



## THE CORPORATION OF THE TOWN OF AMHERSTBURG

### OFFICE OF DEVELOPMENT SERVICES

**MISSION STATEMENT:** *Committed to delivering cost-effective and efficient services for the residents of the Town of Amherstburg with a view to improve and enhance their quality of life.*

<b>Author's Name:</b> Melissa Osborne	<b>Report Date:</b> November 30, 2022
<b>Author's Phone:</b> 519 736-5712 ext. 2137	<b>Date to Council:</b> December 12, 2022
<b>Author's E-mail:</b> mosborne@amherstburg.ca	<b>Resolution #:</b>

**To:** Mayor and Members of Town Council

**Subject:** Lease Agreement with Amherstburg Broadcasting Corporation

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#### 1. **RECOMMENDATION:**

It is recommended that:

1. The Director of Infrastructure Services and the Ontario Clean Water Agency (OCWA) **BE DIRECTED** to determine the feasibility of installing Amherstburg Broadcasting Corporation (Amherstburg Broadcasting) required radio antenna and equipment at the water tower;
2. Upon confirmation of the feasibility noted above, Council **DIRECT** the Deputy CAO/Director of Development Services, to negotiate a *License of Occupation Agreement* between the Town and Amherstburg Broadcasting with such agreement being consistent with agreements currently in place for other "for profit" businesses which use the water tower; and,
3. Council **DIRECT** Administration to bring a report back to Council on the final negotiated lease agreement for approval.

#### 2. **BACKGROUND:**

Amherstburg Broadcasting, wholly owned and effectively controlled by Martyn Adler, put forward an application to the Canadian Radio-television and Telecommunications Commission (CRTC) in 2020. The application was for a broadcasting licence to operate a low-power, English-language commercial FM radio station in Amherstburg, Ontario. The proposed station would operate at 107.9 MHz (channel 300LP) and be the first radio station operated in Amherstburg, Ontario.

In March of 2020, based on specifications provided by Amherstburg Broadcasting to the Town and OCWA, the Town approved, in principle, the location of the antenna and related equipment at the water tower. This approval in principle was required to allow the

submission to the CRTC to proceed. Amherstburg Broadcasting was advised by Administration that final approval for use of the site would need to be confirmed and a lease agreement, consistent with previously negotiated leases, would need to be in place as well.

On September 23, 2022 CRTC issued their decision, which reads in summary as follows:

*“The Commission **approves** an application by Amherstburg Broadcasting Corporation for a broadcasting licence to operate a low-power, English-language commercial FM radio station in Amherstburg, Ontario.”*

This report is to update Council on the status as well as to seek approval for next steps required to address and locate the radio antenna and related equipment at the water tower.

### **3. DISCUSSION:**

The CRTC summary of the decision can be found at the following link, <https://crtc.gc.ca/eng/archive/2022/2022-262.htm>. Some of the specific points related to the radio station's content are below for clarity and confirmation of the local content:

- 1. The applicant proposed to broadcast 126 hours of programming on the new station each broadcast week, of which 123.5 hours would be devoted to local programming. The remaining 2.5 hours would be dedicated to Canadian Press newscasts broadcast during late evening and overnight periods.*
- 2. Amherstburg Broadcasting proposed to operate the new station within a Soft Adult Contemporary music format. It stated that the station's mix of news, talk and music programming would target the entire population of the Town of Amherstburg. The applicant confirmed that it would adhere to the regulatory requirements relating to the broadcast of Canadian musical selections, set out in the Radio Regulations, 1986 (the Regulations).*
- 3. In addition, the applicant proposed to devote 1,202 minutes of programming per broadcast week to spoken word content. Of that amount, 176 minutes would be devoted to news. The applicant undertook to devote at least 80% of this programming to local news (i.e. news relating to the Town of Amherstburg) and indicated that the remainder would be evenly divided between regional and international news. The remaining 1,026 minutes would be devoted to a weekday talk show, community calendar items and sports, weather and surveillance programming.*
- 4. Amherstburg Broadcasting indicated that the proposed service would actively seek out regional musical artists with the intention of interviewing them, promoting them (on air, online, and at live venues) and broadcasting their musical selections where appropriate within the station's Soft Adult Contemporary format. The applicant further indicated that the proposed station would reflect local community issues via news and spoken word content, and would provide reporting and context to area news stories each day. It added that announcers would be encouraged to join local community groups and represent*

*the station at fundraisers, information evenings and special events within the station's coverage area*

In addition, the following requirement is noted by CRTC, providing for emergency alert messages, as is consistent with section 16 of the Regulations:

*As set out in section 16 of the Regulations, licensees have obligations relating to the broadcast of emergency alert messages received from the National Alert Aggregation and Dissemination System. The Commission reminds the licensee that compliance with section 16 of the Regulations will require that any alert broadcast decoders (e.g., ENDEC) used for the purposes of broadcasting emergency alert messages be installed and programmed to properly account for the authorized contours of the radio station. A confirmation of the installation and test of the alert broadcast decoder is to be provided to the Commission within 90 days of installation.*

Council should be aware that Mr. Adler has informed Administration that he intends to delegate before Council requesting use of the water tower location at no cost given the value the radio station will bring to the community. Notwithstanding the benefits to the community, the radio station is a 'for profit' business which leverages the listening audience for marketing and advertisement sales. Administration has advised Mr. Adler that given they are a 'for profit' business we are not able to recommend to Council an agreement which is below fair market value. To do so would be considered bonusing of their business as defined in the Municipal Act:

### **Assistance prohibited**

**106** (1) Despite any Act, a municipality shall not assist directly or indirectly any manufacturing business or other industrial or commercial enterprise through the granting of bonuses for that purpose. 2001, c. 25, s. 106 (1).

### **Same**

(2) Without limiting subsection (1), the municipality shall not grant assistance by,

- (a) giving or lending any property of the municipality, including money;
- (b) guaranteeing borrowing;
- (c) **leasing or selling any property of the municipality at below fair market value;** or
- (d) giving a total or partial exemption from any levy, charge or fee. 2001, c. 25, s. 106 (2).

The Town currently has *Lease of Occupancy Agreements* in place with three businesses, all of whom pay the same lease rate and provide for services to the community which were previously not available, specifically high-speed internet. To grant permission for Amherstburg Broadcasting to use the water tower at less than the rates applied in these agreements would be deemed bonusing subjecting the Town to litigation.

As noted in the report there has been preliminary work completed regarding the feasibility of the radio antenna and equipment at the water tower. A site visit was also conducted in November 2022 between Amherstburg Broadcasting and OCWA based on the CRTC's approval. As of the writing of this report, follow up emails and confirmation of final antenna and equipment is in process, however not complete. As such there is a recommendation to ensure both the Town and OCWA have reviewed and approved final design and equipment specifications prior to finalizing an agreement. The final approval will also ensure the system does not conflict with existing antennas, as is part of those agreements.

**4. RISK ANALYSIS:**

There is a risk that the final antenna and equipment may not be feasible to locate at the water tower. While this risk is deemed low, should it occur Administration will continue to work with Amherstburg Broadcasting on potential alternative solutions.

**5. FINANCIAL MATTERS:**

There are no financial costs associated with this report.

**6. CONSULTATIONS:**

Ontario Clean Water Agency (OCWA)

**7. CONCLUSION:**

Administration recommends the report and recommendations be approved allowing the work to proceed so that the radio station can be operational as soon as possible in 2023.



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Melissa Osborne  
**Deputy CAO / Director of Development Services**

## Report Approval Details

Document Title:	Lease Agreement for use of Water Tower for new radio station.docx
Attachments:	
Final Approval Date:	Dec 5, 2022

This report and all of its attachments were approved and signed as outlined below:

### No Signature found

Antonietta Giofu



Tracy Prince



Valerie Critchley



Kevin Fox