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Rice

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From: earlhamcityhall@mchsi.com <earlhamcityhall@mchsi.com>
Sent: Tuesday, March 22, 2022 3:35 PM
To: Jenna Sabroske <jsabroske@ahlerslaw.com>
Subject: Tax abatement

[External Email] Only click on trusted links.

Hi Jenna,

Strange question for you. We have a property owner for whom the council already approved his tax abatement. However, he has not done several things to his home which the building inspector said needed to be done and he said he would do. Is it possible for council to rescind that resolution so this property owner does not get the tax abatement?

Thanks for your help.

Mary Sue

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Rice

From: earlhamcityhall@mchsi.com
Sent: Tuesday, March 29, 2022 3:49 PM
To: 'Jenna Sabroske'
Subject: RE: Tax abatement

See responses below. Thanks. Mary Sue

From: Jenna Sabroske <jsabroske@ahlerslaw.com>
Sent: Tuesday, March 22, 2022 5:59 PM
To: earlhamcityhall@mchsi.com
Subject: RE: Tax abatement

Mary Sue,

The City's Urban Revitalization Plan states (in the "Approval of Applications" section) that "City Council shall approve an application" if a number of criteria are met. One of the criteria is that "The project has been issued a building permit (if required) from the City." Another criteria is that "Any other legal requirement has been met."

In my opinion, compliance with an issued building permit and compliance with building code fall under the requirement to comply with "any other legal requirement." Therefore, if the Council had NOT YET approved the property for tax abatement, then I think the Council would have grounds to deny approving the application until the property owner was in compliance.

However, I have some follow up questions since the Council HAS ALREADY approved the property for a tax abatement:

1. When did Council approve the property owner's application? 4-12-21
2. Has the application been submitted to the County Assessor? yes
 - a. If so, when was the application submitted to the County Assessor? 4-14-21
 - b. If the application has been submitted to the County Assessor, has the County Assessor already entered the tax exemption on the tax assessment rolls? Yes. Mayor Lillie asked the Assessor to hold on to the application (when we realized the might be a problem) until she heard back from him. In the meantime, the Assessor retired and a new Assessor took over. Somewhere, somehow, someone in the Assessor's office thought it was okay to go ahead and release the hold on application, and the exemption was placed on the tax roll. I spoke with the new Assessor last week. She said we could do an Auditor's correction to get this off of tax roll, but we would need a good paper trail. I'm not quite sure what that entails.

Please let me know the answers to these questions, and then we can review what the City's options are now.

Thanks,

Jenna H.B. Sabroske
Associate Attorney



From: Jenna Sabroske <jsabroske@ahlerslaw.com>
Sent: Monday, April 4, 2022 11:02 AM
To: earlhamcityhall@mchsi.com
Subject: RE: Tax abatement

Mary Sue,

We are not sure the City or the County would have authority to remove the exemption/abatement from the tax rolls now that it has been put in place.

I assume that with the exemption having been submitted after February 1, 2021 to the City (and sent to the Assessor after March 1, 2021), that the application is being treated as though it were submitted by the property owner in January 2022 for application to tax year 2022. That makes it more likely that the County might feasibly withdraw the exemption before tax payments start being made for tax year 2022. However, while that makes it practically more possible, there is nothing in the Iowa Code suggesting that either the City or County would have the authority to withdraw the exemption. Instead, the opposite is indicated by Iowa Code—that once an exemption is entered on the tax rolls, it should remain on the tax rolls for the duration of the exemption's granted schedule.

If the City felt strongly about pursuing withdraw of the tax exemption, to the degree that the City would be willing to defend that action against possible lawsuit by the property owner, then we could explore withdrawal further. Please let me know if that is the case.

From a big picture perspective, I would recommend two courses of action:

1. With respect to this property, proceed with enforcement of the building code in the normal course of building code enforcement (e.g., working with building inspector, sending notices, etc.).
2. In the future, with respect to tax abatement applications submitted under the urban revitalization plan, I would suggest the City delay approval of applications as follows:
 - a. Any applications submitted outside of the January 1 – January 31 annual application window can be held on file by the City, for approval in the immediately following January approval window. For example, an application submitted to the City in 2022 but after February 1, 2022 would be held until 2023—no council action would be taken on the application until 2023.
 - b. If the City did take action to approve an application submitted outside of the annual application window, then the City could hold the approved application until the next deadline to submit approved applications to the County Assessor. For example, an application submitted to the City in 2022 but after February 1, 2022 and then approved by Council in 2022 would be held by the City until sometime in February 2023 and only submitted to the County by the March 1, 2023 deadline.

Either of the approaches in 2(a) or 2(b) above allow the City opportunity to withdraw City approval before passing the application to the County Assessor.

Keep in mind that Iowa Code Chapter 404 has very clear application timing deadlines. If a property owner did not submit an application between January 1 and February 1 of a particular year, the City could decline to accept the application until the following January 1 – February 1. It is common that property owners submit applications outside of this timeframe, but then the City has no obligation to approve the application and submit the application (if approved) to the County Assessor until the following March 1st.

END