



CITY OF HAMILTON
PUBLIC WORKS DEPARTMENT
Corporate Assets & Strategic Planning Division

TO:	Mayor and Members General Issues Committee
COMMITTEE DATE:	March 30, 2015
SUBJECT/REPORT NO:	Lease - Lister Block, 28 James Street North, Unit #106, Hamilton (PW13026a) (Ward 2)
WARD(S) AFFECTED:	Ward 2
PREPARED BY:	Rom D'Angelo Director, Facilities Management & Capital Programs (905) 546-2424, Extension 4617 Delfina Duarte Superintendent, Business Services & Technology (905) 546-2424, Extension 6627
SUBMITTED BY:	Gerry Davis, CMA General Manager Public Works Department
SIGNATURE:	

RECOMMENDATION

- (a) That the City of Hamilton (Landlord) enter into a lease agreement with “Muscat-Taylor Financial Holdings Inc.” and “WC Franchising Inc.” (Tenants) for the property known as 28 James Street North, Unit 106 (also known as Lister Block), subject to the following terms and conditions:
- (i) *Term:* Ten years commencing on April 1, 2015, and ending March 31, 2025, with two additional five year options to renew at the Tenants’ pleasure provided the Lease is in good standing in that the Tenants are not in default of any of the terms of the Lease. The Lease rates for the option periods will be subject to negotiation at the then market rates.
 - (ii) *Property / Demised Premises:* Lister Block, 28 James Street North, Unit 106, comprising of 3,417 square feet of rentable area as shown in Appendix “B” to Report PW13026a. The space will be leased on an “as-is” basis with finishing subject to heritage restraints and building permits as applicable;
 - (iii) *Landlord’s Work:* None
 - (iv) *Tenants’ Work:* The Tenants will, at its sole cost, complete all necessary interior renovation work to create a look and feel consistent with the Wendel Clark’s Classic Grill and Bar franchise agreement requirements. Estimate value of Tenants’ work: \$330,000.

- (v) *Net Rental Rate:* Years 1 to 10: \$15.00 per sq. ft. net (\$4,271.25/ month +HST, \$51,255.00/annually +HST); first year to include three month's rent free period commencing on date of building permit issuance. The Tenants shall pay market rental rates for any renewal terms.
- (vi) *Operating Costs:* In addition to net rent payable in Recommendation (a)(v) of Report PW13026a, the Tenants will pay its proportionate share of operating costs including property taxes at an estimated \$7.36 per sq. ft. or \$25,149.12.
- (vii) *Lease Security:* Tenants will be required to maintain an irrevocable Letter of Credit in the amount of \$30,000, to be held for the first five years of the Lease Term as offered in the Tenants' proposal submission.
- (viii) *Lease Inducement:* Three months' rent free period for fit-up to commence on building permit issuance.
- (ix) *Parking:* Two parking spots will be provided to the Tenants. Furthermore, the Lister Block parking lot will be made available to the Tenants' customers between the hours of 6:00 p.m. to 6:00 a.m. daily;
- (b) That the Mayor, and the City Clerk be authorized and directed to execute the Lease in a form satisfactory to the City Solicitor and with content satisfactory to the General Manager of Public Works and the General Manager of Finance and Corporate Services.

EXECUTIVE SUMMARY

On November 4, 2014, the City of Hamilton terminated the existing lease agreement with "28 Lister Inc." and "Chris DesRoches" due to default of lease for non-payment of rents, leaving Unit 106 at 28 James Street North vacant with a need for a new tenant.

On December 19, 2014, the City issued a Request for Proposals (RFP) for a restaurant to occupy Unit 106 at 28 James Street North in the Lister Building. The RFP was available from December 19, 2014, through January 28, 2015 (41 days). During this time fifteen Request for Proposals were picked up.

On January 9, 2015, an optional bidders meeting was held in the restaurant. The purpose of the meeting was to provide guidance on the RFP process as well as allow proponents to ask questions and view the premises. A follow up addendum was issued answering all questions and making further information available to all bidders including space drawings. Fifteen people attended the bidders meeting.

Two RFP submissions were received, with one of the two submissions deemed as non-compliant. The remaining submission, Muscat-Taylor Financial Holdings Inc. and WC Franchising Inc., operating as "Wendel Clark's Classic Grill and Bar", was evaluated through Procurement's standard RFP process and deemed to be the successful proponent.

Staff are seeking Council's direction to permit Muscat-Taylor Financial Holdings Inc. and WC Franchising Inc. to enter into a lease agreement with the City for the space at 28 James Street North, Unit 106 in the Lister Block.

Wendel Clark's Classic Grill and Bar is a reasonably new yet successful franchise with two locations currently operating in Vaughan and Burlington, Ontario. Over the next six years, Wendel Clark's Classic Grill and Bar has plans to expand the franchise to fifty locations province-wide, with the potential to expand into other provinces. The successful proponent and franchisee is Muscat-Taylor Financial Holdings Inc. and WC Franchising Inc., operated by Mr. Louis Muscat and Mrs. Karen Taylor-Muscat. A Franchise Agreement will be signed between WC Franchising Inc. and Muscat-Taylor Financial Holdings Inc. upon the signing of the lease agreement with the City of Hamilton.

Wendel Clark's Classic Grill and Bar offers an upscale casual sports lounge atmosphere with a state of the art audio visual package that enables sports fans to enjoy their favourite sporting events in a comfortable and inviting venue. The sports lounge will offer a bar with High Definition (HD) televisions and a dining area that includes banquette seating. The restaurant also has plans to apply for a patio location for additional seating options.

The use of the space as a casual dining sports lounge is consistent with the preferred use and criteria established by the Portfolio Management Committee (PMC) on March 18, 2010. In addition, it is a much needed use in the immediate area which has few sports lounge dining options.

Alternatives for Consideration - See Page 6

FINANCIAL - STAFFING - LEGAL IMPLICATIONS

Financial: The proposed gross operating surpluses generated from the lease revenues are illustrated below, based on the ten year revenue / cost / surplus forecast (life of the lease agreement)

<i>Term</i>	<i>Revenues</i>
Ten year net lease revenues	\$ 512,550

The investment by the City of Hamilton for the term of this lease is zero dollars. Therefore, no additional funding is required.

The Lease revenues will be received in Account #791550-46000

Staffing: There are no increases to staffing levels associated with the recommendations in this report.

Legal: Legal Services will review the lease prior to execution.

HISTORICAL BACKGROUND

After a lengthy restoration, the City of Hamilton took over the Lister Block on March 31, 2012, and various City departments moved into the building during the month of April 2012, occupying Floors 2 through 6. Additionally, Tourism Hamilton occupies space on the ground floor. However, there are two available commercial units on the ground floor.

Uses for the ground floor commercial units were contemplated in March of 2010 by the Portfolio Management Committee (PMC) and it was determined that the preferred uses would be a restaurant service for the spaces with street access and for the interior spaces, uses that:

- support the heritage nature of the building,
- support and contribute to the community building and revitalization,
- support community services,
- are sensitive to, and support, Tourism Hamilton's mandate,
- forestall or prevent inappropriate uses that could otherwise be attracted to low cost, downtown space, and
- do not place increased burden on facility operating costs without offsetting revenue.

PMC stated that "all potential uses for the space, both retail and other uses, should be measured against these criteria".

In February 2013, Council approved leasing Unit #104 (852 sq. ft.) to Mezza Caffè at a net of \$15.00/sq. ft. plus \$12.00/sq. ft. in operating costs with escalations over the five year term. This commercial lease agreement is currently in place with Mezza Caffè.

In April 2013, Council approved Report PW13026 for a lease agreement for Unit #106 between "28 Lister Inc." and "Chris DesRoches" and the City. The restaurant, 28 Lister Inc., invested significant funds in fit-ups and became fully operational by July 2014. During the months that followed, 28 Lister Inc. was unable to pay the base rent and operating costs on a regular basis and defaulted on the lease agreement.

On November 4, 2014, the City terminated the existing lease agreement with "28 Lister Inc." and "Chris DesRoches" due to default of lease for failure to pay rents, leaving Unit 106 at 28 James Street North vacant with a need for a new tenant.

On December 19, 2014, the City issued a Request for Proposals (RFP) for a restaurant to occupy Unit 106 at 28 James Street North in the Lister Building. The RFP was available from December 19, 2014, through January 28, 2015 (41 days).

Two RFP submissions were received with one of those two submissions deemed non-compliant. The remaining submission, Muscat-Taylor Financial Holdings Inc. and WC Franchising Inc., operating as Wendel Clark's Classic Grill and Bar, was evaluated through Procurement's standard RFP process and deemed the successful proponent.

Upon receiving Council approval, staff will execute the lease agreement with a goal of having Wendel Clark's Classic Grill and Bar fully functional by July 1, 2015, in time for the PanAm Games.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

The recommendations are 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. City Council, in approving the consolidation of routine real estate matters, authorized the delegation of authority to approve the acquisition, disposition or lease as follows:

- General Manager or designate for a lease value not exceeding \$150,000 annual rental, and,
- City Manager or designate for a lease value not exceeding \$250,000 annual rental.

As the lease is a new agreement, Council approval is required to approve the recommendations contained in this report.

RELEVANT CONSULTATION

Portfolio Management Committee (PMC) - Uses for Lister Block retail space were contemplated in March of 2010 by PMC and it was determined that the preferred uses would be a restaurant service for the spaces with street access (Units 104 and 106).

City Manager's Office, Legal Services - Legal Services was consulted throughout the RFP process and once the agreement is approved by Council, a lease will be executed in a form satisfactory to the City Solicitor.

Planning and Economic Development - Staff from both Economic Development and Real Estate were consulted throughout the RFP process and as part of the RFP evaluation team.

Corporate Services Department - Financial Planning & Policy Division, Enterprise Management and Revenue Generation - All financials vetted through Corporate Services.

Corporate Services Department - Procurement - Staff assisted in drafting the RFP documents and working with staff through the RFP process.

Corporate Services Department - Risk Management - Risk Management staff have supported Legal Services with insurance requirements.

Public Works - Corporate Assets & Strategic Planning, Facilities Management & Capital Programs - Staff have been involved in the RFP process, assisting in drafting the RFP documents, and participating on the RFP evaluation team.

The City's RFP Evaluation Team includes:

- Rom D'Angelo - Facilities Management & Capital Programs
- Delfina Duarte - Facilities Management & Capital Programs
- Michael Armstrong - Golf Food Operations
- Glen Norton - Downtown Renewal / Economic Development
- Ray Kessler - Real Estate
- Ryan McHugh - Revenue Generation

ANALYSIS AND RATIONAL FOR RECOMMENDATION

The offer submitted by Muscat-Taylor Financial Holdings Inc. and WC Franchising Inc. meets all of the pre-defined criteria set by the City for leasing the space including:

1. Term - Ten Years plus two additional five year terms at the option of the Lessees. The Lessee shall pay market rental rates at the year 10 and year 15 renewals, if the Lessee chooses to renew the lease.
2. PMC's preference for use - restaurant services.
3. Meeting and respecting the heritage nature of the building image - a casual dining restaurant.
4. Meeting acceptable financial criteria in accordance with the business case analyzed by staff.
5. Risk Management - Lease Security in the form of \$30,000.00 secured Letter of Credit (in compliance with the City of Hamilton Irrevocable Letter of Credit Policy (FCS02016)), Franchisor covenant on lease.
7. Experience - owners are a mature couple with the backing and support of a well-established corporation and franchise.
8. Other Criteria - healthy, local foods, suitable hours.
9. Fit-up period - three months from lease commencement.

The rates in this lease are within estimated market rates for current market conditions as studied in 2012.

The rents offered by Muscat-Taylor Financial Holdings Inc. and WC Franchising Inc. are within the City's market research numbers noting that Muscat-Taylor Financial Holdings Inc. and WC Franchising Inc. will need to make a significant investment in the fit-ups, and investing in quality furniture and fixtures. Muscat-Taylor Financial Holdings Inc. and WC Franchising Inc. will pay \$15.00 per sq. ft. plus \$7.36 per sq. ft. for operating costs and will complete all fit-up work, which is estimated at \$330,000.

Lastly, there will be between 20 and 25 net new jobs created within the community.

ALTERNATIVES FOR CONSIDERATION

Council may decide to turn down the report recommendation and choose a new restaurant style; however, the RFP process would need to be repeated, resulting in months of additional losses of revenue (rental income) and without the guarantee of receiving another successful RFP submission.

Staff utilized the City of Hamilton's Procurement process for issuing a Request for Proposals (RFP) and Muscat-Taylor Financial Holdings Inc. and WC Franchising Inc. passed both Step 1: RFP Evaluation Criteria and Step 2: RFP Cost Proposal, therefore staff do not recommend any alternatives to the report recommendation.

ALIGNMENT TO THE 2012 - 2015 STRATEGIC PLAN

Strategic Priority #1

A Prosperous & Healthy Community

WE enhance our image, economy and well-being by demonstrating that Hamilton is a great place to live, work, play and learn.

Strategic Objective

- 1.1 Continue to grow the non-residential tax base.
- 1.2 Continue to prioritize capital infrastructure projects to support managed growth and optimize community benefit.
- 1.3 Promote economic opportunities with a focus on Hamilton's downtown core, all downtown areas and waterfronts.
- 1.5 Support the development and implementation of neighbourhood and City wide strategies that will improve the health and well-being of residents.
- 1.6 Enhance Overall Sustainability (financial, economic, social and environmental).

APPENDICES AND SCHEDULES ATTACHED

- Appendix "A" Location Map
- Appendix "B" Unit location within building