

Fort McKay First Nation Tax Cancellation Request

Presenter: Chris Davis, Senior Manager

Department: Legal Services

Meeting Date: July 13, 2021

Fort McKay Tax Cancellation Request

(continued)

Fort McKay First Nation (FMFN) is requesting municipal tax cancellation under Section 347 of the *Municipal Government Act* for the 2020 and 2021 reporting years for eleven (11) properties outside of the Reserve but owned by FMFN:

- Community Arena & Recreation Fields
- Family Support Center
- Youth Center
- Daycare and Elders Center
- General Store and Fuel Station
- Public Works Yard
- Arbour
- Cemetery
- Residential Homes (2)
- Vacant Land

Fort McKay Tax Cancellation Request

(continued)

- All eleven (11) properties are in the process of being added to Reserve land through Additions to Reserve (ATR) with Indigenous Services Canada (ISC).
- Until this ATR between FMFN and ISC is completed, the lands remain eligible for municipal assessment and taxation.
- Under Section 347 of the *Municipal Government Act (MGA)*, if Council considers the cancellation to be equitable, it may, with or without conditions, cancel all or part of the taxes.

Fort McKay Tax Cancellation Request

The value of the cancellation is \$166,648.87 and is comprised of the following:

- Municipal Taxes: \$106,836.99
- Municipal Penalties for Amounts Outstanding: \$13,464.16
- Province of Alberta Requisition: \$46,347.72 *

** The Province of Alberta requisition amount is collected by the Municipality on behalf of the Province for the Alberta School Foundation and Seniors Lodge requisitions. These amounts are invoiced by the Province and paid in full by the Municipality based on assessed values.*

Addition to Reserve Lands

- The lands in question have not yet become Reserve lands through the ATR process. Once completed, these Reserve lands will be exempted from taxation by the Municipality.
- This is addressed in the following provisions of the *MGA*:
 - Section 331 states that the assessed owner of lands (generally, the registered owner) is the person liable to pay municipal taxes.
 - Section 298(1)(t) states that all “property in Indian reserves” is exempt from taxation.

Case Law

In 1990, the Supreme Court of Canada found that lands outside Reserves are taxable:

“... the purpose of the legislation is not to remedy the economically disadvantaged position of Indians by ensuring that Indians may acquire, hold and deal with property in the commercial mainstream on different terms than their fellow citizens. An examination of the decisions bearing on these sections (87, 89 and 90 of the Indian Act) confirms that Indians who acquire and deal in property outside lands reserved for their use, deal with it on the same basis as all other Canadians.”

Mitchell v Peguis Indian Band, 1990 CanLII 117 (SCC)

Case Law

(continued)

The courts have found that lands owned in fee simple by certain First Nation co-operatives, but outside the Reserve, may be subject to municipal taxes.

Aseniwiche Winewak Nation v Greenview (MD No. 16), 2000 ABQB 839

Fort McKay First Nation's Legal Arguments

The FMFN's position is that lands are not taxable because:

- they are Treaty Land Entitlement (TLE) lands; and
- the beneficial interest in them ultimately rests with the FMFN.

Municipality's Legal Arguments

From the Municipality's legal perspective, only four (4) of the proposed eleven (11) properties for ATR are identified as TLE lands, the remaining seven (7) are referred to as "community additions"; however, the matter of the TLE is not relevant to the issue of municipal taxation.

- "Personal property" is property that is not "real property" (i.e. land). Section 87 of the *Indian Act* makes it clear that only if personal property is on a Reserve is it exempt from taxation.
- Real estate does not qualify as "personal property" therefore, Section 90 of the *Indian Act* does not make these lands Reserve.

Municipal Fee-for-Service Collection

The FMFN states that the Municipality is “double-dipping” through the receipt of ISC Payments in Lieu of Taxes (PILT) and the collection of municipal taxes.

- PILT payments from ISC to the Municipality are made for FMFN On-Reserve lands that receive municipal services (i.e., provision of water and wastewater services).
- Off-Reserve lands held by FMFN are assessed and taxed in a manner consistent with all other properties in the Region that do not qualify for tax exemption status under the provisions of the *MGA*.

Council Support for the Addition to Reserve

(continued)

The Municipality is committed to working with Indigenous communities and views the ATR as an important opportunity to advance reconciliation while improving its relationship with First Nations.

Council Support for the Addition to Reserve

(continued)

The Regional Municipality of Wood Buffalo's 2018-2022 Strategic Plan calls on the Municipality to:

- Implement the Truth and Reconciliation Commission Calls to Action (#4a).
- Strengthen rural and Indigenous communities and partnerships (#4f).
- Advocate for rural and Indigenous communities (#4g).

Council Support for the Addition to Reserve

On July 22, 2020, the Regional Municipality of Wood Buffalo formally provided a letter of support to ISC advising that the following motion was unanimously approved by Council on July 14, 2020:

“THAT the Mayor be authorized on behalf of Council to send a letter of support to Indigenous Services Canada – Alberta Regional Office for the Fort McKay First Nation’s Additions to Reserve, subject to the provision of a Band Council Resolution which confirms that the First Nation will negotiate and enter into a Service Agreement with the Municipality for the provision of services to the Addition to Reserve Lands.”

Rationale for Cancellation of Taxes

- The ATR process for the eleven (11) properties cannot be finalized if there are outstanding tax arrears and would not only have negative consequences for the FMFN but also place the Government of Canada at risk of not being able to fulfill its obligation to the FMFN for lands owed and restitution by way of the TLE portion of the ATR.
- Supporting the ATR process through the cancellation of 2020 and 2021 tax amounts owing is an opportunity to strengthen relationships, work collaboratively, and meaningfully advance the priority of reconciliation with Indigenous communities.

Recommended Motions

(continued)

Motion 1

THAT Council, in the spirit of truth and reconciliation, apply Section 347 of the *Municipal Government Act* for the eleven (11) properties in Fort McKay that are being considered as an Addition to Reserve to the Fort McKay First Nation Reserve by approving the cancellation for the 2020 and 2021 tax years, in an amount of \$166,648.87 comprising municipal taxes and penalties in the amount of \$120,301.15 and fund the amount of \$46,347.72 in Province of Alberta requisitions from Municipal reserve; and

Recommended Motions

Motion 2

THAT Administration be directed to explore further steps to cancel property taxes in future years for said eleven (11) properties until the Addition to Reserve process is finalized between the Fort McKay First Nation and Indigenous Services Canada.

Thank You | Questions