

Amendment to Agreement with William Beasley Enterprises Limited

Date:	February 8, 2012
To:	Government Management Committee
From:	General Manager, Parks, Forestry and Recreation
Wards:	Ward 28, Toronto Centre-Rosedale
Reference Number:	P:\2012\Cluster A\PFR\GM11-022312-AFS#15224

SUMMARY

The purpose of this report is to clarify the areas of Centreville that are leased and those that are the subject of a non-exclusive licence of occupation. This report seeks authority from Council to amend the existing agreement to better reflect the original intention of Council by delineating areas of exclusive and non-exclusive occupation in the agreement with William Beasley Enterprises Limited. The amendment will delineate part of the area under a lease to William Beasley Enterprises Limited (the "Tenant") for the operation of a Children's Amusement Area, including rides, food, and merchandise concession outlets known as "Centreville" located at Centre Island, in order to accurately reflect the areas over which the Tenant has exclusive possession. The balance of the lands under the agreement is delineated as a non-exclusive licence of occupation used in conjunction with the leased portion.

If Council approves the recommendation put forward in this report, it is anticipated that the Municipal Property Assessment Corporation (MPAC) will reassess the property for the years 2009 onward, for which assessment appeals are pending, which will result in reduced taxes. Resolving the property tax issues will also clarify the on-going tax liability associated with the property and will facilitate the issuance of a Request for Proposal (RFP) to solicit an operator commencing in 2013.

RECOMMENDATIONS

The General Manager of Parks, Forestry and Recreation recommends that:

1. City Council grant authority to amend the existing Agreement to reduce the area leased to William Beasley Enterprises Limited from 5.609 hectares to 0.631

hectares, with the remaining lands to be the subject of a non-exclusive licence of occupation retroactive to May 15, 2002, the date of the agreement, generally in accordance with the proposed terms and conditions set out in this report and on such other terms and conditions as may be satisfactory to the General Manager of Parks, Forestry and Recreation, and in a form and content acceptable to the City Solicitor; and,

2. The appropriate City officials be authorized and directed to take the necessary action to give effect thereto.

Financial Impact

There is no impact on the Operating or Capital budget.

The Deputy City Manager and Chief Financial Officer has reviewed this report and agrees with the financial impact information.

DECISION HISTORY

City Council, at its regular meeting held on April 23, 24, 25, 26, 27, and its special meeting held on April 30, May 1, and 2, 2001, adopted Clause 11 embodied in Report 3 of the Economic Development and Parks Committee, entitled "Toronto Island Children's Amusement Area – Lease Extension" (Ward 28 Toronto Centre-Rosedale).

(Report 3, Clause 11)

<http://www.toronto.ca/legdocs/2001/agendas/council/cc010424/edp3rpt/cl011.pdf>

City Council adopted a Notice of Motion at its regular meeting held on November 29, 30, and December 1, 2011 – Consent to permit Beasley Amusements Inc. to hold over and operate in the 2012 season. To view the Council decision, follow the hyperlink below:

(Member Motion – MM14.7)

<http://app.toronto.ca/tmmis/viewPublishedReport.do?function=getCouncilDecisionDocumentReport&meetingId=4422>

The existing agreement between the City and the Tenant expires on May 14, 2012. By the adoption of MM14.7 on November 29 and 30, and December 1, 2011, Council authorized the Tenant to overhold on a month-to-month basis, generally on the same terms and conditions under the Agreement, together with such other terms and conditions as determined by the General Manager, to ensure that Centreville continues operating during the 2012 summer season. The City will issue an RFP for the continued operation of Centreville commencing in January 2013.

ISSUE/BACKGROUND

Toronto Island is a 230 hectare park which is owned by the City of Toronto. Approximately 5.609 hectares is currently leased to Beasley Enterprises Limited who operates the Centreville amusement park with over 20 amusement rides. It is a unique family attraction that has provided affordable entertainment for Torontonians since the Tenant began operating in 1966. The agreements between the City and the Tenant relating to the operation of Centreville have been amended and extended a number of times. The latest Amended and Re-Stated Lease Agreement dated May 15, 2002 (the "Agreement"), extended the agreement for a term expiring on May 14, 2012.

The Agreement requires the Tenant to pay the following:

- \$360,000 for Basic Rent for "Food and Merchandise Concession" at Centreville.
- \$360,000 for Basic Rent for the "Operation of the food concession at the concession area" per license agreement from CI Foods Services Ltd
- A Percentage Fee on food concessions equivalent to 17.5% of Gross Sales between \$1.8 million and \$2.16 million per annum and 15% of Gross Sales in excess of \$2.16 million.
- A percentage of revenues from the sale of game and ride tickets at Centreville as set out in the agreement (15% for years 2008 onward).
- Property taxes as levied by the City of Toronto.

The Municipal Property Assessment Corporation has classified the property as including an exempt portion and a commercial-taxable portion. The commercial taxable component is attributable to the tenants that occupy the property, while the exempt component is attributable to the portion of the land controlled by the City as used as a park. We have been advised that based on the current lease information, MPAC has assessed 5.609 hectares of land as commercial-taxable to William Beasley Enterprises Limited which has resulted in a significant tax burden for this tenant.

Consistent with the *Assessment Act*, the taxes are levied and charged to property owners (in this case, the City's Parks, Forestry and Recreation Division) who then pay and recover property taxes from their tenants. Parks, Forestry and Recreation Division has been paying the property taxes and invoicing the paid amount to the Tenant. Since 2004, the Tenant has raised concerns with respect to how the property is assessed by MPAC. They have argued that since they do not exclusively occupy the property, most of the land should be assessed as exempt given that it is owned and controlled by the municipality.

The original agreements between the City and the Tenant do not distinguish between those areas over which the Tenant has exclusive possession and those areas over which it simply has a non-exclusive licence of occupation. An amendment to the Agreement is required in order to clarify these areas.

COMMENTS

William Beasley Enterprises Limited has filed appeals for the taxation years 2009, 2010 and 2011, which are currently awaiting scheduling with the Assessment Review Board.

The City, MPAC, and Beasley have discussed the concerns raised by the Tenant and agree in principle that the property tax issue for the years 2009 onward can be resolved with an amendment to the Beasley Amusements Lease and CI Foods Licence Agreement that will specifically correct the hectares of the exclusively occupied areas.

After Council amends the Agreement, MPAC will be provided the revised documents, and Minutes of Settlement will be drafted. Once the tax impacts of the assessment appeals are known, staff will bring forward a further report disclosing the financial impacts and will provide recommendations with respect to the earlier years where property taxes still have not been fully recovered from the Tenant given that they have similar concerns regarding the assessment classification of the property.

Staff have consulted with Revenue Services and Legal Services in the preparation of this report.

CONTACT

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SIGNATURE

Jim Hart
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