THE CORPORATION OF THE TOWN OF SOUTH BRUCE PENINSULA

BY-LAW NUMBER 121-2012

Being a By-Law to Authorize the Mayor and Clerk to
Sign an Agreement with Kirby Hepburn and Trina
Thomas Regarding the Dog Park Located at 108
Division Street in Wiarton

WHEREAS Section 8 of the Municipal Act, 2001, Chapter 25, as amended, provides that Section 8 shall be interpreted broadly so as to confer broad authority on the municipality to enable the municipality to govern its affairs as it considers appropriate and to enhance the municipality’s ability to respond to municipal issues;

AND WHEREAS Section 9 of the Municipal Act, 2001, Chapter 25, as amended, provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act;

AND WHEREAS the Town of South Bruce Peninsula has deemed it expedient to enter into an agreement with Kirby Hepburn and Trina Thomas for the future use of the dog park located on the Town owned property known as 108 Division Street.

NOW THEREFORE THE CORPORATION OF THE TOWN OF SOUTH BRUCE PENINSULA ENACTS AS FOLLOWS:

1. THAT the Mayor and Clerk are hereby authorized to sign an agreement with Kirby Hepburn and Trina Thomas for the future use of the dog park located at 108 Division Street.

2. THAT the agreement as referred to herein shall be attached hereto and form part of this by-law.

3. THAT any by-law inconsistent with this by-law shall be hereby repealed.

4. THAT this by-law shall come into full force and effect upon final passing thereof.

READ a FIRST and SECOND time this 16th day of October, 2012.

______________________________ MAYOR

______________________________ CLERK

READ a THIRD time and FINALLY PASSED this 16th day of October, 2012.

______________________________ MAYOR

______________________________ CLERK
This agreement made this 16th day of October, 2012

BETWEEN

Kirby Hepburn;

AND

Trina Thomas;

AND

The Corporation of the Town of South Bruce Peninsula

WHEREAS the Corporation of the Town of South Bruce Peninsula owns the property located at Range 1, Park Lot 7, Div N (108 Division Street);

AND WHEREAS the Hepburn and Thomas families did donate all materials, labour, planning and installation required to build a dog park at 108 Division Street;

AND WHEREAS the Hepburn and Thomas families have requested that the dog park be known as “Tayja’s Doggy Park” in remembrance of the loss of Tayja Hepburn;

AND WHEREAS the Town is desirous of entering into an agreement with Kirby Hepburn and Trina Thomas to clarify the future use of the dog park located at 108 Division Street.

NOW THEREFORE this agreement witnesseth that in consideration of the covenants and agreements hereinafter contained, the parties hereto agree and covenant as follows:

1. The Town of South Bruce Peninsula shall formally name the dog park located at 108 Division Street as “Tayja’s Doggy Park”;

2.1 The Town of South Bruce Peninsula will, at its own expense, maintain, insure and repair “Tayja’s Doggy Park” in accordance with Town maintenance and operations standards.

2.2 The parties to this agreement do hereby agree that the Town of South Bruce Peninsula will not be required to consult with Kirby Hepburn and Trina Thomas in matters pertaining to general maintenance, grass cutting, by-laws, by-law enforcement, hours of operation, maintenance of access road or other such operational matters.
2.3 The parties to this agreement do hereby agree that the Town of South Bruce Peninsula will not be required to consult with Kirby Hepburn and Trina Thomas regarding other uses on the property known as 108 Division Street.

3.1 Town staff will not make any additions to, deletions from or any other changes to the dog park without prior written consent from Kirby Hepburn and Trina Thomas.

3.2 Where changes, additions or deletions are required by any legislative authority or to maintain health and safety of workers or those using the dog park, Town staff will be permitted to make said changes, additions or deletions and will communicate said changes in a written format to Kirby Hepburn and Trina Thomas.

4. Kirby Hepburn and Trina Thomas agree that they will not make any additions to, deletions from or changes to the dog park without the written consent of Town staff.

5. Where Town staff, Kirby Hepburn and Trina Thomas cannot reach consensus with regard to additions to, deletion from or changes to the dog park, the issue will be brought before Council. The decision of Council shall be final and binding and shall serve as direction for the parties to this agreement.

6. All parties to this agreement do hereby acknowledge that Kirby Hepburn and Trina Thomas and their families have donated all items which constitute “Tayja’s Doggy Park”. No compensation, monetary or otherwise will be relayed to Kirby Hepburn, Trina Thomas or their families for said donation.

7.1 The Town agrees that they will operate the dog park known as “Tayja’s Doggy Park” for a period of not less than ten (10) years. Prior to the expiration of the tenth year, the parties hereto shall meet to discuss the continuation of the dog park.

7.2 In the event that Kirby Hepburn and Trina Thomas feel that the use of a dog park shall not continue, such notice shall be served one party to the other and this agreement shall terminate ninety (90) days after notification is served.

7.3 In the event that the parties hereto agree that the dog park will continue as a use on Town property, this agreement will remain in full force and until such time as notice of termination with just cause is served one party to the other in a written format giving ninety (90) days notice of said termination.
7.4 Just cause for termination on the part of the Town shall include reasons such as the inability of the Town to obtain insurance for the dog park use, if legislation is passed which would strictly prohibit a dog park or if for any reason a dog park use is deemed inappropriate by a court of competent jurisdiction.

8. The parties hereto agree that notice shall be considered to be served if sent to the addresses as listed herein.

The Corporation of the Town of South Bruce Peninsula

315 George Street
PO Box 310
Wiarton ON NOH 2T0

Kirby Hepburn
PO Box 779
228 Mary Street
Wiarton ON NOH 2T0

Trina Thomas
PO Box 779
228 Mary Street
Wiarton ON NOH 2T0

In witness whereof, the parties hereto have set their hand and seal.

Signed, sealed and delivered in the presence of:

_________________________________  __________________________
Kirby Hepburn                             Witness

_________________________________  __________________________
Trina Thomas                             Witness

The Corporation of the Town of South Bruce Peninsula

_________________________________  __________________________
Mayor                                     Witness

_________________________________
Clerk