



Reply to: **Gregory F. Stewart**

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June 14, 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

You have requested a review and comment on the situation in the Birchwood area. I have reviewed the various documents forwarded to me and taken into consideration our discussions concerning this matter. It appears from the documentation that there are three issues of concern:

1. The request from the owners of Lot 43 for access to their property.
2. The concern of owners of Lots 41 and 42 regarding the boundary to their property adjacent to the Shore Road Allowance.
3. The establishment of the Birchwood Trails.

1. LOT 43

The owners of Lot 43 have historically had access to their property over adjacent private properties. That access has now been restricted by the owners of the adjacent properties. There has never been any type of formal agreement to that access and the existing lane has been washed out. The owners of Lot 43 approached the Municipality to request access to their property from the south end of Birchwood Avenue in the Kin Huron Subdivision. In order to accommodate this request, Council decided that Block B Plan 828 be divided in two and that a portion of the Block be dedicated as a municipal road allowance to grant access to Lot 43. The required survey work was completed.

During the course of the surveying, there appeared to be differing historical surveys showing the boundary line between the Shore Road Allowance and the abutting perimeters of the private lands. Through discussion, a compromise boundary was proposed and accepted by the owners of Lot 43. Subsequently two Registered Plans were deposited – one on October 22, 2021, setting the new boundary of Lot 43 abutting to the Shore Road Allowance and one on December 16, 2021, splitting Block B to accommodate the access to Lot 43.

This issue concerning Lot 43 has been settled and is generally not open to challenge by third parties unless they are able to show a direct impact on them for their property. This does not appear to be the case here.

2. Boundary Line with Lots 41 and 42

The Municipality engaged in discussions with the owners of Lots 41 and 42 to attempt to have an agreement on a boundary adjustment to have Lots 41 and 42 accept the boundary between Lots 41 and 42 and the Shore Road Allowance that was outlined in the Registered Plan that had been deposited with respect to Lot 43. No agreement was obtained. In order to resolve this issue regarding the boundary, on June 13, 2022, Council directed the initiation of a Boundary Act Application to the Director of Land Titles. The application is with the Municipal Solicitor and being prepared with the assistance of the surveyor.

3. Establishment of Birchwood Trails

Council directed staff to explore conversion of the existing open stormwater outlet easement between properties 197 and 201 Birchwood to a closed pipe that would permit a trail access to an existing trail network. This direction was later repealed by Council.

Council also directed staff to work with various stakeholders to create a footpath from 201 Birchwood to Parkwood. Council directed staff to create a footpath across the Bluff to 201 to 217 Birchwood. Council has subsequently directed staff to hold off on completing the work on Lot 43 for the time being. However, this work on Lot 43 will be completed prior to an outcome on the issue with Lots 41 and 42.

Summary

The current status of these matters, with respect to Lot 43, are that an agreement has been made and implemented regarding creating a road access to Lot 43 and setting the public, private boundary related to Lot 43.

The issues concerning the boundary to Lots 41 and 42 and the implementation of the Birchwood Trail are currently on hold pending the completion of the Boundary Application.

Generally, issues concerning boundaries for Shore Road Allowances are difficult because many of the historical legal descriptions have been imprecise or inaccurate. The boundaries

are usually set through agreement between the Municipality and the abutting landowner or by a Boundary Application or by an Order of the Superior Court of Justice to determine the boundary.

Hopefully this provides you with some concise summary of the current status of matters as best I can determine it based on the voluminous material that I have reviewed.

If you require anything further, please contact me.

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