

# The Municipal Resurvey: The Resurrection

By John Barzo and Chester Stanton

## Introduction

After an almost 40 year long slumber and left for dead, the municipal resurvey provisions in Sections 48 - 49 of the Ontario *Surveys Act* have recently been born again with the release of Surveyor General, Susan F. MacGregor's decision on October 24, 2013 in "Case No.: 883".

Within this decision one can find much to mull over, including the difference in approaches and statutory mandates when compared with the *Boundaries Act*, the rejection of the notion of equitable division of boundaries in relation to accreted lands when involving an original road allowance and perhaps introducing a principle of "the intended lot fabric".

## Background

The subject properties are situated on the shores of Georgian Bay in the Township of Tiny, and in particular the Road Allowance between Concessions 18 and 19, to the water's edge at what is locally known as Thunder Bay. Initially, the waterfront landowners on the west side of the road initiated an application under the *Boundaries Act*, with a proposed plan of deflecting the road towards the east. The landowner on the east side of the road was not in favour. The Township, as the literal meat in the sandwich was dragged into the fray.

The BA application was abandoned at the 11<sup>th</sup> hour, and shortly thereafter a lawsuit commenced against the Township, in part on the basis of alleged bad faith in maintaining the position that the road should continue in a straight line without deflection. The litigation was put on hold to allow the applicants to recommence a BA application, but when they did so, they advanced a new theory on the basis that an entire segment of the original road allowance was in fact in the wrong place.

Faced with this escalation in the dispute, the Township turned to the provisions of the *Surveys Act*. The *Boundaries Act* hearing was placed in abeyance.

The end result of the *Surveys Act* decision was that it was found that the road was in the correct locale, and further in circumstances of accreted lands, a road allowance is to continue along in a straight line, without deflection, to maintain the intended lot fabric.

## The Lawyer's Perspective

Since there are two statutory routes to resolve the issue at hand, a comparison of the wording of the respective legislation was a natural starting point. Under the *Boundaries Act*, there is a statutory mandate to the Director to "*dispose of any objection in such manner as he or she considers just and equitable under the circumstances*".

Under the *Surveys Act*, the Minister, upon the evidence submitted "*may direct such amendments to be made as he or she considers necessary*".

Surveyor General MacGregor found that "*introducing a bend into a road allowance creates unnecessary confusion for landowners*". When addressing the issue of equitable distribution of accreted shore lands in the context of the *Surveys Act*, she reasoned as follows:

*"After considering the evidence and the law provided, I find that reliction/inundation, erosion/accretion have no impact on the location of the road allowance. The Surveys Act in Ontario was written to ensure the lot fabric is restored according to best evidence principles when lost. The objective is to put the lot fabric back where it was, providing certainty to land owners. If the common law principle of equitable distribution of accreted shore lands applies at all, it should be confined to the lot within which the property sits."*

The question that is left, is whether the above noted principles as outlined by Surveyor General MacGregor would have been applied if the hearing was held under the *Boundaries Act*?

## The Surveyor's Perspective

This situation has been ongoing for many years including two *Boundaries Act* Applications, two lawsuits and a hearing under the *Surveys Act*.

For Surveyors it emphasizes the fact that the original evidence of lot fabric for the townships in Ontario is disappearing. Long gone are most of the original blazes, bearing trees, stone mounds, wood posts and pits and mounds set during the course of these surveys. We now have to look for other evidence of the position of the original road allowances, side roads and lot corners. The priorities of evidence are well documented and the methods for re-establishing the lot fabric are set out in the *Surveys Act*.

As Surveyors we need to keep in mind that there may be extrinsic evidence available as there was in the case at hand. Old field notes from surveys carried out at a time when the original evidence was still in existence were reviewed, as were the field notes and plan from the original survey. A review of the field notes for the original survey indicates that the lines in Tiny Township were all run in an orderly fashion, however, a detailed review of the Surveyor's diary indicated a completely different scenario with lines being run from different directions to a common base line. This of course resulted in jogs where the original plan and field notes did not indicate jogs and distances measured for the

lots which were not in accordance with the original plan and field notes.

Some of the evidence introduced in support of the position of the boundary included soils tests by geo-technical engineers to determine what may have constituted wind-borne alluvium and what was original ground, historical air photos, historical by-laws of the Municipality and experts who helped determine the age of old trees in the area of the subject lands.

In light of the deteriorating original evidence, it is impor-

tant to keep in mind that there is an avenue, besides the *Boundaries Act*, available under the *Surveys Act* to confirm the position of the original lot fabric. 

**John Barzo** is a lawyer practicing in Barrie, Ontario and represented the Township of Tiny. He can be reached by email at [jbarzo@barzolaw.com](mailto:jbarzo@barzolaw.com)

**Chester Stanton, B.Sc., O.L.S., O.L.I.P., C.L.S.**, is a principal of Dearden and Stanton in Orillia, Ontario and represented one of the land owners. He can be reached by email at [cstanton@encode.com](mailto:cstanton@encode.com)

Case No.: 883 can be found at the following website:

<http://www.township.tiny.on.ca/Shared%20Documents/Surveyor%20General's%20Decision%20,%20Moranis.pdf>

**Editor's note:** After preparation of this article, the decision in this matter has been appealed to the Ontario Divisional Court. The hearing date has not yet been set.

## NEWS FROM 1043

### Changes to the Register

#### MEMBERS DECEASED

George J. Wegman	998	Sept. 13, 2013
Robert R. Smith	652	Oct. 20, 2013
Beverley G. Cook	1149	Oct. 27, 2013
Harold Macklin	746	Nov. 16, 2013
Kenneth Matthews	1272	Dec. 7, 2013
Gordon F. Mackay	1162	Dec. 8, 2013

#### RETIREMENTS/RESIGNATIONS

Anil Agnihotri	1772	Dec. 31, 2013
Eugene Marshall	CR8	Dec. 31, 2013
Michael T. Franey	CR77	Dec. 31, 2013
John Knowles	CR121	Dec. 31, 2013
Robert Naraine	CR71	Dec. 31, 2013

#### COFA'S RELINQUISHED

Rowan-Stanciu Ltd.		Mar. 25 2013
W.R. Wollerman Surveying Inc.		May 1, 2013
D.J. Cullen Limited		Aug. 1, 2013
P.J. Thorpe Surveying Limited		Oct. 31, 2013

#### COFA'S ISSUED

David Horwood Limited  
Markham, ON, November 20, 2013

#### COFA'S REVISED

Was: Vladimir Dosen Surveying  
Is: Vladimir Dosen Surveying Inc.  
Toronto, November 5, 2013

#### LICENCE REINSTATED

Stephen Vollick	1765	Nov. 1, 2013
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### Surveyors in Transit

**Ertl Surveyors** in Richmond Hill has acquired **Rowan-Stanciu Ltd.**

**Timothy Hartley** is now with the **Association of Ontario Land Surveyors** as the Manager of the Survey Review Department.

**David J. Pesce Surveying** in Alliston has acquired **D.J. Cullen Limited.**

**Christopher Oyler** is now with **Surveyors On Site Inc.** in Windsor.

**Thomas Gondo** is now with **MMM Group Limited** in Mississauga.

**Marcus Nouwens** is now with **J.D. Barnes Limited** in Toronto.

**Peter Thorpe** is now with **Van Harten Surveying Inc.** in Orangeville. **P.J. Thorpe Surveying Ltd.** has been acquired by **Van Harten Surveying Inc.** in Orangeville.

**Greg Bishop Surveying and Consulting Ltd.** has moved to 121 Mallard Road, P.O. Box 309, Haliburton, ON, K0M 1S0. Phone: 705-457-2811.

**Dan J. Cormier** is now with **McElhanney Associates Land Surveying Ltd.** in Surrey, BC.

The Belleville office of **Ivan B. Wallace Ontario Land Surveyor Ltd.** is now located at 5503 Highway 62, Prince Edward Square, Belleville, ON, K8N 4Z7. Phone: 613-966-9898.

**Wayne Wollerman** is now with **Ivan B. Wallace Ontario Land Surveyor Ltd.** in Belleville. **W.R. Wollerman Surveying** has been acquired by **Ivan B. Wallace Ontario Land Surveyor Ltd.** in Belleville.

The offices of **Ivan B. Wallace Ontario Land Surveyor Ltd.** in Picton, Trenton, Peterborough and Cobourg are now closed.

**Kerry Boehme** and **Roger Pickard** have transferred to the Belleville office of **Ivan B. Wallace Ontario Land Surveyor Ltd.**

**Dwayne Cummings** and **Crystal Cranch** have transferred to the Bowmanville office of **Ivan B. Wallace Ontario Land Surveyor Ltd.**

**David Horwood Limited** is located at Unit 16 – 3980 14<sup>th</sup> Ave. Markham, ON, L3R 0B1. **David O. Horwood** is the managing OLS.

**Sarah J. Cornett** is no longer with **Professional Surveyors Canada.**

**John D'Amico** is no longer with **Donevan Fleischmann Petrich Limited.**

**Sexton McKay Limited (a Division of J.D. Barnes Limited)** has moved to 140 Renfrew Drive, Suite 100, Markham, ON, L3R 6B3.

**Scott McKay** has transferred to the Markham office of **Sexton McKay Limited (a Division of J.D. Barnes Limited).** Phone: 905-477-3600, ext. 291.