



MEMORANDUM

TO: Mayor and Members of Council

FROM: Catherine Conrad, City Solicitor and Acting Director of Human Resources
Shane Manson, Senior Manager, Revenue & Property Taxation

DATE: September 26, 2017

SUBJECT: Cancellation, Reduction or Refund of Taxes under Sections 357 and 358 of the *Municipal Act, 2001*

At the September 18, 2017 meeting of General Committee, the Committee referred the “Cancellation, Reduction or Refund of Taxes under Sections 357 and 358 of the *Municipal Act, 2001*” report to the September 26, 2017 Council meeting. Committee requested that staff provide Council with further background information on the tax appeal application for the Father Michael McGivney Catholic Academy property that is included within the report noted above. The Committee further requested that staff provide: a copy of the letter submitted by Mr. Longo on behalf of Mr. Skrobal; details on the amount being requested for refund and further clarification on subsection 110 (16) and section 358 of the *Municipal Act, 2001*.

Father Michael McGivney Catholic Academy is located at 5300 14th Ave. and is owned by the York Catholic District School Board (YCDSB). The YCDSB entered into an agreement with First Service Tennis Management Inc. (FSTM) to be the service provider of an Athletic Complex located on the Father McGivney School property. City staff were advised by YCDSB, that the executed agreement includes property tax provisions, which states the tenant “FSTM” is responsible for any property taxes associated with the sports dome facility. The sports dome facility was completed and the tenant (FSTM) commenced operation on October 3, 2015. The sports facility is known as the Markham Sports Dome (MSD).

Background

FSTM submitted an application under section 358 of the *Municipal Act, 2001* (*Attachment 1*) requesting a refund of property taxes paid, resulting from “a gross or manifest error in the preparation of the assessment roll that is clerical or factual in nature”, for the 2015, 2016 and 2017 taxation years. The applicant has further indicated that it was the intent of the YCDSB to exempt the Facility at all times and have requested that the City of Markham cancel and refund all taxes paid for 2015 and 2016, and the period of 2017 until passage of the resolution by the YCDSB providing for an exemption on March 28th, 2017.

April 2016 – September 2016

Legal counsel for FSTM indicated in their May 23, 2017 letter (*Attachment 1*) that the issue of the tax exemption status of the MSD facility was first identified in April 1, 2016, as a result of MPAC assessing a similar type of dome in the City of Toronto.

Senior staff at the Municipal Property Assessment Corporation (MPAC) were advised in mid-2016 that the YCDSB was in the process of doing all necessary things that are preconditions to pass a resolution to authorize an exemption for a School Capital Facility (SCF), including conversion of the existing Shared Use Agreement to a lease, and obtaining approval from the Minister of Education.

On June 29, 2016, the YSDCB sent a letter seeking the approval from the Minister of Education. The Minister approved the request to grant an exemption on September 12, 2016.

November 2016 – January 17, 2017

On or about November 3, 2016, approximately seven weeks after the Minister's approval, MPAC issued a Property Assessment Change Notice (PACN) to both the property owner and to the City of Markham. MPAC assessed and classified the MSD facility as a commercial property retroactive to Oct 3, 2015. If YCDSB disagreed with the valuation or classification of the PACN issued from MPAC, they had two options to appeal.

1. File a Request for Reconsideration (RFR) with the MPAC within 120 days of the PACN notice
 - YCDSB have indicated that an RFR was filed with MPAC for the PACN within the stipulated time. Staff do not have access to MPAC's response to the RFR.
2. Appeal to the Assessment Review Board (ARB) directly
 - File an appeal directly to the ARB (for non-residential properties only), within 90 days from the notice date of the PACN.
 - City Staff are not aware of any appeal filed with the ARB for the PACN

January 17, 2017

As a result of the PACN issued by MPAC, the City calculated and mailed the 2015 and 2016 property tax bill in the amount of \$87,342 on January 17, 2017

January 25, 2017

Legal counsel for FSTM contacted City Staff to discuss the property tax issue.

March 28, 2017

The Board of Trustees for the YCDSB passed a resolution (*Attachment 2*) pursuant to section 110(12) of the *Municipal Act, 2001* designating the property occupied by the Dome and Clubhouse as a School Capital Facility (SCF) effective March 28th, 2017, which was six and half (6 ½) months after the Minister of Education approved the YCDSB's request to grant an exemption on September 12, 2016.

March 29, 2017

City Staff received a letter (*Attachment 3*) from the YCDSB's Director of Education advising the City of the SCF designation on March 28, 2017 and further indicated that legal counsel for FSTM, with the Board's consent, will be filing an application pursuant to section 358 of the *Municipal Act, 2001* for the cancellation of all taxes levied in accordance with the PACN's.

May 23, 2017

FSTM submitted an application under section 358 of the *Municipal Act, 2001* (*Attachment 1*) to the City of Markham, requesting a refund of property taxes resulting from "a gross or manifest error in the preparation of the assessment roll that is factual in nature" for the 2015, 2016 and 2017 taxation years.

June 27, 2017

City Staff provided a copy of the tax application (*Attachment 1*) to MPAC for their review and recommendation.

August 16, 2017

MPAC provided the City of Markham with the following recommendation (*Attachment 4*) for the 2015, 2016 and 2017 taxation years for the Father Michael McGivney Catholic Academy property as follows;

- 2015 – SCF passed on March 28th, 2017. “**No error in fact**” for the issuance of Commercial Property Assessment Change Notice (PACN) for the area leased to First Tennis Management Inc. during the 2015 taxation year
- 2016 - SCF passed on March 28th, 2017. “**No error in fact**” for the issuance of PACN) for the area leased to First Tennis Management Inc. during the 2016 taxation year
- 2017 – Pursuant to section 110 (12) of the Municipal Act, 2001, the portion of the property occupied by the dome and clubhouse and leased to First Tennis Management Inc. is exempt as a SCF effective March 28, 2017 forward.
 - Jan 1, 2017 – Mar 27, 2017: MPAC has not identified any error in CVA or Classification
 - Mar 28, 2017 – Dec 31, 2017: Property class to be changed from Commercial to Exempt pursuant to the SCF designation

September 18, 2017

The MSD facility was designated an exempt School Capital Facility on March 28, 2017, and is therefore, only eligible for a tax exemption from March 28, 2017 to December 31, 2017, in accordance with subsection 110(16). This results in a tax adjustment of \$58,299.40, with the City share being \$7,736.11 and was included within the September 18, 2017 Staff report to Committee.

As a result of MPAC’s recommendation, the 2015 and 2016 taxation years, and the period of 2017 prior to passage of the exemption, are not eligible for a tax exemption as the facility was only designated a SCF on March 28, 2017. As noted earlier, FSTM is requesting the following tax amounts be refunded;

- 2015: Oct 3, 2015 to Dec 31, 2015: Tax amount of \$17,061.53
- 2016: Jan 1, 2016 to Dec 31, 2016: Tax amount of \$70,280.71
- 2017: Jan 1, 2017 – Mar 27, 2017: Tax amount of \$17,061.53
 - **Total Taxes: Oct 3, 2015 – Mar 27, 2017 = \$105,312.67**

Statutory Authority for the Application

Subsection 358(1) permits an application for a refund for any overcharge caused by “a gross or manifest error in the preparation of the assessment roll that is **clerical or factual in nature**, including the transposition of figures, a typographical error or similar errors, **but not an error in judgement in assessing the property.**”

The legislation provides in subsection 358(7) that “An application shall not be heard by council under subsection (9) unless the assessment corporation confirms an error in the assessment referred to in the application”. MPAC’s position is that there have been no errors in the 2015 and 2016 assessments and that there is “No change in Assessment as a result of this Tax Application” for those years.

Summary

Pursuant to the *Municipal Act, 2001*, the 2015, 2016 and the period of 2017 prior to passage of the exemption, are not eligible for a tax exemption as no clerical or factual error in the assessment has occurred. Further, Section 110(16) of the *Municipal Act, 2001*, clearly states that a resolution passed under subsection 110(12) shall specify an effective date which shall be the date of passing of the resolution or a **later** date. The facility was designated a School Capital Facility exemption on March 28, 2017, and as such is eligible for a tax exemption from that day forward only, as no later date was specified in the resolution, which results in a tax adjustment of \$58,299.40; with the City share being \$7,736.11.

Conclusion

There is no statutory authority for Council to approve the application for a refund of taxes for 2015 and 2016 and part of 2017, under section 358 of the Municipal Act for a gross or manifest error in the preparation of the assessment roll that is clerical or factual in nature, as:

- There was no factual or clerical error. It may be argued that there was an error of judgment, but the legislation specifically excludes errors in judgment as a ground for appeal and refund.
- MPAC has confirmed there was no error and that there is no change in assessment
- The designation as a SCF occurred on March 28, 2017 and the legislation prohibits backdating of the exemption as a SCF.

The only refund FSTM is entitled to, is for the period after designation as an exempt SCF, as noted above.

Attachment 1



The Brooke Building
152 King Street East
Second Floor
Toronto, Ontario
M5A 1J3

Tel: (416) 238-2221
Fax: (647) 689-2376

www.walkerwestlongo.ca

May 23, 2017

Via email

Joel Lustig
Treasurer, City of Markham
Anthony Roman Centre
101 Town Centre Blvd.
City of Markham, ON, L3R 9W3
905-477-7000 ext. 5715
jlustig@markham.ca

Dear Sir:

Re: Father McGivney School
5300 14th Ave., Markham, ON L3S 3K8 ("Subject Property")
Roll No.: 1936-030-213-36600-0000
Application Pursuant to S. 358 of the Municipal Act, 2001

We represent First Service Tennis Management Inc. ("FSTM"), the tenant of the Subject Property. FSTM is the service provider of the Athletic Complex ("Facility") located at the Subject Property. The Facility is known as the Markham Sports Dome (MSD). The property owner, York Catholic District School Board ("YCDSB") benefits from these services and has therefore authorized FSTM to file this application.

We note that the Markham Soccer Club and the Unionville-Milliken Soccer Club are part of the launch of this project and, in partnership with the City of Markham, and in recognition of the City's support, receive significantly discounted field rental rates at the MSD.

This application is made pursuant to Section 358(1) of the Municipal Act, 2001 S.O. 2001, c. 25, for a refund of property taxes resulting from a gross or manifest error in the preparation of the assessment roll that is factual in nature. This application relates to the 2015, 2016 and 2017 taxation years.

On March 28, 2017, the YCDSB adopted a resolution that granted the Facility exemption from all municipal and school property taxes as of the passing of the exemption resolution by the YCDSB. YCDSB's grant of the exemption to the school capital facility was made pursuant to Section 110(12) of the *Municipal Act*, 2001 and Section 8 of *O. Reg. 603/06*.

The issue of the tax exemption status of the Facility was first identified in April 1, 2016, and subsequently steps were taken to determine an appropriate method of addressing the issue. The YCDSB notified MPAC of its intention to pass the exemption in the summer of 2016 and sent a letter seeking the requisite approval of the Minister of Education on June 29, 2016. The Minister approved the request to grant an exemption on September 12, 2016. Between that

date and enactment of the exemption, consideration was given to Committee reports and other variables relevant to the decision to pass the required resolution. MPAC was also advised in the summer of 2016 that the YCDSB intended to exempt the Facility. Notwithstanding notice to MPAC of YCDSB's intention to enact a resolution to exempt the school capital facility, in October, 2016, Property Assessment Change Notices (PACNs) were issued by MPAC.

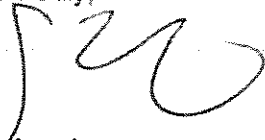
The omitted assessments were applied to a property that has been declared exempt. Its exempt status was established because of its use and benefit to the school and youth in the community. The benefit and use of the Facility has not changed since the Facility was first constructed therefore these retroactive, taxable assessments constitute a gross and manifest error.

As there was never any intention that taxes be payable as a result of FSTM's provision of services at the Facility, and the YCDSB intended to exempt the Facility, at all times, the assessment issued by MPAC is a factual error that has required the imposition of taxes that should never have been levied.

In light of the above, we request the cancellation and refund of all taxes paid on account of the Subject Property for 2015, 2016 and the period of 2017 until passage of the exemption on March 28, 2017.

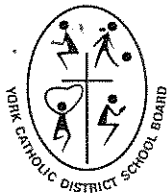
Thank you for your consideration of this application. Should you have any questions or require further information or clarification please contact the undersigned.

Yours truly,



Stephen Longo
Walker West Longo LLP

- c. Shane Manson,
Senior Manager, Revenue & Property Tax
City of Markham
- c. Dan McCowell,
YorkCatholic District School Board



Attachment 2

York Catholic District School Board

Catholic Education Centre, 320 Bloomington Road West, Aurora, Ontario L4G 0M1
Tel: 905-713-1211, 416-221-5051, 1-800-363-2711
Fax: 905-713-1272 • www.ycdsb.ca

July 26, 2017

DELIVERED VIA EMAIL AND COURIER TO: Rose.McLean@mpac.ca

Rose McLean
President and Chief Administrative Officer, MPAC
Head Office
1340 Pickering Parkway, Suite 101
Pickering, ON L1V 0C4

Dear Ms. McLean:

Re: Approval of School Capital Facility Designation for Father Michael McGivney Sports Dome, 5300 14th Avenue, Markham, Roll # 1936 030 213 36600

This letter is to advise you that the Board of Trustees ("**Board**") for the York Catholic District School Board ("**YCDSB**") passed a resolution, pursuant to section 110 (12) of the *Municipal Act*, to declare exempt from taxes levied for municipal and school purposes the lands leased to the operator, First Service Tennis Management Inc., on which the School Capital Facilities, namely the clubhouse and sports dome at Father McGivney Catholic Academy located at 5300 14th Avenue, Markham are located.

For your records, enclosed please find a copy of the Board minutes dated March 28, 2017.

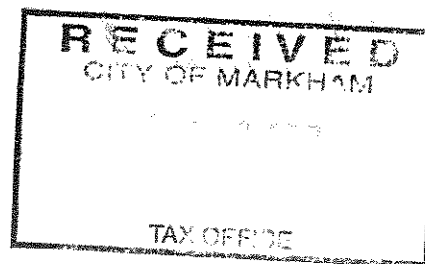
Should you have any questions, please do not hesitate to contact me.

Yours truly,

YORK CATHOLIC DISTRICT SCHOOL BOARD

Per:

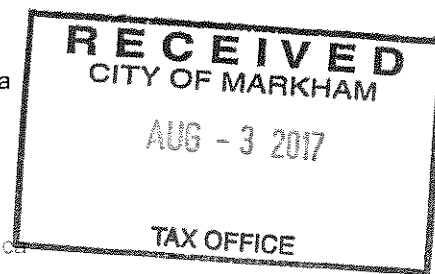
Patricia Preston
Director of Education and
Secretary of the Board



cc. City of Markham – Kimberley Kitteringham- Via Email and courier to: kkitteringham@markham.ca
Markham Civic Centre,
101 Town Centre Boulevard,
Markham, Ontario, L3R 9W3

City of Markham - Shane Manson – Via Email and courier to: smanson@markham.ca
Senior Manager Revenue and Property Taxation
Markham Civic Centre,
101 Town Centre Boulevard,
Markham, Ontario, L3R 9W3

Kathryn Wallace - York Region District School Board - Via Email to: director@yrdsb.ca
Andre Blais - Centre Sud (CSDCCS) - Via Email to: ablais@csdccc.edu.on.ca
Martin Bertrand - Conseil scolaire Viamonde - Via Email to: bertrandm@csvgiamonde.ca



Tom Pechkovsky - YCDSB
Nancy Avison – Miller Thomson LLP
Stephen Longo – Walker West Long LLP

c) APPROVAL OF REPORT NO. 2017:01 CORPORATE SERVICES COMMITTEE

Vice-Chair of the Committee, Ann Stong presented, for approval, the Report No. 2017:01 of the Corporate Services Committee meeting held on March 7, 2017.

MOTION: Stong/Crowe

THAT the Terms of Reference be reviewed and approved.

Community Planning & Partnership:

THAT the Board approve the list of schools identified for circulation in accordance with Policy 704 *Community Planning and Partnership* (CPP).

THAT the Board approve the list of Co-Build projects identified for circulation in accordance with Policy 704 *Community Planning and Partnership* (CPP)

Boundary Changes (Holy Spirit CES and Our Lady of the Annunciation CES)

THAT the West Gormley Development area be redirected from Holy Spirit CES to Our Lady of the Annunciation CES, effective immediately.

Fr. Michael McGivney CA Dome Lease

THAT the lease in favour of First Service Tennis Management Inc., over the lands upon which the athletic complex has been constructed and more or less in the area shown hatched on the plan attached hereto as Exhibit A, (the "leased Lands" is approved and further, entering in to such Lease is a reasonable step in a plan to provide accommodation for pupils on the site, all as contemplated in Section 194 (3) (b) of the *Education Act*;

THAT pursuant to Section 110 (12) of the *Municipal Act*, the Leased Lands and the Athletic Complex constructed thereon, are thereby exempt from all of the taxes levied for municipal or school purposes effective as of the date of the passing or adoption of this Resolution.

- MOTION CARRIED —

d) ONTARIO CATHOLIC SCHOOL TRUSTEES' ASSOCIATION 2017 AGM EXPENDITURES

Board Chair, Carol Cotton, presented a summary of the projected expenditures by York Catholic DSB for cohosting the Ontario Catholic School Trustees' Association – 2017 AGM occurring in April 2017. York Catholic DSB has five schools invited to showcase their talent by participating in the Opening Ceremony and Liturgy. This undertaking will anticipate a projected cost of \$5,000.

MOTION: Stong/Ciaravella

THAT the Board of Trustees approve the reduction of each Trustees 2017 Discretionary Budget from \$5000 to \$4500 to offset the expenses as indicated.

THAT a final report be brought back to the Board of Trustees after the OCSTA 2017 AGM.

- MOTION CARRIED —

e) APPROVAL OF REPORT NO. 2017:02 YORK CATHOLIC PARENT INVOLVEMENT COMMITTEE

This Report was deferred to the Board Meeting of April 25, 2017.

f) RESPONSE TO PARENT DELEGATION, DECEMBER 20TH BOARD MEETING

Further to the December 20th Regular Board Meeting, a Delegation was presented from Mr. Wright concerning the decisions in the South Woodbridge East PAR to move the French Immersion Program from Immaculate Conception CES to St. John Bosco. The delegation's concern was specific to the current JK siblings of French Immersion students. A Report to Board was provided at the December 20th Board Meeting regarding the Immaculate Conception French Immersion Program transition process to St. John Bosco. Once the motion was approved, the Board of Trustees directed staff to investigate what, if any, opportunities exist to minimize the loss of instructional time and report back to the Board with an update:

Staff reviewed Mr. Wright's proposal in an effort to align with the above Board motion, however it would not be possible to proceed without impact on classroom instruction.

Therefore, it is recommended that the Board of Trustees rescind the motion approved at the Regular Meeting of the Board held on December 20th:



Attachment 3

York Catholic District School Board

Catholic Education Centre, 320 Bloomington Road West, Aurora, Ontario L4G 0M1
Tel: 905-713-1211, 416-221-5051, 1-800-363-2711
Fax: 905-713-1272 • www.ycdsb.ca

March 29th, 2017

Shane Manson
Senior Manager, Revenue and Property Tax
Anthony Roman Centre
101 Town Centre Blvd.
City of Markham, ON, L3R 9W3

Dear Sir:

Re: Father McGivney School
5300 14th Avenue Markham
19-36-030-213-36600-0000

On March 28, the York Catholic District School Board (YCDSB) enacted a school capital facility exemption (SCF) by-law in respect of premises operated as Father McGivney School and municipally known as 5300 14th Avenue. The SCF exemption has been passed in accordance with s. 110 (12) of the Municipal Act and O. Reg. 603(6). In accordance with the legislation the exemption is effective as of the date of passage.

Last fall, MPAC issued Property Assessment Change Notices (PACNs) applying a taxable assessment to the domed sports facilities that are the subject of the exemption passed by the YCDSB. These assessments are retroactive to the fall of 2015. From the Board's perspective the imposition of taxable assessments is unfortunate as it was always the intention and understanding of the Board that the facilities would remain exempt. The YCDSB, through legal counsel, advised senior staff at MPAC in mid-2016 that the Board was in the process of doing the necessary things that are preconditions to enacting an SCF exemption (including conversion of the existing Shared Use Agreement to a lease, and obtaining approval from the Minister of Education). Once the necessary prerequisites were achieved, the Board enacted the exemption as it always intended to do.

Requests for Reconsideration (RFRs) have been filed with MPAC for the PACNs. However, we understand that MPAC has so far expressed a reluctance to cancel the taxable PACNs and restore the exempt status of the property for the period prior to March 28, 2017. Therefore, legal counsel for the operator will be filing with the City, with the Board's consent, an application pursuant to s. 358 of the Municipal Act for the cancellation of all taxes levied in accordance with the PRANs. We are hopeful that the City will consider and approve the application so that the taxes in question may be cancelled.

We thank the City for its consideration of this matter.

Regards,

A handwritten signature in black ink that reads "Patricia Preston".

Patricia Preston,
Director of Education & Secretary of the Board

c.c.: Dan McCowell, Coordinating Manager of Planning & Operations
Nancy Avison, Miller Thomson LLP
Stephen Longo, Walker West Longo LLP

Attachment 4

Application made under Sec 357/358/359 of the Municipal Act, 2001

MPAC's RESPONSE

Owner name(s)	YORK CATHOLIC DISTRICT SCHOOL BOARD
Roll number	1936-030-213-36600-0000
Property location	5300 14TH AVE
Property description	MARKHAM CON 7 PT LOT 6 RP 65R14955 PARTS 1 TO 3
Municipality/Local taxing authority	MARKHAM CITY
Application number	4556
Application reason	Became Exempt
Received date	June 27, 2017
Claim relief period	From: January 01, 2015 - To: December 31, 2015
Taxation year	2015

No change in Assessment as a result of this Tax Application.

MPAC Remarks

Resolution for School Capital Facility passed on March 28, 2017. No error in fact for the issuance of COM XT OMT for area leased to First Tennis Management Inc during 2015-2016 tax year.

MPAC Representative:
Date:

Lawrence Luk
August 14, 2017

Application made under Sec 357/358/359 of the Municipal Act, 2001

MPAC's RESPONSE

Owner name(s)	YORK CATHOLIC DISTRICT SCHOOL BOARD
Roll number	1936-030-213-36600-0000
Property location	5300 14TH AVE
Property description	MARKHAM CON 7 PT LOT 6 RP 65R14955 PARTS 1 TO 3
Municipality/Local taxing authority	MARKHAM CITY
Application number	
Application reason	Became Exempt
Received date	June 27, 2017
Claim relief period	From: January 01, 2016 - To: December 31, 2016
Taxation year	2016

No change in Assessment as a result of this Tax Application.

MPAC Remarks

Resolution for School Capital Facility passed on March 28, 2017. No error in fact for the issuance of COM XT OMT for area leased to First Tennis Management Inc during 2015-2016 tax year.

MPAC Representative:
Date:

Lawrence Luk
August 14, 2017

Application made under Sec 357/358/359 of the Municipal Act, 2001

MPAC's RESPONSE

Owner name(s) YORK CATHOLIC DISTRICT SCHOOL BOARD
Roll number 1936-030-213-36600-0000
Property location 5300 14TH AVE
Property description MARKHAM CON 7 PT LOT 6 RP 65R14955 PARTS 1 TO 3
Municipality/Local taxing authority MARKHAM CITY

Application number 4558
Application reason Became Exempt
Received date June 27, 2017
Claim relief period From: March 28, 2017 - To: December 31, 2017
Taxation year 2017

Current Property Assessment

Property Classification	2012	2016	Phase-In Assessment for Taxation Years			
	Assessed Value	Assessed Value	2017	2018	2019	2020
OWNR COM X T	4,200,000	5,939,000	4,634,750	5,069,500	5,504,250	5,939,000
OWNR EDN E -	17,939,000	25,367,000	19,796,000	21,653,000	23,510,000	25,367,000
Total	22,139,000	31,306,000	24,430,750	26,722,500	29,014,250	31,306,000

Change to the Property Assessment

Property Classification	2012	2016	Phase-In Assessment for Taxation Years			
	Assessed Value	Assessed Value	2017	2018	2019	2020
OWNR EDN E -	17,939,000	25,367,000	19,796,000	21,653,000	23,510,000	25,367,000
OWNR OE E -	4,199,934	5,939,000	4,634,701	5,069,467	5,504,234	5,939,000
Total	22,138,934	31,306,000	24,430,701	26,722,467	29,014,234	31,306,000

MPAC Remarks

For 2017 tax year, pursuant to section 110(12) of the Municipal Act, 2001, the portion of the property occupied by the Dome and clubhouse and leased to First Tennis Management INC. is exempt as a school capital facility. The resolution passed by the YCDSB exempts this portion of the property from municipal and school taxes effective March 28, 2017. The tax liability of the property is going from EDN E COM XT to EDN E and OE E effective, March 28, 2017.

MPAC Representative:
Date:

Lawrence Luk
August 16, 2017