



**STAFF REPORT
ACTION REQUIRED
with Confidential Attachment**

Payments in lieu of Taxes for Billy Bishop Toronto City Airport

Date:	July 9, 2013
To:	City Council
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:\2013\Internal Services\rev\cc13020rev (AFS17989)

SUMMARY

This report provides an update on the status of the dispute with the Toronto Port Authority (TPA) over Payment in Lieu of Taxes (PILT) for the Billy Bishop Toronto City Airport (BBTCA) and seeks instructions on the issues.

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 staff 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 and 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 ("DAP") for a resolution of the PILT dispute matter on various Port Authority 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 results of the application to the DAP, directed staff to pursue a judicial review application of the Panel's decision to the Federal Court. This report is available at: <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2009.CC31.8>

The Federal Court made its decision in June 2010 and quashed the Toronto Port Authority's decision on PILTs, and set aside the DAP's report. The Court ordered that "at the request of either party a new PILT process is to be commenced before a differently constituted panel."

At its meeting held April 3 and 4, 2013 City Council did not adopt item GM20.3 Proposed Payments in Lieu of Taxes (PILT) Settlement, Billy Bishop Toronto City Airport (Ward All) (with confidential attachment). The public report is available at: <http://www.toronto.ca/legdocs/mmis/2013/gm/bgrd/backgroundfile-55952.pdf>

ISSUE BACKGROUND

The Toronto Port Authority (TPA) owns the Billy Bishop Toronto City Airport, the Toronto Marine Terminals, the Toronto Outer Harbour Marina and other properties. In lieu of property taxes, the TPA makes PILT payments to the City for its properties under the federal *Payments in Lieu of Taxes Act*. Under the *PILT Act*, the City is a "taxing authority" and the TPA is a Schedule III crown corporation. The Crown Corporation Payments Regulations govern the PILT to be made by the TPA to the City for its properties.

Generally, the City requests a PILT based upon the CVA (current value assessment) returned on the annual assessment roll by the Municipal Property Assessment Corporation (MPAC). Disputes have arisen as the TPA disagrees with the MPAC returned values. The TPA maintains that it has the discretion to pay PILTs based on values that it determines are, in its view, reasonable and reflecting the constraints in its Letters Patent on how its properties can be used.

PILT Disputes

The City has requested PILTs for all of the TPA's properties based on the City's total tax rates and the CVA property values returned by MPAC on the annual assessment roll. For its properties, the TPA has made payments based upon property values that are considerably lower than the values returned by MPAC and used by the City for PILT calculation.

The City has been in discussions and litigation with the TPA to resolve PILT disputes for all of its properties since 2003, with limited success.

For the past couple of years, the TPA and the City have had various meetings both at the working and senior management level to explore the possibility of resolving or narrowing the outstanding issues. The City and the TPA were unable to reach a tentative agreement on the Marine Terminal property at 80 Cherry Street or the Outer Harbour Marina. As a result, the parties proceeded with a further DAP hearing in January 2013 related to the current value assessment for these two properties. To date the DAP has not released its recommendation following the completion of the January hearing; the parties expect the DAP recommendation to be delivered in the near future. City staff will report further on this to City Council once a decision is issued by the DAP.

COMMENTS

The parties did not go forward with a hearing at the DAP over the values for the BBTCA as they were trying to resolve the matter. As noted above, City staff presented a report to the April 3-4, 2013 Council outlining a proposed settlement which was not adopted by Council. The TPA has recently written to the DAP requesting that a hearing be held to deal with PILTs at the BBTCA. The attached confidential report comments on the legal

issues in dispute and seeks instructions on these issues including presenting a revised settlement proposal to the TPA.

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SIGNATURE

Anna Kinastowski
City Solicitor

Giuliana Carbone
Treasurer

ATTACHMENTS

Attachment 1 – Confidential Information