



Council Chambers
City Hall, Saskatoon, SK
Tuesday, April 30, 2013
at 4:30 p.m.

MINUTES OF THE SPECIAL MEETING OF CITY COUNCIL

PRESENT: His Worship the Mayor, in the Chair;
Councillors Clark, Davies, Donauer, Jeffries, Loewen, Lorje,
and Olauson;
City Manager Totland;
City Solicitor Warwick;
General Manager, Corporate Services Bilanski;
A/General Manager, Community Services Lacroix; and
City Clerk Sproule

Councillor Davies entered the meeting at 4:37 p.m. during consideration of Clause B1) Legislative Report No. 5-2013.

LEGISLATIVE REPORT NO. 5-2013

Section B – OFFICE OF THE CITY SOLICITOR

B1) Jack Adilman Estate Report (File No. CK. 1870-25)

- RECOMMENDATION:**
- 1) that the City of Saskatoon, as a beneficiary to the estate for Jack Adilman, negotiate the winding up of the Jack Adilman Estate with the life beneficiary and the other beneficiary, United Israel Appeal of Canada, in accordance with the terms of this report; and
 - 2) that the Mayor and City Clerk be authorized to execute on behalf of the City of Saskatoon the necessary documents to conclude this matter, as either drafted by or reviewed by the City Solicitor's Office.

TOPIC AND PURPOSE

The Administration requires instructions to address the possible winding up of the Jack Adilman Estate of which the City of Saskatoon is a beneficiary.

REPORT HIGHLIGHTS

1. The City of Saskatoon has been entrusted to receive the benefit of part of the Jack Adilman Estate, and distribute the money received to advance the leisure pursuits of its citizens.
2. There is an opportunity to wind up the life benefit trust element of the Jack Adilman Estate, reap some tax benefits in doing so, and ensure that a larger amount of the capital is retained.
3. It is the view of the Administration, and the area experts we have retained, that if we can wind up this trust it would be beneficial and make economic sense.

STRATEGIC GOAL

This report supports the strategic goal of Quality of Life as it helps to ensure existing and future leisure centres, and other recreational facilities are accessible physically and financially and meet community needs.

BACKGROUND

The City has benefited for several years, indirectly, from the Jack Adilman Estate (the "Estate"). At present, the Estate has a trust which pays a life beneficiary, the City and United Israel Appeal of Canada ("UIA") an annual sum. In 2012, the City received \$90,000 from the trust, which funds are to be used for leisure activities used to support the advancement of amateur sport at a recreational level within Saskatoon, through one-time capital projects.

The Estate is valued at approximately 1.1 million in cash, 2 million in securities, and a 1/3 share in residential property that has a fair market value of approximately 14 million dollars.

When the life beneficiary dies, the assets remaining pass to the City and UIA in equal shares.

The trust has been in place for 21 years, and on May 1, 2013 the 21-year rule of the *Income Tax Act* takes effect. This rule deems that the trust has wound up and the

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estate must then pay tax on any capital gains. In the case of the Estate, the tax consequence would be approximately \$300,000. To avoid this consequence, the three parties involved are seeking to negotiate an agreement to wind up the trust, by paying out the life beneficiary a commuted income payment and then dividing the balance of the Estate between the City and UIA.

The terms proposed to wind up the Estate are as follows:

- the life beneficiary, Ms. Beryl Hiatt, would receive the 2012-2013 income distribution from the Estate of approximately \$100,000;
- Ms. Hiatt would receive a lump sum of \$1,237,000, payable over the course of three years: 2013 - \$600,000, 2014 and 2015 - \$318,500; and
- the sums due in future years would be secured by way of a promissory note from one of the companies, Adilman's Ltd., that forms the bulk of the Estate.

The money to conclude this transaction would come from the assets in the Estate, either income from the assets or the securities that exist at present and can be converted to cash.

REPORT

For several years, the City of Saskatoon has benefited, indirectly, from a bequest of the Estate. Mr. Adilman provided a trust in his will that four relatives would receive, for their lifetimes, a set sum of money, and if there was more than what was required, then the City and UIA receive the excess. The City must use these funds for the benefit of amateur sport at the recreational level that would not otherwise receive City funds. When each of the four relatives has died, the City and UIA would then receive the balance of the Estate, in trust, estimated in today's dollars to be worth several million dollars.

There is now only one surviving relative remaining, and she is 62 years old; however, there is a rule under the *Income Tax Act* that deems that all trusts dispose of its property every 21 years, and pay the requisite tax on any capital gains. The 21-year rule will take effect in the case of this trust on May 1, 2013.

If nothing is done, the Estate will pay the capital gains tax that has accrued, which in this case is approximately \$300,000. This would encroach on the capital of the Estate.

In most cases, so long as all the beneficiaries agree, an estate trust is wound up so as to avoid the 21-year rule. In the case of the Estate this would entail paying out the last surviving life beneficiary and then splitting the balance of the Estate between the City and UIA.

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There are sufficient assets in the Estate to pay her the amount required but it would seem more prudent to pay her over a course of three years so that the City and UIA could take advantage of the income that could be earned on the investments and physical assets.

Attachment 1 to this report is a schematic which shows what assets are in the Estate.

If the Estate is wound up, the City and UIA would assume control over and manage the Estate assets, which in this case includes two residential properties in Saskatoon. The Estate does not own these outright, it owns 33% of the shares in the company that owns the assets.

In any event, the City and UIA will become the owners of these assets at some point, given the terms of the will; therefore, it would seem prudent to address this issue now and preserve as much of the capital as possible by preventing the 21-year rule from taking effect. UIA agrees.

The terms for winding up the Estate are developed based on expert assistance in valuation of the life interest and the tax consequences of winding up the Estate and distributing its assets to the two final beneficiaries: the City of Saskatoon and the UIA.

The proposed terms are as follows:

- the life beneficiary, Ms. Beryl Hiatt, would receive the 2012-2013 income distribution from the Estate of approximately \$100,000, each of the others is expecting to receive a similar amount;
- Ms. Hiatt would receive a lump sum of \$1,237,000, payable over the course of three years: 2013 - \$600,000, 2014 and 2015 - \$318,500; and
- the sums due in future years would be secured by way of a promissory note from one of the companies, Adilman's Ltd., that forms the bulk of the Estate.

As noted above, the lump sum payment is based on a valuation taking into account the age of the life beneficiary and the expected income she may receive from the Estate. Ms. Hiatt had an expert valuation that quantified her interest at \$1.72 million. With the assistance of the UIA, the City had a second valuation completed by Richter, a Montreal firm that is engaged in this field. The Richter analysis valued the life interest at between \$1.22 and \$1.25 million.

At present, the Estate and the assets in a company that it maintains, Adilman's Ltd., has sufficient assets to satisfy the sums that would be due and owing to the life beneficiary. By paying this to her over time, the City and UIA can take advantage of some tax planning possibilities.

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Further, that the City and UIA would work cooperatively to address the division of the Estate after the winding up of the trust is complete in such a manner that the maximum value on investments is achieved. This may mean that the companies will continue to function for a time and City representatives would serve on the two companies involved.

Ms. Beryl Hiatt has had the benefit of her own team of professional advisors on this matter, and is agreeable to the terms set out above.

Throughout, the Administration has been in contact with and has relied on advice from the current administrator of the Estate, TD Waterhouse. As well, we have sought and will continue to rely on the tax and estate advice of Deloitte. The representatives from Deloitte view the winding up of the trust, and avoiding the tax consequences as prudent as this would preserve the capital.

As well, the Administration has had some preliminary discussions with the Saskatoon Community Foundation to see if it would assume the role of managing the Estate and the assets that would remain after the trust is wound up. Regardless of what form of management is chosen, the City would ensure that the terms of the trust are preserved in perpetuity.

If the City of Saskatoon does not agree to this course of action, and the Estate pays the taxes that would be due, the funds to do so would see the assets of the Estate depleted by that amount and this could have an impact on income in future years, but more critically, would see the base of the Estate reduced.

ATTACHMENT

1. Schematic which sets out the assets in the Jack Adilman Estate.

Moved by Councillor Lorje, Seconded by Councillor Olauson,

- 1) *that the City of Saskatoon, as a beneficiary to the estate for Jack Adilman, negotiate the winding up of the Jack Adilman Estate with the life beneficiary and the other beneficiary, United Israel Appeal of Canada, in accordance with the terms of this report; and*
- 2) *that the Mayor and City Clerk be authorized to execute on behalf of the City of Saskatoon the necessary documents to conclude this matter, as either drafted by or reviewed by the City Solicitor's Office.*

CARRIED.

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Moved by Councillor Lorje,

THAT the meeting stand adjourned.

CARRIED.

The meeting adjourned at 4:40 p.m.

Mayor

City Clerk