

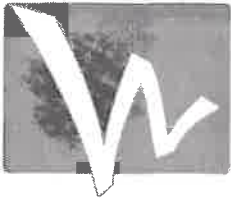
COUNCIL COMMITTEE MEETING
February 16, 2011

AGENDA

1. AuditorsPage 2-6
2. Ground AmbulancePage 7-11
3. Bylaw and Policies
 - a. Remuneration PolicyPage 12-13
 - b. Expense Reimbursement Policy.....Page 14-15
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IN CAMERA

5. Development



WildeandCompany

Chartered Accountants

P.O. BOX 70
4902 – 50 STREET
VEGREVILLE, AB T9C 1R1

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D.L. FEBROUSKI, C.G.A.
R.E. REYNOLDS, C.G.A.
D.L. SABADOS, C.A.
R.M. SUCHY, C.M.A.

*Denotes Professional Corporation

CLIENT'S COPY

February 15, 2011

Town of Rimbey
Box 350
Rimbey AB T0C 2J0

Attention: Mayor and Council

Dear Sir / Madam:

We have been engaged to audit the financial statements of Town of Rimbey for the year ending December 31, 2010.

Canadian generally accepted auditing standards require that we communicate at least annually with you regarding all relationships between the municipality and ourselves that, in our professional judgment, may reasonably be thought to bear on our independence.

In determining which relationships to report, the standards require us to consider relevant rules and related interpretations prescribed by the Institute of Chartered Accountants of Alberta and applicable legislation, covering such matters as:

- a) holding a financial interest, either directly or indirectly, in a client;
- b) holding a position, either directly or indirectly, that gives the right or responsibility to exert significant influence over the financial or accounting policies of a client;
- c) personal or business relationships of immediate family, close relatives, partners or retired partners, either directly or indirectly, with a client;
- d) economic dependence on a client; and
- e) provision of services in addition to the audit engagement.

We have prepared the following comments to facilitate our discussion with you regarding independence matters arising since February 12, 2010, the date of our last letter.

We are not aware of any relationships between the municipality and ourselves that, in our professional judgment, may reasonably be thought to bear on our independence, that have occurred from February 12, 2010 to February 15, 2011.

Canadian generally accepted standards for audit engagements require that we confirm our independence to the audit committee in the context of the Rules of Professional Conduct of the Institute of Chartered Accountants of Alberta. Accordingly, we hereby confirm that we are independent with respect to the municipality within the meaning of the Rules of Professional Conduct of the Institute of Chartered Accountants of Alberta as of February 15, 2011.

This report is intended solely for the use of the audit committee, the board of directors, management, and others within the municipality and should not be used for any other purpose.

Should you wish to discuss this matter with us further, please contact us at your earliest convenience. Thank you again for the opportunity of providing our services to your municipality.

Yours truly,

WILDE & COMPANY

A handwritten signature in blue ink that reads "Ashley Goddard".

For:

Colette A. Miller, F.C.A.

\\nt3\client_data\corporate data\0093\caseware\acctg10\town of rimbey\

TOWN OF RIMBEY

Box 350
Rimbey, AB
T0C 2J0

February 15, 2011

CLIENT'S COPY

Wilde & Company Chartered Accountants
P.O. Box 70
4902 - 50 Street
Vegreville AB T9C 1R1

Dear Sir / Madam:

This representation letter is provided in connection with your audit of the financial statements of Town of Rimbey for the year ended December 31, 2010 for the purpose of expressing an opinion as to whether the financial statements are presented fairly, in all material respects, in accordance with Canadian generally accepted accounting principles.

We confirm that (to the best of our knowledge and belief, having made such inquiries as we considered necessary for the purpose of appropriately informing ourselves):

Financial statements

- We have fulfilled our responsibilities, as set out in the terms of the audit engagement letter dated , for the preparation of the financial statements in accordance with Canadian generally accepted accounting principles; in particular, the financial statements are fairly presented in accordance therewith.
- Significant assumptions used by us in making accounting estimates, including those measured at fair value, are reasonable. (CAS 540)
- Related-party relationships and transactions have been appropriately accounted for and disclosed in accordance with the requirements of Canadian generally accepted accounting principles.
- All events subsequent to the date of the financial statements and for which generally accepted accounting principles require adjustment or disclosure have been adjusted or disclosed. (CAS 560)
- The effects of uncorrected misstatements are immaterial, both individually and in the aggregate, to the financial statements as a whole. A list of the uncorrected misstatements is attached to the representation letter. (CAS 450)

Information provided

- We have provided you with:
 - Access to all information of which we are aware that is relevant to the preparation of the financial statements such as records, documentation and other matters,
 - Additional information that you have requested from us for the purpose of the audit, and
 - Unrestricted access to persons within the entity from whom you determined it necessary to obtain evidence.
- All transactions have been recorded in the accounting records and are reflected in the financial statements.
- We have disclosed to you the results of our assessment of the risk that the financial statements may be materially misstated as a result of fraud. (CAS 240)
- We have disclosed to you all information in relation to fraud or suspected fraud that we are aware of and that affects the entity and involves:
 - Management,
 - Employees who have significant roles in internal control, or
 - Others where the fraud could have a material effect on the financial statements. (CAS 240)

- We have disclosed to you all information in relation to allegations of fraud, or suspected fraud, affecting the entity's financial statements communicated by employees, former employees, analysts, regulators or others. (CAS 240)
- We have disclosed to you all known instances of non-compliance or suspected non-compliance with laws and regulations whose effects should be considered when preparing financial statements. (CAS 240)
- We have disclosed to you the identity of the entity's related parties and all the related-party relationships and transactions of which we are aware. (CAS 550)

General

We have reviewed, approved and recorded all of the following:

- Adjusting journal entries you prepared or changed;
- Account codes you determined or changed;
- Transactions you classified; and
- Accounting records you prepared or changed.

There are no material transactions that have not been properly recorded in the accounting records underlying the financial statements.

We are unaware of any violations or possible violations of laws or regulations the effects of which should be considered for disclosure in the financial statements or as the basis of recording a contingent loss.

We have no knowledge of fraud or suspected fraud affecting the entity involving management; employees who have significant roles in internal control; or others, where the fraud could have a nontrivial effect on the financial statements.

We have no knowledge of any allegations of fraud or suspected fraud affecting the entity's financial statements communicated by employees, former employees, analysts, regulators or others.

We believe the effects of the uncorrected financial statement misstatements summarized in the accompanying schedule are immaterial, both individually and in the aggregate, to the financial statements taken as a whole.

We believe that the significant assumptions used in arriving at the fair values of financial instruments as measured and disclosed in the financial statements are reasonable and appropriate in the circumstances.

We have no plans or intentions that may materially affect the carrying value or classification of assets and liabilities reflected in the financial statements.

We have informed you of all outstanding and possible claims, whether or not they have been discussed with legal counsel.

All liabilities and contingencies, including those associated with guarantees, whether written or oral, have been disclosed to you and are appropriately reflected in the financial statements.

The municipality has satisfactory title to all owned assets, and there are no liens or encumbrances on such assets nor has any asset been pledged as collateral.

Where the value of any asset has been impaired, an appropriate provision has been made in the financial statements. This includes:

- Appropriate provisions for idle, abandoned, destroyed or obsolete assets or where site restoration costs will be necessary; and
- Impairments in the value of goodwill or intangible assets.

We have disclosed to you, and the municipality has complied with, all aspects of contractual agreements that would have a material effect on the financial statements in the event of non-compliance, including all covenants, conditions or other requirements of all outstanding debt.

We have disclosed to you all significant customers and/or suppliers of the municipality who individually represent a significant volume of transactions with our municipality. We are of the opinion that the volume of transactions (e.g., sales, services, purchases, borrowing and lending) done by the municipality with any one party is not of sufficient magnitude that discontinuance would have a material negative effect on the ongoing operations of the municipality.

Provision has been made for any material loss to be sustained in the fulfillment of, or from an inability to fulfill, any sales commitments.

Receivables recorded in the financial statements represent valid claims against debtors for sales or other charges arising on or before the balance sheet date and have been appropriately reduced to their estimated net realizable value.

There were no inventories on consignment, bill-and-hold, or other arrangements, either owned by us or by our suppliers. Provision, when material, has been made (i) to reduce excess or obsolete inventories to their estimated net realizable value and (ii) for any loss to be sustained as a result of purchase commitments for inventory quantities in excess of normal requirements or at prices in excess of the prevailing market prices.

There are no material unrecorded assets or contingent assets (such as claims relating to patent infringements or unfulfilled contracts whose value depends on satisfying conditions regarded as uncertain), that have not been disclosed to you.

We have disclosed to you all significant estimates and fair value measurements. We are of the opinion that:

- The measurement methods used are permitted under Canadian generally accepted accounting principles and appropriate in the circumstances;
- The underlying assumptions are reasonable and reflect management's best estimates considering existing market information;
- The method of valuation has been applied consistently;
- The assumptions are consistent with management's intended courses of action; and
- Financial statement disclosures are in accordance with Canadian generally accepted accounting principles.

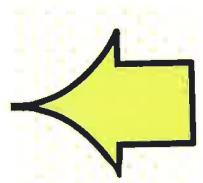
We have obtained all consents that are required under applicable privacy legislation for the collection, use, and disclosure to you of personal information.

The minute books of the municipality are a complete record of all meetings and resolutions of shareholders and directors throughout the period and to the present date.

We are aware of the environmental laws and regulations that have an impact on our municipality and we are in compliance. There are no known environmental liabilities that have not been accrued for or disclosed in the financial statements.

Yours truly,

TOWN OF RIMBEY



Date signed

Date signed

February 9, 2011

Town of Rimbey
4938-50 Ave
Rimbey, AB T0C 2J0
Attn: Tony Goode

Re: Letter of 11 January 2011

Dear Mr. Goode,

Thank you for the letter dated January 11, 2011, requesting information on both divesting as well as future contract for EMS service provision. I will endeavor to provide details with the caveat that this information is best given in a face-to-face discussion. We encourage a meeting to further discuss and provide clarity on these issues in the near future.

In the questions surrounding divestment:

As per the contract between Alberta Health Services and The Town of Rimbey regarding service provision, if the contracted provider chooses to discontinue provision – written notice of such is required. Upon reception of the letter itself, AHS and its internal decision-makers begin the investigative process to determine how best service provision will occur on (and after) the date of transition – the date determined mutually by both parties ensuring service continuity. The options available to AHS include but are not limited to having the area bid on through an RFP process, sole sourcing to a neighboring provider, or providing service directly as an AHS EMS area.

Service quality and maintaining current service level is of utmost importance in the process, as is community and staff engagement, and transparency of the process itself. Assets, building leases and vacation liability are all issues that would need to be discussed with the proposed service provider – again after the mutually agreed upon transition date is determined.

In the questions surrounding current and future contract:

AHS remains willing to discuss future contract possibilities with the Town of Rimbey as we recently have with all other non-profit providers in the province. Recent provider engagement meetings have outlined the complete plan to move forward with private and non-profit groups. I understand the Rimbey group opted to not attend this meeting – it is encouraged that this meeting be rescheduled if the Town of Rimbey has any plans to continue to contract EMS provision in the area. A service delivery enhancement such as inclusion of an ALS component is definitely a discussion we would like to have with the Town of Rimbey. There is a process in place in the current agreement to allow for this. The change request (contract amendment) is a process used by both groups to better understand the impacts of change as well as any funding issues that arise. We also encourage further discussion on this item for the service area of Rimbey keeping in mind there are many steps involved and requires significant planning and is not something that can be done without each other working together as partners.

Thank you for bringing these items to my attention, hopefully this letter somewhat provides clarification. I look forward to hearing from you in the near future regarding a meeting to discuss the service provided by the Town of Rimbey. Thank you.

Best regards,



Scott Holsworth
Director – EMS
Central/Calgary Zone

SH/ty

cc Darren Sandbeck, Executive Director – EMS, Calgary/Central Zone
Dave Treppel, Director – Contract Management



January 11, 2011

FILE COPY

Mr. Scott Holsworth
4703-53 Street
Camrose, AB T4V 1Y8

Email: scott.holsworth@albertahealthservices.ca

Dear Mr. Holsworth:

The Council of Rimbey is requesting more clarification in regards to the position of the existing Ambulance contract and future of the contract for the Rimbey Ambulance Service during the 2011 budget process.

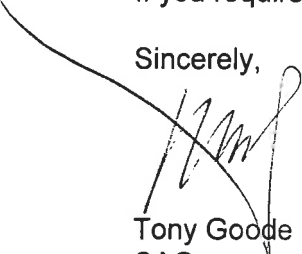
Detailed information is being requested regarding the following:

1. Divesting options including but not limited to the subjects of service quality, asset transfers, lease of building, guarantee of staffing levels and or sales of assets.
2. Current and future contract service including but not limited to mileage increases and upgrade of service from BLS to ALS including licensing, equipment and funding.

The required information would be greatly appreciated as soon as possible.

If you require further information or clarification, please contact the undersigned.

Sincerely,



Tony Goode
CAO

TG/mb

January 13, 2010

Town of Rimbey
4938-50 Ave
Rimbey, AB T0C 2J0
Attn: Tony Goode

Re: EMS Contract Change Request – January 22, 2010

Dear Mr. Goode;

Thank you for the recent resubmission of the January 22, 2010 change request for Rimbey EMS. The combination of Alberta Health Services Emergency Medical Services Zone Administration changes coupled with similar changes in the Town of Rimbey in the past months has caused this issue to not be followed up on sufficiently – my apologies.

On April 1, 2009, AHS contracted Rimbey EMS for two resources and subsequently funded the agreed on amount for those resources on a monthly basis.

The change request submitted is based on a funding scenario of what Rimbey EMS would have potentially received had the contract not been in place.

AHS currently funds the resources on a fixed cost agreed to by both parties. This change request citing \$163,694.18 for 2009/2010 and 2010/2011 IFT funding shortfall is not supported by AHS and therefore declined. We do recognize however, that there was a reflected negative variance in the submitted 2009/2010 financial report of approximately \$8000.00. The discussion regarding this shortfall is one that we are willing to have in order to provide sufficient funding.

Thank you for your time and patience with this submission. We look forward to continued discussions on EMS service delivery in the Rimbey area.

Sincerely,



Darren Sandbeck M.A., EMT-P
Executive Director
Emergency Medical Services
Calgary / Central Zone
Alberta Health Services

RECEIVED
JAN 13 2011
TOWN OF RIMBEY

December 13, 2010

Russ Wardrope, CAO
Town of Rimbey
Box 350
Rimbey, AB
T0C 2J0

Dear Russ Wardrope,

In follow-up to the information letter sent last September, I am pleased to enclose an extension Agreement to the current EMS Ground Ambulance contract with Alberta Health Services (AHS).

Under Section 7.2 (AHS Option to Renew) of the Agreement, AHS hereby elects to extend the Term from April 1, 2011 to March 31, 2012. Please sign both copies and return one original signed document by courier in the pre-addressed, enclosed envelope.

Upon return of this signed Agreement, please also submit a copy of your active professional liability insurance that meets those limits outlined in the Agreement. Should your insurance expire during the term of this Agreement, it is requested that a new copy of the policy be sent to the AHS representative identified in the Agreement.

I appreciate your organization's assistance and continued dedication to service as ground ambulance integrates into one patient-centered, province-wide EMS system within AHS.

If you have any questions or concerns, please contact Michael Love at 403-943-1954.

Sincerely,



Michael Love
Manager, Operations and Support
CPSM, Strategic Contracting

Encl.



Town of Rimbey Policy Manual

Title: Council Remuneration

Policy No.: 155

Supercedes.: 154

Approved: February xx, 2011

Resolution No.: xxx/11

Effective Date: February xx, 2011

Purpose:

1. To set appropriate rates of pay for Council
2. Monthly Time sheets to be approved by resolution of Council

Policy Statement:

Base Fees

The Mayor will be paid \$ 1,553.55 per month to cover the regular monthly Council meeting, all background work, general public interaction, in-Town charity functions, local meetings, committee meetings, attendance to functions and gatherings where the Mayor's presence is requested but not required; but he/she deems it appropriate to attend.

Councillors will be paid \$ 1,066.77 per month to cover the regular monthly Council meeting, background work, general public interaction, local meetings, committee meetings, and events where and when a Councillor's attendance is requested but not required by Council. The Deputy Mayor shall receive an additional \$100.00 per month.

Cost of living will automatically be applied to Council remuneration and meeting rates as per Town Staff salaries, according to the Alberta Consumer Pricing Index, on January 1st of every year.

Other Expenses

Travel and subsistence expenses shall be paid in accordance with Policy #1108.

Cell Phone Costs – The Mayor shall receive a cell phone paid for by the Town or an allowance of \$50.00 per month for use of their personal phone.

Hourly Rates

Councillors shall be further compensated for attendance at the following events:

- Alberta Government
- Alberta Urban Municipalities Association
- University of Alberta; and
- Other organizations interested in or working with local governments.
- Meetings with other Municipalities
- The A.U.M.A. Annual Convention
- A.U.M.A. Regional Seminars
- University of Alberta Elected Officials Seminars
- Meetings called and organized by any branch of the Alberta Government, or any other municipal government
- Field trips and research trips to other Municipalities
- Any other meetings or attendance at functions approved by resolution of Council

Compensation shall be as follows:

\$30.00 / hour to a maximum of \$300.00 / day

Councillors shall be responsible for filling in their own claim forms for these events.

Compensation will not be provided for attendance at meetings or functions where expenses are paid by other organizations (ex. Rimoka Foundation).

Benefits

AUMA Group Accident Insurance As per Provider Rates

Initial Policy Approved: October 20, 2003

Resolution: 457/03

Latest Revision: October 13th, 2009

Resolution: 321/09



Town of Rimbey Policy Manual

Title: Reimbursement for Council, Staff, Fire
Department, Boards & Committees

Policy No.: 1108

Supercedes.: Policy 151, 1107, 1109, 1110, 1111

Approved: February xx, 2011

Resolution No.: xxx/11

Effective Date: February xx, 2011

Purpose: To provide equitable compensation for those traveling on municipal business.

Policy Statement:

Meals

When required by the Town of Rimbey to be absent from Rimbey during meal hours, the following rates shall apply for the Staff, Fire Department, and all Board & Committee members:

Breakfast	\$10.00 (including gratuities)
Lunch	\$15.00 (including gratuities)
Supper	<u>\$25.00</u> (including gratuities)
Total per day	\$50.00

Or receipts may be submitted for full compensation, including gratuities.
No alcoholic beverages shall be paid for by the Town at any time.

Mileage

Shall be set at the simplified per kilometer rate for Alberta according to Canada Revenue Agency.

Lodging

Actual receipted cost.
No receipt required for stay in private accommodations - \$50.00 per night

Registration Fees

Actual receipted cost

Other Items

Actual receipted cost. May include incidentals such as parking, use of public transportation, etc...

Employees will not be reimbursed hourly wages for travel time to and from functions outside regular working hours. Such travel time is deemed to be included in the mileage portion of the expense claim.

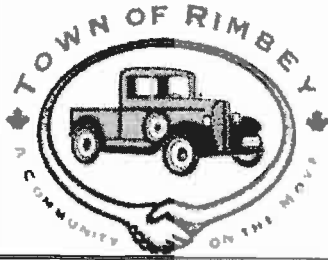
DRAFT

Initial Policy Approved: October 23, 1991

Resolution: 754/91

Latest Revision: May 27, 2008

Resolution: 183/08



Town of Rimbey Policy Manual

Title: Utility Service Fee, Payment & Penalties Policy

Policy No.: 3211

Supersedes:

Approved: February xx, 2011

Resolution No.: xxx/11

Effective Date: February xx, 2011

Purpose: To provide service fee rates, payment and penalty policies for utility accounts.

Policy Statement:

The following policy, procedures and rates regulate the delivery and collection of utility billings in a timely and effective manner.

1.0 Utility Billings

- 1.1 All utility billings shall be processed and forwarded in the name of the property owner(s) as listed on the tax roll.
- 1.2 Utility rates and charges shall be levied for water, sewer, solid waste collection and disposal, recycle and meter service charges commencing when water is turned on to a property.
- 1.3 Utility billings shall be mailed out and collected on a regular schedule as determined by Council.
- 1.4 Billings for services shall be in accordance with rates set out in the Municipal Utility Rates By-Law.
- 1.5 Billings shall be mailed no later than ten (10) days after the first day of the month following the end of the period for which the account was rendered.
- 1.6 Utility bills shall cease only when an employee or agent of the Town of Rimbey physically turns off the water to a property.

2.0 Connection / Disconnection Fee

- 2.1 A fee of fifty dollars (**\$50.00**) shall be charged to any accounts to defray the costs for any of the following:
 - a) Shutting off a service.
 - b) Reconnecting of service following shutoff.
 - c) New service.

3.0 Utility Account Transfers & Fees

- 3.1 An administration fee of forty dollars (**\$40.00**) shall be charged to any account, when a new owner purchases a property. The non-refundable transfer fee will be charged to the new account holder on the first utility billing.
- 3.2 **NO utility account** for any property *shall be transferred into the name of a renter*, but shall be forwarded in the name of the property owner only.
- 3.3 If a property owner chooses, a utility billing may be forwarded in care of a renter, providing that the property owner has signed a 'Utilities Rental Agreement' form as per Appendix 'A', allowing that utility account arrears, plus penalties and fees, may be transferred to the property owner's tax roll account, and acknowledging that there may be no notification of such transfers until tax levy notices are mailed in the spring of each year. The forty dollar (**\$40.00**) transfer fee shall apply each time a new account needs to be created.
- 3.4 **Mobile Home Parks** – Utility billings shall be forwarded to the owner of the manufactured or mobile home. If the mobile home owner chooses, a utility billing may be forwarded in care of a renter, as per section 3.3.

4.0 Payment and Penalties

- 4.1 The date fixed for payment of utility billings shall be the second last working day of the month in which the utility billings were mailed.
- 4.2 Any utility account, which remains unpaid on the last working day of the month in which the utility billings were mailed, shall have a **10% late payment penalty** added to the unpaid current balance which will form part of the rate levied.
- 4.3 Should an account or portion thereof become 2 months in arrears, a written notice shall be forwarded, giving notice of the arrears and final opportunity to pay prior to transferring the arrears to the **property tax roll account**.

5.0 Arrears Transfer to Tax Roll

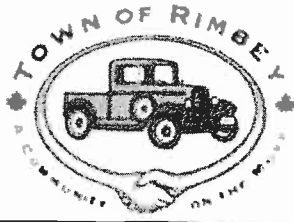
- 5.1 In the event that payment for the arrears on a utility account is not received at the Town Office by the date and time specified in the written notice (4.3), the **arrears and penalties, plus a forty dollar (\$40.00)** administration fee, will be transferred to the tax roll of the property, without further notice.
- 5.2 These charges become an amount owing to the Municipality and subject to collections under the tax recovery process.

Initial Policy Approved: June 23, 2005

Resolution: 229/05

Latest Revision: February 12, 2008

Resolution: 57/08



Town of Rimbey Policy Manual

Title: Grant in aid Policy

Policy No.:

Supersedes.: NEW

Approved: February xx, 2011

Resolution No.: xxx/11

Effective Date: February xx, 2011

Purpose: Fair and Equitable Process for the Granting of Financial Assistance

Policy Statement: The Town of Rimbey will provide a fair and equitable process for the granting of financial assistance, to a maximum of \$500.00, for projects or events that benefit the community.

Guidelines

1. Clubs or organizations may apply for funding for a specific project or event that is locally based, and whose efforts are either local or regional in nature. Applications will not be accepted for operational items other than insurance (ex.- not for salaries, supplies, etc...).
2. Applications may be made once per calendar year and funds must be used in the year applied.
3. Grants-in-aid will not be given to any "for profit" organizations or government funded agencies.
4. The maximum amount granted shall be \$500.00.
5. The grant-in-aid application deadline will be advertised in the local newspaper at the beginning of each fiscal year. Applications must be received prior to the advertised deadline date in order to be considered.
6. Applications for grants must be made on the approved application form.
7. Organizations currently receiving a Town of Rimbey property tax exemption are not eligible for a grant-in-aid.
8. Council may accept or reject any application based on merit and availability of funds.
9. A written report and financial statement must be submitted prior to approval of any new grant applications.

Initial Policy Approved: February xx, 2011

Resolution: xxx/11



B R O W N L E E
L L P
Barristers & Solicitors

Suite 2200, Commerce Place
10155 - 102 Street
Edmonton, AB Canada T5J 4G8
Telephone: (780) 497-4800
Telecopier: (780) 424-3254
E-Mail: e-mail@brownleelaw.com
WebSite: www.brownleelaw.com

Refer to: L.I. Randa
Direct Line: 780-497-4832
E-mail: lrand@brownleelaw.com
Our File No.: 71184-0012/LIR

February 1, 2011

VIA EMAIL

Town of Rimbey
Box 350
Rimbey, Alberta T0C 2J0

Attention: Ryan Maier, Assistant CAO

Dear Sir:

Re: Review of Tax Incentives Bylaws

Further to your discussions with our Jeneane Grundberg, you have requested our opinion regarding the validity of a number of tax incentive bylaws and policies passed by the Town of Rimbey (the "Town") Council. In particular, we are writing to provide our opinion on:

1. the validity of certain tax incentive bylaws passed by the Town Council (the "Council"), the effect of which cancels property taxes for certain types of properties;
2. the validity of a property tax exemption policy related to the replacement of dilapidated buildings with new improvements; and
3. options available to the Town, in the event that either of the aforementioned are invalid.

A. BACKGROUND

Tax Incentive Bylaws

Between April 2003 and March 2008, the Council passed four tax rebate bylaws (collectively referred to as the "Bylaws"), in respect of certain types of property, for the purpose of encouraging development. The Bylaws in question are as follows:

- Bylaw 749/03, passed by Council on April 14, 2003, provides a tax rebate to "Newly created lots";

- Bylaw 785/05, passed by Council on August 11, 2005, provides a tax rebate to “New commercial and industrial developments”, as well as to “Businesses that renovate their existing buildings”;
- Bylaw 785/05 appears to have been replaced by Bylaw 827/08, passed by Council on March 18, 2008, which provides rebates to the same types of property; and
- Bylaw 826/08, passed by Council on March 18, 2008, provides a tax rebate to “New residential rental developments”.

The Bylaws provides that tax rebates “shall” be made by a resolution of Council in each calendar year. Moreover, the Bylaws provide that tax rebates shall be made for a period of five years, unless the property is sold (or developed, in the case of Bylaw 749/03).

Property Tax Exemption Policy

In 2005, Council passed Resolution 285/05 establishing the Community Improvement and Consolidation Program (the “Policy”). The purpose of the Policy is to encourage the replacement of derelict buildings in the Town. Under the Policy, certain property owners may receive a property tax exemption if they replace a dilapidated building with a new improvement. All residential properties within the boundary identified on a map attached to the Policy are eligible, save for “MHS” and “MPH”. Moreover, all C-1 Central Commercial, C-2 Highway Commercial and DC lots within the boundary identified on the aforementioned map are eligible. Applications for the property tax exemption are subject to the approval of the Development Authority. The tax exemption applies for a period of five years, “Subject to Council having to approve the tax exemption for each exempted property on an annual basis”.

B. ISSUES

In response to your request, this opinion will address the following issues:

1. Are the Bylaws valid?
2. Is the Policy valid?
3. If the Bylaws and Policy are not valid, does the Town risk the imposition of liability from property owners that might have relied on the tax rebates?
4. If the Bylaws and Policy are not valid, what options are available to the Town?

C. EXECUTIVE SUMMARY

Validity of the Bylaws and Policy - In our opinion, the Bylaws and the Policy are invalid for several reasons, including that they: (1) contravene subsection 347(1) of the *Municipal Government Act*, R.S.A. 2000, c. M-26 (the “MGA”); (2) unlawfully discriminate between properties within the same

taxable class; and (3) fetter the discretion of Council to set property tax rates. Additionally, the Policy's requirement of Development Authority approval contravenes the *MGA*.

Liability Risk - There are very strong arguments that the Town, including past and present members of Council, does not risk the imposition of liability to property owners that relied on the validity of Bylaws and/or Policy in making development decisions. Generally speaking, municipalities are exempt from liability in respect of the exercise of legislative powers by a council. Arguably, this immunity applies even when a council exceeds its jurisdiction, including the passing of invalid bylaws and/or policies. Likewise, any decision by the current Council to cease the implementation of the Bylaws and the Policy would also fall within the exercise of the Council's legislative powers and be immune from liability (provided that the exercise of legislative discretion is done in good faith).

Options - It is our opinion that the Town has at least three options in regards to how it may proceed:

1. The Town may maintain the *status quo* and continue to provide the tax incentives. We do not recommend this course of action.
2. The Town may *terminate* the tax incentive rebates, by Council repealing the Bylaws and the Policy.
3. The Town may terminate the tax incentives but continue to provide the rebates to existing benefiting property owners in order to minimize any potential liability. Here, Council may annually pass a resolution to cancel taxes for specified benefiting property, wherein the rebates would be applied to the property tax imposed on the property for that taxation year.

D. ANALYSIS

1. *Are the Bylaws valid?*

In our opinion, the Bylaws are not valid. First, the Bylaws appear to contravene subsection 347(1) of the *MGA*. Second, the Bylaws likely unlawfully discriminate between properties within the same taxation class. Third, the Bylaws likely fetter the discretion of successor Council's to exercise their taxation powers.

(a) Section 347

Subsection 347(1) of the *MGA* states:

347(1) If a council considers it equitable to do so, it may, generally or with respect to a particular taxable property or business or a class of taxable property or business, do one or more of the following, with or without conditions:

- (a) cancel or reduce tax arrears;
- (b) cancel or refund all or part of a tax;
- (c) defer the collection of a tax.

Subsection 347(1) of the *MGA* authorizes a municipality to cancel property taxes "to a particular taxable property" or "a class of taxable property". Further, it is our interpretation of subsection

347(1) that Council may only cancel taxes on an individual basis under subsection (b) in the year in which the tax is imposed (or in contrast, cancel tax arrears from the past) and not taxes yet to be imposed. Accordingly, a municipality may extend property tax rebates to properties on an individual basis, or to an entire class of taxable property. By contrast, a municipality may not extend tax rebates to one or more subclasses within a taxable class. Moreover, a municipality may not extend rebates on the basis of any criterion other than taxable class, unless the rebate is extended specifically to an individual property. In short, the jurisdiction of a municipality to extend tax rebates is strictly constrained by subsection 347(1) of the *MGA*.

Contrary to subsection 347(1) of the *MGA*, Bylaws 785/05, 826/08 and 827/08 extend rebates to various subclasses within a taxable class. As a matter of background, subsection 297(1) of the *MGA* provides that a municipality must assign one of four types of assessment classes to property: (1) residential; (2) non-residential; (3) farm land; and (4) machinery and equipment. Bylaws 785/05 and 827/08 extend rebates to "New commercial and industrial developments". New commercial and industrial properties fall within the definition of the non-residential class prescribed by the *MGA*, and constitute a subclass therein. Similarly, "New residential rental development" properties under Bylaw 826/08 constitute a subclass of the residential taxable class.

Bylaw 749/03 also contravenes subsection 347(1) of the *MGA*. Bylaw 749/03 affords a tax rebate to "Newly created lots" whereas subsection 347(1) of the *MGA* states that tax rebates may only be extended to properties on an individual basis or on the basis of an entire taxable class.

The Bylaws appear to further contravene subsection 347(1) of the *MGA* to the extent that they extend rebates for future taxes. In this regard, the Bylaws appear to contemplate extending tax rebates for up to a five year period. In our opinion, a municipality does not have the jurisdiction to forgive taxes that have not yet been imposed. Within this context, subsection 347(1) grants Council a specific authority to: (1) cancel or reduce tax arrears (i.e. past taxes); (2) cancel or refund all or part of a tax (i.e. current taxes); or (3) to defer the collection of a tax (i.e. current taxes). Further, section 353 of the *MGA* requires a municipality to pass a property tax bylaw annually. As such, in our opinion, it follows that any property tax rebate would have to be considered by Council on an annual basis, following the passage of the property tax bylaw, and "the tax" imposed pursuant to the property tax bylaw.

Discrimination

As noted above, the Bylaws distinguish between certain types of properties within taxable property classes. According to the case law, it is a fundamental principle of taxation that properties falling within the same class should be taxed in a uniform manner.

Applying this principle, the Alberta Courts have held that by extending a rebate under a bylaw to "commercial" properties, the subject bylaw unlawfully discriminated against other properties within the non-residential taxable class. Based on the foregoing, in our opinion, the Bylaws unlawfully discriminate between properties within the same taxable class.

Fettering the Discretion of Council

The establishment of tax rates for properties within a municipality falls within the legislative powers of a municipal council. A municipal council's legislative powers must be exercised

freely. As a result, a municipal council may not pass a law, resolution or policy, or enter into any form of agreement or other arrangement that would have the effect of binding future councils. This principle has been confirmed by the Supreme Court of Canada, wherein it ruled that an agreement entered into by one council did not have the effect of binding future councils from making legislative decisions. To do so would be to unlawfully fetter the discretion of a future council.

In our opinion, the Bylaws unlawfully fetter the discretion of Council. In this regard, the Bylaws stipulate that the tax rebates “*shall* be made for a period five (5) consecutive calendar years” [emphasis added]. Consequently, the Bylaws have the effect of constraining the current, and any future Council from exercising its legislative discretion to decide whether taxes should be cancelled on any particular property pursuant to section 347 of the *MGA*. Although, the Bylaws require that Council pass a resolution, in respect of the rebates on an annual basis, the wording of the Bylaws suggest that the passing of such resolutions are mandatory, and not discretionary. In this regard, the Bylaws state that “Tax rebates *shall* be made by a resolution of Town Council *not later than May 31st in each year*” [emphasis added]. Any interpretation of the foregoing language as discretionary cannot be easily reconciled with the requirement under the Bylaws that the tax rebates be for a period of five years.

2. *Is the Policy valid?*

In our opinion, the Policy is not valid. First, the *MGA* does not authorize the Town to “exempt” the types of properties under the Policy. Second, contrary to the *MGA*, the Policy appears to require tax cancellation approval by the Development Authority. And lastly, similar to our analysis on the Bylaws, the Policy appears to contravene subsection 347(1) of the *MGA*, unlawfully discriminates between properties of the same taxable class, and unlawfully fetters the discretion of Council.

Jurisdiction of Town to “Exempt” Properties

The jurisdiction of the Town to “exempt” properties from the imposition of property taxes is expressly set-out in Part 10 of the *MGA*. Part 10 of the *MGA* does not afford the Town the jurisdiction to “exempt” residential properties. Moreover, Part 10 of the *MGA* expressly sets out the types of non-residential properties that may be “exempted”, and does not authorize the “exemption” of “commercial” properties from taxation.

Notwithstanding the foregoing, the Town may “cancel” taxes pursuant to section 347 of the *MGA*. The effect of the Policy appears to cancel taxes as contemplated by section 347 of the *MGA*, notwithstanding that the Policy refers to the “exemption” of property taxes. However, as discussed below, the Policy in our opinion fails to comply with section 347.

Development Authority Approval

The Policy contravenes the *MGA* to the extent that the cancellation of taxes, in respect of any property requires the approval of the Development Authority. Pursuant to the *MGA*, only Council has the jurisdiction to decide whether property taxes should be cancelled, in respect of any property.

Section 347, Discrimination and Fettering the Discretion of Council

In our opinion, the Policy does not comply with section 347 for the same reasons set-out above, in respect of the Bylaws. In addition, the Policy distinguishes between properties within the same taxable class, and as such, unlawfully discriminates between properties within the same taxable class – the same effect as the Bylaw discussed above. Lastly, similar to the Bylaws, the Policy appears to provide for a five year tax cancellation and consequently, constrains the current and future Council's from exercising its legislative discretion to decide whether taxes should be cancelled in any given year. The result of this and the above regarding the Bylaws is that the Bylaws and the Policy would be illegal and therefore invalid and void.

In regards to section 347 in particular, the Policy applies to subclasses within the residential and non-residential taxable classes, respectively. In order to comply with section 347 of the *MGA*, the Policy would have to apply to all properties within the residential or non-residential taxable class, or both. The Policy also contravenes section 347 to the extent that it contemplates cancelling taxes for a five year period, thereby cancelling future taxes. As noted above, section 347 of the *MGA* does not authorize a municipality to cancel future taxes.

It is noted that the Policy does expressly state that the five year cancellation period is "Subject to Council having to approve the tax exemption on an annual basis". Whereas the tax cancellation appears to be subject to the annual approval of Council, it is arguable that the Policy does not cancel future taxes, but only taxes within the particular taxation year. However, the foregoing interpretation does not appear to be consistent with a reading of the Policy as a whole. For example section 1.7 of the Policy sets out circumstances when a property owner may receive something less than the five year exemption. Accordingly, the Policy appears to provide generally for a five year cancellation, subject to certain expressed exceptions. Moreover, that section 1.4 of the Policy stipulates that "Subject to Council *having* to approve the tax exemption" suggests that the annual approval by Council is mandatory, and not discretionary. Given the above, it is our opinion the Policy is invalid and does not comply with the *MGA*.

3. *If the Bylaws and Policy are not valid, does the Town risk the imposition of liability from property owners that might have relied on the tax rebates?*

Given our opinion that the Bylaws and Policy are invalid, this raises the question of whether the Town might be liable to property owners that relied on the Bylaws and/or Policy in making development decisions. In our opinion, there is very strong argument that the Town is not liability to property owners for negligent misrepresentation, breach of a statutory duty or any other manner of liability.

The Courts have consistently held that a municipality is immune from the imposition of liability when exercising legislative or quasi-judicial powers. This immunity extends to when a municipal council acts unlawfully, including passing an invalid bylaw or policy. Such immunity prevails notwithstanding that an individual may have suffered damages, including financial loss, as a consequence of the unlawful legislative action. The Courts have held the foregoing on the basis of underlying public policy considerations, including that when a municipal council exercises a legislative power, it does so on the basis of concern for the general public. Accordingly, the Courts have held that no nexus or duty extends to private individuals. The only stipulation is that the subject legislative powers must not be carried out in "bad faith". If the Court determines that a municipal council acted in bad faith, then the general rule of immunity may not apply. Nevertheless, a high

threshold must be met before the Courts will find that a municipal council acted in bad faith; namely a finding that a council exercised power for a private purpose at the expense of a public interest or otherwise exercised recklessness and gross negligence (neither of which appears evident from the information and background provided to us in preparation of this opinion).

By passing the Bylaws and Policy, the Council was exercising legislative powers. Moreover, there is no evidence that in enacting the Bylaws and Policy, the Council acted in bad faith. On the contrary, it would seem that the Council acted on the basis of a *bone fide* municipal purpose, namely to encourage development and revitalization in the Town. Accordingly, the Town, and members of Council individually are likely immune from liability on account of any alleged negligent misrepresentation, or any other basis that liability might be imposed.

Similarly, in our opinion, the Council would be immune from liability, in the event that the Council decides to repeal the Bylaws and the Policy. Such a decision would fall within the statutory discretion afforded to the Council under the *MGA* to set tax rates on properties. Moreover, ceasing to implement what appear to be invalid Bylaws and an invalid Policy, in our opinion, constitute a legitimate exercise of Council's powers.

Before Council decides to take any course of action, we recommend that the Town consult with its liability Insurers for additional advice and direction.

4. *If the Bylaws and Policy are not valid, what options are available to the Town?*

The Town has at least three options how it may proceed in relation to these Bylaws and the Policy:

1. Maintain the Status Quo

The Town may decide to maintain the *status quo* by leaving the Bylaws and Policy in place. We recommend against this course of action. First, as a general rule, it is not advisable for a municipality to maintain invalid bylaws and policies. Second, that the Bylaws and Policy are invalid renders it possible that one or more of the Bylaws or Policy may be subject to challenge. By maintaining the *status quo* the Town risks incurring considerable and unnecessary legal costs, in the event of such a challenge, and embarrassment that would follow a declaration by the Court that the Bylaws or Policy are invalid. Third, if the Council wishes to maintain the rebates provided in the Bylaws or Policy, there is a lawful alternative that can be pursued, the foregoing of which is discussed below under option 3.

2. Repeal the Bylaws/Policy and End the Rebates

Council could proceed to repeal the Bylaws and the Policy by way of passing a bylaw to that effect, thereby terminating the rebates. As stated above, the risk of any subsequent liability for this option is minimal at best. Notwithstanding, we recommend that you consult with your insurer before proceeding.

3. Repeal the Bylaws/Policy and Continuing Some Rebates

Council could proceed to repeal the Bylaws and the Policy by way of passing a bylaw to that effect, and can lawfully continue to provide some tax rebates to property owners. Such an option may be considered if Council is concerned with the political ramification of cancelling this policy

decision of the previous Council. This can be done by way of Council annually passing a resolution identifying each property wherein a certain portion of the property taxes would be cancelled. Such a resolution can only cancel property taxes imposed on any given year and would be at the discretion of the current Council. This would be consistent with subsection 347(1) of the *MGA*, which provides that a municipality may cancel taxes to “a particular taxable property”.

We trust the foregoing to be satisfactory. If you have any questions, do not hesitate to contact us at your earliest convenience.

Yours truly,

BROWNLEE LLP

PER:

A handwritten signature in black ink, appearing to read 'L. Randa', is written over the printed name.

LORNE I. RANDA
LIR/MJC