

DONNELLY



MURPHY

Reply to: **Gregory F. Stewart**

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July 24, 2023

VIA EMAIL

Municipality of Kincardine
601 Durham Street
Kincardine, ON N2Z 1L6

**Attention: Jillene Bellchamber-Glazier, BA, MPA
Chief Administrative Officer**

Dear Ms. Bellchamber-Glazier:

RE: Birchwood Reports; Our File No. 25366

I write this letter as an addendum to my letter of June 14, 2023. I met with Council on June 22, 2023, to make further comment in regard to the various Birchwood issues.

If the trail along lots 41 and 42 are currently under dispute, provided the trail is safe and owned by the Municipality, it can be used by the public. There may be some issues with respect to the boundaries but the trail itself can be used by the public.

With regard to the Agreement concluded for lot 43, if it had been dealt with by a court, the court would have attempted to determine a clear picture of the difference between the surveys and would also have looked at historical information such as the surveyor's notes. If the court couldn't make a definite decision, an attempt would be made to work out a compromise. That is exactly the result that was concluded here.

With respect to road allowances, the Municipality has the authority to limit access to a road allowance either permanently or temporarily. On a road under Municipal jurisdiction, the public does not have authority to place barriers or direct how the Municipality is to use the road.

On the Municipal portion of lot 43, mulching has been completed. The barriers on lot 42 impeding the trail have been removed and signage installed. Cedars will be planted in the fall.

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Problem Solved.
Right Here.

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It would be extremely difficult for a third party to try now to legally challenge the compromise agreement entered into by the Municipality and the owners of lot 43. Both the Municipality and the landowner have the legal right to enter into the Agreement and any third party challenging it would have to show that the Agreement has a detrimental impact on them.

Proceeding with a Boundary Act Application on any of these matters would generally be far more expensive than negotiating an agreement.

Yours very truly,

DONNELLY MURPHY LAWYERS PC

A handwritten signature in black ink, appearing to be 'G. Stewart', written over a horizontal dotted line.

Per:

Gregory F. Stewart

GFS/vm