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Item No. 6
Halifax Regional Council
January 29, 2013

TO: Mayor Savage and Members of Halifax Regional Council

SUBMITTED BY: Original Signed

Marian Tyson, QC, Acting Director, Legal, Insurance & Risk Management Services

DATE: January 8, 2013

SUBJECT: Update of the Dispute of the Payment in Lieu of Taxes Payments for the Citadel, Halifax

INFORMATION REPORT

ORIGIN

Decision of the Supreme Court of Canada in the matter of Halifax Regional Municipality (Appellant), Her Majesty The Queen in Right of Canada, as represented by the Minister of Public Works and Government Services (Respondent), and City of Toronto, Federation of Canadian Municipalities, Association of Canadian Port Authorities and City of Québec (Intervenors) remitting the matter of the valuation of the lands of the Halifax Citadel National Historic Site to the Minister of Public Works and Government Services for redetermination.

LEGISLATIVE AUTHORITY

This matter is a question of appropriate payment in lieu of tax by the federal department of Public Works and Government Services Canada to the HRM under the federal statute Payment in Lieu of Taxes Act, R.S.C. 1985 c. M-13.

BACKGROUND

The issue of whether the federal department was paying appropriate payments in lieu of taxes to HRM for Citadel Hill and the Fort was precipitated in 1994, when Public Works Government Services Canada reduced the value of the Citadel on which it would pay payment in lieu of tax from \$20,000,000 to \$9,146,000 unilaterally, and then later reduced it again to \$5,250,000.

While the Government of Canada does not pay taxes, it has recognized and instituted legislation to provide that it will make payments in lieu of taxes to municipalities for its properties located in a municipality. Federal departments pay only on eligible property as defined in the *Payment in Lieu of Taxes Act*, and traditionally on the basis of the assessed values determined by the provincial assessment authority. These assessed values were not used by PWGSC beginning in 1994.

Halifax Regional Municipality requested a review of the values used by the PWGSC through the avenue available under the *Payment in Lieu of Taxes Act*, that is, a hearing before the Dispute Advisory Board appointed *ad hoc* by the Minister of Public Works and Government Services to recommend, after hearing the parties, appropriate values for property serving as the basis for payments.

A dispute about what property was eligible for consideration was ended by agreement, after the issue was brought to the Federal Court by HRM and then settled by the parties. Later, agreement on the value of eligible improvements for the years 2001-2005 was reached and approved by Council on September 19, 2006.

The Hearing before the Dispute Advisory Panel concerning the values for the years 1997 to 2007 took place June 25 to 29, 2007, and involved the hearing of evidence of expert witnesses on the appropriate appraisal of the acreage of the hill and the eligible improvements (the *PILT Act* had been amended in 2000 to further exclude more improvements from eligibility). By this time, the differences in the values between Assessment Services and those adopted by PWGSC were: for the eligible improvements, for the years 1997-1999, approximately \$7,000,000 and \$1,825,000 respectively per annum; and for the land \$19,000,000 and \$3,425,000 respectively per annum.

The Decision, which considered the evidence and recommended the values of the land and the improvements to the Minister, was rendered December 20, 2007 received January 7, 2008. HRM applied to have the Panel consider an error of omission with respect to the calculations of value for the eligible buildings, and the Panel issued a Rectification to Recommendation decision correcting the error on the 20th of February 2008. The Minister issued his Decision adopting the recommendation of the Panel on July 29, 2008, that is, the value of eligible improvements was \$4,761,200 and the value of the land was \$1,550,010.

There were significant legal issues with the analyses in the DAP Decision and, as a result, Council approved the filing of a Judicial Review with the Federal Court (Trial Division). HRM's application was successful and the matter was referred back to a new DAP for reconsideration.

Public Works and Government Services Canada has appealed the decision of the Federal Court

to the Federal Court of Appeal and on July 21, 2010, the Federal Court of Appeal rendered its decision allowing the appeal.

In August 2010, Legal Services staff recommended that the decision of the Federal Court of Appeal should be appealed to the Supreme Court of Canada on the basis of error of law on the Court's finding that the federal Minister's discretion to determine property value is unconstrained and whether the determination of value by the Minister met a standard of reasonableness.

The Supreme Court of Canada granted leave to HRM to appeal and heard the parties, including Intervenor, City of Toronto, Federation of Canadian Municipalities, Association of Canadian Port Authorities and City of Québec on December 12, 2011. The Decision of the Supreme Court of Canada was received on June 15, 2012. The Court found the Minister's determination of value was not reasonable and said the Minister can determine value using the assessed value of the assessment authority as a benchmark. The Court was critical of the use of an unaccepted methodology of appraisal by the federal department.

DISCUSSION

After a review of the Decision of the Supreme Court of Canada, Legal Services requested through correspondence that its counterparts in the federal Department of Justice meet to discuss settlement of the amount of PILT payable.

A letter with the suggested settlement amount was sent dated October 30, 2012. A response dated November 6, 2012 was received from the Department of Justice solicitor to the effect that the correspondence was forwarded to their client and he was awaiting instructions.

However, on December 13, 2012, the Mayor was advised through a letter from the Minister of Public Works and Government Services, Rona Ambrose, that she intends to refer the matter of the valuation of the land at the Halifax Citadel National Historic Site back to the Payment in Lieu of Taxes Dispute Advisory Panel for a readjudication which will recommend a new value to her as Minister.

As noted in the background, the Decision of the Supreme Court of Canada, which essentially rejected the methodology and value argued by the PWGSC, was received six months ago. HRM suggested the amount of outstanding PILT owed by PWGSC should be settled after 17 years of litigation with PWGSC. By letter dated December 31, 2012, the Department of Justice solicitor advised that the Minister contacted the Chair of DAP seeking advice on valuation and that the Panel attend to this without delay. The solicitor indicated that the Department client is interested in exploring a mutually agreeable solution before returning to a hearing before the DAP.

Legal Services has responded indicating that HRM is willing to continue attempts to reach a settlement. Further, that HRM will have to retain experts to produce an appraisal for the new Panel, as well as external Counsel.

Last week, HRM was advised that the costs awarded by the Supreme Court of Canada for the litigation in the Federal Court, the Federal Court of Appeal, and the Supreme Court of Canada was likely agreeable at the suggested total amount of \$29,396.00. These costs represent a partial recovery of actual legal bills incurred by HRM, and are determined by the Rules of the Supreme Court of Canada through a tariff adopted by the Court.

FINANCIAL IMPLICATIONS

The financial implications will remain unknown until the finalization of any Appeal and any further hearing before the Dispute Advisory Panel.

COMMUNITY ENGAGEMENT

Not applicable.

ATTACHMENTS

None.

A copy of this report can be obtained online at <http://www.halifax.ca/council/agendasc/agenda.html> then choose the appropriate meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

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Original signed

Report Approved by: _____
Marian Tyson, QC, Acting Director, Legal, Insurance & Risk Management Services, 490-4219
