



The Boundaries Act

BACKGROUND

THE BOUNDARIES ACT decision summarized here was heard in 1976. The now disputed boundary came into question in 1971 when surveyor 2 did a survey which placed the boundary between Parcels 16391 and 10812, some 18 feet south of a possessory boundary. Surveyor 2 established his interpretation of the disputed boundary from what he perceived to be the point of commencement and the distances called for in the parcel description.

R.C., the owner of Parcel 16391 to the south of the boundary in question, disputed surveyor 2's survey and in 1974 commissioned surveyor 1 to prepare a survey for an application under the Boundaries Act. Surveyor 1 assessed a wide range of evidence concerning the disputed boundary including the recollections of one of the parties to the creation of the original boundary. On the basis of this he concluded that the possessory boundary as evidenced by a line of old post holes, was the best evidence of the original boundary.

In the hearing, N.G., the owner of Parcel 10812, lying to the north of the disputed boundary, relied on the survey by surveyor 2.

TITLE HISTORY

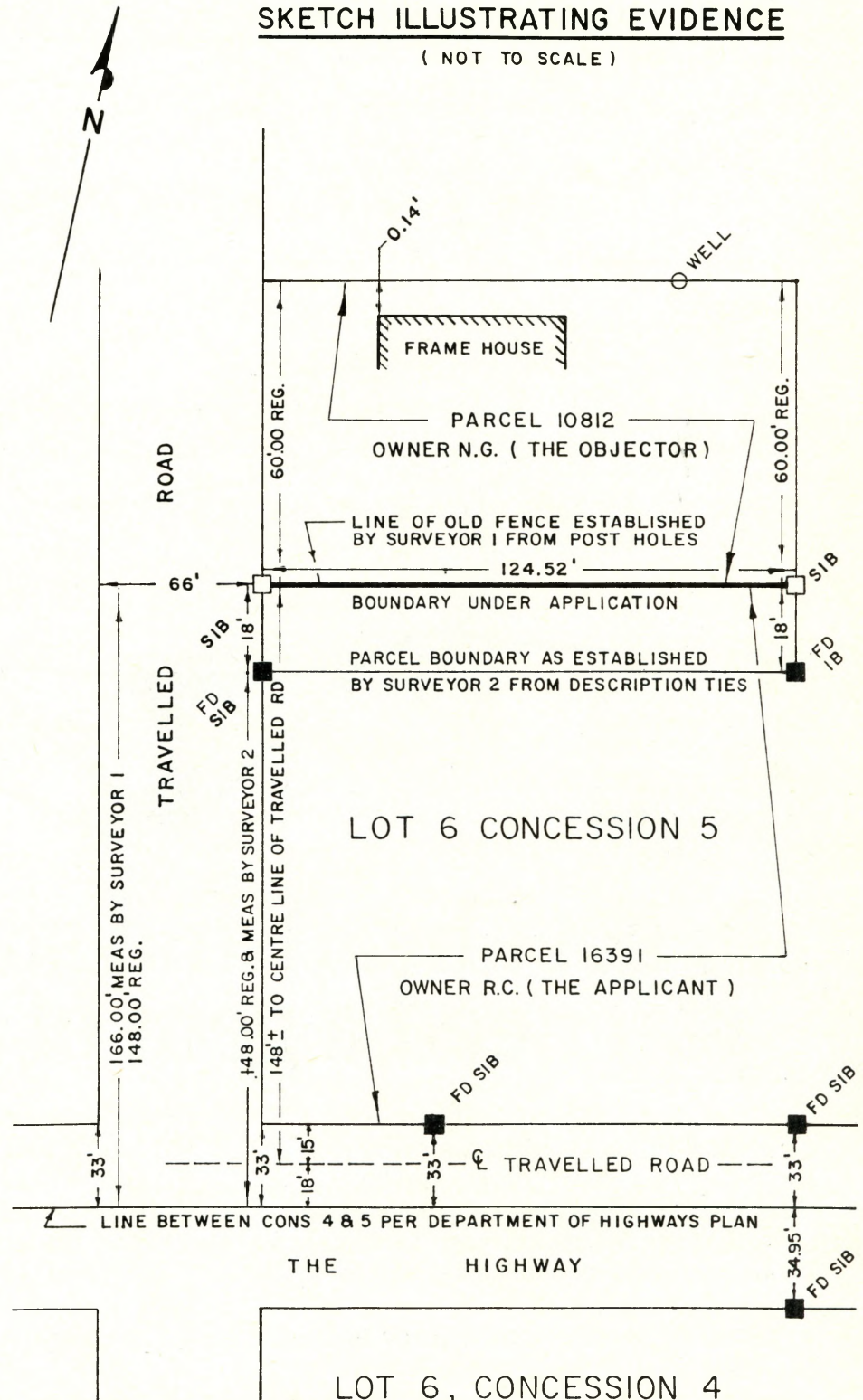
The two parcels involved are part of Lot 6, Concession 5, lying east of the travelled road running northerly through the lot. Lot 6 was patented in 1927 and the lands subsequently transferred to one D.C. in 1944.

Between 1944 and 1952, D.C. transferred a number of severances out of the parent parcel beginning with Parcel 10812, transferred to H.Q. in 1945 (now owned by N.G., the objector). The final transfer was that of Parcel 16391, to E.C., in 1952 (the lands now owned by R.C., the applicant).

In 1961 H.Q. transferred Parcel 10812 to N.G. the current owner. It was originally described as being 60 feet wide and approximately 125 feet deep, situated on the east side of the travelled road running northerly through Lot 6. The southerly boundary of the parcel was described

SKETCH ILLUSTRATING EVIDENCE

(NOT TO SCALE)



as lying 148 feet north of the southerly limit of Lot 6, which is also the limit between Concessions 4 and 5.

In 1973 E.C. transferred Parcel 16391 to his son R.C. It was originally described as lying immediately south and each of Parcel 10812 and extending southerly to the northerly limit of the public road between Concessions 4 and 5, now part of the old highway, and extending from the travelled road running northerly through the lot, to a point just west of the easterly boundary of Lot 6.

The boundary in dispute is the boundary between Parcels 10812 and 16391 extending easterly from the travelled road a distance of 124.52 feet.

SURVEY EVIDENCE

The applicant's surveyor, surveyor 1, testified that he had re-established the boundary under application following the line of a former old fence line, as evidenced today by a line of post holes in the ground. This fence was also shown in Department of Highway's field notes.

Surveyor 1 testified that a thorough search had failed to disclose any other surveys of the disputed boundary since its creation in 1945, save for the survey by surveyor 2 in 1971. There were two surveys by other surveyors, in 1947 and 1952, attached to the transfer document for Parcel 16391, transferred to E.C. in 1952. Surveyor 1 assigned these surveys little weight since he believed they were not based on field surveys but were compiled from office records.

Surveyor 1 testified that evidence of long continued occupation by the current owners and their predecessors in title supported his conclusion as to the position of the boundary under application. He referred to the positions of the old fences previously existing along both the northerly and southerly boundary of the N.G. property, the position of N.G.'s house immediately south of the northerly boundary and the location of a well on the northerly boundary. If both boundaries of Parcel 10812 were established in strict compliance with the parcel description in the manner used by surveyor 2, then both the southerly and northerly boundaries would be some 18 feet south of the positions of the former fence lines said to define these limits. In addition N.G.'s house and well would encroach on the lands to the north.

Surveyor 2 testified as to the method used in his 1971 survey. He stated that he did consider evidence of the old fence in determining his position for the boundary

in question but rejected it in favour of the position determined from the parcel description.

EVIDENCE OF LAY WITNESSES

Evidence of the boundary in dispute was presented by A.Q., the son of the original owner of Parcel 10812 and by N.G., the current owner. Evidence was also presented by R.C., the applicant and current owner of Parcel 16391, and his father E.C. who was the original owner of this parcel.

E.C. testified that when he purchased Parcel 16391 from D.C. in 1946 (by a purchase and sale agreement completed in 1952), D.C. had pointed out an existing fence line as defining the northerly boundary of the parcel. In subsequent years E.C. had performed a number of acts of ownership in the belief that the fence constituted the boundary between his lands and those of H.Q. to the north (now owned by N.G.). This included planting trees just south of the fence in 1950; placing a well just south of the tree line with the assistance of H.Q.; and the excavation of a drainage ditch, all in the now disputed area. E.C. indicated that there had been no doubt as to the position of the boundary under application until the 1971 survey for N.G. by surveyor 2.

N.G. testified that when he purchased Parcel 10812 in 1961, both the northerly and southerly boundaries were fenced and accepted by him as the limits of his property for at least 10 years until the date of surveyor 2's 1971 survey. He removed the fence along the southerly boundary in 1974 and erected a new fence some 18 feet south along the boundary located by surveyor 2.

The testimony of A.Q., the son of the original owner of Parcel 10812 should be examined in light of the fact that he was not the owner, but knew where the boundaries were. He testified that in 1945 he helped his father erect a fence along the northerly boundary, locate a well on this boundary and moved a house onto the property. N.G.'s acquiescence in the boundaries of this property supports A.Q.'s testimony.

DECISION

In rendering its decision the Boundaries Act Tribunal stated:

"The evidence of the various witnesses clearly indicates, in my view, that the owners on both sides lived to the fence line and accepted it as the boundary line between their respective properties from

1945 to 1974. Other evidence of occupation on either side of the fence supports this conclusion. Davison v. Kinsman (1853), 2 N.S.R. 1,69 (C.A.) and Bell v. Howard (1857) 6 U.C.C.P. 292 (C.A.) affirms the principle that the creation of unalterable boundaries can be carried out by the land owners themselves who are not recognised and registered land surveyors.

"It was acknowledged that the fence was not originally erected as a boundary line; but the evidence clearly supports the conclusion that it was the intention of the parties to the original severance that the fence constituted the southerly boundary thereof.

"In assessing surveyor 2's survey, I am impressed by the fact that the boundary presently in dispute was set by him at deed distance north of the southerly boundary of Township Lot 6 as re-established by the Department of Highways. The Department of Highways survey reflects an opinion as to the true position of this lot line; however, it has not been the subject of confirmation either under the Boundaries Act or the Surveys Act.

"There is reason to doubt this positioning of the lot line by virtue of the fact that the centreline of the travelled road is some 18 feet north of this boundary. In a contest of evidence, the lot line by the Department of Highways could be challengeable.

"If, in fact the centreline of the travelled road is the best available evidence of the lot line, then the authors of the original description of Parcel 10812 accurately tied the southerly limit of that Parcel to what they assumed to be true position of the southerly limit of Lot 6."

Accordingly the tribunal ruled that surveyor 1 had correctly re-established the boundary under application as shown in heavy outline on the sketch.

COMMENT

It seems clear from the evidence that everyone had accepted the possessory boundary along the southerly boundary of Parcel 10812, in the position accepted by surveyor 1, from the time of its creation defining the parcel boundary until the survey by surveyor 2 in 1971. One cannot escape the conclusion that if surveyor 2 had been as thorough in his research as surveyor 1, this boundary dispute would never have occurred.

Confirmation and Condominium Section
Legal and Survey Standards Branch
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