

Item No. 11.1.11
Halifax Regional Council
March 18, 2014

TO: Mayor Savage and Members of Halifax Regional Council

SUBMITTED BY: Original Signed by _____
Mike Labrecque, Deputy Chief Administrative Officer

Original Signed _____

Kelly Denty, A/Director, Community & Recreation Services

DATE: March 10, 2014

SUBJECT: Khyber Arts Society Funding Request

ORIGIN

- July 31, 2007- Regional Council motion to authorize a process to enable an HRM owned/community operated Arts & culture Cluster Facility at the Khyber building, 1588 Barrington Street.
- August 10, 2010 - Regional Council approved a 3 year operating strategy for 1588 Barrington Street for interim programming as an arts and cultural incubator and allocated second floor rentable space to the Khyber Arts Society at less than market value rate for the period.
- December 2013 – Building assessment completed as a result of safety concerns related to presence of asbestos and lead.
- February 19, 2014 – Notice to vacate 1588 Barrington Street provided to tenants.
- March 8, 2014 - Request for relocation funding from the Khyber Arts Society.

LEGISLATIVE AUTHORITY

- *Halifax Regional Municipality Charter*, Section 79 (1) (av) (v), respecting grants and donations; Section 63(2), respecting the lease of property at less than market value passed by at least two thirds majority of Council present and voting; and Section 35(2)(d)(iii), respecting the negotiation of leases for a term not exceeding one year by the CAO
- HRM Cultural Plan

RECOMMENDATION

It is recommended that Halifax Regional Council:

1. Provide one time grant funding in the amount of \$45,000 to the Khyber Arts Society to cover moving costs and supplemental rental costs for a period not longer than 3 years associated with their relocation from 1588 Barrington Street, conditional on:
 - a. a signed lease agreement or signed offer to lease at the new location;
 - b. confirmation of vacant possession delivered to HRM on March 31, 2014; and
 - c. a signed surrender/release in favour of HRM; and
2. Authorize the CAO to amend the current month to month arrangement such that it reduces the rental payments owing from both the Khyber Arts Society and Heritage Trust for the period January 1, 2014 to March 31, 2014 to a nominal amount, effectively waiving rent for that period.

BACKGROUND

The building located at 1588 Barrington Street, commonly known as the “Khyber”, was purchased by the City of Halifax in 1988 for \$1.00 from a private developer to prevent the demolition of the heritage building and for possible use in the proposed expansion of the Neptune Theatre complex. The property is a municipally registered heritage building and does not have many modern building features including barrier free access nor any vehicle or loading capacity. It has been leased to two tenants (Heritage Trust and Khyber Arts Society) in recent years. Heritage Trust leased minimal space for storage and infrequent use. Khyber Arts Society (KAS) was the primary tenant using the majority of the building for programming and exhibitions.

Establishment of an Arts & Culture Incubator

In August 2010, Regional Council approved a 3-year operating strategy for management of the building as an arts and culture incubator to address the ongoing shortage of cultural space within the downtown core. The report proposed a 3-year operating strategy for 1588 Barrington Street, evolving from HRM managing tenancy and programming, to management and programming by a cultural organization through a management agreement. Transition of the management and operation of the building from HRM to a third party has not been completed due to numerous challenges, however, KAS has taken a lead role in the programming of the space and creation of an arts incubator.

Building Condition Assessment and Risk Assessment

The 2010 staff report relative to the operating strategy estimated capital requirements for the building were in the order of \$800,000 to \$1 million. The report further indicated that a more defined capital program would need to be established. In 2013, to determine the full scope of deferred maintenance and capital requirements, HRM commissioned a building condition assessment which determined that the building requires significantly more work than previously estimated.

The building's condition may have been further affected by recent construction of an abutting property. In December 2013, staff received notification from tenants that plaster was falling. As required by the Occupational Health and Safety Act, an asbestos abatement assessment was completed and Stantec was contracted to complete an occupational health and safety assessment of the building. This assessment documented additional asbestos plaster and lead paint failures (dust and paint chips), and evidence of imminent failures (cracking plaster and flaking paint).

As required under the Occupational Health and Safety Act, on January 13, 2014, HRM immediately informed the tenants of the findings. Because the Khyber is open to the public, the situation presented additional risk to the public and exposed the tenants and HRM to risk and possible claims. Therefore, HRM took further action by recommending that the building be vacated until abatement measures could be completed. Due to the immediate concerns, HRM staff assisted KAS with their short term relocation of planned events. Staff also reviewed options for the relocation of KAS including Alderney Landing, the Vogue building and Seeds Gallery in preparation of request for assistance.

On January 27, 2014 HRM received letters from both KAS and Heritage Trust disputing the findings and repeating their mutual intentions to remain in the building. HRM undertook additional testing, which confirmed the risk and explicitly stated that all plaster in 1588 Barrington Street should be considered asbestos containing materials. The additional results were provided to both Heritage Trust and KAS.

Further discussion occurred with KAS and Heritage Trust, however, both tenants continued to dispute the assessment reports and would not agree to vacate the building. However, since HRM was in receipt of a number of technical assessments, the management of the risk to the public was untenable and full abatement was needed prior to any further public use, on February 19, 2014, registered letters were sent to both Heritage Trust and KAS to inform them that HRM was terminating their monthly lease and they were required to vacate the building by the end of March (6 weeks' notice). This resulted in the request and consideration of a grant to KAS in order to permit the continuation of programming at another location until decisions on the building could be made.

DISCUSSION

The purpose of this report is for Council's consideration of a one-time grant to the Khyber Arts Society and rent abatement to both tenants. The future disposition of 1588 Barrington Street will be the subject of future Council decisions.

Creation of arts incubation space and program delivery at 1588 Barrington Street furthered the delivery of HRM's arts and cultural mandate, as outlined in the Cultural Plan. Cultural incubation space supports the development of emerging and professional artists and art organizations. As well, it allows for arts and culture production, networking among like-minded groups and with the general public. Investment in cultural facilities offers artists and creators a place to meet, share, collaborate, explore and develop new creative outputs which enhance the creative economy.

Previous Council Direction

The relationship with KAS started in 1997 when HRM entered into a five year agreement with them to lease and restore selected features of the Khyber building. That agreement was extended for an additional five year period in 2002, to extend through 2007. In 2005, HRM terminated the agreement with KAS for the management of 1588 Barrington Street and entered into month-to-month arrangements with KAS and Heritage Trust.

In 2007, Regional Council passed a motion to “enable an HRM owned/community operated Arts & Culture Cluster Facility at the Khyber Building, 1588 Barrington Street” and initiate a “Feasibility Study and Business Plan”. When no proposals were received for the feasibility study and business plan, Regional Council opted to not reissue the request for proposal, but rather provide funding directly to KAS to develop a business plan. In 2009, rather than transfer the funds to KAS, HRM staff collaborated with KAS to retain a consultant to complete a feasibility study for an artist-run centre.

The feasibility study outlined options related to the future ownership and operations of 1588 Barrington Street for the creation of an arts incubator. As a result, in August 2010, Regional Council approved a 3 year operating strategy for 1588 Barrington Street and temporary allocation of second floor space to KAS at less than market value rate for the period. The report proposed a 3-year operating strategy, evolving from HRM managing tenancy and programming, to management by a cultural organization through a management agreement. The proposed operating strategy assumed the following:

Budget Estimates:

| | |
|----------------------------------|---------------------|
| Facility Operations | \$ 52,364 per year* |
| Programming Management from HRM | \$ 40,000 |
| <u>Basic Renovations</u> | <u>\$ 50,000</u> |
| Total Estimated Operating Budget | \$142,364 |

*The strategy assumed that the annual operating costs were to be offset by \$36,000 of revenues from facility leases, resulting in a net cost of \$106,364 to operate the building and provide programming.

Those financial assumptions have proven inaccurate and other factors prevailed which have frustrated progress in implementing the proposed transition strategy to KAS. These factors include:

- lack of clarity regarding further building recapitalization requirements (which has led to further deterioration of the building);
- limitations in terms of use and public access; and
- concerns regarding the operation and management of the premises.

From a programming perspective, the building has been operating as an arts incubator by KAS. As a result, KAS receives grant funding from Canada Council for the Arts and Province of Nova Scotia. However, in the previous staff reports and subsequent Council direction, there was more focus on the transition of the building operation rather than the capacity for arts programming so

while Regional Council's strategic direction has not been fully achieved as outlined, the arts and cultural outcomes are being successfully delivered.

The Khyber Arts Society Mandate

The KAS core business is tied to its exhibition schedule, with opening night and related event functions. On the occasions when the space is not occupied by a Khyber project, the organization offers short term usage of the space to community groups which allow KAS to recoup costs and provide affordable options for other not-for-profit groups. Fortunately, the mandate of the KAS to "foster critical thought in society by operating an artist-run centre that presents non-commercial contemporary art exhibits and facilitates dialogue, social interaction, and information exchange" does not preclude it from operating in another location. As such, it remains likely that KAS's service to the arts community will not be deterred and could in fact be enhanced in a new location.

KAS has found a potential site for relocation of programming and is currently negotiating terms for a lease. The potential site is located in an area that is considered part of the cultural landscape of HRM so it has the potential to create synergies with neighboring uses. KAS has also indicated that this potential location is more readily accessible and convenient to the majority of their clients. As a fully accessible site with loading capabilities, it is expected to provide enhanced ability to meet the needs of KAS.

Request for Support

Upon notification to vacate the building and termination of their lease, KAS requested a change in the type of HRM support of grant funding to replace the below market value lease previous provided at the 1588 Barrington Street location. The grant funding would enable KAS to relocate and continue to provide its programming. As well, since the provision of an arts incubator is not generally location specific, KAS could also be expected to be able to continue that service.

The proposed location would require KAS to enter into a 3 year lease agreement at a cost of approximately \$1000 more per month than KAS currently pays to HRM (Attachment 1). As a result, KAS has requested financial assistance, in the form of a grant, to offset the increased costs as well as funding to assist with the moving of all equipment and supplies. Based on the estimated costs, an amount of \$45,000 in grant funding is recommended. The grant funding is to support moving expenses from 1588 Barrington Street and rent supplement for a period not longer than 3 years from April 1, 2014 to March 31, 2017.

Due to the short timeframe, this request is being presented to Regional Council for consideration as emergency funding. The requested grant would allow the group to enter into the lease agreement at the new location for the three year period. At the end of the three year period, should KAS require further funding from HRM, the standard process for consideration of funding support would be required, including consideration by the Grants Committee. This would ensure that any future request would be considered in the context of all other requests,

along with the relevant information. Staff is recommending the approval of the one-time grant for the reasons that follow.

Precedence & Previous Council Direction

In circumstances where HRM is forced to close a building due to health and safety concerns, the timing is often immediate. The relocation due to the findings at 1588 Barrington Street has created a unique hardship. The reason for the building closure was not the result of a programming decision but rather health and safety/environmental concerns, and the unmanageable risk that the building presents. Staff believes that the termination of the month to month arrangement occurred with ample notice.

The previous directions from Council resulted in KAS offering cultural programming to the general public. The relationship between the Municipality and KAS is different from other groups that rent space from HRM at a less than market rate. Along with the hardship caused by the immediate need to vacate the building, the relationship makes this particular situation unique from others such that Regional Council can consider providing relocation support, when it has not in the past for other relocations, nor would it necessarily expect to in the future.

In addition, the previous directions from Council specifically relate to 1588 Barrington Street and do not provide authority for HRM to provide funding for KAS to operate at a different location. Accordingly, any consideration for relocation funding in the form of grant requires express direction from Regional Council.

Grant Consideration

Under the *HRM Charter*, HRM's mandate includes the provision of recreational programming which includes cultural programs. Some cultural programming is provided through a direct delivery model, while others are provided through alternate service delivery by partner agencies and other community development initiatives. Grant funding from HRM would allow the KAS to provide its cultural programming consistent with HRM's mandate.

Under Section 79 (1) (av) (v) of the *HRM Charter*, Regional Council can consider the provision of a grant to a cultural organization. Currently, HRM does not have a grant funding program which could accommodate the level and type of funding requested by KAS. HRM's current Community Grants program provides for program grants in the amount of \$5,000 and capital grants in the amount of \$25,000. Also, under HRM's current Community Grants program, operating costs are not eligible for funding and therefore any costs associated with utilities, wages, etc., are deemed ineligible. Therefore, the KAS request could not be considered under the current guidelines. Recently, Regional Council has received multiple requests for funding support in amounts that exceed and fall outside the current Community Grants and other program guidelines. As part of the work on the Auditor General's report on Grants and Donations, staff is currently reviewing the overall granting policy. In the interim, the *HRM Charter* permits Regional Council to consider requests on a case by case basis.

The provision of a grant to KAS would reduce the overall operating costs to HRM. Currently, HRM is responsible for all maintenance and operating costs of 1588 Barrington Street. HRM spends in excess of \$80,000 annually on routine maintenance, small capital repairs and operating costs at the building. During the three year operating agreement (2010-2013), direct operating costs for the building exceeded \$240,000.

Based on the operating costs associated with 1588 Barrington Street, along with a below market value lease which is significantly reduced compared to similar buildings, the direct and indirect costs for HRM to enable the provision of an arts incubator by KAS at the proposed location are significant, far exceeding the amount recommended as a grant for the necessary relocation. Therefore, provision of a grant to enable KAS to relocate would be fiscally responsible for HRM.

The provision of a grant to KAS to supplement costs required through the three year lease would provide stability for the operation of KAS. This would allow the group to focus on arts and culture programming and incubation, rather than building operation. It would allow HRM sufficient time to complete the structural assessment of the building, review options for the building with Council and allow Council time to consider the future disposition of the building.

Rent Abatement and Waiver

Under Section 63(2) of the *HRM Charter*, Regional Council may lease property at a price less than market value to non-profit organizations that Regional Council considers to be carrying on an activity that is beneficial to the Municipality and such resolutions must be passed by at least two thirds majority. Given that the building is not to be occupied, it is recommended that Regional Council authorize the CAO to amend the month to month arrangement with both the Khyber Arts Society and Heritage Trust such that the rent owing for the period January 1, 2014 to March 31, 2014 is a nominal amount, effectively waiving rent for that period.

Summary

As a result, staff recommends a one-time grant not to exceed \$45,000 for the following reasons:

- The closure of 1588 Barrington Street due to health and safety/environmental concerns has created a unique hardship.
- The previous directions from Council resulted in KAS offering cultural programming to the general public.
- The relationship between the Municipality and KAS is different from other groups that rent space from HRM at a less than market rate.
- Grant funding from HRM would allow the KAS to continue to provide cultural programming in an alternate location.
- Provision of a grant to enable KAS to relocate would be fiscally responsible for HRM.

Staff also recommends reducing the rent owing for both tenants to a nominal amount, effectively waiving rent in these circumstances.

FINANCIAL IMPLICATIONS

The provision of a grant to the Khyber Arts Society can be accommodated within the current projected 13/14 surplus for Community & Recreation Services.

ENVIRONMENTAL IMPLICATIONS

The building at 1588 Barrington Street requires asbestos and lead remediation. Any work would be completed by a contractor that is qualified to handle hazardous materials.

COMMUNITY ENGAGEMENT

The Khyber Arts Society is a community stakeholder in arts and culture sector.

ALTERNATIVES

- (1) Regional Council may choose to not provide a grant to KAS. This is not recommended as KAS provides arts and culture programming consistent with the intent of the HRM Cultural Plan.
- (2) Regional Council may choose to provide a grant to KAS in an amount less than requested. This is not recommended as it would impact the ability of KAS to provide cultural programming and arts incubation.
- (3) Regional Council may choose to provide a grant to KAS beyond the term of the 3 year lease. This is not recommended as it would limit Regional Council's future decisions related to provision of arts and culture programming.
- (4) Regional Council may choose to leave the month to month arrangement as is with respect to rental payments for both tenants. This is not recommended because it fails to recognize the current building condition.

ATTACHMENTS

Attachment 1: Letter of Request from Khyber Arts Society

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

Report Prepared by: Elizabeth Taylor, Manager, Events & Cultural Initiatives, 490- 4387

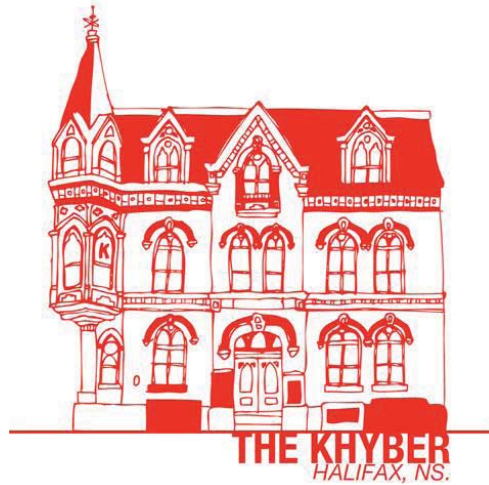
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Report Approved by: _____
Jane Fraser, Director, Planning & Infrastructure, 490-7166

Financial Approval by: _____
Greg Keefe, Director of Finance & ICT/CFO, 490-6308

To:
Elizabeth Taylor
HRM



From:

The Khyber Arts Society
1588 Barrington Street
Halifax, NS
B3J 1Z6

902 422-9668
info@khyber.ca
khyber.ca

Hi Elizabeth,

The space we are currently looking at moving into is valued at \$2500 per month, we have asked the landlord to knock it down to \$2000 per month and are waiting to hear back. This price does not include utilities; we estimate that it will be in the \$300 per month range. The owner willing to pay for \$4000 towards materials to retrofit the space.

In regards to the rent owed, our bookkeeper shows that we paid December's rent. I received overdue letters only for Jan and Feb.

We are in a tight situation and are willing pay a prorated rate for January but we feel that February and March should be excused as the situation has been quite detrimental to the health of our organization and we have simply not been able to use the rented space. Jan, Feb, Mar, are normally spent fundraising, we hope that the last two months can be excused.

Thank you,

Original Signed

Daniel Joyce,
Artistic Director,
Khyber Centre for the Arts