



Council
Communication
Office of the City Manager

Date

September 25, 2006

Agenda Item No. 50B
Roll Call No. 06-
Communication No. 06-600
Submitted by: Larry Hulse, Community
Development Director

AGENDA HEADING:

Denial of request to retroactively apply the previously approved application for tax abatement for improvements to 2608 Driftwood Avenue completed at various times since 2003.

SYNOPSIS:

Recommend denial of a new application for tax abatement upon the value added by improvements completed in 2003, 2004, and 2005 to property at 2608 Driftwood Avenue, with a request that the application be applied retroactively to the property taxes already assessed. The City received a prior application for the same improvements in January 2006, and that application was approved and will be applied prospectively to the taxes due commencing in fiscal year 2007/08.

FISCAL IMPACT:

Amount: Tax abatement upon improvements with a combined assessed value of \$124,800.

Funding Source: Taxes are generated in the first year from the land value, but the improvement value will be forthcoming when the abated value comes on the tax rolls.

ADDITIONAL INFORMATION:

The applicant, Mark Murray, is the owner of a new single family dwelling at 2608 Driftwood Avenue. The applicant claims he filed an application for tax abatement with his original building permit which was issued on June 4, 2002. That permit expired on June 4, 2003. A new permit was issued in August, 2003, to allow the completion of the single family dwelling. A foundation inspection was completed in August 2002, and it appears that no additional building inspections were done until a framing inspection was completed in February 2004. The most recent plumbing inspection occurred in October 2003. The most recent electrical inspection occurred in January 2004. The most recent mechanical inspection occurred in July 2005. To date there has not been a final building inspection, plumbing inspection, mechanical inspection, or electrical inspection because no requests for final inspections have been made to the various inspection divisions.

The applicant reports that he discovered that the 2002 application for abatement had not been acted upon when he received notice to pay property taxes in September 2005. He then contacted the City in January 2006, and was encouraged by City staff to immediately file a new application. An application was received in January 2006 and was approved by the City Council in February, to be applied prospectively commencing with the taxes due in fiscal year 2008/09.

The applicant subsequently filed another application for tax abatement and now is asking that tax abatement for the improvements to 2608 Driftwood Avenue be applied retroactively for the reasons set forth in his letter dated received August 31, 2006, (erroneously dated September 31, 2006).

The City cannot change or misrepresent the date the applications were actually received. The City Council has previously asked Polk County to apply tax abatement retroactively only when there were extraordinary circumstances, such as when there is evidence the application was timely filed but lost by the City. In those circumstances Polk County has honored the City Council's request for retroactive application. However, the retroactive application of tax abatement is contrary to the provisions in Iowa Code §404.4, and should be reserved for extraordinary circumstances.

There is no record of the 2002 application on file with the City and the applicant has not provided any evidence that an application was actually filed with the City at the time of the original building permit in 2002.

Even if the applicant did file an application for tax abatement in 2002 as he contends, the City could approve that application only once. If the application was received in 2002 and approved in the normal course, the tax abatement would only apply to the value of the improvements completed on January 1, 2003, and assessed at \$15,000. If the application was to be held by the City until the City received notice that the improvements were finished and ready for final inspection, the City would never have acted upon the application, as no request for final inspection has been received.

The City Council has already approved an application for tax abatement upon the value of the improvements to 2608 Driftwood Avenue existing on January 1, 2006, to be effective with the taxes due in fiscal year 2008/09. Staff recommends denial of this latest application and request for retroactive application.

PREVIOUS COUNCIL ACTION(S):

Date: September 11, 2006

Roll Call Number: 06-1804

Action: Approving late filed tax abatement applications for improvements to 2704 E. Titus Avenue and 5207 SE 31st Street). Approval applied prospectively only. The applicants' failure to timely file the applications were not due in any part to action or inaction by the City. ([Council Communication No. 06-567](#)) Moved by Hensley to adopt, with the tax abatement to be applied prospectively. Motion Carried 6-0.

Date: March 6, 2006

Roll Call Number: 06-432

Action: Approving one tax abatement application for improvements made to 3430 South Union Street during 2005. Approval applied retroactively because the applicant's failure to timely file the application was due in part by a miss-communication by the City Staff to the applicant who does not speak English proficiently. ([Council Communication No. 06-117](#)) Moved by Brooks to adopt. Motion Carried 6-0. Absent: Hensley.

Date: February 20, 2006

Roll Call Number: 06-388

Action: Approving 435 tax abatement applications for improvements made to property during 2005. ([Council Communication No. 06-088](#)) Moved by Hensley to adopt. Motion Carried 6-1. Pass: Kiernan.

BOARD/COMMISSION ACTION(S): NONE

ANTICIPATED ACTIONS AND FUTURE COMMITMENTS:

The tax abatement program on new improvements currently ends on December 31, 2008, unless the City Council extends the program beyond that date. Any application received by February 1, 2009 and approved by the City Council will receive abatement for the number of years eligible and for which an application was submitted. It is anticipated that there will be numerous submittals of tax abatement applications on a yearly basis until the program ends.