

Cape Breton Regional Municipality

Council Meeting

ADDENDUM

**TUESDAY, FEBRUARY 27TH, 2018
6:00 P.M.**

Council Chambers
2nd Floor, City Hall
320 Esplanade, Sydney, NS

Cape Breton Regional Municipal Council

Tuesday, February 27th, 2018

6:00 p.m.

ADDENDUM

2. PLANNING ISSUES:

2.1 FINAL APPROVAL:

- a) **Zoning Amendment Application #1037: Chris Skidmore - East Bay Highway, Big Pond (PIDs 15327539, 15327547, 15327554, and 15327562:**
 - **Staff Response to Comments made at February 20th Public Hearing:** Malcolm Gillis, Director of Planning and Development and Karen Neville, Planner (See page 3)



MEMO TO: CBRM COUNCIL

FROM: Malcolm Gillis and Karen Neville

**SUBJECT: STAFF RESPONSE TO COMMENTS MADE AT
FEBRUARY 20th PUBLIC HEARING**

DATE: February 23rd, 2018

There were 25 presentations made before Council during the February 20th Public Hearing and the Clerk's office received another 27 written submissions. Mayor and Council graciously gave Planning and Development Department staff time to respond to the great number of comments that were voiced and written. Please consider this memo as staff's response to the pertinent comments given to Council.

There was a claim that Recreation is the CBRM's responsibility

Only public recreation is the CBRM's responsibility. A campground is a private endeavor which is not the responsibility of the CBRM.

What is being proposed is an amusement park and according to the Part 5 Policy 13.a of the MPS, amusement parks in rural communities should have extensive setback and buffering provisions to protect residential development.

The LUB defines amusement park as:

entertainment business offering recreational activities, mechanically or electrically operated rides, and ancillary activities to the general public for a fee.

The various amenities (splash park, zip-lines, walking trail, tennis courts, etc.) would not comply with the definition of amusement park, but rather the definition for a recreational use. It should be noted, all of the recreational uses being proposed by the applicant would be permitted as of right in the Rural CBRM Zone (RCB). The RCB Zone permits all recreational uses with the exception of racetracks for motor vehicles and campgrounds.

There was a claim that Big Pond has the second highest property assessment along the Bras d'Or Lakes.

Of the thirty three communities fronting on the Bras d'Or Lakes in CBRM, Big Pond and Big Pond Centre have the 10th and 13th highest property assessment value respectively.

Grave concerns were expressed that toxins in the fumes emanating from the motor vehicles and appliances within the RV park would adversely affect the plants to be grown in an organic farm on an adjacent property.

- The staff report recommends that only Phase 1 with approximately 211 RV sites should be approved by Council. Most of these will be parked with the engine not running, and those being driven within the park will be traveling in low gear at speeds below 20 kilometer per hour. Because RV parks provide electricity connections, there will be no need for the RV generators to be operating and, while equipped with air conditioning the typical Cape Breton summer doesn't warrant a need to have air conditioners operating regularly. Last summer here in Cape Breton was relatively warm in comparison to the historical average but the Sydney weather station did not record one day during which the highest temperature recorded went into the 30° Celsius.
- The latest statistics from traffic counters installed in the community of Big Pond by the Department of Transportation and Infrastructure Renewal tell us approximately 930 motor vehicles a day travel along the Road these properties abut, from small cars to tractor trailers traveling at permitted speeds of approximately 80 kilometers per hour.
- Staff is not convinced there is a justifiable reason to reject this application because of the fumes emanating from the proposed RV park. *However, Council could choose to instruct staff read pertinent studies on the matter and report back to Council or CBRM could hire a consulting firm to investigate this further.*

The Province's Statement of Provincial Interest Regarding Agricultural Land was referenced as a reason for Council to (1) protect farms from developments that could potentially adversely affect them (2) protect agricultural lands suitable for farming in the community and therefore consider rejecting this zoning amendment application.

- This Statement of Provincial Interest obliges municipalities to adopt policies that address agricultural land. If the Province felt the CBRM did not address this statement it would not have approved the CBRM's Municipal Planning Strategy. The Province did approve our Planning Strategy with the current policy statements in the Planning Strategy after we consulted with the local Federation of Agriculture. These policies permit all types and scales of agricultural endeavours throughout the rural communities of CBRM and even allows agriculture in urban settings under stricter provisions. Most municipalities are not as tolerant of agriculture and certainly not in urban or suburban locales. Most of the permitted uses in the RCB Zone would be relatively benign near existing farms and those uses which would be considered hazardous would be subject to a zoning amendment. Staff just are not convinced this proposed RV park will be hazardous to farming.
- Regarding the question of preserving all lands suitable for agriculture, according to the Federal Government's Agriculture and Agri-food land suitability for agriculture classification,

the site of this campground is not suitable for agriculture, but much of the Mie Mestreech Road subdivision is. If CBRM took that prohibitive approach that rural residential subdivision would never have received subdivision approval. But we did not because there simply was not enough demand on the lands suitable for agriculture and such a policy would have been considered excessive. That position was not only supported by the agricultural community but they made it quite clear to us they would have strongly lobbied against a policy of total preservation.

The adverse effects of noise emanating from the park is a matter that can be considered by Council and one of the most compelling presentations was made by an acknowledged audiologist who claimed the combination of surrounding topography, open water, and the location of the park which creates an amphitheater effect, coupled with the number of people congregating in the park, would adversely affect quiet enjoyment of properties.

It would be presumptuous of staff to refute his knowledge of audiology, but the information we have gathered from people within campgrounds and those living in proximity also tells us there really is not a lot of noise created to travel so readily as implied. Will there be sound. Of course there will. But the test of the Planning Strategy is to mitigate and provide reasonable protection. Sounds should be both loud and continuous to be considered noise warranting prohibition. Councillors need to ask themselves, should the still, silent quiet advocated by presenters be the standard for tolerance in rural communities. Because if it is, there are a range of land uses currently permitted in the RCB Zone that could contribute to sounds that would need to be re-considered.

It was claimed that the population of Big Pond has increased by as much as 50%. This point was made to suggest it is a rapidly growing residential community and that continued growth would be jeopardized by this campground.

The only reliable source of population statistics to be compared over time is the census of Canada conducted by Statistics Canada. The smallest areas for which population statistics are published by Statistics Canada are called dissemination areas. The population of the community of Big Pond is too small to be considered a dissemination area by Statistics Canada. For each of the last several census' CBRM's Planning and Development Department estimates the population of each of the communities in CBRM that are too small to warrant their own dissemination area by multiplying the average household size for that encompassing dissemination area with the number of households in the community. According to our estimating formula the population of Big Pond/Big Pond Center has changed insignificantly between the 2011 census and the latest i.e. 2016 census (141 in 2011 and 143 in 2016). There are 171 seasonal residences and 89 permanent residences in the combined communities of Big Pond and Big Pond Center. In the last 5 years we have processed 7 applications for Permits for new residential construction. There is no evidence to support a claim the population of these communities has increased by over 50%.

For projects that span inter-governmental jurisdictions, it was advocated that the four levels of Government should work more collaboratively to process applications for development approvals instead of the current relatively independent bureaucratic procedures

This type of inclusive approach would provide a more holistic set of criteria and of course we support it, but such an approach requires not only a (1) commitment from all four levels of Government but (2) an accepted bureaucratic process endorsed by all four levels of Government (3) supported by an endorsed plan approved by all four levels of Government. Actually we have a written commitment from all four levels of Government to do just that for the watershed of the Bras D'Or Lake i.e. the CEPI Charter (Bras D'Or Lake Collaborative Environmental Planning Initiative). What CEPI has not achieved yet is a plan for the Bras D'Or Lake watershed with an implemented bureaucratic process to regulate development in compliance with it. Yes, CBRM is a signatory to the CEPI Charter, but so is every other municipality within the watershed, but so are four departments of the Province and three departments of the Federal Government. To be candid Planning Department staff no longer regularly attends meetings of CEPI out of frustration because we can't afford to commit our scant staff resources to a project that was seeing little progress towards its objective i.e. to develop an overall management plan for the Bras D'Or Lake. To expect a Municipality whose jurisdiction covers less than 25% of the Bras D'Or Lake watershed and whose jurisdictional responsibilities don't cover the scope of concerns expressed at the Public Hearing and in the written submissions to take on the role of environmental protector is neither fair or realistic.

That being said, the Bras d'Or Lakes Collaborative Environmental Planning Initiative prepared development standards for the Bras d'Or Lakes in 2008. While this document did not result in amendments to the Municipal Planning Strategy and Land Use By-law, staff are recommending a 20 metre buffer from the high water mark of the Bras d'Or Lakes based on its findings.

Reference was made that Bras D'Or Lake is now a UNESCO Biosphere Reserve and this designation could be lost if municipalities allows developments like this RV park.

Council is on record as supporting the Biosphere Reserve Association's application for this UNESCO designation. However, when the Chair of the Association lobbied Council for its endorsement he made it quite clear that the Regional Municipality would be under no obligation to adopt more stringent regulatory provisions if the designation was approved and their website confirms the development rights of individual property owners are not to be restricted because the watershed is now a UNESCO Biosphere Reserve.

The claim was made by a number of people that Big Pond is transitioning into a quiet, relatively sparsely developed community of small scale agricultural, cultural, recreational, residential, artistic and service endeavours and this RV park will be out of scale with that transition.

This may very well be, and it is a direction that could be supported by land use policy after a comprehensive public consultation process, but to date, it has never been articulated as plan policy. People who believe this transition is occurring by design are welcome to advocate for a change in policy to support that vision but a Municipality cannot suddenly say it is so while in the midst of processing a development application.

The Sydney St. Peters Highway is not capable of handling the traffic demands of this campground.

This Highway is the Province's not the CBRM's and the Traffic Authority is the Department of Transportation and Infrastructure Renewal. Having said that, this Highway is one of only three main routes in and out of the CBRM. And developments elsewhere along this route could have a much more dramatic impact on the volume of traffic using it.

Several individuals stated that the proposed development is out of scale with the community. It was not clear whether or not staff's reduced recommendation is considered out of scale or if it was acceptable. It begs the question if any scale of campground development is acceptable or if all campground development is out of scale.

If Council believes the argument that campground development of any scale and density is not appropriate for Big Pond, Council needs to amend its planning documents to reflect this. And if this initiative is taken for Big Pond it begs the question should this type of development be prohibited in any other community along the shores of the Bras d'Or Lakes or is Big Pond unique?

The comment was made that Council and staff should conduct a public consultation process with the rural communities along the Bras D'Or Lake to develop land use policies intended to reach the objectives these communities.

If Council wishes to undertake this change in policy, direction needs to be given to staff.

The Campground Occupancy Rates in Cape Breton does not warrant another Campground Development

The information presented on campground occupancy rates for Cape Breton includes information for private campgrounds as well as campgrounds at National and Provincial Parks. It should be noted that only private campgrounds contain seasonal sites and National and Provincial Parks contain both RV and tenting sites. According to Tourism Nova Scotia seasonal camping normally involves rental of a campsite for the full operating season (at minimum, the rental must exceed 30 days) often from mid-May to mid-October.

Staff have been in contact with Tourism Nova Scotia for occupancy rates for only private campground developments within Cape Breton, but did not receive a response in time to provide the necessary information in this submission.

Concerns over Drinking Water

Drinking water falls under the jurisdiction of Nova Scotia Environment's responsibility.

Water is a natural resource of the Province of Nova Scotia. When CBRM establishes a public drinking water supply it must obtain permission from Nova Scotia Environment.

When applying for a Building/Development Permit in areas without municipal sanitary sewer and water, an applicant is required provide a copy of their approval for sanitary services from Nova Scotia Environment, but they are not require information on potable water.

Unlike other developments, the proposed campground development must be registered as a public drinking water supply. As a part of that approval, the location of nearby groundwater users must be identified and the potential interference effects on these wells must be assessed.

Lack of Detailed Business Plan

As a part of any zone amendment, Council can request more information from a proponent. That being said, Council's role is not to critique the business sense of a development proposal, Council's role is to determine if a development is an acceptable land use.

Liability for Highway Crossing

The CBRM is not the Traffic Authority, the Traffic Authority that is responsible for approving access locations.

This can be the catalyst for more development or business development in Big Pond.

Is more development in Big Pond a good thing or a bad thing? Since 2004, the LUB has permitted a range of sales and service development as a right in the RCB Zone but in the 13+ years since, no Permit for a business development in the combined communities of Big Pond and Big Pond Center has been issued. If Council does not want additional sales and service development in rural CBRM there needs to be a change in Planning Strategy Policy.

This concern was previously raised when the Caterpillar retail and repair facility was proposed along the Frenchvale Road overlooking Highway 125. In the more than 10 years since that development no new business development has been proposed for any site along the Frenchvale Road.

Concerns over Emergency Response

At a public meeting in Big Pond, a representative of the Police Department indicated that they did not think policing would be an issue based on the limited 911 calls to current campgrounds. In 2016, three calls were made for Police assistance from the Ben Eoin Campground.

CBRM Fire Department representatives believe the Big Pond Volunteer Fire Department is equipped to respond, as well as is any other rural Fire Department, especially since CBRM has approved the funding to purchase a new pumper tank for this Fire Department.

Criteria outlined in Part 2, Policy 17e are Environmental Issues

It is not that municipalities cannot attempt to mitigate the potential adverse effects of these matters, but the municipality cannot attempt to regulate environmental matters that are clearly the responsibility of the Province and/or the Federal Government.

Buffering and Screening Provisions

There was some confusion about the buffering and screening provisions in the Amending By-law.

The site specific zone staff is recommending requires a ten metre landscaped buffer along the side property boundaries and limits the type of activity within twenty metres of the ordinary high water mark of the Bras d'Or Lakes. This means that there are different buffering requirements along the side property lot parcel boundaries vs the lot parcel boundary shared with the Bras d'Or Lakes.

A 10 metre (33 feet) wide landscaped buffer is required adjacent to side property boundaries. Vegetation within this buffer shall be retained and where there is not enough to meet the buffer width trees must be planted and no activity shall be permitted except for walkways and trails. If Council wishes, it could remove the ability to have walkways and trails within this buffer area.

The area adjacent to the Bras d'Or Lakes is treated differently, i.e. activity within 20 metres (66 feet) of the ordinary high water mark of the Bras d'Or Lakes is restricted. Within this area activity shall be limited to the placement of one accessory structure not exceeding a footprint of 9.3m² (100ft²) fences, boardwalks, walkways and trails not exceeding 3 metres in width, wharfs, boat ramps, marine dependent uses, fishery uses, conservation uses, parks on public lands, historic sites and monuments, wastewater, storm and water infrastructure, and water control structures.

In addition, the Amending By-law is proposing that campsites be screened from a public street/road or adjacent properties by an opaque vegetative, topographic screen (berm), opaque fence, building or combination thereof.

It should be noted that in addition to the buffering and screening provision, the Amending By-law is also requiring the retention of significant vegetation except where its removal is necessary for the construction of the development.

Evaluating Campgrounds Case-by-Case

Why should campgrounds be evaluated case by case based on MPS Policy? Just use the standards of the Ironville Campground Recreational (IRV) Zone.

If Council does not want campgrounds evaluated on a case by case based on MPS policy, then direction should be given to staff to develop a set of development provisions which would apply to all campgrounds. In doing so, campgrounds could be permitted in various zones as of right, eliminating the need to process a zone amendment.

The provisions of the IRV Zone are based on the specific proposal submitted by that prospective developer. With exception of the number of campsites, the provisions of the proposed Amending By-law are more restricted than those of the IRV Zone. It should be noted that the

Ironville campground has not developed because the developer determined such a low density was not feasible.

If Council rejects this application, staff has requested direction under what circumstance a campground development could be considered within rural CBRM in order to properly address future requests.

Part 8, Policy 5.b of the Municipal Planning Strategy

Part 8, Policy 5.b states:

It shall be a policy of Council to consider the drainage basin of the Bras D'Or Lake as a potential wastewater management district when developing a wastewater management strategy for the entire Regional Municipality.

The CBRM has not undertaken a wastewater management strategy for the entire Regional Municipality. The *Municipal Government Act* states that a municipality shall not act in a manner that is inconsistent with a municipal planning strategy, but the adoption of a municipal planning strategy does not commit the council to undertake any of the projects suggested in it.

Piping Plovers

The piping plovers nesting on the beach of the subject properties fall under the jurisdiction of the Department of Natural Resources.

Cemetery

The access to the cemetery is located on property which is owned by the Catholic Episcopal Corporation. The applicant will be required to maintain a 10 metre vegetated buffer along the property boundaries shared with the cemetery access. It should be noted that in this area there is a significant stand of mature trees.

Aboriginal Consultation

It has not been the practice of staff to specifically notify Aboriginal organizations of a zoning amendment application. Having said that, a few months ago Planner Karen Neville discussed the zoning amendment bureaucratic process with David Mitchell of the Office of Aboriginal Affairs. During that conversation Mr. Mitchell intimated that commenting on Municipal zoning amendment decisions is not their normal practice. As well, the zoning amendment proponent reached out to what he understood were representatives of Eskasoni First Nations and received a letter of endorsement from the Band Council Director of Community Economic Development. We've since learned that the Band Council has instructed CBRM to "dismiss" the letters of endorsement.

ORIGINAL SIGNED BY

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