



STAFF REPORT

Title: Correspondence - Minister of Public Services and Procurement

Meeting Date: September 8, 2020

Executive Summary:

His Worship Mayor Craig Copeland received a letter dated August 25, 2020, from the Honourable Minister of Public Services and Procurement, Anita Anand. The letter confirms receipt of an earlier letter sent by His Worship dated January 28, 2020, as well as an email dated April 7, 2020 (all are attached to this report).

The minister assures the city that the Government of Canada is committed to resolving the issue, but refrains from making further comment, as part of the dispute remains before the Payments in Lieu of Taxes (PILT) Dispute Advisory Panel (DAP), and part remains before the federal court system.

The Government of Canada remains in arrears to the City of Cold Lake in an amount totaling over \$23 million. About \$13 million of this is disputed PILT (including school board requisitions currently being deferred by Alberta's Minister of Education) and the remainder is due to penalties and interest levied in accordance with the Municipal Government Act.

The minister states that a DAP decision is expected in 2020 and the federal court proceedings are proceeding "on schedule."

Background:

The 4 Wing Cold Lake Military Base (the Base) consists of 8,533 acres of land in use as an active air force Base, improved with an airfield and approximately 1,300 buildings. These buildings include operational facilities, training facilities and accommodations for the military personnel and their families. The City of Cold Lake and Public Works and Procurement Canada (PSPC) care in close agreement as to the value of the buildings and structures, but cannot agree to the property value with respect to the underlying land occupied by the Base.

For years, the city assessed the land portion of the property at approximately \$45 million and made application to PSPC for the Payment in Lieu of Taxes (PI LT) payment. PSPC provided a value for the land of \$14.5 million.

Dispute Advisory Panel Review



The city applied to the Dispute Advisory Panel (DAP) for a review of the PILT on the Base for the year 2012 due to the fact that PSPC unilaterally reduced the PILT payment for the land by 70%. The City utilized the rulings of the Supreme Court of Canada in the *Halifax versus Canada* [*Halifax v. Canada* (Public Works and Government Services)] and *Montreal City v. Montreal Port Authority* that stated:

- The Minister has an obligation to make a fair and equitable determination of the valuation of federal property.
- Fairness to municipalities demands that the Minister's determination of valuation be informed by the tax system that would apply to the federal property if that property were taxable.
- The Minister cannot base his or her determination on a "fictitious tax system."

The city decided to have 2 independent appraisals completed on the property which resulted in significantly different results indicating the "market value" of this property for assessment purposes was between \$158 and \$198 million.

At the DAP hearing, the city provided rationale and conclusions for why the land is worth \$189 million while the PSPC's position was that the land had a minimal value of \$14.5 million.

The DAP rendered its recommendation to the Minister on April 17, 2014, in favor of the land being worth approximately \$158 million, less the cost to upgrade services which was said to be \$114 million, leaving the land value at approximately \$44 million.

The city agreed with the DAP recommendations except for its treatment of physical servicing on the land (water, sewer etc). There was minimal evidence to prove the upgrades were worth \$114 million, but due to the absence of better evidence the panel used it as a reasonable deduction.

Minister's Decision

The Minister accepted the DAP's recommendation on June 3, 2015. The city although in agreement with some of the DAP's decision, felt the methodology surrounding the deduction for services was flawed, and therefore filed two (2) judicial reviews: One regarding the DAP's recommendation to the Minister and one regarding the Minister's decision to accept the recommendation of the DAP.

Post DAP's Recommendation and Minister's Decision



PSPC continued to pay PILT based on this decision and the city followed with applying for a review by the DAP on an annual basis regardless of the fact that a number of the upgrades have been completed since the hearing.

The city and PSPC agreed to stay the outstanding litigation to facilitate bona fide discussions to attempt to resolve the ongoing PILT dispute. The city put a great deal of time and effort into preparing for these discussions. Proposals were provided by both parties. In the city's view, PSPC did not take these discussions seriously and were not dealing with the city in good faith. The city sent letters and attempted to outline its concerns. PSPC continues to put up roadblocks that stall the process, and the city has recently been notified that PSPC will no longer be making PILT payments on the Cold Lake Golf and Winter Club due to the status of a concession agreement.

The City began to manage this facility in 2013 upon a request from the Wing Commander.

The DAP would not review the 2013-2018 PILT appeals by the city until the judicial reviews were no longer outstanding. The city withdrew the outstanding litigation in order to move forward. The city has since filed for review for the 2019 and 2020 PILT payments. The city is becoming very frustrated with the process and currently there is no review date set to hear any of the reviews from 2013 to date. The city is currently trying to amalgamate the hearings for 2013-2020 and has filed a judicial review over the Golf and Winter Club Agreement. We understand this most likely will delay the process for a timely DAP review.

Impact on City of Cold Lake Taxpayer

In a recent Supreme Court of Canada decision, the Court confirmed the fundamental principle that every assessment must be fair and equitable for all tax payers, as every taxpayer must bare their fair share of the total municipal tax burden. PSPC has not been paying its fair share of the total municipal tax burden within the city. To avoid the city experiencing a revenue shortage, the city has taxed the balance of the taxpayers in Cold Lake an additional amount to offset the shortage created by PSPC's refusal to pay its fair share of the total tax burden.

Moreover, the city collects school tax on behalf of the Province of Alberta. The amount that the city is obliged to remit to the province is calculated by multiplying the city's total assessment base by the provincial school tax rate. Accordingly, the city is obliged to remit monies to the province based upon the assessed value of the 4 Wing Military Base rather than the PILT payment received from PSPC. This results in the city being legally required to remit more money (school tax) to the province than it collects from PSPC. The annual deficit is causing additional hardship upon the city. The city annually



must request a deferral of the payment from the province but must set up an allowance in the event the province requests a payout of the deferral.

Alternatives:

- Council may accept the letter as information.
- Council may direct administration to prepare a further response based on its discussion.

Recommended Action:

Administration recommends that Council accept the letter as information.

Budget Implications (Yes or No):

No

Submitted by:

Kevin Nagoya, Chief Administrative Officer