

A Boundaries Act Hearing

BY G. R. WILSON

Cadastral and Engineering Surveys
Committee.

THE BOUNDARIES ACT

(R.S.O. 1970, Chapter 48)

In the matter of the Boundaries Act
AND

In the matter of an Application for
confirmation of the true location on
the ground of the boundary between
the north half and the south half of
Lot 11, Block 4, Registered Plan "Y".

This is an Application by Marvin
B. and Janice B. for the purpose of con-
firming the aforementioned boundary as
shown by a heavy, solid line on a draft
plan of survey, dated December 7, 1973
and signed by Surveyor "A".

This Application came before me
in the Court House, Court Room 'A',
at 10:00 o'clock in the morning of the
8th day of October, 1974.

At this time there appeared before
me:

Solicitor "A" - Counsel for the Appli-
cants

Surveyor "A", O.L.S. - Surveyor who
signed the draft plan of survey

Solicitor "B" - Counsel representing
Steve S. and Lillian S., as Objectors
Steve S. - Adjoining owner and Ob-
jector

Surveyor "B" - Surveyor

Prior to the Hearing a letter of
objection was received from Solicitor "B"
on behalf of his clients, Steve S. and
Lillian S., owners of lands lying immedi-
ately south of the boundary under Ap-
plication. The letter of objection claimed
that the position of the boundary as
re-established by the Applicants' surveyor,
"A", was in error and that the true
position was shown on a plan of survey
by Surveyor "B", dated July 18th, 1969.

During the Hearing twelve exhibits
were filed.

From the evidence presented in the
Hearing, the background to the Applica-
tion emerged as follows:

The Applicants, Mr. and Mrs. B.,
are owners of a property of approximate-
ly 75 feet in width on the west side of
Granite Street, being composed of all
of Lot 10 and the north half of Lot 11,
Block 4, according to a plan of sub-
division, prepared by E. C. Steele, On-
tario Land Surveyor, in 1902 and regis-

tered as Plan Number "Y". The lands
were conveyed to the Applicants by a
deed registered in the Land Registry
Office as Number T-102864 on July 31,
1969.

The lands of the Objectors, Mr. and
Mrs. S., lie immediately to the south of
the B. property and are composed of the
south half of Lot 11 and all of Lot 12,
Block 4, according to Plan "Y", as
described in Instrument Number T-1025-
17, registered July 17, 1969.

Block 4 of Registered Plan 10098
is composed of two tiers of lots (Lots
1 to 6 inclusive, fronting on the east
side of Grand Boulevard and Lots 7 to
15 inclusive, fronting on the west side
of Granite Street) separated by a 20 foot
wide lane, and bounded on the south
by St. George's Avenue and on the north
by the southerly limit of a plan of sub-
division prepared by E. M. MacQuarrie,
Ontario Land Surveyor, and registered
as number in the year 1958.

From about 1946, Lots 7 to 15
inclusive, fronting on the west side of
Granite Street, were first developed as
building lots of approximately 75 feet
in width, being composed of a combin-
ation of whole and half lots.

Surveyor "B", O.L.S., surveyed the
line under Application, being the line
between the north and south halves of
Lot 11, for a building lot stakeout and
subsequent house mortgage survey of
Lot 12 and the south half of Lot 11 on
July 12th and August 5th, 1969, res-
pectively.

Surveyor "A", O.L.S., surveyed the
same half lot line for the owners of the
property to the north in July of 1972,
which positioning was approximately 1
foot south of the line by "B", O.L.S.
It is this difference of opinion which leads
us to the present application for confir-
mation of the true location on the ground
of the line between the north and south
halves of Lot 11 in Block 4 under pro-
visions of The Boundaries Act.

The Applicants' surveyor, Surveyor
"A", was placed under oath and gave
evidence concerning his positioning of
the boundary under Application and con-
cerning prior surveys by his firm within
Blocks 3, 4 and 5 on Registered Plan
10098. It was the Surveyor's evidence
that the first building lot survey in Block
4 was by himself, for a parcel stakeout
of all of Lot 7 and the north half of Lot
8 on June 29th, 1966. The plan and the

field notes thereof were filed in the Hear-
ing as Exhibits 2 and 9, respectively.

Failing to find evidence of any origi-
nal monuments planted in 1902 to con-
trol the lots created by Registered Plan
10098, Surveyor "A" gave evidence that
he had in 1966 relied on found survey
evidence along the northerly limit of
Blocks 3, 4 and 5, planted by E. M.
MacQuarrie, O.L.S. in his survey of the
plan of subdivision of lands to the north,
called "The Giuliani Subdivision", and
registered as number---, and also found
survey evidence along the southerly limit
of Blocks 3, 4 and 5, Plan 10098, being
also the northerly limit of St. George's
Avenue, as shown on a plan of survey
of the St. George's Avenue extension by
J. B. Chambers, O.L.S., dated January
31, 1964, a copy of which was filed
as Exhibit 8 in the Hearing. This found
evidence allowed Surveyor "A" to re-
establish the exterior limits of Blocks
3 and 4 on Registered Plan 10098 and
to proportion the measured distances be-
tween these exterior limits to re-establish
the intervening lot and half lot lines. By
this proportioning method Surveyor "A"
determined that Lots 7 to 15 in Block
4 each had a surplus of approximately
9.5 feet in the depth and a surplus of
0.07 feet and 0.05 feet in the front and
rear widths, respectively.

This block re-establishment and the
proportioning method provided the basis
employed on subsequent surveys by Sur-
veyor "A" of the northerly half of Lot
8 and all of Lot 9, Block 4, Plan 10098,
on July 15th, 1971, a copy of the plan
of survey being filed as Exhibit 3 in the
Hearing, and of the line between the
north and south halves of Lot 11 in
Block 4 for the Applicants in May of
1972.

This later survey disclosed that the
half lot so re-established was approxi-
mately 1 foot south of the same bound-
ary as re-established by Surveyor "B",
in July of 1969 and that certain improve-
ments made by the owners of the south
half of Lot 11, in accordance with the
"B" survey, i.e. fence and a concrete
slab sidewalk, were situated wholly or
partly in the north half of Lot 11.

It was brought out in evidence that
Surveyor "A" had some discussions with
Surveyor "B" concerning this boundary
and Surveyor "B" re-staked this bound-
ary in 1972 at deed distance south of
the north limit of Block 4, the position
of which Surveyor "A" accepted and
showed on his plan of this boundary
dated July 13, 1972, filed as Exhibit 4.
This later survey by "B", O.L.S., was
approximately 1 foot north of his pre-
vious positioning in 1969.

Surveyor "A" also gave evidence
that at the time of his June 29th, 1966

survey of Lot 7 and the north half of Lot 8, he was aware of a survey by F. C. Wilson, O.L.S., dated June 20, 1966 on the east side of Granite Street, being a survey of all of Lot 7 and the north half of Lot 8 in Block 3, Plan 10098. Mr. Wilson's plan of survey, filed as Exhibit 6, indicated that he had found two iron bars along the line between the north and south halves of Lot 8 in Block 4, but it was Surveyor "A"'s evidence that he could not find these monuments during his survey some 9 days later.

Solicitor "B", counsel for the Objectors, placed before the Hearing the evidence of Surveyor "B". It was Surveyor "B"'s evidence under oath that during his stakeout survey of Lot 12 and the south half of Lot 11 in Block 4, he had found no survey evidence on the west side of Granite Street with the exception of an iron bar at the north-east angle of Lot 7. The position of this monument was not confirmed by him and, therefore, he relied on survey monuments planted by Wilson, O.L.S., for his survey of Lot 7 and the north half of Lot 8 in Block 3 on the east side of Granite Street. It was determined from the evidence of Surveyor "B" and from his firm's original field notes of 1969, filed as Exhibit 15 in the Hearing, that the line between the north and south halves of Lot 11 in Block 4, on the west side of Granite Street, has been re-established at that time at deed distance of 75 feet south of the production westerly of the line between Lots 6 and 7 in Block 3, on the east side of Granite Street, as evidenced by the monuments set by Mr. Wilson in 1966.

Surveyor "B" stated that at the time of his 1969 survey he was unaware of the previous survey by Surveyor "A" in Lots 7 and 8, Block 4, and assumed that he had made a search of the firm's records. Surveyor "B" also stated that he had not searched on the ground south of Lot 12 in Block 4 for evidence of any survey monuments and, therefore, was also unaware of the existence of any monument at the south-east angle of Lot 15 in Block 4 used by Surveyor "A" in his re-establishment of lot and half lot boundaries within that block. Upon cross-examination, Surveyor "B" admitted that he would have used Surveyor "A"'s lines and survey method if he had found the iron bars on the exterior limits of Block 4.

It was also brought out in evidence that when Surveyor "B" became aware of the Surveyor "A" survey in 1972 of the half lot line in dispute, he prepared a sketch, a copy of which was filed as Exhibit 11, illustrating the survey method used by both himself and Surveyor "A",

the evidence found and used, and the position of the various boundaries. This sketch illustrates that the position of the Lot 11 half lot line as originally set by Surveyor "B" in 1969 was approximately 1 foot north of the same boundary as re-established by Surveyor "A".

Commenting on his second positioning in 1972 of the Lot 11 half lot line which agreed with Surveyor "A", Surveyor "B" stated that he had set this line at deed distance south of the northerly limit of Block 4 as re-established by Surveyor "A", with the purpose of obtaining agreement by the owners on each side thereof in an attempt to settle a possible dispute, but Mr. S., the owner of the lands south of the boundary, would not agree. Surveyor "B" maintained that the half lot line as originally set by himself in 1969 was the true position of this boundary.

It was the submission of counsel for the objectors that as the original Plan 10098 indicated the lot lines on both sides of Granite Street to be directly opposite each other, the survey method employed by Surveyor "B" in 1969, in re-establishing lot lines on the west side of Granite Street from evidence of the lot lines on the east side, represented the proper method of re-establishing the half lot line in dispute.

In my opinion, it is a well established common law and statutory principle that original posts in their original undisturbed positions control forever the positioning of lines on original survey plans. The problem before the Hearing, therefore, is to determine by the best available evidence the true positioning of lines on original survey plans, and therefore the true positioning of the boundaries of Lot 11 in Block 4, Plan 10098, as created in the original survey of 1902, and then the half lot line based on the positioning of those lot boundaries. No evidence was presented concerning the existence of any original stakes. The survey methods employed by both the Applicants' and Objectors' surveyors were based on evidence of resurvey long after the original survey of 1902.

Section 55 of The Surveys Act provides the statutory direction as to the survey method to be employed should the position of original corners of lots on plans of subdivision become lost.

Surveyor "A" showed that in 1966, failing to find any original evidence of the lot lines in question, he did a block outline survey to re-establish by proportional division lot lines within Block 4. This same method was used in his survey of 1971 for Lot 9 and the south half of Lot 8. In these decisions I concur.

The Applicants' surveyor in his re-establishment of the boundary under Application deviated from his previous survey method and accepted the boundary as re-established at a net distance south of the northerly limit of Block 4, rather than by proportional division between the northerly and southerly boundaries of the block. This procedure is contrary to the noted provisions of The Surveys Act.

The Objectors' surveyor, "B", adopted O.L.S. Wilson's points which were set at net distances from found evidence with no consideration of the measurement surplus within Blocks 3 and 4. Surveyor "B" then produced these lines and laid off net plan distances to re-establish the line between the north and south halves of Lot 11 in Block 4. He was, in effect, laying out theoretical points using theoretical measurements, which procedure is contrary to The Surveys Act. Surveyor "B" made no search for evidence along St. George's Avenue and, in fact, stated that he would have accepted "A"'s lines and method if he had found the block outline survey stakes.

It was the contention of the Objectors' counsel that lot lines on both sides of Granite Street should be opposite each other and, accordingly, O.L.S. "B"'s survey method was appropriate. We are concerned in matters such as this, with where the lines are in fact, not where they should have been in theory.

In my view, the survey method employed by O.L.S. "B" was inappropriate for the re-establishment of the boundary under Application and, therefore, the Objection by Steve S. and Lillian S. is denied and I DO SO RULE.

Having considered all the evidence in connection with this Application, on the evidence adduced and the law applicable, I RULE in favour of the Applicant, except that the line under Application shall be re-established at a proportionate distance between the northerly and southerly limits of Block 4 in accordance with Section 55 of The Surveys Act. This will have the effect of moving the line under Application southerly from its position as shown on the draft plan by approximately 0.31 feet at Granite Street and approximately 0.39 feet at the rear of the lot.

I DO HEREBY CONFIRM the true location on the ground of the boundary between the north half and south half of Lot 11, Block 4, Registered Plan 10098, in the position defined in my decision in the preceding paragraph.

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I DO ORDER, also that the final plan of survey be amended by the Applicants' surveyor to reflect my decision and that it be prepared to my satisfaction and registered in the appropriate Land Registry Office as prescribed by Section 16 of The Boundaries Act.

I DO FURTHER ORDER that the costs of this Application be borne by the Applicants in accordance with the undertaking in the formal Application.