



Date: September 15, 2003

TO: Board Members - Parks and Recreation
FROM: General Manager - Parks and Recreation
SUBJECT: Harbour Ferries Ltd. Parking Lot - Operating & License Agreements

RECOMMENDATION

- A) *THAT the lease agreement and licence agreement with Harbour Ferries Ltd. for the parking lot at the north foot of Denman Street be replaced by an operating agreement and license agreement and be renewed for the period September 1, 2003 to August 31, 2013.***
- B) *THAT the rent for the first year of the renewal term be set at \$91,000 per annum, with annual increases for the first five years based on Consumer Price Index (CPI) and a rent review after the first five years to determine the rent for the next five years of the term.***
- C) *THAT no legal rights shall arise and no consents, permissions or licenses are granted hereby and none shall arise or be granted hereafter unless and until all contemplated legal documentation has been executed and delivered by all parties.***
- D) *THAT once the form of all legal documentation has been approved by the General Manager and Director of Legal Services for the City of Vancouver, that the General Manager be authorised to execute and deliver such documentation on behalf of the Board.***

BACKGROUND

Harbour Ferries Ltd. has been at its current location (north foot of Denman Street) for many years. The adjacent parking lot covers an area of approximately 60,000 ft², containing 140 parking spaces. For the operation of its marina and boat charters, Harbour Ferries is required to have 68 parking spaces available.

When the area was turned over to the Park Board in the early 1980s for park purposes, the Board entered into a 20 year lease and license agreement with Harbour Ferries to rent it the parking lot. The lease agreement covered the major part of the parking lot which is on the Board's land.

A license agreement was required for the portion of the area which is leased by the City from the Port. Appendix A shows the respective areas.

In 1983, the rent was set at \$66,000 per annum. It remained at that level for the first 10 years and increased to \$75,000 for 1993-1998 and to \$84,000 for the final five years, 1998-2003. These agreements expired on August 31, 2003.

In the early 1990s, there was an interpretation issue regarding the City taxes to be paid by Harbour Ferries. After lengthy negotiations and litigation, in 1994 it was agreed that the lessee pay "Vancouver Only" taxes i.e. excluding hospital and school taxes collected by the City on behalf of other jurisdictions. In 2002, the amount paid by Harbour Ferries in respect of taxes was \$4,762.

Harbour Ferries' moorage lies within a water lot under separate lease with the Port of Vancouver. It is currently in the process of renewing this lease with the Port.

DISCUSSION

Form of Agreements

Following a 1996 decision in the BC Court of Appeal, the City's Legal Services have advised that leases of unsubdivided portions of land with a term of over 3 years are unenforceable. As a result, the current lease agreement will be replaced by an operating agreement for the new term. While this document will have a different legal form, the substance of the new operating agreement will be similar to the previous lease agreement.

Rent

A Property Negotiator from the City's Real Estate Services reviewed rents of other parking lots in the Coal Harbour area. Rapid development in this area has made it difficult to find good comparables, but he believed that Harbour Ferries was paying a fair market rent to the Board for the previous term. His recommendation is that the rent increase be based on the Consumer Price Index for Vancouver (CPI).

The last rent increase went into effect on September 1, 1998. Rent at that time was set at \$84,000 per annum for the five years to August 31, 2003. Applying the increase in CPI over these 5 years, rent should be increased by 8.7%, to \$91,000 for year 1 of the new term. In the new agreement, there will be annual rent increases based on CPI for each year, with a rent review before September 1, 2008, prior to the final five years of the agreement. Harbour Ferries has agreed to the proposed rates and increases. Based on the relative square footage, this initial rental rate would be allocated \$23,606 to the area covered by the license agreement and \$67,394 to the area covered by the operating agreement.

Good Neighbour Agreement

In May, 2003, staff were contacted by residents of one of the buildings adjacent to the parking lot, who expressed concerns over noise levels from the parking lot. In particular, they were concerned about late night noise emanating from buses in the lot, people returning from late cruises and the overnight "Dry Grad" cruises during May and June.

Since then, staff have met with representatives of the residents and Harbour Ferries and worked with both parties to put together a "Good Neighbour" agreement, involving increased signage, security in the lot at night and other operational controls to attempt to minimise the impact on the residents. Harbour Ferries has put these changes into effect, is in direct contact with the neighbours regarding individual incidents which have arisen over the summer and has shown willingness to respond when made aware of concerns.

Improvements to the Lot

One of the issues raised by the residents was noise from tour buses having to back up in order to make a tight turn at the end of the lot. To allow them to exit more easily, Harbour Ferries has agreed to fund the costs of removing the end of one of the medians at this turn.

JUSTIFICATION

This renewal will allow Harbour Ferries to continue its operations at the marina adjacent to the lot. A current rental rate of \$91,000 per annum is considered to be fair market value for this use in this location. The company has shown itself willing to respond to neighbourhood concerns and to work to minimise noise related issues associated with its ongoing operations.

Prepared by:

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