the present proceeding purports to be one under the *Municipal Government Act*.

[17] The Board is a statutory tribunal, meaning that it is established by an Act of the Legislature, and lacks the inherent jurisdiction of courts, such as the Nova Scotia Supreme Court. As the Supreme Court of Canada said in *Douglas/Kwantlen Faculty Assn. v. Douglas College*, [1990] 3 S.C.R. 570; [1990] S.C.J. No. 124:

...the jurisdiction of a statutory tribunal must be found in a statute and must extend not only to the subject matter of the application and the parties, but also to the remedy sought.

[18] The *Municipal Government Act* does expressly grant significant powers to the Board in relation to some appeals of decisions made by municipal councils. For example, if a council decides to approve a development agreement, that decision is expressly appealable to the Board: s. 247(2). Likewise, a decision by a development officer to refuse a development permit may also be appealed: s. 247(3).

[19] Further, a decision by a council to amend a land-use by-law, or LUB, can, in certain circumstances, be appealed to the Board: s. 247(1).

[20] However, the *Municipal Government Act* contains no express provision for an appeal of a change to a municipal planning strategy.

[21] The lack of any express power in the legislation does not necessarily mean that the Board lacks the power to grant an order. In certain circumstances, it has been successfully argued that the Board can exercise a power which does not appear explicitly in a statute, but is there by way of necessary implication. An example of such an implied power may be found in *Attorney General of Nova Scotia v Williams* (N.S.C.A.), 1995 CanLII 4256 (NS CA), 144 NSR (2d) 19; 126 DLR (4th) 599, an expropriation case.

[22] In *Williams*, the Court ultimately concluded that, even though the Board is a statutory tribunal, and even though the *Expropriation Act* did not contain an express provision giving the Board jurisdiction to make a particular type of costs order, the Board, nonetheless, on a proper construction of that Act, did have jurisdiction to issue such an order.

[23] In the present proceeding, however, the Board sees nothing in the applicable legislation which would support a conclusion that the Board has an implied jurisdiction to hear an appeal of the type brought by Ms. Whitaker, i.e., an appeal of an amendment to the MPS.

[24] The Board infers from some of the documentation before it that Ms. Whitaker also challenged the propriety of a particular member of Council participating in the consideration of the MPS amendment, including voting upon it.

[25] The Board will not explore this point, but simply note that, in its judgment, the *Act* gives the Board no power to reverse a municipality's decision because it allegedly used an unfair process, such as council members being biased. Jurisdiction over the latter point, it has been repeatedly held, rests with the Supreme Court. In making this observation, the Board draws no conclusions, express or implied, about the impugned actions of the councillor in question; the Board simply observes it has no jurisdiction to consider, much less act upon, such an allegation.

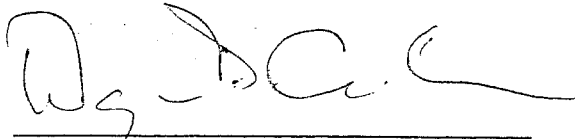
V SUMMARY and CONCLUSION

[26] The Board finds it has no jurisdiction to hear this appeal to the amendment of CBRM's municipal planning strategy; it likewise finds it has no jurisdiction to hear any appeal relating to the participation of a particular councillor in that decision.

[27] The Board dismisses the appeal.

[28] An Order will issue accordingly.

DATED at Halifax, Nova Scotia, this 2nd day of March, 2015.



Wayne D. Cochrane

NOVA SCOTIA UTILITY AND REVIEW BOARD

IN THE MATTER OF THE MUNICIPAL GOVERNMENT ACT

- and -

IN THE MATTER OF AN APPEAL by SUSAN WHITAKER to an amendment to the Municipal Planning Strategy affecting Archibald's Wharf, North Sydney

BEFORE:




Wayne D. Cochrane, Q.C.,

ORDER

The Board, having received written submissions on January 21 and January 26, 2015; and having subsequently rendered its written Decision on March 2, 2015;

IT IS HEREBY ORDERED that the Appeal be dismissed.

DATED at Halifax, Nova Scotia this 2nd day of March, 2015.


Clerk of the Board



ISSUE PAPER

320 Esplanade

Sydney, Nova Scotia, B1P 7B9

To: Mayor Cecil Clarke & CBRM Council
Date: May14, 2015
Subject: CBRM Sustainability Fund
Submitted By: Marie Walsh, Chief Financial Officer

Introduction

On behalf of the CBRM sustainability committee, I would like to provide an update on the evaluation process to date for this year's sustainability fund.

As discussed during the budget deliberations, the committee will evaluate all applications received; however, the committee will refer any applications requesting \$50,000 or more in funding to CBRM Council.

Funding Decisions to Date

The eligibility requirements and the funding conditions for this program were clearly identified in the application package that was provided to each organization that requested information on this fund.

Based upon our evaluations to date, we are recommending funding for the organizations and events identified in the attached spreadsheet.

Some of these initiatives exceed the \$50,000 threshold and, therefore, require the approval of Council.

Specifically, there are two items that require Council approval.

First, there is the annual operating grant of \$100,000 for the Savoy Theatre. This has been an annual grant for several years that recognizes the unique cultural role of the theatre in our region.

Second, there is the proposed Community Blooms program, which would be administered by Business Cape Breton. This is a beautification effort that builds upon the success achieved last year. The CBRM funding requirement for this initiative is \$138,000. The project proposal is attached.

To date, the total requests for funding received by the committee equal approximately \$2.3 million. Our total budget for this year is approximately \$1.1 million. In other words, there is a very substantial funding shortfall.

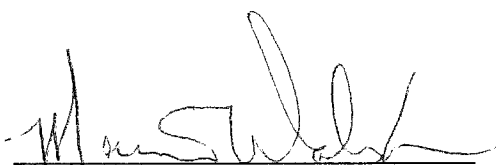
As discussed during the budget deliberations, Council could utilize some of the anticipated budget surplus from our last fiscal year to fund this list of initiatives.

This would enable CBRM to support a much broader array of community initiatives than would otherwise be possible.

Recommendation

I recommend that Council approve this list of initiatives and, furthermore, that Council endorse utilizing some of the expected operating surplus from 2014-15 to fund these initiatives and, thereby, extend our ability to support the work of not-for-profit organizations in our communities.

All of which is respectfully submitted,



Marie Walsh
Chief Financial Officer, CBRM

Group	Committee Approval	Notes
Celtic Colours Festival Society	10,000	Event (+ in kind)
Davis Day	1,000	Event
Dominion Heritage Committee	6,000	renovations
Glace Bay Heritage Museum	5,000	Operating
Grand Narrows	10,000	Event - \$5000 not pd last year & \$5000 this year
Main-a-Dieu Community Development Association(Coastal Discovery)	20,000	operating
Mira Pasture Co-op	5,000	operating
New Waterford & District Community Centre	30,000	Final payment of \$90,000 commitment
Old Sydney Society	10,000	Operating
Sydney Mines & Area Food Bank	805	operating
Sydney Mines Community Heritage Society(Fossil Center)	25,000	operating
Sydney Ribfest (Sydney Rotary Club/Sydney Sunrise Rotary Club)	5,000	Event
Sydney River Columbus Pensioners Club	1,400	operating
Trinity Church Graham Group ACW	2,100	operating
Two Rivers Development Association	35,000	Annual
Whitney Pier Society for the Arts	3,500	Event
Whitney Pier Youth (Boys and Girls Clubs of Cape Breton)	10,000	Operating
Youth Council	25,000	Council Commitment
Bay Plex	30,000	annual - loan repayment
Action Week	40,000	Event
Dominion Volunteer Fire	9,810	Fireworks firing system- will benefit CBRM for fireworks events
Menilik Hall	1,600	operating
UNIA	4,000	Event
UNIA	2,000	operating
New Years celebration	20,000	event
Other events	20,000	event
Center For Craft	57,360	adjust taxes to residential rate
Event Funding to Partner with ACOA	25,000	events
	<u>414,575</u>	

Over 50,000 requiring Council Approval

Savoy Theatre	100,000	operating
Community Blooms	138,000	
	<u>238,000</u>	

Already Committed

PGA The Lakes	50,000	Event
	<u>50,000</u>	
Total	<u>702,575</u>	

2015-16 Operating Budget:

Motion:

Moved by Councillor Detheridge, seconded by Deputy Mayor George MacDonald, approval of the 2015-16 Operating Budget as recommended by staff, including:

- 2015-16 Operating Budget totaling \$143,207,400;
- Transfer the 2013/14 surplus of \$456,000 to revenue; and
- Approval in principle to consider the allocation of the 2014/15 pending surplus to the Sustainability Fund with a list to come back to Council for approval.

Motion Carried.

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