



March 10, 2017

PHFFT Report related to MPH's Accounting dated October 27, 2016

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On June 30, 2016, Mr. Justice McCarthy ordered the Municipality of Port Hope (MPH) to prepare an accounting of the Ward 2 LLRW Fund from 2001 to present, and to provide that accounting to all ratepayers.

The Court Order was simple and straightforward: MPH was to account for the income earned on the Fund and all payments made out of the Fund.

MPH produced an accounting dated October 27, 2016. There appear to be a number of mistaken assumptions and misleading conclusions.

As an example, in the MPH Accounting for each year from 2001 to 2015, their numbers differ from the actual amount of money in the Fund, as evidenced by the Fund Managers' bank statements. These yearly differences range from minus \$242,000 to plus \$1,850,000 and are listed in Table A attached.

To address the issues and confusion created by the MPH Accounting, Port Hoppers for Fair Taxes (PHFFT) has prepared explanatory tables (Tables B and C attached). Rather than attempt to explain the false assumptions used by MPH as the basis for their calculations, we have compared the Fund's bank statements produced by the Fund Managers, with the MPH tax-rating by-laws. These sources are noted at the bottom of Table C and in the set of Notes explaining the correcting adjustments.

In round numbers, the Ward 2 LLRW Trust Fund earned \$5 million over the past 15+ years. Of this, \$1 million was withdrawn from the Fund and used properly according to the terms of the Fund. \$4 million was withdrawn but not used properly and this amount "borrowed" from the Fund needs to be repaid. Past interest on the amount borrowed comes to three quarters of a million dollars, and this amount also needs to be put into the Fund.

Of \$5,065,797 withdrawn from the Fund by MPH, virtually every dollar of what the Fund earned between 2001 and 2016, only \$1,080,250 or 21.3% was actually used for the exclusive benefit of Ward 2 ratepayers (please refer to Table B).

The total owing by MPH, as at July 1, 2016, is just under \$4.75 million as shown in Table C. This includes \$550,589.19 that MPH withdrew from the Fund in March, 2015 with no justification at that time or since.

The MPH Accounting shows no attempt to include interest on the \$2.2 million that they acknowledge and show is owing to the Fund. As illustrated in Tables B and C, MPH withdrew \$3,985,547 that was not used properly, and this amount needs to be treated like any other *loan* and repaid, *together with interest*, to those from whom it was "borrowed" (as shown in Table C).



The rate of interest needs to be at least equal to the rate of interest earned by the Fund in any given year. If MPH had not withdrawn the money, it would have been earning interest along with the rest of the money in the Fund.

Some of the many apparent irregularities identified in MPH's Table 1 of its accounting include:

- in 2002, and for the next three years, MPH claims that almost the entire amount of interest earned was used to reduce the levy at the time the levy was established in each of those years, despite the fact that the actual amount of those interest monies would not be known until year-end;
- MPH claims that \$516,500 was used to decrease the Ward 2 levy in 2012, when in fact almost that entire amount of money was used to decrease the Ward 1 levy;
- PHFFT is most disturbed by the timing of MPH's removal of the additional \$550,589.19 from the Fund in March 2015, as noted above. An MPH document dated February 2, 2015 acknowledges that they owed more than \$1 million to the Fund, regardless of whether the Fund was a trust or not. By March 31<sup>st</sup> of 2015 they had quietly withdrawn an additional \$550,589.19 without disclosure, right in the middle of the Court proceedings. As recently as February 7, 2017, the Mayor stated at a Council meeting that during the course of this council, *none* of the funds were used for anything except for tax relief.

PHFFT expects MPH to repay the \$4.75 million immediately including interest which has continued to accrue from mid-2016 to the present. The ongoing delay has impaired relations within the community since 2012, and continues to erode trust in Council and the Municipality.

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Three tables follow, named A, B and C, all referenced above. After Table C, look for a set of Notes.

It is very important to read Table C and the Notes together – they are interrelated. We recommend reading from printed copies, not on a computer, tablet, or phone screen.

The Report, including these two pages, Tables A, B, C, and the Notes, can be downloaded from the PHFFT website at:

<http://www.porthopecommunitygroups.org/porthoppersforfairtaxes/>

**Table A – Ward 2 LLRW Fund Year-End Balances**

Calendar Year	Balance in Trust Investment End of Period (E)	Version in MPH LLRW Accounting of Oct. 2016 (W)	Difference = (E) minus (W) (X)
2001	10,250,907	10,000,907	250,000
2002	10,172,929	10,000,000	172,929
2003	10,263,708	10,000,001	263,707
2004	10,215,132	10,002,274	212,858
2005	10,346,090	10,003,681	342,409
2006	10,379,251	10,006,842	372,409
2007	10,786,647	10,027,238	759,409
2008	11,135,394	10,000,010	1,135,384
2009	11,504,934	10,007,178	1,497,756
2010	11,855,524	10,007,768	1,847,756
2011	10,240,556	10,007,768	232,788
2012	10,540,275	10,002,931	537,344
2013	10,311,753	10,003,217	308,536
2014	10,621,631	10,313,096	308,535
2015	10,104,859	10,346,913	-242,054

**Table A** is based in part on Table C, which follows.

Column (E) is sourced from Investment Counsellors' statements.

Column (W) is from Table 1 in MPH LLRW Accounting, Oct. 2016.

Column (X) gives an indication of the difference = (E) minus (W).

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**Table B – “Borrowed” by MPH from the Ward 2 LLRW Fund**

Calendar Year	Net Earnings Booked (B)	With-drawals from the Trust (D)	Applied to Ward 2 per MPH LLRW Accounting in October 2016		Correcting Adjustment (see Table C for detail) (J)	“Borrowed” and Due from (to) the Fund (K)	Applied to Ward 2 after Correcting Adjustments (details are in Table C and associated notes)	
			Levy (F)	Expense (G)			Levy (Y)	Expense (Z)
2001	250,907		300,000		-214,800	85,200		
2002	222,022	300,000	387,500	50,000	-328,225	-190,725		
2003	266,186	175,407	237,500			62,093		
2004	329,109	377,685	285,500		-191,200	-283,385		
2005	430,958	300,000	346,000		-313,100	-267,100		
2006	333,161	300,000	-20,000			-320,000		
2007	407,396		-13,000			-13,000		
2008	348,747		-32,000	2,975		-29,025		
2009	369,540			94,516	-94,516			
2010	350,590							
2011	380,203	1,995,171				-1,995,171		
2012	299,719		516,500	4,837	-516,500	4,837		
2013	360,160	588,682	100,000			-488,682		
2014	309,878							
2015	281,817	798,589	248,000			-550,589		
2016	142,668	230,263	230,263			↓		
<i>2016 is to June 30<sup>th</sup></i>	5,083,061	5,065,797	2,738,591		-1,658,341	↓		<b>1,080,250</b>

**Total Owing from (to) Ward 2 Fund as of 2016/07/01 -3,985,547 not including interest.**

**Table B** is an abbreviated Table C, plus a focus on amount of LLRW interest that was applied properly (“Y” & “Z”).  
 Columns (B) and (D) are sourced from the Investment Counsellors’ statements.  
 Column (F) is sourced from Table 2 in the MPH Accounting (column “Amount of Ward 2 Levy Decrease”).  
 Column (G) is sourced from Table 1 (column “Direct Application to Operating or Capital Expense in Ward 2”).  
 Column (K) = Column (F) plus Column (G) plus Column (J) minus Column (D).  
**Column (K) does not include interest.** Refer to Table C for more detail.  
 Refer to Table C for additional information about correcting adjustments.

Columns (Y) and (Z) illustrate the amounts of LLRW interest, after the correcting adjustments, to directly reduce levy (Y) or to offset operating/capital expense (Z).

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**Note:** Table C and the Notes referenced in Column (H) are interrelated and must be read in conjunction with each other.

TABLE C  Date dd-mmm-yy	Opening Balance of Ward 2 LLRW Trust Fund	Net Earnings Booked	Effective Interest Rate	With- drawals from the Trust	Balance in Trust Investment End of Period	Applied to Ward 2 per MPH LLRW Accounting of October 2016		Notes  (H)	Correcting Adjustment (see note above)	Change in Due from (to) Trust	Cumulative Balance of Change	Interest on Cumulative Balance at Effective Rate
	(A)	(B)	(C)	(D)	(E)	Levy (F)	Expense (G)		(J)	(K)	(L)	(M)
21-Apr-01	10,000,000	250,907	3.61%		10,250,907	300,000		1	-214,800	85,200	85,200	2,028
01-Jan-02	10,250,907	222,022	2.19%	300,000	10,172,929	387,500	50,000	2	-328,225	-190,725	-105,525	-2,314
01-Jan-03	10,172,929	266,186	2.61%	175,407	10,263,708	237,500		3		62,093	-43,432	-1,132
01-Jan-04	10,263,708	329,109	3.22%	377,685	10,215,132	285,500		4	-191,200	-283,385	-326,817	-10,526
01-Jan-05	10,215,132	430,958	4.21%	300,000	10,346,090	346,000		5	-313,100	-267,100	-593,917	-24,997
01-Jan-06	10,346,090	333,161	3.24%	300,000	10,379,251	-20,000				-320,000	-913,917	-29,618
01-Jan-07	10,379,251	407,396	3.93%		10,786,647	-13,000				-13,000	-926,917	-36,441
01-Jan-08	10,786,647	348,747	3.30%		11,135,394	-32,000	2,975			-29,025	-955,942	-31,502
01-Jan-09	11,135,394	369,540	3.37%		11,504,934		94,516	6	-94,516		-955,942	-32,229
01-Jan-10	11,504,934	350,590	3.10%		11,855,524						-955,942	-29,605
01-Jan-11	11,855,524	380,203	3.26%	1,995,171	10,240,556			7		-1,995,171	-2,951,113	-96,062
01-Jan-12	10,240,556	299,719	2.71%		10,540,275	516,500	4,837	8	-516,500	4,837	-2,946,276	-79,928
01-Jan-13	10,540,275	360,160	3.47%	588,682	10,311,753	100,000		9		-488,682	-3,434,958	-119,065
01-Jan-14	10,311,753	309,878	2.97%		10,621,631						-3,434,958	-102,092
01-Jan-15	10,621,631	281,817	2.69%	798,589	10,104,859	248,000		10		-550,589	-3,985,547	-107,311
01-Jan-16	10,104,859	142,668	1.38%	230,263	10,017,264	230,263					-3,985,547	-54,868
2016 is to June 30 <sup>th</sup>		5,083,061	2016 is to June 30 <sup>th</sup>	5,065,797	2016 is to June 30 <sup>th</sup>	2,738,591				Interest	-755,662	-755,662

**Owing from (to) Trust  
as of 2016/07/01** **-4,741,209**

Columns (A) through (D) are sourced from the Investment Counsellors' statements.

Column (E) = Column (A) plus Column (B) minus Column (D).

Column (F) is sourced from Table 2 in the MPH Accounting (column "Amount of Ward 2 Levy Decrease").

Column (G) is sourced from Table 1 (column "Direct Application to Operating or Capital Expense in Ward 2").

Column (K) = Column (F) plus Column (G) plus Column (J) minus Column (D).

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Notes for the correcting adjustments in Column (J) are supplied on a separate set of four pages, best read from printed copies.

Column (J) shows total correcting adjustments that are required in relation to Columns (F) and (G). See Notes for explanations.

## Notes on Correcting Adjustments and Other Fine-Tuning of the MPH LLRW Accounting

A number of entries in the MPH Accounting dated October 27, 2016 were incorrect. This set of notes addresses some of the tax years, describes correcting adjustments that appear in Column (J) of Table C, and provides other observations. The notes are referenced by number in Table C. It is important to *read Table C and the Notes in conjunction with each other* -- they are interrelated. We recommend reading from printed copies, not on a computer screen, on a tablet screen, or on a phone.

Careful analysis of specific municipal by-laws was a key component for detecting and understanding errors in the MPH Accounting. Annual tax-rating by-laws, sometimes in conjunction with the area-rating by-law of 2003, provided essential information.

For some of the tax years, these notes are accompanied by a Table D, and in some cases by a Table E, included in a separate document to illustrate the analysis that was performed. A list of Tables D&E is included on the last page of this set of notes.

### Note 1 for Tax Year 2001:

Tax-Rating By-Law 52/2001 includes a budget appendix that shows a lump sum of \$600,000 of LLRW interest as revenue in the municipal operating budget, for both wards combined, without specifying the amount that was related to each ward. The MPH Accounting, Table 2 (in column "Amount of Ward 2 Levy Decrease") allocated \$300,000 direct to levy for Ward 2.

Analysis of the tax-rating by-law shows that the taxes billed in 2001 for Ward 2 came to 14.2% of the municipal total, as illustrated in Table D-2001. This indicates that an LLRW contribution of \$600,000 times 14.2% or \$85,200 is probably appropriate for Ward 2. This tax year requires a correcting adjustment of \$85,200 minus \$300,000 equals **\$214,800 negative**. An alternative, considering that the tax-rating by-law and the associated budget did not specify the use of LLRW interest for either ward, would be to erase the \$300,000 from the year entirely, but we have not done this.

### Note 2 for Tax Year 2002:

Tax-Rating By-Law 26/2002 includes a budget appendix that shows a lump sum of \$775,000 of LLRW interest as revenue in the municipal operating budget, for both wards combined, without specifying the amount that was related to each ward. The MPH Accounting, Table 2 (in column "Amount of Ward 2 Levy Decrease") allocated \$387,500 direct to levy for Ward 2.

Analysis of the tax-rating by-law shows that the taxes billed in 2002 for Ward 2 came to 14.1% of the municipal total, as illustrated in Table D-2002. This indicates that an LLRW contribution of \$775,000 times 14.1% or \$109,275 is probably appropriate for Ward 2. This tax year requires a correcting adjustment of \$109,275 minus \$387,500 equals \$278,225 negative. An alternative similar to Note 1 was considered, to erase the \$387,500 from 2002 entirely, but we have not done this. Please see the next paragraph.

Also for 2002, the MPH Accounting, Table 1 (middle column) shows an amount of \$50,000 as LLRW interest used towards capital or operating expense for Ward 2. In light of the previous paragraphs, the \$50,000 was already included in the budget and covered in the levy split (14.1% to Ward 2), and Ward

2 had paid through their tax bills that year. In this case the correcting adjustment is \$50,000 negative, to be added to the \$278,225 negative, for a total 2002 correcting adjustment of **\$328,225 negative**.

**Note 3 for Tax Year 2003:**

2003 is an unusual year in the MPH Accounting, where Table 1 (“Direct Application” column) claims that LLRW interest to directly reduce levy in Ward 2 was \$266,185 and this is almost exactly the same as the Net Earnings shown as \$266,186 (within a dollar). The amount of LLRW interest that is used to directly reduce levy is part of the tax-rating calculations in April of each year, but the earnings will not be known until after year-end, nine months later – the two numbers are exceptionally close (maybe due to a good crystal ball). As indicated in the footnotes in Table C, the numbers in Column (F) are sourced from column “Amount of Ward 2 Levy Decrease” in MPH Table 2 – in 2003 the amount is \$237,500.

**Note 4 for Tax Year 2004:**

Extensive analysis was performed using the numbers in Tax-Rating By-Law 41/2004, in conjunction with Area-Rating By-Law 48/2003.

The analysis is illustrated through Tables D-2004 and E-2004, showing that the Ward 2 levy was \$1,694,400 (to the nearest hundred) and the Ward 2 tax bills came to a total of \$1,600,100. This leaves \$94,300 to be covered by LLRW interest, not \$285,500 as shown in Table 2 of the MPH Accounting (in column “Amount of Ward 2 Levy Decrease”).

The correcting adjustment for tax year 2004 is \$94,300 (the correct amount of LLRW interest) minus \$285,500 (from MPH Table 2) equals **\$191,200 negative**. The text of By-Law 41/2004 makes no reference to LLRW interest used to reduce taxes in either ward.

**Note 5 for Tax Year 2005:**

Extensive analysis was performed using the numbers in Tax-Rating By-Law 28/2005, in conjunction with Area-Rating By-Law 48/2003.

The analysis is illustrated through Tables D-2005 and E-2005, showing that the Ward 2 levy was \$1,693,700 (to the nearest hundred) and the Ward 2 tax bills came to a total of \$1,660,800. This leaves \$32,900 to be covered by LLRW interest, not \$346,000 as shown in Table 2 of the MPH Accounting (in column “Amount of Ward 2 Levy Decrease”).

The correcting adjustment for tax year 2005 is \$32,900 (the correct amount of LLRW interest) minus \$346,000 (from MPH Table 2) equals **\$313,100 negative**. The text of By-Law 28/2005 makes no reference to LLRW interest used to reduce taxes in either ward.

**Note 6 for Tax Year 2009:**

MPH Accounting, Table 1 (middle column) shows \$94,516 for Ward 2 LLRW interest used to offset operating or capital expense, but using interest in this way would not be equivalent to using interest to directly reduce levy. Area-Rating By-Law 48/2003, as amended by By-Law 28/2006, uses formulas to

split the municipal levy between the two wards; there is no provision in that by-law to recognize any type of injection of LLRW interest to cover any ward-specific operating or capital costs.

In effect, if it was applied, the \$94,516 of LLRW interest would have reduced the overall municipal levy that goes into By-Law 48/2003 --- as a result of the by-law, each ward would have shared the reduction on the same percentage share (14.2% to Ward 2 in 2009) as the rest of the levy.

Unlike 2001 and 2002, where the revenue from LLRW interest was included in the operating budget that was attached to the tax-rating by-law, for 2009 we do not know whether any LLRW interest was included in the budget as revenue.

Based on the \$94,516 of LLRW interest claimed in the MPH Accounting for tax year 2009, the correcting adjustment is **\$94,516 negative**.

#### **Note 7 for Tax Year 2011:**

The accounting of the transfer from the Ward 2 Fund to the municipality is incorrect. The withdrawal from the fund was \$1,995,171 not \$1,934,998 as shown in MPH Table 4. The original investment income is reported by MPH at \$320,030 and it is short by \$60,173 of the amount needed to recognize the realization on disposition of those assets.

The total investment income of **\$380,203** for that year has been entered into Column (B) of Table C. Similarly, the amount of the total proceeds **\$1,995,171** is shown in Column (D) of Table C.

#### **Note 8 for Tax Year 2012:**

The text of Tax-Rating By-Law 32/2012 states:

“That the \$14,291,400 approved tax levy requirement for 2012 be offset by \$516,500 interest for the LLRW funds [plural] to establish a General Municipal Levy of \$13,774,900.”

The by-law makes no reference to which fund was supplying the LLRW interest, and it makes no reference to how much LLRW interest was being used to reduce the tax levy in either ward.

Extensive analysis was performed using the numbers in Tax-Rating By-Law 32/2012, in conjunction with Area-Rating By-Law 48/2003 as amended in By-Law 28/2006.

The analysis is illustrated through Tables D-2012 and E-2012, showing that the Ward 2 levy was \$2,029,379 and the Ward 2 tax bills fully covered this amount at \$2,029,765. This means that **zero** LLRW interest was used for Ward 2 in 2012.

From the same analysis of the by-laws, the Ward 1 levy was \$12,262,021 (see Table E-2012) and the Ward 1 tax bills came to only \$11,745,871 (see Table D-2012). This means that \$516,150 was needed from LLRW interest to make up the billing shortfall for Ward 1 (not Ward 2).

According to Table 2 in the MPH Accounting, (column “Amount of Ward 2 Levy Decrease”), LLRW

interest in the amount \$516,500 is shown as coming from the Ward 2 LLRW Fund to reduce the Ward 2 levy, but none of this was used. The correcting adjustment for tax year 2012 is **\$516,500 negative**.

**Note 9 for Tax Year 2013:**

Tax-Rating By-Law 28/2013 states:

“That the \$14,636,400 approved for tax levy requirement be offset by \$150,000 (\$50,000 for Ward 1 and \$100,000 for Ward 2) interest from the LLRW funds for 2013 to establish a General Municipal Levy of \$14,486,400.”

The CIBC statements show a withdrawal of \$150,000 from the Ward 2 LLRW Trust.

Although Area-Rating By-Law 48/2003 as amended was still in force and on the books when the Tax-Rating By-Law 28/2013 was approved, there is a “notwithstanding” clause in the tax-rating by-law that over-rides the area-rating by-law “for 2013 only”.

Unlike tax year 2012 noted above, we cannot use the area-rating by-law to determine the amount of levy by ward – without that information, we cannot confirm the specific amounts of LLRW interest that are indicated in the tax-rating by-law.

However, it is possible, from analysis of the tax-rating by-law, to determine that the Ward 1 tax bills came to a total of \$12,260,933 and the Ward 2 tax billing was \$2,225,018. Refer to Table D-2013.

We have not introduced a correcting adjustment for the 2013 tax year.

**Note 10 for Tax Year 2015:**

Table 4 of the MPH Accounting shows \$248,000 of LLRW interest used in 2015 to reduce the Ward 2 levy, and the total “Withdrawn from the Investment Account” is listed at \$798,589. The difference of \$550,589 clarifies the last paragraph on page 12 of the MPH Accounting, where “two withdrawals were done in 2015” but the amounts are not stated in the text: the first withdrawal was for \$550,589.

**Note 11 – Comment re Area-Rating By-Law 48/2003:**

This by-law, referenced in some of the notes above, was in force from 2003 until it was repealed through Special Services By-Law 28/2014 on April 22, 2014, before the tax rates were set for the 2014 tax year in By-Law 32/2014. All of the by-laws are available online, through the search feature on the MPH website.

**Note 12 – List of Tables D&E Associated With This Set of Notes:**

Table D-2001, Table D-2002, Tables D-2004 and E-2004, Tables D-2005 and E-2005, Tables D-2012 and E-2012, Table D-2013 – all are available in a separate document, on the PHFFT website at:

<http://www.porthopcommunitygroups.org/porthopersforfairtaxes/>