



**STAFF REPORT
ACTION REQUIRED
with Confidential Attachment**

Proposed PILT Settlement, Billy Bishop Toronto Centre Airport

Date:	February 12, 2013
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:\2013\Internal Services\rev\gm13004rev (AFS17057)

SUMMARY

This report recommends a proposed settlement with the Toronto Port Authority (TPA) to resolve the outstanding Payment in Lieu of Taxes (PILT) dispute for the Billy Bishop Toronto Centre Airport (BBTCA). The details of the proposed settlement are discussed in Confidential Attachment 1.

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 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 federal Dispute Advisory Panel, 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 Dispute Advisory Panel'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."

ISSUE BACKGROUND

The Toronto Port Authority (TPA) is a port authority which was created under the *Canada Marine Act* in June 1999. The TPA is responsible for the safety and efficiency of marine navigation in Toronto Harbour. It is the successor entity of the Toronto Harbour Commissioners which managed the Toronto Harbour from 1911 to 1999.

The 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*. The purpose of the *PILT Act* "is to provide for the fair and equitable administration of Payments in lieu of Taxes." 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. According to the Regulations, the TPA shall make a PILT not less than the product of (a) the "corporation effective rate" and (b) the "corporation property value".

- a. **Corporation Effective Rate:** The City and the TPA have generally agreed that the "corporation effective rate" to be used for calculating PILTs for TPA properties should be the total property tax rate (including both the city and education rates) applicable to the property's tax classification as determined by the Municipal Property Assessment Corporation on the Annual Assessment Roll.
- b. **Corporation Property Value:** Under the federal Regulations, "Corporation property value" means the value that a corporation would consider to be attributable by an assessment authority (in Ontario this is the Municipal Property Assessment Corporation) to its corporation property, as the basis for computing the amount of any real property tax that would be applicable to that property if it were taxable property.

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 the market 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. In December 2005, City Council directed that the City apply to the Federal Dispute Advisory Panel (DAP). The DAP is created under the federal PILT legislation to hear disputes and give advice to the respective Minister or Crown Corporation on PILT matters.

The first DAP hearing was held in February 2008, and the DAP decision was made on January 5, 2009. Generally, the DAP favoured the position put forward by the TPA and advised that PILTs should be calculated based upon much lower current value assessment than those returned by MPAC. The DAP did not provide a value for BBTCA. Instead, the DAP supported the TPA's position that the PILT calculation for BBTCA should be based on a per passenger rate of \$0.80 similar to the formula under section 45.1 of Ontario Regulation 282/98 as if the BBTCA were one of the designated airports. This regulation provides that four designated airport authorities (London, Greater Toronto,

Ottawa and Thunder Bay) shall make PILT payments based upon a prescribed per passenger rate.

City staff identified various concerns with the DAP decision and accordingly, City Council, in February 2009, directed staff to pursue a judicial review application to the Federal Court of the DAP's decision. The Federal Court made its decision in June 2010 and quashed the TPA's decision and set aside the DAP's decision. It ordered that "at the request of either party a new PILT process is to be commenced before a differently constituted panel."

Following the Federal Court's decision, the TPA and the City renewed negotiations on all TPA properties, including the BBTCA, with a view to resolving or narrowing issues before proceeding with a further DAP hearing.

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 of this year related to the current value assessment for these two properties. Written submissions will be made to the panel and a decision is expected later this year. City staff will report further on this to City Council once a decision is issued by the DAP.

COMMENTS

In regard to the BBTCA, the City has had numerous discussions with the TPA to explore a possible settlement on the PILT disputes. The attached confidential report discloses the basis of the proposed settlement for the BBTCA and provides the financial implication information.

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SIGNATURE

Giuliana Carbone
Treasurer

Anna Kinastowski
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ATTACHMENTS

1. Confidential Attachment 1