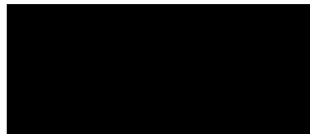


May 2, 2017



s.40(1)

Dear : s.40(1)

Re: Your request for access to information under Part II of the *Access to Information and Protection of Privacy Act* [Our File #: MA/35/2017]

On March 31, 2017, *Department of Municipal Affairs and Environment* received your request for access to the following records:

"A copy of the Kippens expropriation meeting note"

I am pleased to inform you that a decision has been made by the Deputy Minister for Municipal Affairs and Environment to provide access to some of the requested information.

Access to the remaining records, and/or information contained within the records, has been refused in accordance with the following exceptions to disclosure, as specified in the *Access to Information and Protection of Privacy Act* (the *Act*):

29. (1) *The head of a public body may refuse to disclose to an applicant information that would reveal*
- (a) *advice, proposals, recommendations, analyses or policy options developed by or for a public body or minister;*

As required by 8(2) of the *Act*, we have severed information that is unable to be disclosed and have provided you with as much information as possible.

In accordance with your request for a copy of the records, the appropriate copies have been enclosed.

Please be advised that you may appeal this decision and ask the Information and Privacy Commissioner to review the decision to provide partial access to the requested information, as set out in section 42 of the *Act* (a copy of this section of the *Act* has been enclosed for your reference). A request to the Commissioner must be made in writing within 15 business days of the date of this letter or within a longer period that may be allowed by the Commissioner. Your appeal should identify your concerns with the request and why you are submitting the appeal.

The appeal may be addressed to the Information and Privacy Commissioner is as follows:

Office of the Information and Privacy Commissioner
2 Canada Drive

P. O. Box 13004, Stn. A
St. John's, NL. A1B 3V8

Telephone: (709) 729-6309
Toll-Free: 1-877-729-6309
Facsimile: (709) 729-6500

You may also appeal directly to the Supreme Court Trial Division within 15 business days after you receive the decision of the public body, pursuant to section 52 of the *Act* (a copy of this section of the *Act* has been enclosed for your reference).

Please be advised that responsive records will be published following a 72 hour period after the response is sent electronically to you or five business days in the case where records are mailed to you. It is the goal to have the responsive records posted to the Completed Access to Information Requests website within one business day following the applicable period of time. Please note that requests for personal information will not be posted online.

If you have any further questions, please contact me by telephone at 729-3514 or by email at lisas@gov.nl.ca.

Sincerely,

A handwritten signature in cursive script that reads "Lisa Sullivan".

Lisa Sullivan
ATIPP Coordinator
Enclosures

Access or correction complaint

42.(1) A person who makes a request under this Act for access to a record or for correction of personal information may file a complaint with the commissioner respecting a decision, act or failure to act of the head of the public body that relates to the request.

(2) A complaint under subsection (1) shall be filed in writing not later than 15 business days

(a) after the applicant is notified of the decision of the head of the public body, or the date of the act or failure to act; or

(b) after the date the head of the public body is considered to have refused the request under subsection 16(2).

(3) A third party informed under section 19 of a decision of the head of a public body to grant access to a record or part of a record in response to a request may file a complaint with the commissioner respecting that decision.

(4) A complaint under subsection (3) shall be filed in writing not later than 15 business days after the third party is informed of the decision of the head of the public body.

(5) The commissioner may allow a longer time period for the filing of a complaint under this section.

(6) A person or third party who has appealed directly to the Trial Division under subsection 52(1) or 53(1) shall not file a complaint with the commissioner.

(7) The commissioner shall refuse to investigate a complaint where an appeal has been commenced in the Trial Division.

(8) A complaint shall not be filed under this section with respect to

(a) a request that is disregarded under section 21;

(b) a decision respecting an extension of time under section 23;

(c) a variation of a procedure under section 24; or

(d) an estimate of costs or a decision not to waive a cost under section 26.

(9) The commissioner shall provide a copy of the complaint to the head of the public body concerned.

Direct appeal to Trial Division by an applicant

52. (1) Where an applicant has made a request to a public body for access to a record or correction of personal information and has not filed a complaint with the commissioner under section 42, the applicant may appeal the decision, act or failure to act of the head of the public body that relates to the request directly to the Trial Division.

(2) An appeal shall be commenced under subsection (1) not later than 15 business days

(a) after the applicant is notified of the decision of the head of the public body, or the date of the act or failure to act; or

(b) after the date the head of the public body is considered to have refused the request under subsection 16(2).

(3) Where an applicant has filed a complaint with the commissioner under section 42 and the commissioner has refused to investigate the complaint, the applicant may commence an appeal in the Trial Division of the decision, act or failure to act of the head of the public body that relates to the request for access to a record or for correction of personal information.

(4) An appeal shall be commenced under subsection (3) not later than 15 business days after the applicant is notified of the commissioner's refusal under subsection 45(2).

Decision/Direction Note
Department of Municipal Affairs

Title: Expropriation by the Kippens Town Council

Decision/Direction Required:

- The Kippens Town Council requested that the Minister approve their expropriation of a parcel of land for a turning circle at the end of McCarthy's Lane.
- It is recommended that the Minister:
 - Approve the expropriation of the parcel of land required by the Kippens Town Council at the end of McCarthy's Lane by signing the attached 'Approval to Expropriate' documents.

Background and Current Status:

- The Kippens Town Council proposes to rectify a sub-standard dead-end road in the Town by acquiring the parcel of land to enable the construction of a temporary turning circle to allow for municipal services such as snow clearing, garbage collection, and school bus turnaround.
- The parcel of private land has been in use as a turning circle by local residents and the municipality until recently, when the owner erected a barrier.
- The Kippens Town Council determined that it is necessary to acquire land to allow for vehicular turnaround, important to municipal service provision.
- At its January 14, 2016 regular public meeting, the Kippens Town Council passed a resolution to purchase the subject property.
- Council engaged an engineering consultant to prepare a report to inform its decision in considering the size and property configuration to meet the municipal servicing requirements and fair market value.
- In a letter dated April 4, 2016, the solicitor on behalf of the Town of Kippens made an offer in writing to the owner of the property, 58663 Newfoundland & Labrador Ltd., to purchase the land.
- The Town Council has received no response to its offer to acquire the vacant parcel of land and therefore feels that expropriation is the only available option.
- The subject property, measuring 15.3 m x 17.2 m (total of 262 m²) as indicated in the survey submission, is zoned Residential in accordance with the Kippens Development Regulations.
- Further inquiries with the Kippens CAO/ Town Manager has clarified the following:
 - due to encumbrances such as hydrants and utility poles, the Town is unable to utilize the existing municipal road right-of-way to create the turning circle without the subject land;
 - the circular portion of land illustrated for the turnaround, the diameter of which fits within the surveyed rectangular parcel of land, would suffice to meet the servicing needs; and,
 - Council has been unable to resolve the issue with the property owner, hence expropriation is required.

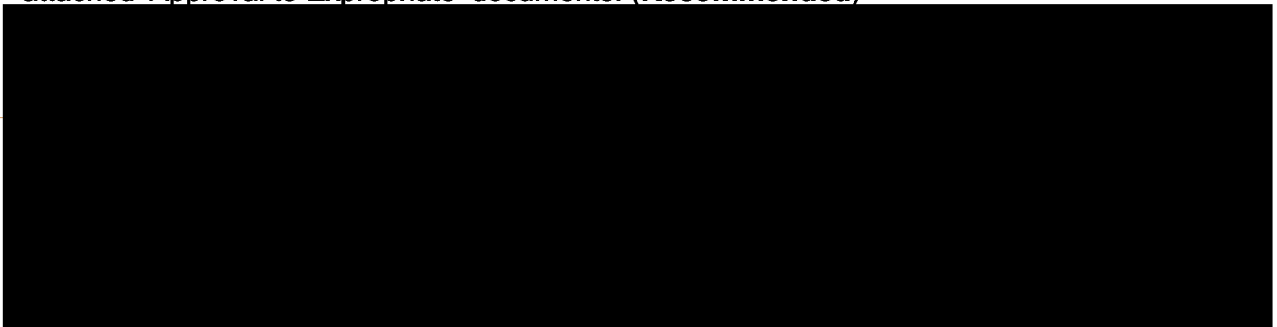
Analysis:

- Section 167 of the *Municipalities Act, 1999* provides Council with authority to acquire, by agreement or expropriation, real property for the construction of roads and sidewalks.
- Section 50 of the *Urban and Rural Planning Act, 2000* provides Council with the authority to expropriate lands, with the approval of the Minister, for the purposes of the powers given to it under the *Municipalities Act, 1999*, where the owner of the land and the Council cannot come to agreement on the sale and purchase of the land.
- If the expropriation is approved, the Town Council is required to compensate any person(s) who can prove a legal ownership interest in the land through negotiation with the Council.
- Sections 63 and 64 of the *Urban and Rural Planning Act, 2000* provides for Board review of amount to be compensated where Council and owner(s) cannot agree on the amount and conditions of compensation to be paid for the expropriated land or injurious affection.
- The Department is not involved in the adjudication of any claims of ownership or compensation.
- The proposed expropriation by the Kippens Town Council is consistent with the *Urban and Rural Planning Act, 2000* and the *Municipalities Act, 1999* and it is, therefore, recommended that the Minister approve the expropriation.

Alternatives:

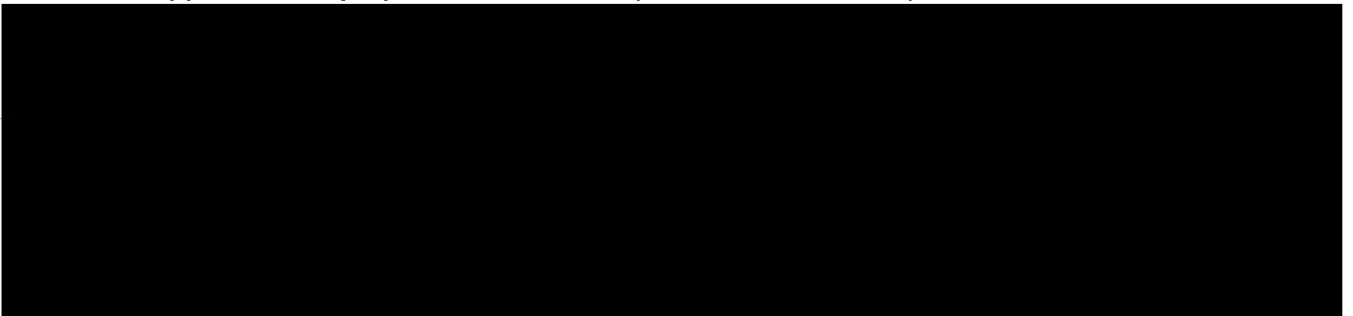
1. Approve expropriation of the parcel of land at the end of McCarthy's Lane by signing the attached 'Approval to Expropriate' documents. **(Recommended)**

s.29(1)(a)



2. Refuse expropriation of the parcel of land at the end of McCarthy's Lane by not signing the attached 'Approval to Expropriate' documents. **(Not Recommended)**

s.29(1)(a)



Prepared/Approved by: K. Blanchard / D. Spurrell / J. Chippett
Ministerial Approval:

April 17, 2017