

**Toronto
Port
Authority**



**Administration
Portuaire
de Toronto**

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September 13, 2011

Councillor Adam Vaughan
City of Toronto
100 Queen Street West
Toronto, Ontario M5H 2N2

Dear Councillor Vaughan:

Re: Your Open Letter of August 31, 2011

I wanted to again take this opportunity to clear up misunderstandings that you appear to have on various issues involving the Toronto Port Authority. This letter is in keeping with previous correspondence along similar lines regarding other misunderstandings and misrepresentations (June 27, 2008, August 28, 2009, October 20, 2010 and December 1, 2010, all of which are available at www.torontoport.com).

I have attempted to address the more serious of your accusations and misrepresentations in the order presented in your recent Open Letter dated August 31, 2011. I have included your various statements and/or claims in italics for reference:

“...strangers, cut through the local playground and scold kids playing in a wading pool. People pee in the park and school yard...”

We are unaware of any TPA staff, airport customers or anyone else related to the TPA’s activities “scolding” kids or “peeing in the park or schoolyard”. I do note in passing that residents near Ramsden Park in Midtown, for example, also have concerns about the sanitary conditions of their local park; to my knowledge none have blamed the TPA, however.

In an effort to ensure that the TPA has done all it can on this issue, we have either uniformed police officers or security guards (at TPA expense in either case) posted, at all times throughout the day, to ensure that local traffic laws are adhered to, and that the department of waiting taxi drivers is appropriate for the neighbourhood.

“PILTS”

As per my October 20, 2010 letter, this complaint is part of your consistent theme that *“The TPA should start paying its taxes”* as far as Payments-in-Lieu-of-Taxes are

concerned. As our earlier audited analysis demonstrated to you, The TPA is a **net contributor to the public purse**. Since 2000, the TPA has paid payments-in-lieu-of-taxes (PILTs) to the City of Toronto in excess of \$8 million in aggregate. The TPA's 2009 PILTs sum represented 6.4 per cent of TPA's gross revenue, versus an average of 3.8 per cent paid by the Ports of Halifax, Hamilton, Quebec City and Vancouver. The TPA has also paid substantial royalty payments to the federal government, which in turn improve the lives of Canadians.

As the City Manager will attest, the TPA requested that the November 30, 2011 deadline for the conclusion of final PILTS agreement between the TPA and the City be inserted into the recent TPA-related Agreement which was approved by City Council in June 2011. Our team is working extremely hard to ensure we comply with this deadline. Whatever you can do to encourage City Staff to complete this process by the agreed-upon deadline would be much appreciated.

“Sometimes the courts are asked to rule, more often than not settlements that undermine the community are reached.”

During the tenure of this Board of Directors, not a single lawsuit has been filed against the City of Toronto or any community group. The only matter before the Courts during this period was a byproduct of obstacles that you had personally thrown up against the public's access to the Billy Bishop Toronto City Airport (“BBTCA”). In the Superior Court of Ontario decision released in December 2008, Madam Justice D. A. Wilson advised that your refusal “to approve the work application submitted by the TPA constitutes a breach of the negative covenant set out in the Tripartite Agreement not to interfere with the safe use and operation of the Toronto City Centre Airport¹ and a breach of its obligation to the TPA pursuant to the Lease Agreement for the Finger Lot to not unreasonably withhold its consent to the work requested on the Finger Lot.”

As you can imagine, tens of thousands of dollars were wasted in unnecessary legal expenses on the part of both the City of Toronto and the TPA, solely because of the previous City Administration's desire to interfere with the safe use and operation of the airport. The Court ruled against you and then-Mayor Miller's Administration in this watershed instance.

On the subject of “settlements”, I will remind you that you voted in favour of the “Macro Settlement Agreement” in December 2009 to settle a variety of outstanding issues that had accumulated between the TPA and the City of Toronto over the prior 10 years. Your personal support of this agreement was recorded as part of a unanimous 36-0 City Council vote in favour of the TPA agreement during then-Mayor David Miler's tenure. Is this agreement, which you supported, the “settlement that undermined the community”?

The more recent Agreement between the City and the TPA, approved in July 2011, will see the City save millions in watermain and utility construction costs and will, more

¹ Since renamed Billy Bishop Toronto City Airport

importantly, improve the water and sewage treatment of many of your constituents and their neighbours.

“While TPA staff get paid to show up at meetings, the community must engage on their own time, in yet another round of consultation that only deepens the despair.”

The BBTCA Consultative Committee framework proposed on June 8, 2010, as a follow-up to our public meeting of February 17, 2010, was designed to provide a forum to engage area residents on a regular basis regarding their concerns about the airport.

The BBTCA Consultative Committee is a hybrid model, employing the best practices of similar committees established throughout the world. It was designed directly in the spirit of the GTAA Consultative Committee, which was “highly regarded” by the Toronto Board of Health under the Miller Administration.

As you know, prior to its formal creation by the TPA, the membership and structure of this Consultative Committee was amended to address your advice and recommendations. It is with regret that your “despair” has “deepened” despite our acceptance of your advice on these matters.

I note that City Hall staff who attended your recent public budget consultations were paid for their time. I also note that whenever members of our Board of Directors meet or speak with City Councillors, stakeholders, or attend our annual public meeting, for example, we do so as unpaid volunteers. When our executives or Directors attend evening meetings with the community, for example, they do not charge fees or overtime, and such hours go unpaid.

“When the community says you can't increase flights without evicting medevac the TPA says residents are exaggerating and then evicts medevac.”

The TPA has not evicted Ornge, the Province of Ontario’s exclusive provider of Medevac services, from the BBTCA. For publicly-stated operational reasons, Ornge has concluded that it should base itself in Hamilton.

On the “increasing flights” point, I note that you have previously claimed that the new 90 slot award in 2010, which resulted from the report by Jacobs Consultancy regarding the NEF Contour analysis, was in breach of the Tripartite Agreement. As was requested by then-Mayor Miller’s administration, we provided the Jacobs data for use in the City’s October 2010 “peer review” of the Jacobs’ Report. As you know, the City’s own “peer review” report has been completed and confirmed the original Jacobs NEF Contour analysis, and as such, also confirmed that our 2010 slot award figures were appropriate.

“When the community says you can’t build the tunnel as presented without city consent and land, the TPA says no, and then turns around strikes a deal with the City because permission and land is needed.”

I had hoped this was made clear in my December 1, 2010 letter.

The original tunnel route as proposed in 2009/10 utilized federal lands, both above and below ground: this was called the “dog leg” route. In a letter to then-Mayor Miller, dated October 29, 2010², we advised the City that there was an opportunity for travellers and the City of Toronto to each save substantial sums by removing that “dog leg”. Here is the relevant excerpt from that letter:

Engineers have designed the proposed route for the BBTCA pedestrian tunnel in such a way that it “jogs” around a particular dockwall owned by the City of Toronto, which is situated just east of the TPA property that holds the city-side passenger ferry terminal. With this “jog” the TPA requires no City permits or easements to construct the tunnel, as the entire project is then on Federal land, should we decide to ultimately proceed with the initiative in the coming weeks. Given your longstanding opposition to the BBTCA, and your specific public anti-tunnel comments of August 7, 2009, we have not approached you earlier regarding this matter. Time is now of the essence, and with the end of the mayoral campaign, it would be imprudent of us not to make this formal request.

The purpose of this letter is to advise you that our design engineers believe that we can save approximately \$3.5 million in construction costs if we were to build the proposed tunnel directly below the City’s dockwall, rather than “jogging” around it. A \$3.5 million reduction in construction costs would mean that the TPA could reduce the current \$20 Airport Improvement Fee (“AIF”), at some point in the future, sooner than otherwise (as you may know, capital improvements at most Canadian airports, including the BBTCA, are financed via such passenger fees). It seems such a waste to spend an additional \$3.5 million but for our inability to secure this easement from the City of Toronto. From a timing standpoint, our designers need formal clarity on the matter in the very near term.

At no time has the TPA ever suggested that the original proposed route involved anything other than TPA land. However, by going directly under the City dockwall, we could save travellers substantial sums. Ultimately, a majority of City Councillors agreed with this approach, and the direct route was approved by City Council in July 2011.

² Available at www.torontoport.com

“The TPA says that it will manage the taxis with extra land, the [sic] gets the land from the City but can't fit taxis on the property.”

I have no idea what information this is based upon, as it is inconsistent with our understanding of the utility of the short term lease we have arranged with the City of Toronto over a portion of the derelict Canada Malting site property.

“When is the TPA ever going to make life better for these residents?”

We are sincerely trying to do our best.

Our BBTCA Consultative Committee is one key initiative in this regard (of which you are a member). The 2008/09 Noise Study was another, as are the “run-up barriers”. The 2009 initiative to use 100% “green electricity” from Bullfrog Power is worth repeating, too; in fact, the TPA is one of Ontario’s largest buyers of green electricity and was the first Federal agency to be 100% Bullfrog. And the new software program for monitoring and tracking noise complaints will improve our ability to serve our neighbours even further.

I would also point out that the TPA just wrapped up its lead financial sponsorship of Harbourfront Toronto’s Hotspot Summer programming. We have also championed an annual contribution for the Disabled Sailing Association, and are an important financial sponsor to several local arts groups, educational institutions and community organizations. We would be happy to provide you with these details if you are interested.

“Fix the harbour walls.”

You have claimed on several occasions, for example, that the TPA is “ignoring” the state of the Western dockwall. As City of Toronto legal staff would advise, which we pointed out in our letter to you of October 20, 2010, this dockwall rests on land owned by the Province of Ontario, which makes it the legal owner and responsible for its maintenance. The TPA is neither the owner of this wall, nor is it responsible for its upkeep. (In fact, the TPA owns less than 20 per cent of Toronto harbour dockwalls.) Having said that, we have demonstrated our eagerness to work with all parties to come up with a solution to the specific site. In 2008, the TPA began an energetic campaign to resolve the state of the “Western dockwall” adjacent to the National Yacht Club (“NYC”); the NYC is a tenant of the City of Toronto, and you own the land adjacent to the dockwall in question. I believe the NYC Board would confirm that the TPA has played the key leadership role in trying to bring the four parties together to resolve this situation in a fashion that would be to the satisfaction of NYC’s membership. We have filed a formal Offer to contribute with the Superior Court of Ontario, and would appreciate any help you could provide to encourage City staff to help the NYC and TPA resolve matter this immediately.

As for the rest of the harbour dockwalls, ~60% are owned by the Province of Ontario, ~30% are owned by the City of Toronto, and just ~10% are owned and maintained by the TPA. Our President & CEO would be pleased to give you a tour of these key pieces of

infrastructure; in the meantime, I've enclosed a 2010 pamphlet we produced outlining which agency owns which sections of Toronto's many dockwalls.

If there is a constructive role that you think we can play regarding the ~90% of Toronto dockwalls that do not belong to the TPA, we are anxious to receive any and all suggestions. As recently as this past summer, City staff rejected an offer from the TPA to take over the ownership, reconstruction and ongoing maintenance of certain badly damaged City-owned dockwalls; we would be happy to reopen these discussions with your public sponsorship of the concept.

“Respect the curfew and impose meaningful fines.”

Beginning in 2008, our Board of Directors moved to impose material fines for Tripartite Agreement curfew violations, as we've reported at each of the last three TPA Annual General Meetings. The current fine is \$10,000 per event, up from \$5,000 at that time, and I note that we have had just a single violation of the 11:00 p.m. curfew by a commercial carrier during the past 12 months. It is one more than we'd like, as you must understand.

“Negotiate in good faith.”

We are unaware of any negotiations that were in anything other than “good faith”, but would welcome any specifics you have on this point.

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Thank you for the opportunity to address these various matters. If you would like any further detail, our team remains ready, as always, to assist.

Respectfully,



Mark McQueen
Chairman