

AGENDA**Type of Meeting:** Board**Date:** June 2, 2016**Page:**1 of 1*"TOWARDS NEW HORIZONS":**Is it in the best interest of our students?**Does it support excellence?***AGENDA 12 – JUNE 2, 2016**

- | | | | |
|-----|--|------------|---------|
| 1. | Call to Order | Jill Weiss | 7:00 pm |
| 2. | Adoption of Agenda | Jill Weiss | 7:01 pm |
| 3. | Disclosure of Conflict of Interest | Jill Weiss | 7:03 pm |
| 4. | New Business | | 7:05 pm |
| 4.1 | Proposed New Lease Agreement with Elk Island Catholic Schools – attachment | Don Falk | |
| 5. | Adjournment | Jill Weiss | 8:00 pm |

Next Board Meeting – June 9, 2016 at 7:00 pm



Don Falk
Superintendent
Phone: 780-416-2353
Email: dfalk@newhorizons.ca

MEMORANDUM

June 1, 2016

To: Board of Directors

From: Don Falk - Superintendent

Re: Proposed New Lease Agreement with Elk Island Catholic Schools

Background:

Our school's access to its present facility was enabled by former Minister of Education Jeff Johnson, who in the attached letter (June 6, 2014) to the Board of Trustees of Elk Island Catholic Schools (EICS) requested the commitment of the EICS Board to the transfer of ownership of the building and lands to the New Horizons Charter School Society. Further, in order to provide New Horizons School (NHS) with immediate access to the facility, Minister Johnson requested that an "interim lease" be put in place.

The interim lease referenced by Minister Johnson was signed by both parties on June 20, 2014 and remains in place to the present day.

For a variety of reasons, the anticipated ownership transfer has not occurred. In response to several requests from the New Horizons Board of Directors, the current Minister of Education has stated repeatedly that the matter of ownership transfer is "under consideration." The Minister's most recent communication in this regard was received on March 2, 2016, at which time he stated (speaking of himself), "The land title transfer is still under consideration by the Minister."

Responses to the Board's two most recent letters to the Minister (April 21, 2016 and May 17, 2016 respectively), requesting the transfer of ownership, have not yet been received. It is my understanding from Ministry of Education officials that the Minister is unlikely to approve the ownership transfer at the present time.

Meanwhile, the EICS Board of Trustees has requested that, in the absence of an ownership transfer, a new long-term lease be developed. Over the past several months, this request has been stated more strongly, most recently in the attached letter (April 27, 2016) from EICS Board Chair Justine Wright. Included in her letter is the following statement:

... no further capital improvements are to take place in our school. Our administration has also been directed to not sign any development permits or to authorize work done to the school until such time that a long term lease agreement satisfactory to the Board is executed.

At the same time, plans for the modernization of our school have continued unabated and are now nearing completion. Final plans are scheduled for submission to Alberta Infrastructure on Friday, June 3, 2016, and a request for tenders is scheduled for posting on June 20. In order for these plans to continue, it is essential that a series of authorizations, including a development permit, be obtained from Strathcona County. At the present time, an application for a development permit has been prepared and submitted to EICS for its approval before being advanced to the County. In keeping with Ms. Wright's letter of April 27, 2016, the application for a development permit has not been signed by EICS.

In this context, the EICS administration, Alberta Education and I have engaged in discussions toward the development of a new lease. The attached proposed lease is the result of those discussions and is presented to the Board of Directors for its consideration. Although falling short of ownership, I believe that the lease includes many of the features of ownership and that it will provide the long term security and control of the facility that NHS has long desired.

Following, then, are the factors that give rise to my recommendation that the Board of Directors provide approval for the attached new lease agreement with Elk Island Catholic Schools (EICS):

1. The term of the lease matches the length of our school's charter. (Our charter expires on August 31, 2027.)
2. The lease will automatically renew if the charter is renewed (see attached letter from EICS Board Chair Justine Wright, dated May 16, 2016).
3. The one-year termination clause that was included in earlier drafts has been removed (see attached letter from EICS Board Chair Justine Wright, dated May 26, 2016).
4. The \$1000 per month lease payment that was included in earlier drafts has been removed. There is now provision for a one-time one dollar lease payment.
5. Although it is not possible at the present time for Infrastructure Maintenance and Renewal (IMR) funds to be assigned to NHS because of our status as a lessee, NHS will nevertheless maintain decision-making authority over the use of IMR funds and will be reimbursed for up to 93.3% (approximately \$42,000) of the funds available annually. The remaining 6.7% (approximately \$3000) will be retained by EICS for administrative, accounting and management purposes.
6. NHS retains the exclusive right to sublet portions of the premises (subject to the owner's approval, which will not be unreasonably withheld).
7. The requirement in earlier drafts for EICS to approve any modifications to the premises has been removed (see attached letter from EICS Board Chair Justine Wright, dated May 26, 2016).
8. The lease ceases to exist upon transfer of ownership to NHS.
9. Legal counsel has reviewed the attached lease and is supportive of it.

Recommendations:

It is recommended that the Board of Directors approve the attached proposed lease agreement with Elk Island Catholic Separate Regional Division No. 41.



Don Falk – Superintendent

Attachments (5)

LEASE AND FACILITY USE AGREEMENT

THIS AGREEMENT made effective the 1st day of April, A. D. 2016,

BETWEEN:

NEW HORIZONS CHARTER SCHOOL SOCIETY

hereinafter referred to as "the Lessee")

and

ELK ISLAND CATHOLIC SEPARATE REGIONAL DIVISION NO. 41

(hereinafter referred to as "the Lessor").

WHEREAS the Lessor is the lawful owner of the lands legally described on Schedule 'A' attached (herein referred to as "the lands") and:

WHEREAS constructed on a portion of the said lands is a school building commonly known as St. Theresa Catholic School and the attached Schedule 'B' showing the school.

WHEREAS the Lessee provides Kindergarten through Grade 9 (K – 9) classes.

WHEREAS the Lessor have agreed to lease to the Lessee St. Theresa Catholic School and its lands to operate a K – 9 school subject to the terms and conditions contained herein.

NOW THEREFORE the parties hereto agree as follows:

1.0 DEFINITIONS

1.1 In this Agreement:

- (a) "premises" means St. Theresa Catholic School and the encompassing lands indicated in Schedule "A".
- (b) "utilities" include water, sewer, electricity and fuel.

2.0 GRANT OF LEASE AND EXTENT OF FACILITY USE

- 2.1 The Lessor does hereby lease and demise unto the Lessee, upon the terms and conditions hereinafter set out, those premises owned by the Lessor shown as the school attached hereto as Schedule 'B'.

The premises shall be used by the Lessees for the purpose of operating a K - 9 school program and related educational activities.

- 2.2 Staff, students and guests of the Lessee shall have access to the school and grounds at Lessee's discretion.

3.0 **TERM**

- 3.1 The term of this Agreement shall be from the 1st day of April, 2016 until the expiry of the charter of the Lessee.

- 3.2 The term of the agreement shall be extended upon successful renewal of the Lessee's charter.

4.0 **LEASE RATE**

- 4.1 The Lessee covenants and agrees to pay to the Lessor, as lease rate, in lawful money of Canada, without demand or deduction, the sum of \$1.

- 4.2 The fee is payable to Elk Island Catholic Separate Regional Division No. 41.

5.0 **INFRASTRUCTURE MAINTENANCE RENEWAL (IMR) FUNDING**

- 5.1 Until such time as the Government of Alberta makes payment directly to and assigns responsibility of the IMR program for the premises to the Lessee, the Lessor shall receive all IMR Funding for the premises.

- 5.2 The Lessee shall be reimbursed by the Lessor for up to 93.3% of the IMR funds attributable to the Lessee's previous year's enrolments and the square meterage of the premises.

- 5.3 Reimbursement shall be provided when the Lessee provides proof of payment for maintenance and repairs eligible for IMR funding per the School Capital Manual. Invoices must be submitted by August 31 of each year.
- 5.4 Funds will be utilised at the Lessee's discretion in consultation with the Lessor. Responsibility for obtaining vendors and supervising their work will rest with the Lessee.
- 5.5 The Lessor will retain 6.7% of the funds for the purposes of: Consultation with the Lessee, submission to Alberta Education of IMR expenditure plans as received from the Lessee, preparation and submission to Alberta Education of an annual IMR Statement of Actual Expenditures.
- 6.0 **ASSIGNMENT**
- 6.1 The Lessor assigns to the Lessee the exclusive right to sublet the premises, in part, subject to the written consent of the Lessor. Such consent shall not be unreasonably withheld.
- 6.2 Should the Lessee sublet any interest in the premises, it shall provide the Lessor with a copy of the executed agreement between itself and the other party. This agreement shall hold the other party to the same standard of care and requirements as the Lessee and shall direct joint usage of the premises.
- 7.0 **CONSTRUCTION**
- 7.1 No structural changes shall be made to the premises, or renovations commenced unless the Lessee has first obtained all permits required under any relevant municipal, provincial or federal legislation or regulations.
- 8.0 **LIENS, CAVEATS AND OTHER ENCUMBRANCES**
- 8.1 The Lessee shall:
- (a) do no act which will encumber the lands, and

- (b) discharge, or cause to be discharged forthwith, any claim or lien filed for work or materials supplied to any person in respect of any improvement made to the lands or premises.

9.0 CARE OF PREMISES

- 9.1 The Lessee shall be responsible for the maintenance and upkeep of the premises and keep the premises in an orderly, clean and sanitary condition to the satisfaction of the Lessor and shall not allow refuse, garbage or other loose or objectionable material to accumulate in or about the demised premises and will, at all times, keep and at the termination of the term hereby granted, yield up to the Lessor the premises hereby demised in a clean and well-maintained condition.
- 9.2 The Lessee will supply and maintain signage, appliances, furniture and equipment for said area.
- 9.3 The Lessee will ensure the parking lot, sidewalks, ramp and steps up to the premises are kept clear of snow.
- 9.4 The Lessee will ensure that the landscaping and grass cutting is maintained.

10.0 NUISANCE

- 10.1 The premises shall not be used for an activity, which in the opinion of the Lessor, is a nuisance.

11.0 UTILITIES

- 11.1 The Lessee shall pay for utilities supplied to the premises.
- 11.2 If the Lessee requires new connections to, or an extension of a utility, it shall bear the cost of such work, subject to the Lessor's approval prior to any work being done.

12.0 RIGHT OF ENTRY

- 12.1 The Lessor, its employees, agents or contractors, shall have the right to enter upon the premises at all reasonable times to inspect the premises.

- 12.2 Access to the premises only via the entrance designated by the Lessor or Director of Facilities, and egress shall be only via the same route.
- 12.3 The Lessee is responsible for prompt return of keys to the Lessor upon termination of the lease.
- 13.0 **REGULATIONS**
- 13.1 The Lessee will at all times and in all respects comply with and conform to all bylaws, rules, or regulations of Strathcona County, and all other applicable legislation and regulations whatsoever, whether imposed by municipal, provincial, or federal authorities or otherwise, with respect to the operation of the Lessee's program on the demised premises. For the sake of greater certainty, the Lessee shall comply with all legal requirements and assessments of the Workers' Compensation Act of Alberta, and shall comply with all applicable health, sanitary and other laws, regulations and directions of any competent governmental authority relating to the actual operation of the facilities and of the personnel employed by it.
- 13.2 Smoking on the premises is prohibited. The Lessee will prevent any persons from smoking on the premises or access in the areas to the premises.

14.0 INSURANCE

- 14.1 The Lessee shall throughout the term of this Lease and any period when it is in possession of all or any portion of the premises maintain, in amounts satisfactory to the Lessor, at the Lessee's sole expense:
- 1) All risks property coverage, including fire and other risks as are included in a standard fire and extended coverage insurance contract in the amount equal to full replacement value of \$11,103,935 of the said building and equipment of the entire premises, boiler and machinery insurance, and rent interruption insurance; and

- 2) Public liability insurance in respect of all common areas of the entire premises with the limits of not less than \$5,000,000 and
- 3) Any and all other insurance considered necessary by the Lessor acting reasonably as a prudent owner.

14.2 The Lessee shall throughout the term of this Lease and any period when it is in possession of all or any portion of the demised premises place and maintain, in amounts and with insurers satisfactory to the Lessor, at the Lessee's sole expense:

- 1) policies of public liability and property insurance, including without limitation, the Lessees' fixtures, leasehold improvements and inventory and Tenant legal liability insurance insuring the Lessor and the Lessee against all sums which the Lessor or the Lessee may become obliged to pay as damages by reason of injury to persons or damage to or destruction of property in and upon the demised premises or the entire premises, which at the commencement of this Lease shall not be less than the following limits, namely:
 - a) bodily injury or death of any one person - \$2,000,000.00;
 - b) bodily injury or death of any two or more persons in any one accident - \$5,000,000.00;
 - c) property damage - \$1,000,000.00.
- 2) insurance for replacement of all glass in the demised premises from any damage howsoever caused; and
- 3) insurance for damages sustained due to burglary, or attempted burglary, of the demised premises;

- 4) insurance against fire and other risks as are include in a standard fire and extended coverage insurance contract; and the Lessee shall, prior to gaining entry to all or part of the demised premises and from time to time, deliver to the Lessor Certificates of such insurance, or the original or certified copy of such insurance policies. All insurance required to be maintained by the Lessee hereunder shall include the Lessor as a named insured and shall protect the Lessor in respect of claims by the Lessee as if the Lessor were separately insured and shall also provide that such insurers provide to the Lessor THIRTY (30) days prior written notice of cancellation or non-renewal or material alternation of the terms of such insurance and the insurer(s) shall in no event be subrogated to any rights of the insured against the Lessor in any capacity or anyone acting for or on behalf of or at the direction of the Lessor or for whom the Lessor may be responsible, for any loss or damage howsoever caused.
- 14.3 The Lessor shall not be responsible in any way for any injury to any person or for any loss or damage to any property belonging to the Lessor or to employees, agents, invitees or licensees of the Lessee while such person or property is in or about the entire premises, including the demised premises, and including, without limiting the generality of the foregoing, any loss or damage to any such property caused by theft, breakage, or by steam water, rain or snow which may leak into, issue or flow from any part of the said building or any adjacent or neighbouring lands or premises or from water, steam or drainage pipes or plumbing works of the same or from any other place or quarter or for any damage caused by or attributable to the condition or arrangement of any electric or any other wiring nor for any damage caused by anything done or omitted to be done by any other lessees of the entire premises. The Lessee covenants to save, defend, hold harmless and indemnify the Lessor of and from all loss, costs claims or demands in respect of any and all suits, claims, actions or demands of any nature or kind to which the Lessor shall

or may become liable for or suffer by reason of any breach, violation or non-performance by the Lessor of any covenant, term or provisions hereof or by reason of any injury occasioned to or suffered by any person or persons or any property resulting from any wrongful act, neglect or default on the part of the Lessor or any of the Lessor's employees, agents, invitees or licensees or arising out of the use and occupation by the Lessor of the demised premises and the business conducted thereon.

15.0 MERGER

15.1 The Lessee shall not merge or amalgamate with any other body corporate without the written consent of the Lessor having first been obtained by the Lessees.

16.0 TERMINATION

16.1 The Lessor or Lessee may, by giving thirty (30) days notice, terminate the Agreement in the event that the Lessee

- (a) voluntarily winds up its affairs or dissolves,
- (b) becomes bankrupt,
- (c) fails to remedy any defaults in fulfilling this Agreement after written notice from the Lessor, such notice to provide a reasonable period for compliance therewith.
- (d) does not receive renewal of its charter

16.2 Should a transfer of ownership to the Lessee occur this lease shall be terminated upon transfer.

16.3 Upon the termination of this Agreement (or any renewal or renewals thereof) for any reason whatsoever, the premises and any improvements, which the Lessee has constructed on, or made to the premises, shall become the property of the Lessor.

17.0 NOTICE

17.1 All notices and communications required by the Lessor shall be in writing addressed to the:

Secretary-Treasurer

Elk Island Catholic Separate Regional Division No. 41,

160 Festival Way, Sherwood Park, Alberta, T8A 5Z2

and shall be deemed to be served if delivered personally or if sent by certified mail five days after date of mailing.

- 17.2 All notices to the Lessees shall be in writing, addressed to the:

Superintendent

New Horizons School

1000 Strathcona Drive, Sherwood Park, AB T8A 3R6

and shall be deemed to be served if delivered personally or sent by certified mail five days after date of mailing.

- 17.3 Either party may change its address for service by notifying the other party in the manner set out herein.

THIS AGREEMENT was signed and sealed by the authorized officers of the parties in the Elk Island Catholic Separate Regional Division No. 41, in the Province of Alberta, to give effect to this Agreement the date first above written, notwithstanding the actual date or dates of execution.

Seal:

**ELK ISLAND CATHOLIC SEPARATE
REGIONAL DIVISION NO. 41**

Per: Superintendent of Schools

Per: Secretary-Treasurer

**NEW HORIZONS CHARTER SCHOOL
SOCIETY**

Per: Superintendent

Per: Chair, Board of Directors

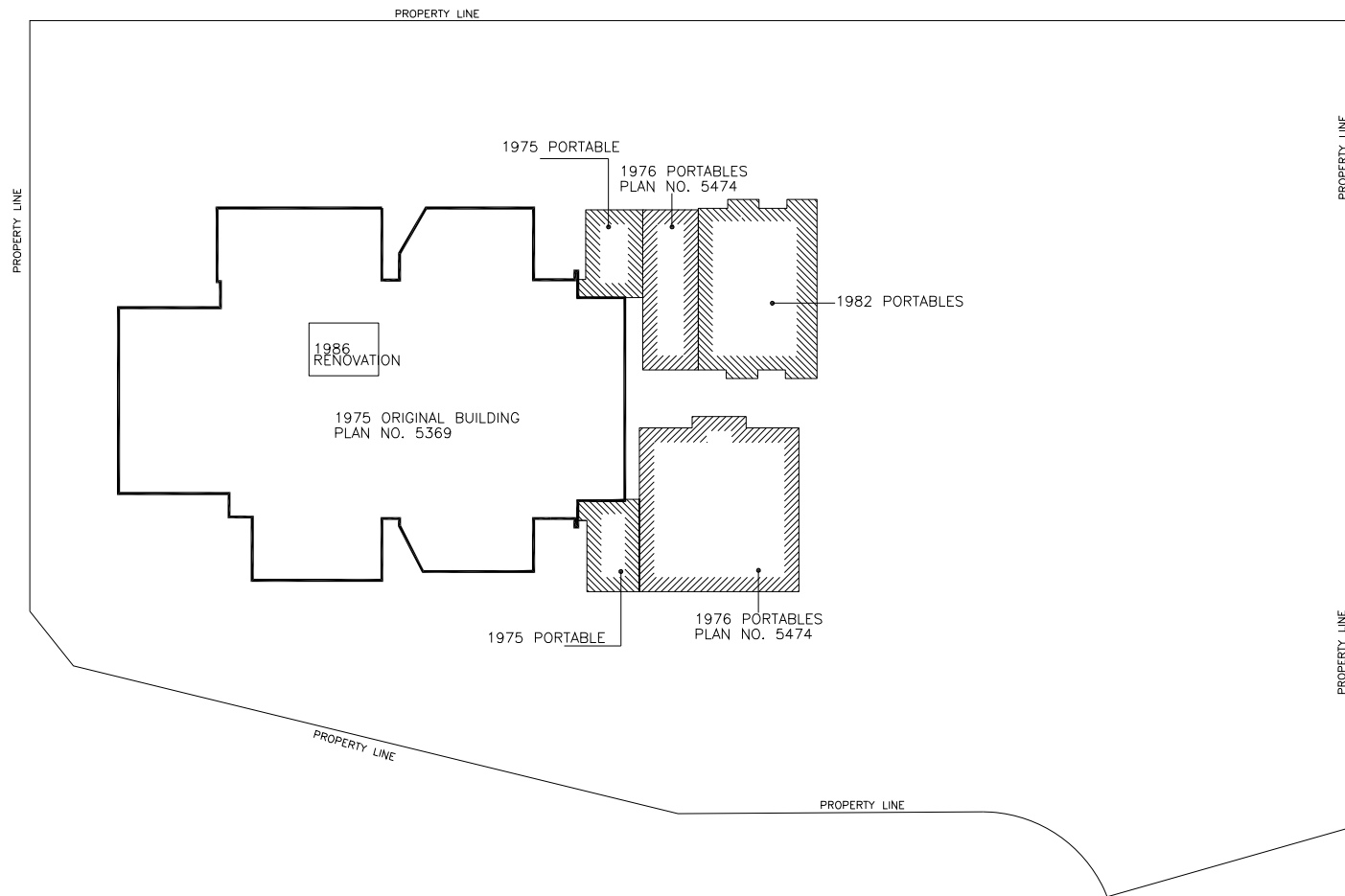
SCHEDULE 'A'

LEGAL DESCRIPTION OF LAND

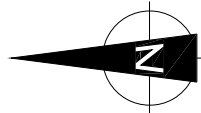
Lot 31, Block 100, Plan 3743TR
NE ¼ 28-52-23-W4 Meridian

St. Theresa Catholic School
1000 Strathcona Drive, Sherwood Park, AB T8A 3R6

Schedule B



LEGAL DESCRIPTION:
 LOT 31
 BLOCK 100
 PLAN 3743TR
 NE1/4 SEC28 TWP52 RGE23 W4M
 SHERWOOD PARK ALBERTA



ELK ISLAND CATHOLIC SEPARATE REGIONAL DIVISION #41

ST. THERESA CATHOLIC SCHOOL K-9
 1000 STRATHCONA DR, SHERWOOD PARK, AB

DATE: 08/31/12

DWN. BY: EW

SCALE: 1:1000

SITE PLAN
 A.I.

BID: B4026A

CODE: 2047

SHEET: 1 OF 3

REV.	CONSTRUCTION	DATE
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ALBERTA
EDUCATION

*Office of the Minister
MLA, Athabasca-Sturgeon-Redwater*

AR85381

JUN 05 2014

Mr. Tony Sykora
Board Chair
Elk Island Catholic Schools
160 Festival Way
Sherwood Park, AB T8A 5Z2

Dear Mr. Sykora:

Thank you for your May 26, 2014 letter outlining three options for the disposition of the former St. Theresa School.

Over the past year, I have been working with several school authorities to ensure stable and permanent access to school facilities for a number of charter school authorities. Given this, and in order that the former St. Theresa School continue to be used to serve the needs of Alberta students, my preferred option would be the transfer of the land and buildings to the New Horizons Charter School Society. I am requesting your commitment in this regard.

I also seek your co-operation and commitment to make the facility available to New Horizons Charter School Society on an immediate basis, with a view to completing transfer of ownership of the school as soon as possible. I understand that there are issues to resolve at the local level prior to transfer (including removal of the Certificate of Lis Pendens from the title, which I understand is in process), so I am requesting that an interim lease be put into place by June 15, 2014 to enable the charter school to prepare the building by September for the 2014/2015 school year.

Subsequent to any transfer, I would expect the charter school to comply with any local joint use agreement that may be in place with the municipality; and, most importantly, with the requirement to allow community access to school buildings and playing fields. I fully support you making this stipulation as part of any negotiations related to the transfer. It is also my expectation that the transfer would be for a nominal amount. The transfer agreement should require the property to be transferred back to the Elk Island Catholic School Division for the same nominal fee if the charter ceases to function as a publicly funded school at this location. It should also require that New Horizons Charter School Society be responsible for all costs related to the preparation of transfer documents and legal fees.

.../2

Mr. Tony Sykora
Page Two

Should your staff have any questions, please have them contact Laurel Udell, Senior Manager, Capital Planning North, at laurel.udell@gov.ab.ca or 780-427-2437.

I would like to acknowledge your local MLA, Cathy Oleson, as she is a strong advocate for the educational needs of your community.

I would appreciate your earliest attention to this matter, and I look forward to your timely response.

Sincerely,

A handwritten signature in black ink, appearing to be 'Jeff Johnson', written over the printed name.

Jeff Johnson
Minister
MLA, Athabasca-Sturgeon-Redwater

cc: Cathy Olesen, MLA, Sherwood Park
Michael Hauptman, Superintendent, Elk Island Catholic Schools



Jill Weiss, Board Chair - New Horizons School
1000 Strathcona Drive,
Sherwood Park, AB T8A 3R6

April 27, 2016

Dear Mrs. Weiss,

In light of the Minister of Education's delay in approving the transfer of our school located at 1000 Strathcona Drive, a long term lease agreement is required. The current lease agreement was only intended to be a short term agreement to allow your organization to utilize our school until such time that the transfer would take place. It was provided in good faith with certain conditions that have not come to conclusion.

The continuation of this interim agreement represents unexpected costs and administration time that has ensued over the last two years. To continue would represent a lack of fiduciary responsibility to our community.

It is the Board's understanding that your organization is unwilling to establish a new agreement that respects Elk Island Catholic Schools' interest in the building as its owner at this time.

Please be advised that effective immediately, no further capital improvements are to take place in our school. Our administration has also been directed to not sign any development permits or to authorize work done to the school until such time that a long term lease agreement satisfactory to the Board is executed.

We look forward to this matter being resolved as expeditiously as possible.

Sincerely,

Justine Wright, Board Chair

cc. Michael Ediger, Director – Capital Planning
Michael Hauptman, Superintendent - Elk Island Catholic Schools
Don Falk, Superintendent - New Horizons School

Honourable David Eggen
Minister of Education
228 Legislature Building
10800 - 97 Avenue
Edmonton, AB
T5K 2B6

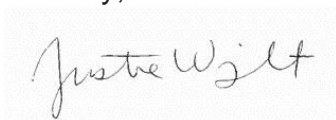
May 16, 2016

Dear Minister Eggen,

Currently, Elk Island Catholic Schools is leasing its school site located at 1000 Strathcona Drive in Sherwood Park to New Horizons Charter School Society under an interim lease. In order to provide a long term lease to the Society, Elk Island Catholic Schools is requesting ministerial approval for a lease termination notice period longer than twelve months. The proposed lease would not have a termination notice period and would be in force for as long as the society has charter status.

We look forward to your response.

Sincerely,



Justine Wright, Board Chair

cc. Michael Ediger, Director – Capital Planning
Michael Hauptman, Superintendent - Elk Island Catholic Schools
Don Falk, Superintendent - New Horizons School

Jill Weiss, Board Chair - New Horizons School
1000 Strathcona Drive,
Sherwood Park, AB T8A 3R6

May 26, 2016

Dear Mrs. Weiss,

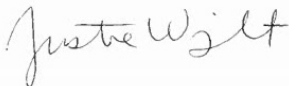
Further to my letter on April 27, I wanted to express our Board's willingness to execute a long term lease agreement to put the matter of the school transfer behind us. It is our understanding that our respective administrations have been working together to come up with an agreement that will serve both our organizations' long term interests.

Elk Island Catholic Schools has formally requested that the Minister of Education waive the requirement for a twelve month termination period for this agreement and also is prepared to not have a clause in the lease that requires our written approval for any construction or renovation projects. We believe these two items will provide your organization with the long term certainty it desires while respecting EICS legal responsibilities.

It is also worth noting that the proposed lease has a clause that would terminate the lease agreement should the Minister of Education approve the transfer of the school to your organization.

I believe that both boards and administrations have acted in good faith and I hope that you can convey to your board our willingness to move forward once the proposed lease is executed.

Sincerely,



Justine Wright, Board Chair

cc. Michael Ediger, Director – Capital Planning
Michael Hauptman, Superintendent - Elk Island Catholic Schools
Don Falk, Superintendent - New Horizons School