



CORPORATE SERVICES *Staff Report*

REPORT NO: COR-2024-10

TO: Council

SUBMITTED BY: Dan Elliott, Interim Treasurer, Chief Financial Officer

PREPARED BY: Dan Elliott, Interim Treasurer, Chief Financial Officer

REVIEWED BY: Sharon Chambers, CAO

DATE: February 26, 2024

SUBJECT: Pending Sale of Private Property for Non-Payment of Property Taxes – Process to Date

RECOMMENDATION:

THAT Report COR-2024-10 be received for information only.

SUMMARY:

The Township of Wilmot has commenced the required process to sell a property for non-payment of property taxes according to the rules set out in the Municipal Act for such sales.

The purpose of this report is to inform Council and the public of the process requirements and the additional steps taken by staff to ensure the owner has had every reasonable opportunity to become aware of the process and of the consequences of not resolving the issue. This report, and any discussions that may ensue will not identify the subject property or the owner(s).

BACKGROUND:

The Township levies taxes on behalf of the Region, the Province for education, and ourselves. Once the billings are issued, the province and the Region are paid their share of the levy,

whether the property accounts have been paid or not. Accordingly, the Township must carry all unpaid amounts, while retaining fully all penalties and interest charges on such accounts. The Township relies on two tools to collect unpaid property taxes: monthly interest charges tougher with periodic reminder notices, and awareness or threat of loss of the property, as the Township has a clear right to sell property using the Tax Sales provisions of the Municipal Act.

At the time of writing, the Township has a single parcel of land for which property taxes have not been paid, against which the Tax Sales process was initiated. The process formally commenced last spring, and if not paid prior, will be sold by public tender on March 27, 2024. Public advertising for the sale is expected to commence shortly prior to or on February 28th, including in a local newspaper.

REPORT:

The Municipal Act of Ontario sets out many provisions for the governance, conduct and administration of municipalities in Ontario, and is the primary but not exclusive piece of legislation in this regard. Part XI of the Act sets out the legislative power to sell property for non-payment of property taxes, along with the detailed requirements, steps, and rules for such sale. This report is intended to highlight and summarize the process for members of Council and the public without reiterating the text of the Act and is not intended to be legal advice to any party. The legal issues and case law surrounding the Ontario municipal property tax sales process is extensive and complex.

Tax Sales Process Summary

In each calendar year, a municipality may commence the tax sales process against any property for which any amount of tax arrears related to two or more prior calendar years remain outstanding.

To start the process, a title search is conducted, and a Tax Arrears Certificate is registered against the title of the property, with a required form of notice provided to each registered owner, the spouse of each owner, and all parties who have a registered interest as shown on title of the property, including the mortgage holder(s). Such notice is provided by registered mail.

The Tax Arrears Certificate indicates that the property will be sold by public sale if the Cancellation Price is not paid within one year following the date of registration. The Cancellation Price changes over time as new taxes, penalties, interest, and fees & charges of the process are added to the account during the period. The Cancellation Price must be paid in full, by certified funds. No part payment may be accepted. The process ends with the payment of the Cancellation Price before the end of the one-year period. The Cancellation Price may be paid by any person/party, even if they do not have a registered interest in the property.

A Final Notice is sent when the Cancellation Price remains unpaid 280 days following the registration of the Tax Arrears Certificate. This Final Notice contains an updated Cancellation

Price, and is sent to each owner, the spouse of each owner, and all parties with registered interests as shown on an updated title search of the property.

There is a provision for the owner to request an Extension Agreement with Council, which request may be accepted or denied by Council. The Extension Agreement sets out the terms and conditions for the ultimate payment of the Cancellation Price, and timelines for compliance. The execution of an approved Extension Agreement suspends the one-year period of the Tax Arrears Certificate until the amount is paid in compliance with the Extension Agreement. If the conditions of the Extension Agreement are not met, the one-year period resumes from where it left off.

If the Cancellation Price remains unpaid at the end of the one-year period following the registration of the Tax Arrears Certificate, “the land shall be offered for public sale by public auction or public tender as the treasurer shall decide”, and the property is advertised for sale in accordance with the regulations, including a minimum bid, set at the Cancellation Price. The property is sold to the highest bidder or tender price which is equal to or greater than the Cancellation Price. There is no requirement for on the municipality to determine or to recover the market value of the property. The municipality may by resolution authorize the municipality to bid at or submit a tender in the public sale if the municipality requires the land for a municipal purpose.

At no time, particularly during the bidding window, does any person have any right to enter upon or into the property for inspection, as it remains private property.

The subject property will be sold by sealed tender, with all sealed bids submitted directly to the Township offices. Bid packages must include a certified cheque as a deposit of 20% of the bidder’s bid price. Shortly after the closing deadline, the bids will be opened in a place open to the public, and the two highest bidders will be announced. All deposits of lower bids will be returned. The highest bidder will be notified and given 14 days to pay the balance of the price, plus land transfer taxes. Failing that, the second highest bidder will be similarly notified. The purchaser must pay the balance of the cancellation price, plus any newly accrued interest, fees, newly due tax installments, all land transfer taxes, and any other closing costs that may be incurred.

A Tax Deed is prepared and registered on title to conclude the process. The tax deed gives the purchaser free and clear title to the lands, except for easements and restrictive covenants that run with the land, and any estates and interests of the Crown in right of Canada or Ontario. All other registered interests are removed from title. It is up to the owner to acquire vacant possession of the property using all legal means available to them. The municipality is not required to obtain vacant possession of the property before the sale, after the sale, or after the registration of the Tax Deed or Notice of Vesting.

Upon sale, the sale price is used first to pay the Cancellation Price. The balance is paid by the municipality into the Court, who distribute the funds to the registered interest parties in order of their legal priority, except the person who was the owner prior to the sale. Finally, if any balance then remains after paying all other registered interests, it shall be paid to the person

who was the owner prior to the sale. A notice shall be mailed to all registered parties setting out the process to make a claim to the balance held by the Court.

If there is no successful purchaser, the Township may choose to register a Notice of Vesting to acquire the clear title of the property, but this is not mandatory.

If no successful bidder or tenderer is found following the tax sale, and a Notice of Vesting is not registered within two years following the sale, the Tax Arrears Certificate is deemed cancelled. This does not prevent the treasurer from registering a new Tax Arrears Certificate on the property, starting the process over again.

Additional steps have been taken by Wilmot Township

As the tax sale process is highly technical, with many legal pitfalls, the Township uses the services of a specialized consulting firm to handle all documents, notices, advertising and conduct of the actual sale. The costs of this service are added to the account and Cancellation Price as permitted.

In addition to the legislated processes and notices, the Township sends a special warning letter to the property owner prior to the commencement of the process in hopes of avoiding the need to start the process. It may also attempt to notify the mortgage company, if any, of the situation, and give them an opportunity to pay and thereby protect their interests.

During the one-year period, the municipality may mail or hand-deliver or attempt to personally contact the owner or occupant at the property with an additional notice or warning letter beyond the notices formally required by the Act.

In the case at hand, during the summer of 2023, within the one-year period, Bylaw Services staff attended at the property and made personal contact with a person who identified themselves as the owner of the property. An additional warning notice letter of the pending sale for non-payment of taxes was handed to this person.

Additionally, in late December, the Interim Treasurer and a Bylaw Enforcement Officer attended at the property. Someone was home, as movement was heard within the home, but no answer came to the door. An additional written notice warning of the impending sale of the property was left conspicuously at the property at what was perceived as the main entrance to the home.

Summary

The Township uses tax arrears reminder notices, and the maximum late penalty and interest charges permitted to collect unpaid taxes on a routine basis. Each year, accounts may be identified to commence the Tax Sales process as outlined herein.

By the time this report is made public through the Township's agenda process, it is expected that public advertising for the pending Tax Sale may have begun. Anyone interested in

additional details about this Township local property or properties similarly listed for other Ontario municipalities may check the website of our contractor/consultant Realtax at realtax.ca, or a commonly used tax sales listing website at OntarioTaxSales.ca. Registration fees may apply.

FINANCIAL CONSIDERATIONS:

There are no costs to the Township of this report. The Township does not incur losses on account of rightful taxes not being paid. All costs of the tax sales process are recovered through the Township Fees & Charges bylaw, including the direct costs of the contracted consultant who facilitates all processes required under the Act.

ATTACHMENTS:

None