

HRM Grants Committee
March 3, 2014

TO: Chair and Members of HRM Grants Committee

SUBMITTED BY: Original signed

Greg Keefe, Director of Finance & ICT/CFO

DATE: January 20, 2014

SUBJECT: Less than Market Value Lease to Shakespeare by the Sea Theatre
Society for 5480 Point Pleasant Drive, Halifax

ORIGIN

This report originates with HRM staff as the agreement between HRM and Shakespeare by the Sea Theatre Society has expired.

LEGISLATIVE AUTHORITY

The recommended action complies with HRM Charter Section 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. (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.

RECOMMENDATION

It is recommended that HRM Grants Committee recommend that Halifax Regional Council:

1. Authorize the Mayor and Municipal Clerk to enter into a less than market value lease agreement with Shakespeare by the Sea Theatre Society for the building located at 5480 Point Pleasant Drive, Halifax, as per the key terms and conditions set out in Table 1 in the discussion section of this report.

BACKGROUND

Shakespeare by the Sea Theatre is a not for profit society, which provides summer and fall outdoor performances at Cambridge Battery, in Point Pleasant Park. The Society uses the indoor space at the subject property mainly for rehearsals, costume/prop storage and as an alternative space for days of inclement weather.

Shakespeare by the Sea Theatre Society has leased the space located at 5480 Point Pleasant Drive from HRM since June 1, 1997. The original agreement had two renewal options and the final renewal expired on March 31, 2000. While the agreement has expired, the Society has continued on a hold over agreement to pay rent which has remained at \$1,200 per annum including HST. The original agreement did not stipulate responsibility for utilities; HRM has paid for electricity, water, maintenance and the capital repairs.

The primary sources of revenue for the Society are ticket sales, corporate sponsorship, and provincial and municipal funding. The Society has over the past few years invested \$20,000 in tenant improvements including converting a portion of the facility into a 90 seat, black box style theatre. The facility also includes an extensive costume storage area, kitchen and a small office. The indoor space is mainly functional during May to November because it is not insulated; therefore, the use of the space for rehearsals or performances is dependent on seasonal temperatures.

The building located at 5480 Point Pleasant Drive is within Point Pleasant Park which is owned by the Federal Government and leased to the Municipality.

Zoning and Permitted Use

Permitted use under the RPK (Regional Park) Zone of the Halifax Peninsula Land Use By-law - 62ED(1) The following uses shall be permitted in any RPK Zone: (a) Recreation uses, (b) Conservation uses (c) Uses accessory to the forgoing uses.

DISCUSSION

The current tenant has leased the premises continuously for seventeen (17) years. Unless HRM has a municipal use for the building or elects to de-commission the public washrooms and remove the built structure, a continuation the lease at this location is recommended. Shakespeare by the Sea Theatre Society has expressed their desire to continue to lease from HRM at this location. This lease agreement supports one of HRM's Cultural objectives to provide spaces that foster creativity, culture, imagination, and innovation. Staff propose a less than market value lease provided that Shakespeare by the Sea Theatre Society maintain a current not for profit society status with the Nova Scotia Registry of Joint Stocks, they continue to be in good standings, and are not in default of any of the covenants of the agreement.

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The market base rent for this space has been calculated at \$7.00 a square foot or \$20,090.00 plus HST per annum. It is proposed that the lease be a cost-recovery agreement with no net revenue to HRM and full recovery of any operating costs, excluding major capital repairs. The waiver of \$20,090.00 in net rent represents the equivalent of an 'operating grant' for the property's use and a less than market value lease as described in s. 63(1) of the HRM Charter.

Table 1

Recommended Key Terms and Conditions	
<i>Property</i>	5480 Point Pleasant Drive
<i>Landlord</i>	Halifax Regional Municipality
<i>Tenant</i>	Shakespeare by the Sea Theatre Society
<i>Area</i>	Facility space approximately (2,870 sq. ft. exclusive of public washrooms)
<i>Base Rent</i>	\$7.00 psf or \$20,090.00 per annum shall be waived and represent the value of the property grant being considered.
<i>Additional Rent</i>	The Tenant shall be responsible to pay utilities. Electricity shall be direct to NSP and water shall be invoiced through HRM. The Tenant shall pay the water invoices as and when they fall due for the term of the Lease. The Tenant shall be responsible for the installation cost of a sub-meter for tracking water consumption estimated at \$300+HST
<i>Term</i>	Five (5) years
<i>Renewal Option</i>	Month to Month
<i>Commencement Date</i>	Anticipated to be March 1, 2014 (March 1, 2014 - February 28, 2019)
<i>Property Tax</i>	The Tenant is responsible to pay the Property Tax for the leased premises which will be at the urban commercial rate. The Tenant may apply annually to the Municipality for tax assistance.
<i>Permitted Use</i>	Costumes/Prop Storage, Workshops, Theatre Productions, and Administration The Society is permitted to have one storage container located beside the facility with written permission from HRM and where HRM has sole discretion.
<i>Insurance</i>	General public liability in the amount no less than \$2,000,000 and any other insurance required by HRM as set forth in HRM's standard lease agreement. If the operation includes alcohol, a Commercial General Liability insurance policy with alcohol not excluded with limits of no less than five million dollars (\$5,000,000.) is required. HRM is to be named on the tenant's policy as additional name insured.

	HRM will continue to maintain appropriate insurance as a prudent Landlord would provide. (The Landlord's insurance does not include any tenant contents or tenant improvement coverage)
<i>Notice Requirements</i>	<p>-The Tenant shall have the option to terminate this agreement upon providing three (3) months' written notice to the Landlord.</p> <p>-The Landlord may terminate the agreement if the Tenant defaults on any of the terms or conditions of the lease.</p> <p>-The Landlord shall have the option to terminate this agreement at any time upon providing three (3) months' written notice to the Tenant if the Landlord decides to redevelop, renovate, or change the Municipal use of the property or building in whole or in part. It is also understood that there will be no further obligation by either party.</p>

FINANCIAL IMPLICATIONS

The execution of this lease agreement, if approved, will decrease the operating budget impacts related to the leased space of this building, which results in a net saving to previous lease revenue and expenditures of approximately \$4,500 per annum for cost centre W202 – Commercial Leasing. The less than market value lease represents an operating grant of \$20,090.

The tenant will assume responsibility for the electricity charges and their proportionate share of the water bills determined by the use of a water counter. The tenant is also responsible for their proportionate share of the property tax and will continue to be responsible to submit payment upon receipt of the property tax invoice from HRM.

COMMUNITY ENGAGEMENT

Community engagement was not completed as this agreement is a renegotiation to renew a current contract.

ENVIRONMENTAL IMPLICATIONS

None associated with this report.

ALTERNATIVES

The Grants Committee may recommend that Regional Council not to renew the expired lease for space located at 5480 Point Pleasant Drive. This is not recommended as the use of the property for this purpose provides community and cultural value.

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1. The Grants Committee may recommend that Regional Council declare the building asset surplus and proceed to demolish the building. This is not recommended as the use of the building provides a community and cultural service.
2. The Grants Committee may recommend that Regional Council place the premises on the market for lease. This is not recommended at this time as Shakespeare by the Sea Theatre Society has completed tenant improvements in the facility over the past few years to make the space useable for indoor performances.
3. The Grants Committee may recommend that Regional Council lease to this group for \$1.00 with all operating costs assumed by the Municipality. This is not recommended as it would result in HRM assuming all operating costs and property taxes outside of a designated funding program and provide a consideration not afforded to non-profit tenants.

ATTACHMENTS

1. Photograph
2. Floor Plan

A copy of this report can be obtained online at <http://www.halifax.ca/commcoun/index.html> then choose the appropriate Community Council and meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

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**Attachment #1
Photographs**

Front View of 5480 Point Pleasant Drive



Rear View of 5480 Point Pleasant Drive (External Public Washrooms)



**Attachment #2
Floor Plan**

Public Washrooms
(HRM operated)

(Rear of building)

Office, Storage & Black Box Theatre
(Proposed lease space of approximately 2,780 square feet)

Storage

(Front of building)