

2014-217

To: Mayor and Council
From: Municipal Treasurer
Date: August 15, 2014
Re: Requests to Write Off Penalty on Unpaid Taxes

BACKGROUND:

We have received four letters from property owners asking for relief from the 10% penalty that was added to their outstanding 2014 property taxes because they had not been paid by midnight on July 2. They were informed that at the staff level there is no ability to change the penalty, but as a last resort they could apply to Council. At the same time they were informed that their situation would have to be sufficiently singular and unusual for Council to consider agreeing to apply to the Minister for approval to write off the penalty.

DISCUSSION:

All the 2014 property tax notices were mailed by May 27. The envelopes that contained the tax notices had

2014 PROPERTY TAX NOTICE
DUE DATE: JULY 2, 2014
Claim your Home Owner Grant
at www.oakbay.ca

in red ink on their front to try to ensure that recipients realized the date sensitivity of the enclosed form. Included on the back of the notices was the following: "POST DATED CHEQUES TO THE DUE DATE ARE ACCEPTED. A **24 HR. DROP BOX** is located at the entrance to the Oak Bay Municipal Hall" followed by payment options: cheque, mail, mortgage company, at banks, by telephone or by online banking. The 10% penalty was mentioned in several places on the front and back of the notice. The Mayor's letter, which accompanied the tax notices, also mentioned the importance of paying by July 2 and the various methods available of paying.

Section 315.3 of the *Local Government Act* states: "The Minister may confer on a local government further powers to manage and dispose of assets, including taxation revenue, that the Minister considers necessary or advisable." Under this Section, a municipal council may apply to the Minister for authority to write off a penalty for late tax payment, thereby overriding the *Municipal Tax Regulation*, which makes mandatory the imposition of a 10% penalty on taxes unpaid at the deadline date.

There have been a few cases where Council has agreed to take the necessary action to apply to write off late penalties. However, in other past appeals under this Section, while the intent of the property owner has not been in dispute, Council has declined to make the requested approach to the Minister because it has not found the facts to be sufficiently

distinguishable from the other circumstances that result in late payment penalties in any given year.

In the cases at hand, Council will want to decide whether the circumstances are sufficiently singular and extenuating to warrant an application to the Minister for the required authority to write off the penalty. Each request will be separately discussed and has its own recommendation.

(a) 301-1211 Beach Drive – Penalty of \$471.03

The owner of the property sent a postdated cheque for July 2 to pay the property taxes. This was done very soon after the tax notices were sent out. Between doing this and July 2, the owner died and when the cheque was deposited it was returned by the bank because her bank account had been frozen. We have had a similar case in the past, and at that time Council decided that the non-payment of the taxes had nothing to do with the homeowner, who had done everything to pay the taxes by the deadline, and therefore applied to the Minister to have the penalty written off.

(b) 644 Beach Drive – Penalty of \$1,305.79

The owner of the property was ill during the time that the tax notices were mailed out, and she told me that her daughter had put the envelope containing the tax notice in a drawer without dealing with it. The penalty is 10% of the outstanding taxes at July 2 and does not change if the bill is paid within a couple of the due date or on December 31. After that date any outstanding taxes are charged daily interest.

(c) 201-1211 Beach Drive – Penalty of \$453.66

The property owner states that the tax payment was put in the mail on June 26. We received it and the Home Owner Grant application on July 3 and charged the penalty on the full amount of the property taxes. June 26 was a Thursday, and therefore left very few business days before July 2. Many of the region's municipalities (Oak Bay included) have adopted the policy that if a payment has been mailed in Canada and has a legible Canadian post mark that is 6 or more business days before the due date, then it will be considered to be on time even if it is received after the due date. This year the latest the post mark would be acceptable was June 23.

(d) 3151 Wessex Close – Penalty of \$548.65
2025 Oak Bay Avenue – Penalty of \$5,480.52

The owner of the above properties states that he put the envelope with the tax payments in a mailbox seven days before the July 2 due date. Working backwards, this means that he probably mailed it on June 26. Contrary to what he states in his letter, the postmark on the envelope was dated July 2 and we received it on July 3, which was the day after the due date. The comments made regarding the situation for 201-1211 Beach Drive apply to this case as well.

We have checked with the City of Victoria, and the tax payment mailed to it by Mr. Tong on the same day was also received on July 3. Victoria has recently decided to change its previous policy regarding postmarks and now accepts any payments with a postmark of July 2 or earlier as being on time, no matter when it is actually received.

OPTIONS:

In each case, Council can decide that:

1. given the number of alternative ways that are offered to pay property taxes and the particular circumstances of a request, it does not consider them to be singular and extenuating enough to warrant an application to the Minister for the authority to write off the penalty; or
2. the circumstances of a request are singular and extenuating enough to warrant an application to the Minister for the authority to write off the penalty.

FINANCIAL IMPACT:

The particular circumstances involved in most of these requests are not significantly dissimilar to other reasons that people give for not paying their taxes on time. If Council decides to apply for the authority to write off the penalty, it will be difficult to refuse other applicants. Individually, writing off the penalties would not have a significant financial impact on the municipality. However, the precedent that would be set would have a much larger impact, which is difficult to quantify.

RECOMMENDATIONS:

- (a) 301-1211 Beach Drive – Penalty of \$471.03

That, pursuant to Section 315.3 of the *Local Government Act*, an application be made to the Minister of community, Sport and Cultural Development for the authority to write-off the 10% tax penalty for late payment of 2014 property taxes for 301-1211 Beach Drive.

August 15, 2014

- (b) 644 Beach Drive – Penalty of \$1,305.79
- (c) 201-1211 Beach Drive – Penalty of \$453.66
- (d) 3151 Wessex Close – Penelty of \$548.65
- 2025 Oak Bay Avenue – Penalty of \$5,480.52

That the correspondence relating to the above properties be received and the requests not be pursued further.



Patricia Walker
Municipal Treasurer

I concur with the recommendation of the Municipal Treasurer



Helen M. Koning
Chief Administrative Officer

July 15, 2014

To: Mayor and Council

From: Municipal Clerk

Re: **Tree Protection Bylaw Application for Reconsideration of Permit Refusal – 3442 Henderson Road**

Under the *Tree Protection Bylaw*, adopted in 2006, the four trees, located at 3442 Henderson Road, for which a permit to remove was denied, would be considered protected.

Pursuant to the Bylaw, the Manager of Parks Services would issue a permit for the removal or damage of a protected tree where such removal or damage was required as per the various criteria laid out in the bylaw, which are as follows:

6. (1) to eliminate a hazard caused by a tree or part thereof which is dead, dying, severely damaged, unstable or severely leaning and in danger of falling;
- (2) to eliminate a hazard caused by interference with utility wires;
- (3) to eliminate a situation where a water line, sewer pipe or drain pipe is being chronically blocked or damaged by roots, or where pressure or penetration from tree growths above or below ground is causing damage to a building or part thereof, or to a significant structure, and there is no other reasonable solution that would not impose an undue hardship;
- (4) subject to Section 9, to allow the construction of a principal building in the location shown on a building permit application which complies with all applicable enactments and bylaws, and where the plans for the same have been approved by the building permit issuing authority for the Municipality;
- (5) to allow the construction of an accessory building or structure in a location complying with all applicable bylaws and regulations where a requirement to construct the building or structure in an alternate location would impose an undue hardship;
- (6) to prevent a foreseeable hazard that would be created by damage to the root system of a tree attributable to the construction of a building or structure in a location approved by the building permit issuing authority for the Municipality;
- (7) to allow the installation of underground or overhead services where a requirement to install the same in an alternate location would impose an undue hardship;
- (8) to allow the installation of a driveway or required off-street parking area where a requirement to install the same in an alternate location would impose an undue hardship;

- (9) or warranted because the tree, due to disease, decay, dieback or other pathological condition, mishap or pest attack is in an advanced and irreversible state of decline:
- (a) that will on balance of probability cause the death of the tree within 5 years or less; or
 - (b) which has already caused the tree to deteriorate to the point that its continued retention can no longer reasonably be considered to serve the tree protection objectives of this Bylaw;
- (10) , in accordance with sound arboricultural principles and practices, and pursuant to the goal of maintaining the native urban forest in a state of ongoing renewal, to promote and protect the health and vigour of any one tree of the species Garry Oak (*Quercus garryana*), Arbutus (*Arbutus menziesii*), Pacific (Western) Yew (*Taxus brevifolia*), Black Hawthorn (*Crataegus douglasii*) or Pacific (Western Flowering) Dogwood (*Cornus nuttallii*), which has either a basal diameter greater than 10 centimetres or a height above the point of germination in excess of 2 metres.
- (11) to prevent foreseeable damage to a building, or to a significant structure, from:
- (a) a limb, trunk or stem failure; or
 - (b) pressure or penetration from tree growths above or below ground, which the Manager of Parks Services has identified as a substantial risk based on his examination of the tree in the context of its location, characteristics and general environment, notwithstanding that the tree may not at the time of application exhibit any of the hazardous conditions set out in Section 6(1) or actually be causing damage as described in Section 6(3); or
- (12) to remedy an undue hardship attributable to the material and deleterious effect of the tree on an improvement of significant value located on the subject parcel, or on land adjoining the subject parcel.

In the case at hand, the Manager of Parks Services has determined that none of the criteria under which he has the authority to issue a permit apply (see additional information attached). Therefore, the owner of 3442 Henderson Road is seeking Council reconsideration of the decision to refuse to issue a permit.

In this regard, Section 21.1 of the Tree Protection Bylaw provides that in the case of a request for reconsideration of a decision of the Manager of Parks Services, Council would review the Manager's interpretation and application of the permit-issuing criteria set out in Section 6 and, if supported by the facts and in harmony with the scheme of this Bylaw generally and the language of that section in particular, may substitute its own interpretation or application and order the issuance of a permit where it is satisfied that the issuance of the permit having regard to:

- (1) the species of the tree;
 - (2) the form of the tree;
 - (3) the condition of the tree; or
 - (4) the general density of protected trees on the subject parcel,
- would not defeat the intent of this Bylaw.


Lorraine Hilton
Municipal Clerk

BYLAW NO. 4326 - SCHEDULE "A"

Permit No. 3057



BYLAW NO. 4326, TREE PROTECTION BYLAW, 2006
TREE WORK APPLICATION AND PERMIT

Permit not valid unless signed and stamped by authorized official. Prior to completing the application, it is recommended that the applicant refer to the Tree Protection Bylaw No. 4326 for all information regarding tree protection, available on the Municipal website at www.oakbay.ca or www.recreation.oakbay.ca.

Date: April 25 2014

Name of Property Owner: <u>ROGER KITSON</u>	Address: <u>3442 HENDERSON RD</u>	Phone- Residence: <u>778 440 0020</u> Phone- Work: <u>778 678 7343</u>
Name of Applicant: <u>SAME</u>	Address:	Phone:

Applicant's Signature: R Kitson

To be completed by Applicant:			To be completed by Arborist:
Location	Diameter of tree	Description of work to be performed	Municipal Arborist comments:
Tree #1: Type of tree and location <u>Cottonwood south</u>	<u>65 cm</u>	<u>removal</u>	<input type="checkbox"/> Work Approved <input checked="" type="checkbox"/> Work Denied: <u>All four trees are healthy. Hydro manures</u>
Tree #2: Type of tree and location <u>Cottonwood</u>	<u>61 cm</u>	<u>removal</u>	<input type="checkbox"/> Work Approved <input checked="" type="checkbox"/> Work Denied: <u>the side next to the wires</u> <u>Removals denied as they</u>
Tree #3: Type of tree and location <u>Cottonwood</u>	<u>69 cm</u>	<u>removal</u>	<input type="checkbox"/> Work Approved <input checked="" type="checkbox"/> Work Denied: <u>do not meet any requirement</u> <u>under section 6 of the by law</u>
Tree #4: Type of tree and location <u>Cottonwood north</u>	<u>84 cm</u>	<u>removal</u>	<input type="checkbox"/> Work Approved <input checked="" type="checkbox"/> Work Denied: <u>end weight</u> <u>End weight reduction</u> <u>permitted by OAK BAY PARKS SERVICES</u> APPROVED

An accurate sketch of site plan in a suitable scale must accompany the application, detailing the proposed cutting of, damage to, or pruning of trees.

Approval Stamp OAK BAY PARKS SERVICES DENIED	Replacement trees required: <input type="checkbox"/> No <input type="checkbox"/> Yes, number of trees required _____
	Date work to be performed:
	Work performed by:
	Date of Follow Up Inspection:
	Follow Up Inspection done by:
	Deposit Paid: _____ Permit Fee Paid: _____
	Municipal Arborist Signature: <u>[Signature]</u>

Applicant Notified: In Person By Phone By Mail

Fines for contravention of the Tree Protection Bylaw can be found in the Ticket Information Utilization Bylaw, available on the Municipal Website at www.oakbay.ca. Fines range from \$250 to \$1000.

MEMORANDUM

2014-220

To: Mayor and Council
From: Fernando Pimentel
Deputy Treasurer
Date: July 28, 2014
Re: Roof Construction Tender Award Recommendation

The prices shown are final, include all applicable taxes, and are net of G.S.T. rebate.

ROOF CONSTRUCTION TENDER; PW17-2014

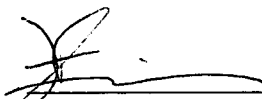
At the Council meeting on July 21, 2014, support in principle was given for replacement of all three roofs as per Tender Option #1 as outlined in the Memorandum from the Deputy Treasurer, dated July 15, 2014, correspondence item no. 2014-204 (see attached).

Now that consideration of final adoption of the required Bylaws to include the appropriate funding will occur at the August 18th Council meeting, Council will be in a position to award the tender. In as much as all Council's options were previously considered on July 21, 2014, the following motion is proposed to follow the action set at that time; it is recommended that Alpha Roofing be awarded the tender for the replacement of all three shed roofs (Tender Option #1).

Company	Tender Option #1 Price	Tender Option #2 Price
Alpha Roofing	\$41,680.00	\$28,290.00
Flynn Canada Ltd	\$48,534.00	\$34,840.00
Top Line Roofing Ltd.	\$53,884.00	\$33,355.00
Universal Sheet Metal	\$54,288.00	\$29,912.00
Parker Johnston	\$61,000.00	\$35,500.00

RECOMMENDATION

That Alpha Roofing be awarded the tender for the replacement of all three shed roofs (Tender Option #1) at the Public Works Yard at a cost of \$41,600.00.


Fernando Pimentel
Deputy Treasurer

Note from Municipal Clerk:
Consideration of the proposed tender award should be tabled to follow consideration of adoption of Bylaw No. 4621, *Financial Plan Bylaw, 2014, Amendment Bylaw No. 1, 2014* and Bylaw No. 4622, *Capital Works and Equipment Reserve Fund Appropriation Bylaw, No. 1, 2014* appearing later in the agenda.

MEMORANDUM

2014-204

To: Mayor and Council

From: Fernando Pimentel
Deputy Treasurer

Date: July 15, 2014

Re: Roof Construction Tender Award Recommendation

The prices shown are final, include all applicable taxes, and are net of G.S.T. rebate.

ROOF CONSTRUCTION TENDER; PW17-2014

The 2014 budget that was adopted in May included \$34,000 for the replacement of roofs on three sheds in the Public Works Yard. One of the sheds is in great need of replacement, while the other two are not in as serious a condition, but still need to have work done on them. The estimated cost was developed by a consultant in the fall of last year.

Tender requests were issued asking for two prices:

- Option #1 Includes all three shed roofs
- Option #2 Covers just the one roof in the worst condition

When the tenders were received, Option #1 came in over budget.

Company	Option #1 Price	Option #2 Price
Alpha Roofing	\$41,680.00	\$28,290.00
Flynn Canada Ltd	\$48,534.00	\$34,840.00
Top Line Roofing Ltd.	\$53,884.00	\$33,355.00
Universal Sheet Metal	\$54,288.00	\$29,912.00
Parker Johnston	\$61,000.00	\$35,500.00

Dahorn Consultants Ltd was hired to specify, tender and monitor the roof work. The fee for this service for option #1 is \$2,750 and option #2 is \$1,750 and these costs need to be added to come to the total project cost. Costs may increase if unplanned issues arise during the construction work.

If Option #2 is chosen, the cost will be within the budget. However, in the next few years the other two roofs will need to have work done on them, and the consultant estimates that the cost to carry out that work could be as high as \$23,000. Adding this to the \$30,040 price for just the one roof (tender plus consulting fee), the cost to deal with all three roofs would be approximately \$53,000. Therefore, if option #1 is chosen and all three roofs are dealt with in 2014, there would be an overall saving of \$8,570 (\$53,000 - \$44,430).

Funding for the roof replacement is from the Capital Works and Equipment Reserve Fund. If Option #1 is chosen, Council will need to adopt an amendment to the Financial Plan Bylaw and a Capital Works and Equipment Reserve Fund Appropriation Bylaw before the awarding of this contract can be approved. The Bylaws have been included as agenda items as this option is recommended.

OPTIONS

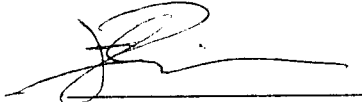
#1. That support in principle be given for replacement of all three roofs as per Tender Option #1. If the required Bylaws to include the appropriate funding are adopted, staff will present Mayor and Council with a memorandum recommending that Alpha Roofing be awarded the tender for the replacement of all three shed roofs (Tender Option #1).

#2. Award the tender to Alpha Roofing for \$28,290 (Tender Option #2). This would replace the one roof in the worst condition. This option is under budget and requires no change to any bylaws. As stated above, the overall costs to replace all the roofs at a later date will be higher.

#3. Do not award any tenders. This option is not recommended. The roofs should be replaced according to our replacement policy and estimated useful life. Extending the use of the roof may result in expensive repairs later on as it is already showing major signs of damage and deterioration.

RECOMMENDATION

That support in principle be given for replacement of all three roofs as per Tender Option #1



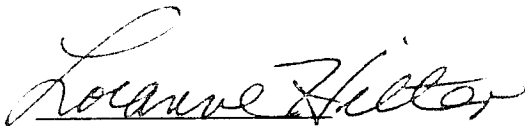
Fernando Pimentel
Deputy Treasurer

I concur with the recommendation of the Deputy Treasurer.



Patricia Walker
Municipal Treasurer

I concur with the recommendation of the Deputy Treasurer.



Lorraine Hilton
Municipal Clerk / Deputy Chief Administrative Officer

2014-221

To: **Mayor & Council**
From: **Manager of Recreation Program Services**
Subject: **Oak Bay High School Cops for Cancer Fundraising Event**
Date: **August 11, 2014**

BACKGROUND

Oak Bay High School students and staff have requested the use of Willows Park for a "Cops for Cancer Fundraising event, Sunday, September 28, 2014 from 10:00am to 3:00pm. The event is a Community Fair, which will offer fun, outdoor and family oriented activities for all whom attend. All proceeds from the event will allow children with paediatric cancer and their families to stay at Camp Goodtimes, which is a Vancouver based camp for them to enjoy recreational activities in a medically supervised and fun environment.

DISCUSSION

Given the fundraising nature of the request, this would require approval from both the Commission (for use of the Park) and Council (for the fundraising activity). The event organizers do not have the option of holding the event on school property due to the ongoing construction of the new school. Given the tight timelines Commission has given their approval via email correspondence and wish Council to consider it now for final approval. There is no other event at Willows Park on the September 27-28, 2014 weekend.

FINANCIAL IMPACT

There is no cost to the municipality for this event.

RECOMMENDATION

That the Oak Bay High School 2014 Cops for Cancer Community Fair Committee be permitted to use Willows Park for a Cops for Cancer Fundraising event, Sunday September 28, 2014 from 10:00am to 3:00pm.



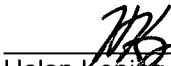
Janet Barclay, Manager of Recreation Programs and Services

(Source of funding). I concur with the recommendation of the Manager of Recreation Programs and Services



Patricia Walker, Municipal Treasurer

I concur with the recommendation of the Manager of Recreation Programs and Services



Helen Kohring, Chief Administrative Officer

Note from Deputy Municipal Clerk:

Notwithstanding the general prohibition against commercial activity in a park, a municipal park may be used for the display and sale of goods or refreshments where certain criteria are met. The proposed event, Oak Bay High School's Cops for Cancer Community Fair Fundraising Event, to be held at Willows Park, Sunday, September 28, 2014, from 10:00 am to 3:00 pm, requires Council approval. If Council is satisfied that the proposed event meets the below criteria, the following motion would be appropriate:

"That, whereas, pursuant to the Zoning Bylaw, the proposed event, including the sales of goods and refreshments, has been determined to be of general benefit to the municipality at large and will create no undue inconvenience for adjacent residents or the public at large, and not detract from the purpose of the land as a public place for recreation, ornamentation or preservation of the natural environment, approval be given for the event, subject to the event organizer entering into a public property occupancy agreement in which it will among other standard requirements:

- a) release and indemnify the Municipality from any claims or liability associated with the event and provide evidence of public liability insurance in the amount of not less than \$3,000,000; and*
- b) agree to pay all invoices from the Municipality for costs incurred in connection with the event, with the Municipal Clerk being authorized to execute such agreement on behalf of the District of Oak Bay."*