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**LOCKEBERG, Randi**

Applicant

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**MUNICIPALITY OF LA PÊCHE**

Public Body

### **THE APPLICATION FOR REVIEW**

Ms Randi Lockeberg wrote to the Secretary-Treasurer of the Municipality of La Pêche on September 17, 1999 :

« The information being requested is as follows:

Owner: Dore (lot 19A-1, 19A-2) and Levesque (lot 18a-13 and lot 19A-1) both Range 9, Masham

- municipal permit to erect new deck (Dore);
- municipal permit and plan submitted by owner and engineer's report for septic tank installation and supplementary greywater tank (Dore and Levesque);
- municipal permit for landscaping along lakeshore (Dore and Levesque);
- documentation pertaining to stop work order for two illegal buildings on lakeshore (Dore); and
- every piece of correspondence related to the above items between the municipality and the owners (Dore, Levesque).

Owner: Francine Belanger (lot 19A-12), Range 9, Masham

- certificate of location submitted by owner prior to construction;
- municipal building permit for cottage;
- municipal building permit for deck;
- engineer's report for septic tank installation; and
- permit to remove trees on adjacent lot (20-A) to facilitate above building activities, and permit to raise level of lot by dumping sand.

Also requested for the above three owners is all correspondence between the owners and the municipality. »

[...]

The Secretary-Treasurer replied on September 24, 1999 :

The present is a follow up on your request for documentation under the Freedom of Information Act for lots 19a-1, 19A-2 and 18A-3, range 9, Masham Township.

After a careful study of your request, we inform you that, the only documents accessible to you are the building permits issued. The only documents the public can have access to, according to article 53 of the Act, are those which do not include personal information.

[...]

Ms. Lockeberg requested a review of this decision on October 29, 1999. A hearing was held in the City of Gatineau on January 22, 2002.

## **THE HEARING**

Ms. Lockeberg is the owner of a large wooded property in a rural area of the Municipality. Her husband, Hans Giselbrecht, testified that there are many other lots abutting on this property. On some of the other properties construction has taken place which appears to them to be an encroachment on the property of Ms. Lockeberg and in violation of municipal building regulations. Documentation concerning the legality of these constructions would be helpful to them in seeking redress.

M. Charles Ricard, Secretary-Treasurer of the Municipality, expressed his willingness to make available all the documents accessible under the terms of the *Act Respecting Access to documents held by public bodies and the Protection of personal information*<sup>1</sup> (the Law). He testified as follows about the Municipality's response to the request of Ms. Lockeberg.

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<sup>1</sup> R.S.Q., A-2.1.

**Concerning the properties of Doré and Lévesque**

The permit to construct a deck was given to the applicant with the personal information blacked out. However, the photos of the deck were not accessible.

The application and the permit of the septic tank installation are accessible but the plan is not accessible as it is drawn up by the municipal inspector and belongs to the owner. There is no engineer's plan. There is no permit for landscaping, as none is required by the municipality. There is no documentation pertaining to a stop work order.

In existing municipal files, there is no other documentation or correspondence between the municipality and these owners.

**Concerning the property of Francine Belanger**

The municipality did not request certificates of location in 1994 when this cottage was built.

The municipal permit for the construction of the cottage is accessible and was given to Ms. Lockeberg.

There is no engineer's report for this property. However, there is a report from the building inspector concerning recommendations for the building of the septic tank. This is not accessible because it belongs to the owner.

There is no permit for tree removal or for dumping sand as none are required by the municipality.

There is no correspondence with this owner.

Counsel for the municipality based the refusal to give access to the plan of the municipal inspector on the decision of *Gauthier c. Ville de Montréal*<sup>2</sup>. He also referred to the decision of the Commission in *Cloutier c. Ville de Lévis*<sup>3</sup> as a possible authority for withholding the photographs of the deck.

## **DECISION**

The hearing permitted the municipality to explain what documents it simply did not possess and what documents it felt were inaccessible.

Of the documents actually in the possession of the municipality, access to two types of documents is sought: the report and the plans of the municipal inspector and photographs of property.

The photographs are of the deck of the Doré property (O-2) and are taken from the exterior of the cottage at a certain distance. No persons are visible in the photographs. They do not, upon examination, reveal anything that could not already be seen by a passer-by. These photographs are in the municipal files in conjunction with the building permit for the deck which is a public document and which has already been given to the applicant. I therefore conclude that the photographs are accessible. This decision follows the Cloutier decision in that I do not find in the photographs of the deck, an inanimate object, any nominative information that should be kept confidential.

The plans of the municipal inspector (O-1 A, O-1 B) are, in fact, sketches of the septic tank installation and its relationship to the cottage on the Doré and Lévesque property. The permit for this construction is accessible and has already been given to the applicant. The inspector has not been hired by the owner, but is retained by the municipality to ascertain

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<sup>2</sup> [1999] C.A.I. 357.

<sup>3</sup> [1987] C.A.I. 465.

the conformity of the construction according to existing regulations. Therefore the documents are public and should be made accessible in the absence of any personal information or applicable restrictions foreseen by the Act.

The report of the inspector containing recommendations for building a septic tank on the Bélanger property is transcribed on a form entitled « Demande de permis d'installation septique » (O-3). It appears to be a part of a request for a building permit. As such, it is a document which is accessible, in the absence of any personal information or applicable restrictions foreseen by the Act. The present case differs from the facts examined in the Gauthier decision referred to above in that here the plans are not technical information provided by a third party of its own volition and do not benefit from the exception for confidential third-party information of s. 23 of the Act.

**ACCORDINGLY, THE COMMISSION :**

**GRANTS** the application for review and orders the public body to release the following documents to the applicant :

- the photographs of the deck (O-2)
- the plans of the municipal inspector (O-1 A, O-1 B)
- the plans of the municipal inspector and the form entitled « Demande de permis d'installation septique » (O-3).

Montreal, March 14, 2002

**JENNIFER STODDART**  
Commissioner

M<sup>c</sup> Roger Paradis  
Counsel of the Municipality