

# MANITOBA

# OMBUDSMAN



*Report Regarding the*

**MUNICIPALITY OF  
KILLARNEY-TURTLE MOUNTAIN  
LOCAL IMPROVEMENT PLAN**

**August 2007**

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August 27, 2007

The Honourable George Hickey  
Speaker of the Legislative Assembly  
Province of Manitoba  
Room 244 Legislative Building  
Winnipeg MB R3C 0V8

Dear Mr. Speaker:

I am pleased to submit a Report regarding the Municipality of Killarney-Turtle Mountain Local Improvement Plan to be forwarded before the Members of the Legislative Assembly in accordance with section 43 of *The Ombudsman Act*.

Yours truly,



Irene A. Hamilton  
Manitoba Ombudsman

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## **EXECUTIVE SUMMARY**

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For many residents of Killarney-Turtle Mountain, the publication of the Killarney Guide on the afternoon of Thursday April 5, 2007, was the first indication that the cost of a proposed "new recreational facility" had increased from \$6.5 million to \$10 million. It was also when they learned that their municipal council would be meeting the following Tuesday morning to give third and final reading to a borrowing by-law for an additional \$2.5 million of that cost.

On the morning of Tuesday, April 11, 2007, between 50 and 100 people attended the council meeting, some in the council chamber itself and others outside in the hallway or on the sidewalk in front of the building. They wanted to speak to their elected representatives.

One of the delegation present also wanted to present Council with 100 copies of a letter asking council to "...re-consider the financial cost, as per Killarney Guide dated April 6, 2007, of the proposed New Facility complex and the **total burden** it will place on the taxpayers of the Rural Municipality of Killarney-Turtle Mountain for many years to come".

Because the municipal office had been closed on Friday and Monday, for Easter, allowing residents to speak to council on the morning of Wednesday, April 11<sup>th</sup> required a motion to dispense with the rule stating that delegations to council must give five days notice of their intention to appear. Mayor Brian Moore proposed such a motion. It was defeated.

Moments later, councillors voted to give second and the third (final) reading to a "Local Improvement" by-law authorizing the borrowing of an additional \$2.5 million, bringing the total authorized borrowing for the project to \$6.5 million. By this point, the estimated cost of the project had risen from just over \$6 million in 2005, to \$10 million. Immediately following that vote, Brian Moore resigned as Mayor and left the table.

Killarney-Turtle Mountain is a municipality of approximately 3,000 people. Much of the money needed to build the new recreational complex will be charged directly to residents in the form of an approved special tax levy, known as a "Local Improvement". There will be a direct and substantial impact on municipal property taxes.

A "Local Improvement" is one means by which a municipality can borrow money for large capital projects and then raise the funds through municipal taxes to repay that money. Local Improvements are regulated by statute and supervised by both the Department of Intergovernmental Affairs (the department) and The Municipal Board. In some respects, the Local Improvement process is exceptional in the framework of democratic government. It allows citizens, who feel a decision by their elected representatives is unreasonable, to exercise veto power when two thirds of potential taxpayers are opposed to a project and file objections to it in accordance with the provisions of *The Municipal Act*.

Provincial law requires that a proposed Local Improvement Plan must identify the cost of the project for which money is to be borrowed; who is to bear the tax burden; how that burden is to be distributed; and the details of the borrowing itself.

Provincial law also requires that citizens be notified of Local Improvement Plans and given a right to express their support or opposition, first to their municipal council at a public hearing , and then to The Municipal Board. Notice of the public hearing must be mailed to individual property owners affected or, if everyone is affected, published in a local paper. Notices must contain information about the plan.

In the case of Killarney-Turtle Mountain, the notices of public hearing to consider By-law 5-2007, were published in January and the public hearing was held in February. Unfortunately, a citizen (potential taxpayer) reading the notice, would not be informed of the cost of the project or the implications for their annual property tax bill. When the hearing was held in February, only two people objected.

The last information provided publicly to Killarney-Turtle Mountain residents about the cost of the new recreational complex, identified the cost of the complex as \$6.5 million. That information was distributed in July, 2005. By February, 2007, the cost was estimated at \$10.8 million.

On March 30, 2007, council gave the go-ahead for the project at a cost of \$9.5 million. It was at this point that the cost of the project came to the attention of the local newspaper, published on April 5, 2007.

The opportunity for residents to speak for or against the passage of borrowing by-laws for the new recreational complex, should not have come down to a last ditch effort on the morning of April 11, 2007. There should have been three prior opportunities for citizens of Killarney-Turtle Mountain to express an informed view on the utility and cost of this project.

Because of inadequate notice provided by the municipality and a failure on the part of both oversight agencies, Intergovernmental Affairs and The Municipal Board, this did not occur. The citizens of Killarney-Turtle Mountain were denied the right to speak about a significant and extraordinary expenditure of public monies, for which they are now directly responsible.

The process by which the residents of Killarney-Turtle Mountain have incurred the significant tax burden associated with this project, does not meet an acceptable standard of transparency or accountability.

In a preliminary report issued on June 11, 2007, I made recommendations intended to restore the opportunity for residents of Killarney-Turtle Mountain to have their say on this matter. I also asked the department to review this process to ensure that in future, the rights of municipal taxpayers in similar situations, are protected.

## **BACKGROUND**

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### The New Facility Project

Like many small towns and municipalities, Killarney has an aging infrastructure. There is little debate about the necessity for upgrading or replacing an aging arena, built of wood over half a century ago. The curling rink is an aging building that will need to be replaced, the bowling alley closed some time ago, a new fitness centre is needed, and neither of the existing meeting halls is considered large enough.

For many years, a dedicated group of volunteers known as the New Facility Committee has touted the benefits of a new facility, raised funds for the project and worked closely with the councils of the town and the rural municipality. The Chair of that Committee described its mandate as "To promote, direct and facilitate steps to encourage the planning, finance and construction of a new arena/facility. Secondly, we wish to communicate and promote awareness between the New Facility Committee and the residents of the area it will serve".

The Committee itself had done an excellent job of working with and informing the community of the necessity for the new facility, and of keeping the community informed of its activities. The work of the committee was essential to the project. However, at a certain point, that work had to become the responsibility of municipal government. That point was reached when the municipality began the process of financing the project through local property taxes.

### Financing the Project

Prior to January 1, 2007, the Municipality of Killarney-Turtle Mountain did not exist. It was created by the merger of the Town of Killarney and the Rural Municipality of Turtle Mountain. The combined population of the new municipality is just under 3400 people.



In 2005, the Town of Killarney, with a population of approximately 2200 people, approved a borrowing by-law for \$2 million toward the new recreational facility. That by-law increased the debt to municipal assessment ratio from 2.18% to 6.95 %. The town's municipal debt would increase from \$911,742 to \$2,911,742. Debt charges were to increase to 15.30% of revenue. *Per capita* debt would increase from \$410.63 to \$1311.12.

At the same time, the Rural Municipality of Turtle Mountain, with a population of approximately 1150, approved a borrowing by-law for \$1.5 million toward the new facility. That by-law increased the debt to municipal assessment ratio from 0.0% to 3.07%. The rural municipality's debt would increase from \$0 to \$1,500,000. Debt charges were to increase to 5.43% of revenue. *Per capita* debt was to increase from \$0 to \$1308.00.

When the town and the Rural Municipality approved their respective borrowing by-laws in 2005, for a combined \$3.5 million, the cost of the new facility was estimated at approximately \$6.5 million.

In February, 2007, the newly merged municipality of Killarney-Turtle Mountain approved a borrowing by-law for an additional \$2.5 million for the new facility. That borrowing by-law increased the debt to municipal assessment ratio from 3.56 % to 5.75%. The new municipality's debt would increase from \$4,053,124 to \$6,553,124. Debt charges would increase to 22.13 % of revenue. *Per capita* debt would increase from \$1204.00 to \$1946.00.

### Escalating Cost

The cost of the new facility was initially pegged at \$6,298,787. A Geo-thermal add on of \$577,620 increased the total cost to \$6,876,407. When the architect was instructed to get the project ready for tender in September, 2006, the new estimate was an increase of 15%, which made the estimated cost of the project \$7,907,868. By the end of November 2006, the project was expected to cost between \$8 and \$8.5 million.

It was this estimated cost of \$8.5 million that prompted the council of the newly combined municipality of Killarney-Turtle Mountain, to initiate a third borrowing by-law, the largest yet, for an additional \$2.5 million. Between the time this by-law was given first reading in January, 2007, and when it was approved by The Municipal Board in March, 2007, the estimated cost of the project had increased to approximately \$10.8 million.

On March 30, 2007, after extensive negotiations between some members of council and the project manager, the council of the municipality voted to proceed with the project on the basis of a reduced cost estimate of \$9.5 million. However, there is some concern that the reduced estimate was achieved by deleting costs that will still be incurred and have to be financed separately and in addition to the estimated project cost on which council voted.

The explanation for the increasing cost of the new facility project appears to be the increasing costs of construction. There is no indication that the escalating cost of the project arises from significant changes to or expansions of the plans initially unveiled by the New Facility Committee. The project cost has also increased because of delay, with the initial plans calling for construction to begin in 2005.

## **CITIZEN COMPLAINTS**

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People who complained to our office were concerned that they had not been aware of the increased cost, and the associated increase in their property tax burden, until they read about the costs in The Killarney Guide. They were also concerned, and angered that they had been denied an opportunity to speak when the true cost of the project was finally made public. Their concern about the lack of information on the increased cost of the project is borne out by our investigation.

### Public Information

At the early stages of this project, there were significant efforts to inform the public about the necessity for the project and about the associated costs. In July, 2004, the New Facility

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Committee hosted an informational session complete with sketches, architectural presentations, fundraising updates and information on tax implications. **Fifty people attended.** At that point, the cost estimate provided was \$6.5 million. A combined \$2.75 million debenture for the Town and the Rural Municipality repayable over 20 years was described by one municipal official as a "worst case scenario".

In July, 2005, after the Town and the Rural Municipality had approved their initial borrowing by-laws totaling \$3.5 million, approximately **150 people attended** an informational meeting hosted by the Chamber of Commerce. Again, the information presented was based on a cost estimate of \$6.5 million.

At the public meeting in July, 2005, taxpayers were reportedly concerned about the "elaborate recreational complex" and the \$6.5 million price tag. Officials were questioned about the feasibility of building the complex in stages, as councils were able to pay for it. Councils were also asked if they would consider a referendum, giving taxpayers an opportunity to vote on whether the project should go ahead.

The good work of the Committee in keeping the public informed was an informal process. From the point where municipal government decided to commit taxpayers to responsibility for the project, that process was dictated by provincial law. The municipalities were required to provide a formal opportunity for residents of the Municipality of Killarney-Turtle Mountain to hear from their elected officials about the details of the project, its cost, and the tax implications for property owners. Providing the public with an opportunity to express an opinion on such a large capital project, is a mandatory requirement when financing the project through a "Local Improvement".

### Local Improvement Plans

*The Municipal Act* permits local governments to finance certain projects by way of special tax levies if a project qualifies as a "local improvement". Local improvements can include the acquisition, development, upgrading or replacement of:

sewage collection and treatment facilities, water supply, treatment and distribution facilities, waste management facilities, highways, drainage systems; or any other project the cost of which includes a capital component.

The rights of the taxpayers who ultimately pay for local improvements, have been given special consideration by legislators. *The Municipal Act* permits taxpayers to reject a local improvement they disagree with. If two thirds of the potential taxpayers under a local improvement plan have objected to the plan, a municipal council **may not approve the plan or propose a similar one for two years.**

It seems obvious that this kind of power should be exercised in a reasonable manner and based on complete information. It is the responsibility of municipal government to provide that information.

Municipal councils proposing a local improvement plan are required to ensure the plan contains certain specific and detailed information. Pursuant to subsection 315(1) of *The Municipal Act*, Local Improvement Plans must:

- describe the proposed local improvement;
- identify the local improvement district or the lands or businesses in respect of which the local improvement tax is to be imposed;
- identify the potential taxpayers under the plan;
- state the method and rate to be used for calculating the proposed local improvement tax, the number of years in which it is to be imposed and, if the tax can be prepaid, the estimated discount or rate of discount for prepayment;
- state the estimated cost of the local improvement and the period of years over which the cost is to be spread, which must not exceed the projected useful life of the improvement;
- identify the anticipated sources of funding to pay for the local improvement and the portion of the estimated cost to be paid by each source;

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- state the estimated amount of money to be borrowed, and the maximum rate of interest, the term and the terms of repayment of the borrowing; and
- state how the annual operation or maintenance of the local improvement is to be funded.

After preparing its local improvement plan, a municipality must notify each potential taxpayer under the plan and hold a public hearing with regard to the plan. The notice to taxpayers must contain information regarding the right to object to the plan. Pursuant to subsection 318 (2) of *The Municipal Act*, the notice must contain **a summary of the information included in the plan.**

Potential taxpayers may examine the plan, object to the plan by filing a notice in writing with the municipality, or appear in person at the public hearing.

After the public hearing, but before final approval of a local improvement plan, the municipality must submit the local improvement by-law to the Department of Intergovernmental Affairs, Municipal Finance and Advisory Services Branch, for its review and analysis, and then to The Municipal Board for its review and approval.

Municipalities must also then notify people who have registered an objection with the municipality that they have the right to object again by filing a notice of objection with The Municipal Board. If at least 25 (or 10 percent of) potential taxpayers object, the Board must hold a hearing.

## **PROVINCIAL OVERSIGHT**

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### Municipal Finance and Advisory Services Branch

This is a branch of the Department of Intergovernmental Affairs. On a daily basis, departmental staff provide advice and assistance to municipalities throughout Manitoba on

issues ranging from planning and development, to taxation. To assist municipalities, they also publish a Municipal Act Procedures Manual, explaining the intent and requirements of various sections of *The Municipal Act* and providing forms, such as a form for giving proper notice of a public hearing in respect of a local improvement plan.

The Municipal Finance and Advisory Services Branch reviews each local improvement plan for errors or omissions and then prepares a written analysis for The Municipal Board. That analysis is designed to ensure that the borrowing is done in a manner permitted by *The Municipal Act*, that it is within the municipality's capacity and that the calculation of the taxation provisions is consistent with the legislation. Only after the branch is satisfied with the local improvement plan, is it then forwarded to The Municipal Board for its review.

The Supervisor of Municipal Accounting described the function of Municipal Finance and Advisory Services in these words, "We do due diligence to see that municipalities have complied with Municipal Act procedures".

The practice of having borrowing by-laws submitted to Municipal Finance and Advisory Services for review prior to being submitted to The Municipal Board for approval, is a matter of convention. After significant amendments to *The Municipal Act* in 1997, the department (then Rural Development) wrote to all municipal Chief Administrative Officers, on May 2, 1997, to advise that "...the new Municipal Act continues the requirement for Municipal board approval of borrowing for general and local improvement purposes".

That letter describes the involvement of Municipal Finance and Advisory Services (then known as the Local Government Support Services Branch) and the process for approval, as follows:

"In order to meet the provisions of the new Act, The Municipal Board and the Local Government Support Services Branch have been working together to develop an appropriate process to expedite these financial approvals. It has been determined that the best approach would be for the branch to conduct and initiate a review of all documents prior to their being submitted to the board. In this way, the branch can

ensure all relevant documentation has been prepared and, if necessary, assist municipalities in the preparation of those documents. The branch would then submit the municipal proposal to the board for approval.

In order that this may be accomplished it would be appreciated if, effective immediately, all municipal borrowing by-laws, capital lease by-laws, and special services by-laws requiring Municipal Board approval be forwarded direct to... (the branch)".

Before submitting borrowing by-laws to the province, municipalities can prepare them from information and templates provided in the Administrative Manual provided by the province. The Municipal Act Procedures Manual provides specific guidance as to the form of notice to be given in respect of a public hearing by a municipal council concerning a local improvement plan. While there is specific wording provided for much of the required content of the notice, this is not the case in respect of the critical requirement for a summary of the content of the local improvement plan.

When it comes to describing the plan, the form contains a blank line with the words "*Information required for summary of local improvement plan contained in s.315 of The Municipal Act. (summary of plan or proposal)*", written directly under the blank line. While it might be reasonable for the department to expect that this would direct municipal administrators to the Act to determine the necessary information for inclusion in the summary, it has not proven as helpful as when more specific guidance by way of sample wording is offered.

To ensure a balanced review of this complaint, and in part because it related to an issue that could arise in any municipality, we examined over 40 notices given by municipalities advertising public hearings about local improvement plans. Using a checklist based on what must be contained in a local improvement plan, as per section 315 of *The Municipal Act*, we found that most of the notices did not contain a summary of all of the information contained in the plan.

The information that must be contained in a local improvement plan is, of necessity, extensive and complex. The use of the word "summary" in the notice requirements in the Act, offers little guidance to municipal administrators. Compounding this is the fact that not all of the required information in the plan would be relevant or useful in terms of providing valuable information to the public about the plan and the impact, if any, on their taxes.

Our review of notices given by municipalities to potential taxpayers about local improvement plans, indicated a range of compliance. Some notices examined contained a complete summary of the required information in point form, without making the notice unreasonably complicated or excessive in size. Others we examined contained little or no information about the plan other than its name.

All notices examined contained a paragraph indicating that a copy of the plan was available for viewing at the municipal office. All notices contained information about the time and place of the public hearing, the right of a potential taxpayer to object to the plan, and the procedures for objecting to the plan at that stage. In most cases, the wording used in these paragraphs was copied directly, with the necessary factual information inserted, from the procedures manual distributed by the Department of Intergovernmental Affairs.

This suggests that if the procedures manual were to contain more specific direction on what should be contained in the "summary", there is a strong likelihood that statutory compliance would improve.

In light of the complexity of providing a "summary" of a local improvement plan in a public notice, and the fact that not all of the information in the plan can be easily summarized in a manner that would be useful to the public, we sought to identify the information considered most useful to the public and most reflective of the statutory requirement for a "summary" of the information contained in the plan.

In addition to our analysis, we canvassed the views of staff of Municipal Finance and Advisory Services as to the minimum required to achieve compliance with the statute. We asked a



senior member of the branch what should be in a public notice and were advised that, at a minimum, notice should contain the total value, the amount of the borrowing and if the cost was not at large (to be paid by all taxpayers), then who would be paying.

In the course of our investigation, we found that on a number of occasions, Municipal Finance and Advisory Services staff had advised a municipality that notice was deficient and suggested information to be included in future notices.

We noted that upon reviewing the 2007 Killarney–Turtle Mountain by-law, staff advised the municipality to ensure "...the estimated cost, funding sources, borrowing amount and terms and potential taxpayers are detailed". The same staff person had previously advised a municipality that "...the summary should include the cost of the project, sources of funding, identification of potential taxpayers and the borrowing terms".

From our review of a sampling of notices submitted to the branch, and from the views expressed to us and to municipalities by the branch, it seems apparent that it would not be difficult to establish a minimum standard that could be communicated to municipalities in respect of the statutory requirement for a summary of a local improvement plan and how best to achieve meet that requirement.

While the branch can and does provide advice to municipalities, there is uncertainty about their authority for imposing standards on municipalities. Their review of borrowing by-laws prior to submission to The Municipal Board is a matter of convention, not law. Ultimately, only the Municipal Board can reject a by-law.

However, given the relationship between the branch and the board, and the apparent utility and efficiency of the review process in place, there is no reason to believe the board would not support branch efforts to improve municipal compliance with the statutory notice requirements. The branch could effectively impose a standard in the way it has imposed the requirement for a review prior to an application to the board. Municipalities who might ignore such a standard would run the risks associated with having the board refuse to approve their by-laws.

In addition to the question of the authority of the branch to impose a standard on municipalities, there is a practical issue that arises because of the sequence of events associated with the approval of borrowing by-laws. When a by-law is submitted to the branch for review and then transmitted to the board, the public hearing by the municipal council has already occurred. To send the matter back to a municipality to give improved notice and hold the public hearing again, would certainly be beyond the authority of branch staff.

If this process is going to change, and it must, that change must be accomplished by a proactive approach, designed to prevent problems arising from incomplete notices given by municipalities. This can be achieved by notifying all municipalities of whatever standard is ultimately determined by the branch, and approved by the board, and by providing specific direction in the procedures manual that is apparently relied upon to a significant extent by municipalities in such matters.

### The Municipal Board

Once an application for approval of a borrowing by-law has been reviewed by the Municipal Finance and Advisory Services Branch, it is sent from the branch, to the Municipal Board for approval.

The board's duty in respect of such applications is set out in section 64 of *The Municipal Board Act*, as follows:

In dealing with an application the board shall consider

- (a) the nature of the work, undertaking, or object proposed;
- (b) the necessity or expediency thereof;
- (c) the financial position of the local authority; and
- (d) any other relevant matters; (emphasis added)**

and may refuse the application or require the local authority to vary the application, or may grant the application in whole or in part, or subject to conditions.

After considering an application the board may, pursuant to subsection 321(2) of *The Municipal Act*, by written order

- (a) approve the by-law as submitted, with or without conditions;
  - (b) refuse to approve the by-law; or
  - (c) require that the by-law be amended in one or more of the following ways:
    - (i) subject to subsection (3), by adding or removing one or more businesses or properties to or from the businesses or properties to be taxed under the by-law,
    - (ii) by changing
      - (A) the amount or rate of tax, or
      - (B) the method of calculating the tax,
- to be levied in respect of one or more businesses or properties.

Each time the board deals with an application for approval of a borrowing by-law, two members of the board, often the Chair and vice-Chair, meet to review and consider the information before them. The Board Secretary is present, a record is kept, and at the end of the review, a formal Board Order issued.

Although this is not a public hearing, the board can and does exercise all of the powers it might at a public hearing, including the power to consider objections and to make inquiries of the applicant municipality to satisfy itself that the by-law should be approved. There are a number of circumstances under which the board will make inquiries before approving a by-law, even if there is no objection from members of the public.

Circumstances that trigger inquiries from the Board include situations where

- the borrowing exceeds 7% of the total assessment (tax base);
- the annual debt repayment exceeds 20% of total annual revenue; and/or
- **the borrowing is in addition to an initial borrowing and is required because of a cost overrun in excess of 10%.**

In the case of Killarney-Turtle Mountain, the final borrowing by-law of \$2.5 million was in fact necessitated by the escalating cost of the project. The figure driving that application, \$8.5 million, represented a cost increase of over 35%. This should have triggered the interest of the board, but it did not. Each borrowing by-law was treated separately, likely because each was from a different municipality and nobody brought the escalating cost of the project to the board's attention.

The importance the board places on the adequacy of public notice of a Local Improvement Plan, can be understood from previous board deliberations. On at least one occasion, the board has declined to hear an application to approve a borrowing by-law, on the basis that the notice to the public was inadequate.

The deficiency in the Killarney-Turtle Mountain notice, although brought to the attention of the municipality by staff of Municipal Finance and Advisory Services, was never brought to the attention of The Municipal Board.

While it would be inappropriate to speculate as to the outcome of the board's deliberations if the deficiency in the notice had been brought to their attention, clearly it is a matter the board would have addressed.

### Oversight Failure

Both the review and analysis by Intergovernmental Affairs and the requirement for approval by The Municipal Board, are provincial mechanisms for ensuring that local improvement plans, and the taxation arising from them, are subjected to scrutiny by authorities outside specific municipal boundaries.

When a municipality submits an application for the approval of a local improvement by-law to Intergovernmental Affairs, before it can be forwarded to The Municipal Board, it is accompanied by a package of documentation. Included in that documentation will be the local improvement plan itself, containing all of the information required by subsection 315(1) of *The*

*Municipal Act*; a copy of the notice given to potential taxpayers; and record of matters such as the public hearing and the number of objectors.

Despite the fact there is a specific legal requirement that notices to potential taxpayers contain a summary of the local improvement plan, none of the three notices concerning the Killarney-Turtle Mountain project contained such a summary.

There is nothing in any of the notices of public hearing that would provide potential taxpayers with a summary of

- the lands or businesses in respect of which the local improvement tax is to be imposed;
- the potential taxpayers under the plan;
- the method and rate to be used for calculating the proposed local improvement tax, the number of years in which it is to be imposed;
- the estimated cost of the local improvement and the period of years over which the cost is to be spread;
- the anticipated sources of funding to pay for the local improvement and the portion of the estimated cost to be paid by each source;
- the estimated amount of money to be borrowed, and the maximum rate of interest, the term and the terms of repayment of the borrowing; and
- how the annual operation or maintenance of the local improvement is to be funded.

While there is an argument to be made that not all of the information required in a local improvement plan can easily be summarized, or is essential in every case to adequately inform the public about the plan, that argument cannot override the statutory requirements imposed by the legislature to ensure that local government is transparent and accountable when imposing extraordinary taxes.

A review of the documentation on file with Municipal Finance and Advisory Services, confirms that the absence of a summary of the plan in the notice of the public hearing about the final local improvement borrowing by-law was identified by staff of the branch. An email to the Chief Administrative Officer of Killarney-Turtle Mountain points out that the notice "*must include a summary of the information included in the local improvement plan*".

This absence of a summary of the plan is only mentioned in the email as information for the use of the Chief Administrative Officer in future. The Chief Administrative Officer is advised "*For future reference, please ensure the estimated cost, funding sources, borrowing amount and terms and potential taxpayers are detailed. The notice for By-law No. 5-2007 only mentioned the name of the project*".

## **FINDINGS AND OPINION**

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*The Ombudsman Act* prescribes the basis on which an Ombudsman may, after an investigation, make a report and recommendation(s) to the head of a municipal council. It also provides broad latitude for crafting a recommendation appropriate to the circumstances of a particular investigation and prescribes the manner in which a council is to consider the report and recommendations.

For information and assistance in understanding the report and recommendation process, I have attached sections 36 and 37 of *The Ombudsman Act* as an appendix to this report.

*The Ombudsman Act* requires that after an investigation, I reach an opinion that the administrative decision, recommendation, act or omission complained about is somehow flawed. I may conclude that it appears to be, among other things, contrary to law; unreasonable; unjust; oppressive; or wrong. That opinion will be the basis on which I can make a recommendation.

When I reach such an opinion, I may recommend that a matter should be further considered; that an omission be rectified, that a decision be cancelled or varied, that a practice should be

reviewed or altered; that a law should be reconsidered; **or that any other steps be taken.**

In making a recommendation, I must be mindful of the fact that it is not the Ombudsman's role to substitute his or her judgment for the judgment of elected officials in matters of government policy. Rather, it is to make recommendations designed to ensure adherence to government policy by those who administer it. In this case, for instance, it would not be appropriate for me to question the decision of the Killarney-Turtle Mountain council to proceed with a \$10 million recreational complex.

Implementing the decision of the Killarney-Turtle Mountain council to proceed with passing the by-laws necessary to finance the construction of the \$10 million recreational complex, requires that the municipality adhere to an administrative framework set out in the provincial legislation.

In making a recommendation to council about the deficiency in the notices of public hearing for Local Improvement Plan By-law 5-2007, I am guided by the intent of the Legislature, given effect in the provisions of *The Municipal Act*.

The statutory provisions concerning Local Improvement Plans do not contain a requirement for a referendum or plebiscite, as requested by some of our complainants and many of the Killarney-Turtle Mountain residents who wrote to council on or about April 11, 2007. Council is required to give potential taxpayers notice of a public hearing, and that notice must include a "...summary of the information included in the local improvement plan".

The extent of that summary is not defined by statute. There is no prescribed or agreed upon standard wording that would achieve statutory compliance in the case of every notice of public hearing.

There is standard wording provided in The Municipal Act Procedures Manual that can be used to advise potential taxpayers of the right to object and of the availability of local improvement plans for review at municipal offices. In light of this, it seems apparent that what was missing

from the Killarney-Turtle Mountain notices of both 2005 and 2007, and many others we reviewed, was information that would inform potential taxpayers of the extent of the project and the impact, if any, on their property taxes.

Public forums on the new facility in 2004 and 2005, made it clear that every property tax payer would be affected. Although the 2005 notices only identified the subject of the local improvement plan as "Killarney-Turtle Mountain New Multi-Purpose Facility", it seems apparent that because of the public forums mentioned everyone had an opportunity to consider the project and to ask questions about how it affected their property taxes. Many residents did just that.

However, by 2007, the cost of that project had increased significantly. There was no further public forum held to explain and discuss the merits of the project in light of that increase. The notice of the mandated municipal hearing contained no information about:

- the estimated cost of the local improvement and the period of years over which the cost is to be spread;
- the anticipated sources of funding to pay for the local improvement and the portion of the estimated cost to be paid by each source;
- the estimated amount of money to be borrowed, and the maximum rate of interest, the term and the terms of repayment of the borrowing; and
- how the annual operation or maintenance of the local improvement is to be funded.

That information was critical, particularly at that stage of the process, because the cost of the project had clearly escalated well beyond the cost that was stated by the municipality in 2005. The absence of this information impeded the ability of potential taxpayers to decide if they should attend the public hearing, or even make efforts to find out more about the local improvement plan.



The information published in The Killarney Guide provided much of the information that should have appeared, in summary form, in the notice of public hearing: the cost of the project, the extent of the borrowing and impact on property taxes. When potential taxpayers read that information in The Killarney Guide, they wanted to object. They tried to object. They were denied the opportunity to object.

**It is apparent that in this case the legislated requirement for a summary of the plan in the notice of the public meeting in respect of By-law 5-2007, was not met. I am of the opinion that the failure to give sufficient notice of the public hearing was wrong. Accordingly, pursuant to subsection 36(1) of *The Ombudsman Act*, I am reporting my opinion to the municipality and the department and making recommendations.**

My opinion is based, in part, on the finding that the provincially mandated process, by which municipalities submit borrowing by-laws to the department for review, prior to transmittal to The Municipal Board for approval, needs to be updated and strengthened in order to continue to ensure the due diligence it was designed to secure.

## **RECOMMENDATIONS**

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### Rural Municipality of Killarney-Turtle Mountain

While I can make recommendations about changing the process for the benefit of potential taxpayers affected by proposed local improvement plans, such recommendations would do little for the residents of Killarney-Turtle Mountain who were denied their right to object. The only recommendation I could make that would be meaningful for complainants, is one that would result in an opportunity for the public to discuss the plan with their elected representatives and express their support for or opposition to the plan in that public forum.

**Accordingly, pursuant to subsection 36 (2) of *The Ombudsman Act*, I am recommending that the Municipality of Killarney-Turtle Mountain hold a public meeting to provide residents with information about the cost and financing of the new facility, including the**

**Local Improvement Plan borrowing, and to hear residents' views on the cost and benefits of the project.**

Intergovernmental Affairs

With respect to the process whereby municipal borrowing by-laws are reviewed by Municipal Finance and Advisory Services, I believe this process can be amended to achieve the due diligence it was designed to foster.

I do not believe it is necessary to change the statutory framework to enshrine the authority of the branch. For the most part the convention works well. There is no reason to recommend that a provincial civil servant have the authority to accept or reject municipal borrowing by-laws. That responsibility rests appropriately with the Municipal Board.

It is necessary for the branch to obtain guidance from the board, on what constitutes an acceptable standard for notice of public hearing; to include that standard in its review of proposed borrowing by-laws and to bring any deficiency of notice to the attention of the board; and to communicate that standard to all municipalities so as to assist municipalities in complying with statutory requirements in the future.

**Accordingly, pursuant to subsection 36(2) of *The Ombudsman Act*, I am recommending that the Municipal Finance and Advisory Services branch of the Department of Intergovernmental Affairs, in consultation with The Municipal Board, review and alter its practice of processing proposed borrowing by-laws, so that the process contains a standard requirement for public notices and a standardized method of bringing any deficiencies in the notice to the attention of the Board.**

**I am further recommending, that the Branch include that standard requirement in the information it provides to municipalities in its Municipal Act Procedures Manual, and inform all municipalities of the change within 30 days of receiving approval from the Board.**

## **CONCLUSION**

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There was some urgency to this matter, for both the complainants and the municipality. At the time of our preliminary report on June 11, 2007, a ground-breaking ceremony for the new facility had occurred, but a contract had not yet been signed with the successful bidder, nor had the borrowing authorized by the local improvement plan by-law been finalized. The Council of the municipality was scheduled to meet on Wednesday, June 13, 2007, to approve signing authority.

I had concluded that the municipality could and should still hear and consider the views of potential taxpayers before a contract was signed. Doing so after the contract was signed, would have simply been an exercise in public relations. Because this matter was urgent, I provided our preliminary report to the Chief Administrative Officer and Acting Mayor of the council of the Municipality of Killarney-Turtle Mountain for consideration and response.

Pursuant to subsection 37 (1) of *The Ombudsman Act*, I requested both the municipality and the department to advise me of the action they intended to take to give effect to my recommendations.

## **RESPONSE FROM KILLARNEY-TURTLE MOUNTAIN**

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In a June 13, 2007, e-mail response from the Chief Administrative Officer of Killarney-Turtle mountain we were advised that

*"At the regular meeting of June 13, 2007, council reviewed your recommendation in camera. After reviewing the recommendation Council has scheduled an information meeting regarding the new facility project on Wednesday, June 20, 2007, at 7:00 p.m., Elks Hall, 403 Fletcher Street... . It is our opinion that this will demonstrate our willingness to share this information with the public."*

## **RESPONSE FROM INTERGOVERNMENTAL AFFAIRS AND THE MUNICIPAL BOARD**

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Given the nature of my recommendation to the department, it was reasonable to assume that more time would be required to respond. The department consulted with the Municipal Board and on August 2, 2007, we received a joint response from the Deputy Minister of Intergovernmental Affairs and the Chair of The Municipal Board. The substance of that response is as follows:

*Now more than ever municipalities are facing diverse and complex challenges; public expectations are increasing. The department continues to assess and revise its practices and procedures in response to the changing municipal environment, to assist municipalities to govern in an effective, transparent and accountable manner.*

*The department and the Board, therefore, support the recommendations in the Draft Report to review the requirement for public notices related to local improvement and special services by-laws. We are pleased to advise the Ombudsman that the following immediate steps will be taken:*

- *Part 10 Section 1 of The Municipal Act Procedures Manual pertaining to Local Improvements and Special Services will be revised. The Manual is a reference document written by Manitoba Intergovernmental Affairs providing plain language explanations to many of the requirements and procedures in The Municipal Act. To assist municipalities in understanding the public notice requirements for Local Improvement Plans and Special Services Proposals, the Manual will be clarified to ensure consistency in the content of the notice regardless of the method of giving notice.*

*Upon a preliminary review, the content of a notice for a local improvement plan should include the following information: a brief description of the project, total authorized project cost, maximum authorized municipal borrowing, affected*

*other information significant to the project. Once the board and the department have concluded discussions on the content of notice for both local improvement and special service by-laws, revisions to the manual will be made and distributed to municipalities by September 30, 2007.*

- The due diligence process undertaken on local improvement and special services by-laws by the Municipal Finance and Advisory Services Branch will be revised to include a review of the public notice, specifically noting the, content and will bring any issues to the board's attention.*

*We believe that these enhancements to the Procedures Manual and the due diligence process will improve transparency and accountability.*

I commend the Council of Killarney Turtle-Mountain for their prompt attention to my recommendation and their decision to hear directly from their citizens. We were advised that over 100 people attended the public meeting held by council, that all of the relevant and necessary information was made available and reviewed, and that a full airing of the public's views occurred.

I thank the department and The Municipal Board for its considered response. I believe the response is appropriate and sufficient and I agree with their assessment, that the proposed changes will indeed improve the transparency and accountability of this important process.



## **APPENDIX**

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### **The Ombudsman Act**

#### **Report on investigation**

**36(1)** Where, after making an investigation under this Act, the Ombudsman is of opinion

(a) that a decision, recommendation, act or omission that is the subject matter of the investigation appears to have been

- (i) contrary to law, or
- (ii) unreasonable, or
- (iii) unjust, or
- (iv) oppressive, or
- (v) improperly discriminatory, or
- (vi) in accordance with a practice or procedure that is or may be unreasonable, unjust, oppressive, or improperly discriminatory, or
- (vii) based wholly or partly on a mistake of law or fact, or
- (viii) wrong; or

(b) that in making a decision or recommendation, or in doing or omitting an act, a power or right has been exercised

- (i) for an improper purpose, or
- (ii) on irrelevant grounds, or
- (iii) on the taking into account of irrelevant considerations; or

(c) that reasons should have been given for a decision, recommendation, act or omission that was the subject matter of the investigation;

the Ombudsman shall report his opinion and his reasons and may make such recommendations as he thinks fit

- (d) to the appropriate minister and to the department or agency of the government concerned; or
- (e) to the appropriate head of council.

#### **Nature of recommendations**

**36(2)** Without limiting the generality of subsection (1), in making a report under subsection (1), the Ombudsman may recommend

- (a) that a matter should be referred to the appropriate authority for further consideration; or
- (b) that an omission should be rectified; or
- (c) that a decision should be cancelled or varied; or
- (d) that any practice on which a decision, recommendation, act or omission was based should be altered or reviewed; or

- (e) that any law on which a decision, recommendation, act or omission was based should be reconsidered; or
- (f) that reasons should be given for any decision, recommendation, act or omission; or
- (g) that any other steps should be taken.

**Report considered at closed meeting**

**36(3)** Where the Ombudsman reports to a head of council under clause (1)(e), the head of council shall at the next meeting of council close the meeting to the public in accordance with *The Municipal Act* or *The City of Winnipeg Charter*, as the case may be, and council shall meet as a committee to discuss the report.

**Notice of proposed steps**

**37(1)** Where the Ombudsman makes a recommendation under section 36, he may request the department, agency of the government or municipality to notify him within a specified time of the steps that it has taken or proposes to take to give effect to his recommendations.

**Further report on recommendations**

**37(2)** If within a reasonable time after a request respecting recommendations is made under this section, no action is taken which seems to the Ombudsman to be adequate and appropriate, the Ombudsman, in his discretion, after considering the comments, if any, made by or on behalf of the department, agency of the government or municipality affected, may report the matter, including a copy of the report containing the recommendations,

- (a) in the case of a report under clause 36(1)(d), to the Lieutenant Governor in Council; and
- (b) in the case of a report under clause 36(1)(e), to the head of council; and may mention the report in the Ombudsman's next annual report to the Assembly.

**Comments included in report**

**37(3)** Any report made under subsection (2) shall include any comments made by or on behalf of the department, agency of the government or municipality upon the opinion or recommendation of the Ombudsman.

**Report tabled at council meeting**

**37(4)** Where the Ombudsman reports to the head of council under clause (2)(b), the head of council shall table the report at the next meeting of council.

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