

TO: Mayor Savage and Members of Halifax Regional Council

SUBMITTED BY: Original Signed by 
Jacques Dubé, Chief Administrative Officer

DATE: February 22, 2021

SUBJECT: Less than Market Value Lease: South End Community Day Care

SUPPLEMENTARY REPORT

ORIGIN

Regional Council February 16, 2016

MOVED by Councillor Mason, seconded by Deputy Mayor Whitman
THAT Halifax Regional Council direct staff to negotiate a Lease Agreement with the South End Community Day Care to transition the Tenant to market rent.

MOVED by Councilor Mason, seconded by Councilor Watts
THAT the motion be deferred pending preparation of a staff report regarding the opportunities and financial implications of establishing a Child Care Policy similar to Richmond BC to support the integration of not for profit day cares at below market rent into new and existing recreation facilities.
Motion to defer put and passed.

Regional Council November 17, 2020

Moved by Councilor Mason, seconded by Councilor Kent:

1. Adopt Administrative Order 2020-013-OP, Respecting Child Care Centres as set out in Attachment 1 of the staff report dated October 1, 2020; and
2. Direct the Chief Administrative Officer to return to Council with proposed less than market value leases for non-profit child care centres currently leasing space in municipal facilities as the existing leases expire. **Motion Put and Passed Unanimously.**

LEGISLATIVE AUTHORITY

Halifax Regional Municipality Charter

61(3) The property vested in Municipality, absolutely or in trust, is under the exclusive management and control of the Council, unless an Act of the Legislature provides otherwise.

63(1) The Municipality may sell or lease property at a price less than market value to a non-profit organization that the Council considers to be carrying on an activity that is beneficial to the Municipality; and

RECOMMENDATION ON PAGE 2

63(2): A resolution to sell or lease property referred to in subsection (1) at less than market value shall be passed by at least two thirds majority of the Council present and voting.

Administrative Order 2020-013-OP, the Child Care Administrative Order

(8) When leasing spaces to Non-Profit Child Care Centres in Facilities, the Municipality shall, subject to the approval of Halifax Regional Council in accordance with the requirements of the Halifax Regional Municipality Charter, lease the space to the Non-Profit Child Care Centre at less-than-market-value.

RECOMMENDATION

It is recommended that Halifax Regional Council authorize the Mayor and Municipal Clerk to enter into a less than market value lease agreement with the South End Community Day Care for the leased premises located at 5594 Morris Street, Halifax, as per the key terms and conditions set out in Table 1 in the discussion section of this report.

BACKGROUND

The South End Community Day Care is located in Spencer House, at 5594 Morris Street (Attachment 1). The original lease agreement commenced on March 1, 1983 inclusive of two five-year renewals which expired as of February 1998. The subsequent lease agreement commenced on April 1, 2003 inclusive of a five-year renewal which fully expired as of March 31, 2013.

In May 2015, staff met with the Executive Director of South End Community Day Care (SECDC) to begin lease discussions and to inform the SECDC that the lease rates would be at market value and that HST would be applied to the entire rent. An Offer to Lease letter was sent in August 2015 containing three options of outlining the transition of the rental rates to market value which was meant to provide the group time to make the appropriate financial adjustments. The group advised HRM staff that they were going to discuss the terms and conditions amongst the South End Community Day Care Centre Board and subsequently, sent a counter offer to HRM.

On October 20, 2015, a Motion to Council was made requesting a staff report regarding the possible continuation of a below market lease to SECDC. The lease negotiations ceased at that time, pending a staff report to Council.

On February 16, 2016, a staff report was submitted to Halifax Regional Council responding to the October 20, 2015 Motion of Council. The report included a recommendation for Regional Council to direct staff to negotiate a Lease Agreement with the SECDC to transition the Tenant to market rent. A motion to defer the lease agreement was passed pending preparation of a staff report regarding the opportunities and financial implications of establishing a Child Care Policy similar to Richmond BC to support the integration of non-profit day cares at below market rent into new and existing recreation facilities.

On November 17, 2020, Halifax Regional Council, approved the recommendations to adopt Administrative Order 2020-013-OP, Respecting Child Care Centres and directed the Chief Administrative Officer return to Council with proposed less than market value leases for non-profit child care centres currently leasing space in municipal facilities as the existing leases expire. As such, this report is going back directly to Regional Council as a supplementary report.

DISCUSSION

Subsequent Council's most recent direction, on January 4, 2021, an Offer to Lease letter was sent to the SECDC. The proposed key terms and conditions set out in the offer were approved and accepted by the South End Community Day Care Centre Board on February 9, 2021. The proposed lease agreement is for a five (5) year term which is to commence on April 1, 2021 and expire on March 31, 2026.

Comparable Class 'C' base rents for the Halifax peninsula are approximately \$10.50 per square foot plus Additional Rent and Property Taxes estimated at \$13.14 per square foot. The subject property would be considered moderately below a Class 'C' building for comparative purposes and as a result the market base rent for this space has been calculated at \$9.00 per square foot. As a below market lease, the base rent for the first year of the lease as recommended in this report is \$2.25 per square foot which represents a rent difference of \$27,088 in year one. The rent difference in a below market lease represents the equivalent of an 'operating grant' for the property's use. The term 'operating grant' represents the opportunity cost associated with HRM leasing the space at less than market value rather than full market value.

The funds received through the lease are allocated for building repairs and maintenance. The funds from this account have previously been sufficient to cover the building repair costs; however, as the building continues to age and is nearing 40 years, a condition assessment for this facility is planned for 2021/2022 to determine future requirements.

The Tenant will be responsible to pay all utilities including heat, power and water, and all other associated costs related to the maintenance and operation of the leased premises. The Tenant is responsible for the snow and ice control for their walkways, entrances, stairs and emergency exits. The Tenant has been advised that there is no parking available at this location. Any negotiations with the Halifax Regional Center for Education (HRCE) for any shared parking is solely between the Tenant and the HRCE for the St. Mary's Elementary School parking lot.

The Tenant is responsible for their proportionate share of the property tax plus HST. The Tenant may continue to apply to the Administrative Order 2014-001-ADM Tax Relief to Non-Profit Organizations once a lease is executed; however, the SECDC is not guaranteed exemption or a reduction of the commercial tax rate. SECDC can apply for the 2021-2022 tax relief program and a council report outlining the recommendations for the property tax relief will be submitted to Regional Council for review, decision and approval. The SECDC would be responsible for the entire property tax payment until a decision is made by Regional Council on the group's tax relief application status which may or may not relieve them from all or a portion of the property taxes due.

The proposed terms and conditions recommended by staff are outlined below in Table 1.

Table 1

Recommended Key Lease Terms and Conditions	
<i>Property Addresses</i>	5594 Morris Street, Halifax
<i>Landlord</i>	Halifax Regional Municipality
<i>Tenant</i>	South End Community Day Care Centre
<i>Premises</i>	The municipal owned property, known as the Spencer House, (a portion of PID 40266553) the land beneath and directly surrounding the building. South End Community Day Care is a total area of four thousand and thirteen feet (4,013) square feet.

Term	Five (5) years (April 1, 2021 – March 31, 2026), the anniversary date shall be on April 1 of each year of the term and the first anniversary will be on April 1, 2022
Use	South End Community Day Care to provide day care and after school programs.
Base Rent	Year 1 (April 1, 2021 to March 31, 2022) \$2.25 per square foot, \$9,029.25+HST/annum, payable monthly \$752.44+HST/month Year 2 (April 1, 2022 to March 31, 2023) \$2.25 per square foot, \$9,029.25+HST/annum, payable monthly \$752.44+HST/month Year 3 (April 1, 2023 to March 31, 2024) \$2.50 per square foot, \$10,032.50+HST/annum, payable monthly \$836.04+HST/month Year 4 (April 1, 2024 to March 31, 2025) \$2.75 per square foot, \$11,035.75+HST/annum, payable monthly \$919.65+HST/month Year 5 (April 1, 2025 to March 31, 2026) \$3.00 per square foot, \$12,039.00+HST/annum, payable monthly \$1,003.25+HST/month
Tenant Responsibility	The Tenant is responsible for all utilities including heat, power and water; and all other associated costs related to the maintenance and operation of the leased premises such as general repairs, technology, service delivery upgrades, alarm system costs, waste/recycling removal, cleaning and grounds maintenance (snow/lawn).
Property Taxes	The Tenant shall be responsible to pay the property taxes to HRM as a result of a taxable assessed value plus the applicable HST. HRM shall issue an invoice to the group.
Insurance	Commercial General Liability in the amount no less than \$5,000,000 and any other insurance required by HRM as set forth in the agreement. Director's and Officer's Liability Insurance in an amount not less than One Million Dollars (\$1,000,000) per occurrence. HRM is to be on the policies as additional named insured.
Notice	Either party shall have the option to terminate this agreement upon providing six (6) months written notice to the other party at any time and for any reason.
Condition	The Tenant accepts the premises on an "as is" basis.
Parking	There are no parking spaces at this location. Any spaces that may be agreed upon are between the St. Mary's Elementary School and the Tenant and would be as a result of negotiations directly between the Tenant and the school.
HRM Maintenance Responsibilities	<ul style="list-style-type: none"> • Capital repairs and replacements for items related to the Building/Structural, as required and as Landlord's budget allows; • Life and Safety System inspections. • Monthly building inspections for South End Community Day Care including Emergency Lights & Exit Lights • Pest control due to building deficiencies i.e. holes or entrances where rodents can enter the building
Special Clauses	Any maintenance, repairs and or replacements for South End Community Day Care for which the group is deemed responsible shall be submitted in writing to HRM for approval prior to any work being complete, except whereas emergency repairs/issues arise and required immediate attention. Any emergency repairs requiring immediate attention is the responsibility of the Tenant but will notify HRM of the issue.

FINANCIAL IMPLICATIONS

The market value base rent was established by using the Regional Rental Rates Reference Guide prepared by Cushman & Wakefield, which was further adjusted to compensate for the subject property being considered moderately below a Class "C" building to bring the base rent to \$9 per square foot. The table below is a breakdown of the market value rent, the proposed rent and the rent difference, referred to as the operating grant for both the first year of the term and for the entire five-year term.

Duration	Market Value Rent at (\$9.00 per square foot)	Proposed Less than Market Value Rent	Foregone Revenue
Base Rent - First year (2022)	\$36,117	\$ 9,029	\$27,088
Base Rent - Second Year (2023)	\$36,117	\$ 9,029	\$27,088
Base Rent – Third Year (2024)	\$36,117	\$10,032	\$26,085
Base Rent – Fourth Year (2025)	\$36,117	\$11,035	\$25,082
Base Rent – Fifth Year (2026)	\$36,117	\$12,039	\$24,078

The annual rent of \$9,029 plus HST for the first year of the term and subsequent years will be deposited into Reserve Account Q541-5102 which the rent revenue shall be transferred annually, on April 1 into a Municipal Facility Maintenance & Operations cost centre W213.

The value of the foregone lease revenue being considered with HRM leasing the space at less than market value is \$129,421 over the term of the lease.

Property taxes are billed initially by the Municipal Government, HRM as Landlord will pay the property taxes through W213- 5508 as a clearing account. The Landlord shall invoice the Tenant the property taxes plus HST. Should Regional Council approve the inclusion of the SECDC to Administrative Order 2014-001-ADM Tax Relief to Non-Profit Organizations, the amount offset will represent an additional 'operating grant' from HRM.

RISK CONSIDERATION

Risk consideration is Low. The Lease is an established provincially registered non-profit as well as a registered Canadian charity. Having a valid Lease Agreement in place reduces the risk considerations.

COMMUNITY ENGAGEMENT

No community engagement was required.

ENVIRONMENTAL IMPLICATIONS

No environmental implications were identified.

ALTERNATIVES

Regional Council could choose to:

1. Lease the property at market value to the SECDC.
2. Lease the property to the SECDC for a longer term.
3. Not enter into any lease agreement SECDC. This would result in the group no longer having access to the site.

ATTACHMENTS

Attachment 1: Site Map and Lease Area

A copy of this report can be obtained online at halifax.ca or by contacting the Office of the Municipal Clerk at 902.490.4210.

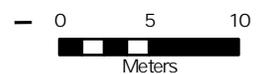
Report Prepared by: Trish Higby, Partnership Coordinator, Parks & Recreation, 902 456 7062



SITE MAP - PID 40266553 PREMISES

-  PID 40266553
-  Building Polygon
-  Parcel
-  HRM Park

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Date: 5/7/2021