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DISPUTE ADVISORY PANEL
Payments in Lieu of Taxes
COMITÉ CONSULTATIF SUR LES DIFFÉRENDS
Paiements en remplacement d'impôts

Quebec, January 5, 2009

Mr. Alan J. Paul, Acting President & CEO
Toronto Port Authority
60 Harbour Street
Toronto, Ontario, M5J 1B7

Re: Application for a review of the 2004, 2005, 2006 and 2007 Payment in Lieu of Taxes, Toronto Port Authority

Roll Numbers: 1904 061 600 0300,
1904 071 050 01000
1904 061 990 00520
1904 071 030 00250

File no. : 21368-14306-1

Mr. Paul,

Please find enclosed the recommendation of the Dispute Advisory Panel regarding the request made by the City of Toronto related to the properties above mentioned.

Yours

J. Michel Doyon, Q.C.
Chairman

JMD/jw

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CANADA

DAP File No. 21363-14306-1

PAYMENT IN LIEU OF TAXES DISPUTE ADVISORY PANEL

CITY OF TORONTO

Applicant

- and -

TORONTO PORT AUTHORITY

Respondent

1. **PANEL:**

Morris M. Kertzer, Panel Chair

Gordon Nagle

Marjorie Dane-Newton

2. **HEARING:**

The hearing was held at Toronto, Ontario on February 25, 26, 27 and 28, 2008. Written submissions were received.

3. **APPEARANCES:**

Diana Dimmer and Angus MacKay for the City of Toronto

Phillip L. Sanford for the Toronto Port Authority

4. The application by the City of Toronto (hereafter, "City") is in respect to four properties owned by the Toronto Port Authority (hereafter, "Port Authority").

5. The four properties are:

   i) Toronto City Centre Airport (hereafter, "Airport")
   roll # 1904 061 600 0300

   ii) Polson Slip water lot (hereafter, "Polson Slip")
   roll # 1904 071 050 01000

   iii) Unwin Avenue s/s (hereafter, "Marina")
   roll # 1904 061 990 00520

   iv) 80 Cherry Street (hereafter, "Marine Terminal")
   roll # 1904 071 030 00250

6. The City has reserved its right to make further applications to the Disputes Advisory Panel (hereafter, "Panel") with respect to other properties.

7. The City asks that the Panel consider the 2004, 2005, 2006 and 2007 tax years for the said four properties.

8. The City's only witness was H. Bryan Cordick whose career from 1971 to his retirement on October 1, 2007 was, first, as a Municipal Property Assessor; then, in 1982 Senior Assessor for the London Regional Assessment Office; then in 1987 Quality Assurance Manager for the London Regional Assessment Office; then, in 1994 Manager, Valuation, London Regional Assessment Office, Oxford East-Elgin Group; then, in 1999 Manager, Valuation, London Commercial Industrial Group; then, in 2001 Manager, Valuation, Special Industrial Properties, later Special and Industrial Properties, Property Values for the Municipal Property Assessment Corporation (hereafter, "MPAC") and, as stated above, he retired from MPAC on October 1, 2007.

9. Mr. Cordick, in April 2004, was granted the AACI, P.App. designation by the Appraisal Institute of Canada.

10. Mr. Cordick's report was presented in an appraisal format but all of the analysis was based on MPAC information. It appeared, from his certification, that he had received significant assistance from MPAC in the preparation of his four written reports.

11. The Panel notes that the four reports rely heavily on Industrial Land Table 15. Table 15 was not filed as an exhibit. The Panel was not afforded the luxury of even a passing glance at the cover of Table 15.

12. The Panel is of the view that the City's witness has not tempered the use by MPAC of its mass appraisal techniques by considering any inequitable result to the Port Authority. To quote paragraph 158 of Report dated

March 28, 2006 of the Ombudsman of Ontario:

158 "Among the more disturbing problems we encountered in this investigation is MPAC's sense of superiority of its mass appraisal techniques over the more specific, contextual evaluations conducted by the ARB. Expressed as a difference of philosophy about the importance of equality or equity, at bottom this is a disagreement about method. Frankly, MPAC's legal position strikes me as wrong; the way the *Assessment Act* strives to achieve equality is to require accurate determinations of current value, not to resist any adjustment that might seem discordant with MPAC's mass appraisal results. While MPAC's mass appraisal techniques are dedicated to accurate market value assessments, like all appraisal methods they are imperfect and so too is the relativity they establish. For better or worse the Province of Ontario has established a superior body to adjudge the correctness of MPAC's products. It is far healthier for MPAC to consider the ARB as a check or balance on its best efforts, and to use judicial avenues to protest decisions it disagrees with. MPAC will simply not gain credibility for the tax system so long as it ignores relevant ARB decisions, even where it is not legally bound by them. Nor will it gain credibility so long as it resists using actual sales information for specific properties to direct its appraisals; it is true that the market can fail, but mass appraisal is not precise enough to judge whether that has happened on its own, and the public will never understand or accept a result that disregards actual experience. I am therefore recommending that unless MPAC has concrete, cogent reasons for believing that a sale has not been made under market conditions or does not otherwise reflect market value, that MPAC should accept that sale price as the best evidence of the proper assessment. **(recommendation 13)** If MPAC rejects the actual sale price, it should provide clear reasons to the taxpayer for doing so. I am also recommending that it apply strictly ARB decisions on current for tax years having the same valuation date, and that it use ARB decisions on current value as the starting point for its evaluation even for tax years with different valuation dates unless the basis for the ARB's decision was a temporary condition or MPAC has concrete information that circumstances have changed. **(recommendations 14 and 15)**"

And paragraphs 8 and 9 of the Executive Summary:

8 "The second of the three most pernicious practices of MPAC is that it does not give enough respect to the very property market that its appraisal system is built upon. In assessing a property, MPAC far too often ignores the actual sale price of the property it is assessing without any concrete reason to suspect that the sale does not reflect market value. It also downplays the importance of any recent sale of comparable properties. The simple fact that a sale does not match its appraised value is taken by MPAC as evidence, not that its appraisal is suspect, but that a real sale does not reflect the real market. The practice is a circular and self-serving one that taxpayers cannot understand. Nor can I. I am therefore recommending that when a property assessment is challenged

based on an actual sale price proximate to the valuation date, that MPAC should *generally* accept that sale as the best evidence to the property assessment. The actual sale price should also be an important factor in assessing the value of the property in future years. MPAC should deviate from these general rules only if there are concrete, cogent reasons for believing that the sale has not been made under market conditions or does not otherwise reflect actual market value.

9 "The third of the three practices of MPAC that has caused the loss of confidence that brought so many complainants to my door is that MPAC does not give adequate respect to the decisions rendered by its appeal body, the ARB. Quite simply, MPAC believes that its appraisal techniques are superior to those used by the ARB. In a nutshell and as intimated by what I have already said, for most of its property assessments, MPAC uses mass appraisal techniques that employ sophisticated computerized models to generate assessments. Those models build in market values from the "zone" where the property is located, and then adjust the average value for the particular property in light of the particular characteristics of the property relevant to its market value - up to 300 such characteristics. In contrast, the ARB does not even look at the mass apppraisal data or at the system used by MPAC. It judges the accuracy of MPAC's assessment "on the ground" rather than through models by looking at things like the assessments that are being imposed on select, concrete comparable properties; or the sales history of the subject property and other like properties in the neighbourhood; or the accuracy of the information MPAC has about the description of the subject property. There is a cultural gap that emerges from these different techniques. MPAC tends to worry that the relatively isolated focus of the ARB will create anomalies, since the ARB does not look at all properties in the objective way a computer program does, but focuses resolutely on the contextual proof about the specific property. Because of the commitment that MPAC has to its mass appraisal technique, it tends to look at any ARB decision that deviates from its appraisal, not as a correction, but as an aberration. While it is legally bound to accept ARB decisions for the tax year appealed, MPAC has had a history of ignoring those decisions in the very next tax year. It has even done so for subsequent taxation years that use the same valuation date that the taxpayer had succeeded in showing to be wrong. The result has been that taxpayers are in a vicious cycle of assessment, appeal, victory, assessment, appeal, victory. It is as though MPAC is saying "Gotcha" to the frustrated taxpayers."

13. The Panel finds itself in a position analogous to the Assessment Review Board (ARB). We are to advise in respect to specific properties.

14. When MPAC was composing its private computer program for Industrial Table 15, how much data was fed into the mix from Marinas (Marine Terminals, Water lots or Airports) and where are they, if any, located? We are asked, on blind faith, to accept that a computer program related to Industrial properties is the correct and only way to assess an operating marina or airport.

15. The City's witness was not conducting himself as an appraiser accredited by the Appraisal Institute of Canada. He demonstrated no independance of thought or application of method. At p.34 of his Marina Report he sets out the three traditional approaches to estimating the value of real estate, namely Cost, Direct Comparison & Income. At p.36 he states that MPAC has arrived at the site value by use of MPAC's industrial land tables which he says are "built using the Direct Comparison Method" and at p.37 states that "table fifteen has been used to value the marina operation." He failed in his duty to question his client's methodology. He probably assumed that there are no other marinas in Ontario or the area. However, there are at least two marinas in the area as in his Polson Slip report, he shows at pp.17 and 18 of tab H, two drawn in water lots opposite the Humber Bay Park East Marina located in the City of Toronto. Additionally, Mr. Manoharan sets forth, starting at p.118 of his report, a series of photographs of the Scarborough Bluffer's Park Marina.

Mr. Cordick failed in his duty to this Panel - he should have given evidence based on these two comparables and the Port Authority's income from the marina to test the correctness of MPAC's decision to use Industrial Table 15. Mr. Cordick should realize that he is no longer an employee of MPAC and he has a duty to question their methods. So too, Mr. Cordick has a duty to question the report of Mr. Manoharan.

TORONTO CITY CENTRE AIRPORT

16. The City's values of the Airport for PILT purposes are:

2004/2005	$39,057,770
2006/2007	$42,944,060

17. The position of the Port Authority is that the value in exchange of the Airport is nominal.

18. It is an understatement that they are far apart.

19. Both sides may be "legally correct" but the result from each position cannot be supported by the Panel.

20. When considering the assessment of an airport, one should look at how some of the other airports in Ontario are assessed. Section 45(1) of Ontario Regulation 282/96 enacted pursuant to the Assessment Act R.S.O. 1990 c.A-31 directs that four Ontario Airports shall make their payment in lieu of taxes, annually, calculated by multiplying the passenger total by the amount set forth in the section. Therefore, Pearson Airport pays $0.94029 per passenger.

21. We noted that the type of passenger landing at the Island Airport differs from the passengers landing at Pearson Airport. Very few Island Airport passengers from Ottawa have overnight luggage. It is a laptop and briefcase crowd. The Ottawa passengers use Porter Airline as a taxi service to and from a meeting.

22. The City's mill rate for the years 2004, 2205, 2006 and 2007 is now known and a calculation is able to be made as to how many dollars the Port Authority will be required to pay and then it is easy to calculate how much is paid per passenger. The City urges that we advise that its valuation is correct. But it is based on Industrial Table 15 and, as stated above, we cannot agree with this.

23. Page 7 of the Toronto Board of Trade's Task Force report states that in Quebec, Trudeau Airport taxes are based on property assessment and is the highest municipal tax paid by a Canadian Airport.

24. We cannot advise that the Airport be taxed as proposed by the City.

25. We cannot advise that there be no tax as proposed by the Port Authority.

26. During the hearing, the Port Authority stated that it had made application to the Province of Ontario that it be listed in the said Section 45(1).

27. The Panel could order that its advice in respect to the Airport be deferred until after the application to be listed in the said Section 45(1) is determined.

28. We are of the opinion that the method of taxation proposed by the said Section 45(1) is fair and reasonable. The purpose of the Payments in Lieu of Taxes Act is by section 2.1 to give fair and equitable advice. Our advice is that a fair amount to be paid by the Port Authority to the City is 80 cents per passenger for the 2004 taxation year and that the provisions of the said Section 45(1) shall apply as if "the 2001 taxation year" set forth in the said Section 45(1) is substituted by "the 2004 taxation year".

Polson Slip (Water Lot)

29. A Report was presented by Mr. Bryan Cordick, on behalf of the City, to support value conclusions for both effective dates.

30. The Cordick valuation is based on a total of five sales, four being sales of upland properties and one being a collection of two separate properties that make up a 3.440 acre water lot. A series of unsupported adjustments were then applied to all five sales in order to equate these sales to the subject property. These adjustments then led Mr. Cordick to the conclusion that average value is $178,629.00 per acre and the median value is $224,918.00. per acre.

31. Mr. Cordick then concludes that the value estimate for the Polsen Slip Water Lot is $357,000.00 for the 2003 base year and $393,000 for the 2005 base year.

32. The valuator for the Port Authority, Mr. Victor Manoharan, indicated in his report that the property is part of a public waterway and that shipping lanes should not be valued as their value is reflected through other assets. As a result the Port Authority's valuation for the valuation periods involved is a nominal amount of $1,000.00.

33. What is surprising about Mr. Cordick's conclusion is his treatment of an apparent rarity, (water lot sales in general and more particularly a water lot sale(s) in the immediate area), is that he bases his estimate of value on the five sales, four of which are upland properties in the same general area. Here again the adjustments are based on data compiled by MPAC without even reference to an independent source. More surprisingly, no effort was made to establish a relationship between upland sales of which he had four and a water lot sale, in the same general area, that could be used as a check against his final conclusion.

The weakness in the Cordick opinion of value is his total reliance and dependence upon a system that develops its analysis and comparative information for mass rather than individual valuation assignments and as such is more generalized and not as precise as an individual analysis.

34. The Port Authority indicated that this water lot property has a nominal value only and assigned a valuation of $1,000.00. We cannot base our advice on this evidence.

35. There were only the two witnesses appearing before the panel, one being a former employee of MPAC, and the other being an employee of PWGSC associated with the PILT program. The only witness with a concrete opinion of value was that of the City and in the opinion of the panel it is poorly formulated and based on Assessment Methods and resource data as opposed to traditional Appraisal Methods.

Given the lack of reliance that comes from the valuation information presented it will be necessary for the panel to be relatively arbitrary in formulating its advice.

This advice is loosely based on information gleaned from but not enunciated in the Cordick report. There is information within the Cordick report to determine the relationship between the unit rate paid for upland property and water lot property. Analysis indicates the water lot sale(s) relative to the upland sales range between 17.2 and 115 percent with the average being 52.4% and the median being in the order of 22%. Our advice based on this method is as follows:

Base Year 2003 **$ 286,000.00**

2005 **$ 315,000.00**

This advice should be adjusted to reflect a pollution factor of approximately 50% and our final advice is:

2003 **$ 150,000.00**
2005 **$ 170,000.00**

OUTER HARBOUR MARINA:

36. A report was presented on behalf of the City by Mr. Bryan Cordick, AACI with all the analysis based on MPAC information. The appraisal describes the subject property as the Outer Harbour Marina (Marina) that is comprised of 465.74 acres with 36.16 acres of upland and 22.85 acres of marina water lots with the remainder excess water lot. The Marina outbuildings are located on a point of land that projects into the water lot. Access to the docking, boardwalk and ramps is from south portion of the land. The docking is located in the adjacent water lot. There are 636 docks with a maximum length of 100 feet.

37. In order to arrive at the value estimate for the Marina, Mr. Cordick relies on the Direct Comparison Approach to value, specifically on Table 15, an industrial land table that has been used by MPAC to value lands in the area. Admittedly, the sales information for Table 15 was very limited for the development of the 2003 and 2005 current value assessments. Then to test the validity of the application five sales that occurred subsequent to the base years were reviewed.

38. Based on the information contained in Table 15 and the subsequent sales reviewed, for the 2003 current value assessment Mr. Cordick extracted a rate of $245,142/acre for the 36.16 acres or upland area An allowance was made with an adjustment factor of 50% or $122,571/acre for the 22.85 acres of marina water lot. The unused 406.73 acres with an adjustment factor of 1% was assigned a rate of $2,451/acre for a total value of $12,661,000.

39. For the 2005 current value assessment he assigned a rate of $269,657/acre for upland area and $134,829/acre for the Marina water lot and $2,697/acre for the unused water lot. Total value $13,928,000. No value has been assigned to the improvements on the site.

Mr. Cordick does not attempt to construct a value for the Marina by calculating an Income Approach value, nor does he consider the Cost Approach.

40. Mr. Victor Manoharan, a Regional Manager, Public Works and Government Services, responsible for the delivery of the Federal PILT program and property valuation services in the Ontario region gave evidence for the Port Authority.

41. Mr. Manoharan relies solely on the Income Approach in order to arrive at value for the Marina. In his report he reconstructs an income value using the actual income and expense information on page 33 of the document provided to the panel by Mr. Alan Paul, CGA and Chief Operating Office for the Port Authority. As is typical of the Income Approach, Mr. Manoharan has included revenue from all sources, then deducted the typical operation expenses and management fees to arrive at a net operating income. Mr. Manoharan provided no explanation in regards to his capitalization rate specifically in regards to what property types were considered in his selection of the base rate. He then capitalized the net operating income to arrive at the value. From this value he further deducted the value of ineligible items as calculated by Marshall Swift Cost Estimator manual. The ineligible items include paving, docks etc. Based on this process Mr. Manoharan arrives at a value of $965,325 for the 2003 current value assessment and $1,051,927 for the 2005 current value assessment. Mr. Manoharan does not give consideration to the 406.73 acres of water lot that is in excess of the current marina operations.

Mr. Manoharan does not attempt to verify the value by including a Direct Comparison Approach, nor does he consider the Cost Approach, other than to value the ineligible items.

42. There was no challenge to the cap rate used by the Port Authority. There was no explanation of the mathematical difference between the 2005 Revenue & Expenses at pages 20 and 21 of Mr. Manoharan's report and the Auditor's Report at p.127 of Mr. Paul's statement.

43. Ultimately, the decision of the Panel becomes very difficult, as the two sides have approached the valuation process from very different perspective. For the city, Mr. Cordick has depended solely on Table 15 from the MPAC office and verified the information by analyzing five subsequent sales in the same general area. Unfortunately, the panel was not provided with any specific information as to the sales used in compiling the elusive Table 15, and as such is expected to rely on the validity of the information contained in the table.

Mr. Manoharan, on the other hand, has relied upon the actual operating income and expense information for the OHM operations only, with no consideration given to the two other generally accepted appraisal techniques. Although Mr. Manoharan approach is sound, there was no evidence provided in regards to the capitalization rate used, although the rate as stated was not questioned by the City.

44. Neither of the two provided the panel with an independent and unbiased opinion of value, but rather that of the particular organization by which they were employed. Unfortunately, we must rely on the evidence that was presented to us.

45. With this is mind our decision relies on the basic appraisal principal in the analysis of Highest and Best Use. On page 32 of Mr. Cordick's report, he indicates 'the use of the site as a marina is legally permissible, probably, marketable and *financially feasible.*' In addition, consideration was given to typical market transactions and the expectation that were the property to be offered on the open market it would trade based on its income producing capabilities. As such, it is our opinion that the Marina, operating as an income producing marina, should be valued by the Income Approach to value and having no other evidence than that provided by the Port Authority we must depend upon that.

46. Therefore, this decision is based on the information contained on pages 20 and 21 of Mr. Manoharan's report and supported by the financial statements contained on Page 33 of Mr. Paul's, however with adjustments to the capitalization rate.

47. Tab 2 of the Port Authority's submission which sets forth the contrast between the City's PILT request and the Port Authority's admissions as a function of the percentage of the Port Authority's Gross Revenue for the years 2002-2006 inclusive. The average request by the City is 45.1% and the average admission by the Port Authority is 4.4%. An astounding ten-fold difference. No commercial venture could succeed with a municipal tax payment of 45% of Gross Revenue.

48. In consideration of the capitalization rate, the base rate of 9% already considers some amount of risk and to add an addition 2% for risk in our opinion seems excessive, however we do recognize that there is additional risk with an operation such as a marina due to it's seasonal nature. Therefore we have reduced the overall capitalization rate by 1% in each of the two valuation years. In addition, we have given consideration to the 406.73 acres of water lots in excess of the marina operation. Given the lack of water lot sales and based on the large size and economy of scale, we consider a rate of $100.00/acre to be appropriate.

49. The final advice of values for the Marina based on the Income Approach to value is:

2003	$1,261,600
2005	$1,157,100

Marine Terminal

50. A Report on behalf of the City was presented by Mr. Bryan Cordick, to support his value conclusions for both effective dates. The following summarizes the value estimates of land, buildings and other improvements.

Site Valuation

51. The Cordick report contained a total of four sales of land to establish a value for the land portion of the subject property, a 56.767 acre site supporting two large warehouses, a Maintenance shop, a ferry terminal and a large lay-down area.

52. These four sales were then subjected to a series of adjustments to relate them to the vacant land component of the Cherry Street Marine Terminal. These adjustments were for features such as the passage of time between the sales and the two effective dates of valuation, the overall size of each, their location, the difference in zoning, the level of municipal services supplied, the corner/interior influence and water access available to each.

53. Applying his analysis of each of these adjustments to the subject property Mr. Cordick concluded that the valuation of the land for each of the two valuation dates was as follows:

Valuation Date	Site Size (ac.)	Estimated Adjusted Unit Rate / Ac.	Site Valuation (subj. to Market Adjustment Factor)
2003	56.767	$ 245,142.00	$ 10,436,982.00
2005	56.767	$ 269,657.00	$ 11,480,714.00

Building Valuation:

54. The valuation of the buildings was completed by utilizing an Automated Valuation System (AVS) developed by MPAC. The Cost Approach to value is utilized to determine the cost of the Improvements. It was described as a computerized system based on an application that automatically determines the Replacement Cost new, less depreciation of buildings and structures. The particulars of this approach are outlined on page 51 of the Cordick Report. The summarized values for the years 2003 and 2005 can be found on page 56. Below is a summary of each.

2003

City of Toronto			
Bldg.	**Cost New**	**Depreciation (%)**	**Est. value**
W52	$ 8,542,504.00	$ 4,577,189.00 (55)	$ 3,744,972.00
51	$ 8,322,161.00	$ 3,758,702.00 (44)	$ 4,783,802.00
Shop	$ 874,581.00	$ 148,679.00 (17)	$ 725,902.00
Total	$17,739,246.00	$ 8,484,570.00 (47)	**$ 9,254,678.00**

2005

City of Toronto			
Bldg.	**Cost New**	**Depreciation (%)**	**Est. value**
W52	$ 9,764,506.00	$ 5,557,570.00 (58)	$ 4,024,447.00
51	$ 9,582,017.00	$ 4,491,673.00 (46)	$ 5,272,833.00
Shop	$ 985,504.00	$ 197,101.00 (20)	$ 788,403.00
Ferry Terminal	$ 3,573,088.00	$ 71,462.00 (02)	$ 3,501,626.00
Total	$ 23,905,115.00	$10,317,806.00 (43)	**$13,587,309.00**

Notes

1) In the valuation year 2005 only, the "Replacement Cost New", "Depreciation from all sources" and *Estimated Value Replacement include an allowance for the Ferry Terminal*

2) To both total value estimates must be added the depreciated (assumed) value of the Yard Works (see pages 56 and 57of the appraisal report). The total revised totals are therefore as follows:

Year	Depreciated Value of Buildings	Yardworks (depreciated)	Total depreciated value of Improvements
2003	$ 9,254,678.00	$ 446,862.00	$ 9,701,540.00
2005	$ 13,587,309.00	$ 475,948.00	$ 14,063,257.00

55. Mr. Alan Paul, Chief Operating Officer for the Port Authority, presented a report wherein it states that the property operates, and must continue to operate, as a "self sufficient" General Cargo Facility (Transhipment Facility). The Port Authority does not have any captive market activity such as the Port of Hamilton (steel, oil) and depends on a "very erratic" market. These statement were supported by the Port Authority's Financial Statements.

56. Mr Paul also gave evidence that the major competition to the Port Authority comes from the Oshawa Marine Terminal to the east and the Port of Hamilton to the southwest and that since 9/11 Transport Canada has instituted a higher level of security. The United States will not allow shipments from Canadian Ports if the ports do not meet a specified level of security. The Port Authority is presently functioning at between 70 and 75 percent of its operating capacity.

57. **Mr. Victor Manoharan,** on behalf of the Port Authority, presented a Valuation Report on the Marine Terminal operation. In his valuation of the property Mr. Manoharan used a form of Income Approach that produced a negative valuation.

58. Mr. Manoharan then evaluated buildings 51 & 52 plus a maintenance building by utilizing a Costing Manual method. The costs estimates and levels of depreciation ascribed to each building for each of the two years involved are summarized below:

2003

Building	Estimated Cost New	Estimated Depreciation	Final Value
Maintenance Bldg	$ 951,250.00	$ 267,305.00 (28%)	$ 683,945.00
Building 51	$ 4,189,505.00	$ 2,304,224.00 (55%)	$1,885,281.00
Building 52	$ 4,581,717.00	$ 2,015,959.00 (44%)	$2,565,758.00
Totals	$ 9,722,472.00	$ 4,587,488.00 (52%)	**$5,134,984.00**

2005

Building	Estimated Cost New	Estimated Depreciation	Final Value
Maintenance Bldg	$ 1,097,073.00	$ 334,503.00 (30%)	$ 762,570.00
Building 51	$ 4,879,498.00	$ 2,830,010.00 (58%)	$2,049,488.00
Building 52	$ 5,241,489.00	$ 2,411,085.00 (46%)	$2,830,404.00
Totals	$ 11,218,060.00	$ 5,575,598.00 (50%)	**$5,642,462.00**

59. To the above estimates Mr. Manoharan adds a land value estimate of $2,453,731.00 based on an acreage rate of $54,685.34 and applied to 44.87 acres he estimated the site to contain. There is no specific mention of yard works in Mr. Manoharan's presentation.

60. **<u>Site Valuation</u>:**

The sales selected by Mr. Cordick may have been the only ones available in the immediate area of the subject and this is supported by the fact that the Port Authority's report did not include any sales in the immediate area or even the immediate region of the subject. However, this does not offset the fact that an inordinate number of adjustments were necessary to equate the various sales with the subject thereby weakening the reliability of the process. Another significant problem was trying to equate sales of between two and six acres with a site that contained over fifty-five (55) acres or between nine (9) and twenty-seven (27) times larger than the comparative sales.

Finally, there is mention that some of the sale properties may be contaminated or polluted but this is not considered in Mr. Cordick's analysis. Also, there is no mention as to the intended redevelopment of these sites.

In conclusion, there is simply not enough evidence on which to base any reliance on the value of the site from the analysis in Mr. Cordick's report.

61. Building Valuation:

As indicated, the cost is based on a computerized costing system that may well be accurate in its development of cost data for a specific building type. It may also be accurate in its estimate of depreciation based on an age life method, although the latter still requires a detailed inspection of the building for extraordinary physical as well as functional and economic obsolesence.

There is no clear indication that Mr. Cordick checked his work with other costing manuals that are available and relied upon by others working in the appraisal field. In fact he appears to have relied completely upon the MPAC costing system that is, according to Mr. Cordick, checked, "periodically", against figures contained in a costing manual produced by the Hanscombe people.

The costing and depreciation estimates outlined in the Port Authority's appraisal may well be accurate but the total reliance upon one of the litigants own costing systems leaves a great measure of doubt as to the accuracy and conformance to actual real estate market conditions prevailing at the respective valuation dates and is a method frowned upon by many practicing appraisal professionals.

62. Mr. Alan Paul, on behalf of the Port Authority, presented a series of statements of facts backed up by financial statements and other anecdotal evidence. Mr. Paul's evidence was that the property was originally developed because of a perceived need as a result of the development of the St. Lawrence Seaway. Containerization has now reduced traffic and the property is presently operating (as of effective date of both valuations) at approximately 70-75% of capacity.

63. Mr. Paul, however, did not present any independent information relative to the value of the various facilities associated with the 80 Cherry Street property but relied upon a report prepared by **Mr. Victor Manoharan**.

64. Mr. Manoharan based his Land Value estimate on land values assigned to similar properties located in the City of Hamilton without any analysis as to why these values should be applicable to generally and similarly zoned land in the City of Toronto. To accept this method of comparison is too much of a "leap of faith" to be consider rational and therefore must be treated accordingly.

65. Mr. Monoharan's attempted valuation by an Income Approach was well outside the parameters of a conventional Income Approach in that he included considerably more than annualized Gross Rental Income as well as the annualized Operating Expenses in attempting to estimate the Net Income to be capitalized into a market value of the property. Further, no market support was offered for the amounts that were used to determine the "negative" result nor was there any justification put forward for the selection of the capitalization rate used to convert the net income into a capitalized value. As a result, very little reliance whatsoever can be accorded this somehwhat unique approach in the process of determining market value.

66. Mr. Manoharan also presented a Cost Approach by utilizing, like the City, a computerized costing method. However, as can be seen from the following comparison chart, there is a significant difference in the Cost New and Depreciated Values between the two cost estimates. Also, it is noteworthy that the estimates of depreciation are very similar. This seems strange given that the Port Authority cites in its report that the concrete floor, in Building #51, was in poor condition and the building experienced 50% vacancy. Building #52 also is given to have concrete floors in poor condition and was experiencing a 25% vacancy.

67. Based on these items the Port Authority's estimate of overall depreciation should have been significantly higher.

2003

Bldg	Toronto Port Authority			City of Toronto		
	Cost New	Depreciation %)	Est. value	Cost New	Depreciation (%)	Est. value
51	$4,189,505.00	$ 2,304,228.00(55)	$ 1,885,277.00	$ 8,322,161.00	$ 4,577,189.00 (55)	$ 3,744,972.00
52	$4,581,717.00	$ 2,015,959.00(44)	$ 2,565,758.00	$ 8,542,504.00	$ 3,758,702.00 (44)	$ 4,783,802.00
M/Sh	$ 780,939.00	$ 132,760.00(17)	$ 648,179.00	$ 874,581.00	$ 148,679.00 (17)	$ 725,902.00
Maint	$ 170,311.00	$ 134,546.00(79)	$ 35,765.00	Assumed to be incl. in line identified as M/Sh immediately above		
Yard	Yard Improvements not included in respondents report					$ 446,862.00
Totals	$9,722,472.00	$ 4,587,493.00(53)	**$ 5,134,979.00**	$17,739,246.00	$ 8,484,570.00 (47)	**$ 9,701,540.00**

2005

Bldg	Toronto Port Authority			City of Toronto		
	Cost New	**Depreciation (%)**	**Est. value**	**Cost New**	**Depreciation (%)**	**Est. value**
51	$4,879,498.00	$ 2,830,108.00(58)	$ 2,049,390.00	$ 9,582,017.00	$ 5,557,570.00 (58)	$ 4,024,447.00
52	$5,241,489.00	$ 2,411,085.00(46)	$ 2,830,404.00	$ 9,764,506.00	$ 4,490,341.00 (46)	$ 5,274,165.00
M/Sh	$ 905,259.00	$ 181,052.00(20)	$ 724,207.00	$ 985,504.00	$ 197,101.00 (20)	$ 788,403.00
Maint	$ 191,814.00	$ 153,451.00(80)	$ 38,363.00	Assumed to be incl. in line identified as M/h immediately above		
F/Ter				$ 3,573,088.00	$ 71,462.00 (02)	$ 3,501,626.00
Yard	Yard Improvements not included in respondents report					$ 475,948.00
Totals	$11,218,060.00	$ 5,575,696.00(49)	**$ 5,642,364.00**	$23,905,115.00	$10,317,806.00 (43)	**$14,064,589.00**

68. The Conclusions

There were but three witnesses appearing before the panel, one being an employee of the Port Authority, another being an employee of PWGSC associated with the PILT program and the other an questionably "independent" appraiser put forward by the City.

69. Mr. Paul Alan presented a relatively recent financial history of the Port Operations including the Ferry Terminal and supported his evidence with the audited statements. He also presented other anecdotal evidence surrounding the current operations including privileged information concerning the property's financial outlook. He indicated that the Port has recently been losing business to strong competition located in Oshawa and Hamilton and that current business is dependant on a very erratic market.

70. The independence of the evidence of both valuation witnesses was questionable at best. The City's witness is currently an independent and qualified appraiser who is now retired from the Municipal Property Assessment Agency (MPAC). His evidence was presented in an appraisal format but all of his analysis was based on information provided by MPAC. There was no apparent effort to develop an independent analysis from more traditional sources.

71. The Port Authority's appraisal evidence was prepared and presented by a Federal Government Employee, also a questionable source of independence.

72. Both appraisers based their land valuation on comparable sales evidence; the City by relying on sales in the immediate area that required, in Mr. Cordick's opinion, an uncomfortable level of adjustments to have the sales reasonable equate with the subject property, while the Port Authority's witness used the general level of sales of industrial properties in Hamilton on which to base his value estimate.

73. No evidence was put forward by the Respondent's witness as to the specific details of the sales he relied upon. The Appellant's witness provided specific details of the sale identified as comparables but failed to provide any justification whatsoever for the inordinate number of adjustments, that, in total, ranged from -9% to -81%. As a result the Panel if left with no choice but to arbitrarily assign a Land Value for each of the two valuation years.

74. The value of the improvements were estimated by both appraisers in a similar manner, in that each based his estimate on a computer driven costing program. The City's appraisal using, not surprisingly, the MPAC program and the Port Authority's appraiser using an unidentified but generally similar costing program. Perhaps, not surprisingly, they came up with significantly divergent estimates of the total replacement cost new. Even more surprisingly the estimates of depreciation were very similar in spite of the fact that the Respondents report indicated levels of both deferred maintenance and over capacity.

75. Based on the above we are of the opinion that the only course open is to apply generally equal weighting to the land and improvements values indicated. This however will be tempered by an economic loss due to over capacity. Mr. Alan's evidence was that the property is presently functioning at between 25 and 30% below capacity. We have selected 30% as an appropriate amount to apply to both valuations

Outlined below are the average values of both appraisers from the physically depreciated stage onward.

80 Cherry Street Final Value Determination		
Assessment Base Year	2003	2005
Physically Depreciated Value	$ 7,418,260.00	$ 9,853,475.00
Economic Obsolesence Rate	30%	30%
Economic Obsolesence Amt.	($ 2,225,478.00)	($ 2,956,000.00)
Post Economic Obsolesence Bldg. Value	$ 5,192,782.00	$ 6,897,475.00
Add: Depr Value of Ferry Terminal	-	$ 3,501,626.00
Fully Depr Building Values	$ 5,192,782.00	$ 10,399,100.00
Add: Land Values	$ 5,500,000.00	$ 6,050,000.00
Total Values (before MAF)	$10,692,782.00	$16,449,100.00
Market Adjustment Factor	21.5%	21.5%
Market Adjustment Amount	($ 2,298,948.00)	($ 3,536,550.00)
Final Determined Values	**$ 8,394,000.00 (rounded)**	**$ 12,900,000.00 (rounded)**

Dated this 2nd day of December, 2008 at Ottawa, Ontario

MORRIS M. KERTZER, Panel Chair

Dated this 10th day of December, 2008 at St. John's, Newfoundland

GORDON NAGLE, Panel Member

Dated this 4th day of December, 2008 at Winnipeg, Manitoba

MARJORIE DANE-NEWTON, Panel Member