



Corporate Report

NO: R257

COUNCIL DATE: December 4, 2006

REGULAR COUNCIL

TO: Mayor & Council DATE: November 29, 2006
FROM: General Manager, Finance & Technology FILE: 1970-20
SUBJECT: Tax Sale re: 18566 80 Ave (Folio 8213-03004-7)

RECOMMENDATION

That Council:

- a) Make a finding pursuant to Section 423(2) of the Local Government Act, R.S.B.C 1996,c. as amended (the "Local Government Act"), that there was a manifest error in the tax sale of 18566 – 80 Avenue;
- b) Order that the tax sale of 18566 - 80 Avenue be set aside pursuant to Section 423(2) of the Local Government Act, and
- c) Order the outstanding taxes be restored as they were before the sale and the outstanding taxes be subject to interest pursuant to Section 423 (2) of the Local Government Act.

DISCUSSION

Section 403 of the Local Government Act, requires the City to offer for sale, by public auction, each parcel of real property on which taxes are delinquent. On September 25, 2006 the subject property 18566 80 Ave., (the "Property") was included in the Annual City Tax Sale and was a private purchase.

During the redemption period it came to the attention of the Property Tax Section that a registered Court Order was lodged against the property. This prohibits any sale of the Property without the consent of the Public Trustee or further order of the Court.

The registered Court Order states that:

THIS COURT FURTHER ORDERS that all persons are hereby prohibited from disposing of, or otherwise dealing with any Interest in the Property, In any manner whatsoever, except as provided in this order, or as may be further ordered by this Court.

Section 423 of the Local Government Act allows the Council of a municipality to set aside tax sales where a manifest error in the tax sale is discovered:

- (2) *During the period allowed for redemption, if the council finds a manifest error in the tax sale or in the proceedings before the sale, it may order that:*
 - (a) *the purchase price be returned to the purchaser together with interest at the rate prescribed under subsection (3), and*
 - (b) *the taxes be dealt with as the circumstances require, either*
 - (i) *by restoring the taxes as they were before the sale, or*
 - (ii) *otherwise as directed by the council.*
- (3) *The Lieutenant Governor in Council may prescribe a rate of interest for the purposes of subsection (2)(a).*

In light of the Court Order prohibiting sale, a manifest error has occurred in the sale of the Property. Therefore, pursuant to Section 423(2) of the Local Government Act, it is recommended that Council order that the purchase price be returned to the purchaser together with interest at the prescribed rate. In this case the amount of interest is \$2,888.63. It is further recommended that Council order the outstanding taxes be restored as they were before the sale with the required interest.

Legal Services has reviewed this report and their comments have been incorporated. The Property Tax Section will also seek the assistance of Legal Services in order to have the existing Court Order registered on title varied to allow for future tax sales.

CONCLUSION

The Property should not have been included in the 2006 Annual Tax Sale due to a Court Order registered on the title, which prevents the tax sale from completing. As the decision to proceed with the tax sale constitutes a manifest error, the tax sale should be set aside. It is recommended therefore, that Council order that the tax sale of 18566 80 Avenue, be set aside and that the purchase price and interest be returned to the purchaser. It is also recommended that Council order the Property Tax Section to reinstate the outstanding taxes with interest and pursue collection with the assistance of Legal Services. Legal Services has reviewed this report and their comments have been incorporated.

Vivienne Wilke, CGA,
General Manager,
Finance & Technology