



CITY OF HAMILTON
HEALTHY AND SAFE COMMUNITIES DEPARTMENT
Housing Services Division

TO:	Chair and Members Emergency and Community Services Committee
COMMITTEE DATE:	April 21, 2022
SUBJECT/REPORT NO:	Urban Native Homes - Management Plan Update (CES16024(b)) (Wards 2, 3, 4, 6, 7 and 9)
WARD(S) AFFECTED:	Wards 2, 3, 4, 6, 7 and 9
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SUBMITTED BY:	Edward John Director, Housing Services Division Healthy and Safe Communities Department
SIGNATURE:	

RECOMMENDATION(S)

- (a) That the General Manager of Healthy and Safe Communities Department or their designate be authorized and directed to transfer funds in the amount of \$772,072 received from Ross & McBride as final disposition of assets from the dissolution of Urban Native Homes to Ontario Aboriginal Housing Services; and,
- (b) That the General Manager of Healthy and Safe Communities Department or their designate be authorized to execute any documents required in connection with the transfer of \$772,072 to Ontario Aboriginal Housing Services as the final disposition of Urban Native Home's assets, in a form satisfactory to the City Solicitor.

EXECUTIVE SUMMARY

Notice was given to the Province and Urban Native Homes (UNH) on April 4, 2016 that UNH met the definition of a "project-in-difficulty" under the *Housing Services Act, 2011* (the "Act") and that the City, in its capacity as Service Manager under the Act, would exercise remedies to help preserve the housing assets of UNH, pending development of a long term plan for UNH.

OUR Vision: To be the best place to raise a child and age successfully.

OUR Mission: To provide high quality cost conscious public services that contribute to a healthy, safe and prosperous community, in a sustainable manner.

OUR Culture: Collective Ownership, Steadfast Integrity, Courageous Change, Sensational Service, Engaged Empowered Employees.

SUBJECT: Urban Native Homes - Management Plan Update (CES16024(b)) (Wards 2, 3, 4, 6, 7 and 9) - Page 2 of 6

A successful sale of the properties and other assets of UNH was completed to Ontario Aboriginal Housing Services (OAHS) in 2018, where OAHS assumed all aspects for the price of the mortgage debt. The Agreement of Purchase and Sale documents as well as the Undertaking Agreement, which required the remaining cash to be paid over to OAHS once all outstanding issues had been resolved. These agreements were subject to consent from the City, in its capacity as Service Manager, as required under the *Housing Services Act* for the transfer of social housing assets. It is important to note that no parties to the transaction nor their solicitors during the transaction identified any issues with the transfer.

The City of Hamilton, as the Service Manager, has continued to assist the UNH Board of Directors with the banking, staffing and litigation issues until all outstanding liabilities were resolved. Housing Services Division staff will continue to work with OAHS on the development of a new operating agreement pending new provincial regulations on minimum requirements for agreements.

A critical issue arose in 2020 related to Canada Revenue Agency and UNH's compliance with CRA regulations applicable to registered charities. In January 2022, the City of Hamilton was contacted by the Charities Directorate relaying that the Minister of Finance of Canada had granted special permission to allow the funds to be transferred without any tax penalty to the City of Hamilton as an eligible donee. The purpose of this report is to ensure that the City has approved the transfer of these funds onward to OAHS.

The funds in trust from Ross & McBride, solicitors for UNH, were received on January 10, 2022 and approval to transfer these funds to OAHS is being requested.

Alternatives for Consideration – Not Applicable

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: N/A

Staffing: N/A

Legal: Report CES16024(a) did not envision the challenges posed by UNH's charitable status or that funds might be directed to the City as a result of the Charities Directorate's decision. Legal Services has advised this Report did not provide direction to address this current situation and that Council's permission must be received to transfer the money to OAHS in accordance with the intended plan in the agreement of purchase and sale.

Furthermore, Legal Services has confirmed that the Charities Directorates decision to release the funds to the City of Hamilton does not require that the funds be paid to OAHS. The original agreement of Purchase and Sale, however, makes it clear that the balance of UNH's assets were to be paid to OAHS once all outstanding financial obligations were concluded. The City is not a party to the Agreement of Purchase and Sale.

HISTORICAL BACKGROUND

Urban Native Homes Incorporated (UNH) was a non-profit social housing provider that provided housing with a specific mandate to serve the needs of Hamilton's Indigenous community.

After a number of significant operational issues were identified with UNH, it was declared a Project in Difficulty and its board was replaced. On April 27, 2016, Report CES16024 was approved which updated Council on UNH and included the recommendation "that Housing Services Division staff be directed and authorized to request a proposal for services and/or a portfolio transfer plan from Ontario Aboriginal Housing Services (OAHS) for the consideration of the Service Manager."

On January 22, 2018, the Emergency & Community Services Committee approved Report CES16024(a) to transfer ownership and operation of UNH's social housing assets to OAHS, as set out in the Resolution of the Board of Directors of Urban Native Homes Incorporated. The Report also directed staff to enter into a new operating agreement with OAHS governing the transferred assets.

On February 14, 2018, a successful sale of the properties and other assets of UNH was completed to OAHS, which assumed all aspects of the project for the price of the mortgage debt. The Acknowledgement and Undertaking called for the remaining cash to be paid to OAHS once all outstanding issues had been resolved.

From April 2018 to the present, the City of Hamilton, as the Service Manager, has been assisting the UNH Board of Directors with the banking, staffing and litigation issues until all outstanding liabilities were resolved.

A critical issue arose in 2020 related to Canada Revenue Agency (CRA) and UNH's compliance with the regulations as a registered charity. CRA noted that UNH was no longer functioning as a charity and that its remaining assets could not be transferred to an organization that is not registered as a charity without a significant penalty being assessed. OAHS is not a registered charity.

On January 5, 2022, the City of Hamilton was informed by the Charities Directorate that the Minister of Finance of Canada had granted special permission to allow the funds to

SUBJECT: Urban Native Homes - Management Plan Update (CES16024(b)) (Wards 2, 3, 4, 6, 7 and 9) - Page 4 of 6

be transferred without any tax penalty. It was stipulated, however, that the money must be transferred to a qualified donee and that the City of Hamilton was suitable.

The City of Hamilton received the \$772,072.24 from Ross & McBride, solicitors for UNH, on January 10, 2022.

Having resolved all Board duties and outstanding issues the Urban Native Homes Incorporated Board of Directors filed for and received a Certificate of Dissolution dated February 11, 2022.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

Under the *Housing Services Act 2011 (Act)* and within the federal and urban native operating agreements, Housing Services Division is designated as Service Manager and is responsible for ensuring that housing projects are well managed; maintained in a satisfactory state of repair; fit for occupancy and that social housing providers are managing their assets in a prudent and fiscally responsible manner to meet their financial obligations.

The Act and operating agreements impose requirements on a Service Manager to take steps to manage associated risk when a housing project is considered to be a project in difficulty (s. 72 of the Act). The Act and operating agreements prescribe triggering events (s.83 of the Act) in relation to a housing project, which allow a Service Manager to exercise prescribed remedies. Under the legislation, Service Managers have broad sweeping powers including “act as the housing provider with respect to all or part of the assets, liabilities and undertakings of the housing provider, including its housing projects.”

To date, the City has assisted UNH to dissolve the corporation with staffing and other Property Manager duties. This included scheduling, attending & recording all UNH Board Meetings, assisting with the settlement of lawsuits, serving Notice to employees, working with Bookkeepers/Auditors, cancelling contracts, paying outstanding bills, etc. At the time of the transfer, it was estimated that UNH had approximately \$1.1 M in liabilities not including five outstanding lawsuits.

In January 2020, a critical issue arose relating to Canada Revenue Agency (CRA) and UNH’s compliance with the regulations for charities. CRA’s administrative policy establishes that once a Notice of Intention to Revoke a Charity’s Registration has been issued, a registered charity can only transfer its remaining assets to an “eligible donee”, or it will be subject to a “revocation tax” equal to the Fair Market Value of the properties transferred. A registered charity constitutes an “eligible donee”, but OAHS does not have registered charity status. However, municipalities are considered an “eligible donee” in situations where an eligible charity cannot be found. In order to keep the

property/asset within the charitable sector, CRA may allow the property to be transferred to a municipality for the benefit of the community as it has done in this case.

RELEVANT CONSULTATION

The Charities Directorate of Canada Revenue Agency confirmed that the balance of UNH's assets could not be transferred directly to OAHS without substantial penalty because it is not a qualified donee. The City of Hamilton, however, is a qualified donee.

OAHS and its lawyer, Miller Thomson LLP, have reiterated that the transfer of the balance of assets was part of the original agreement of sale. Furthermore, the funding is urgently needed to address substantial capital needs within the former UNH portfolio in Hamilton.

Financial Planning, Administration and Policy Division, Corporate Services Department has confirmed that direction is required regarding the cheque from Ross and McBride representing the final disposition of UNH's assets.

ANALYSIS AND RATIONALE FOR RECOMMENDATION

Once all Urban Native Homes' (UNH) financial obligations had been settled, their account had a balance of \$772,072.24 which was being held by their lawyer Ross & McBride. On January 5, 2022, the federal Minister of Finance, gave approval for remaining UNH funds (held in trust by Ross & McBride) to be transferred to the City of Hamilton as a qualified donee. On January 10, 2022, Ross & McBride issued the funds to the City of Hamilton where they have been received and deposited into a City of Hamilton account.

The funds were being provided to the City of Hamilton to use them for community benefit. While CRA does not require the City of Hamilton to transfer the funding to OAHS, the transfer was included as part of the Undertaking Agreement between UNH and OAHS. The terms of the sale indicate that it is required and is also pursuant to the management plan.

When OAHS purchased UNH's assets, they did not receive the capital reserves which are used to provide for the long-term repairs and replacement of building structures and systems. Similarly, OAHS did not receive any cash or funds that would represent an accumulated surplus that a housing provider would use to address year to year challenges that might result in budget shortfalls. This has made it difficult for OAHS to maintain their buildings in Hamilton and prevented them from making some necessary investments. Approving the transfer of funding to OAHS would allow them to make much needed investments in their properties located in Hamilton.

ALTERNATIVES FOR CONSIDERATION

None

ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN

Healthy and Safe Communities

Hamilton is a safe and supportive City where people are active, healthy, and have a high quality of life.

APPENDICES AND SCHEDULES ATTACHED

None