

(12)

Notice of Motion:

Moved by: Chair Karen Stintz

Seconded by: Commissioner Josh Colle

1. That the Board reconsider the Gateway Lease matter, originally decided on October 24, 2012 and previously reconsidered on January 21, 2013.

This Motion is a procedural motion and requires a 2/3 vote of the members present in order to reconsider the matter. If a 2/3 vote carries, the Gateway Lease report will be before the Board for debate at the next meeting (April 24th, 2013), subject to the actions of the Board on Motion No. 2 below. Approved

2. Subject to receiving the required 2/3 vote for Motion No. 1 above, in accordance with Section 7(A) of the Procedures Bylaw I move for a waiver of Section 50(B) of the Procedures By-Law to allow for the reconsideration of the Gateway Lease to be heard at this meeting. Approved

This Motion is a procedural motion and requires a 2/3 vote of the members present in order to proceed at this time.

3. Subject to receiving the required 2/3 vote for Motions No. 1 and 2 above, the Board: Deferred

- a) rescinds its decision to endorse the original recommendation of staff (as set out in the October 24, 2012 report as Item No.8(d));
- b) rescinds all approved motions relating to Item No. 12 from the January 21, 2013 meeting; and
- c) notes that this action will result in a rental revenue and bonus loss in excess of \$2.4M over the current term which expires April 30, 2014, \$2M of which was factored into the 2013 TTC Operating Budget.

Mover:

Karen Stintz

Seconder:

Josh Colle

DECISION – ITEM NO. 12 (JANUARY 21, 2013)

At its meeting of January 21, 2013 the Board adopted the following:

That the Commission re-affirm the two recommendations contained in Report #12, as follows:

“It is recommended that the Commission approve the following:

1. The execution of a lease agreement with Tobmar Investments International Inc. (Tobmar) for the continued operation and management of the Gateway Newsstands in the subway system under the terms and conditions outlined in this report and further detailed in a letter from Mr. Michael Aychental, CEO – Tobmar Investments International Inc., dated October 1, 2012;
2. Amend the existing lease agreements with Tobmar associated with the bakeries, cafes and lottery locations to consolidate the terms for ten (10) years commencing December 1, 2012 to November 31, 2022 with a five (5) year option, adjust the rents and further amendments, as set out in the report and Attachment 1”.
3. That the distribution of free newspapers be the subject of a separate RFP issued by Gateway and; the TTC be part of the evaluation process for the selection of the successful proponent, along with Gateway.

TORONTO TRANSIT COMMISSION
REPORT NO. 8(d) 12

(Reconsideration - January 21, 2013)

MEETING DATE: October 24, 2012

SUBJECT: GATEWAY - LEASE

ACTION ITEM

RECOMMENDATION

It is recommended that the Commission approve the following:

1. The execution of a lease agreement with Tobmar Investments International Inc. (Tobmar) for the continued operation and management of the Gateway Newsstands in the subway system under the terms and conditions outlined in this report and further detailed in a letter from Mr. Michael Aychental, CEO – Tobmar Investments International Inc., dated October 1, 2012 (Attachment 1);
2. Amend the existing lease agreements with Tobmar associated with the bakeries, cafes and lottery locations to consolidate the terms for ten (10) years commencing December 1, 2012 to November 31, 2022 with a five (5) year option, adjust the rents and further amendments, as set out in this report and Attachment 1;

FUNDING

The TTC will realize total consolidated base rent of approximately \$48 million over fifteen (15) years; an increase in base rent revenue of 67% over the current rents; including a signing bonus of \$1.5 million payable in two instalments: \$1.0 million in year 1 and \$500,000.00 in year 11. Tobmar will continue to pay realty taxes, hydro, HST and common area maintenance (CAM) at current rates including annual increases of \$0.25 per square foot each and every year during the term and option. The grand total of Tobmar's proposal including base rent and CAM is approximately \$50 million. The proposal has been reviewed by an external brokerage organization.

Tobmar is committed to a capital expenditure of \$1,450,000.00, the Capital Program to be developed between the TTC and Tobmar.

BACKGROUND

As a good standing tenant with the Commission for the past 18 years, Tobmar currently operates 65 newsstands, 8 dedicated lottery booths, 2 bakeries, and 2 cafes at various subway stations.

The current agreements expire on different dates anywhere from May 2014 to May 2022, forcing Tobmar and the TTC to be in perpetual state of continual renewals, construction updates and refurbishments to the leaseholds. This format is costly and requires significant resources and related expenses to implement the programs. Introducing a consistent lease expiry date for all leases would be more cost effective and an efficient use of resources.

DISCUSSION

Tobmar has made an unsolicited proposal (See Attachment 1), to consolidate all lease terms into one manageable agreement. Staff feel that while the lease terms can be consolidated, it is more practical to amend the existing bakery, cafes and lottery leases to reflect the modifications and to have a separate lease for the newsstands particularly since several clauses specific to the newsstands may not apply to the other leases. There has been no written interest expressed from other sources to lease the subway newsstands. The following sets out the general financial and operating terms of Tobmar's proposal.

Newsstand Proposal:

	Current Annual Base Rent	New Annual Base Rent (Years 1 to 10)	New Annual Base Rent (Option – Years 11 to 15)	Total Base Rents
Newsstands	\$1.36M	\$2.36M	\$2.72M	\$37.3M
Signing Bonus		\$1M	\$500K	\$1.5M
CAM		\$120K	\$143.2K	\$1.9M
			Total	\$40.7M

General Terms and Conditions

- Tobmar commits to renovate existing newsstands with a budget of \$1 million starting in 2012 and completed by the end of term including the option to build new locations as required by subway expansion, with an average cost of \$75,000.00 per unit, where applicable.
- Incorporate rack design as part of the retail capital works, where applicable.
- No change to the exclusivity clause (newsstands only) as per the Head Lease.
- Negotiate a new standard TTC lease.
- Tobmar will have one (1) year from the date of the agreement to commence operating from all the currently vacant spaces (Bessarion, Don Mills second location, Bayview, Leslie, Jane and Chester). Should Tobmar fail to open these locations, the premises will revert back to the TTC to lease. The total base rent as per offered by Tobmar will not be adjusted if the vacant premises are returned to the TTC.
- Percentage rent remains as per the Head Lease.
- Standardize the appearance of the newsstands, including signage.

Bakeries– Proposal:

	Current Annual Base Rent	Annual Base Rent (Years 1 to 4)	New Annual Base Rent (Years 5 to 10)	New Annual Base Rent (Years 11 to 15)	Total Base Rent
Bakeries	\$170K	\$170K	\$181.9K	\$209.2K	\$2.82M
C.A.M.		\$10.5K	\$8.7K	\$13.6K	\$162K
				Total	\$2.98M

Tobmar commits to \$150,000.00 in capital improvement during the option period.

Cafes – Proposal:

	Current Annual Base Rent	Annual Base Rent (Years 1 to 10)	New Annual Base Rent (Years 11 to 15)	Total Base Rent
Cafes	\$120K	\$144K	\$165K	\$2.265M
C.A.M.		\$13.2K	\$20.0K	\$232K
			Total	\$2.5M

Tobmar commits to \$200,000.00 to renovate the existing cafes (Islington and Warden) to the current TTC standards immediately upon execution of the amending agreements.

Lottery Booths – Proposal:

	Current Annual Base Rent	Annual Base Rent (Years 1 to 2)	New Annual Base Rent (Years 3 to 10)	New Annual Base Rent (Years 11 to 15)	Total Base Rent
Lottery	\$243.5K	\$243.5	\$254K	\$292K	\$3.9M
C.A.M.		\$2.85K	\$3.2K	\$6.3K	\$62.8K
				Total	\$3.96M

Renovate the lottery locations in the option period with a budget of \$100,000.00.

Tobmar also agrees to institute a "Cleanliness" program in conjunction with the TTC.

JUSTIFICATION

Increase in rent of 67% will provide the TTC with a long term revenue source while at excellent rates enhancing the overall appearance of the leaseholds, ultimately improving customer satisfaction. A transition period to another tenant involving: design approvals, construction, obtaining permits etc. would likely result in a loss of revenue in the range of \$1.5 million to \$2 million due to downtime; further justifying the approval to proceed with this proposal.

Attachment 1



October 1, 2012

VIA EMAIL

Toronto Transit Commission
Property Development Department
2200 Yonge Street, Suite 900
Toronto, Ontario
M4S 2C6

Attention: Mr. Domenic Garisto, Head of Property Development

Dear Mr. Garisto:

Thank you for meeting with David Goldman, Noah Aychental and myself recently to discuss our proposal for the consolidation of our various leases within the TIC Subway System.

As you are aware from our meetings, over the last several weeks, the financials concerning our proposal have undergone a number of changes as a result of our negotiations with you.

I have taken the liberty of outlining our Offer, including some discussion of our background, the improvements that we intend to make and the justification for our proposal.

A Member Of The Tobmar Group Of Companies
240 Chrislea Road, Woodbridge, Ontario, Canada L4L 8V1
Telephone: (905) 851-9652 Fax: (905) 851-7246
E-mail: info@gatewaynewstands.com Website: www.gatewaynewstands.com

GATEWAY CONSOLIDATION PROPOSAL RECAP

- Recommend consolidating the Lease Ending Terms for the Newsstands, Bakeries, Cafes and Lottery locations so that all Leases end on the same date
- Recommend Ten (10) Year Lease from December 2012 to November 2022 with one five (5) Year Option

FUNDING

- No funding required by TTC
- Increase of 67 % on current base rents
- Includes Signing Bonus of \$1,500,000 payable \$1,000,000 in Year 1 and \$500,000 in Year 11.
- Continue to pay Realty Tax, C.A.M., Hydro, HST including annual increases as per Lease of \$0.25 per square foot for C.A.M.
- Grand Total Base Rent plus Bonus for Fifteen (15) years **\$47,826,855**
- Percentage Rent no change from current lease

	Current Annual Base Rent	New Annual Base Rent for Years 1 to 10	New Annual Base Rent for Years 11 to 15	Total Base Rents 15 years
Newsstands	\$1,366,697	\$2,366,697	\$2,721,702	\$37,275,480

Signing Bonus	Year 1	\$1,000,000
	Year 11	\$500,000

	Current Annual Base Rent	Annual Base Rent from Years 1 to 4	New Annual Base Rent for Years 5 to 10	New Annual Base Rent for Years 11 to 15	Total Base Rents 15 years
Bakeries	\$170,000	\$170,000	\$181,900	\$209,185	\$2,817,325

	Current Annual Base Rent	Annual Base Rent from Years 1 to 10		New Annual Base Rent for Years 11 to 15	Total Base Rents 15 years
Cafés	\$120,000	\$144,000		\$165,000	\$2,265,000

	Current Annual Base Rent	Annual Base Rent from Years 1 to 2	New Annual Base Rent for Years 3 to 10	New Annual Base Rent for Years 11 to 15	Total Base Rents 15 years
Lottery	\$243,500	\$243,500	\$253,240	\$291,226	\$4,009,800

Total Base Rents 15 years

\$47,826,855

Current
C.A.M. Annual
Charges* \$114,752
*subject to Annual Increases
over 15 years of \$0.25 per
square foot per year

This represents an escalation of \$19,236,855 over the current Total Base Rent which is a 67% increase.

BACKGROUND

- Gateway currently operates 65 Newsstands, 8 dedicated Lottery Booths, 2 Bakeries, 2 Cafes, and has been a Tenant in good standing for 18 years.
- Current Agreements expire on different dates from May 2014 to 2022
- Gateway and TTC are in a perpetual state of continual renewals, construction updates and refurbishments. This is costly and problematic to the TTC as they are expending costly efforts when a consistent end date of the lease terms would be less costly and more efficient way to plan for cost saving and operational improvements.
- Gateway has made an unsolicited offer to consolidate all Lease Terms into an easily manageable cost effective single new Fifteen (15) year term.
- Gateway has been an excellent Tenant complying with all building code requirements, all fire codes, and other upgrades required by the TTC
- Gateway has been a reliable professional Tenant that is well financed and has met all its financial obligations to TTC for the last 18 years of its tenancy.

IMPROVEMENTS

- Gateway has proven its ability to quickly plan and builds new store units and renovate existing units with a minimum of down time
- Gateway commits to renovate existing Newsstands with a budget of \$1,000,000, starting in 2012 and completing by the end of term including option, and to build new locations as required, by TTC Expansion, with an average cost of \$75,000 per unit, where applicable.
- Incorporate Rack Design as Part of Retail Capital Works, where applicable
- Renovate the two cafes to current standards with a budget of \$200,000
- Renovate the two Bakeries in option period with a budget of \$150,000
- Renovate the Lottery locations in the option period with a budget of \$100,000
- Total Capital Expenditures \$1,450,000

DISCUSSION

- Negotiate New TTC Standard Lease
- Exclusivity no change from Head Lease
- Gateway will have 1 year from the date of the agreement to commence operating from all the currently "vacant" spaces (Bessarian, Bayview, Don Mills 2nd location, Jane and Chester). Should Gateway fail to open these locations, the spaces will revert back to TTC to lease. Base Rent will not be adjusted if vacant premises are returned to TTC.

TERM

- December 2012 to November 2022
- Plus Five (5) Year Option to November 2027
- Additional Rent Gateway will continue to pay all additional rent such as common area maintenance, hydro, water, taxes, etc....
- Minimum Rent proposed is excellent compared with rents normally associated and collected in the past by the various uses operated on TTC Property and exceed market rents by wide margin.
- It is unlikely competitive bids for the various businesses would result in higher rents being paid to the TTC.

STATION EXPANSION

- Gateway will continue to expand its stores with the expansion of new TTC stations for the term of its leases. We need to budget and account for TTC expansion plans which coincide with the end of our term, including but not limited to expansion of the Spadina Line to York University, the future expansion of Sheppard Line, plus any future lines that may be extended.
- Additionally, the Pan Am games are taking place in 2015 Also, in the past, we have had requests from the TTC from time to time to relocate stores due to the TTC's program to relocate or install new handicapped elevators which have resulted in the relocating of our stores at our costs; recent examples,

Victoria Park and Queens Park Station. This has necessitated a large capital expenditure by Gateway which cannot be recovered in the remaining lease term till 2014.

JUSTIFICATION

- Increases in rent will provide stable and reliable increases in revenue for the commission
- Cost Savings to the Commission in consolidating Lease and eliminating cost of individual future Tender preparation and execution.
- Renovations will ensure good physical condition of units by utilizing safe, clean, fire retardant materials
- Gateway is TTC's largest Tenant and has expanded store counts over its 18 years to historical highs providing exemplary access to services for TTC Ridership
- Gateway Management is very responsive and cooperative with all TTC request
- Gateway is North Americas largest operator of stores in its industry with over 500 units and is North Americas leader in Transit Retail with existing stores in the TTC, Go Transit, Via Rail, OC Transpo in Ottawa, MTA in New York, CTA in Chicago as well as railway stations, hospitals, office buildings, shopping centres and universities.
- Renewal of Café Leases is the most prudent course of action given that there is a possibility for the TTC to take back these locations on short notice due to the possible redevelopment to the facility. This makes these locations unattractive for a competitive RFP and impractical to anyone wanting to invest in a new business.

ADDITIONAL AGREEMENT TERMS

- Gateway to institute a "Cleanliness" Program including periodic cleaning of Rolling Closures when storefronts are closed.
- Standardize the appearance of the newsstands, including signage

PUBLIC RELATIONS

- **Over 300 New Canadians and families working within the Gateway System.**
- **Disadvantaged and Handicap Operators given opportunities.**
- **A good Public Profile in cooperation with TTC Sponsored Charities.**