

March 22, 2017

TRIM DOC 2017 01256

Town of Bay Bulls
P. O. Box 70
2 Southside Road
Bay Bulls, NL A0A 1C0

Dear Mayor O'Driscoll and Councillors:

Re: 2016 Municipal Review

In accordance with section 4 of the *Municipal Affairs Act*, a municipal inspection was conducted during the period June 14-24, 2016.

The following recommendations arise from matters of concern and/or compliance which were identified during the inspection process:

1. The annual budget is required to be adopted by council by December 1st pursuant to section 77.(1) of the *Municipalities Act, 1999*.
2. Insurance coverages should be maintained at adequate levels. The insurer has formally notified the town that the building Location #3 (Garage) is not adequately covered under the existing insurance policy in the event of a claim for loss.
3. Bank and cash reconciliations should be completed by staff on a regular basis.
4. All expenditures, including payroll, are to be authorized by motion of council and must not exceed the total approved budget pursuant to section 99 of the *Municipalities Act, 1999*. When approving a listing of accounts payables for payment the total amount being authorized by council must be stated in the motion and reflected in the minutes.
5. Financial commitments should not be made without spending limits or controls and proper authorization. A consultant was recently engaged by council to facilitate the hiring of a town manager without any set parameters or agreed upon compensation. Such unclear contractual arrangements by council could lead to unnecessary litigation and financial liability.
6. Financial commitments should not be made without proper authorization and motion of the council in a public meeting. On September 14, 2015 the council approved an expenditure of \$11,144.63 (\$9,862.50 plus tax of \$1,282.13 to Mercer's Paving Inc. for road work completed on St. John's Road, however, there is no public record of when or how this work was authorized by council. Also the work appears to piggyback a capital work undertaking that was publicly tendered but this extra work was not included in the original estimate/tender call. This action (also identified in item 24 below) appears to be contrary to the *Public Tender Act* and section 214 of the *Municipalities Act, 1999*.

7. The use of an off-site consultant with authorized remote access to the computerized accounting systems may pose an unnecessary financial information risk. Additionally there is the problem of accessing financial information for inspection/audit purposes which is no longer available on-site. It appears that council originally intended for the consultant to assist/train staff in the proper use of the computerized accounting system, however, this does not appear to be happening. The consultant appears to be doing most of the accounting functions and report generating in isolation and the town office staff are not being engaged in the process.
8. Certain fees lack the necessary legislative authority to impose. The minimum annual Quarry fee of \$1,000 and the Crown Land application fee of \$100 are examples of unsupported fees.
9. The due date for taxes cannot be later than June 30 pursuant to section 101(2) of the *Municipalities Act, 1999*. The 2016 Tax Structure erroneously indicates "that Taxes are in Arrears as of 12 p.m. December 31, 2016". Tax accounts are considered in arrears immediately after the due date which is determined by council but cannot be later than June 30.
10. The interest rate charged on overdue accounts must be stated as simple or compounded interest pursuant to section 107 of the *Municipalities Act, 1999*.
11. It appears interest is incorrectly applied to 2015 arrears on January 29, 2016 and applied to all current on June 30, 2016. Interest should be charged on all outstanding/overdue accounts.
12. Council should periodically review its tax collection methods to ensure effectiveness.
13. Council is required to hold a monthly public meeting pursuant to section 24(1) of the *Municipalities Act, 1999*.
14. Council's use of privileged meetings should be kept to a minimum.
15. Rules of procedure are required to be adopted pursuant to section 24(3) of the *Municipalities Act, 1999*.
16. Concerns identified with the minutes of meetings:
 - a) Declarations of councillor conflicts of interest are not adequately stated or recorded as required. Section 208(1) of the *Municipalities Act, 1999*, requires that the councillor shall state that s/he has that interest, state the nature of the interest and that statement shall be recorded in the meeting minutes.
 - b) Corrections or amendments to the minutes as identified by council are not properly recorded. Perceived changes to the tabled minutes are applied retroactively and a new set of corrected minutes are presumably created. From the minutes of the council meeting held on December 14, 2015 the carried motion #2015-8241 was "...to approve to adopt the minutes of November 10, 2015 public meeting as presented with corrections." There is no record of the corrections but staff purports that the corrections would have been made and reflected in the (new) minutes for November 10. This practice is not acceptable. Tabled minutes are a permanent record of a specific meeting and should not be altered. Any changes determined by council in the course of adoption would be noted and recorded in that meeting minutes.
 - c) The font and format of the meeting minutes is not consistent with general practice.
 - d) Occasionally there are questionable motions being approved by council such as: "Move to abolish poll tax". Council establishes the annual taxation structure pursuant to section 101 of the *Municipalities Act, 1999*. To not impose poll tax in the annual adoption of taxes would effectively abolish it. Council should endeavour to keep motions and resolutions as clear and concise as possible.

- e) Expenditures are being authorized by council subject to “as funds become available”. This conditional statement is unnecessary and somewhat confusing as the expenditures should not be approved for payment if sufficient funds are not available.
17. The council is deciding whether to support councillor declared conflicts of interest without being requested contrary to section 209 of the *Municipalities Act, 1999*. The council routinely decides matters of councillor conflicts of interest even when the councillor declares a conflict and leaves the room without asking council for a determination. This has occasionally resulted in councillors being asked to return and compelled to vote on matters where the potential for conflict may be significant. For example, see motions 2016-8390 and 2016-8391 from March 15, 2016 (tender award for truck to Hickman’s) regarding Mayor O’Driscoll’s declared conflict of interest as his brother is an employee for that company and council’s decision that he wasn’t in conflict.
 18. Regulations are required to be adopted and on file pursuant to section 414(1) of the *Municipalities Act, 1999*.
 19. Official copies of all adopted regulations must be available for public inspection upon request pursuant to section 215 of the *Municipalities Act, 1999*.
 20. Council has adopted the *Urban and Rural Planning Act, 2000*, but has failed to enforce the inherent regulations. For example, a recent building addition was completed without a development permit yet no municipal enforcement action was taken by council. The Sheldon Drive Playground Committee did not obtain the required permits to construct a playground and install equipment pursuant to the town’s development regulations.
 21. It has been determined that the council does not require permits for the construction of decks/verandas/porches/balconies which is contrary to the requirements of the *Urban and Rural Planning Act, 2000*. Such activities do constitute development as defined in sections 2(g) and 2(c) of the *Urban and Rural Planning Act, 2000* and a permit is required pursuant to section 35. It is important that the council and staff have a working knowledge of its development regulations and enforcement procedures/requirements.
 22. Numerous instances of potential councillor conflict of interest situations have been identified. Some were decided by council and/or a legal opinion obtained while others have been overlooked. For example, Councillor Jason Sullivan was clearly in a conflict of interest by his own admission as recorded in minutes of meeting held on July 14/15, and adopted Sept. 14/15, but no action was taken by council. Additional councillor conflict of interest training is warranted.
 23. Annual disclosure statement information regarding property ownership, as filed by those required to do so pursuant to section 210 of the *Municipalities Act, 1999*, should be scrutinized and cross-referenced with the municipal assessment roll to ensure appropriate taxation liability accounts have been created and/or property ownership is confirmed.
 24. There appear to be occasions when public work was approved by council contrary to the *Public Tender Act* and section 214 of the *Municipalities Act, 1999*:
 - a) March 15, 2016 - Truck acquisition awarded to highest bidder rather than the lowest.
 - b) September 14, 2015 - Payment of \$11,144.63 authorized to Mercer’s Paving for additional road work completed on St. John’s Road which was not included in original tender call.

These examples (as well as the recent September 16, 2016 example of capital work which was approved but not tendered) must be reported by council to the Government Purchasing Agency branch of Service NL for their consideration and comment.

Councillors and staff should better familiarize themselves with the legislative requirements of the *Public Tender Act* and its subordinate regulations in an effort to minimize the town's potential exposure to unnecessary litigation and financial liability.

25. An Access to Information and Protection of Privacy (ATIPP) co-ordinator is required to be appointed by council per the ATIPP legislation.
26. Crown Land Municipal Recommendation Forms (MRF) must be appropriately completed and processed by the town. Council often provides recommendations subject to conditions, such as rezoning, which is contrary to the form requirements. All completed MRFs must be forwarded to the Crown Land Division regardless of council's positive or negative recommendation.
27. The roles and responsibilities of council, staff, and department heads should be periodically reviewed and updated as necessary. It is recommended that additional resources be applied in the areas of human resources and training initiatives in an effort to improve local governance and service delivery.

Council is hereby requested to give these matters, should they remain outstanding, its prompt attention. Please contact me if you require additional information.

Yours truly,



W. David Clarke, BVE
Municipal Affairs Analyst

Cc. Ms. Lori Evoy, Eastern Regional Manager

Municipal Review Report

Municipality: Bay Bulls
Analyst: W. D. Clarke
Date of Visit: June 14, 16, 17, 20-24, 2016
Date of Previous Visit: N/A
Name of Council's Auditor (Sec. 87) Gregory G. Stokes, CA
Date of Last Audit: (Sec. 92) 2014

COUNCIL MEMBERSHIP (Sec 13)

(a) Full complement for this Council is 7 Members.

(b) List of Present Councillors:

	(Phone)
Mayor: Patrick O'Driscoll	(709) 334-2351

Deputy Mayor: Harold MULLOWNEY (709) 334-3410

Councillors:

- (1) Gerard Mulcahy
- (2) Jason Sullivan
- (3) Rick Oxford
- (4) Vacant - Madonna Hawkins resigned May 12, 2016.
- (5) Vacant – Joan Luby's seat was vacated by council on May 29, 2016.

(c) Number of Vacancies: 2

(d) Difficulties to fill vacancies, (including vacancy duration, attempts to fill, etc.) if applicable, and suggestions (Discuss): Not applicable

(e) Are all councillor taxes paid and in order as per Sec 206 (1) (e)? Yes

(f) Does the clerk/council have the most recent copy of the Municipalities Act, 1999? Yes

(g) Are councillors' Oath of Office on file [Section 206(f)(i)]? Yes

EMPLOYEES

- | | <u>Position</u> | | <u>Phone</u> |
|-----|-----------------|---------------|----------------|
| (a) | Town Clerk | Janet O'Brien | (709) 334-3518 |
| (b) | Town Manager | N/A | |
- (c) Are any councillors working receiving payment out of Council funds for work [including projects) (Sec 206(1) (g)]? No
- (d) If answer to (c) is yes, has ministerial approval been received by Council?

BONDING OF EMPLOYEES

- (a) Are all employees who are responsible for Council funds bonded by Council? Yes
(b) Name of Bonding Company: Northbridge General Insurance Corp. per Cal Legrow
(c) Amount of Bond for each employee:
- | <u>Name</u> | <u>Position</u> | <u>Amount of Bond</u> |
|------------------|-----------------|-----------------------|
| Blanket coverage | All | \$50,000 |
- (d) Expiry Date of Bond: March 16, 2017

INSURANCE

- (a) Are all Council buildings, furniture and equipment insured against fire?
No, location #3 (Garage) is underinsured.
(b) Does Council have General Liability Insurance? Yes
(c) If so, state amount: \$1,000,000 up to \$5,000,000.

FINANCES

- (a) Name and Location of Council's Bank: (Sec 76)
ScotiaBank – Bidgood's Plaza in Goulds, St. John's
(b) Frequency of Deposits: (Sec 76) Weekly
Last Deposit Date: June 10, 2016 Last Deposit Amount: \$9,155.10
(c) Are all Council disbursements made by cheque? (Sec 76) Yes
(d) Are any Council disbursements made by electronic payment (pre-authorized payments)? Yes
(e) Are all expenditures authorized by Motion of Council? No - see notes.
(f) Are any blank cheques pre-signed? No
(g) Are cheques signed in accordance with Section 76(2) of the Act? Yes
(h) Are bank accounts reconciled? Unclear - Computerized accounting system is being accessed and work is being performed off-site by council authorized contractor in isolation from office staff. Bank account statements and cash/bank reconciliation reports were not available at town office for inspection.

LOANS

- (a) Does Council have any Long Term Debt? Yes
(b) Council DSR (MIMMS): 18.76
If > 30%, identify action plan (discuss): _____

- (c) Arrears (NMFC)? N/A Amount: \$ _____
Identify action plan (discuss): _____
- (d) Short term borrowing (overdraft/line of credit): N/A
- (1) Total amount of Loans: \$ _____ Principle
\$ _____ Arrears
- (2) Are payments made as per loan agreement? _____ yes _____ no
- (3) If no, give details: _____

IMPOSITION/COLLECTION OF TAXES (Sec 101, 109, 112-130, 171)

- (a) Have all taxes been imposed and/or varied in accordance with the Act? **No - see notes**
- (b) What are the current tax rates? – Also see attached 2016 Tax Structure

Residential Property Tax:	4 mills	Poll Tax:	N/A
Commercial Property Tax:	13.5 mills	Residential W&S Rate:	N/A
Minimum Property Tax (Res.):	\$365	Commercial W&S Rate:	N/A
Minimum Property Tax (Com):	\$365	Waste Disposal Fee:	N/A
Vacant Land Tax:	N/A	Business Tax:	Mill rate varies - \$375 min.
Small Structure Tax:	N/A	Other Authorized Tax:	N/A

- (c) Has Council set a date when taxes become due and payable (Other than June 30)?
Yes, May 31 but council has also set a legislatively unsupported "Arrears" date - see notes and tax structure
- (d) Collection efforts employed by the Municipality:
- | | |
|-----------------------|-----------|
| Regular billing? | Yes |
| Court action? | No |
| Collection agency? | Yes |
| Water/Sewer Shut off? | N/A |
| Lien/Sale by auction? | No |
- (e) If Council is not participating in tax collection efforts, why?
- (f) Does Council have the poll tax deducted at the employer source, where applicable? N/A

INFRASTRUCTURE

- (a) Does the Town have a Municipal Plan? Yes
- Is the Municipal Plan, if applicable, current? Yes, 2014
- (b) Does Council have any current infrastructure requirements? Yes:
- | | |
|-------------|-----|
| Water/Sewer | N/A |
| Roads | Yes |
| Protection | No |
| Other | No |

- (c) Does council have the required resources for infrastructure improvement/expansion? Yes
- (d) Is council aware of cost shared capital funding? Yes
Discuss: _____

GOVERNANCE

- (a) How often are regular Council meetings scheduled (Sec 24)? Monthly unless cancelled or lack of quorum. Often no attempt to reschedule contrary to legislation. No meeting for August 2015.
- (b) Are Council Meetings open to the public (Sec 213)? Yes
- (c) Does Council conduct any privileged meetings? Yes – Council has allotted a half-hour prior to regular meeting commencement as privileged for the purpose of frank discussion.
- (d) Are decisions made at a privileged meeting ratified at a public meeting (Sec 213)? Yes
- (e) Has Council adopted formal rules of procedure for its meetings [(Sec 24(3))]? No
- (f) Does Town Clerk and/or Town Manager attend Council Meetings (Sec 56, 59, 62)? Yes
- (g) Are Council Minutes properly recorded and maintained (Sec 61)? No
If no, discuss: Improvements needed - see notes.
- (h) Does Council have adequate fire resistant storage facilities to keep essential records (Sec 61)?
Yes
- (i) Are voting procedures properly carried out in the adoption of resolution (Sec 211, 212)? Yes
- (j) Do the Minutes show the number of Councillors in attendance (Sec 212)? Yes
- (k) Do the Minutes show the number of Councillors voting for or against the resolution [Sec 212(4)]? Yes
- (l) Does the presiding officer vote? Yes
- (m) Where abstentions in voting occur, are decisions properly made in accordance with Section 212(3) of the Act? No - see notes related to conflict of interest.
- (n) Are Council regulations properly adopted and on file [Sec 413(1) & (2)]? No
- (o) Are records specifically stated in Section 215 of the Act available to the public upon request?
No - see (n) above.

- (p) Is Council aware of the provisions of the Act regarding conflict of interest governing discussions and voting at Council meetings (Sec 207)? Yes, but additional training is warranted based on the volume of perceived infractions.
- (q) Are disclosure statements completed and filed annually by staff and council (Sec 210)? Yes
- (r) Does council regularly receive a current listing of:

Tax Receivable:

Current: No Prior: No

Accounts Payable: Yes

Year to Date Budget vs. Actual: No

If no, discuss: Computerized accounting system being maintained by off-site consultant.

COMMITTEES

- (1) Has Council established committees (Sec 25)? Yes

Finance

Public Works

Development

- (2) If answer to 1 is no, discuss _____

REGIONALIZATION/PARTNERSHIPS

- (a) Is the Municipality involved in any partnerships/regional cooperation initiatives? Yes

Municipalities/Communities Involved

Bay Bulls to Bauline East

Services Shared

Bay Bulls Regional Lifestyle Centre

- (b) Has the Town approached/been approached by, other Municipalities to share services?

Details: Fire protection; Recreation

- (c) Is the Town willing/able to discuss sharing of services with neighbouring communities? Yes

TRAINING

- a) Does Council avail of training? Unclear

If so, what training? Discuss _____

- b) Do the clerk and other staff avail of available training? Yes

If so, what training? Budget

- c) Does Council encourage training? Yes

COMMENTS AND RECOMMENDATIONS

1. Insurance issues:

- a) A municipal asset is not adequately insured – Building Location #3 (Garage).

The insurer had formally notified the town that the building was not adequately covered under the existing insurance policy in the event of a claim for loss.

- b) Potential liability related to the new playground.

The town clerk was requested to contact the insurance provider to determine whether the playground committee's undertaking to construct playground equipment on municipal property would pose any liability for the town or was considered an insurable asset. The indication was that there would be no liability as the equipment is owned and controlled by the committee and the committee is not connected with council.

It also appears that the Sheldon Drive Playground Committee did not obtain the required permits to construct a playground and install the equipment pursuant to the town's development regulations. No regulatory action was taken by the town in this regard.

While the playground committee received substantial funding commitments (\$15,000 Provincial and over \$8,000 Municipal per council letter dated July 11, 2013) it appears there was little, if any, oversight or accountability.

2. All expenditures are not being authorized by a motion of council.

Payroll disbursements are not recorded in the minutes as required.

Disbursement motions always include the unnecessary conditional statement "as funds become available".

Financial commitments are being made without spending limits or controls and proper authorization. The related expenditures are authorized by council however the amount being authorized is not always stated for the record. When approving a listing of accounts payables for payment the total amount being authorized by council must be stated in the motion and reflected in the minutes. It is not sufficient to simply approve the payables as presented for payment or to make financial commitments without setting limits. A consultant was recently engaged without any set perimeters or agreed upon compensation to facilitate the hiring of a town manager.

3. It is apparent that financial commitments are sometimes being made without public discussion or authorization.

On September 14, 2015 the council approved an expenditure of \$11,144.63 (\$9,862.50 plus tax of \$1,282.13 to Mercer's Paving Inc. for road work completed on St. John's Road however there is no public record of when or how this work was authorized by council. Also the work appears to "piggyback" a capital work undertaking that was publicly tendered but this "extra work" was not included in the original estimate/tender call. This action (also identified in item 21 below) appears to be contrary to the *Public Tender Act* and section 214 of the *Municipalities Act, 1999*.

4. Expenditures are being authorized by council subject to "as funds become available". This conditional statement is unnecessary and somewhat confusing as the expenditures should not be approved for payment if sufficient funds are not available.

Staff payroll expenditures are not being included in the payables listing presented to council for approval. It is expected and necessary that all bank account disbursements must be authorized by a resolution of council.

5. The use of an off-site consultant with authorized remote access to the computerized accounting systems may pose an unnecessary financial information risk. Additionally there is the problem of accessing financial information for inspection/audit purposes which is no longer available on-site.

It appears that council originally intended for the consultant to assist/train staff in the proper use of the computerized accounting system however this does not appear to be happening. The consultant appears to be doing most of the accounting functions and report generating in isolation and the town office staff are not being engaged in the process.

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18. Council has adopted the *Urban and Rural Planning Act* but has failed to enforce the inherent regulations. For example, a recent building addition proceeded this summer without a development permit yet no enforcement action was taken by council.

Additionally, it appears the council does not require permits for a variety of construction activities which constitute development, pursuant to the *Urban and Rural Planning Act*, such as the construction of decks/verandas/porches/balconies.

It is important that the council and staff have a working knowledge of its development regulations and enforcement procedures.

19. Numerous instances of potential councillor conflict of interest situations have been identified. Some were decided by council and/or a legal opinion obtained while others have been overlooked. For example, Councillor Jason Sullivan was clearly in a conflict of interest by his own admission as recorded in minutes of meeting held on July 14/15, and adopted Sept. 14/15, but no action was taken by council.

Additional councillor conflict of interest training is warranted.

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24. The roles and responsibilities of council, staff, and department heads should be periodically reviewed and updated as necessary. It is recommended that additional resources be applied in the areas of human resources and training initiatives in an effort to improve local governance and service delivery.

MUNICIPAL AFFAIRS ANALYST:

Wm. David Clarke

Date: October 28, 2016

Attachments

- Cash Count
- 2016 Tax Structure