



**STAFF REPORT
ACTION REQUIRED
with Confidential
Attachment**

Payments in lieu of Taxes for PortsToronto

Date:	May 29, 2015
To:	Government Management Committee
From:	City Solicitor and Treasurer
Wards:	All
Reason for Confidential Information:	This report contains advice or communications that are subject to solicitor-client privilege and pertains to litigation or potential litigation that affects the City.
Reference Number:	P:\2015\Internal Services\rev\gm15014rev (AFS21049)

SUMMARY

This report updates City Council on the advice provided by the federal Dispute Advisory Panel in January 2014 respecting two properties owned by PortsToronto (formerly named the Toronto Port Authority). This report also recommends approval of a proposed comprehensive agreement resolving the City of Toronto's dispute with PortsToronto over Payments in Lieu of Taxes (PILTs) for the two properties considered by the Panel as well as other properties owned by PortsToronto.

RECOMMENDATIONS

The City Solicitor and the Treasurer recommend that:

1. City Council adopt the recommendations contained in Confidential Attachment 1 to this report.
2. City Council direct that Confidential Attachment 1, including all Appendices, remain confidential as it contains advice and information that is subject to solicitor-client privilege and pertains to litigation or potential litigation. City Council authorize the public release of all or a portion of the confidential instructions once adopted by City Council at the discretion of the City Solicitor.

3. The appropriate City officials be authorized and directed to take the necessary action to give effect thereto.

Financial Impact

The financial impacts resulting from the recommendations made in this report are disclosed in Confidential Attachment 1.

The Deputy City Manager & Chief Financial Officer has reviewed this report and agrees with the financial impact information disclosed in Confidential Attachment 1.

DECISION HISTORY

At its meeting held on December 14 and 16, 2005, City Council, in its consideration of a confidential report (October 17, 2005) from the Treasurer and City Solicitor titled "Update on Status of Discussions with Toronto Port Authority concerning Payments in Lieu of Taxes", directed staff to apply to the federal Dispute Advisory Panel (Panel) for a resolution of the PILT dispute matter on various PortsToronto properties (re: Policy and Finance Committee Report 9, Clause 34b). This report is available at: <http://www.toronto.ca/legdocs/2005/agendas/council/cc051205/pofcl034b.pdf>

Subsequently, at its meeting held February 23, 24 and 25, 2009, City Council, in its consideration of item CC31.8: "Federal PILT Dispute Advisory Panel Decision - Toronto Port Authority Properties" from the City Solicitor and Acting Treasurer, which reported on the Panel's advice and PortsToronto's decision on PILTs, directed staff to pursue a judicial review application at the Federal Court of Canada of the Panel's advice and PortsToronto's decision on PILTs. This report is available at: <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2009.CC31.8>

The Federal Court's judgement was released in June 2010 and it set aside the Panel's advice and quashed PortsToronto decision on PILTs. The Court ordered that "at the request of either party a new PILT process is to be commenced before a differently constituted panel."

On January 14, 15, 16 and 17, 2013 at the request of the City, the Panel held a hearing in Toronto addressing the property values of PortsToronto's Marine Terminals at 80 Cherry Street and the Outer Harbour Marina at 475 Unwin Avenue. On January 2, 2014 the Panel released its advice on property values for these properties.

At its meeting held October 8, 9, 10 and 11, 2013 City Council adopted item CC39.1 "Payments in lieu of Taxes for Billy Bishop Toronto City Airport" (Ward All) (with confidential attachment). The public report is available at: <http://www.toronto.ca/legdocs/mmis/2013/cc/bgrd/backgroundfile-62206.pdf>. Portions of the confidential attachment were released on January 24, 2015. These are available at: <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.CC39.1>

ISSUE BACKGROUND

PortsToronto¹ owns several properties near and on the City's waterfront. PortsToronto makes voluntary payments in lieu of taxes (PILTs) to the City for its properties under the federal *Payments in Lieu of Taxes Act (PILTs Act)*. For many years, the City and PortsToronto have disagreed over the assessment value of several of their properties used for calculating PILTs.

Legislative Scheme

Under Ontario's *Assessment Act*, land owned by Canada is subject to assessment but is exempt from property tax. The federal *PILTs Act* was enacted to compensate municipalities for delivering services to federally owned properties that would be subject to property tax if they were privately owned. Federal crown corporations make PILTs pursuant to the *Crown Corporation Payments Regulation* ("the Regulation"). PortsToronto is subject to the Regulation.

Under the *PILTs Act* and the Regulation, the City requests PILTs from PortsToronto. PILTs are unlike property taxes in two important ways: PILTs are voluntary, and PortsToronto has discretion in determining corporation property values and property tax rate classification (e.g. commercial, residential, etc.) for calculating PILTs. The Supreme Court of Canada in its June 2012 judgement² concerning the valuation of the Halifax Citadel concluded that the purpose of this discretion to determine value is to preserve the constitutional immunity of federal bodies from tax while at the same time providing a mechanism to compensate municipalities for their services. To achieve this purpose, federal bodies such as PortsToronto may make an independent determination of value, but it must be their opinion of the value of the properties that would be attributable to the properties by an assessment authority if the properties were taxable.

PILT Disputes

Since 1999, the City has requested PILTs for all of the PortsToronto properties based on the current value assessment (CVA) property values returned by the Municipal Property Assessment Corporation (MPAC) on the annual assessment rolls and the City's total tax rates based on the property classification returned by MPAC on the assessment roll. However, PortsToronto has made PILTs using property values that are considerably lower than MPAC's returned values.

¹ PortsToronto is a port authority under section 8 of the *Canada Marine Act*. Its Letters Patent were effective as of June 8, 1999.

² *Halifax (Regional Municipality) v. Canada (Public Works and Government Services)*, [2012] 2 SCR 108. The City of Toronto was an intervener in support of Halifax in this case. The City was also an intervener in support of the position taken by the City of Montreal before the Supreme Court of Canada in *Montréal (City) v. Montreal Port Authority* [2010] S.C.J. No. 14. In that case, the Court considered the nature of the discretion that federal bodies like PortsToronto have under the *PILTs Act* in determining the tax rates used to calculate PILTs.

The City has been in discussions and litigation with PortsToronto to resolve PILT disputes for its properties since 2003. MPAC has been involved in this process as well. The review uncovered multiple errors in the assessments of PortsToronto's properties, including:

- incorrect values for the properties;
- incorrect classifications;
- errors in ownership; and,
- errors in lot size and boundaries.

Progress has been made in correcting the assessments of PortsToronto properties through these discussions over the years, however, the City, MPAC and PortsToronto still had certain disputes over values.

The City and PortsToronto appeared before the Panel first in February 2008. The Panel considered the value of:

- 80 Cherry Street,
- the Outer Harbour Marina,
- the Polson slip water lot, and,
- as it was named at the time, the Toronto City Centre Airport.

The Panel provided its advice in January 2009 and PortsToronto relied on the advice to make PILTs for all of its properties for the years 1999 to 2009 in February 2009. In June 2010, the City was successful in its judicial review application to the Federal Court of Canada of the Panel's advice and PortsToronto's decision on PILTs. In its judgement, the Court set aside the advice and quashed PortsToronto's decision to make PILTs on the basis of that advice. In doing so, the Federal Court concluded it was appropriate to have a new hearing dealing with the value of PortsToronto properties before a differently constituted Panel.

As a result the City pursued a second hearing before the federal Dispute Advisory Panel under the *PILTs Act*. The federal legislation allows for parties to apply to the Federal Dispute Advisory Panel for a hearing. Following a hearing, the Panel provides non-binding advice to the federal entity.

COMMENTS

Second Dispute Advisory Panel Hearing

The second Panel hearing with different members was held in January 2013. By this time, the City and PortsToronto were close to an agreement on valuing their water lots as well as reaching an agreement on the per passenger PILT for the Billy Bishop Toronto Centre Airport (BBTCA) that was ultimately approved by City Council in October 2013. Therefore, the City and PortsToronto only sought advice from the Panel on the value of

80 Cherry Street (the Marine Terminal property) and the Outer Harbour Marina at 475 Unwin Avenue. The taxation years at issue were 2006, 2007, 2008, and 2009, 2010, 2011, and 2012. The second Panel provided its advice in January 2014.

The evidence before the Panel on the value of 80 Cherry Street and the Outer Harbour Marina consisted of the current values for these properties returned by MPAC on the assessment roll and evidence of value from the City's and PortsToronto's respective expert witnesses.

80 Cherry Street – Marine Terminals

PortsToronto carries out the majority of its port activities at 80 Cherry Street. The Marine Terminal area has two terminals to handle port cargo and storage. There are also smaller buildings that are subject to PILTs used for maintenance and storage. The International Marine Passenger Terminal (IMPT) for the Rochester – Toronto fast ferry service that ceased operations at the end of 2005 is also located at 80 Cherry Street.

The parties agreed that the Cost Approach was the appropriate valuation method for 80 Cherry Street. The Cost Approach is an accepted valuation method for property assessment purposes that is based on the cost of constructing the buildings, with adjustments for depreciation, added to the cost of the land. Most commonly land values are derived from market sales.

475 Unwin Avenue – Outer Harbour Marina

PortsToronto operates a marina with 636 boat slips at the Outer Harbour Marina. The property is comprised of land used for the marina, water lots, and excess land that could be developed for future marina use.

Comprehensive Agreement for years 1999 to 2016

Since January 2014, the City and PortsToronto have had various meetings both at the working and senior management level using the Panel's advice as a basis to resolve all of the PILT disputes between the City and PortsToronto. These joint efforts by the City and PortsToronto were recently completed. The outcome is that the City and PortsToronto have reached a proposed comprehensive agreement on property values and PILTs for all of PortsToronto's properties (other than the BBTCA) for eighteen tax years (1999 to 2016).

Table 1 below provides the valuation date used to determine Current Value Assessments (on which PILT payments are based) for the taxation years covered under the comprehensive agreement.

The Current Value Assessment or CVA of a property represents an estimated market value at a fixed point in time, or the amount the property would sell for in an arm's length, open market sale between a willing buyer and a willing seller. Current Value

Assessments for all properties are determined by the Municipal Property Assessment Corporation (MPAC). The valuation date refers to the date on which the estimated market value is based. Since 2009, re-assessments are conducted by MPAC on a four-year cycle tied to a specific valuation date. Where a property has experienced an increase in CVA from one reassessment to the next, any changes in assessment are phased-in in equal increments over the four-year assessment cycle. Decreases in assessed value are fully realized in the first year following a reassessment.

Table 1
Reassessment Cycle for the Proposed Comprehensive Agreement

Taxation Year	Valuation Date
1999, 2000	June 30, 1996
2001, 2002	June 30, 1999
2003	June 30, 2001
2004, 2005	June 30, 2003
2006, 2007, 2008	January 1, 2005
2009, 2010, 2011, 2012	January 1, 2008
2013, 2014, 2015, 2016	January 1, 2012

The attached confidential report comments on the proposed comprehensive agreement with PortsToronto and seeks instructions.

CONTACT

Casey Brendon, Director, Revenue Services, Tel: (416) 392-8065, Fax: (416) 696-3778,
 E-mail cbrendo@toronto.ca

Diana W. Dimmer, Director of Litigation, Legal Services, Tel: (416) 392-7229, Fax:
 (416) 397-5624, E-mail ddimmer@toronto.ca

SIGNATURE

 Anna Kinastowski
 City Solicitor

 Giuliana Carbone
 Treasurer

ATTACHMENTS

Attachment 1 – Confidential Information