



P.O. Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Item No. 9.1.2
Halifax Regional Municipality Grants Committee
February 13, 2023

TO: Chair and Members of the Halifax Regional Municipality Grants Committee

SUBMITTED BY: Original Signed

Cathie O'Toole, Chief Administrative Officer

DATE: February 3, 2023

SUBJECT: **Less than Market Value Lease: Back to the Sea Society, 140 Alderney Drive, Dartmouth**

ORIGIN

This report originates with the accepted letter of Offer to Lease from Back to the Sea Society for the premises located at 140 Alderney Drive, Dartmouth.

LEGISLATIVE AUTHORITY

The *Halifax Regional Municipality Charter*, S.N.S. 2008, c. 39, s. 61(3) provides:

Powers of Municipality regarding property

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

The *Halifax Regional Municipality Charter*, S.N.S. 2008, c. 39, s. 63(1) and s. 63(2) provide:

Sale or lease of municipal property

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

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

The Grants Committee Terms of Reference states:

“The HRM Grants Committee shall review, evaluate and make recommendations to Regional Council regarding annual cash grants, rent subsidies, property tax exemptions, less than market value property sales and leases to registered non-profit organizations and charities managed by a duly appointed Grants Committee.”

RECOMMENDATION

It is recommended that the Grants Committee recommend that Halifax Regional Council authorize the Executive Director, Property, Fleet & Environment to negotiate and finalize a less than market value lease agreement with Back to the Sea Society for the premises located at 140 Alderney Drive, Dartmouth as per the key terms and conditions set out in Table 1 in the discussion section of this report, and direct the Mayor and Municipal Clerk to execute the finalized less than market value lease agreement.

BACKGROUND

The Back to the Sea Society is a non-profit group which focuses on public education and hands on learning of local marine life with a desire for ocean protection. In 2017, a pilot project was realized when the Society opened a Touch Tank Hut as a miniature aquarium and marine interpretive centre with the vision of opening a permanent community aquarium in the future. The Society was provided a small building on the Dartmouth waterfront by Alderney Landing Community Cultural Centre. Due to the increased number of events held at the Alderney Landing Events Plaza, which temporarily closes the surrounding area and access to the Back to the Sea building, the group decided to look for another location. Parks & Recreation reviewed the possibility of a location in Ferry Terminal Park, however, it would have impacts to the other uses of the park and new infrastructure would be required to be installed. The Back to the Sea Society wanted a permanent building to run their program with easy access to parking and pedestrian flow and proximity to the waterfront.

The Back to the Sea Society met with HRM in April to discuss the possibility of leasing the building located in Martin’s Park at 140 Alderney for a community aquarium. The proposed building is larger than their current location and includes more room for programming, washrooms, office space and enables the group to remain on the Dartmouth Waterfront.

DISCUSSION

In November 2022, the Back to the Sea Society accepted an Offer to Lease at less than market value for a five (5) year term commencing on May 1, 2023 and expiring on April 30, 2028. The base rent for the space has been negotiated at \$1.00 dollar plus HST per annum for the term of the agreement. The Back to the Sea Society will be responsible for all operating costs such as, but not limited to, utilities (heating, water, sewer, electricity); general repairs and maintenance; interior cleaning; source separation and removal of garbage, recycling, and compost; tenant intrusion alarm; telephone; internet; cable; and any other related operating costs for the Premises. The Tenant will be responsible for their proportionate share of the property tax plus HST. Since the building has been vacant for several years there are some minor maintenance items which will need to be completed by HRM prior to the group taking occupancy which are listed below in Table 1.

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

Table 1:

Recommended Key Lease Terms and Conditions	
<i>Property Addresses</i>	140 Alderney Drive, Dartmouth (PID 40763476)
<i>Landlord</i>	Halifax Regional Municipality
<i>Tenant</i>	Back to the Sea Society

Premises	Approximately 1,084 square feet of interior space and approximately 1,342 square feet of land which includes the land beneath the building and the two grass alcoves in the rear of the building to be used for the Tenant's exterior equipment.
Term	Five (5) years (May 1, 2023, to April 30, 2028)
Commencement Date	May 1, 2023
Use	Community aquarium focusing on public education and hands on learning and related activities
Base Rent	\$1.00 plus HST per annum
Additional Rent	All other amounts payable by the Tenant to the Landlord except Rent whether specifically designated as Additional Rent.
Property Taxes	The Tenant shall be responsible for any applicable property taxes levied upon the property due to this agreement. The Tenant's proportionate share of the property taxes plus HST will be invoiced to the Tenant as they fall due.
Utilities	The Tenant will be solely responsible for all water, sewer, electrical, heating, phone, internet, cable, and any other utility expenses related to their operations excepting any which are identified below as the Landlord's responsibility.
Tenant Responsibilities	General repairs including fixtures (i.e., plugged toilet, leaking faucets, etc.); interior cleaning of the Premises, supplying the washroom paper and janitorial products and supplies; all garbage, compost, and recycling to be collected from the Premises and disposed of offsite; pest control, if required; Tenant intrusion alarms and monitoring for the Premises (if any); false alarm charges; monthly inspections; repairs and replacements of life safety equipment such as emergency lights, fire extinguishers and smoke detectors; repairs, maintenance and replacements of all Tenant installed equipment in, on or at the Premises which are for the exclusive use of the Tenant; snow removal and ice control for the entrances and exits which directly serve the Premises; any required upgrades to the building systems (i.e., heating, electrical, water) to accommodate the Tenant's Permitted Use shall be at the Tenants expense and require prior written permission from the Landlord; landscaping around Tenant's equipment and any other related Tenant costs, etc.
HRM Responsibilities	Maintenance, repairs, replacements, and inspections for all building systems including but not limited to plumbing (including the sump pump), heating, mechanical, electrical systems, and safety systems; structural repairs, maintenance, and replacements for the building; repairs and maintenance to the parking lot; annual inspections of the Building/Premises and life safety equipment (i.e., fire panels and sprinklers, if any and emergency light fixtures, fire extinguishers etc.); snow and ice control for the parking lot; landscaping and all other maintenance and repairs, except those identified as Tenant responsibilities, and all other related landlord costs, etc.
Insurance	Commercial General Liability in the amount no less than \$2,000,000 including content insurance, and Director's and Officer's Liability Insurance. Halifax Regional Municipality is to be on the policies as additional named insured. The Tenant's policy shall contain a waiver of subrogation rights. The Tenant will provide the Landlord with a Certificate of Insurance evidencing proof of all required coverage upon the signing of the agreement.
Early Termination	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.
Parking	Two parking spaces in the 130/140 Alderney Drive parking lot will be reserved for the exclusive use of the Tenant at no cost, which shall be marked by signage. If the Tenant or their invitees require additional parking may use the remainder of the parking lot in common with other users, if available. The Landlord shall create, produce, and install parking signage, if required.

<i>Surrender Requirements</i>	If the Tenant has improved the property by adding any permanent improvements including but not limited to structures, fencing, leaseholds, and other notable improvements than upon the termination of the agreement, and at the discretion of the Landlord, the Tenant may be required to remove the improvements and all related materials and return the Premises to its original condition. If the Tenant is required to remove any improvements and the related materials, the Tenant shall be responsible for all costs. At the termination of the agreement with the Tenant, if Landlord chooses to retain any of the improvements, it shall then be owned by the Landlord and there will be no financial compensation to the Tenant for such ownership.
<i>Special Clauses</i>	<p>The Tenants use of the land surrounding the Premises must be booked in advance with Halifax Regional Municipality Facility Scheduling.</p> <p>The Tenant actions or inactions, such as but not limited to the filling and emptying of the aquariums or tanks shall always abide by all laws, including any and all environmental laws, whether they are federal, provincial, municipal or by any other authority having jurisdiction.</p> <p>The 1986 plaque recognizing the importance of the Shubenacadie Canal System is to remain in its current location and is not to be changed in any way.</p>
<i>Condition</i>	The Tenant accepts the premises on an “as is” basis.
<i>Alterations</i>	Tenant shall not make any alterations to the Premises without the prior written consent of the Landlord
<i>Tenant Work</i>	<ul style="list-style-type: none"> • Upgrade the electrical system to accommodate the permitted use of the Premises, if required. • Install the two required 230 V power outlets for the Tenant’s equipment. • The Tenant may change the building trim colour to teal, on the condition the Tenant is to return the trim to the original green colour at the end of the term or upon the termination of their agreement. The Tenant is required to have the paint type approved by HRM prior to any painting.
<i>Landlord Work</i>	<ul style="list-style-type: none"> • Add weatherproofing to the three sets of exterior glass doors • Reinstate the two washrooms to working condition • Remove all items, debris, and garbage from Premises • Clean Premises prior to turning it over to Tenant • Paint interior space prior to turning it over to the Tenant • Repair the phone line for the building

FINANCIAL IMPLICATIONS

The market value base rent was established by using the Regional Rental Rates Reference Guide prepared by Cushman & Wakefield. The market value base rent for this space is \$9.00 per square foot, which is at the lower end of market value spectrum, and the annual base rent of \$9,756.00 per annum.

The proposed less than market value base rent has been negotiated at \$1.00 dollar per annum. The rent difference in a below market value 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 value of the operating grant being considered with HRM leasing the space at less than market value is approximately \$48,775.00 over the term of the lease.

The annual rent of \$1.00 plus HST for the first year of the term and subsequent years will be deposited into Parks Operating Account W181-5151.

The estimated property taxes are \$2,200.00 +HST per annum. Property taxes are billed initially by the Municipal Government, HRM as Landlord will pay the property taxes through Parks account W181-5508 as a clearing account. The Landlord shall invoice the Tenant the property taxes plus HST. Should Regional Council approve the inclusion of the Back to the Sea Society 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 with a valid Lease Agreement in place reduces the risk considerations.

COMMUNITY ENGAGEMENT

No community engagement required for the completion of this report.

ENVIRONMENTAL IMPLICATIONS

There are no known environmental implications at this time.

ALTERNATIVES

Alternative 1: The Grants Committee could recommend that the Regional Council lease the Premises at market value to Back to the Sea Society.

Alternative 2: The Grants Committee could recommend that the Regional Council not lease the Premises to Back to the Sea Society.

ATTACHMENTS

Attachment "A" Martin's Park Building – Proposed Premises

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: Tara Legge, Leasing Officer, Corporate Real Estate, Property, Fleet & Environment
902.476.2296

HALIFAX

ATTACHMENT 'A' Martin's Park Building – Proposed Premises

