



The Corporation of the City of Courtenay

Staff Report

To: Council

File No.: 1960-20-2301/ RTE00005

From: Director of Development Services

Date: September 11, 2024

Subject: Revitalization Tax Exemption Application No. 2301 for 397 5th Street

PURPOSE:

For Council to consider Revitalization Tax Exemption Application No. 2301 for eligibility as per Downtown Courtenay Revitalization Tax Exemption Bylaw No. 2937, 2018 for the newly constructed “Palace Place” apartments and ground floor commercial units at 397 5th Street, LOT A SECTION 61 COMOX DISTRICT PLAN EPP102945.

BACKGROUND:

The applicant was issued a development permit (2020) and building permit (2021) for the construction of a mixed-use development including thirty-nine (39) units of multi-residential development and four (4) commercial retail units (CRU’s). The property has now achieved occupancy permits for all residential units and three commercial units, with one commercial unit currently undergoing tenant improvements.

The subject property falls within “Area 1” identified in the Downtown Courtenay Revitalization Tax Exemption Bylaw No. 2937 and could be eligible for a 100 percent municipal tax exemption for five years on residential class improvements and 50 percent on business class improvements (as seen in **Figure No.1**) provided all other eligibility criteria of Bylaw No. 2937 are met.

Figure No. 1 Downtown Revitalization Tax Exemption Areas. Subject property 397 5th Street shown with red star.



The owners met with Staff on June 20, 2019, staff advised that they needed to submit an application for consideration of the Revitalization Tax Exemption (RTE). The owners inquired into the status of their RTE application on June 30, 2023, and learned that no application had been made. Staff resent the application information to the applicant, the Bylaw and eligibility criteria on June 30, 2023. The applicant submitted the application on October 3, 2023. The development was well under construction, having passed building framing inspection on August 23, 2023.

Staff evaluated the application through Bylaw No. 2937 and determined that the application did not meet eligibility criteria based on:

Section 2.1 definition of project which is:

“Project” means a revitalization project on a Parcel involving the construction of a new improvement or alteration of an existing improvement, which meets the requirements of this bylaw, and the construction of which is begun after an application for Tax Exemption has been submitted to, and approved by, Council;

And, Section 4.1 (g).

g) Any construction of a *project* undertaken prior to the application for a Revitalization Tax Exemption will not be eligible for consideration;

Both the definition of “Project” and the eligibility criteria 4.1 (g) makes clear that only construction initiated *after* a Tax Exemption has been approved by Council will be eligible for the Tax Exemption Agreement and Certificate.

Staff issued a letter to the applicant, citing that “City records indicate the building permit was issued in October 2021. Because the permit was issued in 2021 and construction began, the project had commenced prior to your RTE application being made in October 2023, making the project ineligible” (Attachment No.1 Staff letter).

The applicant requested a reconsideration of the application in a letter received by staff on January 16, 2024 (Attachment No. 2), citing previous staff correspondence beginning in 2019 that indicated that “...the City would guide and lead us through all aspects of the Development and Building Permit process, including whatever would need to be done to secure the revitalization tax credit.”

Staff met with the applicant on March 22, 2024 to discuss the request for reconsideration and previous correspondence with staff. According to the procedures stipulated in Bylaw No. 2937 the RTE application on October 3, 2023 should have been presented to Council by means of a staff report allowing Council the ability to interpret on the eligibility of the application. The application is therefore being presented to Council to direct on the eligibility of the application based upon staff’s interpretation of the bylaw and recommendation.

DISCUSSION:

Staff are bringing forward the applicant's request for reconsideration on their application submitted on October 3, 2023 and have provided two options for Council to consider.

Option 1

Staff recommend denial based upon the clearly stated definition of 'project' and the eligibility criteria Section 4 (g) that the RTE program shall apply to only new construction after Council has approved the application and prior to construction commencing. The applicant was informed by previous staff that an application was required as part of the building permit application process in 2019 and previous staff did offer assistance in understanding the process and requirements. This development proceeded to construction and was 79% complete at time of application for the RTE on October 3, 2023.

Community Charter Section 226 provides authority for local governments through their Councils to authorize municipal tax exemption to land or improvements in accordance with an adopted revitalization program bylaw. The legislation stipulates that the bylaw governing the revitalization program must among other things include a description of the reasons for and the objectives of the program and a description of how the program is intended to accomplish the objectives.

Council adopted Downtown Courtenay Revitalization Tax Exemption Bylaw No. 2937, 2018 on September 4, 2018. Bylaw No. 2937 cites the objectives of the program and how the program is intended to achieve said objectives with the following clauses:

3.3 The downtown revitalization tax exemption program is established under this Bylaw in order to promote the revitalization of Downtown Courtenay through:

- a) The development and redevelopment of buildings used for residential purposes to increase the population density in downtown Courtenay to support commercial success;
- b) The development and redevelopment of commercial buildings to create a vibrant downtown that attracts new investment opportunities and supports increased residential viability;
- c) To reinforce and strengthen downtown Courtenay as the commercial heart of the Comox Valley.

3.4 The revitalization tax exemption program is intended to accomplish the objectives referred to in Section 3.3 by providing Owners with an economic incentive in the form of a tax exemption to undertake the development of new improvements.

The staff report introducing the Bylaw on July 16, 2018 identifies the Bylaw as a tool to stimulate and incentivize new commercial and residential development in the greater downtown area. The staff report also recognized that development interest in the downtown at that time was not high and that including additional eligibility criteria such as specific residential or commercial uses, or building performance standards, was not recommended at that time. The staff report also recommended that, if approved, a review of the bylaw and program occur 'in the future after an initial period of review to measure the success of the program'. (Attachment No. 3 July 16, 2018 staff report).

Given that the program is meant to incentivize development in the downtown that may not otherwise occur, staff do not recommend expanding the interpretation to apply to projects that have commenced construction prior to Council approval of an RTE application and that staff undertake a more comprehensive

review of Bylaw No. 2937, as recommended in the 2018 staff report as part of the Downtown Local Area Plan.

Option 2

As per Bylaw No.2937, Section 2 Definitions “project” means “a revitalization project on a Parcel involving the construction of a new improvement or alteration of an existing improvement, which meets the requirements of this bylaw, and the construction of which is begun after an application for a Tax Exemption has been submitted to, and approved by Council”.

As per Section 4 (g) “any construction undertaken prior to application shall not be considered by Council for Tax Exemption”.

One interpretation could be that work constructed after the application date of October 3, 2023 could be considered “new improvement” as per the definition of “project” for a tax exemption for the construction works from October 3, 2024 to completion of the project as per the applicant’s quantity surveyor (Attachment No. 4) given the application should have come before Council for consideration for staff’s evaluation of the application and recommended ineligible as per the criteria in the bylaw.

To support this interpretation, the applicant has submitted a report by a qualified professional assessing the value of construction prior to the application being submitted and after the application was submitted, as a means of determining the baseline against which to measure “new improvements” for Revitalization Tax Exemption agreement and certificate issuance purposes.

The quantity surveyor has provided a construction value of \$12,474,338 as at September 30, 2023 which reflects the project being 79% complete and a construction completion cost of \$15,883,219. The addition construction costs from September 30, 2023 to the end of construction for occupancy reflects 21% of the project was completed after September 30, 2023. The 21% of new construction would be factored into the calculation of a proposed tax exemption for 5 years at a value of an estimated \$60,065.

The applicant is requesting flexibility in determining the official date of application, and that a Revitalization Tax Exemption be granted to the full construction value of the entire development as though the applicant had applied prior to any construction commencing in 2021. Staff are not supportive of this request given the eligibility criteria in the bylaw which should be considered.

Alternatively, the applicant requests that the Revitalization Tax Exemption “be granted on the value of any improvements made after we were advised to complete the application form (June 30, 2023)” as per applicant request for reconsideration letter (Attachment No. 2). Staff recommend that the actual date of application submission be used which is October 3, 2023. Staff recommend that the time of application made which is October 3, 2023 be the measurement for consideration of any “new improvements” to the development and as such requested a quality surveyor to determine the construction value completed before October 3, 2023 and after to inform the 5 year tax exemption should Council wish to consider this interpretation.

While highly unusual and contrary to the purposes of incentivizing new development, Bylaw No. 2937 could allow for the interpretation that “new improvements” to an instream construction project, may be eligible for Revitalization Tax Exemption. Staff are not supportive of this interpretation.

If this interpretation approach is acceptable to Council, then RTE application No. 2301 for the subject property at 397 5th street would be eligible for the \$60,065 5 year tax exemption and Council can consider Resolution Number 2.

POLICY ANALYSIS:

References to the enabling provincial legislation for the establishment of Revitalization Tax Exemption bylaws and programs are included in the Discussion section above. Staff do not feel this application meets the eligibility criteria outlined in Bylaw No. 2937 or the intent of the 2018 staff report attached to this report.

As the original 2018 staff report notes, a review of Bylaw 2937 was recommended ‘in the future after an initial period of review to measure the success of the program’. This review has not occurred, and Staff does recommend that the Council can consider rescinding Bylaw No. 2937 and this review of Bylaw No. 2937 can be part of the Downtown Local Area Planning process.

FINANCIAL IMPLICATIONS:

Should Council support the interpretation option 2, that projects currently under construction may be eligible for the RTE on an application made instream on a project, then a quantity surveyor report would be used as a measure to determine the percentage that would be eligible for possible tax exemption.

In Option 2, 21% of the construction value is proposed for Council’s consideration. Table No. 1 summarizes the estimation of property taxes based on construction completion to September 30, 2023 at 100% and 79% complete over the next five years. The estimates are based on a completed assessed value of \$312,000 per unit (39 units) for a total \$12,168,000 attributed to the residential portion. The commercial portion estimated value is \$1,489,000 based on 7,661 sq. ft of leasable area at an estimated \$195 per sq. ft. Given that \$2,615,881 of construction (minus the contingency) was completed after September 30, 2023 the tax exemption is considered at 21% which is reflect in Table 1.

The taxes are then calculated using the 2024-2028 Financial Plan and tax rate bylaw. At this time the percentage of taxation change for 2029 is not known; a 5% tax change is applied to 2029.

The resulting estimate of Option 2 is a total \$60,065 in taxes are eligible for exemption over the five-year term. Staff note that these are estimates only and the final exemption will vary based on post development assessed values of the improvements and on the tax rate approved for each year.

Provided the project is fully completed and BC Assessment is notified by October 31 2024 then the tax exemption would apply to the 2025 tax year. If the October 31st 2024 deadline passes, the tax exemption would apply to the 2026 tax year.

Table No. 1: Estimated Tax Summary

	2025	2026	2027	2028	2029	Total
Property tax at 100% (no exemption)	\$52,003	\$55,227	\$58,872	\$61,756	\$64,844	\$292,702
Property tax at 79% (with exemption)	\$41,331	\$43,894	\$46,791	\$49,083	\$51,538	\$232,637
Annual tax exemption (21%)	\$10,672	\$11,333	\$12,081	\$12,673	\$13,306	\$60,065

STRATEGIC PRIORITIES REFERENCE:

This initiative addresses the following strategic priorities:

- Buildings and Landscape - Support investment and redevelopment in downtown core: Review and evaluate Downtown development incentives e.g. fast tracking/density bonuses/DCC

PUBLIC ENGAGEMENT:

Public consultation took place during the development of the Downtown Courtenay Revitalization Tax Exemption Bylaw. No further consultation is required for entering into individual agreement.

OPTIONS:

1. THAT Council reject Revitalization Tax Exemption Application No. 2301 pursuant to Downtown Courtenay Revitalization Tax Exemption Bylaw No. 2937, 2018.
and;
THAT Council direct staff to prepare a report on the application and criteria for the Downtown Courtenay Revitalization Tax Exemption Bylaw No. 2937, 2018 and refer for consideration of a revitalization tax exemption bylaw to the Downtown Local Area Planning process.
2. THAT Council provide interpretation clarity within Bylaw No. 2937 of the definition 'project' and of eligibility clause 4.1 (g) in order to allow for projects currently under construction to be eligible for Revitalization Tax Exemption, and direct staff to make amendments to Bylaw No. 2937 to reflect thereto; and
THAT Council accept Revitalization Tax Exemption Application No. 2301 as a retroactive permit that may apply to the time of application on October 3, 2024 ; and
THAT the City enter into a Revitalization Tax Exemption Agreement with Endure Projects, Inc. No. BC1227832 for the property legally described as LOT A SECTION 61 COMOX DISTRICT PLAN EPP102945 (397 5th Street); and
THAT the City issue a Tax Exemption Certificate to Endure Projects, Inc. No. BC1227832 for the property legally described as LOT A SECTION 61 COMOX DISTRICT PLAN EPP102945 (397 5th Street); and
THAT Council direct staff to include a review of Downtown Courtenay Revitalization Tax Exemption Bylaw No. 2937, 2018 as part of the Downtown Local Area Planning Process.
3. THAT Council provide alternative direction to staff.

ATTACHMENTS:

1. Staff letter citing reasons for rejecting the RTE application, December 22, 2023

2. Applicant letter requesting reconsideration of RTE application, January 16, 2023
3. July 16, 2018 Staff Report "Downtown Revitalization Tax Exemption Bylaw"
4. August 20, 2024 Building cost confirmation at time of RTE application provided by applicant

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