

# STIKEMAN ELLIOTT

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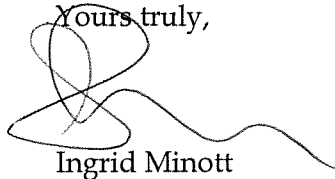
Ms. Kirsten Walli  
Board Secretary  
Ontario Energy Board  
Yonge-Eglinton Centre  
P.O. Box 2319  
2300 Yonge Street, Suite 2700  
Toronto ON M4P 1E4

Dear Ms. Walli:

**Re: wpd Sumac Ridge Incorporated (the "Applicant")  
EB-2013-0442**

We are the solicitors for the Applicant and we write further to Procedural Order No. 3 dated December 19, 2014. Attached please find the Applicant's Reply to the Submissions of the Intervenor Dr. Elizabeth Salmon.

Yours truly,



Ingrid Minott

IM/dl  
Enclosures

TORONTO

MONTRÉAL

OTTAWA

CALGARY

VANCOUVER

NEW YORK

LONDON

SYDNEY

**IN THE MATTER** of the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, Schedule B, (the "OEB Act");

**AND IN THE MATTER** of an Application by wpd Sumac Ridge Incorporated for an Order or Orders pursuant to section 41(9) of the *Electricity Act, 1998*, S.O. 1998, c. 15, Schedule A establishing location for the applicant's distribution facilities on public road owned by the Municipality of Kawartha Lakes, Ontario, as set out in this application.

**REPLY TO THE SUBMISSIONS OF THE INTERVENOR DR. ELIZABETH SALMON**

1 **INTRODUCTION**

2 wpd Sumac Ridge Incorporated ("**Sumac Ridge**" or the "**Applicant**") filed an application  
3 with the Ontario Energy Board (the "**Board**") on December 20, 2013 (the "**Application**") for  
4 an order or orders under section 41(9) of the *Electricity Act, 1998* establishing a location for  
5 distribution facilities it proposes to locate within certain public rights-of-way, streets and  
6 highways owned by the City of Kawartha Lakes ("**Kawartha Lakes**" or the "**City**").

7 On February 24, 2015, pursuant to Procedural Order No. 3 dated December 19, 2014, the  
8 Applicant filed its Argument-in-Chief. Board Staff and the Intervenor, Dr. Elizabeth Salmon,  
9 each filed written submissions in respect of the Application on March 3, 2015. These  
10 submissions are filed pursuant to Procedural Order No. 3 in reply to the Intervenor's  
11 submissions.

12 **SUBMISSIONS**

13 **Use of "Unopened" Road Allowances**

14 In paragraphs 14 to 19 of her submissions, Dr. Salmon incorrectly asserts that "unopened"  
15 road allowances (such as Gray Road and Wild Turkey Road) are not public streets or  
16 highways and fall outside the scope of section 41 of the *Electricity Act, 1998*. As detailed  
17 below, whether a road allowance has been "opened" or "assumed" by a municipality does

1 not affect its status as a “public street or highway” and is therefore immaterial to the  
2 exercise of the Applicant’s rights under section 41 of the *Electricity Act, 1998*.

3 Contrary to the position taken by Dr. Salmon, the terms “opened” and “assumed” refer to a  
4 municipality’s obligation to clear and maintain the road allowance and have no impact  
5 upon the status of a road allowance as a public highway. The common law has long  
6 recognized that the public has a right to use unopened and unassumed road allowances for  
7 the passage of vehicles.<sup>1</sup> The Ontario Court of Appeal ruled in 1888 that all road allowances,  
8 even if not opened or assumed by a municipality, “remain statutory highways, and the  
9 rights of the public to such uses as they are capable of remain”.<sup>2</sup> Consequently, road  
10 allowances that are available for public passage meet the definition of “highway” in the  
11 *Highway Traffic Act*<sup>3</sup> (relied upon by Dr. Salmon in her submissions) regardless of whether  
12 they have been opened or assumed by the municipality.

13 This approach to interpreting “public street or highway” in section 41 of the *Electricity Act*,  
14 1998 is also consistent with section 26 of the *Municipal Act, 2001*, which defines “highway”  
15 to include “[a]ll highways that existed on December 31, 2002” and “[a]ll road allowances  
16 made by Crown surveyors that are located in municipalities”.<sup>4</sup> No exception is made in  
17 section 26 for unopened or unassumed road allowances. The presence of such road  
18 allowances is common in Ontario and, as noted in *Russell on Roads*, the public “has the right  
19 to use them” because they are public highways:

20 Most non-urban municipalities have many kilometres of  
21 unopened, unassumed road allowances that were laid out in  
22 the original Crown surveys... There are, nevertheless, public  
23 highways.<sup>5</sup>

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<sup>1</sup> *Goudreau v. Chandos (Township)* (1993), 14 O.R. (3d) 636 at pp. 3-4 (Gen. Div.) (QL). Appendix “A”.

<sup>2</sup> *Hislop v. McGillivray (Township)* (1888), 15 O.A.R. 687 (C.A.), cited in *Goudreau, supra*, at p. 4.

<sup>3</sup> Appendix “B”.

<sup>4</sup> Appendix “C”.

<sup>5</sup> W.D. (Rusty) Russell, Q.C., *Russell on Roads* (Toronto: Thomson Canada, 2008) at p. 71. Appendix “D”.

1 The public's right to use a road allowance can only be removed or restricted by way of a  
2 municipal by-law passed in accordance with the procedures set out in sections 34 and 35 of  
3 the *Municipal Act, 2001*.<sup>6</sup> There is no evidence that a closure by-law has been passed with  
4 respect to Gray Road or Wild Turkey Road. The City's resolution dated July 9, 2013<sup>7</sup> does  
5 not purport to close Gray Road and Wild Turkey Road. Notably, in its letter to the Board  
6 dated February 24, 2015, the City did not dispute the Applicant's right to use unopened  
7 road allowances and stated that it "will continue to accommodate placement of distribution  
8 infrastructure within Gray Road."<sup>8</sup>

9 While the common law does not provide the public with a right to improve an unopened  
10 road, the work being undertaken by the Applicant is premised upon the express statutory  
11 authority granted by section 41 of the *Electricity Act, 1998*, to construct and install structures  
12 and equipment associated with a distribution facility on any public street or highway. The  
13 City requested in its letter of February 24, 2015 that the work be undertaken "in a manner  
14 complimentary to the use and condition" of the road. Sumac Ridge has designed its  
15 infrastructure in a complimentary manner and notes that it is obliged by paragraph 41(7)(b)  
16 to "in so far as is practicable, restore the street or highway to its original condition".

#### 17 **Alternate Route**

18 The purpose of the Application before the Board is to determine the location of the  
19 proposed Distribution System within Gray Road and Wild Turkey Road. Despite noting in  
20 her submissions that a "Municipality or any other Party may propose an alternate location",  
21 Dr. Salmon has not offered any alternative location of the Distribution System within the  
22 Road Allowances. The alternate distribution route along Highway 7A proposed by Dr.  
23 Salmon is not an alternative location within the Road Allowances and has not been  
24 endorsed by Kawartha Lakes.

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<sup>6</sup> Appendix "C".

<sup>7</sup> Applicant's Pre-Filed Evidence, Exhibit D, Tab 1, Schedule 2, Appendix "F".

<sup>8</sup> Appendix "E".

**Environmental Concerns**

As noted in the Applicant's Argument-in-Chief, the scope of the Board's authority on an application under section 41 is limited to the determination of the location of the proposed Distribution System. The environmental concerns raised by Dr. Salmon in her submissions are accordingly clearly outside the scope of this proceeding.

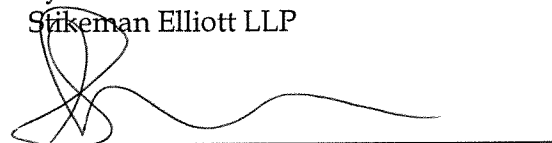
**CONCLUSION**

The Applicant requests that the Board issue an order or orders under section 41(9) of the *Electricity Act, 1998* establishing the location of the Distribution System with the Road Allowances.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED**

DATED at Toronto, Ontario, this 10th day of March, 2015

**wpd Sumac Ridge Incorporated**  
by its counsel  
Stikeman Elliott LLP

A handwritten signature in black ink, appearing to be 'Patrick Duffy', written over a horizontal line.

Patrick Duffy  
Ingrid Minott

# **APPENDIX “A”**

**Goudreau et al. v. Corporation of the Township of Chandos**  
**[Indexed as: Goudreau v. Chandos (Township)]**

**14 O.R. (3d) 636**

[1993] O.J. No. 2070

Action No. 9081/93

Ontario Court (General Division),

**Weekes J.**

August 3, 1993

*Highways -- Member of the public may not improve unopened road allowance without permission of municipality -- Municipal Act, R.S.O. 1990, c. M.45, s. 312(6).*

*Municipal law -- Highways -- Member of the public may not improve unopened road allowance without permission of municipality -- Municipal Act, R.S.O. 1990, c. M.45, s. 312(6).*

The Gs used an unopened road allowance, which was 1.6 km in length, to access their property on the Crow River in the Township of Chandos. They wished to improve the road allowance by grading the surface and by removing trees. The Gs brought an application to determine whether they could make the improvements notwithstanding that the township had refused to give permission unless the whole road was constructed to the standards of the Ministry of Transportation. The Gs argued that the municipality's failure to open the road allowance made it necessary for the public to do what was necessary to make the road passable and that there was an implied right that the public could do so.

Held, the application should be dismissed.

The authorities did not support the proposition that the public is at liberty to open the road allowance without consent. Rather, the authorities established that the public can only use the road allowance as it finds it at the time of the initial survey. Further, s. 312(6) of the Municipal Act provides that, except with the authority of council, no person shall remove or cut down or injure any tree growing upon a highway. Finally, there was a sound policy basis for concluding that municipal consent is required to improve an unopened road allowance since a contrary conclusion would lead to chaotic unregulated development that would threaten safety and environmental standards.

## Cases referred to

Big Point Club v. Lozon, [1943] O.R. 491, [1943] 4 D.L.R. 136 (H.C.J.); Hislop v. McGillivray (Township) (1888), 15 O.A.R. 687 (C.A.), affd (1889), 17 S.C.R. 479; J.F. Brown Co. v. Toronto (City) (1916), 36 O.L.R. 189, 29 D.L.R. 618 (C.A.), affd (1917), 55 S.C.R. 153, 37 D.L.R. 532; Ontario Hydro-Electric Power Commission v. Grey (County) (1924), 55 O.L.R. 339 (C.A.); Scarborough (City) v. R.E.F. Homes Ltd. (1979), 9 M.P.L.R. 255, 10 C.E.L.R. 40 (Ont. C.A.); Uxbridge (Township) v. Walker, [1955] O.W.N. 192, [1955] 3 D.L.R. 261 (Co. Ct.)

## Statutes referred to

Municipal Act, R.S.O. 1950, c. 243, s. 483(1) Municipal Act, R.S.O. 1990, c. M.45, ss. 261, 262, 312

APPLICATION to determine the question of whether a member of the public may improve an unopened road allowance without the permission of the municipality.

G.H.T. Farquharson, Q.C., for applicants.

Robert E. Pakenham, for respondent.

**WEEKES J.:** -- Mr. and Mrs. Goudreau have property on the Crow River in the Township of Chandos. An unopened road allowance leads to their property from a municipal road. They wish to improve the road allowance and on this application have asked me to determine the following question: Has a member of the public, who is required to use an unopened road allowance for access to his property, the right to cut trees and remove or grade other natural obstructions as may be reasonably necessary to permit the safe passage of a motor vehicle, without the express permission of the municipality?

The agreed statement of facts indicates that the applicants are the owners of part of Lot 32, Concession 10 in the Township of Chandos. Their sole access to a public highway is over an unopened road allowance between Concessions 10 and 11, a distance of 1.6 km. At present the road allowance can be traversed, in part, in safety by motor vehicles without the necessity of removing trees or making surface improvements. However, in order to permit the safe passage of a motor vehicle over the whole length of the unopened road allowance it is necessary to cut and remove trees in places, to reduce the grade in certain spots and to fill low areas in other places. The Goudreaus sought the consent of the municipality to carry out the work and were refused permission unless they first agreed to construct the whole of the road to the standards of the Ontario Ministry of Transportation. This led them to bring this application.

The Goudreaus' position is that pursuant to s. 261 of the Municipal Act, R.S.O. 1990, c. M.45, the unopened road allowance is a common and public highway as it is a road allowance made by the Crown surveyors when the township was surveyed. While it has never been opened by the township members of the public have made use of it and it is now used by the Goudreaus as the only means of vehicle access to their land which is situated on the Crow River. The argument is that ownership



of highways is held by municipalities in trust for the public and, in particular, those using the road allowance for access to their property. It is argued that the failure of the municipality to open the road allowance makes it necessary for the public to do what is necessary to make the road allowance passable and that, as there is no express statutory authority for this, there is an implied right to do so.

The township has no quarrel with the Goudreaus regarding the proposition that road allowances are held in trust for the public. This has long been recognized as the law but was more recently expressed by Hope J. in *Big Point Club v. Lozon*, [1943] O.R. 491 at pp. 495-96, [1943] 4 D.L.R. 136 (H.C.J.), in these terms:

Ownership of highways is held by municipalities in trust for all such of the King's subjects as have occasion to make use of them for purposes of communication or for other lawful purpose, or in order to gain access to or egress from adjacent lands.

In *Big Point Club* Hope J. had relied on *J.F. Brown Co. v. Toronto (City)* (1916), 36 O.L.R. 189, 29 D.L.R. 618 (C.A.), to support the passage quoted above. The Goudreaus rely on certain passages in the same decision (*J.F. Brown*) as support for the proposition that the public is at liberty to open road allowances without consent. In particular they rely on the passage at p. 227 where Masten J.A. stated:

A consideration of the sections of the Municipal Act relating to highways (429 - 486) confirms the view that the municipal corporation are trustees for all the King's subjects of the highway so vested in them, and that it remains the right of all such subjects to pass over the highway without obstruction, and that this right is paramount, and cannot be infringed, even by the municipal authority itself, except under express statutory powers.

And again at p. 228 where he stated:

... I think that the Ontario statute vesting the freehold of highways in the municipal corporation does not confer on such municipal corporation any jurisdiction or power to interfere with the paramount right of the public to uninterrupted and unimpeded passage over such highways.

It is important to bear in mind the context of the case. It had to do with the right of a property-owner to be compensated for injurious affection of its lands resulting from the construction of public lavatories on a city street. I do not think for a moment that Masten J.A. intended his remarks to be used as support for the proposition that the public is at liberty to open municipal road allowances without municipal approval.

The township takes the well-founded position that the public can only use the road allowance as it finds it. The authority for this proposition is the decision of Patterson J.A. in *Hislop v. McGillivray (Township)* (1888), 15 O.A.R. 687 (C.A.), affirmed (1889), 17 S.C.R. 479, where, at p. 691, he stated:

The system of survey in laying out any town, township or place is and always has been, as a rule, to lay out concessions and lots of uniform size and rectangular shape, the allowances for roads being made at regular intervals between concessions and lots without any regard to the adaptation of the ground for the purposes of a highway. The inevitable result is that many such allowances can never become travelled roads, either by reason of absolute unfitness or by reason of the outlay required to make roads of them. . .

Still they remain statutory highways, and the rights of the public to such uses as they are capable of remain, unless they are stopped up under section 550, or in possession of a private person and enclosed with a lawful fence under the circumstances mentioned in section 552.

(Emphasis added)

The issue in *Hislop* was whether a township could be compelled to open an unopened road allowance. It was held that it could not be so compelled. I interpret the words of Patterson J.A. to the effect that road allowances can be put to such uses as they are capable of to mean in the condition they are found at the time of the initial survey. I do not think that Patterson J.A. meant to imply that the public had a right to improve unopened road allowances and then put them to such uses as they were capable of in their improved condition. Had that been his intention it would have been simple to state it.

The Goudreaus argue that if the public is not entitled to do its own clearing and improving of an unopened road allowance this would run afoul of the statement of Masten J.A. in *Ontario Hydro-Electric Power Commission v. Grey (County)* (1924), 55 O.L.R. 339 (C.A.) at p. 344, that:

It has long been recognised in the Courts of Ontario and England that the right of the public to free passage along the King's highway is paramount, and cannot be interfered with even by the Crown itself, but only by Parliament or the Legislature.

In my view it is a long and impossible leap from the issue in that case, which was whether the Hydro-Electric Power Commission had the right to place its poles and wires on a highway without the consent of the municipal corporation, to employ the language of Masten J.A. to support the proposition that is advanced here. It would require me to ignore the passage in *Hislop* to which I have already referred. It also ignores s. 312(6) of the Municipal Act which provides:

312(6) Except with the authority of the council or a committee or officer thereof appointed as aforesaid, no person shall remove or cut down or injure any tree growing upon a highway.

In *Uxbridge (Township) v. Walker*, [1955] O.W.N. 192 (Co. Ct.), Pritchard Co. Ct. J. held that "tree" as defined in s. 483(1) of the Municipal Act, R.S.O. 1950, c. 243 (now s. 312), included any tree that may have been standing on a road allowance as well as any trees or shrubs planted or left growing for the purpose of shade or ornament. I share his opinion. The Goudreaus are therefore not at liberty to remove, cut down or injure any tree on the road allowance unless they are in compliance with the statute.

There is a sound policy basis for coming to the conclusion that municipal consent is required to improve an unopened road allowance. The province has a great number of unopened road allowances. To rule that consent is not required would make available all of these road allowances for unregulated development. The chaos and destruction that could ensue is frightening to contemplate. There would be no standards. Protection of wetlands and other areas of natural significance would be more difficult, if not impossible, to ensure. With the consent of the municipality being required there will be the control essential to ensure that proper environmental standards are adhered to and that the opening of such road allowances is done after consideration is given to the greater public interest.

I am supported in this approach by the holding of our Court of Appeal in *Scarborough (City) v. R.E.F. Homes Ltd.* (1979), 9 M.P.L.R. 255, 10 C.E.L.R. 40, that in a broad general sense a municipality is the trustee of the environment for the benefit of the residents in the area of the road allowance and, indeed, for the citizens of the community at large. Bearing in mind that ownership of the soil and freehold of the road allowance is vested in the municipality by s. 262 of the Municipal Act it would seem logical that even if there were no trees on a particular road allowance municipal consent to develop the road allowance would be required so that the municipality could properly perform its obligations as trustee of the environment.

I was referred to a number of cases that dealt with the issue of good faith on the part of the municipality. The argument that the municipality is not acting in good faith when it requires the road to be built to the standards of the Ministry of Transportation is one that would require very different considerations from the matters raised by this application and is not the issue before me.

I therefore hold that a member of the public, who is required to use an unopened road allowance for access to his property, does not have the right to cut trees and remove or grade other natural obstructions as may be reasonably necessary to permit the safe passage of a motor vehicle, without the express permission of the municipality. Written submissions may be made regarding costs within 45 days.

Order accordingly.

# **APPENDIX “B”**

“highway” includes a common and public highway, street, avenue, parkway, driveway, square, place, bridge, viaduct or trestle, any part of which is intended for or used by the general public for the passage of vehicles and includes the area between the lateral property lines thereof; (“voie publique”)

# **APPENDIX “C”**

**What constitutes highway**

26. The following are highways unless they have been closed:

1. All highways that existed on December 31, 2002.
2. All highways established by by-law of a municipality on or after January 1, 2003.
3. All highways transferred to a municipality under the *Public Transportation and Highway Improvement Act*.
4. All road allowances made by the Crown surveyors that are located in municipalities.
5. All road allowances, highways, streets and lanes shown on a registered plan of subdivision. 2001, c. 25, s. 26.

### **Highway closing procedures**

**34.** (1) A by-law permanently closing a highway does not take effect until a certified copy of the by-law is registered in the proper land registry office. 2006, c. 32, Sched. A, s. 18.

### **Consent**

(2) A by-law permanently closing a highway shall not be passed without the consent of the Government of Canada if the highway,

- (a) abuts on land, including land covered by water, owned by the Crown in right of Canada; or
- (b) leads to or abuts on a bridge, wharf, dock, quay or other work owned by the Crown in right of Canada. 2006, c. 32, Sched. A, s. 18.

### **Restricting common law right of passage**

**35.** Without limiting sections 9, 10 and 11, a municipality may pass by-laws removing or restricting the common law right of passage by the public over a highway and the common law right of access to the highway by an owner of land abutting a highway. 2006, c. 32, Sched. A, s. 18.



# **APPENDIX “D”**

**RUSSELL ON ROADS**  
**2<sup>nd</sup> EDITION**

---

by

**W.D. (RUSTY) RUSSELL**

QC., LL.B., B.A.

of the law firm of  
**RUSSELL CHRISTIE LLP**  
Barristers & Solicitors  
ORILLIA, ONTARIO

**THOMSON**  
  
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It was held that the fee (ownership) was specifically retained by the plan owner. There was no intention to dedicate. The right given to lot owners was in the nature of an easement. (This principle was earlier applied in the case of *Van Alstyne v. Ruck*, [1957]<sup>16</sup>.)

**1146726 Ontario Inc. v. National Trust Co. (2004)**<sup>17</sup>—In this case a “promenade” was held not to be a public highway. The facts indicate that the “promenade” was within a private enclave.<sup>18</sup>

### 3.10 “Ownership” does not mean “Assumption”

Municipal “ownership” of the soil and freehold of a highway is one thing, “assuming” the highway for maintenance purposes is another. Most non-urban municipalities have many kilometres of unopened, unassumed road allowances that were laid out in the original Crown surveys, or on a Registered Plan of Subdivision.<sup>19</sup>

These are, nevertheless, public highways. It has been long established that a municipality has no obligation to open or “assume” *original* road allowances, or roads on Registered Plans of Subdivision, or to make passage over them easier for the public.<sup>20</sup>

This is now set out in s. 31(4) of *The Municipal Act, 2001* (as amended).

31(4) A Municipality, may by By-law assume the following highways for public use and section 44[maintenance/repair] does not apply to the highways until the Municipality has passed the By-law:

1. An unopened road allowance made by the Crown surveyors.
2. A road allowance, highway, street, or lane shown on a registered plan of subdivision.

**Sidebar:** The use of the word “assume” in s. 30(4) is unfortunate. The word “assume” is traditionally tied to the word “maintenance”. It would have been preferable if this section had been worded as follows: Municipality, may by By-law, *acquire* the following highways for public use. . .

<sup>16</sup> 1957 CarswellOnt 53, [1957] S.C.R. 142, 7 D.L.R. (2d) 1 (S.C.C.).

<sup>17</sup> (2004), 2004 CarswellOnt 2216, 48 M.P.L.R. (3d) 283 (Ont. S.C.J.), affirmed (2005), 2005 CarswellOnt 1506, 11 M.P.L.R. (4th) 76 (Ont. C.A.).

<sup>18</sup> On a scale of 1 to 10 this decision by Mr. Justice Flynn gets a 12. The opening shows a delightful sense of humour, and when His Honour addresses the issues he does so with meticulous care and with a succinct and logical approach. Easy to read. Easy to understand. Excellent!

<sup>19</sup> *Scott v. North Bay (City)* (1977), 1977 CarswellOnt 514, 18 O.R. (2d) 365, 82 D.L.R. (3d) 573 (Ont. C.A.).

<sup>20</sup> *Hislop v. McGillivray (Township)* (1888), [1888] O.J. No. 50, 15 O.A.R. 687 (Ont. C.A.), affirmed (1890), 1890 CarswellOnt 7, 17 S.C.R. 479 (S.C.C.).

# APPENDIX “E”



Development Services  
180 Kent Street West  
Lindsay ON K9V 2Y6  
Tel: (705) 324-9411 Ext. 1239  
Fax: (705) 324-4027  
e-mail: [rtaylor@city.kawarthalakes.on.ca](mailto:rtaylor@city.kawarthalakes.on.ca)  
website: [www.city.kawarthalakes.on.ca](http://www.city.kawarthalakes.on.ca)

February 24, 2015

Via email [boardsec@ontarioenergyboard.ca](mailto:boardsec@ontarioenergyboard.ca)

Ontario Energy Board  
P.O. Box 2319  
27<sup>th</sup> Floor  
2300 Yonge Street  
Toronto, ON M4P 1E4

Attention: Board Secretary

Dear Ms. Walli:

Re: Sumac Ridge Wind Project (wpd Canada Corporation), City of Kawartha Lakes  
EB-2013-0442 for Determination of Location of Distribution Facilities within Road  
Allowances owned by the City of Kawartha Lakes – Response to Interrogatories

---

The City has reviewed the correspondence from the Board, dated February 4, 2015, which requests additional information from the Intervenor, Dr. E. Salmon. Specifically, Interrogatory No. 3 – Question:

- a. On what evidentiary basis are you relying on in stating that the municipality of the City of Kawartha Lakes wants to keep the road allowance, specifically on Gray Road, as a recreational trail and does not want it widened and opened to vehicular traffic?

Please be aware that on July 9, 2013, Council passed the following resolution:

**RESOLVED THAT** the memorandum from the Director of Development Services regarding the application from wpd Canada Corporation for permits relating to Gray Road and Wild Turkey Road, in the Former Geographic Township of Manvers, now in the City of Kawartha Lakes, dated July 9, 2013, be received;  
**THAT** Council confirms the applications from wpd Canada Corporation for permits relating to Gray Road and Wild Turkey Road, in the Former Geographic Township of Manvers, now in the City of Kawartha Lakes are premature and directs the City's legal counsel to advise the applicant accordingly; and  
**THAT** staff be directed to advise wpd Canada Corporation that any action not authorized by the municipality on Gray Road and Wild Turkey Road shall be seen as trespassing under the Trespass to Property Act and authorities will be contacted to enforce.

**CARRIED CR2013-644**

It is acknowledged by City staff that wpd Canada is considered an "electricity distributor" under the Electric Act, 1998 (Ontario), s. 41(1). This identification granted under the Act allows wpd to install their transmission infrastructure within the City's road allowances.. However, under Ontario Municipal Act 2001 s. 30 "A highway is owned by the municipality that has jurisdiction over it subject to any rights reserved by a person who dedicated the highway or any interest in the land held by any other person".

As Gray Road is a public road allowance, only the Municipality has the right to open and assume these roads. Further only Council can grant approval to open a road by resolution and bylaw. The Electric Act, 1998 does not grant permission to a "distributor" to open a Municipal Public Highway. Typically, the City will only assume an unopened road allowance that meets City standards and enhances the overall planned road network. Road assumption requests are considered only as budget allows (as the City is then responsible for the long term maintenance and servicing costs). Gray Road is a local rural road that is unopened and is not maintained. The road allowance is currently used as a recreational trail and is unsuitable to support heavy traffic and disruption. The City will continue to accommodate placement of distribution infrastructure within Gray Road, but is not contemplating upgrading and opening the road allowance for vehicular traffic. The design and installation of distribution infrastructure should be implemented in a manner complimentary to the use and condition of Gray Road.

Should the Board have any questions, please contact me directly.

Yours truly,



Ron Taylor  
Director of Development Services

RT/lr

C.C.: Robyn Carlson, City Solicitor

Juan Rojas, Manager of Engineering  
Diane McFarlane, Land Management Co-ordinator  
wpd Canada Corporation  
Harry Dahme, Gowlings