



**STAFF REPORT
ACTION REQUIRED
with Confidential Attachment**

Captain John's Harbour Boat Restaurant

Date:	August 22, 2013
To:	Government Management Committee
From:	Treasurer and City Solicitor
Wards:	Ward 28 – Toronto Centre-Rosedale
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\gm13022rev (AFS17911)

SUMMARY

Captain John's Harbour Boat Restaurant is a floating restaurant on the Ship M.S. Jadran that has occupied a water lot at the foot of Yonge Street at 1 Queens Quay West for more than 30 years. The water lot is owned by the Toronto Port Authority and is licensed to the owner of Captain John's. Property taxes, including unpaid water/utility charges, interest and fees added to the tax account have been in arrears since 2002. Similarly, various amounts are owed by Captain John's to the Toronto Port Authority and to Waterfront Toronto.

This report provides details on the current unpaid property taxes, water charges, interest and fees and the status of discussions with the Ship's owner. The confidential portion of this report includes recommendations concerning a proposed agreement dealing with the Ship between the City, the Toronto Port Authority and Waterfront Toronto.

RECOMMENDATIONS

The Treasurer and City Solicitor recommend that:

1. Council adopt the confidential instructions to staff in Attachment 1.
2. City Council direct that Confidential Attachment 1 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.

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.

ISSUE BACKGROUND

1518756 Ontario Inc. owns the Ship the M.S. Jadran and the Captain John's Harbour Boat Restaurant ("Captain John's"). Mr. John Letnik a.k.a. Captain John, is the President of 1518756 Ontario Inc. The Ship is located at the foot of Yonge Street and has permanent connections to the land for water/sewer service, hydro and gas; it is accessible from land via a connecting walkway/gangplank. The water lot occupied by the Ship is owned by the Toronto Port Authority (TPA), a federal port authority created pursuant to the *Canada Marine Act*. The TPA has a license agreement with Captain John's to occupy the water lot.

Property taxes, including unpaid water charges, interest and fees added to the tax account for Captain John's have been in arrears since 2002, and various amounts are owed by Captain John's to the TPA for berthage charges, and to the Toronto Waterfront Revitalization Corporation ("Waterfront Toronto"), for lease payments for the property where the gangplank connects to the Ship. There have been unsuccessful joint efforts by the City, TPA and Waterfront Toronto since October of 2011 to work with Mr. Letnik and his other creditors to address the unpaid amounts.

On June 25, 2012 the City shut off the water supply to the Ship for the failure by Captain John to pay water charges. Toronto Public Health confirmed that Captain John's ceased operating after the water was shut off. Also on June 25, 2012, the TPA issued a detention order against the Ship meaning it cannot leave its berth without the TPA's consent. On June 26, 2012, Waterfront Toronto served notice on Captain John's of the termination of their lease for the use of land adjacent to the Ship, and requested that all property be removed from the leased area. Mr. Letnik is still permitted to enter the Ship and access his personal property located on the Ship.

COMMENTS

Captain John's has been assessed by the Municipal Property Assessment Corporation (MPAC) for taxes since 1993. The ship is classified in the commercial tax class. Currently, the Current Value Assessment (CVA) of the property, based on a January 1, 2012 valuation date, is 1,096,000. The 2013 phased-in CVA value used for taxation in

2013 is 892,750, which results in total 2013 levied taxes of \$27,836, consisting of a municipal portion of \$15,660 and an education portion of \$12,176. Captain John's appealed its current value assessment and/or its property tax classification consistently between 1998 and 2008 to the Assessment Review Board. All of these assessment appeals were either withdrawn by Mr. Letnik prior to a hearing or dismissed by the Board.

Captain John's also commenced a court application seeking a declaration that the Ship was not a structure and thus not assessable under Ontario's *Assessment Act*, R.S.O. 1990 c. A. 31. In 2007, the Superior Court determined that Captain John's was taxable as the Ship was a structure and included in the broad definition of "land" in the *Assessment Act* because of its permanent state and because if Captain John's owned the water lot it would be subject to property taxation. Captain John's appealed, but in October 2008, the Divisional Court upheld the Superior Court decision.

The City, the TPA and Waterfront Toronto have engaged in discussions with Mr. Letnik since October of 2011 to try and resolve the issues with the unpaid amounts owed to the City and others.

The balance of the discussions surrounding Captain John's and staff's recommendations are of a confidential nature, as they contain advice and information that is subject to solicitor client privilege and pertains to litigation or potential litigation. This confidential information is contained in Confidential Attachment 1 to this report.

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SIGNATURE

Giuliana Carbone
Treasurer

Anna Kinastowski
City Solicitor

ATTACHMENTS

Attachment 1 – Confidential Information