



**CITY OF HAMILTON**

**PUBLIC WORKS DEPARTMENT**  
*Operations and Waste Management Division*  
*and*  
**PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT**  
*Economic Development Division*

<b>TO:</b> Mayor and Members General Issues Committee	<b>WARD(S) AFFECTED:</b> WARD 5
<b>COMMITTEE DATE:</b> April 4, 2012	
<b>SUBJECT/REPORT NO:</b> Lease Renewal Agreement, Lessee - 852850 Ontario Inc. (Barangas on the Beach), 380 Van Wagner's Beach Road, Hamilton, Lessor - City of Hamilton (PW12020 / PED12049) (Ward 5)	
<b>SUBMITTED BY:</b> Gerry Davis General Manager Public Works Department  Tim McCabe General Manager Planning and Economic Development Department	<b>PREPARED BY:</b> Ed DeVries (905) 546-2424, Ext. 4819  John Hamilton (905) 546-2424, Ext. 7045
<b>SIGNATURE:</b>	

**RECOMMENDATION**

- (a) That a Lease Renewal Agreement with 852850 Ontario Inc. (Barangas on the Beach), be approved subject to the following terms and conditions:
  - (i) **Term:** 15 years that commenced May 1, 2008 and terminates on April 30, 2023;

- (ii) **Property:** 380 Van Wagner's Beach Road, Hamilton, known as Barangas on the Beach Restaurant, as shown on Appendix "A" attached to Report PW12020 / PED12049, comprising a gross rentable area of 7,000 square feet of ground floor space including 2,500 square feet of exterior deck space;
  - (iii) **Rental Amount:** From the date of commencement, being May 1, 2008, the lessee shall pay a base rent at \$60,000 per year net, plus G.S.T. or applicable H.S.T., throughout the 15 year term. Rent will be paid in four (4) equal instalments from July 1 to October 1 each year. Rental revenue will be credited to the Confederation Park budget administered by the Hamilton Region Conservation Authority;
  - (iv) **Percentage Rent:** The lessee agrees to pay a percentage rent equal to 6% of all gross sales, less the amount of base rent already paid each year;
  - (v) **Parking:** Lease provides for a surface parking lot on the south side of Van Wagner's Beach Road that comprises 30,660 square feet;
  - (vi) **Operating Costs:** The tenant is responsible for all operating costs, including property taxes, insurance maintenance and utilities; and,
- (b) That the Mayor, General Manager of Finance and Corporate Services, and City Clerk be authorized and directed to execute the Lease in a form satisfactory to the City Solicitor.

## **EXECUTIVE SUMMARY**

This Report seeks Council's direction to ratify a Lease Renewal Agreement with 852850 Ontario Inc. (Barangas on the Beach). In 1993, the tenant spent approximately \$2,000,000 to convert a former schoolhouse into a beach front restaurant. At that time Barangas was given a 15 year Lease. In 2008 a Lease Renewal Agreement was negotiated and signed by the tenant and Hamilton Region Conservation Authority (HRCA), however, the agreement was never approved or signed by the City. The intention of this Report is to ratify the agreement, subject to one minor change. The tenant had agreed to pay a base rent of \$30,000 per year or a percentage rent equal to 6% of the gross annual receipts. The base rent has been amended to \$60,000 per year, with all other terms remaining unchanged.

Although unsigned by the City, the HRCA and tenant have operated under the assumption that since 2008 the Lease was in place. The City had not objected to the terms and operated as if the agreement was in effect. Ratifying the Lease Renewal Agreement at this time is somewhat of a housekeeping issue but approving the

agreement will also provide the tenant peace of mind. The rent is current and for several years has been based upon the percentage rent. The tenant now intends to renovate the washrooms and provide additional roof-top cover to some of the patio areas at a cost of approximately \$120,000 to improve revenue and extend the season. The current season runs from Victoria Day weekend in May until the end of October each year.

Barangas has been very successful in the location. The percentage rent has generated a net rent that's ranged from \$75,000 to \$85,000 each year over the past 5 years. Considering the restaurant is scheduled to only be open from May until the end of October, the percentage rent received was regarded as being competitive. The base rent was increased from \$20,000 to \$60,000 per year and considered to be at market rent. The City did not have to provide any tenant improvements as inducements to a new long term agreement. Barangas has a market niche due to its lakeside venue that is deemed an asset to Confederation Park.

***Alternatives for Consideration – See Page 5***

**FINANCIAL / STAFFING / LEGAL IMPLICATIONS**

**Financial:** Lease revenue is credited to the Confederation Park budget administered by HRCA on behalf of the City under a management agreement.

**Staffing:** There are no staffing implications associated with the recommendations of this Report.

**Legal:** Legal Services Division will be involved in the development of the Lease Renewal Agreement through to its completion.

**HISTORICAL BACKGROUND**

In 1993, 852850 Ontario Inc. was given a 15 year Lease by the City and HRCA. At that time the tenant spent approximately \$2,000,000 on renovating and expanding a former schoolhouse into a lakeside restaurant operating as Barangas on the Beach. In 2008, the HRCA and 852850 Ontario Inc. agreed to a Lease Renewal Agreement with a 15 year term that was never approved by Council or signed by the City. The HRCA is authorized to approve any leases with less than a one year term. The 2008 Lease Renewal Agreement had a 15 year term which must be approved by Council prior to execution by all parties.

It has been agreed by the tenant and HRCA that the base rent will triple from the \$20,000, agreed to in the initial Lease (1993), to \$60,000. Regardless, for many years the percentage rent equal to 6% of gross revenue has been triggered and net rental

**SUBJECT: Lease Renewal Agreement, Lessee - 852850 Ontario Inc. (Barangas on the Beach), 380 Van Wagner's Beach Road, Hamilton, Lessor - City of Hamilton (PW12020 / PED12049) (Ward 5) - Page 4 of 5**

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revenues have ranged from \$75,000 to \$85,000 per year. That trend is expected to continue under the Lease Renewal Agreement once ratified.

**POLICY IMPLICATIONS**

The recommendation is consistent with the City's Real Estate Portfolio Management Strategy Plan as approved by City Council on November 24, 2004 and Procedural By-Law No. 04-299. On June 29, 2005, City Council approved the Delegation of Authority to staff for the acquisition, disposition or lease of properties as follows:

General Manager or designate not exceeding \$150,000, and;  
City Manager or designate not exceeding \$250,000.

Although the amount of the annual Lease payments is below the foregoing limits, Council approval is required for leases having a term of more than five (5) years, as mandated by Council. The term of the Lease Renewal Agreement is 15 years, maturing in 2023.

**RELEVANT CONSULTATION**

- Confederation Park Master Plan Committee Management
- City Manager's Office, Legal Services Division
- Public Works, Environment and Sustainable Infrastructure Division, Landscape Architectural Services Section
- Hamilton Regional Conservation Authority

**ANALYSIS / RATIONALE FOR RECOMMENDATION**

Barangas has been a success story for the City and operated as a responsible tenant since 1993, with rent always paid in a timely manner. The HRCA and tenant have negotiated and operated as if the Lease Renewal Agreement was legal and in effect since 2008. Approval of the Lease Renewal Agreement by Council will make this so. It will grant the tenant the ability to recapture planned renovation costs over the remainder of the Lease term.

With the Lease recommendation being adopted, the City will have secured a reliable net revenue stream of approximately \$85,000 per year until 2023. The percentage rent will allow the revenue to escalate if Barangas continues to flourish in years ahead.

It is intended that Barangas continue to anchor the eastern end of a commercial area located along the lakefront trail in Confederation Park. Plans are under consideration to

explore attracting other similar entertainment uses in areas located to the west to make the lakefront more of a recreation and entertainment destination.

### **ALTERNATIVES FOR CONSIDERATION**

The City had considered agreeing to a Lease extension with only a five (5) year term until 2017; however, Legal Services has advised that the City is basically committed to honouring the existing unsigned agreement.

The tenant had requested that a new 15 year agreement be devised to extend until 2027, however, that was considered imprudent by the City as the Confederation Master Plan is still unresolved.

### **CORPORATE STRATEGIC PLAN**

Focus Areas: 1. Skilled, Innovative and Respectful Organization, 2. Financial Sustainability, 3. Intergovernmental Relationships, 4. Growing Our Economy, 5. Social Development, 6. Environmental Stewardship, 7. Healthy Community

#### ***Skilled, Innovative & Respectful Organization***

- ◆ An effective work environment that enables effective communication, respectful culture, well-being and safety.

#### ***Financial Sustainability***

- ◆ Revenue is extended until 2023 from a reliable tenant.

#### ***Growing Our Economy***

- ◆ Tenant will make renovations to property and improvements to grow business.

#### ***Healthy Community***

- ◆ Barangas long term extension will help entice compatible uses to locate within close vicinity.

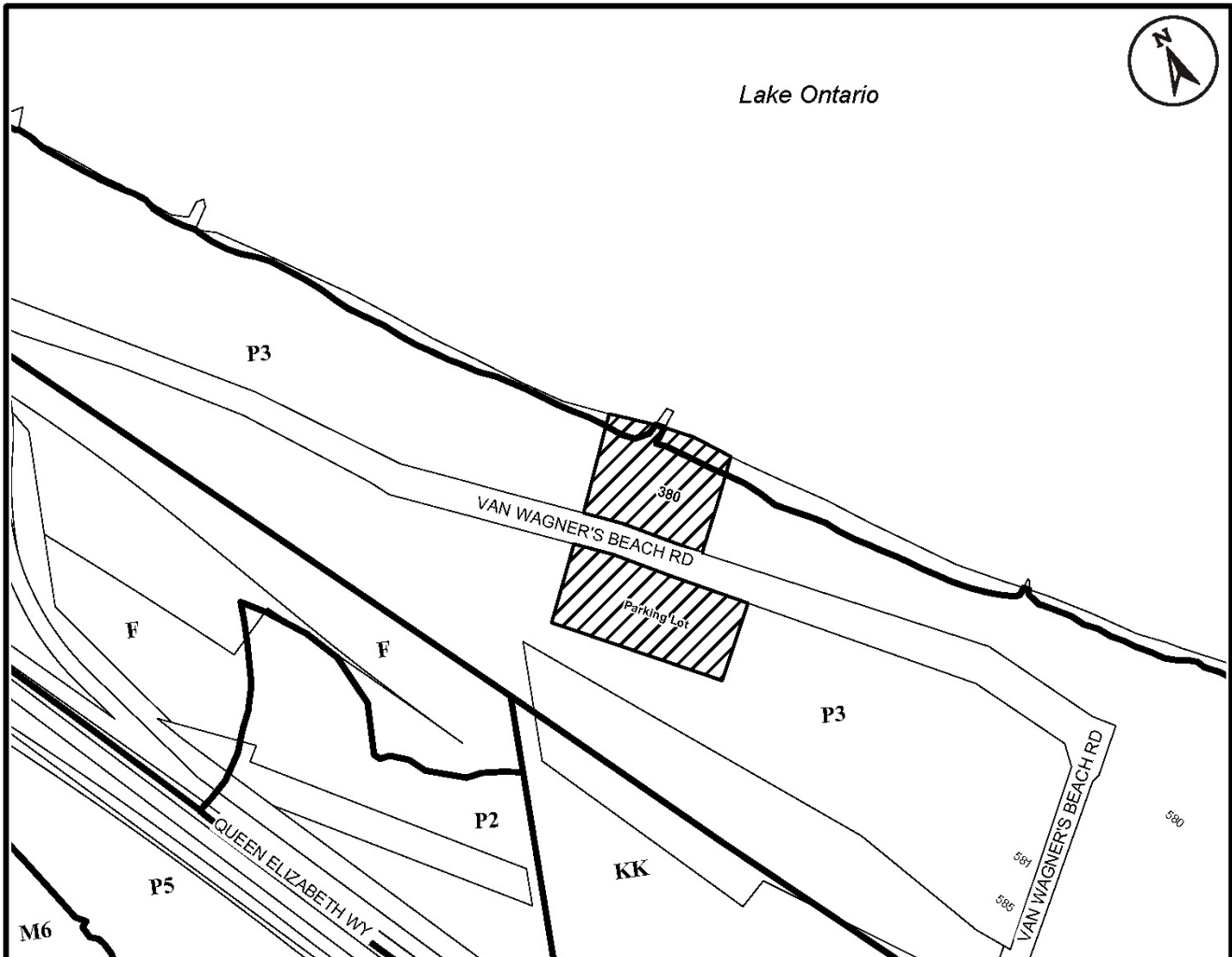
#### ***Environmental Stewardship***

- ◆ Revenue earned will flow towards HRCA's budget to manage Confederation Park.

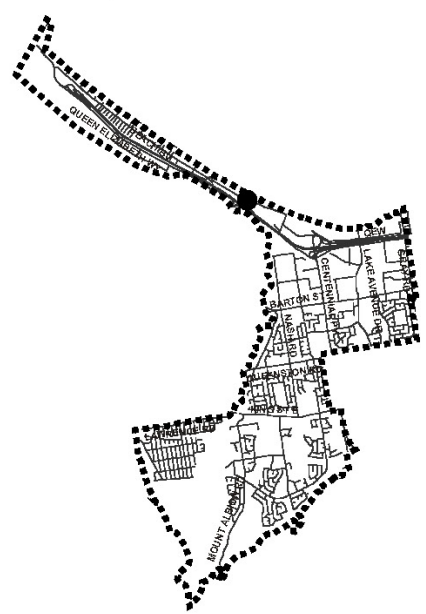
### **APPENDICES / SCHEDULES**

Appendix "A" to Report PW12020 / PED12049 – Location Map

JH/sd



● Location Map



Ward 5 Key Map

N.T.S.

## Location Map



PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT

File Name/Number:  
2011-062

Date:  
February 9, 2012

Appendix "A"

Scale:  
N.T.S.

Planner/Technician:  
JH/AL

### Subject Property

380 Van Wagners Beach Road

852850 Ontario Inc. (Barangas On The Beach Restaurant)  
380 Van Wagners Beach Road

Leased area, restaurant and parking lot