



TOWN OF MINTO

DATE: December 12, 2015

REPORT TO: Mayor and Council

FROM: Bill White, CAO/Clerk

SUBJECT: Marquardt Monster Truck Lease

STRATEGIC PLAN:

- 4.3 Ensure there is sufficient serviced/serviceable land for a variety of uses in Minto's three urban areas, and maintain a supply of municipally owned serviced industrial land for sale to business in accordance with Town policies.
- 8.1 Regularly communicate tourism and marketing strategies including successful tactics, timing and performance measures. Promote Minto through testimonials from current successful tourism businesses.

BACKGROUND

Murray Marquardt submitted the attached request that the Town consider leasing about 4 acres of land adjacent to his property for a monster truck ride. As illustrated in the drawing there are at least eight lots slightly over one acre in size that might be developed in this part of the industrial park. He proposes to lease what would be lots 5, 6, 7 and 8.

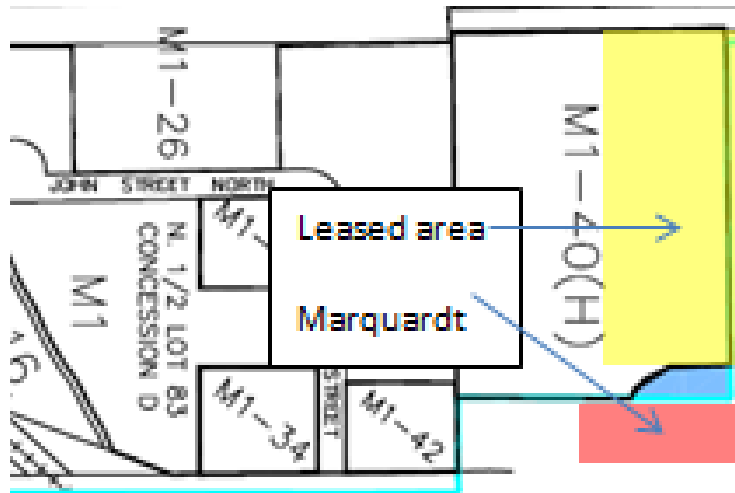


The lands in question are currently subject to a Class Environmental Assessment that was started in 2014 and is currently tabled pending further servicing information.

The lands are zoned in a holding M1-40 zone as a floodway zone. The floodway extends right in behind the Marquardt lands. The light industrial zone would not permit a recreational truck track, but does allow accessory and recreational uses. There could be a case made that so long as the use is tied in with Marquardt's existing business and is subordinate and incidental to that main use that the zoning may permit the use.

The holding provisions on the zone can be removed when municipal services are available, stormwater management is provided, archeological assessment is completed and the use is compatible with residential dwellings to the east in terms of potential sound and vibration

impacts. The archeological assessment is complete. The other issues could be addressed in a temporary use zoning amendment. This allows the use for up to five years under certain conditions, but would not allow the use to continue permanently. Staff recommends the County provide an opinion in this regard.



COMMENTS:

The attached draft lease has been sent to the Marquardt's and they are in agreement with the terms:

- Up to five year lease subject to cancellation or relocation after two years should the Town have industrial purchasers
- Use not to create noise, odour or vibration likely to disturb people in the area.
- Lessee responsible for approvals needed to set up the use (including rezoning if necessary), improvements to the lands and to remove same improvements if/when requested by the Town.
- Minimum \$5 million liability insurance with Town named as additional insured.
- Annual rent around \$200 per acre minimum consistent with an agricultural lease.
- Site plan needed to address traffic circulation, parking, public areas, track layout etc.

The Marquardt landscape business is augmented by a chip stand, small dog park and seating areas geared to the travelling public. The monster truck was purchased and was in local Santa Claus Parades. These rides could enhance services available to visitors and could become a destination type feature. The use could be a reasonable interim use provided issues of noise, stormwater, floodway, layout and zoning can be addressed.

FINANCIAL CONSIDERATIONS:

In a five year lease the Town could generate in the range of \$4,000 to \$5,000 revenue from the lands. The lands are currently not generating revenue as they await redevelopment.

RECOMMENDATION:

That Council receives the CAO Clerk's report dated December 11, 2015 regarding the Marquardt Monster Truck Lease and that a by-law authorizing signing of the lease be considered when the Marquardts sign the lease and zoning is confirmed.

Bill White, C.A.O. Clerk

896459 Ontario Limited
O/A Marquardt Excavating AND/OR Stones 'n More Landscape Products
5973 Hwy 9, RR#4
Harriston, Ontario
N0G 1Z0

October 20, 2015

Town of Minto – Council Members

The proposal we bring to you today would be for The Town of Minto to allow us to Lease a section of Vacant Land (see attached map) which is located behind our Greenhouse / Shop located at 5973 Hwy 9.

In 2009 myself and my wife created our business Stones 'n More in Moorefield. In order to help the business grow we relocated on July 26, 2010 to Harriston and have been welcomed with open arms. We started out hiring two employees but, we now currently employ 12 full-time seasonal employees. We have grown so much throughout the years and would only like to develop more.

The proposal we bring to you today would not only allow our company to flourish but, would also benefit the Town of Minto. It would benefit the Town of Minto by bringing a growing crowd of people into the community. Having this growing crowd would increase revenues to surrounding businesses such as Harriston Home Hardware, Acheson's Pharmacy, L&M Market, Harriston Packers and etc. We also, believe our proposal will attract many people to the Fall Fairs being held in the Town of Minto, both in Harriston and Palmerston.

Our Company has spoken with our Insurance Agent Jeremy Brown from Brown's Insurance Brokers Ltd. and have requested a Policy to cover the exposure of our business on your land.

Our proposal would be to Lease the vacant land which is behind our business (photo attached). We would use this land to create a Track for a Ride on Monster Truck whose engine has been cut back and will not exceed 15 km/h. Safety is our main concern for all participants therefore, our Ride on Truck will come equipped with seat belts for each individual. Another safety feature that has been added is a Radio Control called an RAI which will immediately cut power to the engine of the Truck shutting it down. The RAI will be in the hands of an employee who will be following along in a golf cart behind the truck to keep constant visual.

The track that we propose to you today will be a basic track with a few soft rollers placed strategically in order for everyone to have an exciting safe ride. I have included the drawing to show you the measurements of each roller and give you a good visual of what to expect. I have also, included a picture of the Ride Truck we are looking to purchase should you agree to allow us to go forward with this.

In conclusion, this new and exciting venture that we hope to bring to the town of Harriston would add to our Community. Making it a destination where tourists will want to stop, shop and visit. We hope that all of your questions have been answered if not please feel to contact me at 519-654-2695.

Sincerely,



Murray Marquardt
President
Enc. – 3



Lease Agreement

THIS AGREEMENT made as of the 1st day of January 2015

BETWEEN:

THE CORPORATION OF THE TOWN OF MINTO
(the "Owner")

-and-

[MARQUARDT, MURRAY RICHARD
MARQUARDT, JODINE LYNNE]
(the "Tenant")

WHEREAS the Town owns lands in the Harriston Industrial Park legally described as Concession D East Part Lot 82 which is approximately 4.5 hectares (+11 acres) south west of lands owned by the Tenant know municipally as 5973 Highway 9, Harriston;

AND WHEREAS the Tenant has requested to lease up to 2.4 hectares (+6 acres) vacant industrial land from the Owner for the purposes of providing a course for simulated monster truck rides;

AND WHEREAS the Owner has agreed to grant a lease on the terms set out in this Agreement;

NOW THEREFORE IN CONSIDERATION of the mutual covenants and agreements hereinafter contained, and other good and valuable consideration (the receipt and sufficiency is hereby acknowledged), the parties covenant and agree each with the other as follows:

- 1. Leasing of Lands.** The Tenant hereby leases the lands from the Owner for a term of five (5) years, commencing on January 1, 2016 and continuing to December 31, 2021, subject to the faithful compliance with the terms and conditions of this Agreement.
- 2. Early Termination.** Notwithstanding clause 1 above, either party may terminate this Agreement at any time by giving ninety (90) days written notice to the other party. The Tenant shall pay all amounts owing pursuant to the terms of this Agreement up to the date of termination. The Owner agrees not to request termination before the date of January 1, 2018.
- 3. Lease Amount.** The Tenant shall pay to the Owner the sum of \$200 per acre, plus H.S.T., per year as base rent for the lands in accordance with the terms of this Agreement. The Rent shall be payable in one installment, in advance on the first day of each year of the term of this Agreement.
- 4. Overdue Account.** The Tenant shall pay to the Owner interest of two percent (2%) per month on overdue accounts, in addition to any other remedy the Tenant may have at law.
- 5. Covenant of Tenant.** The Tenant covenants with the Owner to pay rent and shall perform

and observe all land use and other applicable regulations pertaining to the Tenants use of the lands. In the event of default, the Owner shall have all of the rights afforded under the Lease regarding remedies for default. The Tenant further covenants to keep the Owner indemnified against all actions, expenses, claims and demands in respect of such covenants.

6. **Deposit.** The Owner acknowledges receipt from the Tenant of the sum of \$2,400, plus H.S.T. as a deposit to be held by the Owner and credited towards first and last month's rent pursuant to this Agreement. The monies deposited with the Owner shall bear no interest.
7. **Lands.** The Owner shall provide to the Tenant access to the following lands:
 - (a) 6 acres more or less of vacant industrial lands south and west of the Tenants existing holdings at 5973 Highway 9, Harriston
8. **Tenants Use.**
 - (a) The Tenant shall be permitted by the Owner to use the Leased Lands for the purposes of providing simulated monster truck rides on a course to be laid out on the said lands and approved by the Owner. The course shall be constructed of natural stone, dirt, and similar landscape materials of a temporary nature able to be removed at the sole cost of the Tenant upon termination of this lease.
 - (b) The Tenant shall obtain any and all required approvals from all agencies prior to establishing and operating any simulated monster truck rides on the Leased Lands including specifically approval from the Maitland Valley Conservation Authority and rezoning if deemed necessary by the Wellington County Planning and Development Department.
 - (c) The Tenant shall ensure the use of the lands does not create any noise, odour or vibration likely to disturb people in the area or the use of any other property.
 - (d) The Tenant shall provide to the Owner for approval a Site plan needed to address traffic circulation, parking, public areas, track layout and other such matters on the leased lands as well as the Tenants adjacent property.
9. **Default.** The Owner may terminate this Agreement by written notice to take effect immediately upon the delivery thereof to the Tenant, where:
 - (a) the Tenant fails to make any payment provided for herein and such payment remains in arrears and unpaid for a period of twenty (20) days beyond the date that a written notice is delivered by the Tenant indicating that payment is due;
 - (b) the Tenant assigns or purports to assign this Agreement or any of the right under this Agreement without the prior written consent of Owner;
 - (c) the Tenant commits or permits a breach of any of its covenants, representations, warranties or other obligations under this Agreement or any approval obtained from an external agency and the Tenant has failed to remedy the breach within thirty (30) days after delivery by the Owner written notice requiring the breach to be remedied; or,
 - (d) the Tenant becomes insolvent, or has a receiving order made against it, or makes an assignment for the benefit of creditors, or an order is made or a resolution is passed for the winding up of the Tenant, or takes the benefit of any statute for the time being in force relating to bankrupt or insolvent debtors.

10. Any notice required to be given by this Agreement shall be in writing and delivered personally or by regular mail to the other party at the following addresses:

to the Owner at: Town of Minto
5941 Highway 89
Harriston, ON NOG 1Z0
Attention: C.A.O. Clerk

to the Tenant at: Marquardt, Murray and Jodine
RR#4
Harriston ON NOG 1Z0

Notice shall be deemed to have been delivered on the date of personal delivery or five business days after sending notice by regular mail.

11. Indemnification and Insurance.

- (a) The Tenant hereby indemnifies and holds harmless the Owner and its directors, officers, employees, members and agents from and against any and all claims, actions, suits, proceedings, losses, damages, liabilities, costs, fees or expenses, joint or several (including without limitation reasonable legal fees) arising or resulting from or in connection with any occurrence in, on or at the Leased Lands, or in any way from or out of the occupancy or use by the Tenants of the Leased Lands, or any part thereof, or due to or arising out of any breach by the Tenant of this Agreement.
- (b) Tenant shall, at its sole cost and expense, take out and maintain in full force and effect, at all times throughout the Term, the following insurance:
 - (i) "All Risks" insurance on property of every description and kind owned by the Tenant, or for which the Tenant is legally liable, or which is installed by or on behalf of the Tenant, on Lands including, without limitation, equipment, materials, improvements, in an amount not less than the full replacement cost thereof from time to time;
 - (ii) general liability and property damage insurance, including personal liability, contractual liability, tenants' legal liability, non-owned automobile liability, and owners' and contractors' protective insurance coverage with respect to the Premises, which coverage shall include the business operations conducted by the Tenant and any other person on the Premises. Such policies shall be written on a comprehensive basis with coverage for any one occurrence or claim of not less than Five million dollars (\$5,000,000) or such higher limits as the Owner may reasonably require from time to time;
 - (iii) such other forms of insurance as may be reasonably required by the Owner from time to time provided such insurance relates to tenant liability.
- (c) All insurance shall be with insurers and on such terms and conditions as the Owner reasonably approves, and each such policy shall name the Owner as an additional insured as its interest may appear, and, in the case of public liability insurance, shall contain a provision for cross-liability or severability of interest as between the Owner and Tenant. The Tenant shall obtain from the insurers under such policies undertakings to notify the Owner in writing at least thirty (30) days prior to any cancellation thereof. The Tenant shall furnish to the Owner, on written request, certificates or certified copies of all such policies. If the Tenant fails to take out or

to keep in force such insurance or to provide a certificate of every policy and evidence of continuation of coverage as herein provided, the Owner shall have the right to take out such insurance and to pay the premiums thereof, and, in such event, the Tenant shall pay to the Owner the amount paid as premium plus fifteen percent (15%), which payment shall be payable on demand.

- (d) In the event of a claim, any deductible or self-insured retention under the insurance shall be the sole responsibility of the Tenant and that the coverage shall preclude subrogation claims against the Owner and any other person insured under the policy and be primary insurance in response to claims. Any insurance maintained by the Owner and any other person insured under the policy shall be considered excess of the Tenant's insurance and shall not contribute with it. The minimum amount of insurance required herein shall not modify, waive or otherwise alter the Tenant's obligation to fully indemnify the Owner.
- 12. Limits of Liability.** To the extent allow by applicable law, in no event shall the Owner, or any of its directors, officers, employees or agents, be liable for: (a) any loss of profits, loss of use of data, interruption of business or for indirect, special, incidental or consequential damages of any kind incurred by the Tenant; (b) any claim or other proceeding against the Tenant by a third party; or (c) any representation or warranty made to any third party by the Tenant. Notwithstanding anything in this Agreement to the contrary, entire liability to the Tenant for damages concerning the performance or non-performance by the Owner relating any way to the subject matter of this Agreement, and regardless of whether such damages are based in contract or tort or otherwise, shall not exceed the aggregate amount of cash consideration received by the Owner from the Tenant during the six-month period prior to the presentation of the claim to the Owner.
- 13. Time of the Essence.** Time shall be of the essence of this agreement.
- 14. Entire Agreement.** This Agreement constitutes the entire agreement of the parties hereto. There are not and shall not be any verbal statement, representations, warranties, undertakings or agreements between the parties. This agreement may not be amended or modified in any respect except by written instruments signed by all the parties hereto.
- 15. Applicable Law.** This Agreement shall be construed and enforced in accordance with (and the rights of the parties shall be governed by), the laws of the Province of Ontario.
- 16. Binding Effect.** This Agreement shall enure to the benefit of and shall be binding upon the parties hereto and their respective heirs, legal personal representatives, executors, administrators, successors and permitted assigns.
- 17. Schedules.** The following schedules form an integral part of this Agreement:
- (a) Schedule "A" – Lands

IN WITNESS WHEREOF the parties have executed this agreement on the date first noted above.

WITNESS

) **[INSERT PARTY NAME]**

)

)

Name:

)

Name:

Date:

)

Title:

)

)

Name:

)

Name:

Date:

)

Title:

)

)

[If Corporation, insert: "I/We have authority to bind the corporation"]

)

THE CORPORATION OF THE TOWN OF MINTO

George Bridge, Mayor

Bill White, Clerk

We have authority to bind The Corporation of the
Town of Minto

Schedule "A"

The Lands

Below shown in yellow are the lands subject to this lease agreement.

