

LATE HANDOUT ATTACHMENT
#2 TO REGULAR COUNCIL
MINUTES DEC. 2, 2014



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November 28, 2014

Our File: 56642-1
Your File:

Town of Hinton
2nd Floor, 131 Civic Centre Road
Hinton AB T7V 2E5

Attention: Stacey Stahl

Dear Sir/Madam:

Re: Tax Roll #91200400 - 5;25;051;24;NE

Thank you for your letter dated November 24, 2014. The purpose of this letter is to provide additional information to the Hinton Town Council in its consideration of our request and pursuant to their authority pursuant to s. 347(1) of the *Municipal Government Act*.

As we have previously advised, we act on behalf of J. McMillan Equities Ltd. ("McMillan"). We would submit the following background information for your consideration:

- 1) McMillan is a family holding company for a physician and his spouse, including as part of their family's estate planning, the McMillan Family Trust as a shareholder. McMillan is not routinely in the business of lending money. It looks for opportunities to make investments which will result in benefit to the McMillan Family Trust.
- 2) I have been advised by Ms. McMillan, that investments which are made by McMillan are made only with individuals with whom they have a personal connection or longstanding relationship. In this case, the principal of one of the former registered owners, River Valley Home Sales Ltd., Mr. Berget was an acquaintance and someone with whom the McMillan family was familiar.
- 3) In November, 2006 McMillan agreed to lend to Mr. Berget's company the sum of \$785,000.00. This was secured by a mortgage registered against the title to the lands. Unfortunately, the mortgagor went into default in the payment of the monies due and owing to McMillan. Our client was approached and asked to forbear to sue with respect to the mortgage in the hopes that an additional development could be accomplished or a sale made which would see our client paid. Unfortunately that never transpired.



- 4) After waiting for some significant time, to see if another opportunity would arise, our clients were advised that in fact there didn't seem to be any hope for further development of these lands by the mortgagor, given that at that time there were other parties claiming an interest in the land including Revenue Canada.
- 5) During all of this time, our clients were not aware that the property taxes were in arrears.
- 6) It was at this point that they sought legal advice and a foreclosure action was commenced. The Statement of Claim was filed in April 2013 and the foreclosure proceeded to an eventual sale to McMillan which Order was registered on September 30, 2014. Our client was aware from the inception of the action that the taxes were then in arrears and requested the cooperation of the Town of Hinton which was provided, to be patient so that our client could continue to enforce its remedies with respect to the land. There were some issues with respect to enforcement of the mortgage, but these were eventually overcome, and our client was appreciative of the position taken by the Town.
- 7) The property taxes with respect to this property have, pursuant to the statement that we received dated October 22, 2014, been outstanding since 2007. It would appear that no payments were made by the previous owner(s) from 2007 to date. In 2009 the statement shows "tax recovery listing" charges, and a tax notification was registered in 2009. In 2011 a further tax notification was registered but no further steps were taken and no payments were made. Had the Town of Hinton proceeded with respect to a tax sale, our clients would have become aware of the seriousness of the arrears well in advance of 2013. Having said that clearly the Town of Hinton agreed not to take any further steps at our request from the time of our involvement in 2013.
- 8) Our client advises they have never received any notice as contemplated by the tax sale process pursuant to the *Municipal Government Act* relating to the tax notification in either 2009 or 2011 which process appears to be mandatory.
- 9) Our client has not yet assessed fully its losses with respect to this matter. That will not be known until such time as the property is sold, but it has suffered a loss.
- 10) The Hinton Town Council has the authority to cancel or reduce tax arrears where the "Council considers it equitable to do so".

Our position is that in these circumstances, it is fair and equitable for the Council to consider a reduction in the penalties that were imposed between 2007 and 2013. Our client has agreed to accept responsibility with respect to penalties from the commencement of their action and their knowledge of the tax arrears and of course for all arrears of actual taxes. The parties that were in default with respect to their obligations were Aacropolis Homes Ltd. and River Valley Home Sales Ltd. Our client, in enforcing its remedies and acknowledging the responsibility that they took on in 2013



with respect to the arrears of taxes, is requesting some consideration by the Town Council in a reduction of the penalties that have been imposed. Their loss, if they are obligated to pay the entire amount, will be increased significantly.

Our proposal to the Town in our letter of October 24, 2014 was that our client pay the actual taxes owing to date together with all penalties incurred after the 2013 tax levy which by our calculation would result in a total payment of \$67,784.48. In the context of making that offer, our client is in fact effectively paying interest on previously imposed penalties, but they recognize that from the time that they knew the extent of the arrears, payment could have been made.

While we appreciate the indulgence of the Town during the period of time the foreclosure was ongoing, and accept full responsibility for that period of time, we would also suggest that the Town waited for a significant period of time between 2007 and 2013 in order to pursue its remedies and in our view, that also should be taken into consideration.

We thank you for your consideration of these matters and look forward to hearing from you.

Yours truly,

FIELD LLP


Jennifer J. Oakes, QC

JJO/tn

cc: Dr. & Mrs. McMillan

