
Alberta Municipal Affairs

Thorhild County, Municipal Inspection

Final Report

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Executive Summary

A petition of electors was received by the Minister on July 29, 2014 requesting that the Minister undertake an inquiry into the conduct of Council and the Chief Administrative Officer of Thorhild County. Russell Farmer and Associates was appointed by the Minister of Municipal Affairs to complete an Inspection in accordance with Section 571 of the Municipal Government Act.

During our inspection we identified a number of areas of concern. These concerns have been divided into seven core areas: 1) Working Relationships, 2) Council Operations, 3) Role of the County in the 28/63 Regional Water Services Commission, 4) Chief Administrative Officer, 5) Human Resources Practices, 6) Financial Matters, and 7) Additional Matters. Our inquiry into these six areas has resulted in forty-six (46) recommendations for improved governance and operations.

Working Relationships

Working relationships within Council have been extremely poor and have contributed to poor governance practices. A consistently split Council, and open animosity between Councillors resulted in an environment that was not appropriate to a governing body. A key point of contention between Councillors was the performance of the CAO, and the extremely contentious working relationship between the CAO and members of Council.

As a result of these issues, our Inspection report makes the following recommendations:

1. Council develops and adopts a Code of Conduct that addresses role separation and Council behavior.
2. Council engages in a regular quarterly review of its performance as a whole and the performance of individual Councillors as a means of ensuring clear role separation and an appropriate standard of conduct.
3. Council monitors agenda items and Council deliberations for operational matters that should not be reaching Council meetings.
4. Council strive for inclusive communication with administration. All emails to and from representatives of administration, including the CAO, should be copied to all members of Council.
5. Council engage a facilitator to work on effective communication practices and training in non-confrontational language use.

6. Councillors conduct themselves at all times in a manner that reflects positively on the County, its Council, and its staff.
7. Council immediately discontinue all involvement in administrative or operational matters
8. Councillors immediately discontinue making negative comments regarding fellow Councillors, Council as a whole or administration to external stakeholders

Council Operations

Due to the animosity on Council, and a lack of appropriate processes, Council is failing in its role as a leadership body. Some of the core issues with Council operations identified during our review include:

- Council engages in poor decision making. Decisions are made without complete information, and decisions are frequently changed resulting in inconsistent and conflicting policy development;
- Council's minutes contain comments, vote counts and recorded votes, which reflect a poor governance practice;
- Council's performance review of the CAO does not represent the opinions of all Councillors on Council, and does not give appropriate direction for ongoing development;
- Council engages in operational matters and does not appear to have a clear understanding of role separation;
- Council's procedural bylaw and governance procedures do not reflect good governance practices;
- Council is failing to comply with the MGA or other provincial legislation; and
- Councillors are acting with bias and/or with pecuniary interest.

As a result of our identified issues with Council operations, our Inspection report makes the following recommendations:

9. Council receives regular reports from administration on progress towards completing the objectives set within the strategic plan. It is recommended that Council review progress quarterly.

10. Council links progress on the objectives identified within the strategic plan to their annual performance review of the CAO on their quarterly assessment of their own performance as a governance body.
11. Council adopts a strategic planning process where the plan is reviewed and updated annually at a Council retreat. Council develops a policy to guide the strategic planning process
12. Council adopt a decision making process that considers required information, sources of information, and stakeholders to the decision, prior to engaging in deliberation or voting. If information is outstanding, decisions should be tabled for a later meeting of Council.
13. Council integrates guidelines for confidentiality, effective communication, and bullying/harassment into an updated Code of Conduct.
14. Administration changes its practices regarding Council Minutes to ensure that they contain only agenda items and motions free from comment or detail.
15. Council discontinue the use of recorded votes as a means to represent disagreement with Council decisions.
16. Council develop a scorecard for Council conduct and regularly review performance on the scorecard to identify opportunities for improvement.
17. Council ensure annual CAO performance appraisals are conducted, at a minimum, with semi-annual or quarterly reviews as better practice. Develop a policy to guide the CAO performance review process
18. The Councillor participating remotely may not participate in in-camera discussions, as it is impossible to ensure the security and confidentiality of discussions conducted through phone or computer.
19. The CAO and Council review the CAO performance review process in order to ensure that performance reviews are formative, and that they represent the views of Council as a whole.
20. Council receives supplemental training. This training includes a comprehensive governance orientation for all of Council, and procedural training on effective Council meetings and effective chairing of meetings.
21. Council adopts clear policies on use of Skype or other remote meeting technologies that may be applied to Council or committee meetings.

22. Council conduct a review of the Councillor orientation process, and develop materials and policies to guide orientation following elections.
23. Council complete its scheduled review of the County's Land Use Bylaw and Municipal Development Plan
24. That Council adopt a policy, based on the decision of the FOIPP commissioner, to guide the retention and destruction of Councillor notes, records and documents.
25. That Councillor Larry Sisson complies with Section 174 of the Municipal Government Act and declare that he is disqualified. In the event that he does not voluntarily accept disqualification, it is recommended that Council obtain a legal opinion on disqualification in accordance with Section 175 of the Municipal Government Act.
26. Council rescind resolution 500-2013 requiring recorded votes, and amend the procedural bylaw accordingly.
27. That Council complete a comprehensive review of the County's procedural bylaw to address the deficiencies contained in this report, and to ensure compliance with appropriate procedural practices.

Role of the County in the 28/63 Regional Water Services Commission

A significant point of concern identified during the Inspection related to the conduct and processes of the County with respect to the management and operation of the 28/63 Regional Water Services Commission. In this matter, the County has demonstrated poor practices in decision making, personnel management and inter-municipal cooperation.

As a result of our identified issues with 28/63, our Inspection report makes the following recommendations:

28. Council re-affirm the County's support for the Highway 28/63 Regional Water Services Commission.
29. That Council engage in a collaborative approach to amend the Service Agreement component of 28/63's operating agreement.
30. That Thorhild County invite Smoky Lake County to engage in facilitated joint Council meetings to discuss the working relationship between the municipalities and to address the impact on working relationships created by Thorhild County's conduct with respect to 28/63.

31. That Thorhild County immediately discontinue any objection to, or obstruction of, 28/63 Commission managers and staff in engaging with County staff below the level of the CAO in completing their duties for the Commission.

Chief Administrative Officer

The position Chief Administrative Officer (CAO) has been a contentious issue for Thorhild County. Our inspection identified significant concerns with the performance of the CAO and with Council's role with respect to the CAO. Some points of concern include:

- The termination of the County's last CAO, and Council's failure to comply with principles of procedural fairness and the requirements of legislation.
- The hiring process for the current CAO, Council's decision making process, and the relationship of the current CAO with Council.
- A recent court ruling stating that the CAO has failed to act in good faith while performing her role for the County.

As a result of our identified issues, our Inspection report makes the following recommendations:

32. Thorhild County comply with Resolution 595-2013 by adopting a CAO hiring policy that defines the hiring process, roles, and responsibilities
33. That Council obtain a legal opinion on the process for dismissing a CAO, and that Council comply with the requirements of Section 206 of the Municipal government Act in all future CAO dismissals.
34. That Ms. Kolewaski cease to be engaged as the CAO of Thorhild County. This may be accomplished through Ms. Kolewaski's voluntary resignation, or as the result of a Council process.
35. In the event that Ms. Kolewaski does not voluntarily resign; that Council complete a review of the employment of Ms. Kolewaski which complies with Section 206 of the MGA. This review should be completed in light of the divisive nature of her employment, her inability to work effectively with all members of Council, her inability to effectively guide a struggling Council in effective governance practices and the requirements of the MGA, and her demonstrated inability to perform her duties without bias or in good faith.

36. That, in the future, Council engage an independent third party to complete CAO searches, and that a high priority be placed on demonstrated effectiveness in senior municipal administration, and knowledge of the MGA.

Human Resources Practices

Our Inspection assessed the County's practices in the area of human resources management. With respect to most administrative practices, the County performs well. However, with respect to issues of progressive employee discipline and employee termination we identified significant issues and areas where the County deviated from a reasonable standard of procedural fairness.

Our Inspection report makes the following recommendation:

37. The County adopt a human resources policy to guide employee dismissals.
38. The County adopt a human resources policy to guide the process of employee discipline that reflect principles of procedural fairness.

Financial Matters

Our Inspection identified that the County is generally financially sound and engages in good accounting and financial management practices. Three key concerns related to the County's decision to implement significantly higher taxes for the Hamlet of Thorhild than for other hamlets, poor communication practices regarding land sales, and Council spending practices that resulted in a higher than normal number of budget amendments.

Our inspection report makes the following recommendations:

39. Council establish a single mill rate for all hamlets in the County in future taxation bylaws
40. The County provide a report, available to residents, on land sales which identifies sales which have been completed during the current calendar year.
41. The County comply with its new policy to guide land sales.

Other Matters

Two additional matters discussed in the inspection report relate to poor Council decision making practices. The first matter was the decision to demolish a school building owned by the County. In this matter we identify poor decision making processes, poor policy and resolution compliance, and poor project management practices. The second matter is Council's decision to

change the County's newspaper service provider, and to pay a newspaper operating outside the community to distribute in the County.

On these matters, the Inspection report makes the following recommendations

42. Council discontinue its practice of paying for newspaper circulation at the earliest point allowable under the terms of its contracted arrangements.
43. That the County review its contract tendering and asset disposal policies and practices.
44. That the County engage an engineering firm to project manage the remainder of the school demolition project.

Final Comments

This inspection identified significant concerns with the governance of Thorhild County. Key amongst these are:

- Working relationships between Council members, which have adversely impacted Council as a governance body and public perception of the County;
- The working relationship between Council and the CAO, which contributes to factions on Council and in the Community;
- The decision making practices of Council during Council sessions;
- Decisions of Council which demonstrate bias towards stakeholder groups or pre-existing biases towards individuals;
- Repeated violations of the requirements of the Municipal Government Act and other legislation.

The Inspectors make the following final recommendation:

45. The Minister of Municipal Affairs appoint an Official Administrator to Thorhild County, in accordance with Section 575 of the Municipal Government Act, for a period of not less than one year.
46. Council conduct itself, at all times, in a manner befitting elected officials in the Province of Alberta and to act in the best interest of the County as a whole. In the event that Councillors are unable to meet this standard of conduct, it is recommended that they resign from Council.

Background

Thorhild County is located in Central Alberta, 45 minutes north of Edmonton. The County has approximately 3,400 people including seven hamlets. Two hamlets are the result of relatively recent dissolutions – Radway (1996) and Thorhild (2009). No incorporated urban centres are located within the County's boundaries. The adjusted population of the County has shown a decline from its high point in 2001. The economy of the County is primarily driven by agriculture with secondary contributions from recreation and services to the energy industry. The County has a Council of five, including the Reeve.

A petition of electors was received by the Minister on July 29, 2014 requesting that the Minister undertake an inquiry into the conduct of Council and the Chief Administrative Officer of Thorhild County under section 572(1) of the Municipal Government Act (MGA). This petition was deemed sufficient. In response to this petition, the Minister directed Department staff to conduct a preliminary review into the concerns and issues that led to the petitioners' request prior to rendering a decision on the merits of further action. Based on the concerns and issues identified in the preliminary review, the Minister ordered an Inspection into the management, administration and operation of Thorhild County, in accordance with Section 571 of the MGA in order to determine if the municipality is managed in an irregular, improper or improvident manner.

Methodology

The inspection has been undertaken by conducting a review of the following:

- Municipal records including Council minutes, human resource files and Council packages, County Policies, and Council files;
- Business decisions made and the rationale of those decisions;
- County bylaws, ensuring completeness, proper signing and sealing, and filing in a proper register;
- Financial records including budgets, audited financials, expense claims, and general ledgers;
- Land sale documents and files;
- Documents and correspondence relating to matters of interest identified during interviews; and
- Various documents provided by members of Council and administration.

In addition to the above documentation and files, interviews were undertaken with the Reeve, current and past Council members, the current CAO, and department heads. Additional interviews were conducted with past employees, concerned residents, residents who witnessed the petition sent to the Minister and other key residents and business owners as identified during

the inspection. Interviews with representatives from partnering municipalities in the regional water Commission were also undertaken.

The review focused on three key areas within the organization:

- Governance:
 - To review the functioning of Council as a leadership body providing strategic direction;
 - To review decision making processes;
 - To assess understanding of roles and responsibilities;
 - To evaluate current working relationships amongst Council and between Council and administration.
- Operations:
 - To assess the budgeting process, financial operations, and financial controls;
 - To assess the municipality against best practices for efficiency and effectiveness;
 - To assess administrative processes and policies;
 - To review the current financial position of the municipality;
 - To evaluate Council meetings for efficiency and effectiveness.
- Structure:
 - To identify whether current municipal employees have the capacity to carry out their duties as required;
 - To assess the overall organizational model looking at size, reporting relationships, and responsibilities;
 - To evaluate the use of committees and determine if they are operating effectively.

It is important to place some context to the Inspection process. Municipalities have “natural person powers”, meaning that they have the ability and discretion to make and enact decisions on their own behalf; subject to the limitations of legislation. In addition, checks already exist on the power of Council and the municipality through the election process, and through existing legal remedies. It is therefore important to acknowledge that:

- Inspections are not a “balance of opinion” process. This is not a vote. Hearing the same concern from multiple people does not make it right. Nor does hearing that people are happy with a decision of Council necessarily make it a “good” decision.
- This is not a referendum on Council. Residents elect their Council for a period of four years. At the conclusion of the four year term, residents may choose to retain or change their elected officials based on the perceived performance of Council.

- The Inspector does not arbitrate individual disputes between Council and interested stakeholders. If a resident or organization believes that they have a legitimate complaint against a decision of Council, the municipality, or a municipally controlled entity that has caused them harm, legal remedies exist through the court system. Inspections do not replace that legal remedy.

Working relationships

This section of the report focuses on the working relationships between the various groups within the organization. The relationships reviewed include the working relationship between councillors, Council and the Chief Administrative Officer (CAO), Council and administration, CAO and administration and relationships within administration itself. The comments provided are focused on the current Council and moving forward rather than on past Councils. In some cases historical information may be included in the report.

Council

The effectiveness of Council has been adversely impacted by the working relationship between Councillors. Council has had a historical split. A split within the community exists on a few key issues. These issues include the decision by a past council to support a landfill operated by Canadian Waste Management as a form of economic development, and the 2009 dissolution of the Village of Thorhild. The community split resulted in the formation of a lobby group entitled the Concerned Citizens of Thorhild County Society (CCTC) which opposed the waste management facility. This split has played itself out on Council. Prior to the 2013 elections, the current Reeve was a Councillor in the minority faction on Council. The Reeve represents the group supported by CCTC and was opposed to the waste management facility. Following the 2013 election, Wayne Croswell became Reeve, and enjoyed the majority support of Council. Councillors Hanasyk and Grumetza, previously in the majority faction, are now in the minority. Ongoing conflicts on Council have resulted in poor behavior by all members of Council. Some examples of poor behavior include:

- Open animosity and personality conflicts between Councillors;
- An invitation to “settle conflicts outside” which was taken as a threat to fight;
- The alleged undue influence of special interest groups, such as CCTC, and individual residents on Council decisions;
- Hostility from some members of the community directed at members of Council;
- Exchanges of dramatic and accusatory emails filled with offensive language, accusations of intimidation and bullying, many exclamation points, and generally demonstrating an atmosphere of conflict and distrust;

- Threats of legal action, legal opinions, and repeated threats of Councillor disqualification (discussed elsewhere in this report);
- Lack of decorum, inappropriate and aggressive statements made toward Councillors and the current CAO by Councillors during and outside of Council meetings; and
- A feeling by Councillors that working relationships on Council are impacting its ability to operate as an effective governing body.

It is clear from reviewing minutes that there is a significant split on Council. Reeve Croswell and Councillor Sisson generally represent one faction on Council, with Councillors Hanasyk and Grumetza on the other. While Councillor Buryn is generally associated with the Reeve and Councillor Sisson on most matters of substance, there are instances where he votes in opposition. This clear split on Council also impacts Council's relationship with their CAO, as the past CAO was terminated without the support of Councillors Hanasyk and Grumetza, and the current CAO was hired by a 3-2 vote without the support of Hanasyk and Grumetza.

It is our assessment through a review of Council correspondence and direct observation of Council that relationships have deteriorated to the point that Council is ineffective as a governance body. The environment on Council is having a toxic impact in the community, and is being acknowledged by key stakeholders and the media.

Council and CAO

The relationship between Council and the CAO has been one of the key issues that has contributed to the split on Council. Several of the Councillors indicated that the CAO is doing an excellent job completing the day to day operations of Council and supporting Council by providing the appropriate recommendations when required. Other Councillors had significant concerns with the performance of the CAO, and her perceived inability to act without bias in the execution of her duties. The hiring process and performance review process for the CAO are addressed elsewhere in this report. Council has been split on virtually all matters related to the CAO's employment. The CAO is viewed, by some members of Council and the public, as being biased towards the majority faction on Council. Her previous involvement with CCTC and her personal relationship with some Councillors prior to her hiring contribute to this impression of bias. A review of correspondence between Councillors and the CAO reveals the following:

- An unprofessional tone used by both Councillors and the CAO;
- Accusations by the CAO, directed at a Councillor, of bullying, harassment and abuse;
- Frequent questioning of the CAO's actions and conduct;
- A request by the CAO to the Reeve that a Councillor retract comments made on a CAO performance evaluation form;

The relationship between the CAO and some members of Council has deteriorated to the point that it has become ineffective. The CAO is not acting as a trusted advisor to Council, as she enjoys the support of only a faction on Council.

Council and Administration

Members of Administration, during interviews, indicated that the relationship between the CAO and some Councillors was strained and in some cases Councillors were hostile toward the CAO. They also stated that there is a perception that the CAO is clearly acting on behalf of a faction on Council, and specific members of the community. Members of administration indicated that they do not feel secure in their positions. Some commonly cited concerns include:

- A belief that some Councillors are actively attempting to remove senior administration loyal to the last CAO, loyal to the last Council, or involved in any way in opposition to CCTC.
- A belief that the Reeve will seek punitive action against those who signed the petition to initiate the inspection. Newspapers and staff reported that, during an October 1st, 2014, Council meeting, the Reeve requested a copy of the Inspection petition to determine which staff members had signed it as it would be a sign of “insubordination”. This resulted in a complaint being registered with the County’s Personnel Manager from a senior director that was in attendance at the meeting. The Reeve emphatically denies that this demand was made with respect to the Inspection petition.
- Senior administration feel that they are not trusted by Council, and that their expert advice is not respected.
- Some members of senior administration do not like attending Council meetings, as they find the meetings hostile.
- Representatives of the public and Council have openly made negative comments about County employees without intervention by the Reeve in his role as Chair, or by the CAO on their behalf.

The separation of roles between Council and administration should be a key consideration when individual councillors consider their actions. Some key considerations include:

1. The primacy of Council. Only Council as a collective body has the authority to govern. No individual Councillor has the authority to direct administration or to commit the County to any course of action or expenditure in the absence of a Council resolution.
2. Council acts on a strategic level and is focused on policy and service standards. Administration acts on an operational level and meets the policy requirements and service standards set by Council.

There are many examples where individual Councillors became focused on operational matters and brought them forward at Council meetings.

Council has only one employee, the CAO. All other employees of the County are the responsibility of the CAO. Council should not be involved in the hiring, promotion, performance evaluation or dismissal or any employee subordinate to the CAO. We have identified examples of where Council has become directly involved in human resource matters through resolutions. Examples include:

Resolution 067-2014 – Moved by Reeve Wayne Croswell that Council defers the advertising for the position of Deputy Director of Public Works.

Resolution 538-2014 – Moved by Reeve Wayne Croswell that Administration proceeds with elimination of the director position discussed, in accordance with legal advice

In both cases, these positions were budgeted. Any decisions relating to these positions were, therefore, the responsibility of the CAO or his/her designate within administration.

Administration

At the time of this inspection participants indicated that working relationships among members of administration were generally positive. The relationship between office staff and public work staff is excellent and no issues were identified. In the past two years there has been significant turnover of staff, but recent hires report that the environment in the County office has been positive.

It is recommended that:

1. Council develops and adopts a Code of Conduct that addresses role separation and Council behavior.
2. Council engages in a regular quarterly review of its performance as a whole and the performance of individual Councillors as a means of ensuring clear role separation and an appropriate standard of conduct.
3. Council monitors agenda items and Council deliberations for operational matters that should not be reaching Council meetings.
4. Council strive for inclusive communication with administration. All emails to and from representatives of administration, including the CAO, should be copied to all members of Council.
5. Council engage a facilitator to work on effective communication practices and training in non-confrontational language use.
6. Councillors conduct themselves at all times in a manner that reflects positively on the County, its Council, and its staff.
7. Council immediately discontinue all involvement in administrative or operational matters.
8. Councillors immediately discontinue making negative comments regarding fellow Councillors, Council as a whole or administration to external stakeholders.

Council Operations

Governance Practices

Municipalities must respect the primacy of Council as a decision making body. Only Council as a whole has the power to set policy, to pass motions, or to direct the activities of the CAO. Individual Councillors have no power or ability to set policy outside of Council chambers; only when acting as a part of Council as a whole. Section 197 of the MGA requires that Council and Council committees conduct their meetings in public unless the matter to be discussed is within one of the exceptions to disclosure contained in the Freedom of Information and Protection of Privacy Act. Ensuring that all debates and decisions of Council occur in public enhances transparency by ensuring that decisions are not occurring in back rooms or arising from private conversations. Furthermore, it is important that the public be allowed to provide input to the decision making process and that members of Council do not reach conclusions before all information is provided and a public debate can occur. Transparency should always be an underlying principle of good governance.

In evaluating Council as a leadership body, this inspection has looked at several key areas of Council activity.

Strategic Planning

A key function of Council is to provide a strategic vision for the municipality and to identify strategic priorities and goals in support of that vision. A strategic plan serves several key functions:

- It provides a sense of priorities for Council;
- It supports the development of Council agendas, allowing Council to act proactively, and not simply reactively as issues arise;
- It sets priorities for administration;
- It provides a framework to evaluate the success of both Council and the CAO in meeting the agreed-upon strategic priorities; and
- It provides a framework for operational planning and budgeting.

At the outset of the current Council's term in office, the Thorhild County did not have a strategic plan. Previous councils had operated in the absence of a strategic plan to guide priorities and decision making. This became a priority for the current Council. In June of 2014, Council engaged external consulting support to facilitate the development of a strategic plan. The process engaged in by the consultant included extensive public consultation and resulted in a ten-year plan entitled "Building The Future – Thorhild County Strategic Plan 2015 – 2025". This

plan was adopted by Council in November 2014. A review of the document and the process reveals the following:

- The consultants who were engaged had a pre-existing relationship with CAO Betty Kolewaski. The CAO initiated contact with the consultant prior to Council direction to pursue a competitive process. While a competitive process did occur through the open submission of bids, the same consultant won the contract. This consultant's proposal was presented to Council as the lowest cost option. However, interviewee's questioned the relative cost of the proposals, as some quoted bids included GST, and others did not. Accusations were raised during interviews that this was a manipulated bid process. It is noteworthy that the consulting firm engaged was supported by a very experienced municipal consultant and facilitator.
- Residents completed surveys which were compiled by the consultant, with results presented to Council and in reports only in aggregate. Some members of Council attempted to access the full data set of resident responses, even though the Consultants had identified to residents that the process was confidential and that results would only be presented in aggregate. Ultimately, individual responses were not provided by the consultant.
- The format and content of the strategic plan is well developed. The plan provides very good detail, including: timing for completion of objectives, cost estimates, performance measures, and performance targets. The plan is appropriate and achievable.
- Some Councillors contend that the final plan does not reflect the will of all of Council, but only of the majority faction. While there is a duty for Council to consider all input, a plan supported by the majority still represents the collective will of Council.

Many municipalities in Alberta have Integrated Community Sustainability Plans (ICSPs). ICSPs are long-term plans that take into account the long term sustainability of municipalities in four key areas: economic, social, cultural, and environmental. Municipalities require ICSPs in order to qualify for grants under the New Deal for Cities and Communities signed between the Government of Canada and the Province of Alberta in 2005. These grants are designed to transfer money to municipalities from gas taxes for the purpose of infrastructure spending. Thorhild County does not currently have an ICSP.

The County has taken positive steps towards being driven by appropriate planning documents.

Council Decision Making

Our Inspection identified significant concerns with the manner in which Council is engaging in decision making. At the outset of any decision making process Council should ask a series of key questions:

1. Is this decision time sensitive, or do we have time to engage in a detailed decision making process?
2. Do we currently have the information we need to make a decision?
3. What sources of information or professional advice are available?
4. Has our administration provided us with a recommendation based on their expert opinion?
5. What stakeholders are going to be affected, and do we have a responsibility to consult with impacted stakeholders?

A good example of Council's poor decision making processes is related to payment for a frozen sewer line.

In May, 2014 a resident provided an email to the municipality requesting that the County reimburse the resident for the cost of repairing a frozen sewer line. The resident then appeared as a delegation on May 13th, 2014. At issue was the claim that the County was responsible for the damage to the sewer line due to municipal construction work that changed the depth of the sewer line. At this meeting, the Utilities Director provided information to Council in writing relating to County Policy 720, which provided for this matter being addressed by administration. In response to the information provided, Council passed the following Resolution:

Resolution 341-2014 – Moved by Councillor Dan Buryn that Council directs Administration to contact Mr. Robert Strand and advise him that County Policy 720 – Sewer Line Maintenance will be followed, and that he must determine the cause of the sewer blockage.

The resident again appeared as a delegation on July 22nd, 2014 detailing his belief that the County was responsible for the frozen sewer line. At this time, administration advised Council that, in the opinion of the County's utilities staff, the County was not responsible for the frozen sewer line. In response to the advice of administration, Council passed the following resolution on August 26th, 2014.

Resolution 620-2014 – Moved by Councillor Kevin Grumetza that Council directs Administration to contact Mr. Robert Strand and advise him that the County will not pay his hydrovac invoice.

The resident appeared for the third time as a delegation on December 22nd, 2014 to provide evidence that the County's rehabilitation of 1st street in 2012 contravened Alberta Environment and Sustainable Resources Development standards for municipal waterworks, resulting in the frozen sewage line. As a result of this presentation, Council adopted two resolutions on January 13th, 2015.

Resolution 007-2015 – Moved by Councillor Larry Sisson that Council approves the payment of the Strand's invoice as requested by Mr. Strand.

Resolution 008-2015 – Moved by Councillor Kevin Grumetza that Council authorize Administration to contact the engineering company who was responsible for performing the work on 1st Street and request that a meeting be set up with Council and Administration.

On January 27th, 2015, the CAO presented a report from Opus Stewart Weir stating that the road works was not responsible for the damaged sewer line, and, in fact, resulted in an increase in elevation. Council again made a resolution on this matter. The report appears to have been initially provided in May, 2014.

Resolution 023-2015 – Moved by Councillor Larry Sisson that a stop be put on the cheque to Robert Strand pending further information from Opus Stewart Weir.

Some observations arise from this decision making process:

1. Council heard three separate delegations and made five conflicting resolutions on the exact same matter.
2. Council re-visits the same decision on three separate occasions. If Council does not have enough information to make a decision, it should be tabled. A Council motion, once made, should be enduring.
3. Council makes a decision, then requests information from an engineering firm, then make another decision without actually having met with the engineering firm.
4. Council is not expected to be an expert on road construction or sewer line standards. For this, they rely on the expertise of administration or on the expertise of engineers. If the resident had a legal case to be made, there are avenues for legal recourse against the county for a decision made in good faith and based on expert opinion.

Overall, Council's decision making in this matter appears fragmented, uncoordinated, and generally uninformed. In this report, additional examples of where poor decision making processes have been followed are identified. These include repeated and contradictory resolutions of Council related to: 1) payment of costs for the Concerned Citizens of Thorhild County Society (CCTC), 2) the role of Thorhild County in the Highway 28/63 Water Services Commission, and 3) the demolition of an elementary school owned by the County.

Council Confidentiality

Section 153(e) of the MGA states that Councillors have a duty to keep in confidence matters discussed in private at a Council or Council committee meeting until discussed at a meeting held in public. Rules of confidentiality generally apply to information discussed in-camera. It appears that in some cases information from in-camera sessions has been leaked to residents in the community. During interviews for the Inspection many key stakeholders expressed a concern that matters were not remaining in confidence and that confidential information was being shared with supporters of the different factions within the County.

Minutes of Council

Minutes of Council are identified as one of the major administrative duties for the CAO in section 208 of the MGA. An examination was conducted of the County's minutes from 2013 to the present. Minutes of Council should:

1. Identify agenda items;
2. Provide the exact motions of Council
3. Indicate motions as "Carried" or "Defeated"
4. Be free from comment or quotes

According to section 208(1) of the MGA one of the major administrative duties of the CAO is:

208(1) The chief administrative officer must ensure that (a) all minutes of council meetings are recorded in the English language, without note or comment;

There are specific examples of minutes that contain notes and comments of the discussions undertaken by Council. The majority of the detail is within Councillor and CAO reports, or in descriptions of presentations by delegations. Minutes are generally well restricted to agenda items and resolutions. On February 11th, 2014, Council passed the following resolution:

Resolution 072-2014 – Moved by Reeve Wayne Croswell that editorial comments not be included in the minutes of Council meetings (carried 3-2)

Although this was opposed by some members of Council, it is a positive governance practice to remove editorial comments.

In addition, Council minutes generally record resolutions as “carried” or “defeated” without excessive use of recorded votes or vote counts. This is preferred, as any majority carries equal standing. In 2013, Council passed the following resolution:

Resolution 500-2013 – Moved by Councillor Kevin Grumetza that all motions of Council be recorded votes

There is no indication that Council is failing to act in accordance with the requirements of legislation. However, as a governance practice, the use of recorded votes should be discouraged. Some governance issues with recorded votes include:

- Council is a collective governing body. The use of recorded votes serves to highlight areas of disagreement on Council and is a divisive practice. Respect for the democratic principle of “one Councillor, one vote” means that all Councillors demonstrate respect for democratic outcomes after the voting process is completed. Recorded votes serve as a permanent record of lack of support for democratic outcomes.
- Councillors should not be making decisions on Council for political gain. Consideration of public or stakeholder perceptions should not be a consideration in voting; only the best interests of the municipality as a whole. For this reason, the use of recorded votes as a means to impact public support for individual politicians should be discouraged.

Recorded votes should be used rarely, and when used should serve a higher purpose than merely publically demonstrating opposition to democratic outcomes. Recorded votes could, for example, be appropriately used if a Councillor opposes a motion that he/she believes could create a source of individual liability for members of Council. It appears that Thorhild County’s Council is using recorded votes for political gain by publically demonstrating opposition, indicating that a respect amongst Councillors for democratic principles has been lost.

While resolution 500-2013 was carried, it does not appear to still be in effect. We can find no indication that it was rescinded. If the resolution is still in effect, it should be rescinded as the practice of recorded votes on all matters is a poor governance practice.

Minutes are placed online on the County’s website and are accessible to the public. These are well marked with the date, time, type of meeting, and page numbers. Dates and times for upcoming meetings appear to have been well documented. It was noted that the online copies of the minutes are scanned copy of the originals, and contain appropriate signatures.

Use of Skype or Conference Calls

Many municipal councils now allow councillors to participate in council meetings remotely via telephone or the internet. In cases where these technologies are being used, it is important that some key practices be observed:

1. The Councillor participating remotely must conduct him/her self in accordance with the same practices as would be expected of a Councillor participating in person.
2. The Councillor participating remotely may not participate in in-camera discussions, as it is impossible to ensure the security and confidentiality of discussions conducted through phone or computer.

The December 17th, 2014, Special Meeting of Council had three Councillors present, all via telephone. Resolution 862-2014 was to go in-camera, and resolution 863-2014 was to come out of camera. Council should not make use of in-camera at meetings of this type.

Council Bylaws

All bylaws of a municipality must be properly written, recorded, passed, and indexed. Ensuring the integrity of a municipality's bylaws is a key responsibility of the CAO, as is informing Council of their responsibilities under the MGA as they relate to the passing of bylaws. Municipalities are expected to maintain a bylaw register containing each current bylaw. During this inspection a review was conducted of all bylaws and recent Council minutes to examine the passing and maintenance of bylaws for Thorhild County.

The following comments are for the bylaws developed and passed during the time period that the current CAO has been employed.

- Bylaws are properly written, recorded, passed, indexed and available to the public on the County's website;
- The different readings of bylaws have been observed and recorded within minutes of the County.
- Section 187 of the Municipal Government Act requires that all bylaws have three readings and states that a proposed bylaw must not have more than two readings at a Council meeting unless the Councillors present unanimously agree. The intention of separating readings across Council meetings is to allow for sober thought and public input. In some instances, three readings of a bylaw occurred in one Council meeting and Council followed the appropriate procedures for passing a bylaw in three readings.

- New bylaws or updated bylaws include a section indicating that the previous bylaw has been repealed and the date of each reading is included.

A previous governance review recommended that the County complete a comprehensive review of its Land Use Bylaw and Municipal Development Plan. It appears that this recommendation was not implemented. A review of these core documents is scheduled for Fall, 2015.

CAO Performance Evaluation

Council has conducted a formal performance evaluation of the CAO annually. Properly conducted performance reviews serve several key functions:

- They inform the CAO of her performance ;
- They allow Council to review essential job functions with the CAO, and update job descriptions accordingly;
- They allow Council to identify for the CAO the ways in which his/her performance contributes to the organization's goals;
- They allow the CAO and Council to set mutually agreed upon objective measures of job performance in the future;
- They identify ways in which Council can support the CAO's efforts to successfully meet performance measures; and
- They provide documentation of performance to justify salary increases, promotion, disciplinary actions, or termination.

Council performed a performance appraisal of Betty Kolewaski. Council was required, under the terms of Ms. Kelowaski's contract, to complete a performance appraisal at the conclusion of six months of employment with the County. The appraisal was written by the Reeve, and was adopted by Council. The appraisal assessed the CAO in six key categories. The categories and rating received are as follows:

Assistance to Council in understanding its governance role	Outstanding
Relationship building with the Reeve	Outstanding
Policy advice and leadership on the key issues	Outstanding
Fiscal management	Outstanding
Leadership of the administrative team	Outstanding
Discharge of all administrative, legislative, and CAO bylaw and contractual requirements	Outstanding

Our assessment of the performance appraisal, and the performance appraisal process, resulted in the following observations:

- An individual working for the first time in a CAO role, and for the first time in a municipal government environment, should not be deemed “Outstanding” in all areas. This is not a formative evaluation, as it provides no forward-looking areas for ongoing development.
- Councillor Hanasyk provided input which was not reflected in “Council’s” evaluation. A CAO’s assessment should reflect all positions, even those held by a minority. Councillor Hanasyk’s assessment is present in the file, but the Reeve has placed a note at the bottom which says “The opinions presented are not unanimously held by Council”. This same comment could be applied to all Councillor input into the process. The Reeve has demonstrated an unreasonable level of bias in this matter.
- Following one Councillor’s submission of comments for the CAO’s three month performance appraisal, the CAO sent a letter to the Reeve demanding that the Councillor retract comments made on the performance evaluation form.
- The categories of this performance appraisal are not appropriate and do not represent a good understanding of municipal governance. The category “relationship building with the Reeve” should be amended. The CAO is responsible to Council as a collective body. As a result, the Reeve has no exceptional standing, relative to the rest of Council.
- Given the challenges identified in this report that the municipality has experienced in the areas of effective governance, community relations, and administrative stability; it is unreasonable that the CAO would score “Outstanding” in associated performance categories.
- The performance review represents the position of a small group on Council. Two Councillors were not present for the vote to adopt the performance appraisal. Of these Councillors, one did not provide an appraisal, and Councillor Hanasyk’s appraisal is not reflected in the final document. A third Councillor, Councillor Buryn, voted against adoption of the final document; which was adopted by a 2-1 vote. As a result, it appears that the performance appraisal represents the position of only two out of five Councillors.

Pecuniary Interest, Conflict of Interest, and CCTC

Thorhild County's Council has had an ongoing issue with addressing expenses incurred by the Concerned Citizens of Thorhild County Society (CCTC). This group was formed in response to a proposed landfill site operated by Canadian Waste Management; a project that the group opposed based on environmental and land-use related concerns. Thorhild County's Council was informed in January, 2007, that CCTC had become a registered society. Since its incorporation as a society, the executive of CCTC has included:

Wayne Croswell – now Reeve, Thorhild County

Larry Sisson – now Councillor, Thorhild County

Betty Kolewaski – now Chief Administrative Officer, Thorhild County

CCTC is identified as the appellant representative in appeals to the Alberta Environmental Appeals Board. The costs associated with the Society's appeals were partially paid by a ruling of the Environmental Appeals Board. The ruling of the Board read, in part:

The appellants represented by the Concerned Citizens of Thorhild County Society (CCTCS) asked for costs totalling \$259,330.78. These costs included \$13,541.77 for the individual appellants' costs, such as meals, adverse driving conditions, and mileage, \$99,528.94 for legal fees, and \$146,260.07 for retaining consultants. The Board awarded costs totalling \$60,283.87 to the CCTCS, including \$3,022.15 total for the individual appellants, \$26,911.76 for legal fees and disbursements, and \$30,349.96 for consultant fees.

CCTC has come before Council on a number of occasions to request support in paying the Society's remaining costs. In assessing Council's handling of this issue, some matters must be considered:

- Councillor Larry Sisson has funded the Society, and would be a financial beneficiary to cost reimbursement by Council or Canadian Waste Management. He therefore has a pecuniary interest in this matter.
- Reeve Wayne Croswell and CAO Betty Kolewaski have previously served as directors on CCTC's board. Reeve Croswell no longer sits on the Board, and therefore does not meet the MGA's definition of pecuniary interest in this matter. The CAO still appears as a director on the corporate registry. However, the CAO is not subject to the same pecuniary interest rules as councillors. It is, however, reasonable to assess the conduct of Reeve Croswell and Ms. Kolewaski to see if they are meeting an appropriate standard for acting without bias and acting in good faith in this matter.

Council has addressed this matter on a number of occasions. Some specific instances are as follows.

January 14, 2014

The Concerned Citizens of Thorhild County Society presented as a delegation. As part of this presentation, CCTC requested that Thorhild County submit to WMCC outstanding expenses in the amount of \$60,000 for reimbursement to the concerned citizens group.

It was noted by concerned residents that Councillor Sisson was in attendance for the full presentation of the delegation. Although there was no resolution made by Council, and Council does not appear to have engaged in deliberation, it still appears that Councillor Sisson was in violation of section 172(1) of the Municipal Government Act, which reads (in part):

172(1) When a Councillor has a pecuniary interest in a matter before the Council... the Councillor must, if present:

(a) disclose the general nature of the pecuniary interest prior to any discussion on the matter,

(d) ... leave the room in which the meeting is being held until discussion and voting on the matter are concluded.

A delegation would qualify as the matter coming before Council. As a party to the request for expense reimbursement, it would be reasonable to expect the Councillor Sisson would be aware of the content of the CCTC delegations presentation, and would have excused himself for at least that portion of the presentation.

February 11, 2014

On this date, the minutes of Council read (in full):

Councillor Shelly Hanasyk requested that a discussion take place on the Concerned Citizens Request for \$61,976.77 to be invoiced to WM.

Resolution 073-2014 - Moved by Councillor Shelly Hanasyk that Council directs Administration to seek legal advice on the Concerned Citizen's request for reimbursement of \$61,976.77 pertaining to the hosting agreement with Waste Management of Canada Inc. (carried unanimously)

After the vote, Councillor Larry Sisson declared a pecuniary interest in the matter of the Concerned Citizens request for \$61,976.77.

On this matter, it is clear that Councillor Sisson was present for both a deliberation and a vote on a matter where he had pecuniary interest. Although this was a vote for a legal opinion, and not a vote to pay the costs, it still qualifies as a material vote on a matter where he had a pecuniary interest. It is unclear why he declared pecuniary interest after the resolution.

February 25, 2014

On this date, the minutes of Council read (in full):

Resolution 121-2014 – Moved by councillor Shelly Hanasyk the Council makes a request to Waste Management of Canada Inc, for expenses in the amount of \$61,976.77 incurred by the Concerned Citizens. (Defeated)

<u>In Favour</u>	<u>Opposed</u>
Reeve Wayne Croswell	Councillor Kevin Grumetza
Councillor Dan Buryn	Councillor Shelly Hanasyk

Resolution 122-2014 – Moved by Reeve Wayne Croswell that Council accepts the legal opinion from Brownlee LLP regarding the reimbursement of expenses requested by the Concerned Citizens as information (Carried)

The sequence of these resolutions is odd. The legal opinion received by Council states (in part) that CCTC is not a party to the hosting agreement between the County and Waste Management of Canada Inc, and therefore the company is under no obligation to reimburse the costs incurred by CCTC in their submission to the Environmental Appeal Board. In this case, Councillor Sisson did declare pecuniary interest and leave the room as required by 172(1) of the Municipal Government Act.

October 01, 2014 (minutes amended Oct 14)

On October 1st, 2014, Lori Cramer, on behalf of CCTC presented Council with information regarding financial issues of the Society and requested emergency funding. Councillor Sisson again attended the presentation from CCTC, including the request for funding. Councillor Sisson left the room prior to a motion.

In response to the presentation, Council considered the following resolution:

Resolution 666-2014 - Moved by Reeve Wayne Croswell that \$35,000 in emergency funding go to the Concerned Citizens to assist with legal and consulting costs. (Defeated)

<u>In Favour</u>	<u>Opposed</u>
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Reeve Wayne Croswell	Councillor Shelly Hanasyk
Councillor Dan Buryn	Councillor Kevin Grumetza

It is noteworthy that Council did not follow the advice of legal counsel in the matter of CCTC's expenses. This legal opinion was received on February 25, 2014 regarding the County's obligation to pay CCTC expenses, and the obligation of Canadian Waste Management to pay CCTC expenses under the terms of the hosting agreement.

December 09, 2014

On December 9th, 2014, Council again received a delegation from CCTC requesting emergency funding of \$35,000. In part, the minutes state that the Society wishes to "pay off their debts and thereafter dissolve the group". Councillor Sisson attended the presentation from CCTC, including the request for funding, but left the room after Resolution 833-2014 was moved.

Resolution 833-2014 – Moved by Reeve Wayne Croswell that Council authorizes the payment of \$35,000 to the Concerned Citizens of Thorhild County Society to come from the Emergency Capital Operating Fund.

<u>In Favour</u>	<u>Opposed</u>
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Reeve Wayne Croswell	Councillor Shelly Hanasyk
Councillor Dan Buryn	Councillor Kevin Grumetza

Following the defeat of this resolution, a second resolution was moved.

Resolution 834- 2014 – Moved by Reeve Wayne Croswell that Council meet with Waste Management and request that they pay the Concerned Citizens of Thorhild County Society the \$35,000 remaining of their costs of the Environmental Appeal Board Hearing (Carried)

August 26, 2014

On August 26, 2014, the Thorhild Agricultural Society appeared before Council with an emergency funding request of \$35,000. A motion supporting their request was defeated.

In Favour

Opposed

Councillor Shelly Hanasyk Reeve Wayne Croswell

Councillor Kevin Grumetza Councillor Dan Buryn

Councillor Larry Sisson

A subsequent resolution was moved by the Reeve.

Resolution 592-2014 - Moved by Reeve Wayne Croswell that Council authorizes the payment of emergency funding in the amount of \$15,000 to the Thorhild Agricultural Society; and request the Agricultural Society members attempt to recoup the balance of the \$35,000 by other means. (Carried)

This matter before Council was frequently cited by interviewees as a sign of bias on Council. The amount budgeted for Emergency Funds in 2014 was \$50,000. It is commonly believed that the Reeve and Councillors wished to retain \$35,000 in budgeted Emergency Funds to pay the \$35,000 to CCTC. The motion to provide \$15,000 to the Agricultural Society came approximately one month before CCTC's October 1st, 2014 delegation.

May 5th, 2015

The matter of paying CCTC came before Council on May 5th, 2015, as a result of a notice of motion from Reeve Croswell. A review of the draft minutes from May 5th, 2015 reveals the following:

- Councillor Buryn made a motion to deal with the matter contained in the notice of motion. Councillor Sisson voted to have Council hear the matters, even though he had a pecuniary interest in the matter being heard.
- Councillor Sisson declared a pecuniary interest and followed the requirements of section 172(1) of the MGA on the matter contained in the notice of motion.
- Councillor Hanasyk was absent for the Council meeting. This is significant. Three previous motions on this matter had failed as a result of a tied vote. With Councillor Hanasyk absent, the resolution passed by a vote of 2 for, 1 against.

- Council passed a second resolution directing Administration to engage Canadian Waste Management to reimburse the County for this expense.

Council's handling of this issue raises a number of significant concerns.

1. Councillors vote for resolutions to pay CCTC's expenses, and to pursue CCTC's costs with Canadian Waste Management in spite of legal opinions stating that a) the County has no legal obligation to cover the expenses and b) CCTC is not a party to the agreement with Canadian Waste Management and therefore CWM is under no contractual obligations to pay. CWM's obligation to pay CCTC's costs was already defined in the decision of the Environmental Appeals Board.
2. Councillor Sisson repeatedly violates section 172(1) of the MGA by: a) failing to leave the room during delegations relating to CCTC's expense reimbursement requests, b) voting on a motion to get a legal opinion on CWM's obligations with regard to CCTC, and c) voting in favour of Council hearing a matter raised in a notice of motion relating to CCTC's expense reimbursement. On the last matter, he effectively votes to have the motion heard knowing that the composition of Council will support a matter in which he has a pecuniary interest.
3. During the inspection we received conflicting information regarding Councillor Sisson's financial interest. While he voluntarily declares Pecuniary Interest, he stated that it is due to his presence at hearing on behalf of CCTC, and that he lacks a financial interest. If he has a financial interest, he is in violation of Section 172(1) of the MGA, as previously described. If he does not have a financial interest, his decision to declare pecuniary interest and to not vote on matters before Council is a violation of MGA Section 174(1)(f) which requires Councillors to vote on all matters before Council. Either breach of the act is cause for disqualification.
4. Council makes repeated motions on the same issue. They carry two separate resolutions (December 9th and May 5th) to meet with Waste Management and request that they pay the Concerned Citizens of Thorhild County Society the \$35,000 remaining of their costs of the Environmental Appeal Board Hearing.
5. Council allows CAO Betty Kolewaski to provide advice on matters where she has a potential conflict of interest as a past (or current) director of CCTC, and a friend to parties with a pecuniary interest. Ms. Kolewalski has no obligation to be present in chambers during deliberations on this matter, and should have excused herself or have been excused by Council.

6. The purposes of a municipality is defined in Section 3 of the MGA, and states that:

The Purposes of a Municipality are:

- a) To provide good government,
- b) To provide services, facilities or other things that, in the opinion of Council, are necessary or desirable for all or part of the municipality, and
- c) To develop and maintain safe and viable communities.

It is reasonable to expect that Council would expend the revenues of the municipality in a manner consistent with these purposes. The Society is an independent legal entity with no beneficial function to the municipality going forward. In the absence of any legal obligation, it is unclear how this expenditure is consistent with the purposes of a municipality.

7. It appears that Reeve Croswell and Councillor Buryn may have acted in bad faith in this matter. Council voted on motions to provide \$35,000 to CCTC on October 1st, 2014, and again on December 9th, 2014. Both motions were defeated. This clearly represents the will of Council. There is no indication of any new information that would necessitate re-hearing this matter. The use of a notice of motion during a Councillor's absence to subvert the will of Council is a clear manipulation of the democratic process on behalf of a special interest group. It is possible that Section 535(2) of the MGA, could be applied to Reeve Croswell and Councillor Buryn with respect to the amount paid to CCTC. This section of the MGA provides that Councillors:

are not liable for loss or damage caused by anything said or done or omitted to be done in the good faith performance or intended performance of their function, duties or powers under this Act or any other enactment

The Councillors could be deemed to be liable by a court if it was determined that the councillors acted in bad faith in the performance of their duties, functions or powers under the MGA, and that those actions caused injury or damage. The party suffering the injury or damage would be the party having standing to bring the court action, in this case likely the municipality or an elector.

Orientation

Council members have not been provided with an adequate governance orientation. Orientation is a critical process for returning and new Councillors who are stepping into the new and unique role of elected official. Some common Council orientation topics include:

- Governance – roles and responsibilities, principles of effective governance, policy based governance, the role of committees and their function and policy based decision making.
- Planning documents - budgets, capital plans, strategic plans, municipal development plan, area structure plans and documentation related to significant projects that are underway within the municipality.
- Policies - key policy documents include the land use bylaw, procedural bylaw, Council code of conduct (if it exists), financial control policies, Council remuneration policy and any other policies that administration identifies to be critical.
- Administrative Processes - Key processes for a new Council include logistics such as accessing email, buildings, etc., how to fill out forms, and any other processes related to conducting Council sessions and participating in committees.
- Engaging with the Public – answering questions and requests for information, role of Council at public forums, and media training

Our review identified that Council received a poor orientation at the beginning of their term.

Council began with a motion to engage a consultant to provide governance training.

Resolution 469-2013 – Moved by Councillor Dan Buryn that Council directs administration to contact Mr. George Cuff regarding the possibility of his facilitating a half day Council orientation Session.

However, this motion was rescinded prior to any governance training being provided.

Resolution 520-2013 - Moved by Councillor Shelly Hanasyk that Council rescinds the motion to meet with George Cuff at the AAMDC Convention

Council also explored having Alberta Municipal Affairs do a governance, roles and responsibilities workshop. However, resolution 246-2014 on this matter was defeated.

Given the governance and conduct issues identified during the current Council's term, it is clear that governance practices are either not well understood, or are being ignored.

Recording of Council Meetings and FOIPP Compliance

On May 13th, 2014, Council adopted an amendment to their Procedural Bylaw – Bylaw 1155-2012, which read:

The use of video and recording devices to record meetings of Council is permitted.

Following the adoption of the amendment, members of the public along with one member of Council, Councillor Dan Buryn, began to record Council proceedings on a number of electronic devices. This policy amendment has created issues related to governance practices and compliance with the Freedom of Information and Protection of Privacy Act (FOIPP)

With respect to members of the public, the practice of recording Council meetings has resulted in a form of conduct in Council meetings which we deem to be unacceptable. Two Councillors, Hanasyk and Grumetza, sit together on one side of the Council table. These two Councillors are in the minority faction on Council, and are opposed by some segments of the public. A member of the public puts a video recorder on a tripod on the delegation table in Council Chambers. This video camera records only Councillor's Grumetza and Hanasyk. This not a case of the public recording "Council". These members of the public are recording only two Councillors for the purpose of opposing their positions and identifying conduct, opinions, and motions which these members of the public find objectionable. We view this as a form of harassment which creates a hostile environment during Council meetings. This form of recording should be prohibited.

Councillor Buryn records Council meetings on the audio recorder on his mobile device. A Councillor making recordings is different from a member of the public. These recordings are being made while the Councillors in working within his role as Councillor. As a result, the following considerations should apply:

- The recordings created by the Councillor should be deemed municipal records, and are therefore subject to considerations of records management and FOIPP.
- These records should be available to the Public, and are subject to FOIPP requests.
- These records may not be destroyed, except in accordance with the County's records management policies.

We have confirmed that the Councillor is, appropriately, disabling his recording device during in-camera discussions. However, we are unable to identify if any of his records are being retained, or if they are being deleted by the Councillor following meetings.

On March 11th, 2014, a request for documents was made by a member of the public which cited FOIPP and identified the requested documents as all recordings of the Councillor beginning February 24th, 2014 and extending to "present". The Councillor, and the County, failed to reply

to this request within the 30 days allowable to respond to the applicant. As a FOIPP request is pending, Section 92 of the Act would apply with respect to the offenses and penalties associated with destroying the identified records. An investigation is currently pending with the Office of the Information and Privacy Commissioner of Alberta. In this matter, the Commissioner is in a better position to consider the legal implications of the recordings and to take any required action.

As a mechanism to address issues with the recording of Council meetings, it would be preferable for the County to make an official recording or transcript. If the County determines that recording of Council meetings is desirable, it should be done by the County, and should be made available to the public.

It is recommended that:

9. Council receives regular reports from administration on progress towards completing the objectives set within the strategic plan. It is recommended that Council review progress quarterly.
10. Council links progress on the objectives identified within the strategic plan to their annual performance review of the CAO on their quarterly assessment of their own performance as a governance body.
11. Council adopts a strategic planning process where the plan is reviewed and updated annually at a Council retreat. Council develops a policy to guide the strategic planning process
12. Council adopt a decision making process that considers required information, sources of information, and stakeholders to the decision, prior to engaging in deliberation or voting. If information is outstanding, decisions should be tabled for a later meeting of Council.
13. Council integrates guidelines for confidentiality, effective communication, and bullying/harassment into an updated Code of Conduct.
14. Administration changes its practices regarding Council Minutes to ensure that they contain only agenda items and motions free from comment or detail.
15. Council discontinue the use of recorded votes as a means to represent disagreement with Council decisions.
16. Council develop a scorecard for Council conduct and regularly review performance on the scorecard to identify opportunities for improvement.
17. Council ensure annual CAO performance appraisals are conducted, at a minimum, with semi-annual or quarterly reviews as better practice. Develop a policy to guide the CAO performance review process.

It is recommended that:

18. The Councillor participating remotely may not participate in in-camera discussions, as it is impossible to ensure the security and confidentiality of discussions conducted through phone or computer.
19. The CAO and Council review the CAO performance review process in order to ensure that performance reviews are formative, and that they represent the views of Council as a whole.
20. Council receives supplemental training. This training includes a comprehensive governance orientation for all of Council, and procedural training on effective Council meetings and effective chairing of meetings.
21. Council adopts clear policies on use of Skype or other remote meeting technologies that may be applied to Council or committee meetings.
22. Council conduct a review of the Councillor orientation process, and develop materials and policies to guide orientation following elections.
23. Council complete its scheduled review of the County's Land Use Bylaw and Municipal Development Plan
24. That Council adopt a policy, based on the decision of the FOIPP commissioner, to guide the retention and destruction of Councillor notes, records and documents.
25. That Councillor Larry Sisson complies with Section 174 of the Municipal Government Act and declare that he is disqualified. In the event that he does not voluntarily accept disqualification, it is recommended that Council obtain a legal opinion on disqualification in accordance with Section 175 of the Municipal Government Act.
26. Council rescind resolution 500-2013 requiring recorded votes, and amend the procedural bylaw accordingly.
27. That Council complete a comprehensive review of the County's procedural bylaw to address the deficiencies contained in this report, and to ensure compliance with appropriate procedural practices.

Role of the County in the Highway 28/63 Regional Water Services Commission

The operation of the Highway 28/63 Regional Water Services Commission (28/63) has become a point of contention between the Thorhild County and the Smoky Lake County following a series of unusual decisions by Thorhild County.

The Thorhild Water Commission was formed in 1992 as a partnership between the Village of Thorhild and Thorhild County. With the dissolution of the Village in 2009, the County became the only member. The Commission was extended to provide services to the Smoky Lake area in 2009, and became the 28/63 Regional Water Services Commission. Since that time, Thorhild County has been the management body. The Commission's Business Plan (Dec 03, 2010) identifies Thorhild County as the Administration Centre and Operations Centre of 28/63. This relationship is established under a set of services agreements.

8.2 Service Agreements

1. Administrative Services Agreement – This agreement will fulfill the administrative needs of the commission (accounting, minutes, secretarial, and management).
2. The agreement will be a three year time period at which time the Commission will evaluate the contract and service
3. Operation of Transmission System Agreement – a contract for the operation and maintenance of the commission (daily operation, line locates, testing and maintenance)

Thorhild County was, therefore responsible for the ongoing administration and full operation of the water services commission, although it appears that both municipalities were providing operators to maintain the water system. Although the agreement was to be reviewed within three years, this was never done. As a result, up to the time of this review, Thorhild County remained in the roles defined within the Services Agreement. Thorhild County's Utilities Director, Joyce Pierce, served as the acting manager of 28/63.

The following is a timeline of events for 28/63

March 06, 2014 – The Board of 28/63 appoints Interim Commission Manager Joyce Pierce as the Officer of the Commission for the purpose of ongoing litigation with Telus FOC.

August 06, 2014 – Thorhild County terminates the employment of Joyce Pierce.

August 19, 2014 - 28/63 Board Meeting

The Reeve of Thorhild informs the Board that the County is going through restructuring and would like the Board to look at other options for managing the Commission such as shared duties or contracting out duties,

The CAO of Smoky Lake County informs the Board that, presently, Smoky Lake is ill equipped to take on managing the Commission

Resolution 053-14 Moved by Don Romanko that the Commission offer a management contract to Joyce Pierce as Commission Manager pending her availability

August 26, 2014 - Thorhild County Council Meeting

Resolution 614-2014 – Moved by Councillor Larry Sisson that Thorhild County representatives present, at the next meeting of the Highway 28/63 Regional Water Commission that, Thorhild County is willing to continue acting as the managing body of the Highway 28/63 Regional Water Commission, as long as the commission manager is an employee of Thorhild County, until the 2014 Commission Organizational Meeting.

September 02, 2014 – 28/63 Board Meeting

A letter from Thorhild County dated Aug 27, 2014 was distributed to the Board based on Resolution 614-2014

Resolution 060-14 Moved by Frank Berry that the Board direct Dereld Cholak, Janelle Cornelius, and Cory Ollikka to engage Joyce Pierce as the manager of the Commission.

September 19, 2014 – 28/63 Board Meeting

Resolution 072-14: moved by Frank Berry that the Board appoints the CAO of Smoky Lake County, Cory Ollikka as the Commission Manager, and the Director of Corporate Services of Thorhild County, Janelle Cornerlius as Commission Chief Financial Officer and Commission Recording Secretary and for the respective municipalities to be appropriately compensated by the Commission.

October 17, 2014 – 28/63 Board Meeting

Resolution 082-14 – Moved by Dan Kotylak that the Board authorizes the execution of the MOU between Hwy 28/63 Regional Water Services Commission and Thorhild County.

November 25, 2014 – Thorhild County Council Meeting

Resolution 827-2014 – Moved by Councillor Dan Buryn the Council advise the Highway 28/63 Water Commission that Thorhild County is withdrawing its management services, including services supplied by the water utility servicemen, effective December 31st, 2014.

December 05, 2014 – 28/63 Organizational Meeting

Cory Ollikka appointed as the Commission Manager

Discussion of County resolution 827-2014

December 09, 2014 – Thorhild County Council Meeting

Resolution 859-2014 – Moved by Councillor Larry Sisson that Council directs Administration to contact Highway 28/63 Water Commission to advise that Thorhild County will extend transition time to June 30, 2015 for financial and water utility servicemen services.

The sequence of events which occurred with respect to 28/63 is highly unusual. Our assessment of these events reveals the following details:

- The decision to terminate Joyce Pierce without cause, and without any transition plan, adversely impacted a partnering municipality and a well-functioning commission. Ms. Pierce had assumed the acting manager role of the Commission following the hiring of Ms. Kolewaski as CAO of Thorhild County. This role had historically been filled by a County CAO. The termination of Ms. Pierce created a knowledge and operational gap in the Commission. Ms. Pierce also had unique knowledge of an ongoing legal process.
- County Resolution 614-2014 appears to be a direct response to the Commission's plan to engage Ms. Pierce in a management role in order to address an organizational knowledge and operational gap.
- Through every step in this process, the County failed to engage in reasonable consultation with its impacted stakeholders. The termination of Ms. Pierce failed to consider the impact on the Commission. The decision to withdraw as the managing body and,

following that, to withdraw all management and operational services was done without consultation or due consideration of impact on other municipal partners.

- The County makes multiple, and contradictory resolutions with regard to its role in 28/63. Beginning with notice to the 28/63 Board on August 19th, 2014, of the County's intent to re-structure, the County then made a series of motions (614-2014, 827-2014, 859-2014) that provided a changing target and indications of intent. The County had a duty to consult, to engage in a collaborative process, and to provide clear direction on its intent.
- Thorhild County's decision to no longer provide water operators is a significant change to the operational model of the Commission that impacts the staffing of both Counties. The Commission was operating under a model where both Thorhild and Smoky Lake provided two licensed operators, with both counties responsible for operation, testing, and maintenance within their own municipal boundaries. Smoky Lake County will now be responsible for all operational matters within both Counties.
- The overall motive for the County's actions are never articulated. Thorhild County was in the middle of a budget year, and there was no indication of significant operational issues in the existing management arrangements. Although the timelines were ultimately extended, the initial short timelines were not at all reasonable. Providing 35 days of notice of the intent to withdraw water system operators is irresponsible given the risks associated with maintaining potable water quality for the region.

At this time, Ms. Pierce is the Manager of Operations and Administration, while Smoky Lake County CAO Cory Ollikka is now the Commission Manager. The County entered into a Memorandum of Understanding (MOU) dated October 14, 2014. Part of the MOU reads:

It is understood that the Commission Manager will be required to communicate with and, in specific circumstances, direct staff (provided that Thorhild County CAO is made aware) to undertake tasks and provide regular information relating to the regular operations of the Commission system.

It is our understanding that the role of the Ms. Pierce as Manager of Operations and Administration for the Commission has had ongoing issues, as Ms. Kolewaski has expressed concerns with Ms. Pierce, as a terminated employee, entering County facilities and communicating with County staff.

It is recommended that:

28. Council re-affirm the County's support for the Highway 28/63 Regional Water Services Commission.
29. That Council engage in a collaborative approach to amend the Service Agreement component of 28/63's operating agreement.
30. That Thorhild County invite Smoky Lake County to engage in facilitated joint Council meetings to discuss the working relationship between the municipalities and to address the impact on working relationships created by Thorhild County's conduct with respect to 28/63.
31. That Thorhild County immediately discontinue any objection to, or obstruction of, 28/63 Commission managers and staff in engaging with County staff below the level of the CAO in completing their duties for the Commission.

County Chief Administrative Officer

Termination of Jim Squire, CAO

One of the first significant decisions of the current Council was to terminate Chief Administrative Officer Jim Squire. Mr. Squire was dismissed by a resolution of Council on November 19th, 2013. Mr. Squire had served as CAO for Thorhild County for a period of two years, beginning in October of 2011. Mr. Squire was an experienced municipal administrator, with approximately 12 years of CAO experience and nearly thirty years in local government administration.

The process for the dismissal of a CAO is defined within the Municipal Government Act. Section 206 of the MGA states (in part):

(1) The appointment of a person to the position of chief administrative officer may be made, suspended or revoked only if the majority of the whole council vote to do so.

(2) The appointment of a person to the position of chief administrative officer may not be revoked or suspended unless the council notifies the officer, in accordance with subsection (3), that it is proposing to revoke or suspend the appointment and provides the officer with its reasons.

(3) The notification and reasons must be in writing and be served personally on the officer or sent by regular mail to the last known address of the officer.

(4) If requested by the officer, council must give the officer or the officer's representative a reasonable opportunity to be heard before council.

There is, therefore, a standard of procedural fairness which must be met. The CAO must be provided with reasons, and must be given a reasonable opportunity to respond. Thorhild County's Council failed to meet the requirements of legislation or of procedural fairness. The minutes for Council meeting provide the following resolutions and supporting details:

Resolution 544-2013 – Moved by Councillor Larry Sisson that Council goes in-camera at 2:23 pm to discuss a governance issue, excluding all members of administration.

Councillor Kevin Grumetza and Councillor Shelly Hanasyk stepped out of the meeting at 2:30 pm.

Resolution 545-2013 Moved by Councillor Larry Sisson that Council comes out of Camera at 2:35 pm.

Resolution 546-2013 – Moved by Councillor Dan Buryn that Council approves Schedule "A" dated November 19, 2013 and remain private pursuant to Sections 16, 17, 19, and 24 of the Freedom of Information and Protection of Privacy Act. (3 in favour, 0 opposed)

Reeve Wayne Croswell, Councillor Larry Sisson, and Councillor Dan Buryn left the meeting at 2:36 pm.

Reeve Wayne Croswell, Councillor Larry Sisson, Councillor Dan Buryn, Councillor Kevin Grumetza, and Councillor Shelly Hanasyk rejoined the meeting at 2:48 p.m.

Angela Bilski, Recording Secretary, rejoined the meeting at 2:50 p.m.

These minutes, and supporting interviews, provide the following observations.

- When Reeve Croswell, Councillor Sisson and Councillor Buryn left the meeting at 2:36 pm, they met with Mr. Squire and notified him of the decision of Council to terminate his employment with cause in accordance with Schedule A.
- A review of minutes shows that Council had made no previous efforts to discuss the performance or employment of the CAO. It is apparent that the decision to proceed with the dismissal occurred in a single meeting. Mr. Squire was not provided with reasons for his dismissal, nor was he provided with an opportunity to respond. It is noteworthy that a

prior Council had similarly failed to meet the requirements of Section 208 of the MGA in the termination of the CAO who preceded Mr. Squire.

- Schedule “A” was a letter from legal counsel stating that the CAO was being dismissed with cause, dated November 19th, 2013. The letter was, therefore, drafted prior to the November 19th, 2013 Council meeting. There is no supporting resolution from Council to engage legal counsel on this matter, nor is there any resolution directing a member of Council to expend funds on engaging legal counsel. An invoice from legal counsel for \$6,394.50 itemizes work beginning November 15th, 2013; four days prior to the Council meeting. The letter also identifies the Reeve as the contact point, and provides the following bulleted list:
 - Invoice has not been paid
 - No adequate authorization of Council
 - MGA Section 180(1) “a Council may only act by resolution of bylaw”
 - MGA Section 248(1) “a municipality may only make an expenditure that is included in an operating budget, interim operating budget, or capital budget or otherwise authorized by the Council”
 - Awaiting resolution of Council for appropriate authorization to pay invoice

The lawyer was, therefore, clearly aware that this legal work had not been authorized by Council. Bullet #4 of Schedule “A”, which was drafted by the lawyer as invoiced work, states that the lawyer shall be retained to act as legal counsel for Thorhild County. Schedule “A” was the final deliverable in the legal work, so Council engaged the lawyer after the work was completed.

- The Councillors engaged in this decision proceeded with clear and obvious bias. Council had been in place following the October 21st, 2013 municipal elections for less than a month. With no specific instance of significant misconduct by Mr. Squire, Council had not had adequate experience with their CAO to make a determination of performance. The presence of Schedule A demonstrates that some members of Council had made their decision to terminate prior to any Council deliberation. This is a violation of the MGA, as Council has a duty to proceed without bias and, in accordance with Section 197(1), to ensure that their business and decision making is conducted in public. It is also noteworthy that Council discussed this matter in-camera for less than 12 minutes. It is our conclusion that the decision was made before the Council meeting, by a subset of Councillors, in a process outside of Council.
- The County’s legal Counsel provided reasons for dismissal on Jan 3rd, 2014, in response to a request from Mr. Squire’s legal counsel. These reasons were created as a result of correspondence between the County’s legal counsel and the Reeve. They were not

adopted by the County's Council, and therefore do not represent the position of Council. The list of reasons included:

- Mr. Squire had no knowledge of MGA
- Mr. Squire failed to follow Council direction
- A governance review had identified clear deficiencies in the CAO's performance
- Mr. Squire was not honest in responses to Council

These accusations appear to be without foundation. Based on his experience, Mr. Squire clearly had some level of knowledge of the MGA. In addition, Council had no experience with Mr. Squire as a collective body, and the Governance Review did not, in fact, identify significant deficiencies in Mr. Squire's performance. Mr. Squire's lawyer responded and claimed these reasons were defamatory and inaccurate, and that there was no legal cause for dismissal. There was a resulting statement of claim against the County for \$158,000 in severance plus \$50,000 in punitive claims. Council ultimately agreed to pay \$175,000 and to provide a retraction letter for all accusations of incompetence and dishonesty.

- Councillors Grumetza and Hanasyk left the in-camera portion of the November 19th meeting, as they disagreed with Council pursuing Mr. Squire's dismissal. It was inappropriate for the Councillors to leave an in-camera meeting, as they had a duty to engage in deliberation and to participate in a meeting, even if they objected to the content. Both Councillors failed to re-enter the room when Council came out of the in-camera and voted on Resolution 546-2013 to adopt Schedule "A". The circumstances surrounding their absence have served as an ongoing point of conflict on Council. Councillors Hanasyk and Grumetza contend that they were waiting at the door for the meeting to come out of in-camera, and that the doors were never opened. Other members of Council contend that the doors were re-opened, and that the Councillors failed to re-enter. The position that the doors were never re-opened is supported by observers and administration who were present. It is apparent that the meeting was never properly re-convened, as the minutes identify that the recording secretary did not re-enter the meeting until after the resolution.

The initial draft of Council minutes for December 10th, 2013 state that "Councillor Shelley Hanasyk questioned whether Resolution 546-2013 was made in an open portion of the meeting. She advised that the doors to the Council Chamber were not open for the public to hear the resolution being made, as she and Councillor Kevin Grumetza were standing in the foyer just outside the closed Chamber doors at the time." At the following meeting, Council passed Resolution 004-2014 – "Moved by Reeve Wayne Croswell that the minutes of the December 10, 2013 Regular Council Meeting be adopted

as amended as follows: Remove the editorial comments requested by Councillor Shelley Hanasyk.” This resolution was carried 3-2.

Council has, on a number of occasions, threatened to use the events of November 19th, 2013, to pursue the disqualification of Councillors Hanasyk and Grumetza. Section 174(1)(f) of the MGA states that a councillor is disqualified if the councillor does not vote on a matter at a council meeting at which the councillor is present. An example of this occurred on February 11, 2014. The minutes of that meeting read (in part):

Resolution 078-2014 - Moved by Councillor Dan Buryn that Council goes in-camera at 4:20pm to discuss legal and personnel issues.

Councillor Shelly Hanasyk and Councillor Kevin Grumetza indicated that they were not declaring any voluntary resignations

Councillor Kevin Grumetza and Councillor Shelley Hanasyk were asked by Reeve Wayne Croswell to leave the in-camera session because of a pecuniary interest indicated by Reeve Wayne Croswell

Resolution 079-2014 – Moved by Councillor Dan Buryn that Councillor come out of camera at 5:46 pm.

Resolution 080-2014 – Moved by Councillor Larry Sisson that Council accepts the legal opinion on the disqualification of Councillors Grumetza and Hanasyk as information at this time.

The legal opinion provided to Council from the County’s legal counsel provides an opinion on if the circumstances of November 19th, 2013, would be supported by a court as grounds for disqualification. Based on a review of this legal opinion, it is noteworthy that the opinion is clearly based on only partial information regarding the details of the November 19th Council meeting. Council was aware of the content of the legal opinion when the request was made for the two Councillors to resign, and appears to have not given the opinion due consideration. On that matter, it is improper that the minutes would reflect a discussion that occurred in-camera. Some members of council have continued to use this matter to threaten dismissal on other occasions. It appears that this divisive matter is being used as leverage to threaten or coerce follow Councillors.

Employment of Betty Kolewaski

Betty Kolewaski was hired as the CAO of Thorhild County on April 7th, 2014. This hiring decision has been controversial within the County for a number of reasons. Our review of the hiring process identifies the following:

- Ms. Kolewaski had previously served as a Director of the Concerned Citizens of Thorhild County Society, and served terms as the Chair/Vice Chair. As this Society was developed as a lobby or advocacy group related to a contentious matter within the County, a question may be asked relating to Ms. Kolewaski's ability to perform her duties objectively, and without a pre-existing bias on some matters. A legal records search on the Society continues to show Ms. Kolewaski as a Director.
- Ms. Kolewaski has no previous CAO or municipal administrative experience. This is curious, as the job positing specifically stated that applicants should have "previous CAO or progressive senior management experience in a public sector organization, preferably municipal government". It is also noteworthy that a reason provided to Jim Squire for his dismissal was that he had "no knowledge of the MGA". Ms. Kolewaski's experience was in nursing and healthcare administration.
- Ms. Kolewaski is known to have a pre-existing relationship with Councillor Sisson and Reeve Croswell. This includes previously having vacationed together prior to her hiring, and working together as members of the CCTC. This relationship is acknowledged by all parties.
- Ms. Kolewaski's salary is public, with her contract available on the County's webpage. Her salary is a contentious issue in the community. Her salary of \$151,000 is on the high end for benchmarked comparable, but would not be considered abnormally high.
- Resolution 595-2013 directs that Thorhild County develop a CAO hiring policy prior to the hiring process. It appears that this was never done.
- Resolution 605-2013 – Moved by Reeve Wayne Croswell that Council authorizes the Reeve to advertise for the CAO position for Thorhild County and to get assistance from Administration in placement of the advertisements. The process was not completed with external consulting support. The Reeve received all applications directly to a personal email address.
- The resolution to hire Ms. Kolewaski was carried by a vote of 3-2. As a result, Ms. Kolewaski enjoyed a bare majority of support of her Council at the time she was hired.

While Council did not exceed its authority in hiring Ms. Kolewaski, it is our assessment that their decision making in this matter is questionable. Council had a responsibility to make a decision that would not contribute to further division of Council or in the community, and to recruit an individual with a skill set that matched the position description that was advertised.

Acting In Bad Faith

As the senior representative of administration, it is expected that the CAO will provide unbiased advice to Council, and will act in good faith and without bias when engaging with the public and with County employees.

On March 27th, 2015, the Alberta Court of Queens Bench ruled that Thorhild County's termination of JLG Ball Enterprise's development permit to extract and stockpile gravel was invalid. As part of this ruling, the Court determined that Ms. Kolewaski acted in bad faith in her roles of Chief Administrative Officer and Development Officer. The Judge in the case stated that Ms. Kolewaski failed to cooperate in setting a meeting date for a required community advisory committee meeting. He also stated that Ms. Kolewaski required JLG Ball Enterprises to produce a report that was not required by the terms of the development permit.

In this matter, part of the ruling from the Judge stated that the County should have gone through:

Lawful means and fair processes which would not involve individuals who appear to have axes to grind with JLG Ball. And by these people, I mean the Chief Administrative Officer and the Reeve.

The ruling from the Judge further stated:

There was little, if any, good faith on the part of Ms. Kolewaski to facilitate such a meeting or participate in it. There is no good faith basis for issuing the termination order or notice, and it was overkill and evidence of bad faith on the part of the County.

As a result of this ruling, the County was required to pay "higher than normal costs" to JLG Ball.

It is recommended that:

32. Thorhild County comply with Resolution 595-2013 by adopting a CAO hiring policy that defines the hiring process, roles, and responsibilities
33. That Council obtain a legal opinion on the process for dismissing a CAO, and that Council comply with the requirements of Section 206 of the Municipal government Act in all future CAO dismissals.
34. That Ms. Kolewaski cease to be engaged as the CAO of Thorhild County. This may be accomplished through Ms. Kolewaski's voluntary resignation, or as the result of a Council process.
35. In the event that Ms. Kolewaski does not voluntarily resign; that Council complete a review of the employment of Ms. Kolewaski which complies with Section 206 of the MGA. This review should be completed in light of the divisive nature of her employment, her inability to work effectively with all members of Council, her inability to effectively guide a struggling Council in effective governance practices and the requirements of the MGA, and her demonstrated inability to perform her duties without bias or in good faith.
36. That, in the future, Council engage an independent third party to complete CAO searches, and that a high priority be placed on demonstrated effectiveness in senior municipal administration, and knowledge of the MGA.

Human Resources Practices

The following sections outline the findings that relate to administration's HR practices.

Staff Files and Contracts

As a matter of proper administrative procedure municipalities should have a complete personnel file for each staff member. Files should contain:

- A job description;
- An employment contract;
- Copies of performance reviews and performance expectations;
- Documented disciplinary actions or commendations; and
- Payroll and tax information.

A review of the personnel files of staff members indicated that the County keeps complete and well organized files.

Performance Reviews

It is a key responsibility of the CAO and senior management to conduct performance reviews on all municipal employees. Properly conducted performance reviews serve several key organizational functions:

- They inform staff of their performance;
- They allow management to review essential job functions with employees, and update job descriptions accordingly;
- They allow management to identify for the employee the ways in which their performance contributes to the organization's goals;
- They allow staff and management to set mutually agreed upon objective measures of job performance in the future;
- They identify ways in which management can support employee efforts to successfully meet performance measures; and
- They provide documentation of performance to justify salary increases, promotion, disciplinary actions, or termination.

Our review did not identify any issues with performance reviews for the organization. The performance review form meets the County's needs and there is space for management and the employee to identify objectives for the coming year, training and areas for improvement. All employees indicated that they received annual performance reviews and those employees who are new to the organization indicated that they received informal feedback from the CAO on a regular basis. Additionally, a performance review is conducted for staff when they reach their probation period.

Staff Termination

Following the hiring of Ms. Kolewaski as CAO, the County experienced some turnover in her direct reports. The first was the CAO's executive assistant, who was dismissed due to a poor working relationship with the CAO. Although this dismissal was not well-received within administration, it was within the powers of the CAO, and is not considered abnormal.

A second termination was that of the Joyce Pierce, the County's Utilities Director. Ms. Pierce had served 14 years with the County in the role of Utilities Director. In her role, Ms. Pierce had also assumed the role of acting manager of the Highway 28/63 Regional Water Services

Commission. The role of manager of the Commission was generally held by the County's CAO, but was delegated following the hiring of Ms. Kolewaski.

Ms. Pierce was terminated by a motion of Council on August 6th, 2014.

Resolution 538-2014 – Moved by Reeve Wayne Croswell that Administration proceeds with elimination of the director position discussed, in accordance with legal advice

It is the position of Council and the CAO this this position was eliminated due to a proposed restructuring wherein the position would be replaced by a new Director of Infrastructure position. A review of this process reveals the following:

- The resolution of Council was unnecessary for an organizational restructuring. As the elimination of the position did not require a budget amendment, Council had no reason for involvement. The CAO has absolute authority over her administration including staffing and organizational design, subject to approval of budget.
- The proposed restructuring did not occur. Almost a year following Ms. Pierce's termination, the individual who reported to the Director of Utilities is filling the role of Utilities Department Manager reporting directly to the CAO. Unless the restructuring was imminent, there was no reason to proceed with a termination.
- There appears to have been a pre-existing conflict between Ms. Pierce and Ms. Kolewaski along with some members of Council. This is the result of perceived mismanagement by the County of certain matters associated with Ms. Pierce, including the waste management facility opposed by CCTC.
- Past performance reviews of Ms. Pierce identify no issues which could be seen as grounds for dismissal.
- As discussed elsewhere in this report, the impact of the termination of Ms. Pierce on 28/63 was never appropriately considered or managed. The animosity between Ms. Pierce and Ms. Kolewaski continues now that Ms. Pierce is employed by the Commission.

Both the Director of Corporate Services and the Personnel Manager report that they have not been engaged in any termination processes undertaken by Ms. Kolewaski, and only were informed after the fact. Human resources and finance should be engaged to ensure process fairness and to address changes to payroll functions and employment records.

Disciplinary Process

It is an expectation that municipalities will demonstrate human resources practices that reflect procedural fairness and that adhere to principles of natural justice. With respect to employee discipline, this requires:

- Demonstration of an unbiased process;
- Ensuring full information before action is taken;
- Allowing employees to make representation on their own behalf to address accusations; and
- A process of proportionate and progressive discipline.

In July, 2014, a complaint was made to the CAO about an employee in Public Works having an inspection petition on the worksite. The CAO responded to this accusation by:

- Directing the Director of Public Works to relieve the employee of his duties prior to any investigatory process. The employee was asked for his keys and escorted off County property.
- The employee was initially notified that they were suspended without pay. This was subsequently changed in a letter from the CAO to suspended with pay.
- A week later, the employee was told to return to work without being provided with any documentation regarding the results of the investigation.

In this matter, the Director of Public Works and the Director of Corporate Services conducted an investigation, and found no substantiation for the accusation. Some basic questions remain:

- Why was possession of a petition before and after work, or in the lunch room, an offense significant enough to initiate an investigation? It is unclear what policy or employment standard this violates.
- For what reason was the employee suspended? The matter clearly had no health, safety, legal, or job performance implications.
- Why wasn't the employee provided with a clear process and, at the conclusion, a clear document outlining the result of the investigation?

The overall process in this matter was entirely inappropriate.

It is recommended that:

37. The County adopt a human resources policy to guide employee dismissals.
38. The County adopt a human resources policy to guide the process of employee discipline that reflect principles of procedural fairness.

Financial Matters

Section 208 of the MGA assigns responsibility for the financial affairs of the municipality to the CAO. Maintaining financial records, ensuring revenues are collected, managing deposits, paying for expenditures, budgeting and tracking performance against budgets, applying for and managing grants, and investing municipal reserves are all responsibilities of the CAO. Council has a responsibility to ensure accurate reporting to Council on the financial affairs of the municipality occurs, to review and approve budgets and tax rates, and to ensure an effective audit process occurs.

In order to develop a better understanding of the financial position of Thorhild County and the financial processes used by administration, our firm obtained copies of the financial records of the County. Using these financial records our consultants:

- Reviewed current year financial statements;
- Reviewed audited annual financial reports; and
- Reviewed available policies and procedures relating to financial transactions.

Our review did not identify any issues with the financial records and policies of the County. The County's budget is set and reported to Council on a regular basis. The report to Council is detailed, includes a report on revenue/expenses and balance sheet and includes variances between the current year budget and actual revenues and expenditures in each report for the County. The County has a well-established finance group within Corporate Service with extensive knowledge of public sector accounting and supporting accounting designations.

As part of the inspection we reviewed recently audited financial statements. The County engages in a reasonable and independent audit process. The auditor indicated there were no major issues with the financial system and that that County's financial records are an accurate representation of the County's financial position. The Auditor identified no deficiencies in the County's accounting practices.

Overall Financial Position

Thorhild County's financial statements indicate a fairly strong financial position for the County as of December 31, 2013. This includes:

- Net financial assets of more than \$8 million.
- A small amount of long term debt (\$870,423) relative to financial resources and debt limit. As of 2013, the County was using less than 5% of its debt limit.
- Operational revenues in excess of expenditures of \$1,887,745
- Overall revenues in excess of expenditures of \$6,219,624
- Investment in tangible capital assets in excess of \$6 million
- Available cash and equivalents in excess of \$5 million
- The County's residential and non-residential equalized tax rates are close to average for benchmarked Alberta municipalities
- The County makes effective use of grants, and is higher than the benchmarked average for comparable municipalities in grant dollars received per capita
- Thorhild County's expenditures on recreation, transportation, protective services, and overall expenditures per capita are all at or below average for comparable Alberta municipalities.

Our assessment of the County's financial indicators is that the County is financially stable, and has historically been fiscally well managed.

County Mill Rates

In spite of the County's strong financial position, Council has recently made decisions with respect to municipal tax rates that were identified as concerns for residents.

A review of the 2014 Tax Rate Bylaw identifies that the County makes use of a varied rate of taxation with respect to residential properties. Residential tax rates for 2014 were as follows:

County and resort residential: 3.2445

Hamlet residential: 4.3260

Hamlet of Thorhild: 6.3260

The Hamlet of Thorhild, therefore, has a mill rate which is 46% higher than that for other hamlets in the County. The Municipal Government Act provides the following applicable guidelines for tax rates:

Section 297(2)(a) A Council may by bylaw divide class 1 (residential) into sub-classes on any basis it considers appropriate

Section 354(1)(3) – The tax rate may be different for each assessment class or sub-class referred to in Section 297

There is no restriction on the ability of Council to set different taxation rates for different hamlets. The County's Mill Rate Bylaw is, therefore, legal and enforceable. A question which must, however, be answered is the rationale for the difference in mill rates. Our investigation reveals the following:

- Resolution 313-2014 simply reads: *Moved by Councillor Larry Sisson that the Mill Rate for Thorhild Hamlet be raised by two points from 4.3260 to 6.3260*
- Discussions with the County's Director of Corporate Services provided no budgetary or service level basis on which to justify varied rates of taxation. In fact, it was identified that the County had a balanced budget based on a common residential mill rate before Council elected to raise the mill rate for the Hamlet of Thorhild.
- The additional revenues collected flow into general revenues, and are therefore not allocated to a specific capital project or program.
- Some representatives of the County indicated that the higher taxes are because of the cost of recreational facilities in the Hamlet that benefit primarily Hamlet residents, such as the pool. This does not constitute an adequate rationale. Urban centres always have higher costs for some types of services, like recreation, as they act as regional service hubs. As previously identified, the County does not have expenses in the area of recreation that deviate substantially from comparison municipalities.
- Some representatives of Council and Administration provided a justification based on the 2009 dissolution. Prior to dissolution, the Hamlet's mill rates were substantially higher. Based on this logic, when dissolution occurred the Hamlet of Thorhild unreasonably benefitted with dramatically lower tax rates and the cost of providing services to the Hamlet was borne by County residents. One Councillor stated "their tax rate should have

never changed”. This argument is unreasonable. Financial viability is often a reason for dissolution, and rural municipalities regularly collaborate with urban neighbors to offset higher costs associated with their role as regional service hubs. The argument is inherently punitive, and demonstrates a failure of Councillors acting from this position to make decisions without bias.

Although the County’s Mill Rate Bylaw is legal and enforceable, we can find no supportable rationale for a difference in mill rates. We are also unable to identify other municipalities in Alberta that adopt tax rates in this matter. We, therefore, find the process irregular.

Land Sales

Some residents identified a concern that Council is engaging in land sales below market value, and that these sales are not being disclosed. This belief by residents is based on a Council practice of making resolutions with respect to land sales which are proposed or are being considered. Some examples of these resolutions include.

Resolution 379-2014 – Moved by Councillor Dan Buryn that Council authorizes Administration to accept the offer of purchasing 15 acres of land in the Thorhild Industrial Park for the agreed upon price, and to commence construction within 12 months.

Resolution 380-2014 – Moved by Councillor Larry Sisson that Council authorizes the CAO to continue negotiations with the second party interested in purchasing land in the Thorhild Industrial Park for the agreed upon price, and to commence construction within 12 months.

Resolution 566-2014 – Moved by Councillor Larry Sisson that Council accept the offer to purchase the land in the Thorhild Industrial Park and advertise that the sale is below market value.

In some respects, Council is restricted in their ability to disclose the details of land sales, as they exist as a non-discretionary exception to disclosure in the Freedom of Information and Protection of Privacy Act. However, Resolutions 379-2014 and 566-2014 appear to indicate that sales are pending completion. In the case of Resolution 566-2014, there is an explicit direction to advertise the sale, which was never done.

A review of all County land transactions since 2013 indicates that, while some sales of County owned property have occurred, none of them related to the resolutions on the industrial park. The issue appears to be with the term “accept the offer of purchasing”. This does not mean that the actual sale is complete. There are pending negotiations, but no sold lands. Resolution 566-

2014, which requires advertising of the sale, should have been rescinded if the sale was not proceeding.

An issue for the County has been the process for determination of fair market value. Section 70 of the Municipal Government Act provides the requirement that a sale below market value must be advertised, and Section 606 defines the manner in which that advertising must occur. Council has recently taken the proactive step of adopting a policy to guide the valuation of municipal properties and to guide land sales. This policy is well developed and should provide for a better process going forward.

Unbudgeted Expenditures

In 2014, Council made an abnormally high number of budget amendments. Council approved fifty-four (54) amendments; forty-four (44) of them were approval of expenses. In each case, these expenditures were supported by a Council motion. A review of these expenses identifies the following:

- Total additional expenses arising from budget amendments in 2014 are \$802, 197
- Expenses include changes to human resources such as an undisclosed salary for a Community Economic Development Officer, and severance for three County employees terminated by Council or the CAO.
- On four occasions Council waived fire invoices, which have been recorded as expenditures to budget. Council should discontinue the practice of making ad-hoc decisions on fire invoices, and establish a process under policy that can be budgeted and administered by administration.
- Unbudgeted expenditures related to the demolition of the elementary school accounted for \$169,600.

Council has paid for additional expenses, in part, from the proceeds of a land sale. The proceeds of the land sale are being deemed as revenue for a positive contribution to the County's budget. While this is an acceptable accounting practice, it is a poor financial management practice. Lands held by the County are assets. The sale of assets to offset operating costs is not sustainable. It would be preferable for revenue from the sale of land to be used for capital projects, or that it is placed in reserves to maintain the County's net asset value.

It is recommended that:

39. Council establish a single mill rate for all hamlets in the County in future taxation bylaws
40. The County provide a report, available to residents, on land sales which identifies sales which have been completed during the current calendar year.
41. The County comply with its new policy to guide land sales.

Additional Matters

Elementary School

Thorhild County purchased a vacant elementary school in 2012, with the intent of developing it as a commercial property and economic development tool. Once purchased, concerns were raised with its condition and required renovation.

November 05, 2013, Resolution 484-2013 – Moved by Reeve Wayne Croswell that Council rescinds Resolution 371-2013 and that Council reconsiders the future of the building at a future Council retreat.

May 06, 2014, Resolution 294-2014 – Motion for Council to issue RFP for demolition and hold salvage auction for demolition.

June 24, 2014, Resolution 452-2014 – Direction to Administration to complete an RFP for salvage auction/demo of TES and lands.

July 22, 2014, Resolution 503-2014 – motion to do a cost comparison between demolition and renovation (defeated)

July 22, 2014, Resolution 504-2014 – motion to have administration present the cost associated with asbestos identification and removal

July 22, 2014, Resolution 509-2014 – motion to hold referendum on demolition (defeated)

August 26, 2014, Resolution 607-2014 – motion to investigate use of the school as low cost housing (defeated)

November 07, 2014, Resolution 771-2014 – council directs administration to obtain a hazardous materials assessment

November 25, 2014, Resolution 808-2014 – motion for Council to approve the disposition of items and materials from the school at discretion of administration.

December 09, 2014, Resolution 837-2014 – Council approves \$164,600 for asbestos abatement

Our review of this process identified the following concerns:

1. Council proceeded with a demolition without full information. Council initially budgeted only \$100,000 for demolition, and had not done a full investigation on hazardous materials, materials removal, identification of structures present, and full cost of demolition.
2. Administration awarded the contract to project manage the demolition to the County's Janitor. Project managing a demolition requires extensive construction and project management experience. Regardless of the qualifications of the Janitor, this project should have been tendered.
3. Council directed administration to conduct a salvage auction (May 6, 2014). It appears that residents and community members were allowed to enter the building and to remove items for free (doors, plywood, whiteboards). Council subsequently directed administration to dispose of items at the discretion of administration (November 25, 2014) Council has an existing policy – 1404 – Disposal of County Assets, which should have been followed. Council and administration failed to comply with policy, or with the direction of Council.
4. On July 22nd, 2014, administration provided a request for decision to budget \$354,000 for demolition of the school. It appear that this was done without an engineering assessment of the school.
5. Council initially awarded the contract to demolish the facility to a company that lacked the capacity to remove and destroy hazardous materials. It appears that there was an intent to simply do an open-pit burn. As this did not meet the requirements of Alberta Environment, the contract had to be re-awarded to a different company.
6. Council failed to adequately consider options to demolition. Attempts to explore options were proposed as motions, and were defeated. It is noteworthy that these motions were made after Council had made a motion to demolish the school.

Council proceeded in this matter without due consideration of scope, options, logistics, true costs or process. The result was repeated motions, changes in direction and significant budget overruns. It is evident that the school was the project of a previous Council that was not supported by the new majority.

Newspaper

Council for Thorhild County had an issue with the reporting in the local newspaper. The County news was previously covered by the Redwater Review. The Redwater Review provided circulation to all post office outlets in the County, and did not charge the County for circulation. In December, 2014, a conflict arose between Council and the Redwater Review regarding articles written about Council and the County. As reported in January, 2015 in the Redwater Review “The Reeve alleged a variety of breaches of Alberta Press Council Policies. The Alberta Press Council subsequently sent a letter denying that any complaint against The Review exists”. In addition to concerns relating to the quality and content of reporting, points of dispute arose regarding newspaper employees signing the Inspection petition, and a request for the Redwater Review’s owner to attend Council on December 22nd, 2014 as a delegation.

As a result of this dispute, Council elected to tender newspaper services for the County, and issued an RFP. On January 13th, 2015, Council made a resolution to award the contract to a newspaper out of Westlock. The County will now have news coverage and distribution by The Westlock News. The amount of the contract is \$58,000 in addition to all County advertising.

Residents have objected to the cost of the contract on the basis that the previous service provider was free. While this contract does fall within the power of Council, we view it as an irregular governance practice. Elected officials should not use the power of the public purse as a means to control a free media. Additionally, Council had an advertising outlet that existed within the County that met the standard required under the act for advertisement. The expenditure of \$58,000 was therefore unnecessary, and represents a failure of Council to exercise its fiduciary responsibility.

It is recommended that:

42. Council discontinue its practice of paying for newspaper circulation at the earliest point allowable under the terms of its contracted arrangements.
43. That the County review its contract tendering and asset disposal policies and practices.
44. That the County engage an engineering firm to project manage the remainder of the school demolition project.

Concluding Comments

This inspection identified a number of areas of concern with the CAO and Council. Key amongst these are:

- Working relationships between Council members, which have adversely impacted Council as a governance body and public perception of the County;
- The working relationship between Council and the CAO, which contributes to factions on Council and in the Community;
- The inability of the CAO to perform her functions without bias or in good faith;
- The decision making practices of Council during Council sessions;
- Decisions of Council which demonstrate bias towards stakeholder groups or pre-existing biases towards individuals;
- Irregular decisions of Council which appear to be based on personal interests and fail to adequately reflect an understanding of fiduciary responsibility;
- The CAO's adversarial relationship with key stakeholders and some members of the community;
- Council's role clarity and excessive involvement in operational matters;

- Repeated violations of the requirements of the Municipal Government Act and other legislation.

Many of the key matters of concern identified in this report are the result of improper conduct on behalf of Council and/or the CAO. This term, as applied to Thorhild County can be defined as:

Improper - Not suitable; unfit; not suited to the character, time and place. The conduct of many of the key stakeholders in this review has been improper and not suited to the roles of either governing or administering a municipality.

Improvident - Not having or showing foresight; spendthrift or thoughtless. Council has expended funds and made decisions without due consideration to its fiduciary duty, or to the impact on other impacted stakeholders.

Irregular - Contrary to the rules or to that which is normal or established. Council has made decisions that are in clear contravention of the Municipal Government Act, and which do not reflect a standard of practice expected of elected officials.

It is recommended that:

45. The Minister of Municipal Affairs appoint an Official Administrator to Thorhild County, in accordance with Section 575 of the Municipal Government Act, for a period of not less than one year.
46. Council conduct itself, at all times, in a manner befitting elected officials in the Province of Alberta and to act in the best interest of the County as a whole. In the event that Councillors are unable to meet this standard of conduct, it is recommended that they resign from Council.