



**City of Kingston
Report to Council
Report Number 21-172**

To: Mayor and Members of Council
From: Desiree Kennedy, Chief Financial Officer & City Treasurer
Resource Staff: Jeff Walker, Manager, Taxation & Revenue
Date of Meeting: June 22, 2021
Subject: Withdrawal of Dispute Advisory Panel Appeal

Council Strategic Plan Alignment:

Theme: Corporate business

Goal: See above

Executive Summary:

While federally owned properties are exempt from property taxes, the federal government pays payments in lieu of taxes (PILT) through the Department of Public Works and Government Services Canada (PWGSC) based on property assessment values as calculated by PWGSC. Over the years, differences have arisen between the property assessment values as calculated by PWGSC for paying the PILT and property assessment values as calculated by the Municipal Property Assessment Corporation (MPAC), which were used by the City to submit their PILT requests to PWGSC and previously used to determine budget projections for PILT revenues.

As a result of the increasing differences in assessment values and anticipated federal PILT revenues, in April 2008, Council instructed the City Treasurer to file an appeal on behalf of the City to the Federal Dispute Advisory Panel concerning the amount of Payments in Lieu of Taxes (PILT) paid by Public Works Government Services Canada and directed the Director of Legal Services to determine if an appeal or other legal procedure would be warranted to pursue payment of PILT amounts.

Over the years, facilitated by representatives from the Dispute Advisory Panel (DAP), City staff have worked with PWGSC and MPAC to reconcile assessment value differences. Staff have identified rational for the majority of the discrepancies which have been related to either property

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tax classification differences or physical changes to properties that had not been accounted for by MPAC in their assessment. The remaining differences related to methodologies in the respective costing systems. While differences between the two valuation methodologies will continue to exist because of different assumptions and approach, the parties have developed an ongoing reconciling process whereby PWGSC and MPAC will maintain a parallel PILT listing that will reconcile methodology differences and support the City's process for projecting PILT revenues.

Based on the results of significant efforts made by the City, PWGSC, and MPAC over the past number of years, there is no longer any benefit to continue with the PILT DAP or any other judicial review process. Therefore, staff are recommending that the City's 2007-2008 appeal to the PILT DAP be formally withdrawn. Staff will continue to work with PWGSC and MPAC to ensure the federal properties are accurately and fairly assessed and PIL revenues accurately projected for budget purposes.

Recommendation:

That Council direct the Chief Financial Officer and City Treasurer to formally withdraw the 2007-2008 appeal to the federal Dispute Advisory Panel regarding the Payments in Lieu of Taxes paid by Public Works Government Services Canada for federal properties located in Kingston; and

That Council direct the Chief Financial Officer and City Treasurer to execute any documents necessary to provide for the withdrawal of the appeal, to the satisfaction of the Acting City Solicitor; and

That staff take no further legal action to pursue amounts from the federal government for Payments in Lieu of Taxes with respect to the 2007 and 2008 fiscal years.

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Authorizing Signatures:

ORIGINAL SIGNED BY CHIEF FINANCIAL
OFFICER & CITY TREASURER

**Desiree Kennedy, Chief
Financial Officer & City
Treasurer**

ORIGINAL SIGNED BY CHIEF
ADMINISTRATIVE OFFICER

**Lanie Hurdle, Chief
Administrative Officer**

Consultation with the following Members of the Corporate Management Team:

Paige Agnew, Commissioner, Community Services	Not required
Peter Huigenbos, Commissioner, Business, Environment & Projects	Not required
Brad Joyce, Commissioner, Corporate Services	Not required
Jim Keech, President & CEO, Utilities Kingston	Not required
Sheila Kidd, Commissioner, Transportation & Public Works	Not required

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Options/Discussion:

All properties owned and occupied by all three levels of government are exempt from property taxation; however, other legislation provides that payments in lieu of taxation (PILT) may be paid by the government with respect to certain properties. The federal *Payments in Lieu of Taxation Act* permits the federal government to make a payment in lieu of taxes for properties such as federal penitentiaries and properties connected with the Canadian Forces Base.

The federal government pays federal properties' PILT through the Department of Public Works and Government Services Canada (PWGSC). Payments are calculated on the basis of assessment values and municipal tax rates which would, in the opinion of the Minister of Public Works and Government Services, apply to federal property if it were taxable. PWGSC calculates PILT based on their assessed values and property tax classification pursuant to its own determination.

The PWGSC and Municipal Property Assessment Corporation (MPAC) follow different legislation for assessing federal PIL properties and over the years, differences have arisen between the property assessment values as calculated by PWGSC and the property assessment values as calculated by MPAC and used by the City to submit their PILT requests to PWGSC.

In Ontario, MPAC uses assessment and taxation principles that are guided by the Ontario *Assessment Act*, the *Municipal Act* and regulations thereto. MPAC is directed under the *Assessment Act* to include federal properties on the assessment roll and to assess federal property in accordance with the Ontario *Assessment Act* and respective regulation. There is no discretion provided in the legislation to adjust the assessment or property tax classification to reflect the Federal PILT payments that are made under the Federal *Payment in Lieu of Taxes Act (PILT Act)*. Therefore, MPAC is obliged to continue to value and classify all property solely under the provisions of the *Assessment Act*.

In 2007, the difference between the two PILT calculations (using PWGSC and MPAC assessments) had increased to over \$900K. City staff attempted to discuss assessment variances with both parties and to formulate a plan that would resolve the assessment differences; however, no conclusion could be reached. At that time, staff recommended that the City file an appeal for the 2007 and 2008 taxation years with the federal Payments in Lieu of Taxes Dispute Advisory Panel (DAP). The DAP was created by the federal government to facilitate municipal complaints and to provide rules of practice for municipal applications and the hearing of complaints. The DAP makes recommendations with respect to the appropriate PILT calculations; however, the largest discrepancies in PILT calculations relate to legislative and regulatory differences. The DAP can only make recommendations for a PILT amount under consideration; therefore, the recommendation does not alter the applicable laws and the discrepancy continues into the next year's PILT.

The application to the DAP was formally submitted by the City of Kingston in May 2008 and included a listing of 33 federal properties. The DAP process was initiated by the City of Kingston

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with the hopes of encouraging PWGSC and MPAC to work together to review and complete an analysis of the properties and to confirm and/or identify rational for differences in assessment values and property tax classifications.

Subsequent to filing an appeal, the City attempted to host meetings with representatives from PWGSC and MPAC with the objective of better understanding how the assessment values were derived by PWGSC for calculating the payments in lieu and understanding why significant differences exist between those values and the assessment values that MPAC includes on the City's tax roll.

Resolving differences between the two assessment bases was proving difficult. It was identified early on that a number of property assessment differences existed as a result of different methodologies used by PWGSC and MPAC and that an open review and communication process between the various parties in order to better understand assessment methodologies and reconcile valuation differences would be a beneficial and efficient strategy for resolving any disputes. In addition, the DAP was undergoing change to its operating structure and their involvement in the appeal process was deferred.

In 2015, the DAP reorganized and appointed a case manager to the file who reached out to determine what was needed to move this file forward. With the facilitation and support of the DAP, a number of joint meetings between the City, PWGSC and MPAC were held. As a first step, the parties agreed that the calculated PILT differences on 25 of the federal properties under appeal were either resolved or represented very small differences. That left 8 properties with larger discrepancies under appeal, with a plan to move those forward to a review management conference.

Parties continued to meet to discuss the remaining 8 properties and opportunities for resolution as an alternative to proceeding to a formal hearing under the DAP process. The meetings, overseen by an assigned member of the DAP, confirmed a variety of methodology and costing differences.

While some adjustments were made to the federal assessment calculations as part of the review process, approximately three-quarters of the differences between the PWGSC and the MPAC calculations related to property tax classification differences and/or physical changes to the properties that had not been accounted for by MPAC in their assessment of the properties. MPAC confirmed that they had allocated limited resources over the years to review the assessed values of federal properties, knowing that federal PILT revenues would be based solely on PWGSC calculations. The remaining differences were attributed to differences in values used in the respective costing systems.

The mandate of the Dispute Advisory Panel under the *PILT Act* includes giving advice to the Minister in the event that a taxing authority disagrees with the property value, property dimension or effective rate applicable to any federal property. Despite the fact that our issues were not technically within the purview of the DAP, the City has been successful, with the support of the DAP, in bringing both PWGSC and MPAC to the table to complete a detailed review of the properties subject to the appeal. This has also resulted in improved

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communication between the three parties and a better awareness of the assessment methodologies and values in reconciling valuation discrepancies going forward.

The parties have also developed an ongoing reconciling process whereby PWGSC and MPAC will maintain a parallel PILT listing. MPAC will continue to return the Assessment Roll as mandated by the Ontario *Assessment Act*; however, MPAC will also work to develop a separate Federal PILT report with values and classifications that would be applied if MPAC were following the Federal *PILT Act*. This will be a useful tool for the City in projecting and reconciling future PILT revenues.

It should also be noted that, while differences between the two valuations will continue to exist because of different assumptions and approach, given the experience from the past few years, staff are seeing smaller discrepancies between the assessment values calculated by MPAC and PWGSC for new construction values. In fact, for the past four years, PWGSC and MPAC have calculated close to the same values for new construction assessment. This suggests that there may have been errors in MPAC valuations in 2007-2008 as a result of the limited review processes of these properties in the past.

Based on the results of the reconciliation work done over the past number of years, and with a common understanding of the inherent differences in methodology, the analysis indicates that it is very unlikely that the City would be successful in a DAP hearing or any other legal process in order to recoup further PILT funds from PWGSC. Therefore, staff are recommending that the City's 2007-2008 appeal to the PILT DAP be formally withdrawn at this time. Staff will continue to work with PWGSC and MPAC to ensure the federal properties are accurately and fairly assessed and payments in lieu revenues are accurately projected for budget purposes.

Existing Policy/By-Law:

None

Notice Provisions:

None

Accessibility Considerations:

None

Financial Considerations:

The City's annual operating budget includes payments in lieu of taxation for federal properties of approximately \$10M. These revenues are now budgeted based on PWGSC's assessed values, prior year actuals and ongoing discussions with PWGSC with respect to property changes and additions.

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Contacts:

Desiree Kennedy, Chief Financial Officer & City Treasurer, 613-546-4291 extension 2220

Jeff Walker, Manager, Taxation & Revenue, 613-546-4291 extension 2484

Other City of Kingston Staff Consulted:

Alan McLeod, Acting City Solicitor and Director of Legal Services

Exhibits Attached:

None