

# DUXBURY<sup>LAW</sup>

TRIAL & TRIBUNAL LAWYERS

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Sept. 15, 2017

Haldimand County  
Dunnville Satellite Office  
1-117 Forest St. E.  
Dunnville ON  
N1A 1B9

Sandra Marsh  
Property Coordinator



## **RE: Pending Closure and Conveyance of Road Allowance in Lowbanks – Concerns and Opposition to Sale as Currently Contemplated**

We are retained by Ms. Cheryl Ann Farr with respect to this matter. We are in receipt of your letter of September 1, 2017, and make the following comments in response to your request, therein:

Attached hereto is a copy of a map showing the lands owned by our client (highlighted in green). As you can see, the prospective conveyance appears to include lands which directly abutt our client's lands. This is a concern, but, in addition to this, our client advises of several other concerns.

Firstly, our client's land, in conjunction with several other lands in the immediate area, enjoy an easement over the subject lands. Our client's easement was acquired as a result of long user, both by our client, and, her predecessors in title. The nature of the easement is diverse but includes, among other things, the right to use the subject lands for the purposes of accessing the lakeshore, bird-watching, picnicking, riding bicycles, walking, playing games such as frisbee and camping.

As a result of our client's easement our client expresses grave concerns for any conveyance which might interfere with her land's easement rights. Should the subject lands, therefore, be conveyed to any purchaser, we will recommend to our client that an application to the Superior Court of Justice be commenced to have recognized, and protected, her easement rights. In doing so, our client would also request that any potential sale be postponed, pending a determination of her application against the County.

Secondly, our client expresses concern regarding the potential increase in user of the subject land. The subject land is currently put to light recreational use by our client (pursuant to her easement) and others in the immediate area. The area is one of high and intense erosion as a result of significant wave action coming off of Lake Erie. It is our client's understanding that the current rate of erosion is 2 meters or more, per year. Our client states that an increase in user by any potential purchaser will result in further and intensified degradation of the shoreline area. This will expose the subject land, and lands surrounding it, to increased ecological and environmental damage.

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Thirdly, our client expresses significant concerns regarding the intended use to which the subject lands might be put by any prospective purchaser. The subject land enjoys no means of ingress or egress and there is no right of way or other means of lawful access which would permit a prospective purchaser access. While the land directly east of the subject lands enjoys a right of way over our client's property, that right of way does not include any potentially acquired land(s) to the west/south. An attempt by any prospective purchaser to increase the burden on our client's land and extend the grant beyond its current and intended lawful bounds (which is limited to the use of said right of way for the purposes of egress and ingress to the land to the immediate south of our client's home, via bicycle or on foot) will be vigorously resisted by our client.

Given the above our client requests the County advise our firm of any further processes or steps to be taken in this matter, and of any further opportunity or opportunities to make submissions. Our client would be amenable to discussing a means of advancing such a sale, were sufficient protections and safeguards put in place to protect our client's interests and legal rights.

Yours very truly,

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Per:



T. David Marshall





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