

## 1971 Albert Street - Property Tax Penalties

<b>Date</b>	December 9, 2020
<b>To</b>	Executive Committee
<b>From</b>	Financial Strategy & Sustainability
<b>Service Area</b>	Assessment & Property Revenue Services
<b>Item No.</b>	EX20-41

### RECOMMENDATION

---

The Executive Committee recommends that City Council:

1. Deny the request by Smith Street Lands Ltd. for a partial property tax reduction on 1971 Albert Street.
2. Approve these recommendations at its meeting on December 16, 2020.

### ISSUE

---

On November 30, 2020 the City received a request for a partial property tax reduction (Appendix A) on 1971 Albert Street by Smith Street Lands Ltd. The request was to eliminate property tax penalties in the amount of \$692,562.60 that have been accumulating since July 2018. The requestor advised that without an agreement to eliminate these penalties, the sale of this property will not close on January 18, 2021.

### IMPACTS

---

#### Financial Impact

Under the recommended option there are no financial implications.

By law all charges and penalties applied to a property tax account become part of the outstanding property taxes. The outstanding balance for 1971 Albert St as of December 1, 2020, and the projected balance as of January 1, 2021 may be broke down as follows:

	As of Dec 1, 2020	As of Jan 18,2021
Levies (2018, 2019 & 2020)	\$134,877.72	\$134,877.72
Penalty on Levies	\$45,838.24	\$49,000.77
Backfill costs	\$2,124,295.78	\$2,124,295.78
Penalty on Backfill Costs	\$595,006.65	\$642,594.65
Tax Enforcement Charges	1,012.32	\$1,029.83
Total Outstanding Tax	\$2,901,030.71	\$2,951,798.75

The 2021 preliminary assessed value is \$4,329,900.

## OTHER OPTIONS

---

Option 1: Approve a conditional grant equivalent to a partial property tax reduction of \$600,000 payable upon the owner receiving an Occupancy Permit (or substantial completion as otherwise determined by the City) for a permanent structure on the property.

Under this option, the following conditions that must be met by the owner to be eligible for the grant are:

- 1) The property taxes on the account must be paid in full upon the closing of the sale by January 2021 (estimated at \$2,951,798.75).
- 2) Property taxes must remain in good standing during the period the seller is eligible to receive the conditional grant.
- 3) The grant would be paid upon the owner receiving an Occupancy Permit (or substantial completion as otherwise determined by the City) for a permanent structure meeting all land use considerations as specified by the *Regina Zoning Bylaw 2019* and the *Regina Downtown Neighbourhood Plan* excluding any permits associated with the current Contract Zone for a Temporary Parking Lot.
- 4) If condition #3 is not achieved by December 31, 2024 (four years), the conditional grant expires, unless otherwise extended by City Council.

In determining the proposed amount of the conditional grant under this option, Administration considered:

- The portion of the taxes owing related to penalties on the 2018, 2019, and 2020 levies that are outstanding (estimated to be \$49,000.77 by January 2021). As there are a number of properties annually in the City who do not pay their levies by the due date, including these penalties in the determination of the grant has the potential of setting too broad of a precedent moving forward. As a result, Administration did not consider this amount when determining the amount of a possible conditional grant.
- The portion of the taxes owing related to penalties owing related to the backfill costs (estimated to be \$642,594.65 by January 2021). The amount of the cost to backfill and the unique nature and circumstances under which the City was required to take this action, limit any potential precedent that might be set by factoring the amount of penalties owing related to the costs of the backfill.
- Revenue lost by using funds available for investment to fund the cost of backfilling. Lost investment revenue is estimated at approximately \$42,600.

As a result, if this option is selected, the amount of the conditional grant is proposed to be \$600,000 which is approximately equal to the amount of outstanding penalties incurred on the property related to the backfill charges (\$642,594.65), less the estimated loss of interest revenue (\$42,600).

## **COMMUNICATIONS**

---

The property owner, Westgate Properties Ltd. and Smith Street Lands Ltd will be informed of this report.

## **DISCUSSION**

---

The penalties which Smith Street Lands requests be eliminated arise from non-payment of the 2018, 2019 and 2020 annual tax levies by the current property owner (Westgate Properties Inc.) and the costs incurred by the City to remediate the property to protect public safety after Westgate failed to conduct the mandated work. The levies, costs and penalties are all, by law, property taxes.

Penalties on the outstanding balances on a property tax account are applied each month. Penalty rates (which are established by *The Regina Administration Bylaw* and which apply to all tax accounts in the City) are 1.75% per month on arrears and 1.50% on current charges. The total balance on this account at December 1, 2020 is \$2,901,030.71. This balance increases monthly as penalties and new charges are added and is projected to be \$2,951,798.75 in January 2021.

The property is being sold by a Court order issued in a foreclosure action commenced by KEB Hana Bank against the property. On May 7, 2020, the Court confirmed a sale of the property to Magnetic Capital Group Inc. The purchase price established by the agreement for sale and the Court order is that Magnetic will pay to the City all property taxes, arrears and penalties on the tax account and pay the fixed sum of \$500,000 to KEB Hana Bank. By both order of the Court, and by operation of law, the property taxes owed to the City are the first charge against the property. Sale proceeds may only be disbursed to KEB Hana Bank once the tax account is paid.

The sale to Magnetic was anticipated to close within three months of the Court order, which would have been August 7, 2020. The City is now advised that Smith Street Lands, the requester, and Magnetic have recently entered into a partnership that will see the property at 1971 Albert Street owned by Smith Street Lands if the court-confirmed sale to Magnetic closes. Smith Street advises the sale is presently contemplated to close January 18, 2021. The City is not a party to the agreement for sale of the property and the City has no control over whether or when the sale closes, the arrangement between Magnetic and Smith Street cannot alter the terms of the sale established by the Court order.

The City commenced tax enforcement action against the property in accordance with the procedures established by *The Tax Enforcement Act* in February 2019. Administration is currently preparing the next step in the tax enforcement process which is to file a request for

title to the property. Given the legislative requirements of the tax enforcement process and the requirements of the Provincial Mediation Board, the earliest the City could acquire title to the property through the process of *The Tax Enforcement Act* is estimated to be June 2021.

Council has authority under s. 244 of *The Cities Act* to reduce property taxes or defer their collection, but only in the circumstances described in s. 244(2) of *The Cities Act*.

“(2) A council may act pursuant to subsection (1) if:

- (a) there has been a change in the property, to the extent that the council considers it inappropriate to collect the whole or a part of the taxes;
- (b) a lease, license, permit or contract has expired or been terminated with respect to property that is exempt from taxation;
- (c) in the council’s opinion, the taxes owing are uncollectable;
- (d) in the council’s opinion, the taxes owing have become uncollectable due to unforeseen hardship to the taxpayer; or
- (e) in the council’s opinion, the compromise or abatement:
  - (i) is in the best interests of the community; and
  - (ii) is the result of a policy or program passed by bylaw or resolution for which public notice has been given in accordance with section 102.”

The onus is on Smith Street Lands to show how the property falls into one of the scenarios set out in subsection 244(2) of *The Cities Act* above.

Smith Street Lands advises that the reason for the requested elimination of the penalties on the tax account back to July 2018 is that, by the time the sale is anticipated to close in January 2021, the tax account balance combined with the amounts the purchaser has agreed to pay KEB Hana Bank as per the court order, will result in a total purchase price that exceeds what Smith Street Lands believes the fair market value of the land to be. Smith Street Lands proposes that the City should grant the tax reduction because the penalties that have accrued on the account since the property first went into arrears in 2018 are not “out-of-pocket expenses” for the City. In their submission, Smith Street Lands states that if Council does not grant the requested tax reduction, the sale of the property will not proceed.

Administration respectfully suggests that the requester has not identified a basis for its requested tax reduction that meets any of the criteria in s. 244(2) of *The Cities Act*. The following paragraphs outline the requirements and criteria for the clauses in 244 of *The Cities Act*.

**Subsection 244(2)(a)**

Subsection 244(2)(a) of *The Cities Act* deals with changes to the property to the extent that the "council considers it inappropriate to collect the whole or part of the taxes." There have been physical condition changes to the land because of the remediation work on the land that was completed in November of 2019 and there will be an ownership change if the sale goes through. The balance owing on the tax account and the rates of penalties accruing on

the balance was information known to Smith Street Lands when they considered purchase of the land. Given this, there has been no change to the land that Smith Street Lands was not aware of that would seem to engage s. 244(2)(a) of *The Cities Act*.

**Subsection 244(2)(b)**

Subsection 244(2)(b) of *The Cities Act* does not apply because the property is not exempt from taxation.

**Subsection 244(2)(c)**

As to s. 244(2)(c) of *The Cities Act*, it does not appear to Administration that the taxes are uncollectable. By both operation of law (s. 245 and 284 of *The Cities Act*) and by the terms of the Court order which confirms sale of the land to Magnetic Capital, the taxes owing to the City on the property are the first charge on the land. The City does not have nor is it in receipt of an independent appraisal of the fair market value of the land. However, the estimated 2021 assessed value of the land, which is typically very close to or lower than fair market value, is \$4,329,900. The purchase price for the property specified by the Court order is the outstanding balance of the property tax account (currently \$2,901,030.71) plus \$500,000 for KEB Hana Bank, which would result in a purchase price of \$3,401,030.71 if the sale closed in December 2020, a price below what the City estimates to be the fair market value of the property. As of January, 2021, the tax account is estimated to increase to \$2,951,798.75, which, combined with the \$500,000 that must be paid to KEB Hana Bank under the Court order, would result in a purchase price of \$3,451,798.75 as of January 18, 2021 – a price that is still below the estimated fair market value of the property.

Smith Street Lands does not say that it is financially incapable of paying the amount outlined as the purchase price in the Court order.

As the creditor with the first charge against the land, the City is entitled to have the tax account paid in full from the sale. If the sale proceeds are insufficient to pay the property tax account, then the sale can still close (though no funds may be paid to KEB Hana Bank if taxes are not paid in full), but the tax lien will continue to run with the land and the City's current enforcement action will continue until the taxes are paid in full or the City takes title to the land.

If the sale of the land to Magnetic Capital does not close, the City remains entitled to continue with the tax enforcement process and request title to the land. If the City were to receive title to the property through the tax enforcement process, the Real Estate Branch would tender the property for sale as required by the legislation. If an offer is received for greater than the amount owing against the property, the City may accept the offer and recoup the costs against the property. Funds received in excess of the amount required to service the debt of the property would be provided to the previous owner or the owner's creditors, if ordered by the Provincial Mediation Board. If there were no offers for at least the amount owing against the property, the City may choose not to sell the property. The City may then hold the property for one year after which time the City may utilize the property as it sees fit for municipal purposes or offer it for sale on the open market with no obligations to the previous owner.

As such, whether the taxes on this property are collectable is not determined by whether the sale to Magnetic/Smith Street closes.

**Subsection 244(2)(d)**

As to s. 244(2)(d) of *The Cities Act*, Smith Street has not claimed that financial hardship prevents them from paying the taxes.

**Subsection 244(2)(e)**

As to s. 244(2)(e) of *The Cities Act*, there is no policy or program passed by bylaw or resolution for which public notice has been given in accordance with section 102 of *The Cities Act* which would apply to this request, and as such that criteria does not apply to authorize the requested tax reduction.

Smith Street Lands' request for a reduction in the tax account does not appear to meet any of the criteria established by s. 244(2) of *The Cities Act* which allow for such a request to be granted.

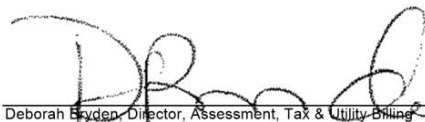
**DECISION HISTORY**

---

The recommendations contained in this report require City Council approval.

Respectfully Submitted,

Respectfully Submitted,



Deborah Hayden, Director, Assessment, Tax & Utility Billing

12/8/2020



Barry Lacey, Exec. Director, Financial Strategy & Sustainability

12/8/2020

Prepared by: Tony Petrulias, Manager, Property Tax & Utility Billing

**ATTACHMENTS**

Appendix A - 1971 Albert St