

Type of Decision									
Meeting Date	Tuesday, November 14, 2017				Report Date	Monday, October 30, 2017			
Decision Required		Yes	x	No	Priority	X	High		Low
Direction		Information Only		x	Type of Meeting	X	Open		Closed

## Clerk's - Report #14/11/17/801- iv - Cunningham-Swan Training October 25, 2017

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### **Subject: Notes from Education Session with Cunningham Swan in Eganville**

#### **Matt Benson - Environmental issues**

1. HCM has no brownfields that we are responsible for. It is uncertain that there are any within the community aside from perhaps some of the railway yards.
  - a. It is staff understanding that the property which concerns Councillor Foote has been remediated.
2. Should the municipality do something about a property it does not own? No. If you end up with it during a tax sale process, there are some steps you can take to mitigate damage and responsibility. During sale, have an RFP which will allow for a price which includes clean up.
3. If you end up with a contaminated property through any method, tax sale etc. go to the Ministry with a plan, not a problem.
4. Zoning by-law changes during planning process, you've made a change that affects a contaminated property, now what? The change does not put you in line for claims to remediate.
5. Matt spoke to environmental policy (Risk Management System) – with the lack of industry or brownfields within the municipality the only issues we currently face are landfills. Each landfill site has its own operations plan which addresses risk and risk management.
  - a. It is staff recommendation that this type of policy be created but it is certainly not a priority for a community of our size and composition.

#### **Alan Whyte – The New Employment Standard's Act**

6. Legislation has changed so that after five years of service, an employee is now entitled to three weeks of paid vacation pay. Act not yet in force.
7. ESA calculates severance by weeks; common law measures in months for without cause, reprisal or constructive dismissal.
8. Independent Contractors have the ability to apply to employer for statutory benefits (vacation, severance etc.) if they can prove that they are actually employees.
  - a. Onus is now on the employer to prove that the person is not an employee.

- b. HCM does not have an issue with this for either of our long term contractors. The criteria to determine independency has been completed some time ago. They are both independent.
  - c. This is more an issue in cases like the base or CNL where short term contracts were hired as office support so that they did not have to pay benefits. They did the same work as their peers, the only difference was they had an end date and were not considered employees but instead contractors. Not an issue in HCM
9. Call in rule is changing from 3 hours at minimum wage to 3 hours regular wage if called in. The employer is allowed to offer/give other work to fill the 3 hours if required to pay it.
  10. On-Call pay. Some municipalities pay a minimal on-call pay for employees required to monitor weather etc. during winter road maintenance season. Something for consideration.
  11. There will soon be no differentiation in pay due to “employment status” meaning part time, full time, temporary, probationary, student etc. If you are doing the same job, you deserve the same pay. Exceptions include: seniority, merit, quantity or quality of work, other objective factors besides gender and employment status.
  12. Unpaid leaves are being increased: maternity, parental, family medical, child death, domestic or sexual violence leave, personal emergency.
  13. Employers can no longer require a doctor’s note, but can demand evidence of entitlement.
    - a. There will remain a common law right to require a doctor’s note to say that the employee can return to work after a prolonged absence.
    - b. Employer’s obligations under Workplace Harassment Policy OHSa may be located here <https://www.labour.gov.on.ca/english/hs/pdf/harassment.pdf>.

**Dave Munday – Bill 68 Changes - Municipal Act, Municipal Conflict of Interest Act, Municipal Elections Act**

14. Codes of Conduct for Council members mandatory as of March 1, 2019
  - a. Perception of conflict, difficult to prove;
  - b. brother-sister don’t fall under the Act, there was an opportunity for the government to change the legislation but it did not
  - c. Council could decide to add it under their Code of Conduct if it so chooses.
  - d. Law offices receiving more and more complaints of bullying and harassment
  - e. Review investigation processes for ease of use.
15. When hiring an Integrity Commissioner – build everything you need into the contract
  - a. Terms of reference in retainer.
  - b. Make sure the IC meets recommendation from solicitor before seeking a court application.
  - c. You are not likely to remove a sitting councillor, why go through the costs.
  - d. IC does not have to investigate everything – allow discretion.
  - e. There is no obligation on IC to name informants/witnesses etc. to accused.
  - f. The court doesn’t care how an IC obtained personal emails.
  - g. A council must pass a resolution stating how it intends to address a report from the IC or staff member reporting out.
  - h. An integrity commissioner has a broad power to decide whether or not to commence an investigation.
16. Materially Advance
  - a. More than procedural. Must go to the heart of the matter of the decision. Or Groundwork established to advance business.

- b. Informal discussions are permitted so long as they do not move the matter forward. Don't have "informal" discussions with a quorum of council present.
- c. Includes email meetings. Can't weigh in by email or phone calls. Illegal meeting.

17. Electronic Participation

- a. The act is silent on whether or not they can vote. If the by-law prevents them from voting but they are participating electronically, it will be counted as a negative vote.

18. Issue of who can file a MCIA complaint.

- a. Organized group with no budget, no money. They can now file a complaint. If they lose and the court awards costs, they have no money – it is a useless award. The municipality is left being responsible for all costs. Example of a recent case – costs of \$20,000.

19. Administrative Monetary Penalties

- a. Now allowed for breach of any by-law not just parking. Cannot charge with an offense and impose an AMP.

20. Elections Act

- a. Term will change to November 15 for 2022
- b. Individual contribution limit changed from \$750 - \$1200
- c. Nominations must be endorsed by 25 voters

**Tony Fleming – Ontario Municipal Board Changes**

21. New changes

- a. Must understand "good planning principles"
- b. Restricts rights of appeals
- c. More weight to decisions of council

22. Make sure that decisions comply with OP and PPS – more important than ever

- a. Is Op doing what you want it to do?
- b. Site specific zoning amendment – OP not PPS.
- c. Health and safety/environmental vs. economic development
- d. What do you want the municipality to look like 5-10 years from now? You don't want a car plant beside residential.

23. Official Plan is the primary driver of change. If it conforms to the OP, little possibility for change.

- a. If a municipality fails to make a decision, it must be found to "inconsistent" or "not conform to" the OP as drafted.
- b. Changes must conform with OP and PPS.

24. Interim control by-law will prevent someone from doing something for up to three years – difficult to challenge – can not be used again though for same property.

- a. OMB used to be an appeal process – no longer.
- b. No need for an imminent emergency – just need to comply with "good land use planning"
- c. Be careful with this tool. There is a law of unintended consequences.

25. Note – if you're going to say "no" & staff recommended "yes" then defer the decision. In an appeal the only evidence our lawyer will have is the report created to support staff's decision. If staff is recommending one way, it is likely that it will provide an argument for that decision.

- a. If council makes an alternate decision and then is taken to OMB for appeal, they can no longer present additional information. Your lawyer will then go to the board with a document that argues against your decision. Not likely to help you win your

case. Best to defer the decision; ask staff to go back and create a second report making your case. Then if/when the decision is appealed, at least you will have something to help argue to the OMB. Again, since any changes are to conform to Zoning By-Law, Official Plan and the Provincial Policy Statement, it is likely that the first report will follow those documents.

- b. There is now a greater responsibility on staff to provide full documentation for any planning type of decisions. (Few and far between in HCM. We work with County to provide advice to Council.)
- c. Minor Variance avoids the entire process. The Zoning By-Law Amendment can be challenged.

#### **General Q & A**

26. Tax roll – the user agreement with MPAC says we can't share info.

- a. A person could hire an agent to look at info at your site and send it to them.
- b. Property ownership is public information – teranet system. Can search by name and municipal address.
- c. MFIPPA does not care that anyone can come in a view the roll. "Thou shalt not give out personal information."

27. Nonconforming use

- a. Rebuild in a flood zone once fire
- b. Non-conforming vs. non-complying
- c. Use is residential – there is a case before the board right now – waiting for board to decide
- d. At question - If you remove more than 50% of load bearing walls – considered vacant – to build new/rebuild – need a minor variance
- e. Tony – disagrees
- f. If the lot is vacant – the thing that was non-compliant no longer exists.
- g. Have permission to rebuild – use a site plan, flood proof etc. – argument for non-conforming so OK to rebuild, hard pressed to deny permit to rebuild

28. Digital signatures

- a. Consent apps. Agency comments etc. OK, see in practise all the time.
- b. Board has not challenged authenticity

29. Zoning – Algonquin Trail – zoning is residential, is trail allowed use,

30. is there anything in your zoning by-law that will allow public use on a residential lot?

#### **To Do**

- 1. Review current policies and update to reflect changes.