



REPORT

Report Date: October 27, 2020
Contact: Marina Marzin
Contact No.: 604.873.7730
RTS No.: 14155
VanRIMS No.: 08-2000-20
Meeting Date: November 4, 2020

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TO: Standing Committee on City Finance and Services

FROM: Patrice Impey, General Manager - Finance, Risk and Supply Chain Management

SUBJECT: Property Tax Sale Manifest Error - 3469 Arbutus Street

RECOMMENDATION

THAT Council cancel the tax sale of a property with the street address 3469 Arbutus Street, Vancouver, BC and legally described as:

Parcel Identifier: 011-259-884

Legal Description: LOT 12 BLOCK 530 DISTRICT LOT 526 PLAN 4998

Due to a manifest error in the 2019 Property Tax Sale, and approve the refund to the tax sale purchaser of the upset price plus six percent interest in accordance with Section 445 of the *Vancouver Charter*.

REPORT SUMMARY

Following a tax sale, there is a one-year period when the owner of a property can redeem the taxes owing and the tax sale purchaser will not obtain title to the property. During the one-year redemption period, if the City becomes aware that a manifest error has occurred in the tax sale or the proceedings, section 445 of the *Vancouver Charter* authorizes Council to declare a manifest error by resolution, and provide for the upset price to be returned to the purchaser with interest at six percent. This process cancels the tax sale of the property.

The report seeks Council approval to cancel the tax sale of a property and to refund to the tax sale purchaser the upset price paid plus interest in accordance to Section 445 of the *Vancouver Charter*, due to a manifest error in the 2019 Property Tax Sale.

COUNCIL AUTHORITY/PREVIOUS DECISIONS

There is no applicable Council Authority or previous decisions relevant to this report.

CITY MANAGER'S/GENERAL MANAGER'S COMMENTS

The City Manager recommends approval of the foregoing.

REPORT**Background/Context**

The *Vancouver Charter* requires that real properties with unpaid property taxes delinquent for two years are offered for sale by public auction each year.

Successful purchasers of property are required to pay the upset price, which is the sum of the delinquent taxes, penalty interest, and registration charges payable to the Land Title Office.

The City last conducted its annual tax sale on November 13, 2019. The tax sale included a property located at 3469 Arbutus Street, Vancouver, BC (the "Property").

The owner of the Property (the "Owner") inherited the Property in 1985, and it is mortgage free. The assessed value of the Property in 2019 was \$2,154,700.00.

The tax sale purchaser bid the minimum upset price, \$4,373.74, plus \$1,400,000.00.

The Owner has not paid any City taxes on the Property since 2016. The Property appears to be abandoned. The Owner does not reside at the Property. The City has attempted to deliver various notices and messages to the Owner, both leading up to and after the tax sale in November 2019, but has no confirmation that it has succeeded.

The City has had no confirmed communication with the Owner in 4 years.

The Owner is unresponsive to other tax matters as well. The Property has been subject to the City's Empty Homes Tax because of a failure to file a declaration. A lien on the title shows the Property has also been subject to BC's Speculation and Vacancy Tax.

It is not unusual for a bank or mortgage holder to pay the property taxes owing during the redemption period, but because there is no mortgage on the Property, that will not happen here.

The Owner filed a Notice of Civil Claim in BC Supreme Court on January 29, 2015. The claim was related to allegations of a bus accident. The claim by the Owner included allegations that she had suffered "acute brain injury with a small side brain hemorrhage".

The lawyer who represented the Owner in the personal injury claim told City staff that he has concerns regarding the Owner's capacity.

Staff is recommending that Council make the declaration of manifest error because staff has no confirmation that the Owner received any Tax Notices or notices of the tax sale leading up to the tax sale, and staff consider there to be reasonable concerns about the mental competence of the Owner, given all the circumstances. Any declaration of manifest error must be based on errors arising up to and including the sale of the Property, but the Courts have confirmed that issues of mental competence can void a tax sale.

The City has notified the tax sale purchaser of this proposed Council resolution.

Financial

The City is required to return the upset price, plus six percent interest. Interest for one year totals \$262.42 and funding will be provided from the 2019 operating budget.

CONCLUSION

It is recommended that Council declare a manifest error in relation to the Property, cancelling the tax sale. If Council makes the declaration, it is required to refund the upset price with interest of six percent to the purchaser.

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Appendix A – Section 445 of the Vancouver Charter

Section 445 of the *Vancouver Charter* reads:

Cancellation of sale for manifest error

445. (1) If, during the period of redemption, the Council is satisfied that a manifest error has taken place in the sale or in the proceedings leading to the sale, the Council may, by resolution and after giving notice to the purchaser, cancel the sale to that purchaser.

(2) If a sale is cancelled under subsection (1),

(a) the city shall return to the purchaser the upset price together with interest at the rate of 6% per year, and

(b) the taxes, as they appeared on the real-property tax roll before the sale, shall be restored to the roll as delinquent taxes.