

STAFF REPORT: Financial Information Services

REPORT TO: Council
MEETING DATE: September 14, 2009
REPORT NO.: FIS.09.45
SUBJECT: Blue Mountain Village Association Change in Tax Classification
PREPARED BY: Ruth Prince, Manager of Revenue
John Metras, Town Solicitor

A. Recommendations

THAT Council receive Staff Report FIS.09.45 "Blue Mountain Village Association Change in Tax Classification";

AND THAT Council deny the request for cancellation, reduction and refund of property tax pursuant to section 357(1)(a) of the *Municipal Act, 2001*.

B. Background

On April 7, 2009, The Blue Mountains received correspondence from Miller Thomson, Barristers & Solicitors who are representing Blue Mountain Village Association. The Blue Mountain Village Association (BMVA) has applied for a change in tax classification under Section 357 of the *Municipal Act, 2001*. This section of the act pertains to the "cancellation, reduction and refund of taxes". The BMVA seeks cancellation, reduction and refund of tax as a result of a Change Event within the meaning of section 357(1)(a) of the *Municipal Act, 2001*. The Change in Event is the sale of the lands from Intrawest ULC to the BMVA. It is the BMVA's position that the lands which form The Plunge and are part of the Transfer/Deed of Land are owned and occupied by a not-for-profit service organization, a non-profit private club, a non-profit cultural organization or a non-profit recreation sports club other than land used as a golf course or ski resort within the meaning of O.Reg.282/98 section 3(2)(iv). Therefore, they feel the lands are properly classified for purposes of O.Reg.282/98 within the Residential Property Class.

In their application for change of tax class, the BMVA states that it is a "not-for-profit which, as a result of various agreements, has direct responsibility for The Plunge as a public amenity in the nature of an indoor/outdoor swimming pool assessable to guests and visitors to The Blue Mountains as well as the general public".

Section 357 (5) of the *Municipal Act* states that on or before September 30 of the year following the year in respect of which the application is made, council shall,

- (a) hold a meeting at which the applicants may make representations to council;
 - (b) notify the applicants of the meeting by mail sent at least 14 days before the meeting;
- and
- (c) make a decision

The 2008 assessment for The Plunge is \$1,922,000 (2009 is \$2,176,000) under commercial taxable. When the building permit was taken out for The Plunge in March 2005, the value of the permit according to the BMVA was \$4.5 million. The Plunge was valued by MPAC in the summer of 2006. MPAC felt that as part of a provincial grant and agreements the Town and the Blue Mountain Village have allowing the Town's population to use the facility at a discounted rate, the use should be noted as commercial.

In consultation with Dennis Doyle from Municipal Tax Services and the Town's Solicitor, staff is of the opinion that the Blue Mountain Village Association does not meet the meaning of O.Reg.282/98 section 3(2)(iv) as it is neither a "non-profit service organization, a non-profit private club, a non-profit cultural organization nor a non-profit recreational sports club."

C. The Blue Mountains' Strategic Plan

Providing a strong, well managed municipal government by developing clear and effective policies.

D. Environmental Impacts

None

E. Budget Impact

	2008 Assessed Value	2008 Town's Share	2008 County of Grey's Share	2008 Education's Share	2008 Total Property Tax
Residential	1,922,000	\$7,190	\$ 8,883	\$ 5,074	\$21,147
Commercial	1,922,000	\$9,397	\$11,609	\$35,541	\$56,547

F. Attached

1. Letter from Miller Thomson
2. Section 357 Municipal Act, 2001
3. Ontario Regulation 282/98

Respectfully submitted,

Ruth Prince, Manager of Revenue

John Metras, Town Solicitor

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Town of The Blue Mountains
Box 310
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Attention: The Treasurer

Dear Sir/Madam:

**Re: Application Pursuant to Section 357 of the *Municipal Act*, 2001 for Cancellation,
Reduction and Refund of Taxes
Roll No. 42-42-000-020-00990000**

We are counsel to Blue Mountain Village Association ("BMVA").

On March 11, 2008 a Transfer/Deed of Land was registered with respect to the following property:

Parts of Lots 6, 10 and 15, Plan 1065, Town of The Blue Mountains, County of Grey designated as Parts 18, 19, 20, 21, 22 and 23 Plan 16R8762 and Parts 7, 8, 9, 10 and 12, Plan 16R-8744, Part 12, Plan 16R-9223 and Part 1 Plan 16R-9266.

The lands described above include an Aquatic Centre facility referred to as The Plunge.

Application is made at this time by BMVA for cancellation, reduction and refund of property tax pursuant to section 357(1)(a) of the *Municipal Act*, 2001.

Basis for Claim

As a result of the Transfer/Deed of Land on March 11, 2008, a copy of which is attached for your reference, lands were transferred from Intrawest ULC to BMVA, including the Aquatic Centre referred to as The Plunge.

Prior to the date of the Transfer, the lands in question which comprise The Plunge were classified for tax purposes as Commercial (CT).

BMVA is a not-for-profit organization which, as a result of various agreements, has direct responsibility for The Plunge as a public amenity in the nature of an indoor/outdoor swimming pool assessable to guests and visitors to the Blue Mountain Village as well as the general public.

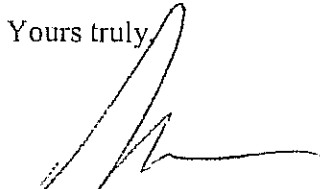
BMVA seeks cancellation, reduction and refund of tax as a result of a Change Event within the meaning of section 357(1)(a) of the *Municipal Act*, 2001. It is the position of BMVA that the lands which form The Plunge and that are part of the Transfer/Deed of Land are lands owned and occupied by a not-for-profit service organization, a non-profit private club, a non-profit cultural organization or a non-profit recreation sports club other than land used as a golf course or ski resort within the meaning of O.Reg.282/98 section 3(2)(iv). The lands therefore are properly classified for purposes of O.Reg.282/98 within the Residential Property Class.

The Residential Property Tax Class is a Class that has a lower tax ratio for taxation than the Class portioned to the property was in before the Change Event.

We look forward to timely consideration by the Town of The Blue Mountains with respect to this Application.

If any further information is required please contact this writer.

Yours truly



Peter A. Milligan
Associate Counsel
PAM/ald

Enclosure (1)

cc. The Blue Mountain Village Association, Att: Robert Comish, Vice-Chair
b.c. Altus Group, Att: Scott Niepage

Cancellation, reduction, refund of taxes

357. (1) Upon application to the treasurer of a local municipality made in accordance with this section, the local municipality may cancel, reduce or refund all or part of taxes levied on land in the year in respect of which the application is made if,

- (a) as a result of a change event, as defined in clause (a) of the definition of “change event” in subsection 34 (2.2) of the *Assessment Act*, during the taxation year, the property or portion of the property is eligible to be reclassified in a different class of real property, as defined in regulations made under that Act, and that class has a lower tax ratio for the taxation year than the class the property or portion of the property is in before the change event, and no supplementary assessment is made in respect of the change event under subsection 34 (2) of the *Assessment Act*;
- (b) the land has become vacant land or excess land during the year or during the preceding year after the return of the assessment roll for the preceding year;
- (c) the land has become exempt from taxation during the year or during the preceding year after the return of the assessment roll for the preceding year;
- (d) during the year or during the preceding year after the return of the assessment roll, a building on the land,
 - (i) was razed by fire, demolition or otherwise, or
 - (ii) was damaged by fire, demolition or otherwise so as to render it substantially unusable for the purposes for which it was used immediately prior to the damage;
- (d.1) the applicant is unable to pay taxes because of sickness or extreme poverty;
- (e) a mobile unit on the land was removed during the year or during the preceding year after the return of the assessment roll for the preceding year;
- (f) a person was overcharged due to a gross or manifest error that is clerical or factual in nature, including the transposition of figures, a typographical error or similar error but not an error in judgment in assessing the property; or
- (g) repairs or renovations to the land prevented the normal use of the land for a period of at least three months during the year. 2001, c. 25, s. 357 (1); 2002, c. 17, Sched. A, s. 62; 2002, c. 22, s. 158; 2004, c. 31, Sched. 26, s. 6.

Exception, vacant unit rebate

(1.1) For 2007 and subsequent taxation years, no cancellation, reduction or refund of taxes is permitted under clause (1) (g) in respect of land that is eligible property under section 364. 2007, c. 7, Sched. 26, s. 1.

Application

- (2) An application may only be made by the owner of the land or by another person who,
 - (a) has an interest in the land as shown on the records of the appropriate land registry office and the sheriff's office;
 - (b) is a tenant, occupant or other person in possession of the land; or
 - (c) is the spouse of the owner or other person described in clause (a) or (b). 2001, c. 25, s. 357 (2); 2005, c. 5, s. 44 (6).

Timing

(3) An application under this section must be filed with the treasurer on or before February 28 of the year following the year in respect of which the application is made. 2001, c. 25, s. 357 (3).

Application by treasurer

(4) Despite subsections (2) and (3), an application under clause (1) (f) or (g) may be made by the treasurer of the local municipality on or before April 30 of the year following the year in respect of which the application is made if no application is made by a person described in subsection (2) within the deadline set out in subsection (3). 2001, c. 25, s. 357 (4).

Meeting

(5) On or before September 30 of the year following the year in respect of which the application is made, council shall,

- (a) hold a meeting at which the applicants may make representations to council;

- (b) notify the applicants of the meeting by mail sent at least 14 days before the meeting; and
- (c) make its decision. 2001, c. 25, s. 357 (5).

Notice

(6) Within 14 days after making its decision, council shall notify the applicants of the decision and specify the last day for appealing the decision. 2001, c. 25, s. 357 (6).

Appeal

(7) Within 35 days after council makes its decision, an applicant may appeal the decision of council to the Assessment Review Board by filing a notice of appeal with the registrar of the board. 2001, c. 25, s. 357 (7).

Where no decision

(8) If council fails to make its decision by September 30 of the year following the year in respect of which the application is made, an applicant may appeal to the Assessment Review Board by October 21 of the year by filing a notice of appeal with the registrar of the board and the appeal shall be a new hearing. 2001, c. 25, s. 357 (8).

Notice

(9) The Assessment Review Board shall notify the appellants and the treasurer of the municipality of the hearing by mail sent at least 14 days before the hearing. 2001, c. 25, s. 357 (9).

Decision

(10) The Assessment Review Board shall hear the appeal and may make any decision that council could have made. 2001, c. 25, s. 357 (10).

Delegation of power

(11) The council may pass a by-law authorizing the Assessment Review Board to exercise the powers and functions of the council under subsections (1) and (5) with respect to applications made under subsection (1) and subsections (6), (7), (8), (9) and (10) do not apply to these applications. 2001, c. 25, s. 357 (11).

Copy to be provided

(12) The council shall forward to the registrar of the Assessment Review Board and to the assessment corporation a certified copy of any by-law passed under subsection (11) and a copy of every application received to which the by-law applies. 2001, c. 25, s. 357 (12).

Taxes restored

(13) The council or the Assessment Review Board may restore to the tax roll all or any part of the taxes for a year that it reduced, cancelled or refunded as a result of an application in respect of a building under clause (1) (d) if it is satisfied that during the year the building has been reconstructed or repaired and is capable of being used for the purposes for which it was used immediately before it was destroyed or damaged. 2001, c. 25, s. 357 (13).

Restriction

- (14) A decision cannot be made under subsection (13) unless,
 - (a) it is made on or before February 28 in the year following the year in respect of which the application is made; and
 - (b) every person who, according to the tax roll, would be liable for the restored taxes, is given an opportunity to make representations to the council or board, as the case may be. 2001, c. 25, s. 357 (14).

Appeal

(15) A decision of council under subsection (13) may be appealed to the Assessment Review Board and subsections (6), (7), (9) and (10) apply with necessary modifications to the appeal. 2001, c. 25, s. 357 (15).

Restored taxes payable

- (16) Taxes restored to the tax roll for a year, after a tax bill is sent to the person liable for the taxes, are payable,
 - (a) as part of the next instalment of taxes payable in that year; or
 - (b) if no instalment remains payable in that year or the tax bill is not sent until the following year, on the 22nd day after the tax bill is sent. 2001, c. 25, s. 357 (16).

Decision final

- (17) A decision of the Assessment Review Board is final. 2001, c. 25, s. 357 (17).

Notice of decision

(18) The council and the Assessment Review Board shall forward a copy of their decisions under this section to the assessment corporation but failure to comply with this requirement does not invalidate the proceedings taken under this section. 2001, c. 25, s. 357 (18).

Note: On a day to be named by proclamation of the Lieutenant Governor, the Act is amended by the Statutes of Ontario, 2002, chapter 33, section 145 by adding the following section:

Tax relief re: cemeteries

357.1 (1) The purpose of this section is to provide tax relief to a cemetery owner if the cemetery's care and maintenance fund is not adequately funded. 2002, c. 33, s. 145.

Application for cancellation, reduction, refund

(2) If a cemetery is located in a local municipality and the cemetery owner has a deficiency in one or more of its care and maintenance funds as prescribed, the cemetery owner may apply to the treasurer of the local municipality for the cancellation, reduction or refund of all or part of the taxes assessed or levied against the part of the land that is eligible land in the year in respect of which the application is made. 2002, c. 33, s. 145.

Timing of application

(3) An application under subsection (2) shall be delivered to the local municipality on or before February 28 of the year following the taxation year in respect of which the notice is given or such later date as the Minister of Finance may prescribe. 2002, c. 33, s. 145.

Registrar's notice

(4) The application under subsection (2) shall include a notice from the registrar prepared under section 54 of the *Funeral, Burial and Cremation Services Act, 2002*, which notice shall,

- (a) confirm whether the owner has a deficiency in its care and maintenance fund; and
- (b) direct the local municipality to cancel the taxes assessed or levied on the eligible land or to reduce or refund the taxes by the amount specified in the notice. 2002, c. 33, s. 145.

Decision by registrar

(5) The decision made by the registrar as to whether the taxes assessed or levied against the eligible land should be cancelled, reduced or refunded and as to the amount of any reduction or refund of the taxes assessed or levied against the eligible land shall be made in accordance with the regulations, but in no case shall the amount of a refund exceed the amount of the taxes assessed or levied in respect of the eligible land in the taxation year in respect of which the application is made. 2002, c. 33, s. 145.

Compliance by municipality

(6) Upon receipt of a notice under subsection (4), the local municipality shall carry out the direction contained in the notice. 2002, c. 33, s. 145.

Same

(7) The local municipality shall issue any refund to which a cemetery owner is entitled under this Act within 120 days after the last day on which the owner is entitled to make an application under subsection (3). 2002, c. 33, s. 145.

Regulations

- (8) The Minister of Finance may make regulations,
- (a) defining deficiency for the purposes of this section;
 - (b) prescribing the cemetery that has a deficiency in its care and maintenance fund for the purposes of subsection (2) and respecting the manner in which the owner of one or more cemeteries may calculate deficiencies in his or her care and maintenance funds;
 - (c) prescribing a date for the purposes of subsection (3);
 - (d) governing the decision made by the registrar as to whether to cancel the taxes assessed or levied against the eligible land or as to the amount of the reduction or refund of the taxes assessed or levied against the eligible land and respecting the determination as to the amount of the reduction or refund. 2002, c. 33, s. 145.

Definitions

- (9) In this section,

“care and maintenance fund” and “cemetery” have the same meaning as they have in the *Funeral, Burial and Cremation Services Act, 2002*; (“fonds d’entretien”, “cimetière”)

“commercial cemetery” means a cemetery operated for the purpose of making a profit for the owner; (“cimetière commercial”)

“crematorium”, “funeral establishment”, “licensed services” and “licensed supplies” have the same meaning as they have in the *Funeral, Burial and Cremation Services Act, 2002*; (“crématoire”, “résidence funéraire”, “services autorisés”, “fournitures autorisées”)

“deficiency” means a deficiency as defined by regulation; (“insuffisance”, “insuffisant”)

“eligible land” means land located on a cemetery other than a commercial cemetery that is liable to assessment and taxation in respect of the operation of a crematorium, funeral establishment, transfer service or other business related to the provision of licensed supplies or licensed services; (“bien-fonds admissible”)

“registrar” means the registrar appointed with respect to cemeteries under the *Funeral, Burial and Cremation Services Act, 2002*; (“registrateur”)

“transfer service” means a transfer service as defined in the *Funeral, Burial and Cremation Services Act, 2002*. (“service de transfert”) 2002, c. 33, s. 145.

See: 2002, c. 33, ss. 145, 154.

Note: On a day to be named by proclamation of the Lieutenant Governor, section 357.1 is repealed by the Statutes of Ontario, 2006, chapter 34, Schedule D, section 96. See: 2006, c. 34, Sched. D, ss. 96, 98 (1).

Assessment Act
 Loi sur l'évaluation foncière
 ONTARIO REGULATION 282/98
 GENERAL

Consolidation Period: From January 26, 2009 to the e-Laws currency date.

Last amendment: O. Reg. 16/09.

This Regulation is made in English only.

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RESIDENTIAL PROPERTY CLASS

3. (1) The residential property class consists of the following:

1. Land used for residential purposes that is,
 - i. land that does not have seven or more self-contained units,
 - ii. a unit or proposed unit, as defined in the *Condominium Act*,
 - iii. land owned by a co-operative, as defined in the *Co-operative Corporations Act*, the primary object of which is to provide housing to its members or land leased by such a co-operative if the term of the lease is at least 20 years,
 - iv. subject to subsection (2), land with seven or more self-contained units owned by a corporation with or without share capital each shareholder or member of which has a right, by virtue of being a shareholder or member of the corporation, to occupy one of the units,
 - v. subject to subsection (2), land with seven or more self-contained units owned by individuals only, each of whom has an undivided interest in the land and a right, arising from a contract with the other owners, to occupy one of the units, if at least half the units are occupied by the owners with a right to occupy them,
 - vi. land with self-contained units, organized as what is commonly known as a timeshare, that,
 - A. is owned by persons, each of whom has an undivided interest in the land and a right to occupy a unit on a periodic basis for at least one week at a time, or
 - B. is leased by persons, for terms of at least 20 years, each of whom has a right to occupy a unit on a periodic basis for at least one week at a time,

- vii. a group home as defined in subsection 166 (1) of the *Municipal Act, 2001*,
- viii. a care home, as defined in the *Tenant Protection Act, 1997*, that does not have seven or more self-contained units and that is not included in the commercial property class under paragraph 2 of section 5,
- ix. land used for residential purposes on a seasonal basis, including campgrounds,
- x. land with self-contained units, organized as what is commonly known as a life lease project, in respect of which individuals (referred to in this subparagraph as “purchasers”) have each entered into an agreement to purchase a right (referred to in this subparagraph as the “life lease interest”) to occupy a unit for residential purposes within the project, if,
 - A. the term, not including renewals, of the life lease interest is equal to or greater than 20 years or is equal to the lifetime of the purchasers,
 - B. the purchasers have made one or more payments to the owner of the land on account of the purchase, and
 - C. the purchasers have a right to sell, transfer or otherwise dispose of the life lease interest in a manner determined under the terms of the agreement for the purchase,
- xi. land that is a municipally-licensed rooming house,
- xii. a recreational facility that is operated on a not-for-profit basis, if the use of the facility is restricted to residents of units in a residential subdivision, land-lease community or condominium or townhouse complex, as well as their guests, and if the facility is not open to the general public.
- xiii. land on which a wind turbine tower as defined in subsection 45.4 (5) is situated, but not the wind turbine tower, if,
 - A. the land immediately surrounding the land on which the wind turbine tower is situated is classified in the residential property class,
 - B. the electricity generated by the wind turbine tower is primarily for the operator’s own use, and
 - C. the rated maximum output capacity of the wind turbine tower does not exceed 500 kilowatts.



Note: Paragraph 1, as made by subsection 1 (1) of Ontario Regulation 356/00, applies to the 2000 and subsequent taxation years. See: O. Reg. 356/00, s. 1 (4).

2. Land not used for residential purposes that is,
 - i. farm land to which subsection 19 (5) of the Act applies for the taxation year for which the land is being classified, other than land in the farm property class or land prescribed under section 44,
 - ii. land used by a non-profit organization for child care purposes that is either,
 - A. land owned by the organization, or
 - B. land leased by the organization, other than land that would otherwise be in the commercial property class or the industrial property class,
 - iii. land owned by a religious organization other than land occupied by a tenant and used for a commercial activity,
 - iv. land owned and occupied by a non-profit service organization, a non-profit private club, a non-profit cultural organization or a non-profit recreational sports club, other than land used as a golf course or ski resort,
 - v. land owned by a conservation authority, other than land occupied by a tenant and used for a commercial activity or land used as a golf course or ski resort,
 - vi. land used as a golf course, including buildings or structures used for the purpose of maintaining the golf course, but not including any other buildings and structures and the land used in connection with those other buildings or structures,
 - vii. land used as a driving range for at least four consecutive months a year but not including any buildings and structures and the land used in connection with those buildings or structures,
 - viii. land used as a ski resort, including ski-lifts and buildings or structures used for the purpose of maintaining ski hills or trails, but not including any other buildings and structures and the land used in connection with those other buildings or structures,
 - ix. vacant land principally zoned for residential development but not principally zoned for multi-residential development,
 - x. buildings used exclusively for the purposes of storing private aircraft and land on which those buildings are located,

xi. land used to provide horse trail rides or horse riding lessons to the public.

Note: Subparagraph 2 iv, as amended by subsection 1 (2) of Ontario Regulation 356/00, applies to the 2000 and subsequent taxation years. See: O. Reg. 356/00, s. 1 (4).