



AMHERST TOWN COUNCIL

RFD# 2019009

Date: January 28, 2019

TO: Mayor Kogon and Members of Amherst Town Council

SUBMITTED BY: Andrew Fisher, Manager of Planning & Strategic Initiatives

DATE: January 28, 2019

SUBJECT: VIA Station / Station Street: closing documents

ORIGIN: Transfer of the Train station and a portion of Station Street owned by VIA to the Town, and eventual transfer of the Station Building to J.E. Bembridge.

LEGISLATIVE AUTHORITY: Municipal Government Act (MGA), section 50 concerning the powers of a municipality regarding property, and section 51 concerning the sale or lease of municipal property.

RECOMMENDATION: That Council authorize the Mayor and CAO to execute five agreements that provide for the transfer of Station Street, adjacent parking areas, and the Train Station to the Town, with eventual transfer of the Train Station to J.E. Bembridge Ent., with a closing date of March 1, 2019.

BACKGROUND: In September 2016, Council approved Agreements of Purchase & Sale (APS), and leases that would result in the VIA Station, and a portion of Station Street owned by VIA transferred to the Town. The station building would be transferred to the Town and leased to J.E. Bembridge Enterprises for five years, with ownership transferring to Bembridge at year five. A portion of the Station Building would also be leased to VIA for a waiting area, the terms and conditions of which Bembridge would assume when ownership transfers at year five.

While the 2016 agreements were executed at that time, they were subject to approval by Parks Canada and the Privy Council. The delay in getting approval at the federal level rendered the agreements void as the closing date lapsed. In February 2018 Council approved amending agreements that updated the 2016 agreements with new closing dates, and provisions to address the conditions stipulated under the Order in Council. However, upon further review of the agreements, Bembridge could no longer accept some of the original terms and conditions.

At present, there are now five new documents described below. VIA and Bembridge have confirmed that the agreements are acceptable and are ready to sign immediately. Please see the attached Site Plan showing the newly created lots and respective ownership. Also attached is floor plan of the station building that shows the VIA designated waiting area and technology space.

The five attached agreements are as follows:



1. **Agreement of Purchase & Sale between the Town and VIA** provides for transfer of Station Street (Lot 18-5), Parking Lots (18-1 & 18-3), and the Station building (Lot 18-2). The Platform (Lot 18-4) remains under VIA ownership. The agreement allows the transfer of the Station Building to Bembridge after 5 years. In addition to the Municipal Heritage designation already completed, the Town will submit an application for Provincial Heritage Designation as required by the Order in Council. These designations protect the exterior character of the station, but do not impact the building interior.
2. **Station Building Lease between the Town and VIA** provides VIA a designated waiting area for their customers and space within the building to house VIA's technology, as shown on the attached floor plan. This lease will be assumed by Bembridge after 5 years. The lease term is 20 years, with the option to renew for another 20 years. The Town is responsible for operation and maintenance of the building (immediately assumed by Bembridge), and snow clearing of the platform. Flagging for snow clearing is paid by VIA.
3. **Agreement of Purchase & Sale between the Town and Bembridge** provides that Bembridge will lease-to-own the station, taking ownership after 5 years. Except for snow clearing of the platform, Bembridge assumes operational responsibility for the station building, and VIA's requirements.
4. **Parking Lot Agreement** provides that the Town will own and maintain the lands surrounding the Station Building, and will provide VIA access over said lands to the Station Building and platform. Accessible parking and loading spaces as required by Bembridge will be permitted within the parking areas.
5. **Renovation Contribution Agreement** provides for the cost sharing of the Station Building as it relates to the VIA designated waiting area. VIA have agreed to pay at least \$5,000 of the cost, or more if they determine additional costs are required to meet their standards. The Town will contribute up to \$7,000 to replace the furnace; otherwise, Bembridge is responsible for renovation and ongoing maintenance of the Station.

For the most part, the above noted agreements reflect what the Town agreed to in 2016, and the Town's liability has not changed substantially. The following outlines the significant changes and implications of the current agreements:

- Land Ownership – In 2016 the Town was to take ownership of the entire area (street, station, platform). After year five, Bembridge would assume ownership of everything but Station Street. The difference now is that Bembridge takes only the station building and the Town keeps the parking area around it. VIA retains ownership of the platform. This change increases the Town's liability with respect to the parking areas, but decreases liability with respect to owning and maintaining a train platform.
- Snow Clearing – Bembridge is responsible for snow on the Station Building property (everything under the roof). The Town is responsible for snow within the parking areas in perpetuity, and on the platform for the term of the lease (20 years).

- **Right to Repossess** – While of no consequence to the Town, VIA's right to repossess the station was not acceptable to Bembridge for legitimate reasons. This clause has been replaced by a remedy clause that provides VIA recourse to correct safety or operational deficiencies if required.
- **VIA Designated Areas** – As shown on the attached floor plan, VIA has a designated customer waiting area, to which VIA can remotely control access. There is also a space designated for VIA's technology. The Contribution Agreement ensures that the designated space meets VIA standards without causing Bembridge undue costs. Bembridge has until December 31, 2019 to complete the renovations.

Overall the Town's most substantial risk the same as it was in 2016. That is, if Bembridge breaches the agreement and does not take ownership of the station after year five. In this case the town will own the station and be obligated to VIA's waiting area requirements for the 20-year renewable lease. The other risk is owning the parking areas in addition to Station Street. This represents additional snow clearing and maintenance obligations, as well as, potential environmental liability. However, Staff do not feel this is a significant risk increase, especially when weighed against the reduced risk of owning the train platform.

FINANCIAL IMPLICATIONS: At close, the town will receive a one-time payment of \$90,000 from VIA, and Bembridge will pay the Town a total of \$64,980 + HST in monthly installments over five years. The town will be responsible for survey and closing costs, and will contribute up to \$7,000 towards a new furnace. Upon the sale of station to Bembridge at year five, the town will receive tax revenue.

COMMUNITY ENGAGEMENT: In 2015 VIA indicated their desire to divest the Train Station. The Town underwent a public RFP process and received one response from J.E. Bembridge Enterprises. Since then, the public has been kept up to date on this issue with ongoing media releases.

ENVIRONMENTAL IMPLICATIONS: The town takes official ownership of Station Street and the parking areas, which are adjacent to a railway, and other industrial uses.

SOCIAL JUSTICE IMPLICATIONS: There are no social justice implications related to this decision.

ALTERNATIVES: Refuse to enter into the above agreements, or direct staff to negotiate different terms.

ATTACHMENTS:

1. Site Plan and Station Floor Plan
2. Agreement of Purchase & Sale between the Town and VIA
3. Station Building Lease between the Town and VIA
4. Agreement of Purchase & Sale between the Town and Bembridge

5. Parking Lot Agreement
6. Renovation Contribution Agreement

Report prepared by Andrew Fisher
Report and Financial approved by: