



REPORT FOR ACTION

Refund of Double-Repayment of Property Taxes - 50 Cumberland Street / 37 Yorkville Avenue (Municipal Car Park 15)

Date: March 31, 2023

To: Board of Directors, Toronto Parking Authority

From: President, Toronto Parking Authority

Wards: Ward 11, University-Rosedale

SUMMARY

This report is to obtain authority for Toronto Parking Authority (TPA) staff to repay \$876,037.96 to PricewaterhouseCoopers Inc., LIT Receiver of 33 Yorkville Residences Inc. and 33 Yorkville Residences Limited Partnership, on the basis that it represents a double-repayment for property taxes that were already refunded to the TPA on November 12, 2020 in the amount of \$1,465,800.18.

RECOMMENDATIONS

The President, Toronto Parking Authority recommends that:

1. The Board of Directors of Toronto Parking Authority provide authority to the President, Toronto Parking Authority, to pay \$876,037.96 to PricewaterhouseCoopers Inc., LIT Receiver of 33 Yorkville Residences Inc. and 33 Yorkville Residences Limited Partnership; and,
2. The Board of Directors of Toronto Parking Authority provide authority to the President, Toronto Parking Authority, to instruct Toronto Parking Authority counsel to undertake any steps required in the receivership proceedings that related to this payment.

FINANCIAL IMPACT

There is no financial impact to this report.

DECISION HISTORY

On March 2, 2020, the TPA received correspondence that the construction lenders for 33 Yorkville and Cresford Capital Corporation (collectively the "33 Yorkville Cresford subsidiaries") intended to bring an application that was heard on March 27, 2020 to appoint a receiver and manager for 33 Yorkville and Cresford.

At its meeting on May 15, 2020, the Toronto Parking Authority adopted item PA14.4 - Transaction Update on City-Owned 50 Cumberland / 37 Yorkville Avenue (Municipal Car Park 15), without amendment, which, among other things, updated the TPA Board about the proceeding.

<https://secure.toronto.ca/council/agenda-item.do?item=2020.PA14.4>

On June 26, 2020, lawyers for the TPA / City sent a letter to the Receiver requesting reimbursement for property tax overpayments which the TPA had made to the 33 Yorkville Cresford subsidiaries. Lawyers for the TPA / City had discussed this matter with the Receiver on May 27, 2020, and the Receiver had requested further explanation and documentation about this matter.

At its meeting on July 24, 2020, the Toronto Parking Authority adopted item PA16.2 - Supplementary Transaction Update on City-Owned 50 Cumberland / 37 Yorkville Avenue (Municipal Car Park 15), without amendment, which, among other things, provided a further update regarding the property tax matter.

<https://secure.toronto.ca/council/agenda-item.do?item=2020.PA16.2>

At its meeting on October 15, 2020, the Toronto Parking Authority adopted item PA17.1 - Transaction Update on City-Owned 50 Cumberland / 37 Yorkville Avenue (Municipal Car Park 15), as amended, which, among other things, provided a further update regarding the matter.

<https://secure.toronto.ca/council/agenda-item.do?item=2020.PA17.1>

COMMENTS

TPA Paid Property Taxes for Lease-Back of the Public Parking Garage

The City is the owner of the below-grade land municipally known as 37 Yorkville Avenue / 50 Cumberland Street (City Sub-Strata Lands), that is located beneath the majority of the lands, which were formerly owned by the 33 Yorkville Cresford subsidiaries.

The above-grade lands were sold by the City to the predecessor of the 33 Yorkville Cresford subsidiaries in December 2015. As part of the sale, an 800-space public parking garage (Public Parking Garage) is to be constructed by the purchaser (formerly a Cresford subsidiary, now a Pemberton subsidiary) in the City Sub-Strata Lands at the purchaser's sole cost, and in accordance with TPA's parking specifications and approved plans.

The TPA, as tenant, entered into a Net Parking Facility Lease with the purchaser of the above-grade lands (then the 33 Yorkville Cresford subsidiaries), to operate the then-existing municipal garage until commencement of construction. Sections 2.2 and 3.3 of the Lease required TPA to pay estimated property taxes as part of additional rent, to be reconciled based on actual amounts "as soon as reasonably possible".

As is common in a large condominium development, the assessment and resulting taxation of the City's Sub-strata Lands and the above-grade lands was in a complex state of "flux." The 33 Yorkville Cresford subsidiaries – or likely their realty advisors or property managers -- estimated the TPA's share of additional rent for property taxes based on its previous year's taxes, which is common and specifically authorized by the Net Parking Facility Lease.

In July, 2019, the City processed substantial credit adjustments to the 33 Yorkville Cresford subsidiaries property tax account for numerous taxation years based on various Assessment Act appeals and other similar City of Toronto Act proceedings. Resulting refunds were not received by the 33 Yorkville Cresford subsidiaries until January, 2020. The reconciliation of credits that ought to have been payable to the TPA had not yet taken place by the time of the commencement of the insolvency proceedings in early March, 2020.

TPA Sought and Obtained Repayment for Property Tax Overpayments

Counsel for the TPA wrote to the Receiver for the 33 Yorkville Cresford subsidiaries advancing a claim for these funds in letters dated:

- (a) May 25, 2020;
- (b) June 26, 2020; and
- (c) July 17, 2020.

The amount claimed was the following, which was arrived at with the assistance of estimates created by financial analysts from the City's Revenue Services Division, and with the review from the TPA Financial Controller:

2016: \$508,181.95
2017: \$365,433.92
2018: \$592,184.31

Total: \$1,465,800.18

TPA staff have confirmed this amount was received on November 12, 2020.

TPA Received Double-Payment of Property Tax Overpayments

The TPA received a cheque dated March 22, 2021 in the amount of \$876,037.96 for a refund of property taxes for the 2016 and 2017 taxation years (Tax Repayment Cheque).

The Tax Repayment Cheque was sent with several pages of calculations performed by Triovest that demonstrate what the funds relate to, and how Triovest arrived at the total sum.

The covering page indicates the purpose was to requisition funds to repay the TPA in its role as tenant. The various following invoice pages contain an appropriate municipal address, 50 Cumberland & 37 Yorkville.

The calculations provided with the Tax Repayment Cheque were broken down by year:

2016

The calculations provided show an amount of \$508,208.96, which is listed as "2016 Final Revised Tax Billing Adjustment."

This amount varies by only about 0.006 percent from the amount calculated by Revenue Services and paid by the Receiver for the 2016 final revised tax billing. We consider this to be a de minimis variance, and it can be explained by varying, but permissible differences in how the taxes for that year were divided between the TPA, and the various commercial tenants which operated at the above-ground portion of the then-structure.

There is also \$66,067.16 in Harmonized Sales Tax (HST), as HST is payable on additional rent. We have been advised by TPA staff that for accounting purposes, this HST refund has to be adjusted with the Canada Revenue Agency, as HST is a "pass-through" cost, meaning, HST calculated on additional rent is passed through to the parking fees charged for the use of the parking spaces.

2017

The calculations provided show an amount of \$265,597.83, which from attached supporting documents, is for the 2017 final revised tax billing.

The amount already requested and received by the TPA for 2017 year is in excess of this amount, or \$365,433.92.

Our analysis indicates that the amount paid for 2017 Tax Repayment Cheque is an under-calculation, and reflects an incorrect methodology. This figure reflects the amount billed for 2017 to a property tax account ending in 02801. In our view, this is incorrect,

as this tax account was a temporarily, "flow-through" account created to facilitate the significant reassessment of the property. Credits arising from payments made into this temporary, flow-through account were transferred into the correct tax account, ending in 02802.

However, this issue is moot as the TPA has already received the amount, which the TPA asserts is correct for the 2017 taxation year.

The 2017 year also includes a payment of \$34,527.72 for HST. For the reasons discussed above regarding HST, this amount is a "pass-through."

The foregoing accounts for all, but a de minimis sum of the Tax Repayment Cheque. The difference is \$1,636.29, on a cheque of \$876,037.96.

Counsel for TPA Investigated to Whom Payment Should be Made

The TPA has no way of knowing which entity has been deprived of the funds double-repaid to the TPA. It could be one of the following three:

- (a) the 33 Yorkville Cresford subsidiaries, which are being dissolved through ongoing insolvency proceedings. A Court-appointed Receiver acts on their behalf. If the funds belong to these entities, the funds should be used to repay outstanding creditors;
- (b) the 33 Yorkville Cresford subsidiaries property manager / realty advisor, Triovest. The TPA has no knowledge of its relationship with the previous (or perhaps current) owner. It is possible that all revenues and all expenses in relation to the property were assigned to it / were its responsibility by operation of contract. Alternatively, it is also possible it was simply managing the property for the owner, with revenues and expenses flowing back and forth to and from the owner;
- (c) the new owner, PEM (Yorkville) Holdings Inc., is a Pemberton subsidiary. It is possible this entity has funded the payment.

Counsel for the TPA wrote to all three entities on April 11, 2022 informing them of the matter, asking them to advise whether they advanced a claim to the funds, and indicating that if they remained silent, the TPA would likely refund the entity which advanced a claim to the funds.

Counsel for the TPA received on April 29 and May 3, 2022 responses by property tax consultants on behalf of Kingsett seeking further information and clarification about the matter, to which counsel replied on the same dates.

On August 17, 2022, counsel for the Court-appointed Receiver wrote to advise that it had conducted a review of the available information as well as coordinated with certain parties. It advised that in its view, and that of KingSett, that the Taxes Repayment Cheque is properly payable to the 33 Yorkville estate. They were not aware of any party taking a contrary view. They copied Kingsett, Triovest, and counsel for PEM (Yorkville) Holdings Inc. None of them have replied to advance a contrary position.

In light of the aforementioned, the TPA will repay \$876,037.96 to PricewaterhouseCoopers Inc., LIT Receiver of 33 Yorkville Residences Inc. and 33 Yorkville Residences Limited Partnership, on the basis that it represents a double-repayment for property taxes that were already refunded to the TPA on November 12, 2020 in the amount of \$1,465,800.18.

CONTACT

Rose-Ann Lee, Chief Financial Officer, Toronto Parking Authority, 647-202-9440,
rose-ann.lee@toronto.ca

Phyllis Gallagher, Financial Controller, Toronto Parking Authority, 416-457-7023,
Phyllis.gallagher@toronto.ca

SIGNATURE

W. Scott Collier, President
Toronto Parking Authority