



Item
Meeting 2011 Sep 19

COUNCIL REPORT

TO: CITY MANAGER **DATE:** 2011 September 14

FROM: DIRECTOR FINANCE **FILE:** 7810-09

SUBJECT: 2010 TAX SALE CORRECTION

PURPOSE: To recommend that Council pass a resolution pursuant to Section 423(2) of the Local Government Act, with respect to the 2010 tax sale of the property at 7151 Maureen Crescent in the City of Burnaby.

RECOMMENDATION:

That Council pass the following resolution:

Whereas the following property (the Land) was sold at a tax sale conducted by the collector for the City on 2010 September 27 under Section 403 of the Local Government Act:

7151 Maureen Crescent
Parcel identification 002-706-024
Roll Number 6923-7151-0000
Lot 74, District Lot 207, Group 1, New Westminster District Plan 27610

And whereas Council for the City has found that there was a manifest error in the conduct of the tax sale, in that notice of the tax sale was not given to the owner of the Land in accordance with the requirements of the Local Government Act;

Therefore be it resolved pursuant to Section 423(2) of the Local Government Act that:

1. The tax sale of the Land be set aside on the ground that there was a manifest error in the giving of notice of the tax sale to the owner of the Land;
2. The purchase price paid by the purchaser at the tax sale be returned together with interest at the rate prescribed in Section 423(3) of the Local Government Act; and
3. The taxes that were delinquent on the date of the tax sale be restored to the tax roll as delinquent.

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SUMMARY

Difficulties in confirming legal ownership of the property, plus an administrative error in completion of the 2010 tax sale (as per the requirements of the Sections 403 – 427 of the Local Government Act), has impacted upon the procedural fairness of the 2010 tax sale of 7151 Maureen Crescent.

Section 423(2) of the Local Government Act allows for the sale to be set aside during the redemption period by resolution of City Council “if the council finds a manifest error in the tax sale”. It is considered appropriate that in light of the errors set out in this report, and in interest of ensuring due process and procedural fairness, that the City should set aside the tax sale of 7151 Maureen Crescent.

BACKGROUND

Part 1: Legal Ownership

The 2010 tax sale took place on 2010 September 27. Property owners have one year from the date of the tax sale in order to pay all taxes owed in order to redeem the property, and prevent title transfer to the purchaser.

Since completion of the tax sale the City has experienced difficulty in contacting the legal owner of 7151 Maureen Crescent. Original information supplied by the Land Title and Survey Authority (LTSA) listed the owner of this property as one Pauline Yanchuck. The person residing at the premises has informed the City that the registered owner (her mother) is deceased; however, a will or other supporting information has not been provided to verify if the current resident is the legal owner.

Correspondence with the LTSA has also established that a duplicate indefeasible title is also held against this property. This duplicate title currently hinders the current resident’s ability to transfer title to her name. Attempts are continuing through various legal means to find all relevant information in order to assist with the timely redemption of the property.

The City has been informed by the current resident (Faith Yanchuck) that the will has been probated, and that she is seeking a change of legal title at the nearest opportunity. The City has however been unable to confirm that these details are correct.

Part 2: Tax Sale Notification

Section 414 of the Local Government Act requires that, “Not later than 3 months after the sale of property at the tax sale, the collector must give written notice of the sale and of the day the redemption period ends, either by serving the notice or by sending it by **registered mail**, to **persons registered in the land title office**”. If neither of these methods are successful, the municipality must apply to court for permission to serve the notice in another way, referred to as a “substituted service”. In all cases, the owner and charge holder should receive notice within 3 months of the tax sale.

Upon reviewing tax sale procedures in August 2011, it was identified by Tax and the Legal Department that Express Mail was used to notify the property owners and charge holders; this method of service does not meet the requirements of the legislation.

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Part 3: Tax Sale Information

7151 Maureen Crescent
 Assessed value - \$780,000
 Sold at tax sale for - \$ 80,000

Part 4: Upset and Redemption Values

The upset price is calculated by adding together the outstanding delinquent tax plus interest, the outstanding arrears plus interest, the outstanding current plus penalty, 5% of the sum of the foregoing and land title fees. Redemption value is the sum of the upset price, less a credit for the LTSA fee, plus interest on the tax sale based on the property not being redeemed until 2011 September 27. Should a property be redeemed prior to this date, then the interest element owed will be reduced.

7151 Maureen Crescent

Upset price:

2010 Tax levy	\$ 3,265.84
Utility	\$ 859.45
Arrears & interest	\$ 4,373.69
Delinquents & interest	\$ 3,955.86
Penalty	\$ 206.26
Penalty	\$ 216.58
HOG Claimed	\$ 0.00
Tax sale costs	\$ 643.88
LTO fee	\$ 60.00
	<u>\$ 13,581.56</u>

Redemption value:

Upset price	\$ 13,581.56
Interest on Tax Sale	\$ 4,643.84
Credit for LTO fee	\$ -20.00
Total redemption value	<u>\$ 18,205.40</u>

CONCLUSION

The City is experiencing difficulties in identification of the legal owner of the subject property. Due to the error in the giving of notice; the City should exercise its right to set aside the tax sale. Once the one year redemption period has expired, the City no longer has the authority to set aside the tax sale. It is therefore recommended that Council adopt the recommendation contained in this report at its meeting on 2011 September 19.

Denise Jorgenson
 DIRECTOR FINANCE

Copied to: City Solicitor
 City Clerk