



Staff Report

Community Services

Report To: Committee of the Whole
Meeting Date: August 21, 2017
Report Number: CSPW.17.083
Subject: Chamber of Commerce Building Agreement Execution
Prepared by: Shawn Everitt, Director of Community Services

A. Recommendations

THAT Council receive Staff Report CSPW.17.083 entitled "Chamber of Commerce Building Agreement Execution";

AND THAT Council authorize the Mayor and Clerk to execute the Chamber of Commerce Building Agreement.

B. Overview

This report recommends that Council authorize the Mayor and Clerk to execute an agreement between The Blue Mountains Chamber of Commerce (Chamber) and the Town for the use of 3 Grey Street. The Agreement reflects the Council approved terms outlined in Option 3 of Staff Report CSPW.17.007 (refer to Attachment 1).

C. Background

Over the past year, Town Staff and representatives from the Chamber have had numerous discussions regarding the potential uses of the building and lands at the 3 Grey Street property as well as the need to develop a detailed agreement between the Chamber and the Town.

At the January 23, 2017 meeting of Council, Staff presented Staff Report CSPW.17.007 which outlined three options for Council to consider to form the Chamber of Commerce Building Agreement. Council approved a motion that identified Option 3 as the basis of the agreement terms (refer to Attachment 2).

D. Analysis

Follow up from Council's review of Staff Report CSPW.17.007 had Town Staff meeting with the President of the Chamber to review the draft agreement based on the items listed in Option 3. Some negotiations between the Town and Chamber took place and mutual acceptance of the terms as presented in the attached agreement have been reached (refer to Attachment 3).

E. The Blue Mountains Strategic Plan

- Goal #1: Create Opportunities for Sustainability
- Goal #2: Engage Our Communities & Partners
- Goal #4: Promote a Culture of Organizational & Operational Excellence
- Goal #5: Ensure Our Infrastructure is Sustainable

F. Environmental Impacts

Appropriate management of Town owned land for sustainable use.

G. Financial Impact

Existing operational costs reflected in the 2017 budget.

H. In consultation with

President of the Chamber of Commerce
Manager of Purchasing and Risk Management
Town Solicitor
Senior Management Team

I. Attached

1. Staff Report CSPW.17.007
2. Council Resolution Regarding CSPW.17.007
3. Draft Chamber of Commerce Building Agreement

Respectfully submitted,

Shawn Everitt
Director of Community Services

For more information, please contact:
Shawn Everitt
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519-599-3131 extension 281



Staff Report

Community Services

Report To: Committee of the Whole
Meeting Date: January 9, 2017
Report Number: CSPW.17.007
Subject: Options for Chamber of Commerce Building Agreement
Prepared by: Shawn Everitt, Director of Community Services

A. Recommendations

THAT Council receive Staff Report CSPW.17.007 entitled "Options for Chamber of Commerce Building Agreement";

AND THAT Council direct Staff to develop an agreement based on Option 3 for the Chamber of Commerce Executive to consider.

B. Overview

This report outlines the options considered thus far regarding moving forward with the development of an agreement between the Blue Mountains Chamber of Commerce (Chamber) and the Town for the future use arrangements of the 3 Grey Street property.

C. Background

Over the past year, Town Staff and representatives from the Chamber have had numerous discussions regarding the potential uses of the building and lands at the 3 Grey Street property as well as the need to develop a detailed agreement between the Chamber and the Town.

In 1988 the Chamber (then the Beaver Valley Chamber of Commerce) presented a brief to the former Thornbury Town Council that outlined the request to have a building placed on Town owned land at 3 Grey Street for a "permanent Tourist Information Centre". As researched, the Town of Thornbury made a Resolution in June of 1989 that identified the following;

"That this Council support the front end financing of the purchase of a building in co-operation with the Beaver Valley Chamber of Commerce AND matching funds from the Township of Collingwood to be placed on the Town site on Grey Street to the sum of \$15,000 SUCH funds to be made available immediately as the building must be purchased and moved before the end of June."

Since 1990, the Chamber has managed the building that is located on 3 Grey Street.

Over the years, the building has been used as a Tourist Information Centre, while it has also provided an office for the Chamber as well as a temporary location for an Ontario Provincial Police Detachment.

During 2016, Town Staff and representatives of the Chamber worked on a capital project that included the following:

- Landscaping enhancements including the removal of a kiosk structure
- Removal of the building's side decking and new stair construction
- Removal of overgrown vegetation along the building
- Enhancement to the parking lot area and sign
- Planting of trees transplanted from Tomahawk tree nursery
- New bench and slab placement
- Electrical supply and outdoor GFI plug installations for future beautification of the municipal gateway
- Installation of a water meter in the building as this building had been deficient and is now within the required metering program

D. Analysis

Staff have been provided with a proposed agreement that was drafted by the Chamber. Staff considers the following highlights taken from the draft agreement as Option 1:

Option 1

- a) Chamber of Commerce would rent the building for \$1.00 base rate payable each year
- b) Chamber would be responsible for cleaning and janitorial services
- c) Chamber would be responsible for window cleaning
- d) Chamber would be responsible for provision of insurance to the Town
- e) Chamber would be responsible for supplies used in relation the operation and maintenance of the building
- f) The Town would be responsible for repairs and replacements to the building and/or Billboard sign and any component of the building
- g) The Town be responsible for the provision, repair, replacement, and maintenance of the heating, cooling, ventilation, and air conditioning equipment throughout the building
- h) The Town would be responsible for all outdoor maintenance including landscaping and snow removal
- i) The Town would be responsible for the operation and maintenance of the parking area
- j) The Town would be responsible for all preventative maintenance and inspection

- k) The Town would be responsible for the payment of Capital costs to the exterior and structure of the building
- l) The Chamber would be responsible for the direct payment of utilities including hydro, telephone, internet and water
- m) The Town would assume clear ownership of the building and the Chamber of Commerce would be relieved of property taxes, however still be responsible for BIA Levy on an annual basis

After reviewing the draft agreement supplied by the Chamber, the Town's Senior Management Team has identified that taking on an additional facility at this time presents significant financial strain and the Town does not have the capacity to provide this additional level of service without increasing the operational costs in the Community Services Facility budget. This facility has not been included in the 2017 proposed budget, however, Staff recommend that Option 2 be considered.

Option 2 would provide a formal agreement that would have the Town assume ownership of the building as well as remain responsible for the property. The Chamber would be responsible for all building costs excluding capital costs as well as repair and maintenance costs of the HVAC system. Any Third Party lease agreement would be between the Town and the Third Party, however use of the building would also require an agreement between the Town and Chamber detailing the specific type of use that is deemed appropriate on a case by case basis;

Option 2

- a) The Town would assume ownership of the building and be responsible for capital costs
- b) Chamber would be responsible for cleaning and janitorial services
- c) Chamber would be responsible for window cleaning
- d) Chamber would be responsible for provision of insurance to the Town as a Tenant of the building
- e) Chamber would be responsible for supplies used in relation to the operation and maintenance of the building
- f) The Chamber would be responsible for the annual preventative maintenance costs of the HVAC system throughout the building
- g) The Town be responsible for the provision, repair and replacement of the HVAC system throughout the building
- h) The Town would be responsible for all outdoor maintenance including landscaping and snow removal
- i) The Town would be responsible for the operation and maintenance of the parking area
- j) The Town would be responsible for all scheduling of preventative maintenance and inspections
- k) The Town would be responsible for the payment of Capital costs of the building

- l) The Chamber would be responsible for the direct payment of utilities including hydro, telephone, internet and water service. In the case of a Third Party lease, the hydro costs associated with the lease would be payable to the Town and reimbursed to the Chamber
- m) The Chamber would be responsible for all repair and management of the outdoor advertisement sign
- n) The Town would assume clear ownership of the building and the Chamber would be relieved of property taxes, however would still be responsible for the BIA Levy on an annual basis

Staff have also identified Option 3 which would provide a formal agreement representing the current arrangement outlining the following;

Option 3

- a) The Town is responsible for all operations and maintenance of the 3 Grey Street property excluding the building, its access points and the advertisement/billboard sign. This property responsibility includes the parking lot area, trail, landscaping, gateway features and the gardens around the building
- b) Winter maintenance will include the daily inspection of the parking lot area from November 15 to March 31 of each year with snow removal in compliance with the Town's Winter Maintenance Policy (Level 2 based on the building utilizing a three day operation schedule)
- c) The Town is responsible for the hydro costs for the exterior hydro receptacles that provide power for the eastern gateway beautification. These hydro costs will be negotiated prior to works being completed. The negotiations will take place between an identified member of the Chamber and the Director of Community Services or designate
- d) The Town will not access water from the building for any reason unless specifically requesting use from the Chamber representative a minimum of 1 week in advance of the requested use
- e) The Chamber is identified and referred to as the "Owner" of the building and is responsible for any Third Party or other lease arrangements with tenants of the building
- f) In the case of a tenant utilizing the building, parking lot maintenance cost (specifically winter maintenance) will be negotiated if additional days from the above noted three days is required
- g) The Chamber is responsible for maintenance and operations costs of both the exterior and interior of the building
- h) The Chamber is responsible for all utility costs supplied to the building for the purposes of servicing the building and the advertisement/billboard sign
- i) Any modifications or additions to the building require the appropriate permits
- j) The Chamber is responsible for ensuring compliance with the Accessibility for Ontarians with Disabilities Act (AODA) for public spaces

- k) Any use of the land at 3 Grey Street will be negotiated between the Chamber and the Town within 2 months of the proposed use. Appropriate Insurance will be provide to the Town as well as all other required documentation such as WSIB, Health and Safety Policies and Procedures and Lands Use Permit approved by the Director of Community Services or designate

E. The Blue Mountains Strategic Plan

- Goal #1: Create Opportunities for Sustainability
- Goal #2: Engage Our Communities & Partners
- Goal #3: Support Healthy Lifestyles
- Goal #4: Promote a Culture of Organizational & Operational Excellence
- Goal #5: Ensure Our Infrastructure is Sustainable

F. Environmental Impacts

Appropriate management of Town owned land for sustainable use.

G. Financial Impact

Option 1

Estimated costs are expected to be comparable to the operations and maintenance costs associated with the OPP Detachment building, excluding utilities, janitorial supplies and contracting. Annual maintenance costs in the amount of \$25,500 are anticipated, however are not included in the 2017 proposed budget. Possible Capital costs are anticipated to be \$10,000 for accessibility requirements.

This option would result in the loss of approximately \$4,500 in annual property taxes.

Third Party leases of the building could be a potential source of revenue, however, due to unknown use and possible requests for subsidies and grants and donations, Staff suggest no revenue be projected for the purposes of this report.

Total estimated annual cost to the Town would be $(\$25,500 + \$4,500) = \textbf{\$30,000}$

Option 2

Estimated costs are expected to be comparable to the operations and maintenance costs associated with the OPP Detachment building, including the cost of annual preventative to the HVAC system while excluding utilities, janitorial supplies and contracting. Annual maintenance costs in the amount of \$20,000 are anticipated, however are not included in the 2017 proposed budget. Possible Capital costs are anticipated to be \$10,000 for accessibility requirements.

This option would result in the loss of approximately \$4,500 in annual property taxes.

Third Party leases of the building could be a potential source of revenue, however, due to unknown use and possible requests for subsidies and grants and donations, Staff suggest no revenue be projected for the purposes of this report.

Total estimated annual cost to the Town would be $(\$20,000 + \$4,500) = \textbf{\$24,500}$

Option 3

This option maintains the existing operational costs and is what is reflected in the 2017 proposed budget.

There would be no additional costs to the Town.

It is important to note that Option 3 may not be an acceptable option for the Chamber.

H. In consultation with

President of the Chamber of Commerce
Senior Management Team

I. Attached

None

Respectfully submitted,

Shawn Everitt
Director of Community Services

For more information, please contact:
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CSPW.17.083
ATTACHMENT 2

January 23, 2017

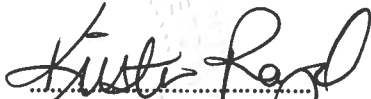
Moved by: R.J. Gamble

Seconded by: John McGee

THAT Council receive Staff Report CSPW.17.007 entitled "Options for Chamber of Commerce Building Agreement";

AND THAT Council direct Staff to develop an agreement based on Option 3 for the Chamber of Commerce Executive to consider **CARRIED**.

CERTIFIED TO BE A TRUE COPY


.....
Krista Royal, Deputy Clerk

MUNICIPAL LAND USE AGREEMENT

THIS AGREEMENT (this "Agreement") dated this _____ day of _____, 2017

BETWEEN:

**The Corporation of the Town of The Blue Mountains of
PO Box 310, 32 Mill Street, Thornbury, Ontario, N0H 2P0
Telephone: (519) 599-3131 Fax: (519) 599-7723**

(the "Town")

OF THE FIRST PART

- AND -

**Beaver Valley Chamber of Commerce O/A Blue Mountains Chamber of Commerce
PO Box 477, 3 Grey Street North, Thornbury, Ontario, N0H 2P0
Telephone: (519) 599-1200 Fax: (519) 599-2567**

(the "Chamber")

OF THE SECOND PART

IN CONSIDERATION OF the Town permitting use of the Property by the Chamber, the Chamber using this Property and the mutual benefits and obligations set forth in this Agreement, the receipt and sufficiency of which consideration is hereby acknowledged, the Parties to this Agreement (the "Parties") agree as follows:

1. Definitions

When used in this Agreement, the following terms will have the meanings indicated below:

- a. "Advertising Sign" means the sign that is owned and operated by the Chamber.
- b. "Building" means the building located on the Property which is owned exclusively by the Chamber.
- c. "Permitted Use" means a Chamber of Commerce Office and Visitor Information Centre.
- d. "Property" means the lands described as Lots 3 and 4 North East of King Street, Town of Thornbury Plan (3 Grey Street North, Thornbury ON.) together with the features thereon including the parking lot, landscaping, gardens, benches, gateway features and greenspace all of which are owned exclusively by the Town but does not include the Building or Advertisement Sign.

2. Agreement

- a. The Town agrees to provide the use of the Property to the Chamber for the Term of this Agreement for the purposes of permitting the placement of the Building on the Property for a publicly accessible Chamber of Commerce office and an Advertising Sign. The Building shall only be used for the Permitted Use.
- b. Subject to the provisions of this Agreement, the Chamber is entitled to the use of the parking lot on the Property for the parking of vehicles by visitors to the Building.

3. Term

- a. The term of the Agreement shall commence on May 1, 2017 and ends on April 30, 2022 and may be renewed for such further terms(s) as the Parties may agree upon in writing prior to April 30, 2022. Either Party may at any time, on ninety days (90) days written notice to the other, terminate this Agreement.

4. Surrender of Building

- a. At the expiration of the term or any renewed term of this Agreement or the termination of it by either Party, the Chamber will have one hundred and twenty days to remove the Building from the Property to the satisfaction of the Town failing which the Chamber shall quit and surrender the Building to the Town in as good a state and condition as it was at the commencement of this Agreement, reasonable use and wear and damages by the elements excepted.

5. Rent

- a. Subject to the provisions of this Agreement, the Chamber will pay a base rent of \$1.00, payable each year, for the Building and Advertising Sign.
- b. The Chamber will pay the Base Rent on or before the 1st day of May of each and every year of the term or renewed term of this Agreement to the Town.

6. Responsibilities of the Town

- a. The Town is responsible for all operations and maintenance of the Property excluding the Building and the Advertising Sign. This responsibility includes the parking lot area, trail, landscaping, gateway features and the gardens around the Building.
- b. Winter maintenance will include the daily inspection of the parking lot area from November 1 to April 15 of each year with snow removal in compliance with the Town's Winter Maintenance Policy (Level 2 based on the Building utilizing a three day operation schedule).
- c. In the case of additional programming of the Chamber utilizing the Building, parking lot maintenance cost (specifically winter maintenance) will be negotiated if additional days from the above noted three days is required.
- d. The Town is responsible for the hydro costs for the exterior hydro receptacles that provide power for the eastern gateway beautification. These hydro costs will be negotiated each year to ensure appropriate costs are being shared. The negotiations will take place between an identified member of the Chamber and the Director of Community Services or designate.
- e. The Town will not access water from the Building for any reason unless formally requesting use of water from the Chamber representative a minimum of one (1) week in advance of the requested use. The Town will be responsible for payment of any water used. Usage will be recorded by water meter readings before and after use.

7. Responsibilities of the Chamber

- a. The Chamber being the owner of the Building is responsible for any Third Party or other Use Agreements that permit use of the Building.
- b. The Chamber is responsible for maintenance, operation costs and capital costs of both the exterior and interior of the Building.
- c. The Chamber is responsible for the maintenance, operation costs and capital costs of the Advertising Sign.
- d. The Chamber is responsible for all utility costs supplied to the Building for the purposes of servicing the Building and the Advertisement Sign.

- e. Any modifications or additions to the building require the appropriate permits.
- f. The Chamber is responsible for ensuring compliance with the Accessibility for Ontarians with Disabilities Act (AODA) for public spaces.
- g. Any use of the Property will be negotiated between the Chamber and the Town within 2 months of the proposed use. Appropriate Insurance will be provided to the Town as well as all other required documentation such as WSIB, Health and Safety Policies and Procedures and Lands Use Permit approved by the Director of Community Services or designate.

8. Use and Occupation

- a. The Chamber will use and occupy the Building only for the Permitted Use and for no other purpose whatsoever. The Chamber will carry on business under the name of The Blue Mountains Chamber of Commerce and will not change such name without the prior written consent of the Town, such consent not to be unreasonably withheld. The Chamber will carry on and conduct its business from the Building in such manner as to comply with all statutes, bylaws, rules and regulations of any federal, provincial, municipal or other competent authority.

9. Chattels

The Chamber agrees to supply the following chattels:

- a. Office furniture, office equipment/technology, intellectual files.

10. Utilities and Other Costs

- a. The Chamber is responsible for the direct payment of the following utilities and other charges in relation to the Building:
 - Water
 - Property Tax
 - Business Improvement Area Levy
 - Natural Gas
 - Hydro
 - Telephone
 - Internet
 - All operating and capital costs relating to the Building and Advertising Sign.

11. Insurance

- a. **Liability Insurance:** The Chamber shall take out and keep in full force and effect during the Term commercial general liability insurance which shall include coverage for bodily injury, death, property damage or other claims. This policy shall be written with limits of not less than two million (\$2,000,000) dollars exclusive of interest or costs, per occurrence and shall include the Town as an additional insured.
- b. The Chamber will provide proof of such insurance to the Town upon the issuance or renewal of such insurance.

12. Indemnity

- a. The Chamber shall indemnify and save completely harmless the Town and its elected officials, officers, agents, contractors and employees from and against all actions, causes of actions, suits, claims and demands whatsoever which may arise directly or indirectly or in any way connected with the use and occupation of the Property and the Building by the Chamber under this Agreement and the maintenance and repair or lack of maintenance and repair of Building by the Chamber.

13. Governing Law

- a. It is the intention of the Parties to this Agreement that the permitted use created by this Agreement and the performance under this Agreement, and all suits and special proceedings under this Agreement, be construed in accordance with and governed, to the exclusion of the law of any other forum, by the laws of the Province of Ontario, without regard to the jurisdiction in which any action or special proceeding may be instituted.

14. Severability

- a. If there is a conflict between any provision of this Agreement and the applicable legislation of the Province of Ontario (the 'Act'), the Act will prevail and such provisions of the Agreement will be amended or deleted as necessary in order to comply with the Act. Further, any provisions that are required by the Act are incorporated into this Agreement.

15. Assignment and Subletting

- a. The Chamber may enter into a sub-Agreement in whole or in part, all or any part of the Building, or transfer to any other person in whole or in part or any other right or interest under this Agreement, with prior written consent of the Town.
- b. Notwithstanding any sub-Agreement, the Chamber will remain fully liable on this Agreement and will not be released from performing any of the terms, covenants and conditions of this Agreement.

16. Care and Use of Building

- a. The Chamber will promptly notify the Town of any damage, or of any situation that may significantly interfere with the normal use of the Building.
- b. The Chamber will not make (or allow to be made) any noise or nuisance which, in the reasonable opinion of the Town, disturbs the comfort or convenience of the public.
- c. The Chamber will not engage in any illegal trade or activity on or about the Building.
- d. The Chamber will comply with standards of health, sanitation, fire, housing and safety as required by law.

17. Rules and Regulations

- a. The Chamber will obey all rules and regulations posted by the Town regarding the use and care of the Property that are provided for the use of the Chamber in and around the Building.

18. General Provisions

- a. Any waiver by the Town of any failure by the Chamber to perform or observe the provisions of this Agreement will not operate as a waiver of the Town's rights under this Agreement in respect of any subsequent defaults, breaches or nonperformance and will not defeat or affect in any way the Town's rights in respect of any subsequent default or breach.
- b. This Agreement will extend to and be binding upon and inure to the benefit of the respective heirs, executors, administrators, successors and assigns, as the case may be, of each party to this Agreement. All covenants are to be construed as conditions of this Agreement.

IN WITNESS WHEREOF the Parties to this Agreement have duly affixed their signatures under hand and seal, or by a duly authorized officer under seal, on this ____ day of _____, 2017.

The Corporation of The Town of The Blue Mountains

Mayor, John McKean

Clerk, Corrina Giles

**Beaver Valley Chamber of Commerce O/A
Blue Mountains Chamber of Commerce**

Per: