

Is That Really Necessary?
The Nova Scotia Private Ways Act
or “You Can’t Get There from Here”

**Municipal Development Officers
Association of Nova Scotia**

**2022 Spring Conference
May 13, 2022**

**Oak Island Resort
Western Shore, Nova Scotia**

MDOANS



Necessary Private Ways Act

- Background and Purpose of the Act
 - Cron v. Halifax (Regional Municipality), 2010
- Process
- Case Studies:
 - Harbourview, Inverness County
 - Grand Lake, Richmond County
 - Sampsonville, Richmond County
- Conclusions

Private Ways Legislation

The origins of this legislation date back to **1765**.

An Act in addition to an amendment of an Act made and passed in the first year of His Majesty's Reign entitled an Act for repairing and mending highways, roads, bridges and streets and for appointing surveyors of highways within the several townships in this Province, that is S.N.S 1765 c.11.

3. And be it further enacted that the surveyors of the highways of each town respectively, be and are hereby empowered to lay out particular and **private ways either open or pent with swinging gates for such town only as shall be thought necessary** by the Justices of the Peace in their general sessions upon application made to them by the persons concerned. Provided that no damage be done to any particular person in his land or property **without due recompense** to be made by the Town, as the surveyors of highways and the party interested may agree or, as shall be ordered by the Justices in general sessions upon inquiry into the same by a jury to be summoned for that purpose.

Background and Purpose

- That legislation was most significantly revised by the passing of ***An Act Respecting the Laying Out of Private Ways S.N.S., 1926 c. 8***. With the exception of minor changes between then and now, that Act is virtually identical to the present ***Private Ways Act***.
- **An Act Relating to Necessary Private Ways 1989 c. 358 amended 2011 c. 25**
- **Two Parts of the Act**
 - PART 1: Authority of the Governor in Council
 - Mines, mills, quarries, farms or factories who is desirous of transporting the produce of such mine, mill, quarry, farm or factory to a railway or public way, or to tidal or other waters or elsewhere...
 - PART 2: Authority of Municipal Council
 - Any freeholder or freeholders of any municipality may present a petition to the council praying for the obtaining and laying out of a **private way or road**, either open or pent.

Background and Purpose

PART 1: Authority of the Governor in Council

- Mines, mills, quarries, farms or factories who is desirous of transporting the produce of such mine, mill, quarry, farm or factory to a railway or public way, or to tidal or other waters or elsewhere... who is unable to agree for a right of way with the owner or owners of any lands which it is **necessary to cross** in order to effect such entry or transportation, may present a petition to the Governor in Council.,
- Where the commissioner finds on examination that the proposed right of way runs through any house, building, orchard or garden, he shall, without further inquiry, so report to the Governor in Council and no further proceeding shall take place on such petition. R.S., c. 358, s. 5.

Background and Purpose

PART 2: Authority of Municipal Council

- Any freeholder or freeholders of any municipality may present a petition to the council praying for the obtaining and laying out of a **private way or road**, either open or pent.
- Where the council is satisfied that the application should be granted, a commissioner shall examine whether the proposed private way or road:
 - is the **most practicable and reasonable** means of access
 - Is the **most advantageous** to the one applying for the way or road
 - **least detrimental** to the owners of the land through which the way or road shall pass
 - the proposed way or road **is reasonable and practicable and requisite** for the purposes of the one applying therefor

Cron v. Halifax 2010

“Never strike a king unless you are sure you shall kill him.”

Ralph Waldo Emerson

- The applicants sought a declaration that the municipality did not have the legal authority to grant a petition made by their neighbour pursuant to the *Private Ways Act* that would grant her a private 'way or road' over their property.
- Non-consensual takings of lands by Municipal Councils from private landowners are not permitted any longer under the *Private Ways Act*
 - (a) It has outlived its usefulness which was during the early stages of municipal development in Nova Scotia;
 - (b) HRM council cannot rely on it to affect the Cron's property because
 - i) HRM council can only “expropriate” land pursuant to the *Expropriation Act*, and
 - ii) the granting of an easement by HRM to the neighbour can only be accomplished by HRM first by “taking” the lands.

Cron v. Halifax 2010

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- Part 2 of the **Public Ways Act is operative legislation** within the province and any municipal council petitioned for the “obtaining and laying out of a private road” may properly consider such a petition.
- The court examined the history and interaction of the various pieces of legislation and found that the object of the ***Expropriation Act*** is to take land, without consent, **for the benefit of the public.**
- Whereas the object of the *Private Ways Act* is to transfer land, without consent, **from one private person to another.**
- Although the *Private Ways Act* could have significant consequences for affected landowners, the process under the *Act* did not constitute expropriation as contemplated by the *Expropriation Act*.

Cron v. Halifax 2010

2011 Amendments because of Cron vs. Halifax:

Council by-laws

29A (1) The council may make by-laws **respecting the payment of compensation** charged against the polling district in which a private way or road is made, or in whole or in part against the applicant or applicants therefor.

Expropriation Act does not apply

36 For greater certainty,

- (a) an order, award or decision made or any other action taken pursuant to this Act is not an expropriation for the purpose of the *Expropriation Act* or at common law or otherwise; and
- (b) the *Expropriation Act* does not apply to this Act or to any order, award, decision or any other action made or taken pursuant to this Act.

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Process

- Freeholder makes petition to Council asking for creation of access.
- Council reviews petition and shall **order a precept** to be issued to a competent person as a commissioner whose duties are to:
 - Examine whether the proposed access is the most practical and reasonable means of access for the petitioner
 - If satisfied lays out this access to be most advantageous to the petitioner and least detrimental to the landowner over whose land it will pass, and
 - Mark out this access on the land (not over twenty-five (25) feet in width)
- If satisfied with the proposed way or access, commissioner makes duplicate plans of the proposal. If not satisfied (if there is a more reasonable or practical way of access), they so report to Council.
- Commissioner **may** make an agreement in writing between the petitioner and landowner regarding the compensation, if any, for the proposed access.
- Submit to the Municipal Clerk for Council with his Precept the Agreement and his Full Report

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Harbourview

- Just South of Port Hood
- Landlocked property behind properties located along Route 19.
- Application to go directly through the property below
- Proposed route through the garden of the lower property owner.
- Opposed
 - Garden
 - Aunt of the applicant owned the property to the South. Access Available there.
- Decision:
 - Not the **most practicable and reasonable** means of access
 - **Most advantageous** to the one applying for the way or road **but** most detrimental to the owners of the land through which the way or road shall pass
 - The proposed way was not determined to be **reasonable and practicable nor requisite** for the purposes of the one applying therefor

Harbourview



Harbourview



Grand Lake

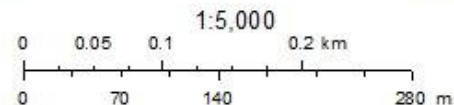
- Located on Isle Madame
- Landlocked property at the end of a peninsula on Grand Lake
- Application to go directly through the middle of the peninsula and along a newly created private road.
- Opposed
 - Not the historical approach to the property
 - Not practical because of a cliff face
 - Not necessary because of water access
- Decision:
 - Applicant requested to respond to lawyers contention that there was water access meaning that the property was not “land-locked” and that the proposed private way was not “requisite”.



May 11, 2022

The Province of Nova Scotia makes no representations, expressed or implied, as to the accuracy, completeness and timeliness of the information, maps and other data, including PID numbers or property boundaries, which are displayed on this page.

The data is provided on the understanding that it is not guaranteed to be correct or complete or current, and conclusions drawn or decisions made, based on an interpretation of the data, are the responsibility of the user.



Service Nova Scotia and Internal Services
Internal Services Department



WEST ARICHAT



Location of trailer



25.01.2013



25.01.2013



WEST ARICHAT



Location of trailer



25.01.2013



25.01.2013



WEST ARICHAT



Location of trailer



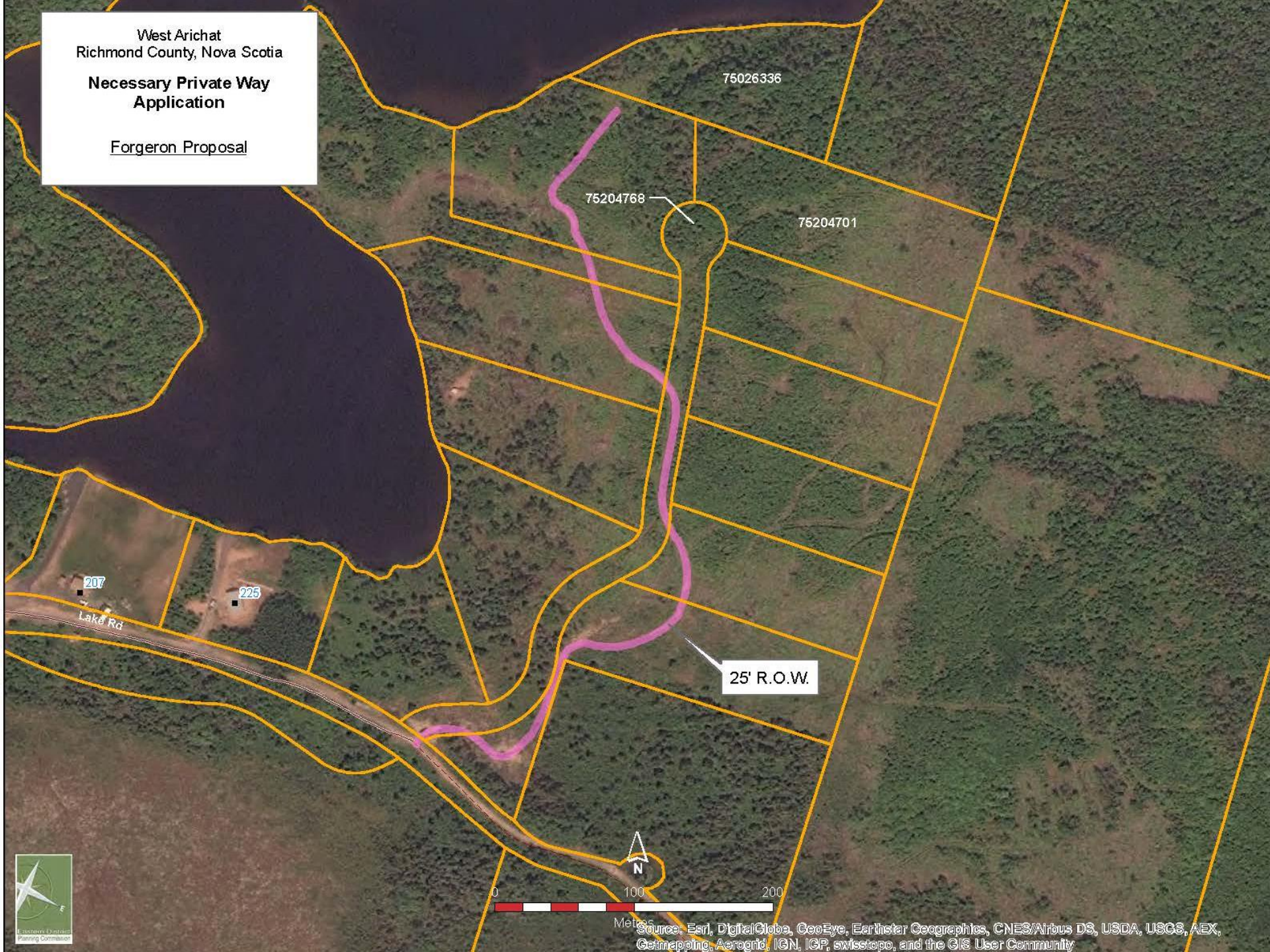


25.01.2013

West Arichat
Richmond County, Nova Scotia

**Necessary Private Way
Application**

Forgeron Proposal



75026336

75204768

75204701

207

225

Lake Rd

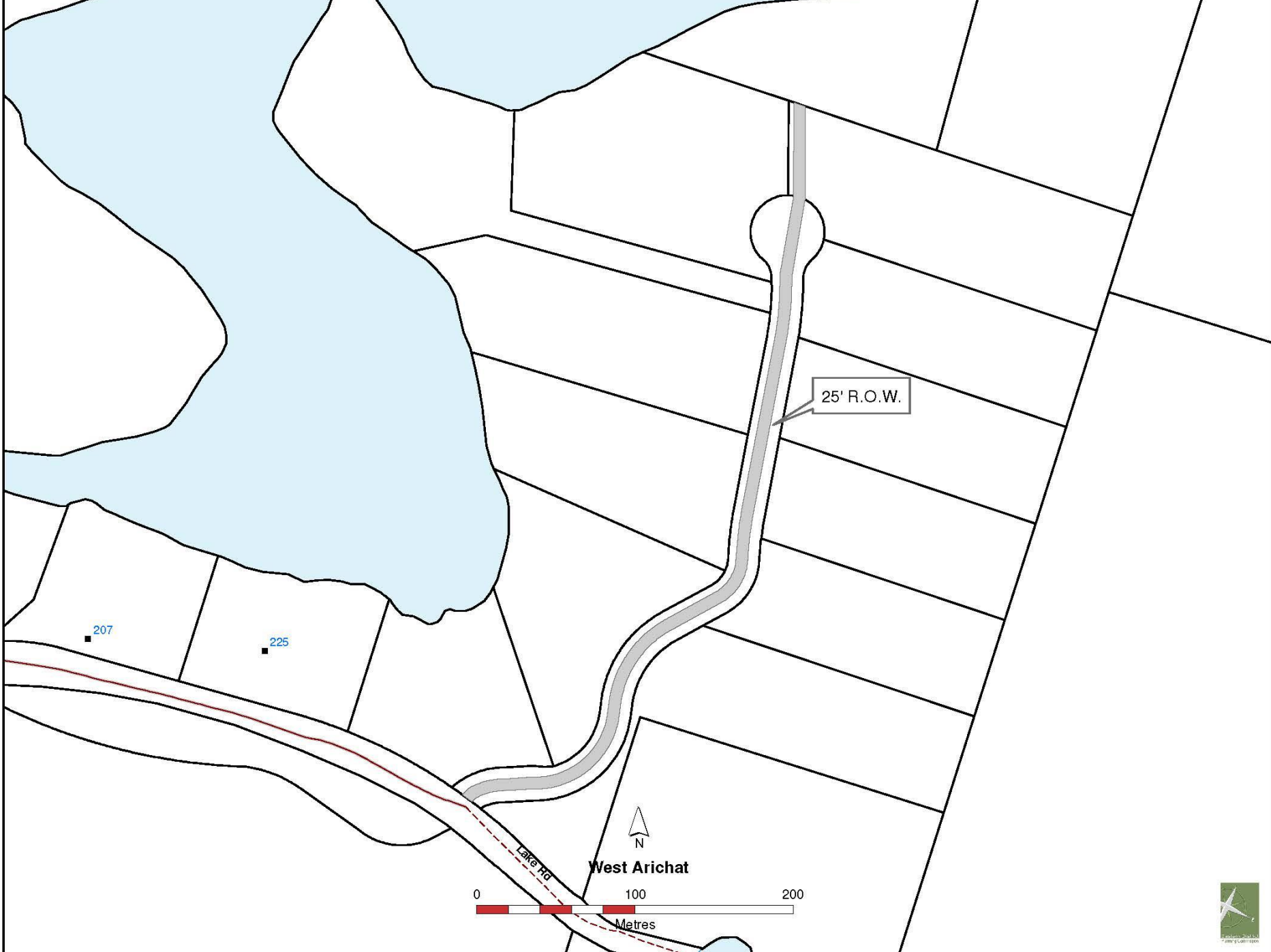
25' R.O.W.



Meters



Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community



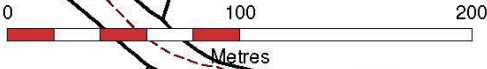
25' R.O.W.

207

225



West Arichat



Lake Rd

Metres



West Arichat
Richmond County, Nova Scotia

**Necessary Private Way
Application**

Landry Proposal

75026336

75204768

75204701

25' R.O.W.

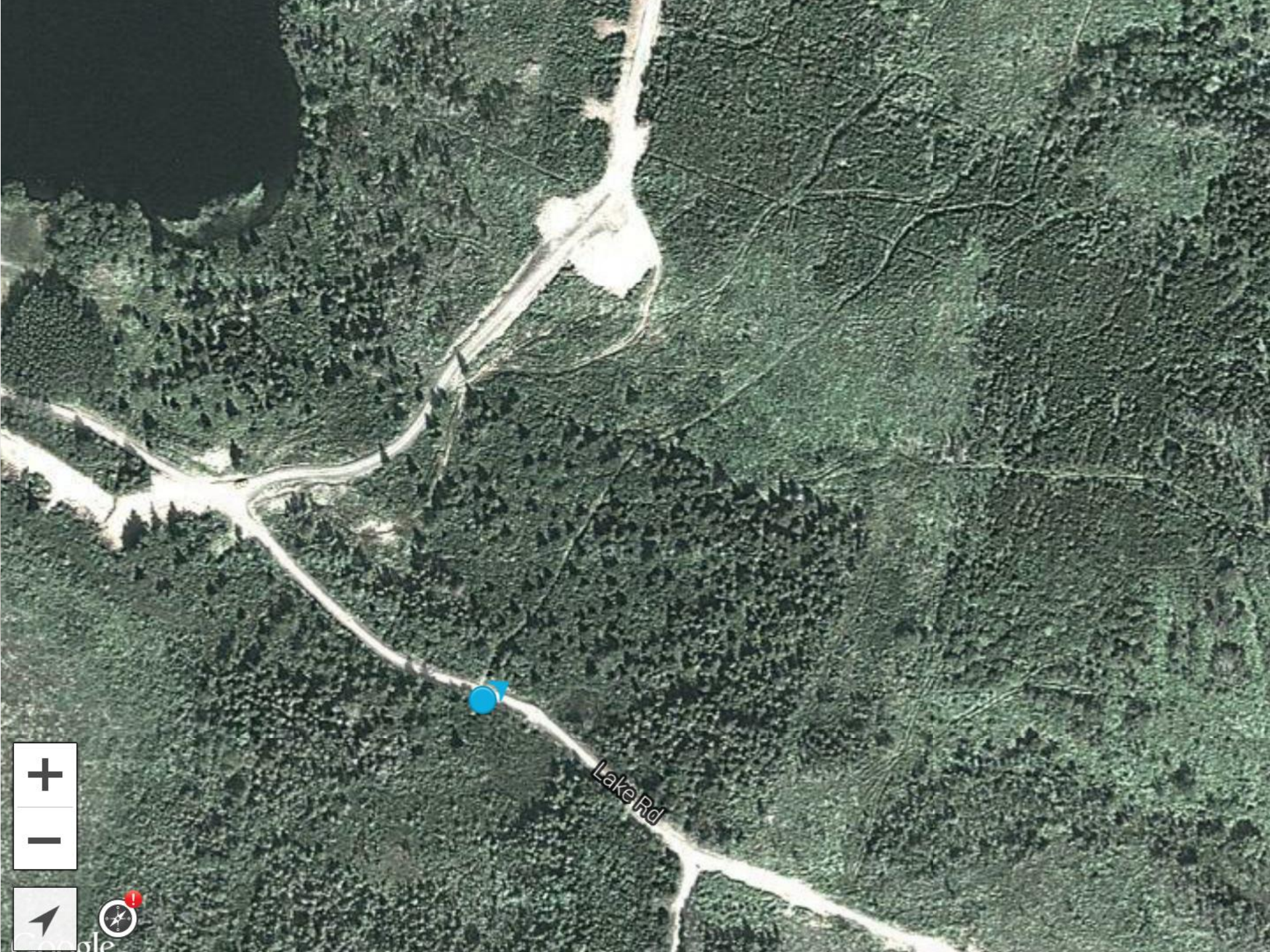
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225

Lake Rd

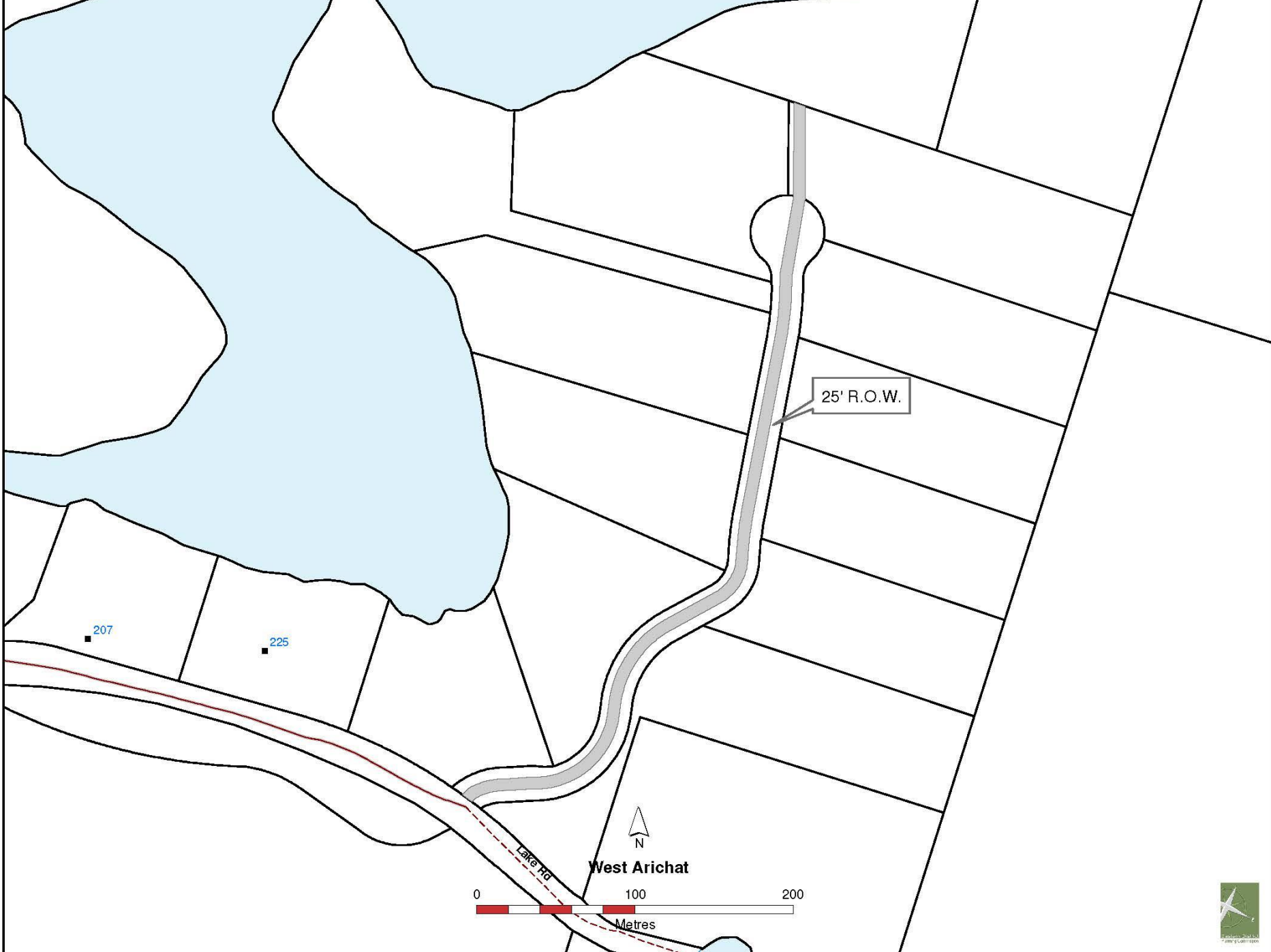


Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroX, GEBCO, IGN, IGP, swisstopo, and the GIS User Community



Lake Rd





Background and Purpose

- **Two Parts of the Act**

- PART 2: Authority of Municipal Council

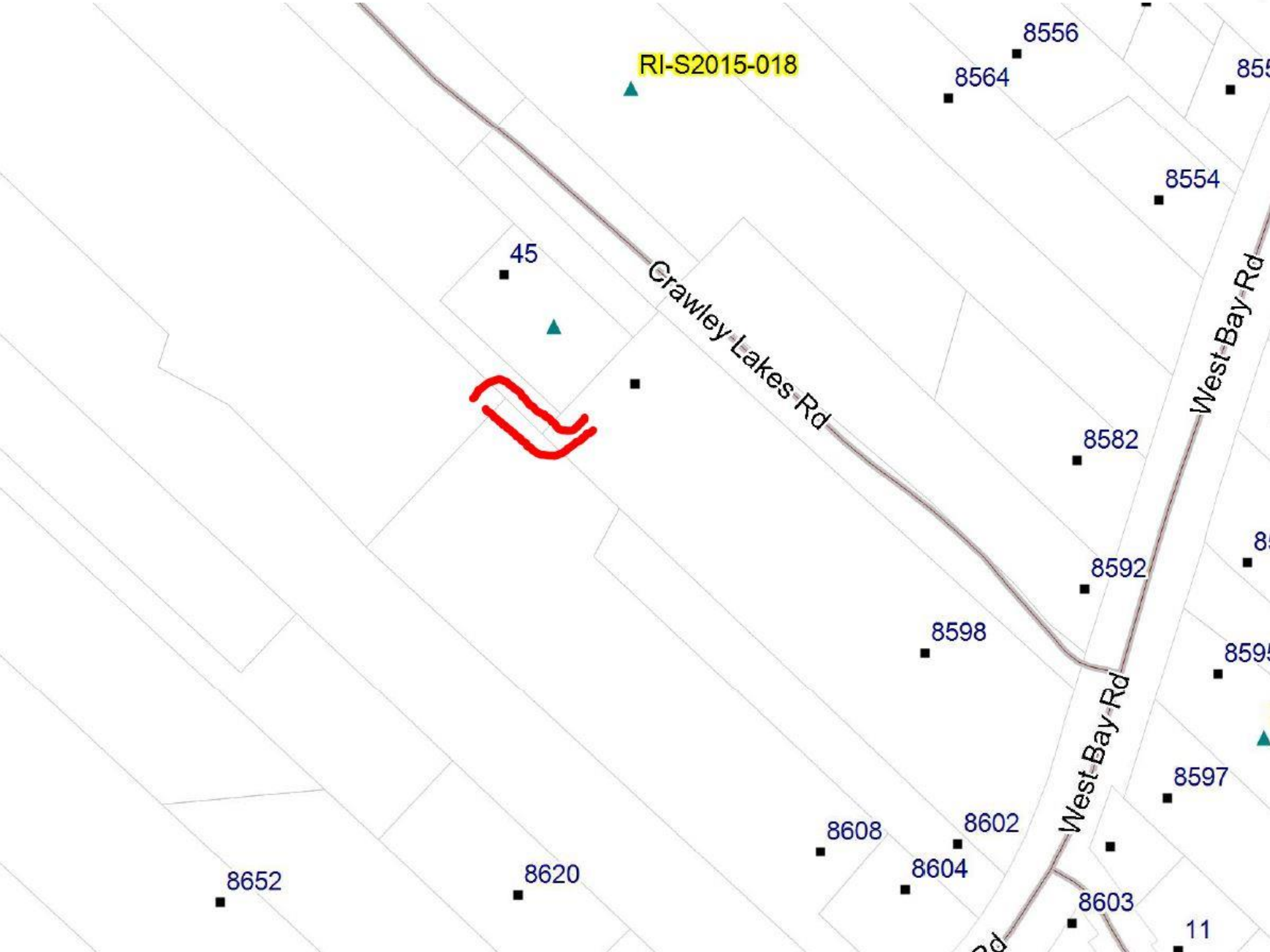
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Grand Lake

- Located on Isle Madame
- Landlocked property at the end of a peninsula on Grand Lake
- Application to go directly through the middle of the peninsula and along a newly created private road.
- Opposed
 - Not the historical approach to the property
 - Not practical because of a cliff face
 - Not necessary because of water access
- **Decision:**
 - **Applicant requested to respond to lawyers contention that there was water access meaning that the property was not “land-locked” and that the proposed private way was not “requisite”.**

Sampsonville

- Located on in Richmond County, North of St. Peters
- Landlocked property off Crawley Lakes Road and the West Bay Highway behind the Lakeside Community Centre
- Right-of-ways already obtained from the Community Centre for access across their property.
- Right-of-way not inferred. Right-of-way not in the Deed but agreed to with a handshake in 1958. Not in Deed.
- Approximately 21 metre right-of-way required.
- Two options for crossing.



RI-S2015-018

Crawley Lakes Rd

West Bay Rd

8556

8564

855

8554

45

8582

8592

8598

8599

8597

8608

8602

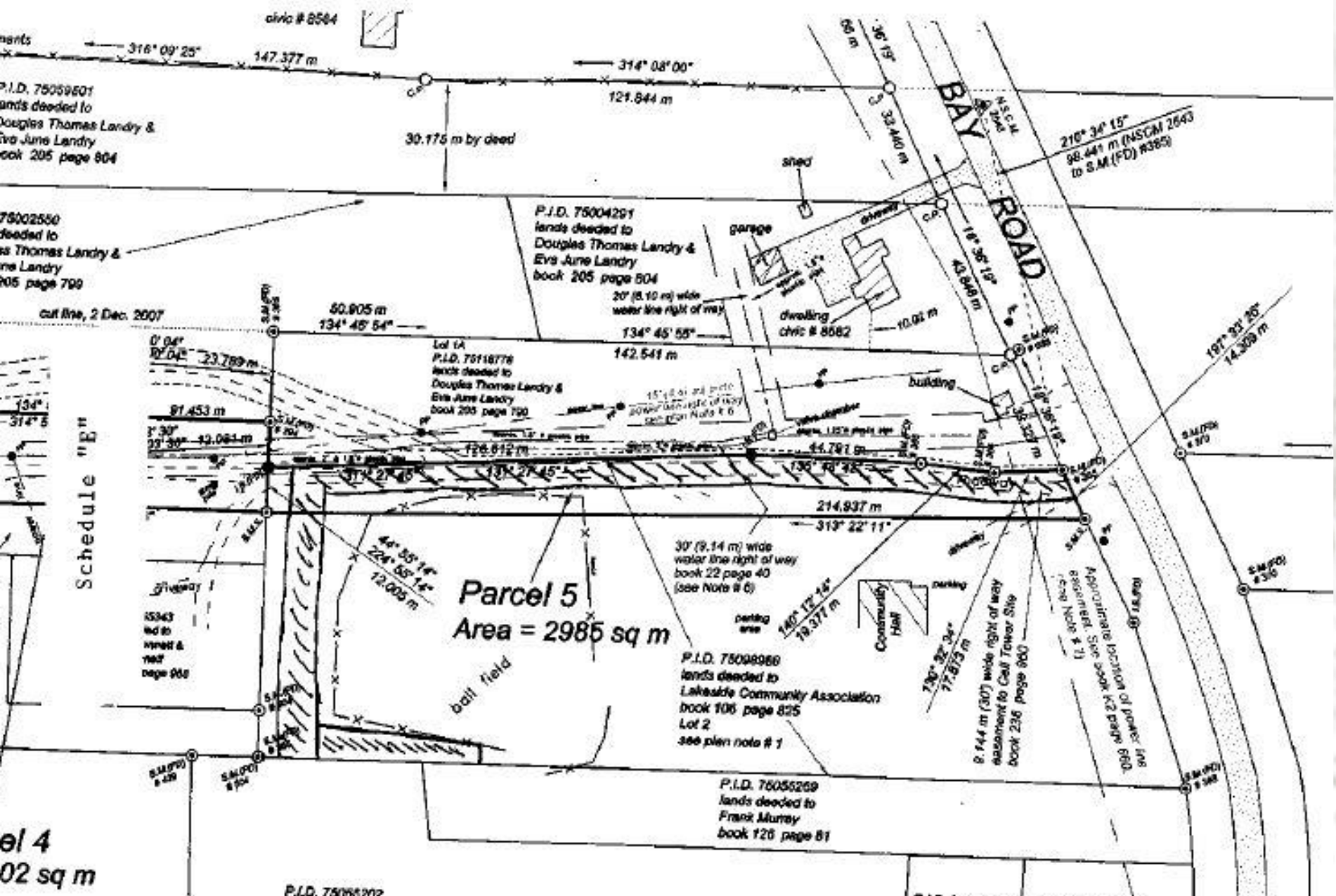
8604

8603

8652

8620

11



civic # 8564

P.I.D. 75009601
lands deeded to
Douglas Thomas Landry &
Eva June Landry
book 205 page 804

P.I.D. 75002550
lands deeded to
Douglas Thomas Landry &
Eva June Landry
book 205 page 799

P.I.D. 75004291
lands deeded to
Douglas Thomas Landry &
Eva June Landry
book 205 page 804

Lot 1A
P.I.D. 75118778
lands deeded to
Douglas Thomas Landry &
Eva June Landry
book 205 page 799

30' (9.14 m) wide
water line right of way
book 22 page 40
(see Note # 6)

P.I.D. 75009866
lands deeded to
Lakeside Community Association
book 106 page 825
Lot 2
see plan note # 1

P.I.D. 76055269
lands deeded to
Frank Murray
book 126 page 81

9.144 m (30') wide right of way
easement to Cell Tower Site
book 236 page 800

Appropriate location of power line
reservoir. See book 122 page 860
(see Note # 1)

Parcel 5
Area = 2985 sq m

bail field

Community Hall

parking

patio area

shed

garage

driveway

dwelling
civic # 8562

building

driveway

Schedule "B"

Parcel 4
102 sq m

P.I.D. 75005202

cut line, 2 Dec. 2007

ISS43
not to
be used
page 906

S.M.(FD) # 428

S.M.(FD) # 429

S.M.(FD) # 430

S.M.(FD) # 431

S.M.(FD) # 432

BAY ROAD

210° 34' 15"
98.441 m (NASCN 2643
to S.M.(FD) #385)

197° 32' 20"
14.309 m

314° 08' 00"
121.844 m

316° 09' 25"
147.377 m

30.175 m by deed

31° 56' 12"

33.440 m

18° 35' 12"

40.868 m

50.805 m
134° 45' 54"

142.541 m

23.789 m

91.453 m

13.084 m

126.812 m

44.781 m

214.937 m

313° 22' 11"

12.005 m

44° 55' 14"

224° 55' 14"

140° 17' 44"

19.577 m

730° 32' 30"

17.873 m

9.144 m

307° 32' 30"

17.873 m

S.M.(FD) # 433

S.M.(FD) # 434

S.M.(FD) # 435

S.M.(FD) # 436

S.M.(FD) # 437

S.M.(FD) # 438

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Google Inspirational Quote to End On...

“A blocked path also offers guidance.”

Mason Cooley

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