

Village of Heisler

Municipal Inspection Report

September 2011

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Government of Alberta ■

Municipal Affairs

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Table of Contents

Executive Summary	1
Municipality Description.....	3
Purpose of the Inspection	4
Governance	5
The Mayor and Council.....	7
Bylaws	8
Minutes.....	9
Assessment and Taxation	10
Policies.....	11
Newsletter	11
Council/CAO Relationship.....	11
Utilities	12
Finance	12
Additional Interviews	13
Conclusions.....	14

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Executive Summary

The citizens of the Village of Heisler petitioned the Minister of Municipal Affairs to conduct an inquiry into the affairs of Village. The Minister of Municipal Affairs decided to undertake a municipal inspection in accordance with section 571 of the *Municipal Government Act (MGA)* in 2010; however, since 2010 was an election year for municipalities in Alberta, the inspection was postponed until after the election was held (in October). Terry Broome of Terry Broome Consulting 950294 AB Ltd. was appointed to conduct an inspection of the management, administration and operations of the Village of Heisler. Following the receipt of Mr. Broome's report, as a number of ongoing issues continued to be brought to the attention of ministry staff, the Minister felt it appropriate to further review the operations to ensure any new concerns would be addressed. This resulted in Sandra Dohei from Advisory Services, of Municipal Affairs, being appointed as the inspector.

During the course of the inspection, several individuals were interviewed including all members of council, some members of the public, and current members of staff. The inspectors also observed council meetings and reviewed records, including minutes, bylaws, policies, financial records, and the assessment and taxation functions.

Based on information received from the interviews conducted, the concerns raised, in no particular order of significance, are as follows:

- Tendering process used by the village
- Council appeared to be making decisions that may be in an individual councillor's best interest
- Council not effectively responding to the concerns of the residents
- Administrator not effectively responding to the concerns of the residents

- Some citizens do not agree on the spending decisions for what appears to be unnecessary projects or purchases
- Council has not done any formal long-range planning for the community
- Lack of policy development

Those interviewed were provided with a brief overview of the review process being undertaken, assured of the confidentiality of the discussion, and given an opportunity to ask questions and clarify any points. They were also provided with the opportunity to provide comment on specific issues and current and past events occurring in the village.

There appears to be a sense of mistrust of the Council and administration within a segment of the community. The mayor and council appear keen to serve the community and to get the job done while not always having regard to the legislative limitations of their respective roles. Some key decisions which one might perceive as being self serving or without regard to proper process could be the area referred to as the “proposed subdivision” or “municipal park area” as it known today. Apparently, a previous mayor took it upon himself, without council approval, to contract the hauling and dumping of contaminated soil to the municipal park area. In reviewing the council minutes, there was no evidence to show that the council had given approval to contract the hauling of the soil. Because of the individual’s decision, this has resulted in the village having to approve a large expenditure for the removal of the contaminated soil and to reclaim the area to the satisfaction of Alberta Environment. The contamination issue from dumping fill in the municipal park area and subsequent processes is not a reflection of the current council, although they are now dealing with the after affects of cleaning up and beautifying the site.

The current council is making the effort to provide as much information as possible to the public. This will be discussed further in the report.

Since the general municipal election in October 2010, the village has elected two former councillors and one new councillor. Throughout the inspection process, it has become evident that this new group is committed to progressing the village’s operations to be in compliance with the legislative requirements, and perhaps more importantly,

ensure the operation of the municipality is conducted in a transparent and accountable manner.

There are certain aspects of the operation of the municipality that require action, and this report set out recommendations for the village. The inspectors feel it is important to acknowledge, however, that they believe the current council and administration are eager and willing to take steps to improve the municipality for the betterment of the community.

Municipality Description

The Village of Heisler has a population of 153 residents and is located within the boundaries of Flagstaff County.

In recent times the Village of Heisler experienced controversy with governance, councillors, and some operational matters. Controversies included councillor resignations, a request to have a councillor resign, by-elections, a dissolution study, the Minister's appointment of an Official Administrator due to a loss of council quorum, and a petition to the Minister from the residents requesting that an inspection or inquiry be conducted.

In 2008, a dissolution study was completed and a vote taken by the electors of the Village of Heisler. The results of the vote were overwhelmingly opposed to dissolution with 74 votes against, and 13 votes in favor of dissolution. As a result of the information contained in the dissolution study, as well as feedback from the village council, the Minister did not recommend dissolution.

While it may be perceived by a segment of the community that dissolution should have occurred, the majority of the citizens that voted did not perceive that as the best solution for the community.

Prior to commencement of the dissolution study in 2008, the CAO resigned, resulting in the village having no administrative services. A consultant was hired through Civic Solutions that acted in the administrative capacity until an agreement was entered into with Flagstaff County to provide administrative services. The former mayor's actions to solicit support from the surrounding towns and villages to obtain a share of revenue from

the linear assessment from the County was not well received by the council and administration of the County. As a result, the County served notice to discontinue the provision of administrative services to the village in late 2009. This resulted in the new hiring of a Chief Administrative Officer (CAO), rebuilding the administrative components, and the need for contractual commitments for assessment and audit services.

The Village has administrative staff consisting of a CAO that directly reports to council, and the CAO supervises the public works foreman.

In 2010, the former mayor was successful in obtaining a university student hired by the University of Alberta Centre for Rural Sustainable Communities. This was a pilot program with the salary paid by the Department of Agriculture and Rural Development. The recruitment to this position was a good fit for the village and they were successful in having the student return for summer employment in 2011.

The Village provides many services to its citizens. These include road maintenance, including snow removal, solid waste management, water and wastewater services, bylaw enforcement, and development control.

Purpose of the Inspection

The inspectors are required to report on the findings of this review and on matters that fall within the guidelines of the *MGA*. If because of an inspection, the minister considers that the village has been managed in an “irregular, improvident, or improper” manner, the Minister by order, may direct the village to take any actions he considers necessary.

The terms irregular, improvident, or improper are defined according to Funk and Wagnalls standard dictionary as:

Improvident: 1. Lacking foresight; incautious; rash.

2. Taking no thought of future needs; thriftless.

Improper: 1. Deviating from fact, truth, or established usage.

2. Not conforming to accepted standards of conduct or good taste.

3. Unsuitable.

Irregular: 1. Not according to established rules or procedure.

2. Not conforming to accepted standards of conduct.

Governance

The *MGA* states the purpose of a municipality is to provide good government, services, facilities or other things that, in the opinion of council, are necessary or desirable for all or a part of the municipality, and develop and maintain safe and viable communities. To do this, council's principal role is to develop and evaluate policies and programs, make sure that the powers, duties and functions are appropriately carried out, and carry out the powers, duties and functions given to it under the *MGA* or any other act. Essentially, council establishes policy and programs and they monitor these decisions by receiving complete and accurate reporting from administration on how the decisions are carried out.

There is little evidence to show that the previous councils had any formal training on their roles and responsibilities. However, in November 2010 a council orientation was provided through the Flagstaff Inter-municipal Partnership (FIP) for all elected councillors. All councillors for the Village of Heisler attended the orientation session.

Individual councillors have some general legislated duties as stated in section 153 of the *MGA*:

- a) to consider the welfare and interests of the municipality as a whole and to bring to council's attention anything that would promote the welfare and interests of the municipality;
- b) to participate generally in developing and evaluating the policies and programs of the municipality;
- c) to participate in council meetings and council committee meetings and meetings of other bodies to which they are appointed by council;
- d) to obtain information about the operation or administration of the municipality from the CAO or a person designated by the CAO;
- e) to keep in confidence matters discussed in private at a council or council committee meeting until discussed at a meeting held in public;

- f) to perform any other duty or function imposed on councillors by this or any other act or by the council.

The current council expressed some concerns that while there is some calming in the community, it isn't easy to please all of the people all of the time.

Alberta's municipal councillors have a strong record of public service to their communities. As elected officials, they are responsible for upholding the public interest ahead of any private interests they may have. Section 172 of the *MGA* states that a councillor may not take part in the decision making process on any matter in which the councillor has a pecuniary interest. A pecuniary interest is an interest in a matter which could monetarily affect a councillor directly or indirectly as a shareholder of a corporation or a firm.

During the interview process, it became apparent that some citizens believe that past mayors/councillors have made decisions that were either not approved by the council as a whole or were decisions that may have been perceived as self-serving. Councillors must ensure that decisions made do not benefit them directly, their family or their friends. There is a perception that current councillors may be influenced by past elected officials or employers.

While there is no factual data to substantiate these claims, the continual discussion on past practices is having an infectious negative attitude with some residents. The inspectors recognize that part of the supporting information provided by the representative of the petitioners is that a former mayor was paid remuneration by an outside board for attending meetings and then also claimed for the meetings from the village. In addition to this, there were allegations that the former mayor was paid for meetings where no approval was provided from council for the attendance at such meetings. The former mayor has paid back to the village any duplicate payments for meeting attendance. Because the petition background was focused on frivolous spending and the actions of the former mayor, many of the findings contained within the report are not relating to that of a former mayor/councillor that resigned from council in 2010. As a result of these past actions, some citizens are not willing to move on to focus on what is positive in the community. One must recognize that our values and beliefs are based on

our experiences in life, and if those experiences are negative, then that is the perception that a person may have to a new situation. To change our beliefs, we need to get a new experience which, if positive, may change those beliefs. Through the interview process it became evident that the communication between the council and a group of its stakeholders is somewhat disengaged. Some citizens are not willing to discuss issues with council as they felt their issues were dismissed by the previous council as “unimportant” and often the verbal responses from council included inappropriate language. Because of these negative experiences, the belief by some is that current council may not be approachable, and won’t listen to, or understand their concerns. Understanding perspectives on issues is one of the many key elements to effective communication. The community could benefit from a communication workshop which is an opportunity to increase one’s awareness of listening and speaking habits and enhance general communication knowledge and skills between council and its citizens as active participants.

<p>1. RECOMMENDATION: That council organizes a workshop on Actions to Effective Communication and that all members of council and administration attend with an extended invitation to electors of the Village of Heisler.</p>

The Mayor and Council

The inspector had the opportunity to observe a regular council meeting on August 16, 2011. The regular meetings of council are held monthly in the council chambers at the Village of Heisler office. The meeting space accommodates council and has adequate space for residents in the gallery. Mayor Sean Maciborski presided over the meeting with Councillor Tetz in attendance. Councillor Steil was absent. Also attending the meeting was the chief administrative officer, Brendalee Loesch and recording secretary, Paul Gauthier. Generally the meeting went well and was conducted in a professional manner. The councillors presented and expressed their views on the issues before them and it was apparent that while having “healthy” debate, they were united and supportive of decisions made. The mayor is responsible for ensuring meeting efficiencies and this was demonstrated as the rules of order were followed.

There were two formal delegations to council. Council members were attentive and showed a keen interest in the information presented.

An opportunity exists within the council meetings to provide the decisions of council through the means of a computer, overhead projector, and screen. There are advantages to having the motions/resolutions stated on the screen so that all members of council and the public are provided with the opportunity to view and read the motion/resolution prior to the vote. The village currently has the equipment to implement this process.

2. RECOMMENDATION: That the village implement, with the use of technology, the process of projecting the decisions of council for viewing by all council members and the public during the regular and special meetings of council.

Bylaws

The bylaws of the village have been reviewed and are generally well written and conform to the legislated requirements.

Citizens living in the village have a right to feel safe, which includes bylaws respecting the protection of people and property, nuisances, including unsightly property. Even though some citizens do not want enforcement of certain bylaws, and would prefer if there were no rules for animal control or unsightly property, most citizens want to feel safe and take pride in the community and the state of surrounding properties. Once council implements bylaws, there is an expectation that they will be enforced and applicable to everyone.

There are a several “old” bylaws that the village may want to consider rescinding. Some examples are: Bylaw #34 for the Establishment of a Civil Defense Organization, Bylaw #47 Governing Hawkers & Peddlers, and bylaws from 1960 on vehicle parking and traffic.

Once council determines the bylaws that are not required, one bylaw can be passed to rescind the listing of the included bylaws.

There is a legislated requirement under the *Emergency Management Act (EMA)* that the local authority be responsible for the direction and control of local emergency

response. The village is currently not in compliance with *EMA* and must prepare the necessary bylaw for compliance.

Council has a procedural bylaw in place to establish the rules for governing council meetings. The importance of such a bylaw is to ensure that the meeting format is consistent and that members and the public attending meetings understand the format. It is not uncommon for councils to work with the procedures and over time amend the process to ensure that it fits within the operation of the village. Some of the areas to be addressed should include the delegation process, applicability of the bylaw to members appointed at large to boards and committees, additions to the agenda, and ensuring that all bylaws include a severability clause.

3. RECOMMENDATION: That council ensures that the bylaws passed are enforced for the entire village.

4. RECOMMENDATION: That council reviews and amends its procedural bylaw, enacts an Emergency Management Bylaw and rescinds bylaws that are no longer required or enforceable.

Minutes

Council and administration must ensure that when they propose to give three readings of a bylaw at one meeting, there is unanimous consent (Carried Unanimously) to proceed to the final reading, and there must be a motion for third reading. Examples of motions contrary to the process are noted in the regular meeting minutes of December 6, 2010, April 15, 2011, and May 10, 2011, under motions 323/10, 131/11, and, 160/11.

When a councillor has a pecuniary interest in a matter, the councillor must declare the reason and ensure that the reason for the abstention is recorded in the minutes. An example of where the Mayor had an interest and it is not clearly noted is in the minutes of the January 12, 2011 meeting, motion 16/11.

The minutes are a written record of what transpired at the meeting and the motions/resolutions must be recorded to stand on their own and address the who, what, where, when and why questions. An example of where the motion may not be clear is noted in the June 6, 2011 minutes under motion 192/11; Moved by Mayor Maciborski to

contact ATCO and advise them that Heisler Village council is in favor of grouping street lights.

5. RECOMMENDATION: That council and administration ensure that the recording of decisions for readings of bylaws is in accordance with section 187 the MGA and all reasons for abstentions are noted in the minutes.

Assessment and Taxation

As discussed earlier in the report, there were numerous comments made respecting individuals that may be perceived as having preferential treatment because of connections with decision makers. Of particular note by some interviewed, was the decision made by the Assessment Review Board (ARB) on November 12, 2009, wherein the assessor advised that the property was fairly assessed and there was no further information noted in the minutes from the complainant. The role of the ARB was to hear the evidence from the complainant and that of the assessor and make a decision following the hearing. The ARB, in making its decision, should have referenced the facts to which the decision related. In the absence of the documented relevant facts, some individuals may perceive that the ARB based their decision on irrelevant considerations.

A new assessment review board process has been implemented by the Provincial Government which requires that any person sitting as a member of local assessment review board must have attended the training and passed the course to ensure the fairness in the process.

Upon review of the assessment and taxation rolls, there are multiple lots that are consolidated by title and in some cases the software program may not show all the lot numbers on the roll. It was also noted that while there is consolidation of lots on a title, an alley separates the lots, which may require a separate assessment of the lot. It should be noted that where registration for all the lots are in one title and a request is received to separate the title later, subdivision approval will be required if the plan was registered prior to July 1, 1950.

It was also noted that for a property to be exempt from taxation, council may by bylaw exempt a property held by a non-profit organization. There is no evidence to show

that council has passed a bylaw, and the inspector was advised that exemptions have happened because “it has always been done that way”.

6. RECOMMENDATION: The village request the Minister of Municipal Affairs to order an assessment audit and that any properties currently not being taxed be addressed to ensure compliance with the MGA.

Policies

The Village of Heisler has established policies to provide guidance, continuity and consistency of decision-making. These policies are meant to assist the council and staff with the certainty of the direction on an issue and provide the tool for administration to implement the policy that council has set. The council and staff have continued to update policies to ensure that they are still meaningful and applicable. It is recommended that the village establish a policy for tendering and how it will go about purchasing services, equipment and supplies. Municipalities are subject to the New West Partnership Trade Agreement. The village has a public works policy for snow removal. The village should adopt a full complement of public works policies that would address inspections of the following: roadways and sidewalks, grass cutting, fire hydrants, municipal facilities, and equipment inspections. Once adopted, the policies should be made accessible for viewing on the municipal website. Public works should be commended for the additional initiative provided by snow clearing of sidewalks on main street.

7. RECOMMENDATION: That Council and administration implement policies in the areas of public works.

Newsletter

Council and staff are to be commended for providing the Village of Heisler a newsletter for the public that communicates decisions of council and events happening in the community. Council currently relies on this newsletter to communicate new policy decisions and bylaws that affect people’s property and activities.

Council/CAO Relationship

The *MGA* in section 207 describes the Chief Administrative Office (CAO) as the administrative head of the municipality, who ensures that the policies and programs of

the municipality are implemented and provides information and advice to council on matters of operations and other affairs of the municipality. It is important to respect the roles and responsibilities of elected councillors and the CAO.

It is clear that the current relationship is functioning as it should and each one respects the role of each other.

Council is supportive of training opportunities for the CAO and has recognized the need for a part time employee to ensure that there is cover-off in the office should the CAO not be available.

8. RECOMMENDATION: That during budget deliberations, consideration be given to fund a part time position for cover-off for the CAO as may be required.

Utilities

The council has recognized the importance of ensuring the future sustainability of water for the village and is now in the process of securing a contract for the installation of water meters.

Through a review of the utility accounts, it was noted that there are occupied buildings where there is no current charge for utilities. It was not possible to have access and discuss this issue with the owners of the property. This is however, a responsibility of the village, according to the Building Code, to ensure that all occupied buildings have a supply of potable water. Under the Alberta Building Code, Part 7, Plumbing Services and Health, council must ensure that all occupied buildings are in compliance.

9. RECOMMENDATION: That council contact the Public Health Inspector to ensure that the occupancy requirements are met with respect to Alberta Building Codes, including Plumbing Services and Health.

Finance

The council has developed a capital plan for the years 2011 – 2014. A review of the 2010 Financial Statements identified no areas of concern and effective 2010, the village paid the debenture debt and is now debt free.

Monthly administrative procedures are documented which is an excellent tool for ensuring the critical dates of functions are met.

Additional Interviews

The inspectors engaged in a limited number of interviews with village residents receiving views on past and current experiences, including involvement with the council and administration. The following are comments received in no particular order of interviewees or importance:

The majority of the residents are related to one another.

Council is lost.

Councillors are unable to get people interested in their local government.

Councillors are not approachable.

Prefer to be with Flagstaff County (dissolution).

Unable to talk to Council about poor bylaw enforcement.

Abuse of power by the mayor.

High taxes for the services provided.

Services are fine.

Residents Concerned about finance in the future.

Lack of cooperation between the Council and the residents.

Council does not follow up their promises.

Council does things they should not do.

Council is selective with bylaw enforcement

Some councillors are making too much money from the village as a councillor.

Councillor resignation.

Council meetings held in-camera.

No lots for sale.

No reserve land.

Prefer dissolution.

People are beginning to leave the village.

Not consistency enforcing bylaws.

Poor decisions made by Council.

Chief Administrative Officer is fair and equitable, better communication.

The Village needs more services for children.

Taxes are high.

Not satisfied with the dissolution study.

Conclusions:

As previously indicated, the inspectors are required to report to the Minister on any matter regarding the operation of the municipality that could be considered irregular, improper, or improvident. The inspectors have concluded the following matters fit into these categories. Specifically:

Improper – “Deviating from fact, truth, or established usage; Not conforming to accepted standards of conduct or good taste; Unsuitable”.

- Council must adhere to the provisions of the *MGA* and ensure that taxable properties are taxed

Improvident – “Lacking foresight; Incautious; Rash; Taking no thought of future needs; Thriftless”.

- Council must adhere to the provisions of the *EMA*.
- Council must adhere to the provisions of the Alberta Building Codes, including Plumbing Services and Health.

Irregular – “Not according to established rules or procedure. Not conforming to accepted standards of conduct”. Nothing to report.

The inspectors believe the following recommendations should be considered by the Minister to implement as directives:

- 1. That council ensures that the bylaws passed are enforced consistently for the entire village;**

- 2. That council reviews and amends its procedural bylaw and enacts an Emergency Management Bylaw;**
- 3. The village request the Minister of Municipal Affairs to order an assessment audit and that any properties currently not being taxed are addressed to ensure compliance with the *MGA*;**
- 4. That council contact the Public Health inspector to ensure that the occupancy requirements are met with respect to Alberta Building Codes, including Plumbing Services and Health.**