



STAFF REPORT ACTION REQUIRED

Below-Market Rent Lease Agreement at 730 Military Trail

Date:	August 4, 2010
To:	Government Management Committee
From:	Chief Corporate Officer and General Manager, Parks, Forestry & Recreation
Wards:	43 – Scarborough East
Reference Number:	P:\2010\Internal Services\RE\Gm10071re – (AFS #12562)

SUMMARY

The purpose of this report is to obtain City Council authority to enter into a new Below-Market Rent (“BMR”) lease agreement with Tam Heather Curling & Tennis Club (the “Club”) for approximately 56,500 square feet of City-owned space located at 730 Military Trail, and to have the premises designated a municipal capital facility.

RECOMMENDATIONS

The Chief Corporate Officer and General Manager, Parks, Forestry & Recreation recommend that:

1. City Council authorize a new BMR lease agreement (the “Agreement”) with the Club, for a five (5) year term, with the option to renew for one further five (5) year term, substantially based on the terms and conditions set out in the attached Appendix “A”, and any other terms and conditions acceptable to the Chief Corporate Officer, and in a form acceptable to the City Solicitor.
2. City Council authorize the Chief Corporate Officer to administer and manage the Agreement including the provision of any consents, approvals, notices and notices of termination provided that the Chief Corporate Officer may, at any time, refer consideration of such matters (including their content) to City Council for its determination and direction.

3. City Council authorize the City Solicitor to document the lease, deliver any notices, and amend the commencement and other dates to such earlier or later date(s), on such terms and conditions, as she may, from time to time, determine.
4. City Council grant an exemption to the BMR Policy to allow the Club to become the tenant at 730 Military Trail without the need to solicit a Request for Proposal as required by the BMR Policy.
5. City Council resolve that the facility located at 730 Military Trail is for the purpose of the City and for public use.
6. City Council pass a by-law pursuant to section 252 of the *City of Toronto Act, 2006* providing authority to:
 - (a) Enter into a municipal capital facility agreement with the Club, as tenant, to in respect of the Leased Premises at 730 Military Trail; and
 - (b) Exempt the Leased Premises at 730 Military Trail from taxation for municipal and school purposes, which tax exemption is to be effective from the latest of (i) the date the municipal capital facility agreement is signed, and (ii) the date the tax exemption by-law is enacted.
7. City Council direct the City Clerk to give written notice of the by-law to the Minister of Education, the Municipal Property Assessment Corporation, the Toronto District School Board, the Toronto Catholic District School Board, the Conseil Scolaire de District du Centre-Sud-Ouest and the Conseil Scolaire de District du Catholique Centre-Sud.
8. City Council amend Municipal Code, Chapter 227 [Reserves and Reserve Funds] by changing the purpose and criteria of the existing Tam Heather Reserve Fund - Schedule 14 – State of Good Repair Obligatory Reserve Funds as per Appendix B.
9. City Council authorize the introduction of the necessary bills to give effect thereto.

Financial Impact

The proposed agreement assumes a lease of 56,500 square feet of total space (of which, 30,300 square feet of space is within the building) for a nominal net rent consideration. All operating costs related to the building occupancy (currently estimated at \$362,765 per year) will be paid by the Club, resulting in no cost to the City of Toronto. The Club shall contribute \$30,000 annually towards the balance sheet account (#220252) deficit (the “Existing Deficit”). After this Existing Deficit of \$174,930 (as July 15, 2010) is eliminated, the \$30,000 annual contribution shall go towards the Tam Heather Reserve Fund.

The deficit the Club accumulated was due to operating inefficiencies. The Club presented financial statements as part of the Club’s Below Market Rent Eligibility Review Package that

indicates they have taken many steps to ensure they will be financially viable. Some of the steps the Club has taken include the following, raising their fees, the installation of a tennis bubble over 4 tennis courts instead of 3 tennis courts which is expected to yield an increase in tennis revenues, the Club has laid off some administration staff and the Club will not fully operate during the summer off peak season. The City will continue to be responsible for the state of good repair to the facility and the Club shall contribute \$30,000.00 annually to the Tam Heather Reserve Fund once the deficit is eliminated.

In accordance with the City's Below Market Rent Policy, the opportunity costs of entering into the Below Market Rent agreement must be determined and reported to City Council. Research indicates that the total present value opportunity cost of the lease over the 5-year term is approximately \$1,100,000 (gross permit fees from ice and court rentals). If the lease is renewed for an additional 5-year term, the present value opportunity cost for the 5-year lease extension term is approximately \$900,000, for a total present value opportunity cost of \$2,000,000.00, over the ten year period. This figure does not take into account the fact that the Club will be responsible for all operating costs related to their leased building as well as the salaries of staff at the site. These costs would normally be the responsibility of the City of Toronto if this was a City-operated facility.

If the property is declared a Municipal Capital Facility, the Club would no longer be responsible to pay the required property taxes assessed on the leased land. The City would lose the municipal portion of the property taxes over the term of the lease agreement. Research indicates that the total present value opportunity cost of the property tax exemption over the 5-year term is approximately \$126,000. If the lease is renewed for an additional 5-year term, the present value opportunity cost of the property tax exemption is approximately \$123,000, for a total present value opportunity cost of \$249,000 over the ten year period.

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

DECISION HISTORY

The Club has been a long-standing community fixture in the former City of Scarborough. The Club purchased the existing Military Trail site from Ontario Hydro in 1972 and commenced operation in 1973.

In the early 1990's, the Club began to experience financial difficulty and were unable to keep up with accumulating debt. In 1994, the Club had an outstanding property tax balance of \$298,500 with the former City of Scarborough. Given the Club's dilemma, the former City of Scarborough decided to purchase the Club facilities, including the land and buildings, for approximately \$1,300,000. Within the next two years, the former City of Scarborough performed major maintenance and upgrades to the existing facilities in the amount of \$632,000.

In 1995, the former City of Scarborough entered into a lease agreement with the Club to operate the facility for the Club's programs and activities at which time it created a reserve fund in support of the facility. This lease agreement expired on April 28th, 1996.

Clause No. 15, Report No. 8 of the Scarborough Community Council, adopted by Council on July 6, 7, and 8, 1999, requested the City Auditor undertake an audit of the financial operations of the Club. The report also authorized an extension of the overholding agreement with the Club from July 1, 1999 to April 28, 2000.

(<http://www.toronto.ca/legdocs/1999/agendas/committees/sc/sc990622/it020.htm>).

Clause No. 5, Report No. 6 of the Audit Committee, adopted by Council on October 3, 4, and 5, 2000, responded to the request of City Council that the City Auditor undertake an audit of the financial operations of the Club. The City intends to implement one of the Report's recommendations, that the Commissioner of Economic Development, Culture & Tourism give consideration to transferring all banking responsibilities from the City back to the Club.

(<http://www.toronto.ca/legdocs/2000/agendas/council/cc/cc001003/au6rpt/cl005.pdf>)

At its meeting on October 1, 2, and 3, 2002, Council adopted "A Policy for City-Owned Space Provided at Below-Market Rent" as the first step in rationalizing how City-owned space is provided to community and cultural organizations.

(<http://www.toronto.ca/legdocs/2002/agendas/council/cc021001/pof13rpt/cl001.pdf>).

Through subsequent reports, Council has refined the BMR policy framework and has authorized the extension of existing BMR lease agreements. The most recent report adopted by City Council was on November 19-20, 2007 titled "Providing City-Owned Space to Community Organizations at Below-Market Rent".

(<http://www.toronto.ca/legdocs/mmis/2007/cc/decisions/2007-11-19-cc14-dd.pdf>).

The BMR policy establishes a framework for the provision of leased City-owned space to non-profit organizations at below-market rents where these groups further the delivery of City programs and services, or provide functions that are consistent with Council's objectives.

ISSUE BACKGROUND

At the beginning of 2010 the Club was presented with the BMR Eligibility Review Package. Upon review, City staff have determined that the Club has successfully met the eligibility criteria

The Club has passed the Eligibility Review for City-Owned BMR space.

The Club has a long history of delivering the on-site programming at the property and satisfies the BMR policy requirements for openness, transparency and program accountability. Given the Club's history on the property and the successful eligibility review of their organization as a BMR tenant, this report recommends an exemption of the Request for Proposal requirement contained in the BMR Policy for determining a suitable BMR tenant at 730 Military Trail.

COMMENTS

The Club has agreed to deliver the relevant programs within the City-owned space provided within the lease agreement and have agreed to pay all operating costs associated with their occupancy.

Section 252 of the *City of Toronto Act, 2006* allows the City to enter into agreements with any person/organization for the provision of municipal capital facilities, and allows City Council to exempt from taxation for municipal and school purposes, land or a portion of land, which municipal capital facilities are or will be located.

Ontario Regulation 598/06 prescribes "City facilities used for cultural, recreational or tourist purposes" as eligible municipal capital facilities for the purpose of section 252. The regulation also requires, in respect of such facilities, that the City (or other prescribed public sector entity) must own the facilities, including the land where they are situate, and that Council must declare that the municipal capital facilities are for purposes of the City and are for public use.

Section 252 of the *City of Toronto Act, 2006* also requires:

- (a) That the property owner and the City enter into an agreement for the provision of a municipal capital facility for the space being leased; and
- (b) That a by-law be passed by Council permitting the City to enter into the agreement and to exempt the property to which the municipal capital facility agreement applies from taxation for municipal and school purposes.

Upon passing of the by-law, the City Clerk must give written notice of the by-law to the Minister of Education. For the tax exemption, the City Clerk must also provide a written notice of the contents of the by-law to the Municipal Property Assessment Corporation and the Secretary of any affected school board(s).

It was recommended through the Auditor General's Office in their report to Council that the Club take over all of the financial obligations and accounting of the property from the City. The transfer of all banking and accounting responsibilities to the Club and the implementation of the municipal capital facility agreement will allow the Club to move forward in controlling its own operation and finances.

The City of Toronto currently maintains the reserve fund created by the City of Scarborough to support this facility, but, since it is being recommended that the nature of the relationship between the Club and the City change, therefore, it is also being recommended that there be a change to the criteria for the management of this existing fund as per Appendix B.

The Club has a significant history at this site and the lease is consistent with the objectives of the Parks, Forestry & Recreation Division. By approving the proposed BMR lease agreement with this organization, the City will allow the Club to continue to operate and have a sustainable and predictable cost base on the property for the foreseeable future. The continued prosperity of the Club will ensure that the recreational activities such as curling and tennis remain available within

the Scarborough District, both of which are beneficial and essential elements of the local community.

City staff consider the terms and conditions of this lease agreement to be fair, reasonable and within the scope of the City's policy for BMR tenants.

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SIGNATURE

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ATTACHMENTS

Appendix "A" – Major Terms & Conditions
Appendix "B" – Tam Heather Reserve Fund Criteria
Appendix "C" – Location Map