



growing opportunity

Agenda Item: 10.10

# Briefing – to Members of Council

June 14, 2016

**Topic** Horizon North Project (Swamp Mats)

**Confidential** No

- Attachment(s)**
1. Invoice # 514 original invoice to Horizon North
  2. Invoice # 663 Invoice for \$56,000.00
  3. Invoice # 664 Invoice for \$126,263.19
  4. Lease agreement made effective April 1<sup>st</sup>, 2015
  5. June 24, 2008 Minutes
  6. July 28, 2015 Minutes
  7. December 16, 2015 Minutes
  8. Policy No 5.10
  9. International Accounting Standard 2

- Issue**
- Unbudgeted project cost - \$375,706.52
  - No motion of Council to proceed with the project or approval of project cost.
  - Breach of the Municipal Government Act, Section 248 (1)
  - Lease agreement signed close to end of project
  - There was no open ended purchase order from Horizon.
  - No motion of Council to borrow the project cost to Horizon
  - There is no loan agreement, amortization schedule.
  - Does not comply with the Municipal Government Act, Section 264 and 265
  - There is no amendment to existing lease agreement to raise Lease payments.
  - Former CAO continued to communicate with Horizon After his employment had ended as if he was still the CAO.
  - Former CAO communications with Horizon indicated that he would refer the matters at hand to the Reeve.
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- Former CAO budgeted for taxes on the lease property in the amount of \$12,312.13. The total levies on this property is \$14,863.77. There is nothing in the existing lease agreement indicating Horizon's is responsible for paying the 2016 taxes.
  - Total unbudgeted funds is \$390,570.29

**Background**

**Events**

- September 17, 2014 A realtor from Muller Realty contacted the Manager of Planning and Development indicating that Swamp

Mats was interested in leasing a parcel of land in the Industrial Park. They would strip it and fence it and use it for storage, all at their own cost. They were interested in a three year lease agreement, with an option to purchase after the lease, or purchase outright.

- September 19, 2014 Manager of Planning and Development responded back to the Realtor. The Manager indicated that she had spoken to the Former CAO regarding the lots at the Industrial Park. There was some concern with the purchase price of the lots at the Park. Council resolution states the price is \$35,000.00 an acre and then at some point later the price was lowered to \$30,000.00 an acre with no resolution of Council.
- September 23, 2014 Realtor, responded to the Manager of Planning and Development that Swamp Mats were willing to pay \$5,500.00 per month, they would be responsible for the stripping of the top soil, bringing in gravel, approach, and the fence.
- September 23, 2014 Manager responded back to the Realtor regarding a few questions the Former CAO had and further clarification on lot pricing.
- After this point the Former CAO did not involve the Manager of Planning and Development with this matter.
- Spring of 2015, Former CAO informed Transportation Department that Horizon was interested in a lay down area in the Industrial park.
- Director of Engineering & Infrastructure met with North East District Manager (Horizon North) on site and they discussed the cost to improve the site to make it viable for lay down.
- The estimated cost given to Horizon was \$55,000.00 to \$75,000. At this time, the full scope of the work involved was unknown.
- Former CAO asked Director of Engineering & Infrastructure when public works could do the job. Director of Engineering & Infrastructure's response was that Public Works could start the job after the landfill project and the remediation at the Maykut gravel pit was completed.
- Half way thru the Maykut pit project, the Former CAO insisted that we start the Horizon Project. Operation Supervisor pulled the rock trucks out of the Maykut pit and directed staff to proceed with the Horizon site project. This was at the end of May.
- There were no funds budgeted in 2015 for this project. The Municipal Government Act, section 248(1) states: " A municipality may only make an expenditure that is
  - (a) Included in an operating budget, interim operating budget or capital budget or otherwise authorized by the council,
  - (b) For an emergency, or
  - (c) Legally required to be paid.

248(2) Each Council must establish procedures to authorize and verify expenditures that are not included in a budget.

- Policy 5.10 Purchasing Policy  
Item 6.0 Non-Budgeted Items states:  
Any expenditure of a non-budgeted amount of \$10,000 or greater will require the approval of Council.
- No motion of approval from Council was found.

- Former CAO indicated to the Operation Supervisor that he wanted all Public Works staff to be kept busy.
- Horizon was also left with the Impression that Westlock County had capacity in their work force to do the work.
- Public Works Operation Supervisor did obtain a purchase order number SMP-21104 from Horizon North for \$55,000.00.
- As the project progressed the Director of Engineering & Infrastructure informed Former CAO that the cost were escalating and the current cost was over \$100,000. The project was not near completion. Former CAO Informed Director of Engineering & Infrastructure that he had an open purchase order. There was no signed contract in place. There was no indication that the cost overruns were communicated to Horizon North. From this point onwards all communication was with Public Works Operation Supervisor and Former CAO.
- This project took approximately 6 to 8 weeks to complete.
- This resulted in putting smaller Westlock County jobs on hold or not completed in 2015.
- July 28, 2015 Motion #262/15 Council ratified the Lease Agreement with Horizon North.
- The Lease Agreement was not completed and signed by the Former CAO until September 9, 2015.
- The project was completed at the end of August.
- Close to completion, Councillor Primeau asked Director of Engineering & Infrastructure, during Council meeting, for the cost update for the Horizon Project. Director of Engineering & Infrastructure replied that he would gather the information and get the information back to council.
- Director of Engineering & Infrastructure went to Former CAO the next day with the information that Councillor Primeau had requested. Director of Engineering & Infrastructure informed Former CAO that he was ready to email the information to all of council and cc Former CAO. Former CAO instructed Director of Engineering & Infrastructure not to send the email and he would look after it.
- The next council meeting, Council Primeau asked again for the cost of the project. At this time, Director of Engineering & Infrastructure directed the question to Former CAO. The question was not answered.
- September 1<sup>st</sup> North East District Manager from Horizon ask Former CAO for the invoice for the dirt work for the \$55,000.00.
- September 25, 2015 at the end of the day, Former CAO asked a staff member to create an invoice to Horizon. There were discrepancies among different line items for the quantity of clay being supplied versus the amount being dried. There was another error around the quantity or unit price. Once the invoice was completed, two copies were given to Former CAO and one invoice was kept for filing in finance. No Backup was provided to Finance for their backup to the invoice. The staff member was going to the Post Office for the County mail and offered to take the registered mail. Former CAO declined the offer. When the staff member was leaving the post office, Former CAO arrived with the registered mail. This was just prior to the post office

closing at 5 p.m. Finance Management was not consulted or informed.

- October 23, 2015 The North East District Manager requested information from the Former CAO. The questions were:
  1. What has been happening with the bill for the lot work?
  2. What is the purchase price for the lot?
  3. Did you have a chance to look at the third party release for power so we can get a cost for putting it into the lot?
- October 23, 2015 Former CAO response to question 1 was as follows "After reviewing the matter with Public Works Staff, we feel that we have been extremely fair to Horizon North, as we have fulfilled the landlords work to your specific and continuous requests, and as agreed, at our cost (no profit); which in turn has provided you with prime and very competitive market pricing." No requests were found and upon confirmation with Horizon North, no requests were made.

Question 2: Former CAO response to lot pricing "As past Council's directive, the lots in the park are to be sold for \$30,000 per acre which would then be in the range of approximately \$250,000. The only motion found to date is June 24, 2008 indicated serviced lot prices be set for not less than \$35,000.00. However, in March 2013 an email was located instructed the Realtor to place a list value of \$30,000 per acre for available lots from the CAO at the time.
- November 1, 2015 further email were exchanged between the Former CAO and Swamp Mats regarding the disputed invoice and the third party release for power,,
- November 4, 2015 email to Former CAO from North East District Manager and discussion with General Manager of Horizon North "The problem that we have is that Horizon North approved the initial \$55,000 that was provided to us in a quote. Horizon North budgeted for this allotment. We didn't expect an invoice for \$190,000 + dollars. In your statement you said that you had to put in this extra work to 'meet your ongoing requests', but there was no other approved requests. I am very confused Former CAO on how we got from \$55,000 to \$190,000 without any written approval from North East District Manager or General Manager".
- November 19, 2015 Horizon North requested a bill be send to them for the \$55,000 and a bill for the 6 loads of gravel delivered to the yard. Also, a request to work something out regarding the invoice that was over and above the \$55,000 originally agreed upon. Again requesting about the third party power sign off form for the power.
- November 30<sup>th</sup> Meeting with Horizon. Former CAO and Horizon met to discuss the invoice.
- There was an earlier meeting with Former CAO, Operations Supervisor and Director of Transportation and Engineering regarding the site earlier in the year.
- December 3, 2015 North East District Manager followed up on the meeting on Monday November 30, 2015 to see if the Former CAO had come up with some numbers regarding the invoice.
- December 7, 2015 Former CAO response back to Horizon North is as follows: "after discussing the matter with you last week, I

am prepared to take the following to Council for their consideration and Municipal Affairs approval. Pending your concurrence and choice of direction....

1. Deduct \$9,063.16 admin fee.
  2. Accept a \$55,000 initial payment
  3. Recalculate our lease arrangement with Horizon North and in addition to the existing lease payment spread the balance of the adjusted lease, with declining principle balance interest(annualized) over the Duration of a three or five year lease; whichever Horizon North chooses.
    - a. 3 year lease - \$6,563.34/month
    - b. 5year lease - \$5,094.01
  4. Provide Horizon North with right of first refusal to purchase at current price structure."
- December 9, 2015 Former CAO came back to finance clerk and requested that the invoice be changed. The \$56,000 to supply 16000 m<sup>3</sup> of clay fill and the \$9,063.16 administration/management fee were removed. Two invoices were created. One with only the 16000 m<sup>3</sup> of clay fill for the amount of \$56,000. The other Invoice included the strip site, drying the clay, and gravel for the total amount of \$125,263.19. Finance Management was not informed or advised.
  - December 14, 2015 further discussion took place between the Former CAO and Horizon North regarding the interest rate. Quoting the former CAO "As a follow-up to our recent conversation, I am prepared to drop the interest rate to 3.5%; as I indicated that the MGA (Municipal Government Act) precludes the Municipality from having this perceived as a loan thereby acting as a Bank; due to such, we will reconfigure as an inducement, so not to breach the MGA. Please see the revised interest rate of 3.5%; Upon acceptance, I will forward to our solicitor so that he may prepare the new 3 year lease. I have also asked him to include the option to purchase at a predetermined price...As per past Council's directive, the lots in the park are to be sold for \$30,000 per acre..."
  - Municipal Government Act, section 264(1) A municipality may only lend money or guarantee the repayment of a loan if
    - (a) The loan or guarantee is made under subsection (2) or (3).
    - (b) The loan is made to one of its controlled corporations, or
    - (c) The guarantee is made in respect of a loan between a lender and one of its controlled corporations.

264(2) A municipality may

- (a) lend money to a non—profit organization, or
- (b) guarantee the repayment of a loan between a lender and a non- profit organization

If the council considers that the money loaned or money obtained under the loan that is guaranteed will be used for a purpose that will benefit the municipality.

**Loan Bylaws**

265(1) A municipality may only lend money to a non-profit organization, one of its controlled corporations or the designated seller within the meaning of section 30(1) of the *Gas Distribution*

Act, SA 1994 cG-1.5 as it read on June 30, 1998, if the loan is authorized by bylaw.

- 265(2) The bylaw authorizing the loan must set out
  - (a) The amount of money to be loaned and, in general terms, the purpose for which the money that is loaned is to be used;
  - (b) The minimum rate of interest, the term and the terms of repayment of the loan;
  - (c) The source or sources of the money to be loaned
- 265(3) the bylaw that authorizes the loan must be advertised.
- Around the 14<sup>th</sup> of December, the Former CAO informed the staff member that Horizon will be paying back the invoice over 3 ½ years with an interest rate of 3.5%. No back up was received.
- December 16, 2015 Motion 442/15 "Council advice Administration to enter into a three year Lease Agreement in Principal with Horizon North with final legal documentation to be brought to Council, with the amount of \$56,000 being paid upfront and the final balance plus G.S.T. and 3.5% interest over the next 3 years. The final payment will be made in December of 2018 or the balance may be paid in full before the end of December, 2018."
- No documents or backup were provided to Finance. Management was not consulted.
- January 11, 2016 Horizon inquired about the new lease agreement. Former CAO response was "spoke with the lawyer today, awaiting documents, will forward upon receipt to both Council and yourselves for perusal and sign off."
- January 27, 2016 Former CAO requesting Horizon for the new payment of \$6,170.47 for January's payment and to get back to him with the lease sign-off.
- January 27, 2016 Horizon response to Former CAO request. "We don't have any information on the \$6,170.47 amount that you have requested. Can you let us know what that is pertaining too?"
- January 27, 2016 Former CAO response "Starting January 1, 2016 the New Lease amount was adjusted to \$6,170.47 per month. This amount is inclusive of capital works that were performed by the County and previously forwarded; we collective (County & Horizon) have agreed to take payment in the lease amount over 36 months (January 1, 2016 to December 31, 2018) which was added to the original \$2,500.00 lease for a total lease payment of \$6,170.47."(sic)
- February 9, 2016 Former CAO response to Horizon, "Would you kindly indicate when the revised lease document will be signed off; I would like to get this file closed before I complete my contract. As I indicated to you previously this has not been an easy sell to all of Council. And there are a couple who are trying to raise additional issues. The lot value has been fixed at \$30,000.00 per acre in the lease; which is below current value. The assessor has now valued the lot at \$484,110. So to protect all interests involved; the sooner this deal with the better." (sic) The actual assessment for the land in 2016 is valued at \$263,670.00.

- March 18, 2016 Former CAO enquiring as to the status of the attached lease document that needs to be signed off.
- March 18, 2016 Horizon response that they would have it signed off April 4<sup>th</sup>.
- March 24<sup>th</sup> 2016 Former CAO's last day of work.

#### Conversation after former CAO no longer was employed.

- April 4<sup>th</sup>, 2016 Text to Horizon from Former CAO "Just a quick check to see if the Board approved the lease. Needs to go to council for ratification. If you could advise that would be great so I can advise the Reeve.
- April 4, 2016 Horizon response indicated they were meeting the next day and as soon as it was done it would be send to the Former CAO.
- April 4, 2016 Horizon inquired about the drainage issue on the site.
- April 4, 2016 Former CAO's response " i will speak to Reeve and get back to you as well"
- April 8, 2016 Former CAO again contacted Horizon "Just a quick check to see if you have an update on the lease."

#### Investigation

- Upon doing further investigation into the Horizon file, it was discovered that the complete file is missing from the Westlock County offices.
- The auditors had copies of the work orders.
- We completed a full analysis of what the costs should have been from the work orders.
- Upon further investigation, we discovered that all of the original work orders were sent to Horizon with the first invoice in September with a letter dated September 25, 2012.
- We did a comparison with the copies from the Auditor to the original from Horizon. These work orders matched what the Auditor had.
- Upon further analysis, we discovered that not all cost were included from these work orders.
- An additional memo was located in the office with cost pertaining to the installation of the approach and road maintenance.

#### Accounting for the Invoices

- All expenses need to be charged to " Land Held for Resale", not as a profit as the Former CAO instructed.
- Invoice # 664 is reversed and the \$125,263.19 is charged as an expense to "Land held for Resale"
- Invoice #663 expenses of \$56,000 have been charged to "Land Held for Resale".
- Remaining expenses are charged to "Land Held for Resale".
- Total expenses found to date is \$390,570.29.
- This amount of improvement cost exceed the resale value of the lots.
- International Financial Reporting Standards (IFRS) Standard 2 *Inventories* require us to write down inventory to net realisable value.
- This write down amount will be reflected in our 2015 Financial Statements


- Original development cost per acre is \$10,952.84
- Total cost including the original cost for the 8.55 acres is estimated at \$469,353.30.
- Total write down required is approximately \$205,683.30.

**Follow-up**

- Motion 442/15 needs to be rescinded.  
Motion 442/15 states: Councillor Savage moved that Council advise Administration to enter into a three year term Lease Agreement in Principal with Horizon North with final legal documentation to be brought back to Council, with the amount of \$56,000 being paid upfront and the final balance plus G.S.T. and 3.5% interest over the next 3 years. The final payment will be made in December of 2018 or the balance may be paid in full before the end of December, 2018.
- A motion from Councillor to direct Administration to negotiate a new lease agreement with Horizon North.
- Administration brings new lease agreement back to Council for ratification.

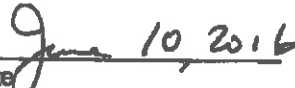
Endorsed by:

  
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Sue Oberg  
Assistant Chief Administrative Officer/  
Chief Financial Officer

  
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Date

Endorsed by:

  
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Duane Coleman  
Chief Administrative Officer

  
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Date