

Appendix A to Council Minutes of January 17, 2008
Clerk's Report on
Presentation to Council and Senior Staff of Head, Clara & Maria
By Fred Dean, Municipal Solicitor

Session began with introductions.

There was recognition of the Chair of the Library Board who attended by invitation. (Most sections of the Municipal Act and Bill 130 apply to the Library Board aside from the meeting investigation sections. As such, references to Council in **most** instances would apply to the Library Board as well.)

Services provided by Local Boards

Fred began with a question to allow us to determine what services our local governments and boards provide.

Building Code – CBO is a statutory office. The Building Code is up to the CBO to enforce. Council has no authority under the Building Code.

Other items discussed included:

- ⊘ Roads, maintenance, grading, snow removal, drainage, brushing etc.
- ⊘ Policing – OPP contract
- ⊘ Library
- ⊘ Community Identity
- ⊘ Social services
- ⊘ Emergency services – fire, ambulance, emergency planning
- ⊘ Solid waste and recycling
- ⊘ By-laws, rules for community, legislative and administrative governance
- ⊘ Economic Development
- ⊘ Health Services – Doctor recruitment, Board of Health
- ⊘ Recreation, Parks
- ⊘ Planning and Zoning – Zoning by-law cannot be inconsistent with the Official Plan
- ⊘ Budgeting – long range outlook, bridges to be replaced in X years, budgeted by “contributions to capital”
- ⊘ Internet Access and communication through library and office
- ⊘ MPAC – request for explanations as to how/why they evaluate properties, provide us with information so that we can answer questions from the public

Council is a “board of directors” for a complex business. It is important to let ratepayers know what we do, what are the services that we are responsible for. Provide a publication to insert in tax bills, distribute through newsletters??

- ⊘ All powers of a local Council come from the province. We do not have any power not given by the province through a multitude of Acts, primarily the Municipal Act.
- ⊘ Section 5 of the MA states that all powers of the municipality “shall” be exercised by Council through a by-law at a duly constituted meeting that is open to the public, held with adequate notice, with a quorum present and by majority vote. When only 3 members are present a quorum is 2, but that is less than a full quorum and less than a majority. It is important to be careful and perhaps defer important issues to a meeting where a full quorum and a majority of Council are present.
- ⊘ All members of Council vote. A Head of Council does not simply vote to decide a tie.
- ⊘ Decisions of Council must be made by by-laws not resolutions. Certain responsibilities can be delegated by Council to certain other members.
- ⊘ There are certain legislated roles and responsibilities that are statutorily defined. Role of Council is set out in the Act and updated by Bill 130 include:
 - ⊘ To represent the public. This is not a staff responsibility.
 - ⊘ To develop and evaluate policy after consideration of reports from staff.
 - ⊘ To determine what services to provide to the ratepayers.

Controllership policies specifically “ensure” that policies, practises and procedures are in place to implement decisions of Council. “You are not the managers. You need to make sure that policies are in place so that staff can do its job. It is up to staff to manage.” Your responsibility is to make sure policies are in place, not to actually manage.

NEW responsibility – to “maintain financial integrity” of the municipality. Council needs to realize that they are ultimately responsible financially even though the power to manage the money is delegated by statute to the Treasurer. That is why it is important to ensure accountability and transparency. Council must decide on an acceptable definition of Accountability and Transparency and create policy to ensure that it is achieved.

There must be a by-law designating how the Head of Council will be addressed. There is discretion as to who term is used as is with the community. It can be Reeve, Mayor etc. or town, village, city etc.

Accountability and Transparency policies/by-laws apply to the Library Board as well.

The role of the Head of Council is to act as a CEO.

- ⊘ Not as a CEO of a private corporation. Does not have management responsibility. It is very different.
- ⊘ Because of this confusion, the Municipal Act has been amended to define it further.
- ⊘ It is also very different from the CAO or senior administrator. The Head of Council is to make recommendations to Council as to how to operate more effectively and efficiently in respect to administrative and controllership policies.
- ⊘ They must focus on Accountability and Transparency. They can provide recommendations to Council. How do they do that? What do Council and the Head of Council need to do? They need to look for assistance.
- ⊘ They are not to make decisions but to make recommendations. This should be completed at least once a year by a report from the Reeve to Council. It may take place more often if important issues come up.
- ⊘ Finally, the Head of Council is to share the responsibility of representing the municipality officially.

Controllership

- ⊘ How to provide advice? – Work with the CAO, the auditor, other municipalities and the County.
- ⊘ The Procedure Bylaw is the most important area of control. Make sure it is effective.
- ⊘ Check with auditors for an appropriate system of internal controls. Budget reports – ours are monthly. Good.
- ⊘ Process of Council approving journal entries? The cheques have been signed and cashed, what possible controllership roll is there in that? Our auditor wants us to continue to do it. Fine, information does not need to be on the agenda, don't print it out and photocopy anymore but instead, continue with budget reports as we are – they provide controllership.
- ⊘ Prepare budget as early in the year as possible. It should be a higher level process. Look at the large picture. Leave the rest to staff. Focus on the long range capital program.

As CEO, Head of Council is responsible to make decisions at a properly called public meeting, with a quorum on properly discussed/debated items. Responsibility is not to be the CAO – not to manage.

Role of Administration

- ⊘ To implement Council decisions. First priority is to research and provide advice on policies and programs. A key source of information for Council. Where else can they look? Conversations with the public, public meetings, outside meetings, newspapers, conferences, training, internet, solicitor, library, personal background, advisory committees.
- ⊘ Committee of the Whole – benefit all know what's going on. With standing or ad hoc committees, there are silos and often people are not adequately informed. Some Councillors are out of the loop. Debates occur again at Council.
- ⊘ Second role of administration is to establish policies and procedures and to work them. Council needs to ensure that they are being created. Staff needs to create and follow them.
- ⊘ Third is to implement decisions of Council whether they like it or not so long as it is not illegal, immoral or improper. There is however a responsibility of staff to assess and report if policies are not working.

Chief Administrative Officer – CAO – appoint Clerk under the Municipal Act and appoint the Clerk to act as the CAO to be responsible for all duties associated with that position. Otherwise, no one has that responsibility or authority. Note – check by-law appointing Clerk.

- Council should stay away from labour negotiations. Case where everyone is in the union. Should never happen, someone other than Council needs to be considered management. Will not happen if no one is appointed. Management responsibility is not councils, but the CAOs.
- For our situation, some documents refer to CAO, current title is Clerk – refer to administrator in all new documents. No need to change old but in appointing by-law should refer to the “prior position title” and state that it should now be referred to as “new position title”.
- Title often used – Clerk/Administrator – make sure that language is inserted in appointing by-law.
- Municipal Clerk and Chief Librarian are statutory offices which means that the province gives the job descriptions. In these positions, you are obliged to fulfill Council/Library Board obligations as well as statutory obligations.
- Clerk to “record without note or comment” to record corporate actions –not all conversations/discussion. Fred referred us to City of Sudbury for reference. We have incorporated this format last October.
- Note – assign duties of CAO to Clerk’s position when job descriptions are being evaluated.

Break – 10:34 a.m. – 10:48 a.m.

Procedure By-laws – apply to Library Board as well?

One of 2 most important documents in any organization (2nd is the budget.) It sets the governance model – set out how the committee system will work, e.g. Committee of the Whole etc. It sets the rules of procedure. It should be in simple language, readable with a good summary and/or index.

Delegations are how the public communicates with Council. How Council gets information from the public to make decisions. Must have well defined rules for how council deals with delegations.

- Can address council or committee but not both
- Wait until staff report is received prior to making a decision
- Staff report must be attached.
- Can only speak to issues that are already on the agenda? Council needs to decide these things so that they do not make last minute decisions and end up looking unprofessional.

Q& A – Council to ask staff questions. Don’t allow questions from the public – specify that public must use the delegation process.

If there is a request from a ratepayer to Council, what process should be used?

- Council bring to staff. Staff to look into, resolve etc.
- Staff to report back to Council and to the initial complainant.
- Council can decide to follow up if its good news, likely won’t if it’s bad.
- Council not to fix the problem not to take action, make the call to staff. No micromanagement – you have people to do that work for you.

Library Board – Need to find a workable solution to ensure that you are fulfilling your obligations under the Municipal and Public Library Act but still be able to operate with Board and skeleton staff. Need to work with Council to come to a workable solution as it relates to procedure and other by-laws, Board members and management.

Procedure By-law (Applies to Library Board?)

- Refer to it when rules are called into question
- If there is a division, it will have the rules to show how to proceed
- Do not need to rely on other sources
- If there is a difference of opinion on procedure – Chair should make a decision – can get advise from the clerk/secretary
- There is a process to appeal the decision should the members not agree
- Can also move to defer an issue, take it off the table
- Every decision made is a decision of Council/Board
- Up to Council/Board to vote on chair’s decision – if its carried move on, if it is found to be in error – make amendments
- If a decision requires further scrutiny and is later determined to be in error – the Clerk/secretary will report to Council/Board at the next meeting. Any decision is deemed invalid.

Accountability and Transparency – should have a definition in our procedure by-law. It should be a living working document that you refer to at all times. Bring to Council meetings.

- ⊘ When are you holding meetings?
- ⊘ Where?
- ⊘ What are you meeting about – agenda?
- ⊘ Can not add items to the agenda at the beginning of the meeting.

Must ensure that there are rules for reconsideration of an issue. Items to consider:

- ⊘ Can only address x times in a calendar year?
- ⊘ Motion to reconsider may only be made by someone who voted on the prevailing side.
- ⊘ Require a 2/3 or ¾ vote for reconsideration?

Review our procedure by-law.

{Library needs to (*should*) follow council's or prepare and adopt their own following rules in the Municipal Act. (*This will be a decision of Council*)? Question here as per section 238 (1).}

Accountability and Transparency (applies to Library Board)

Need to draft a by-law showing how council/Board “will try to ensure” that they are achieving... whatever definition Council has adopted for accountability and transparency.

Transparency refers to:

- ⊘ Open meetings
- ⊘ Advance publication of agenda and reports
- ⊘ Procedure by-law
- ⊘ Codes of conduct
- ⊘ Pecuniary interest declarations
- ⊘ Accessibility of meetings
- ⊘ Access to documents

If you are doing any of these, include them, if you are not – don't. For example, if you do not have a code of conduct for Council/staff, don't include that item in your by-law. You need to have a by-law but what is in it offers some flexibility.

When developing your policies and by-laws do it as if you're looking in as opposed to looking out – use plain English. What's the process, make sure everyone can understand it.

Accountability – ensure that you can account for all actions of Council and staff.

- ⊘ Minutes
- ⊘ Freedom Of Information processes – MFIPPA
- ⊘ Annual Financial Statement publication
- ⊘ Periodic financial reports
- ⊘ Audit – external and auditor general
- ⊘ Closed meeting investigator?
- ⊘ Municipal Ombudsman
- ⊘ Public Admonition
- ⊘ Dismissal of staff
- ⊘ Conflict of interest actions
- ⊘ Criminal Code Charges
- ⊘ Civil Actions
- ⊘ Elections

Hiring employees – not just relatives and nepotism but a process for hiring anyone that shows fairness.

Procurement – from smallest items to largest

- ⊘ Set limits and define different options for different limits. There are specific definitions as to when and how a request for proposal and request for tender are used. - Note – forward ours to Fred for review prior to adopting.
- ⊘ Unique circumstances for our situation re: purchasing – no competition, allow for those instances in your by-law. All purchasing is the use of public funds; you must have a paper trail.

Notice Policy

- ⊘ We now decide where, when, how to give notice. Make sure we follow our policy.

- ⊘ Note – mail-in voting – Clerk in Huntsville
- ⊘ Make sure that items that are in the notice by-law are not being added at the last minute without giving proper notice. Council should have copy of the notice by-law and know it.
- ⊘ The agenda can be a notice vehicle. The fact that it needs notice is in the agenda.

Delegation policy

- ⊘ delegate purchase of smallest items – e.g. Pens through the purchasing by-law
- ⊘ Hiring/firing delegated to administration
- ⊘ Only delegate administrative matters in our municipality. Too small to worry about the rest.
- ⊘ Make sure we don't parrot the act in any by-law or policy – changes too frequently – act applies anyway.

Review policies frequently – applies to all local boards – they can adopt ours.

Important for staff/Council to understand each other's roles. Don't attack staff publicly ever, you will commit political suicide.

Strategic Plan

- ⊘ Should be our #1 priority – 10-30 year plan - Growth for future
- ⊘ Gateway to east and north - Best of both worlds
- ⊘ Community – where are we going to be in 20 years
- ⊘ Allows for budget planning towards future. Good exercise for community involvement.
- ⊘ Let public know they have the ability to provide comments in a predetermined way
- ⊘ Education
- ⊘ Procurement by-law and budget – should be considered in strategic plan
- ⊘ Can have a multi-year budget – one drawback – no experience with new Council, good exercise for council each year to see what's going on.

Training – Council and Staff – very important

- ⊘ Member of AMO, attend conferences, ROMA/OGRA – benefits of networking
- ⊘ Sell benefits of education to the public
- ⊘ Require reports from Councillors after attendance
- ⊘ What did they learn - one thing that we can use?
- ⊘ Municipal Monitor – read it
- ⊘ Business cards for each member of Council
- ⊘ Important to staff, this is a technical business make sure they're getting the information they need to perform well

Business of Council – how do we deal with it?

- ⊘ Public Image – you are representing council 24/7 – staff is not.
- ⊘ Meetings – decorum start on time, dress appropriately
- ⊘ Micro-management – you have to avoid the temptation to micro-manage. You are not the manager.
- ⊘ Staff need to avoid making statements to the public on policy, especially to the media re: policy decisions

Lunch 12:17 – 12:45

Closed meetings

- ⊘ Generally, all meetings are open to the public.
- ⊘ Keep a list of reasons for going into closed session in your councillor binder – review it, know it.
- ⊘ A closed meeting does not explicitly exclude people other than council. A closed meeting is closed to the general public. The Clerk **must** be present at a council meeting. (Not necessarily at committee.) Other people may be present. Council must decide who is required and forward an initiation.
- ⊘ If there is a closed meeting, there is an obligation to pass a resolution closing the meeting. Reason must be referred to and generally identified as to the type of matter that you are dealing with.
- ⊘ Once in closed session may only deal with issues on the resolution to enter closed session. Can go out of that session then back in to deal with another matter. Or can list a number of items on the original motion. Can only deal with what is on the resolution.
- ⊘ What can you do in a closed session? Discuss issue; give direction to staff; offer x\$ to purchase; can deal with a procedural matter – to defer, adjourn etc.; can not

accept a counter offer etc. – that decision, the acceptance must be in open council meeting.

- ↘ Minutes of a closed meeting – should be prepared by the Clerk, adopted by council at the next closed session. Clerk simply keeps minutes available to Council but not public. OR Good practise to have the Chair of the meeting sign off, they are part of the public record. (Then don't need to adopt at next meeting – often far apart.
- ↘ The actual decision to purchase and at what price is a decision of council and would be debated in an open meeting. Only direction to staff should be in a closed session, the decision to accept a counteroffer or a final offer is open to the public.
- ↘ At this point, the clerk would prepare an offer to purchase and it would be brought to a public meeting for final decision.

All meetings require minutes

- ↘ Must reflect what was discussed
- ↘ Obligation of Clerk to make note of all discussions at meetings, both open and closed
- ↘ Obligation on Chair to stop discussion if the information was not on the agenda – require accountability and transparency. Requires notice to the public of what is to be discussed at any meeting. If it's not on the agenda but added later, an issue that the public might consider interesting or worth observing might be added at the last minute and decided without public debate.
- ↘ Minutes are a corporate record of decisions made. They are not a story. Refer to minutes of larger cities for examples of how they should look. There should never be a debate/discussion without a motion first introducing that issue. Once again, with proper notice and insertion in the agenda.
- ↘ Correspondence – should it be on the agenda? – It is common practise to separate the correspondence into a package that is for information only and that which requires attention from Council. All correspondence to be included in a meeting should have a staff report attached, no matter how brief with staff recommendations as to whether or not to support. The information package need not be part of the Councillor package, not part of the meeting. If any member would like to discuss any issue further, they then request to add it to the agenda for the next meeting.

Closed Meeting Investigators – (does not apply to Library Board)

- ↘ Any person may request an investigation
- ↘ Once investigation is complete, there will be a report to Council. Make sure that everyone knows the rules.
- ↘ Obligation to educate the public as to why you go into closed sessions
- ↘ Make sure the resolution entering closed session expresses the reason and the general nature
- ↘ There are methods of disallowing investigations as frivolous and vexatious – is it within jurisdiction? The number of requests made from this person. Is the request the same as or similar to others requested from the same group? If it is determined that they are simply being bothersome, that there is no real reason for the enquiry, they will not be investigated.
- ↘ What happens if it is a valid request and the Council did not meet the obligations of a closed meeting?:
 - The investigator has no authority to take any action other than to determine if valid or not.
 - Courts will have to decide – in past, decisions is that the resolution is of no affect however, depending on the situation and what was discussed and decided it could result in a law suit.
 - Be very cautious about when, why and how you enter into closed sessions.

Can Council meet without staff? – NO – a meeting must have the clerk (or delegate) present. Rule does not apply to committees (committee of the whole). They still need to have a member of staff to take minutes but it does not need to be the Clerk however, all minutes will end up in the possession of the Clerk.

What constitutes a meeting? If you are advancing Council business – it's a meeting. Conduct it properly. If an issue is discussed and decided without debate at an open public place, it's not a meeting. There will be repercussions. Make sure that all issues are thoroughly debated and discussed at an open meeting.

Make sure that all debate is public. You can't have some member's meet, decide what will happen and then show up at the meeting and simply state to the others what has been decided. All debate must happen in a properly called and conducted meeting. Don't hold the debate with email. Don't use it any more than you have to. If it can be found later that discussion occurred through email, there will be repercussions. – open and transparent.

Expenses Tax Free – 1/3 – make sure the by-law is completed the 1st month into the new term – it is and is valid for the term!

Conflict of Interest

- ↘ You must declare that you have a pecuniary/financial interest and
- ↘ The general nature thereof. You do not declare a conflict.
- ↘ You must declare even if you stand to gain or lose, if you support or not.
- ↘ Make sure any declaration is recorded accurately in the minutes. It is the Councillor's responsibility to make sure that their declaration is recorded accurately.
- ↘ Pecuniary means money/financial.
- ↘ Whether you vote for or against, you should not be involved.
- ↘ Siblings are not on the list. No conflict.
- ↘ If you declare – make sure that you distance yourself from the table. It is in your best interest to actually leave, however, you may stay in the room so long as it is not at the table.
- ↘ If the interest is with a sibling – best advice is to declare that you are in a situation which some may deem to be pecuniary interest but isn't under the act. "I would like to have this on record. I do not have an interest under the act. I have been elected to make decisions for this municipality and I intend to do so."
- ↘ If you decide that you will "do one better," than the act and not vote on this because everyone knows you are close to your sibling – don't just sit at the table. Sitting there and not voting is in effect a "no" vote. And you will not be doing what you were voted to do.
- ↘ Once you have made a declaration you may not influence ever – not before, during or after the decisions - for eternity. You are best to never discuss the situation with anyone. You should also request that the Clerk not forward any information specific to this issue to you, if you know that it is to come up at a future meeting.
- ↘ You must decide for every item on every agenda whether or not you have a pecuniary interest and what to do about it.
- ↘ Never ask staff for their advice about a specific issue – they will not give it to you.
- ↘ It is not up to anyone else to tell you of the conflict. It is up to you to do the right thing. It is your obligation, you agreed to when you agreed to become a Council member.
- ↘ Make sure that each and every declaration that you make is recorded accurately by the Clerk. That too is your obligation, not the Clerk's.
- ↘ There are exceptions – know the act.
- ↘ In a closed meeting – you have to leave the room.
- ↘ Let the clerk know and request that they record it – don't simply avoid going to those meetings – must be a formal declaration.
- ↘ Quorum may be reduced to 2 and still be allowed to make a decision.
- ↘ If below 2 – obligated to make application to the court for direction
- ↘ If you were absent and returned after issue was discussed – make sure you declare ASAP upon your return

Roles and Responsibilities – Pecuniary interest

- ↘ Personal obligation
- ↘ Other members of Council not in a position to give advice – inappropriate to accuse another member however; it should be incumbent upon the Head of Council to ask that the member has satisfied himself that he does or does not have a conflict. Should be a private conversation.
- ↘ Refer member to personal legal counsel.
- ↘ Staff not in a position to give advice
- ↘ Should educate ratepayers as to the MC of Interest Act – when/how/why an elector can bring an application
- ↘ Application by elector within 6 weeks of knowledge coming to attention within 6 years of decision
- ↘ Court findings – no contravention; breach of section 5; breach with saving provisions (can throw off Council for period of 7 years)
- ↘ Saving provision – inadvertence (you simply missed it); error in judgement (you sought legal counsel and it was in error);
- ↘ Insurance may be purchased by the municipality to cover legal costs if there is no contravention.
- ↘ With breach with saving provisions – Act does not allow the municipality to purchase insurance for this finding – Councillor should purchase this themselves.
- ↘ Insurers don't differentiate – municipality must ensure that if this is covered under the policy that this portion of the premium is being deducted from honorariums and prove that Councillors are paying for this themselves.
- ↘ Make sure policy is at least \$100,000