

The Centre for Innovative  
Dispute Resolution

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December 15, 2015

23 Empire Avenue  
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Corrie Davis, MCIP  
Manager  
Land Use Planning  
Department of Municipal and Intergovernmental Affairs  
P.O. Box 8700  
St. John's NL A1B 4J6

Dear Mr. Davis;

Re: Report of the Commissioner – Town of Witless Bay – 2013 – 2023 Municipal  
Plan and Development Regulations – Public Hearing – October 20, 2015 – My File  
# 925

Enclosed please find two copies of the Report in connection with the above noted hearing.

I trust this is satisfactory.

Yours truly,



Wayne Thistle, Q.C., C.Arb., C. Med.

**Public Consultations and Review  
Municipal Plan and Development Regulations  
2013 - 2023**

**Town of Witless Bay  
Report on the Public Hearing  
Knights of Columbus Hall  
Witless Bay**

**Hearing Date: October 20, 2015**

**Report Date: December 15, 2015**

**My File # 925**

**Report of the Independent Commissioner**

**Wayne Thistle, Q.C., C. Arb., C. Med.**

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## **1. Background Information**

The following background summary was provided by the Department of Municipal and Intergovernmental Affairs in an Appendix to the Agreement dated October 16, 2015 with the Commissioner as Consultant:

The Town Council of the Town of Witless Bay (“Council”) has been working to develop and adopt a new ten year municipal plan. However, and despite significant guidance and assistance provided by the Department to the Council, especially over the last 12 months, the Council was unable to complete the steps necessary to register a new municipal plan, primarily as a result of past procedural matters and ongoing conflict of interest issues respecting votes on the plan.

The Minister of Municipal and Intergovernmental Affairs (“Minister”) exercised his discretion under the Municipal Affairs Act to order a plebiscite to determine which of two variations of the municipal plan was preferred by the residents of Witless Bay. On September 17, 2015, the majority of residents that voted in the plebiscite chose municipal plan Version A – May 2013 (“Proposed Municipal Plan”).

In consideration of the results of the plebiscite, and other relevant context including longstanding issues relating to the municipal planning process in the Town of Witless Bay, the Minister was satisfied that it was in the public interest to advance the Proposed Municipal Plan in accordance with the provisions of the Urban and Rural Planning Act, 2000 (Act).

The Minister ordered the Council to adopt the Proposed Municipal Plan in accordance with subsection 103(1) of the Act by noon on Friday, October 2, 2015. This order was not carried out by the

Council, and in accordance with subsection 103(2) and section 16 of the Act, the Minister adopted the Proposed Municipal Plan for and in the name of Council.

The Minister considers it necessary to proceed in accordance with section 26 of the Act, and carry out the duties under sections 17 to 25 of the Act on behalf of Council. As part of this process, a commissioner must be appointed to hold a public hearing and provide a written report on the Proposed Municipal Plan.

In accordance with section 19 of the Act, the Minister will appoint a commissioner to hold a public hearing on the Proposed Municipal Plan and complete a written report on that hearing.

## **2. Public Hearing and the Role of the Commissioner**

Pursuant to s. 18 – 23 of the *Urban and Rural Planning Act, 2000*, Council is required to set a date, time and place for the holding of a public hearing where a proposed plan and development regulations have been adopted under subsection 16(1). This hearing is to consider objections and representations which may be made by a person or association of persons to the plan or development regulations or a part of them. Where a proposed plan and development regulations have been submitted under subsection 16(2), Council shall appoint a Commissioner and may appoint one other person that is considered necessary to help the Commissioner in holding a public hearing and complete a report on that hearing.

Not fewer than two days before the date set for the public hearing, a person or association of persons may submit to Council, two signed,

written statements of objections and representations with respect to a plan, development regulations or a part of them.

Where a public hearing held under the Act is completed, the Commissioner shall in the case of a plan and development regulations referred to in subsection 16(2), submit a written report on the public hearing to Council together with two copies of evidence taken at the public hearing.

In the report, the Commissioner shall set out in detail his or her recommendations respecting objections and representations considered by him or her at the public hearing together with reasons and a statement showing objections and representations that came to the attention of the Commissioner, but were not considered together with reasons why they were not considered.

I was informed by a letter dated October 16, 2015, of my appointment to act as commissioner for the public hearing to deal with the proposed Municipal Plan and Development Regulations for the Town of Witless Bay. The hearing was scheduled for Tuesday, October 20, 2015 and, if necessary October 21, 2015 commencing at 7:00 pm at the Knights of Columbus Hall, Witless Bay.

### 3. Public Notification of the Hearing

Various measures were taken to ensure that residents of the Town of Witless Bay be informed of the public hearing and have an opportunity to provide input, either orally or in writing. There were a number of responses expressing opposition to the development and a number expressing support. The breakdown is as follows:

Total submissions.....	554
Submissions opposed to Version A.....	463 (83.6%)
Submissions in favour of Version A.....	91 (16.4%)

A total of approximately 70 people attended the public hearing. A number of individuals who had provided written submissions spoke about the concerns they had regarding the proposed Municipal Plan and Development Regulations.

### 4. Plan Administration

At p. 58 of the Plan, the following is instructive as to permitting minor adjustments:

For the purposes of administering the Plan, the Future Land Use Maps shall be read only in conjunction with the Goals, Objectives and Policies outlined in this document. All development applications will be carefully evaluated as to their conformity to the

Plan. The full conformity of all proposals to the Plan shall be required by Council.

The boundaries between land uses designations are meant to be general, except where they coincide with roads or other prominent physical features, where they are intended to define the exact limits. **It is intended that no amendment to this plan shall be required to permit minor adjustments to these boundaries.** (Emphasis added) Other than such minor changes, no development shall be permitted that does not conform to this Plan.

#### **5. A number of Objections and Representations Made by a Person or Association of Persons at the Public Hearing:**

1. AnnMarie Churchill - resident
2. Kay Aylward – resident
3. Marie Cahill – resident
4. Colleen Shea – resident
5. Blair Paul – resident
6. Sebastien Dupres (current mayor) – resident
7. Derm Moran (former mayor) – resident
8. Bill Montevecci (MUN professor and researcher at Ecological Reserve) – non-resident
9. Fred Winsor – non-resident
10. Dena Wiseman – resident
11. Sean McGraw – non-resident

12. Barbara Carey – resident
13. Ernie Dunn – resident
14. Joan Tobin – resident
15. Fraser Paul – resident
16. Ron Harte – resident
17. Maureen Marie Murphy – resident
18. Fintan Maloney - resident

**6. A number of Objections and Representations – Overlap Between Administrative Issues, Issues outside of the Authority of the Commissioner and Issues within the Authority of the Commissioner:**

A number of objections and representations appear to be of an administrative nature and are better left to Town officials, in conjunction with the town planner, for response. Some are legal issues beyond the authority of the Commissioner while others are clearly within the mandate of the Commissioner. Examples of the objections and representations include the following:

1. A lengthy letter from Dieter Plautz, Witless Bay Residents Association outlined a number of concerns:
  - a. Minister has exceeded his authority.
  - b. Regarding the May 2013 Plan, he expressed strong objection to the rezoning of the Ragged Beach area from the current traditional and long standing Rural land use to a Residential land use zone and the removal of the area's park

designation. He cited reference to some 1,400 letters in 2011 objecting to this change.

c. The many environmental groups, scientists, tourism related organizations and residents of Witless Bay who objected to the residential development of the Ragged Beach area did so because:

- The provincial, regional and local interests are at risk because the proposed subdivision development will have a negative impact on tourism.
- The proposed commercial subdivision development directly borders one of the most popular trails of East Coast Trails system and will greatly diminish its unique appeal.
- The proposed commercial subdivision development is a Reserve.
- The proposed commercial subdivision development is in direct conflict with and contrary to several Strategic Objectives of the *Governments Coastal Oceans Management Strategy and Policy Framework*.

(c) The Residential land use zone designation for the Ragged Beach lands would pave the way for the commercial developers to secure large blocks of public Crown land for road access and the proposed subdivision development.

(d) Permitting a commercial residential subdivision development in this area would seriously interfere with the Municipal Plan's goals.

(e) To allow the proposed Residential land use zone of the Ragged Beach area to stand would directly contradict the conclusion of the Commissioner who conducted the Public Hearing on the May 2014 Municipal Plan.

The request in this submission was that the Commission decide as follows:

- (a) To declare that the Public Hearing cannot proceed on the grounds that the Minister of Municipal and Intergovernmental Affairs has exceeded his authority and that his adoption of the May 2013 Town of Witless Bay Municipal Plan and Development Regulations is ultra vires.

Or alternately:

- (b) To recommend restoring the long-standing Rural Land Use Zone and Park Designation to the Gallows Cove Ragged Beach area of witless Bay.

Section 40 (1)

2. In an e mail dated October 22, 2015, [REDACTED] expressing a number of concerns:

- If the ragged Beach area gets zoned to allow development it will cut a large swath of his land and also place considerable sections of land of at least 4 more landowners in real peril of being expropriated.
- People have already illegally come onto his land and caused extensive damage [REDACTED]

Section 40 (1)

- He was told that they had permits and he told them emphatically that they were destroying his property, but they put the blame on him for not having his survey pegs in place (after over 20 years).
- Last September one of the developers actually trespassed on his property and refused to leave-telling him that it wasn't his property. [REDACTED]

Section 40 (1)

[REDACTED] contends it was blatantly obvious that his being there to provoke was a setup, done to silence him as he has been a very vocal opponent to the rezoning.

Section 40 (1)

Concerns expressed by [REDACTED] are matters within the jurisdiction of the town and do not have to be addressed in this Report.

Section 40 (1)

3. In a letter to Council dated November 14, 2104, [REDACTED] [REDACTED] provided a survey demonstrating the zoning split in their property. They requested that all their private property be zoned as residential before the approval of the town plan. They recognized from comments made by Mayor Despres at a council meeting on November 13, 2014 there would be some latitude to accommodate property owner's boundaries.

This is a matter within the jurisdiction of the town and does not have to be addressed in this Report.

Section 40 (1)

4. In a letter dated September 25, 2015 [REDACTED] [REDACTED] stated that "After viewing Version "A" and Version "B" in the Witless Bay town plan, I see that the larger parcel of land I applied for is on Version "B" but I have voted on Version "A" because I think it is a better plan for our town's future. I would like for you to consider moving the larger parcel of land into Version "A". At the time I did not know we would be voting on two town plans."

This is a matter within the jurisdiction of the town and does not have to be addressed in this Report.

Section 40 (1)

5. In a letter dated 2015-10-15 to the Department of Municipal and Intergovernmental Affairs, [REDACTED] noted that land left by [REDACTED] was zoned partially as residential and partially as rural and asked that the land be zoned residential in its entirety, not just partially as is now the case.

Section 40 (1)

This is a matter within the jurisdiction of the town and does not have to be addressed in this Report.

Section 40 (1)

6. In a letter dated August 18, 2014 to Council, [REDACTED] asked that his land be zoned as residential to allow [REDACTED] to build on it. He understood from members of Council the land was too large for a single house and would require rezoning from Rural to Rural Residential which is a zoning used for future subdivision of land. He had been advised by council on May 29, 2014 that there is currently a moratorium on subdivisions until after the Town Plan is completed and therefore council cannot rezone the land to Rural Residential at this time.

Section 40 (1)

This is a matter within the jurisdiction of the town and does not have to be addressed in this report.

7. In a written submission to the Commissioner and in a statement at the Public Hearing, [REDACTED] noted that the plebiscite held on

Section 40 (1)

September 17, 2015 indicated resounding support for Plan A which would confirm that residents who had been in the community for over 60 years could retain their family land. He commented that the misinformation presented to many members of the public included rumours of a 400 lot subdivision to be placed directly on Ragged Beach and this is simply not true. There is indeed a proposed subdivision for town of Witless Bay, however nowhere near the Ragged Beach area and it was approved in the plebiscite.

Section 40 (1)

██████████ indicated that there are intentions to possibly construct houses near Ragged Beach, but it involves a total of 3 situated well back of the waterline and east coast trails.

Section 40 (1)

██████████'s submission is basically a show of support for approval of Version A allowing private citizens to construct homes on their lands in the Ragged Beach area.

## **7.Motion of the Council of the Town of Witless Bay - #2014-161**

The following motion was passed by Council in 2014:

- d. Request to the Department of Environment & Conservation for the establishment of a Crown Land Reserve (under Section 8 of the

Lands Act) for 99 hectares of Crown Land on the Town's southern coastline

– 2014-161 Dena Wiseman/Ralph Carey Be it resolved Council petition the Department of Environment & Conservation to establish a Crown Land Reserve under Section 8 of the Crown Lands Act along the southern coastline of Witless Bay. This Crown Land Reserve should begin at the first section of Crown Land located south of Mallowney's Lane, extend south to the end of the Witless Bay boundary for a width of 450 metres, and encompass an area of 99 hectares. For the motion: Dena Wiseman, Ralph Carey, Kevin Smart, Sebastien Despres. Against the motion: Rene Estrada. Motion carried.

### **8.A Classic Conflict in Land Use Development**

The interests that have been expressed in the various submissions clearly demonstrate the conflict that the proposed Plan has created. The range of interests can be summarized as follows:

- Private land owners wish to have the right to build a home on their property.
- There are pressures for more housing development and a number of subdivisions have been proposed.
- There are disagreements over the appropriate lot sizes for different zones.
- There are concerns that smaller lot sizes will have a negative impact on the supply of water and on septic disposal systems.

- There are concerns that the rural nature of the town will be lost as a result of developments
- There are concerns over the impact that developments may have on the Witless Bay Ecological Reserve and the seabird colonies.
- There are concerns over the impact that developments can have on the East Coast Trail.

### **9.Land Owners in the Area Adjacent to Ragged Beach**

The three private land owners in the area adjacent to Ragged Beach are AnnMarie Churchill and Gary Churchill, Randy Hart and Wayne and Bonnie Williams. The information provided indicated that the Williams are awaiting a decision on a Quieting of Titles application - #830, Supreme Court #1992 STJ No. 1980. The owners have each indicated a desire to build a single family dwelling on their respective properties. Their combined properties total approximately 7 acres.

Ms. Churchill made the following points on behalf of Gary Churchill and herself:

- When they returned to Newfoundland in 2009 they bought one and one-half acres in the Ragged Beach area.

- They talked to Council and understood they had support to build on this land but were told there would likely be objections.
- The previous Council would have supported an application for five building lots to help offset the cost of a road to their property – paved and to Town standards. The new Council turned this down and they were then satisfied to go back to a single family home on their land. A subdivision was never their plan.
- They are not interested in making any application for Crown land adjacent to their property.
- They want to build one house in the woods, not on the East Coast Trail, with a buffer to the Trail.
- They have fought to do what they can to protect the Trail and Beach.
- Some people have houses on the south side of their property and are opposed to having them build on their property.
- The Plan A version which was supported by 70 % of the residents gives them the right to build on their property.

In an e mail dated November 9, 2015 from AnnMarie and Gary Churchill to Dr. Bill Montevecchi, they asked for his support in the form of a letter to Council that recommends a reasonable approach and states that the building of three homes near Ragged Beach does not in any way impact

or threaten the Witless Bay Ecological Reserve. She indicated they can all agree that massive subdivisions and irresponsible development along the Southern Shore should never be approved.

In a response dated November 15, 2015, Dr. Montevercchi stated, in part as follows:

Thank you for your informative and heartfelt letter of November 9 detailing your efforts to build a house on your property in Witless Bay and your perspectives about development and conservation in the area.

I empathize with your efforts to build a house on your property. And it seems to me that there should be ways developed to allow three landowners to build houses on their land which ideally could be enclaved within a coastal conservation area. Such an approach would certainly enhance property values and the quality of living.

The problem is that the homebuilding issue and the issue of an 87 ½ acre lot development are very, very different matters, and to rezone the area will primarily benefit the developer. Once rezoning occurs, it will be a developers' frenzy that will completely reshape the natural land, coastal and ocean-scapes in the area.

It seems that you and the other two property owners who want to build homes are actually being used in a mega development scheme which doesn't appear to be your intention.

I would be willing to discuss the matter further with you, council and others if that might help to resolve this rather difficult and complicated situation.

The Churchill's provided a detailed response on November 15, 2015:

We thank you for the response and for your support of us three private landowners. It seems we agree that a few homes in the area on private land will not hurt the ecosystem or threaten in any way the ecological reserve or the coastal beauty and tranquility.

It is important that we clarify for you the issue in the Ragged Beach area. There really is no application for a large scale housing development along the Coast - in fact the total acreage of private property in that area is about 7 acres between 3 landowners. There is Crown land in the area that we all agree should remain free of development and this tract of Crown land stretches 7 kms to Mobile, along the ECT, and is not affected by private landowners.

When you mention 87 ½ acres for residential development it seems you are referring to the proposed subdivision Fraser Paul presented on at the Commissioner's hearing. As he pointed out, the subdivision is not near Ragged Beach or these three private landowners. It is approximately 2 kms away on the non-oceanside, across the street and up toward the highway. This subdivision is totally unrelated and removed from our property and the Ragged Beach - Ecological Reserve. This can be confirmed with the Town Clerk as there has been a lot of misinformation circulated regarding this issue, creating unnecessary concern and opposition. In the last Public Council meeting in Witless Bay, the Mayor confirmed there is no current subdivision application for the Ragged Beach area and no application for large tracts of Crown land along the coast at Ragged Beach.

Mr. Harte noted his desire to build on what he described as family land and the following points were made:

- He should have the same rights as other property owners to build on his land;

- There are big houses on the beach;
- His land is 500 feet from the beach at its nearest and 900 feet at the furthest point;
- His family has always respected the environment and would not do anything to interfere with the birds;
- He would not do anything which would adversely affect the Beach.

## **10. Building Lot Size**

There were very strong opinions expressed in respect of the lot area for single dwellings.

The proposed Development Regulations at Schedule “C” at p.1 states the recommended lot area for Land Use Zone – Residential of 1860 square metres (approximately one half acre). Some presenters made representations that the lot size should be one acre.

A news article of September 19, 2015 carried the following article in respect of lots sizes:

### **Witless Bay residents vote in favour of half acre lot sizes**

Close to 500 residents of Witless Bay voted in a plebiscite on Thursday. People in the town have been divided over a decision

regarding the side of his future residential lots. On Thursday, the vote overwhelmingly went in favour of Version A, which would give residents the option of having properties that are a half acre in size. 331 people voted for that option, while 142 choose Version B, which would have meant residential lots would have to be at least one acre.

Those in favour of the larger lots argued that requiring the full acre would ensure that residential wells would be protected, and that each household would have enough water. Despite that, the voters favoured the smaller lot option, and the Department of Municipal and Intergovernmental Affairs said Witless Bay will now move forward with adopting the plan as a policy. However, before that happens a public hearing will be held to get from residents and interested parties.

Mayor Sebastian Despres is all for the larger lots to protect groundwater on which community depends for its wells. “Witless Bay is the fourth largest town in the entire province without public water,” he said. “So we have to do everything we can to protect that important resource and to protect our resident’s wells.”

The Mayor of Witless Bay provided a submission expression reasons for electing a one acre (4050 square metre) minimum lot sizes for areas zoned as “Rural Residential:”

Firstly, the cost of servicing the area would be considerably less at the lower density of one acre. The one acre minimum considerably lessens the danger of fire (which is a crucial consideration in the area as testified by our region’s draft Emergency Management Plan). Full acre lots also often offer much greater facilities for children to play

on the premises and not in the streets (this is crucial since the currently undeveloped parts of the town are on hillsides, where a substantial portion of each lot is taken up by slopes). In addition to these consideration, the Town voiced the following reasons for selecting a minimum of one acre in new subdivisions:

- Larger lots sizes are better suited to rural living
- Larger lot sizes of one acre protect the rural character of the Town.
- Larger lot sizes have a positive impact on property values throughout a community.
- Larger lots have a better resale value.
- Larger lot sizes allows developers to do selective cutting instead of clear cutting.
- Larger lot sizes attract the upmarket, which means that we get more tax dollars per resident.
- Larger lot sizes are much more flexible. They allow for later remodelling and expansion.
- Larger lot sizes help produce privacy for both current and prospective residents.
- Larger lot sizes require much less reworking for septic installation, thus allowing for more organic landscapes and better siting for infrastructure (storm drains, ditches, driveways, etc.).

- Larger lot sizes allow for better siting of the structures built on them as well as much broader possibilities in terms of landscaping.
- Larger lot sizes allow for gardening, and increased self-sufficiency.
- Larger lot sizes allow for more outbuildings such as sheds, greenhouses, root cellars, gazebos, etc.), therefore allowing homeowners greater self-sufficiency and enjoyment of their property.

The arguments in favour of the smaller, one half acre lot size addressed the water supply issue in the following manner:

- Since 2009 the new regulations require an aquifer study requiring involvement of an expert in hydrology before approval of a subdivision. A recent study showed the water level is quite adequate and that the hydrology, geology and topography supported a sustainable aquifer.
- Governmental guidelines regarding viability of property use for residential purposes recommend a minimum quantity of available water to individual residents should be 2.36 L per minute. The yield and pump test rate applicable specifically to Gull Pond Road area greatly exceeds the minimum requirements with an average yield of 31.6 L per minute and 33 L per minute from the test pump rate. The average for the

entire community of Witless Bay also confirms minimum requirements are exceeded in this geographic location with average yield of 12.8 L per minute and test pump average of 18.1 L per minute.

There was also information regarding septic infrastructure with a detailed submission on the Clarity Biofilters system avoiding the need for septic tanks as the standard means of handling wastewater from sinks, baths and toilets when access to municipal sewage is not available. The document from Clarity indicated it has been approved as a standard sewage disposal system for onsite wastewater treatment by Service NL.

A number of submissions from the previous mayor and a number of previous councillors supported the one half acre of size, noting that verbal approval had been given to a developer and that the change to a one acre lot size would be detrimental to the developer.

With respect to lot size, Version A proposes one half acre for the Residential Zone. Naturally, all application for building on such a lot would go through the regulatory process with various departments having to grant approval. This process should be sufficient to safeguard the water and septic requirements of the Town and there is no sound basis to interfere with the current proposal.

## **11. The Rumour re Subdivisions in the Ragged Beach Area**

Some submissions referenced a 400 lot subdivision in the Ragged Beach area. The Commissioner met with officials at the Lands Division and it was confirmed there is no application on file for crown land in that area. There is certainly no evidence of any proposal to create any subdivision, much less a 400 lot subdivision in that area. One submission cited a statement in an informational package issued by opponents of Version A of the proposed Plan. What was stated was “stopping the massive land grab, the construction of subdivisions and up to 400 houses with the imminent danger of bulldozing this area.”

The initial application to build by the Churchill’s was in 2011 and was for one private dwelling. This evolved into ten lots and then down to five lots. Officials now understand the proposal is for one building lot and there has not been an application by the Churchill’s for any crown land. A septic system on that land would require approval of the appropriate government departments and would have to recognize the separation distance from the ocean.

In summary, rumours of a subdivision in the Ragged Beach area are unfounded rumours.

One submission indicated there is a proposed subdivision for the Town of Witless Bay, however nowhere near the Ragged Beach area:

The proposed subdivision is to be located on Route 10 across from the North side of the Southern Shore Arena and extending east with closest proximity to Ragged Beach of 1.5 kilometers. This subdivision will not induce negative ecological repercussions for the Witless Reserve, but will contribute more than \$180,000 to the municipality of Witless Bay in property taxes alone.

Separation of fact from fiction demonstrate that there are intentions to possibly construct houses near Ragged Beach; a total of 3 situated well back of the water line and east coast trails. Houses will be built in harmony of the surroundings and not cookie cutter like structures designed for commercial efficiency.

There is a proposed subdivision for Witless Bay. A subdivision approved in the plebiscite. Witless Bay is a growing community; subdivisions properly constructed in proper areas will be a boon to the economy. Millions of dollars will be spent in Witless Bay. How is this a bad thing?

Through manipulation, misinformation and propaganda some people have not only taken advantage of the public's generosity towards conservation but they have attempted to strip away land rights from families who have resided in the area for generations.

## **12.Crown Land in the Ragged Beach Area**

The Commissioner was informed that the Ragged Beach area is comprised almost entirely of publicly owned Crown land. An aerial photograph with a legend showing private land and Crown land confirmed this is the case.

From the government of Newfoundland and Labrador web site, the following provides information concerning an application for Crown land:

The Lands Branch of the Department of Municipal and Intergovernmental Affairs is responsible for managing and allocating provincial Crown lands in a responsible manner for the continuous social and economic benefit for residents of Newfoundland and Labrador, not only for present but future generations as well. Crown lands are managed and allocated as a public trust and an important part of this principle is ensuring equity and fairness in the allocation process.

There are a number of reasons why the Department may refuse to accept an application. For example, the land may fall within a proposed or designated watershed; the proposed development may be contrary to a municipal or regional plan; the land may border a section of a highway to which access will not be permitted by the Department of Works Services and Transportation. In each of these examples, it is obvious to Department officials that, if accepted, the application would only result in refusal. Where it is obvious that a refusal will result, an application will not be accepted.

A referral is a request for comments and recommendations sent by the Lands Branch to other Government departments or agencies who may have an interest or concern related to the land being applied for. Generally, an application will only be approved by the Lands Branch if recommended by all applicable regulatory authorities.

Generally, ownership of shorelines around any water body is restricted and a 15 metre reservation is maintained for public use between the high water mark of a water body and any area of granted, leased or licenced land. Specific procedures are required to use the shoreline for the construction of a facility and then only for limited purposes. For further information on the shore line reservation, refer to Section 7 of the Lands Act.

Officials of the Lands Branch have indicated the process for making application for Crown land within a municipality. A municipal recommendation form is used and if the council recommend approval of an application then the applicant applies through Crown Lands. It is then sent to any department or agency which would have an interest or might have concerns. It would depend on the site as to which department or agency would get to review the application. In the case of the Ragged Beach area, the application would be referred to various departments including the Department of Environment and Conservation, Service NL and the Department of Works, Services and Transportation.

### **13. The East Coast Trail**

The proposed Development Regulations at Schedule C, p. 11 provides as follows:

The East Coast Trail is a natural walking/hiking trail along Witless Bay Harbor and along the coastline of the Atlantic Ocean which forms part of a much larger coastal trail system. Council shall encourage the maintenance of the trail to protect the natural landscape and views from the trail and to ensure that future development does not negatively impact the trail.

A 15 metre buffer shall be maintained on both sides of the trail where it passes over Crown land to protect the natural landscape and views from the trail. Council, in issuing any development permits within the planning area, shall encourage landowners to take into consideration the effect of development on the East Coast Trail and

preservation of the scenic beauty along the Town's coastline, where the East Coast Trail transverses private property.

The Commissioner reinforces the statement contained in the proposed Development Regulations.

#### **14. The Conservation Zone**

The proposed Municipal Plan at p. 50 states as follows:

Land designated as Conservation uses are intended to protect certain lands within the Town which by reason of their intrinsic character, are sensitive, vulnerable, or ecologically significant, or have natural or recreation values. They include wetlands, watercourses, bodies of water, shoreline frontages, steep cliffs as well as, open natural spaces such as woodlands, green belts, buffers, natural trails, areas and areas of scenic attraction for public enjoyment, etc.

There are compelling reasons to support the position that the Ragged Beach area satisfies the criteria for the Conservation zone specifications.

#### **15. The Commissioner's Assessment of Various Submissions**

It is difficult to make a definitive ruling on a number of the conflicting submissions. However, for the purpose of this Report and my recommendations, I have to find there is compelling evidence to support the following statements. They form part of one of the written

submissions which deals primarily with the Witless Bay Ecological Reserve and protection of the seabird colonies:

- The Witless Bay Seabird Ecological Reserve is a globally significant marine bird protected area.
- The Witless Bay Ecological Reserve is the most heavily impacted Seabird Reserve in Newfoundland and Labrador.
- Owing to the proximity of towns, marine businesses and activities and the high tourist visitation rates, the seabird colonies in the Witless Bay Ecological Reserve are the most highly at risk to disturbance, development and encroachment compared to any Seabird Reserve in our province.
- The cumulative effects of ecotourism and development on the Witless Bay Ecological Seabird Reserve are profound. The offshore supply base nestled among the tour boat operators in Bay Bulls has a considerable environmental footprint with large vessel traffic throughout the period of seabird occupancy from April through October.
- Lights attract and disorient marine birds, especially birds like Leach's storm-petrels and Atlantic Puffins, those that are nocturnally active and whose offspring depart the nesting burrows at night. More coastal development such as the one proposed for Ragged Beach will greatly increase night-lighting immediately adjacent to the Reserve and will compound the currently high risk situation in Witless Bay.
- Further coastal development in the immediate vicinity of seaboard colonies is imprudent and consistent with an attitude of ambivalence or worse with respect to the coastal and marine environmental and wildlife protection.

With respect to the submissions relating to the request by the three private landowners to construct a single dwelling house on their property in the

Ragged Beach area, the Commissioner finds that to allow such construction would not have any significant negative impact on the Ecological Reserve and the seabird colonies. Neither would it have such an effect on the East Coast Trail.

In respect of the submissions concerning lot size and the potential for a negative impact on water supply and disposal systems, the Commissioner finds that there is nothing to substantiate the concerns which have been expressed. There are checks and balances in the regulatory and approval processes which are in place and which should ensure that developments based on the half acre lot size in the Residential Zone and the three quarter acre lot size in the Rural Residential zone are carried out with due regard to the expressed concerns. There were various submissions which overlap the zoning issues but are basically administrative matters falling within the jurisdiction of Council

## **16. Appendices**

There were a significant number of submissions either by letter or e mail and approximately. Appendix “A” is the standard form used by most people opposed to the proposed 2013 – 2023 Municipal Plan. Appendix “A(1)” is the standard form used by 28 memorial University students opposed to the proposed 2013 – 2013 Municipal Plan. Appendix “A(2)” is a listing of persons a number who provided letters individualized letters

with reasons as to why they are opposed to the proposed 2013 – 2023 Municipal Plan.

Appendix “B” is the standard form used by most who are in support of the 2013 – 2023 proposed Municipal Plan.

Appendix “C” is a supplementary submission by Dieter Plautz received after the Public Hearing and submitted on behalf of the Witless Bay Residents’ Association.

Appendix “D” is a copy of the 2011 request by the Witless Bay Resident’s Association to government to establish a Conservation Reserve in the Ragged Beach area under Section 8 of the Lands Act.

Appendix “E” is a listing of those who made submissions, verbally or in writing at the Public Hearing.

## **17. Summary and Conclusions**

As indicated earlier in this Report, the role of the Commissioner, pursuant to the Act, in respect of this application is to hold a public hearing, prepare a report on that hearing, set out in detail his or her recommendations respecting objections and representations considered by him or her at the public hearing together with reasons.

The Vision Statement contained in the proposed Plan provides as follows:

Witless Bay is known for its scenic and rugged beauty, it's Puffins, Whales and tourism values. Witless Bay is embracing the convenience of urban living with the traditional setting of a rural Newfoundland community. A forward-looking community that meets the needs of its citizens and striking a balance between development and environmental sustainability ability while maintaining and enhancing its unique rural community character and natural environment.

The development of a Municipal Plan has to consider competing rights and interests and attempt to achieve a balance which, while it may not meet totally all the rights and interests of all residents and interested parties, it should achieve a balance that is sound and supportable.

The major rights and interests in the case of the Town of Witless Bay can be summarized, in no order of priority, as follows:

- Fair treatment of property owners in the Ragged Beach area to be able to build a single dwelling in their property
- The protection of the Witless Bay Ecological Reserve, the Atlantic Puffin colony, the Leach's Storm-petrels, the Kittiwakes and the Common Murres.
- The protection of the East Coast Trail.
- The protection and enhancement of the ecotourism sector in the area.
- Adequate safeguarding of the water supply and the waste disposal systems in place and those to be developed.

- Subdivision and in-fill development to meet the commercial, recreational and residential needs of a growing community.

While not making recommendations on all issues presented through oral and written submissions, this Report makes the following Recommendations on the major rights and interests:

## **18.RECOMMENDATIONS:**

- 1. There are three property owners in the vicinity of Ragged Beach, AnnMarie and Gary Churchill, Bonnie and Wayne Williams and Ron Harte. The Commissioner recommends that with respect to this private property, it be zoned Residential so as to permit a building application which would then be subject to the normal regulatory requirements and approvals.**
- 2. The Commissioner recommends that with respect to any Crown land in the vicinity of Ragged Beach, no Crown grant be made for any development purpose, subdivision or otherwise.**
- 3. The Commissioner recommends support for the request by Council (2014-161) to the Department of Environment & Conservation for the establishment of a Crown Land Reserve (under Section 8 of the Lands Act) for 99 hectares of Crown Land along the southern coastline of Witless Bay. This Crown**

**Land Reserve should begin at the first section of Crown Land located south of Mallowney's Lane, extend south to the end of the Witless Bay boundary for a width of 450 metres, and encompass an area of 99 hectares. This Recommendation has to take into account a previous Recommendation to zone the private land of the three property owners as Residential.**

- 4. The Commissioner recommends there be no change in the lot size as proposed in the Plan, i.e. 1860 square metres in the Residential Zone and 3038 square metres in the Rural Residential Zone.**
- 5. There are no other recommendations in respect of the proposed Municipal Plan and Development Regulations.**

Respectfully submitted as the Report and Recommendations of the Commissioner this 15<sup>th</sup> day of December, 2015.

*W. Thistle*

Wayne Thistle, Q.C., C. Arb., C. Med.

Commissioner

**APPENDIX “A”**

Below is the standard form submitted by most people opposed to the Plan:

TO: The Commissioner for Public Hearing of October 20th, 2015;  
and

The Department of Municipal and Intergovernmental Affairs.

RE: ‘Witless Bay Municipal Plan and Development Regulations’ –  
Submission and Statement of Objection

As an interested party, I wish to state my full support for protecting and maintaining the longstanding traditional uses, and current ‘Rural’ zoning designation, of the lands and shoreline in the Ragged Beach area of Witless Bay – a pristine wilderness area, overlooking the fragile Witless Bay Ecological Reserve, comprised almost entirely of publicly-owned Crown Lands, and which has never been inhabited by humans since the beginning of time.

Secondly, I strongly object to and oppose the changes in the proposed Municipal Plan and Development Regulations which would eliminate the current ‘Rural’ zoning (and ‘Park’ designation) of lands and shoreline in the Ragged Beach area – and which proposes to change the land use designation for this area from ‘Rural’ to ‘Residential’ zoning.

Signed and sealed on this 16th day of October 2015:

**APPENDIX “A(1)**

Below is the standard form submitted by 28 Memorial University students opposed to the proposed 2013 – 2023 Municipal Plan:

I wish to object to permitting residential development zoning at Ragged Beach Witless Bay in the new Municipal Plan.

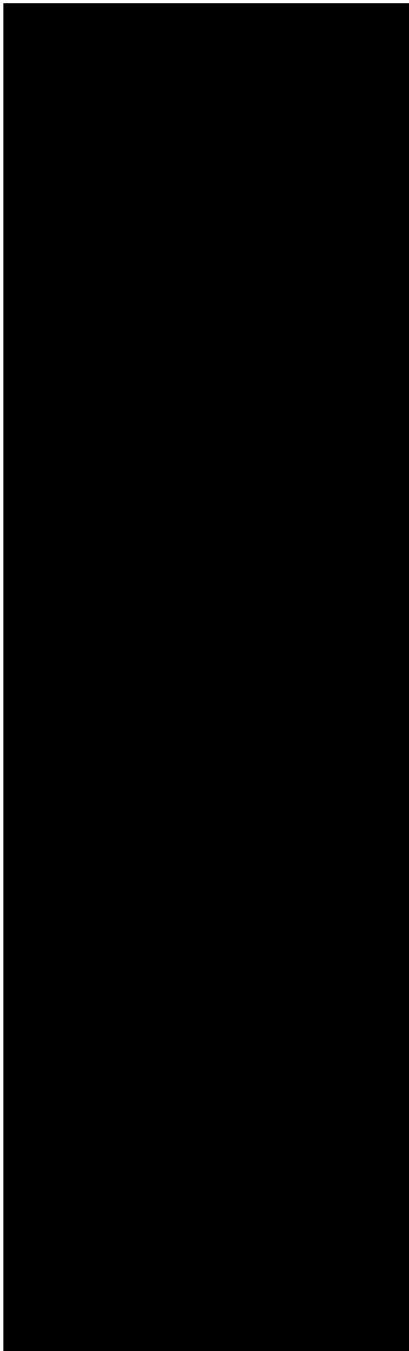
Residential development at Ragged Beach would cause harm to the bird population at the adjacent Witless Bay Ecological Reserve and interfere with the eco-tourism potential of the area.

Residential development at Ragged Beach restrict access to the East Coast Trail, restrict access for public use of the traditional loan space, but deny the right to have a promised public Ragged Beach Nature Park, and would cause environmental harm to shoreline at Ragged Beach.

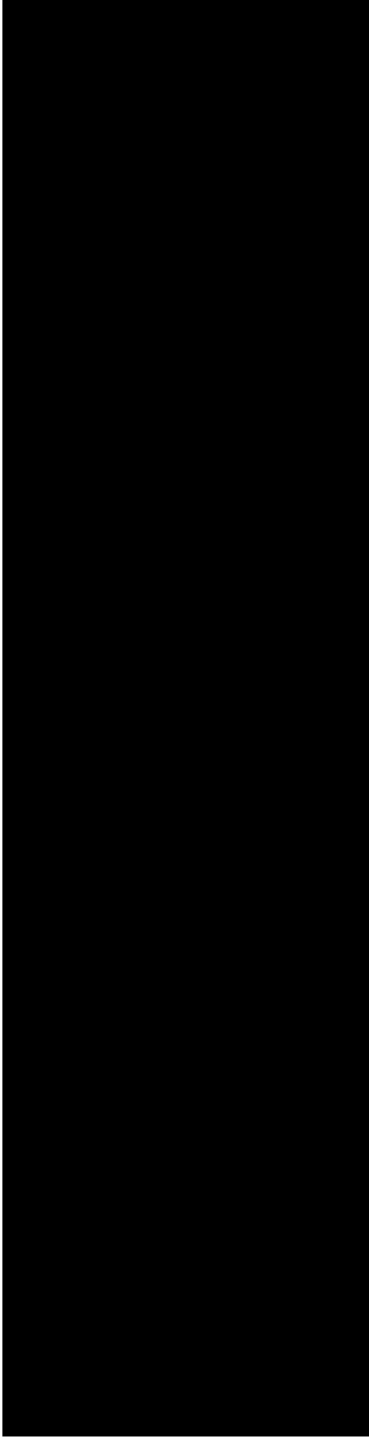
Please register my objections to any residential development zoning at Ragged Beach.

**APPENDIX "A(2)"**

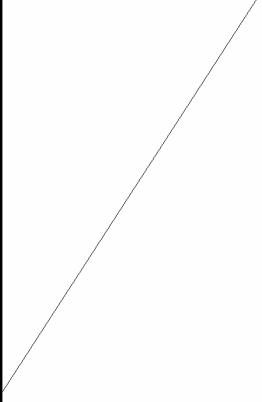
**LIST OF A NUMBER OF PERSONS WHO SUBMITTED INDIVIDUALIZED LETTERS IN OPPOSITION TO THE 2013 – 2023 MUNICIPAL PLAN.**



Section 40 (1)



Section 40 (1)



The following are examples of the reasons given:

- Negative impact on this pristine, tourism rich and ecologically unique gem of the Newfoundland coastline that is such a clear example of why this coastline was ranked number one in the world (out of 99) by National Geographic.
- There are enough subdivisions in the Witless Bay area without endangering wildlife, birding and nature and nature enthusiasts travel from all over the world to witness the incredible experience at Ragged Beach.
- Additional lights would impact many bird species in the area including petrels and the iconic puffin.
- Most of this land is Crown land and should remain in public hands rather than be taken over by a few for their own gain;
- If the real estate development, proposed for the area follows the pattern of other developments in the community of Witless Bay – subdivisions of bungalows crammed side by side by side – the rural and unique character of this area will be destroyed.
- “Residential” zoning would allow for the destruction of this pristine landscape, contrary to the interest of the local inhabitants, as expressed in the most recent municipal election.
- In light of the ongoing coastal erosion and based on my experience with the coastal geomorphology of Newfoundland, I would recommend that development of the areas directly landward of the coastline of Witless Bay should be restricted, and that the areas should remain zoned for conservation.
- As a St. John’s writer who finds his inspiration in pristine coastal landscapes, as a hiker who has taken countless friends from all over along this particular part of the East Coast Trail, as a forager who knows the importance of berry picking from a very young age, as an artist who has come to hate the ugly grading, gridification and private appropriation of too many lovely plots of public lands around our Capital, I call all those responsible to hold their bulldozers and have a sober second thought.

- If the Government of Newfoundland and Labrador does not take a stand to protect this highly valuable asset there exists a high probability that we will see the loss of the Witless Bay Seabird Ecological reserve due to the encroachment of home construction on the ocean shoreline facing the islands of the Ecological reserve. The Government should not take the risk of such a tremendous loss.
- It is a diversion of crown lands for a purpose that could be better met by many other crown land locations and indeed by private lands. It smacks of opportunism.
- The rest of the world travels here to visit what we have. We must not take it for granted. The area should remain in its natural state for everyone to enjoy for generations. It borders the famous and sensitive Witless Bay Ecological Reserve as well as the East Coast Trail and these should be protected as well.
- No resident wants to be burdened with more taxation for expensive water and sewer infrastructure, which will be inevitable if we don't protect our underground water supply. We need larger lot sizes to protect wells. Many developers might not need or want larger lot sizes but residents do.
- I strongly object to the proposed half-acre lot size in this plan, as it would have a huge impact on our community financially environmentally and aesthetically. The proposed half-acre lots in a subdivision setting will create water, sewage and drainage problems as is evident in the existing local subdivisions. A costly water and sewage system upgrade would have to be established at a great cost to our town members. We should have one acre lots with regulations in place for water, sewage, drainage, roads and green spaces.
- Nature NL objects to the proposed changes to the Municipal Plan and Development Regulations and supports the request by the Witless Bay Residents Association that Crown Lands consisting of the ocean shoreline environment and adjoining lands at Ragged Beach be reserves and set apart as a protected

wilderness area in perpetuity - as provided for under Section 8 of the Lands Act. This is an important opportunity for the province to show leadership in the protection of sensitive coastal areas for the enjoyment of all.

- The current Park status of Ragged Beach should be enhanced and integrated into a Nature Preserve that encompasses and respects the ecologically sensitive features of the adjoining bird sanctuary of Witless Bay Ecological. Once the pristine aspects of our natural shores are altered, it will be lost forever, there is no turning back. Development of offshore where crude oil is being extracted, poses a potential threat we are continually on guard against so please let us not compound the issue by turning over these pristine coastal areas to real estate development.
- We have such a remarkable resource here along the shores of the Avalon particularly across from the Witness Bay Ecological Reserve. Once the pristine aspects of our natural shores are altered, it will be lost forever, there is no turning back.
- The Witless Bay Seabird Ecological Reserve provides important breeding and wintering habitat for several species of seabirds, which in turn contributes greatly to the draw of the Witness Bay area as a tourist destination. The seabirds, especially young birds leaving the colony for the first time, are attracted to artificial lights along the coast at night. The Witless Bay Puffin Patrol does excellent work rescuing stranded seabirds, but there's only so much that they can do, and development of the Ragged Beach area (the closest point of land to one of the larger colonies) will only serve to increase these stranding events.
- I am not against development -- people have to live somewhere -- I just want to see sensible and ecologically sustainable development and this usually means not developing land immediately next to the coast especially -- coast that is so beautifully unique, relatively close to St. John's

and ecologically significant. If St. John's and NL are concerned for the future of tourism, the future of its integrity as a province concerned with ocean ecology and sensible development, then building houses in this area would be the biggest act of thoughtless stupidity.

- Of particular delight to us was our visit to the Witless Bay area and the Ecological Reserve Island Bird Sanctuary. Truly a wonder of the world and a great tourist attraction for this area. The delightful rugged shores of Ragged Beach gaze out onto this incredible Bird Sanctuary and also to observe magnificent whales at play offshore. This beach allows visitors access to this pristine wonder and entrance to the East Coast Trail Beaches Pathway.
- When I heard about the rezoning proposal that would allow for massive housing development for the area around Witless Bay it almost felt like a personal injury. What will be lost is far greater than what will be gained. If this goes through I'll still come back but will travel a wide berth away from what you have done, preferring to keep my memory of what Witless Base today. Sadly, I also know that not everybody who smiles at me as we pass on the street is worthy of a smile in return. Preserving the Witless Bay area will be a much grander decision than voting to scar the land with another subdivision: you'll be this Newfoundland son or daughter who stood up and saved something (thus far) truly fabulous, almost eternal.
- When I visited the area in 2008, I was utterly amazed by the diversity of the habitats, flora and fauna in and adjacent to the Witless Bay Ecological Reserve. It was clear to me then, and remains crystal clear to me now, that the system of publicly owned Crown Lands has benefited - and continues to benefit Canadians of all stripes, most especially when such lands remain in a pristine state such as the Beothuks new.
- Please, do not let this special place get lost for the protection of the seabirds. The Atlantic Puffin will love you for protecting the Ragged Beach! By the way, did you know that our area is

home of the largest Atlantic Puffin Colony in Work America. We do have a unique treasure in our area.

- As a frequent visitor to Newfoundland and a lover of walking in this area, I'd like to voice my concern about potentially ruining an area that has potential to further benefit the local economy. Once you've paved everything in sight, you may be wondering why no one wants to spend tourist dollars in your area. I know I'd probably stop visiting.

## **APPENDIX “B”**

Below is the form submitted by most people in favour of the Plan:

**TO: The Commissioner for Public Hearing of October 20th, 2015  
and The Department of Municipal and Intergovernmental Affairs.**

**RE: Witless Bay Municipal Plan and Development Regulations**

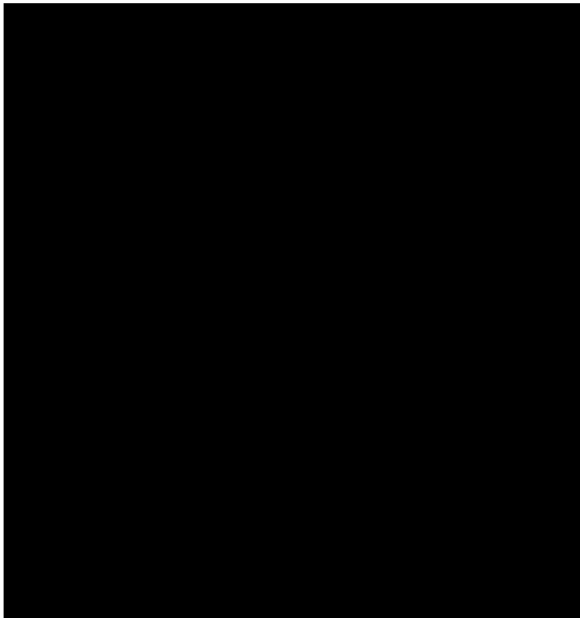
**Submission and Statement of Support**

As an interested party, I wish to state my full support of the recently adopted Town of Witless Bay Municipal Plan and Development Regulations.

70% of voters who cast a ballot on the Witless Bay Town Plan Plebiscite, voted for Plan A that also allows for residential zoning of private land in the Ragged Beach area as well as in multiple other areas of the town, namely near the Tolt and in Bear’s Cove which also has privately recognized land that has been zoned residential in this newly adopted plan. This Plan gives all private landowners the same right to apply to build a home on their lands as their neighbours in the community.

With regards to the specific opposition to the rezoning of Ragged Beach, the truth is that there is no subdivision plan for Ragged Beach. Landowners are asking to build a home on their private property. They want the right to build a house on their own lands, hundreds of feet back from shoreline and the trail. There is no issue with the trail or beach in this area - these will continue to have full usage and be protected by law. The Department of the Environment has said they have “no concerns.” Opponents continued to bring up the trail, beach and the birds to misinform people and to get tourists, environmentalists and others outside the community who don’t care about landowners and in Witless Bay, to exert their power and influence on the group’s behalf.

We ask that landowner's rights be protected, that democracy and the overwhelming vote for Plan A be respected and that fairness and justice prevail in Witless Bay. I support equal rights for all in Witless Bay.

**APPENDIX “B(1)****LIST OF A NUMBER OF PERSONS WHO SUBMITTED INDIVIDUALIZED LETTERS WITH REASONS IN SUPPORT OF THE 2013 – 2023 MUNICIPAL PLAN**

Section 40 (1)

The following are examples of the reasons given:

- There have been speakers tonight for the opponent's side concentrating on one issue only, that of Ragged Beach: academics discussing light induced seabird mortality; environmentalists discussing wanton destruction of the East Coast Trail; letters from all over the world from concerned citizens who are protesting this community's lack of foresight and action towards protecting our coastline. All legitimate concerns if that had been based on factual information.
- There are no subdivisions on the records nor proposed for this area of Ragged Beach. There are no applications or sizable chunks of Crown land in this area. That piece of information was not included in the opponents' informational package that was sent out via email and posted on social media. What was

stated was “stopping the massive commercial land grab, the construction of subdivisions and up to 400 houses with the imminent danger of bulldozing this area,” all in an attempt to entice social outrage.

- The Truth. There are three landowners in this area with privately owned land that want to build a single family home. The public trail and beach area will continue to be utilized and enjoyed by visitors and residents and visitors as usual. This is not affected.
- I support the rezoning to residential of all privately owned land in this community. I would be opposed to large-scale subdivisions built upon the coastline due to its close proximity to the ecological reserve.
- The misinformation presented to many members of the public include rumors of a 400 lot subdivision to be placed directly on Ragged Beach. This is simply not true. There is indeed a proposed subdivision for the town of Witless Bay however nowhere near the Ragged Beach area. The proposed subdivision is to be located on Route 10 across from the North side of the Southern Shore Arena and extending east with closest proximity to Ragged Beach of 1.5 km. This subdivision will not induce negative ecological repercussions for the Witless Bay reserve but will contribute more than \$180,000 to the municipality of Witless Bay in property taxes alone.
- 70% of voters who cast a ballot on the Witless Bay Town Plan Plebiscite, voted for Plan A that also allows for residential zoning of private land in the Ragged Beach area as well as in multiple other areas of the Town, namely near the Tolt and in Bear’s Cove which also has privately recognized land that has been rezoned residential in this plan. This Plan gives all private landowners the same right to apply to build a home on their land as their neighbours in the community.
- With regards to the specific opposition to the rezoning of Ragged Beach, the truth is that there is no subdivision plan for Ragged Beach. Landowners are asking to build a home on

their private property. They want the right to build a house on their own land, hundreds of feet back from the shoreline and the trail. There is no issue with the trail or beach in this area - these will continue to have full usage and be protected by law. The Department of the Environment has said they have “no concerns.” Opponents continue to bring up the trail, beach and the birds to misinform people and to get tourists, environmentalists and others outside the community who don’t care about landowners in Witless Bay to exert their power and influence on the group’s behalf.

**APPENDIX "C"**

October 25, 2015

Department of Municipal and Intergovernmental Affairs

P.O. Box 8700

St. Johns, NL

A1B 4J6


Attention: Commissioner Wayne Thistle

Supplementary Submission Re: Notice of Adoption and Notice of Public Hearing, Town of Witless Bay Municipal Plan and Development Regulations

Commissioner Thistle:

Thank you for allowing us the opportunity to make an additional submission.

Section 40 (1)



The initial application received by the Town from the Churchills early in 2010 was for a single residential dwelling. This application was given approval on the condition that the applicants were responsible for building an extension to Mullooney's Lane to access their property. The Churchills then changed their application from 1 lot to 10 building lots (later reduced to 5) that would require the acquisition of several acres (80% of the total proposed for development) of public Crown Land. This

they claimed was necessary in order to finance the building of the required extension to Mallowney's Lane.

To accommodate the Churchill's development proposal for Ragged Beach and a subsequent development proposal by Ronald Harte, the Town of Witless Bay submitted "Municipal Plan and Regulation Amendments No. 8 and 9, 2011" to change the land use zone from Rural to Residential. Below is the official plot plan of the proposed subdivision as submitted and documented in the Town's records:

### PLOT PLAN

These amendments were strongly opposed by the residents of Witless Bay and as a result did not proceed past step 15 of the URPA, 2000. In fact, 1400 individual letters objecting to the proposed zone change for Ragged Beach were submitted to the Town and the Department of Municipal Affairs.

The amendments failed not only because of the above objections and those noted in our earlier submission, but also because the main access road to the area, Mallowney's Lane, did not, and still does not, meet Town standards for such a subdivision development. After the fall 2013 election, the new Town Council made its intention clear when it voted not to bring Mallowney's Lane up to the required standard. Its reasons were:

1. It would require expropriation of private land for a commercial residential subdivision that was contrary to the Town's vision statement and specific Municipal Plan Goals and Objectives; (see foot notes 1 and 2 below)
2. The extension to Mallowney's Lane would create a cul-de-sac that exceeds the 300 meter maximum stipulated in the Regulations;
3. It would cost the Town in excess of \$500,000 to bring the road up to Town standards.

The Plan before you applies the Residential land use zone to the entire Ragged Beach area. As such it provides development opportunities for other individuals claiming land in the area and would allow them to

acquire several acres of public Crown Land to do so. Given that the Residential land use zone minimum lot size is ½ acre, the number of available building lots in the area far exceed the 5 initially proposed and when fully developed, would forever and totally destroy the pristine nature of land that was intended to be preserved as a Park. Section 40 (1)



We would be pleased to provide any additional information or clarification you may require.

Sincerely

Dieter Plautz

Witless Bay Residents Association

---

*1. "We the people of Witless Bay stand united as stewards of rich natural, cultural and heritage*

*resources to ensure our town's continued vitality. We are recognized for an authentic identity*

*and inviting character that makes our community a great place in which to grow and prosper."*

*2. "Goals:*

*To control future growth of the town in such a manner as to develop a balanced and attractive community.*

*To protect the natural environment and natural resources throughout the*

*Planning Area.*

*Objectives:*

- *To ensure that natural areas such as drainage courses, shorelines, and steep slopes are protected from development to preserve environmental resources and the rural character of the Town.*
- *To preserve scenic views of the shoreline, ponds and hills, recognizing their value to residents and visitors for recreation and tourism.*

**APPENDIX "D"**

The following is the 2011 request by the Witless Bay Resident's Association to government to establish a Conservation Reserve in the Ragged Beach area under Section 8 of the Lands Act:

Witless Bay Residents Association

P.O. Box 223

Witless Bay, NL

A0A 4K0

Honourable Ross Wiseman

Minister

Executive Branch

Department of Environment and Conservation

Government of Newfoundland and Labrador

P.O. Box 8700

4th Floor, West Block

Confederation Building

St. John's, NL A1B 4J6

Dear Minister,

Re: Request and Application to Establish a ‘Reservation of Crown Lands’ for Coastal Shoreline and Lands in the Area of Ragged Beach, Witless Bay

This is a formal request and application for the Government of Newfoundland and Labrador to reserve and set apart as a protected area in perpetuity – as provided for under Section 8 of the Lands Act, - the Crown Lands consisting of the ocean shoreline environment and adjoining lands at Ragged Beach in the Town of Witless Bay.

This area is now zoned “Rural”, and designated in part as “Park”, in the Town of Witless Bay Municipal Plan 2005-2015. The immediate concern and impetus for this request and application is the strong and growing pressure on Crown Lands in this coastal ocean shoreline and surrounding lands at Ragged Beach, including current and pending applications for commercial residential development and construction of roads and subdivisions. In particular, the Council of the Town of Witless Bay has proposed Amendments to the Municipal Plan (#08-2011) and Amendments to the Town of Witless Bay Development Regulations (#09-2011) – and has approved the change of zoning to Residential for the specific purpose of allowing development and construction of a new road across Crown Lands and construction of a residential subdivision (largely on Crown Lands). In fact, about 75% of the land included in this current set of proposed Amendments by the Town is Crown Land.

Of course, the people of the province object to the ownership of public and Crown Lands being taken from the people’s long-standing traditional use and enjoyment – so that ownership of

these Crown Lands can be granted to individuals for their private and exclusive use, to the exclusion of all others.

Please note that the Ragged Beach area in Witless Bay has always and forever been used by local and regional residents, families, individuals and, more recently, by tourists and visitors to the province (since Ragged Beach overlooks the world-famous Witless Bay Ecological Reserve), and hikers from across the province and around the world on what is one of the most accessible and useable sections of the East Coast Trail. There has never been a house or a dwelling in the land area for which we are requesting the Reserve be established; according to elders in the community, several small potato gardens were used in this area, next to the beach, more than 50 years ago.

**SPECIFIC AREA.** The specific area of Crown Land which we request to be reserved and set apart is 100 hectares in size, inclusive of the shoreline from the end of Gallows Cove Road southeast for a distance of approximately 1 kilometre, and inland south/southwest for a distance of approximately 0.75 kilometres.

**PURPOSE.** The main purpose for the proposed Ragged Beach Conservation Area is to protect and provide for all – including future generations – open and unfettered access, traditional use, and unrestricted enjoyment of what is a highly accessible and very unique natural, pristine, ocean shoreline and wilderness environment, and as a clear extension of the Witless Bay Ecological Reserve.

More specifically, the purpose for this reserve includes:

1. Protection of the 'Provincial Interest' in the fragile Witless Bay Ecological Reserve, and the ocean shoreline environment and lands which border it.

2. Protection of the 'Provincial Interest' in the East Coast Trail, and the province's investment in the East Coast Trail and tourism. This shoreline is one of the most accessible, family- and elderly-friendly, and most used sections of the East Coast Trail system. It attracts residents, people from all over the Avalon, as well as visitors/hikers from across Canada, the United States, Germany, the UK, France, and other parts of Europe, and Australia; many residents have assisted individual hikers in their 70s and, yes, in their 80s, on the trail.

3. Protection of the 'Provincial Interest' in the Tourism industry. The province has invested more than \$50,000,000 in tourism marketing, promotion, and 'product' development – over the past 5 years alone – to attract high-end tourists to Newfoundland. Of the 500,000 'non-resident' visitors to Newfoundland, approximately 400,000 visit St. John's. Ragged Beach and the Witless Bay Ecological Reserve, as well as the East Coast Trail from Ragged Beach to Mobile, is an important, highly differentiated, and easily accessible 'product' experience that's located within 25 minutes travel of St. John's -and a highly desirable 'product' experience to improve visitor satisfaction and delight, as well as positive word-of-mouth referrals and editorial coverage.

4. Protection and preservation of these unique ocean shoreline and surrounding lands at Ragged Beach which have received international attention and acclaim, and which National

Geographic has named as the Top Coastal Tourism Destination in the entire World - yes, including, above Hawaii! Now threatened by the self-interest of commercial developers, this highly-rated provincial jewel in the province's tourism crown will (if not prevented) be lost forever.

5. Protection of the seabird populations and ecology in the Witless Bay Ecological Reserve – and, more specifically, the prevention of further artificial night light pollution (from lights in new houses and streetlights, and from cars) which currently causes serious mortality rates among baby Puffins and Leach's Storm-Petrels each summer – as documented and supported by scientists, ecologists, and experts such as Dr. Bill Montevecchi over the past 25 years on site. This area is described as a “global seabird capital...that warrants very careful and special protection...because it is in close proximity...and the one most at risk to human activities and development”.

6. Protection of one of the few remaining, undisturbed, completely unsettled and undeveloped traditional rural ocean shoreline environments in the Northeast Avalon – and protection of the unspoiled physical environment, unique flora and fauna, wildlife, and traditional uses and activities in practice for hundreds of years; this area should be held in reserve, in its current state, in perpetuity for current and future generations.

7. “We do not own the land; we are but guardians of it for future generations”. This is the part of the principle under which public and Crown Lands were established – and no better opportunity exists for the Government of Newfoundland and Labrador to demonstrate its commitment to protect for the use and enjoyment of all, current and future generations, for the provincial interest,

as well as for economic and cultural and environmental benefits and recreation uses – one of the last remaining undeveloped and unspoiled areas in close proximity to the provincial Capital.

There are many other reasons to support the establishment of the Ragged Beach Conservation Reserve, which we would be pleased to discuss with you in person.

Please note that the protection and preservation of Crown Lands in the Ragged Beach area has widespread support among the people. For example, in response to a one-week notice posted by the Town of Witless Bay regarding its intention to rezone lands and permit the construction of residential subdivisions and roads on Crown Lands in this area of Ragged Beach, more than 1400 Letters of Opposition were mailed, emailed, and faxed to the Town; in addition, there was significant support by a wide range of researchers, environmentalists and experts everywhere, from Dr. Bill Montevecchi to the East Coast Trail Association. Furthermore, given that there was only a one-week time period to respond, many additional Letters of Opposition arrived after the deadline of 4:00 p.m. on June 6.

In closing, could you please acknowledge receipt of this request and application, and provide us with the requisite information on the process and next steps to bring the Ragged Beach Conservation Reserve to life.

In the interim, we request and trust that you will establish immediately a Moratorium on these lands, at least until this application has been fully reviewed and finalized and, we respectfully request, approved and implemented.

Yours sincerely, Noel O'Dea, Dena Wiseman, Lorna Yard on  
behalf of the Witless Bay Residents Association

## APPENDIX "E"

Witless Bay Municipal Plan Public Hearing – October 20, 2015 Wayne Thistle, Q.C. officiating	
Name of Presenter:	Submission:
1. Anne Marie Churchill - resident	Submission already received
2. Kay Aylward - resident	New – specific request for rezoning
3. Marie Cahill - resident	New – specific request for re-zoning
4. Colleen Shea - resident	new
5. Blair Paul - resident	new
6. Sebastian Dupres (current mayor)-resident	new
7. Mr. Moran (former mayor)-resident	Verbal, no submission
8. Bill Montevecci (MUN professor and researcher at Ecological Reserve) non-resident	Verbal, no submission
9. Fred Winsor (St. John's)	Verbal, no submission
10. Dena Wiseman -resident	new
11. Sean McGraw – St. John's	verbal
12. Barbara Carey - resident	verbal
13. Frnie Dunn - resident	new
14. Joan Tilden, Registered Intensive Care Nurse, Marine Biologist with a minor in Geography and Earth Sciences, post-graduate degree in Coastal and Marine Management (MUN) - resident	Submission already received
15. Fraser Paul – developer (appears to be a resident)	Submission already received; added brochure regarding septic systems
16. Ron Harte - resident	new
17. Maurcen Marie Murphy (sister of Ron Harte)-resident	verbal
18. Fintan Maloney - resident	New – specific permitting issue