

A Boundaries Act Hearing

BY G. R. WILSON

Cadastral and Engineering Surveys
Committee.

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 boundaries of Simcoe
Street from Dundas Street West to
Elm Street.

This is an Application made by a
Corporation for the purpose of confirming
the boundaries aforementioned in accordance
with a draft plan of survey, signed
by Surveyor "A", and dated November
27th, 1972.

This Application came before me
in my office, New City Hall, Toronto,
at 10:30 o'clock in the morning of the
29th day of January, 1973, was adjourned
at the request of the Applicant, and
reconvened in my Office, at 2:30 o'clock
in the afternoon of the 8th day of February,
1973.

At these times there appeared before
me:

Solicitor "A", Q.C., solicitor with the
Corporation

Surveyor "A", O.L.S., surveyor who signed
the draft plan of survey on behalf of
the Corporation.

Solicitor "B", counsel representing D.W.
S. - as an Objector

Surveyor "B", O.L.S., surveyor with the
firm of "X"

Surveyor "C", O.L.S., surveyor and principal
in the former firm of "X".

Surveyor "A", was placed under
oath, identified the draft plan before the
Hearing, verified his signature set thereto

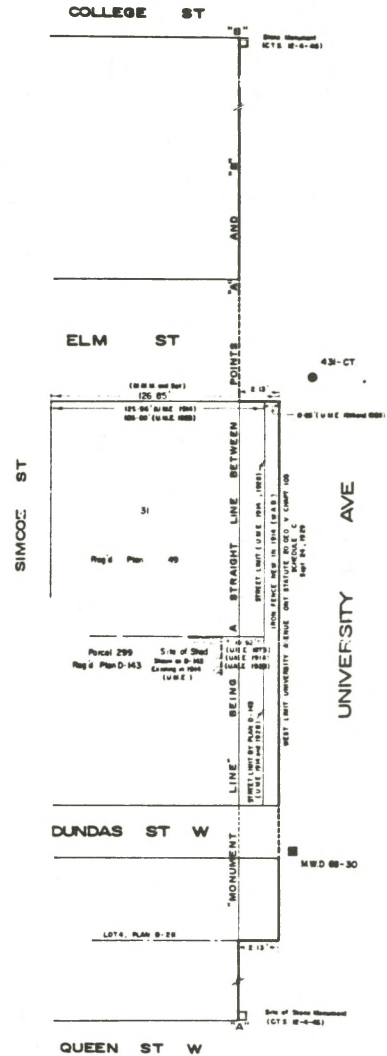
in the Surveyor's Certificate, and explained
in detail the survey method by
which the boundaries of Simcoe Street
under the Application were re-established.
Surveyor "A" made references to his
Survey Report dated July 17, 1972, and
the twenty-two previous surveys of Simcoe
Street mentioned therein, dating back as
early as the year 1868, all filed as
supporting material in support of this
Application.

Surveyor "A" stated that he had
made a thorough search for the field notes
and plans of all previous surveys made
in the area, and from this information
he had studied and analysed the previous
survey methods used and the evidence
upon which these surveys were based,
and although most of the buildings tied
into the earlier surveys and the survey
marks made at those times are no longer
in existence, he was able by building
one survey upon another to arrive at,
in his opinion, the location of the various
streetlines run for those earlier surveys.
Surveyor "A" further stated from an
examination of the foregoing he was of
the opinion that the boundaries of Simcoe
Street as surveyed and illustrated on
the draft plan before the Hearing were
re-established by the best available
evidence of their original positioning.

Objections

A written and oral objection to the
Application was received from Solicitor
"B" upon behalf of the client, D.W.S.
— the owner of lands on the westerly
side of Simcoe Street.

Accompanying the formal notice of
objection was a copy of the draft plan of



DETAIL "B" (NOT TO SCALE)

survey with certain notations made in red ink thereon and also indicated in red lines was the position of both limits of Simcoe Street as claimed by the Objector. The red ink additions indicated that the position of the easterly and westerly boundaries of Simcoe Street as applied for by the Applicant and claimed by the Objector, were coincident at the northerly boundary of Dundas Street West, but at the southerly limit of Elm Street the position of both limits of Simcoe Street claimed by the Objector were approximately 10 inches east of the Applicant surveyor's positioning.

Solicitor "B", appeared before me and submitted evidence in support of the Objection and he was assisted by the testimony of Surveyor "B" and Surveyor "C".

A condensation of the testimony relevant to the various positionings of the limits of Simcoe Street is as follows:

The present positioning of the boundaries of Simcoe Street as illustrated on the draft plan before the Hearing is based on a survey of both limits of Simcoe Street from Dundas Street West northerly to Elm Street by C. J. M., O.L.S., dated February 15th, 1928. As evidenced by his field notes and field report, Mr. M., O.L.S. was surveying a property at the south-east corner of Elm and Simcoe Streets and due to conflicting survey evidence of record both in his office and in the office of Speight and van Nostrand, Ontario Land Surveyors, he ran both boundaries of Simcoe Street north of Anderson Street (now Dundas Street West) based on earlier surveys by members of his firm or their predecessors, including those by F. L. Blake in May of 1873, R. H. Coleman, P.L.S. on July 25th, 1878, and by W. A. Browne, P.L.S. in 1885, Mr. M., O.L.S. found these earlier surveys generally in conformity with one another which gave a width of Simcoe Street of 60 feet at Dundas Street and 60'-2" at Elm Street. Mr. M., O.L.S. decided that the best available evidence for the easterly limit of Simcoe Street was to join a point at Dundas Street, 60 feet east, or plan width, from the stone base of the south-east corner of the brewery building situated at the north-west corner of Dundas and Simcoe Streets and noted in the Coleman Survey of 1878 as 'O.K.' for the westerly limit of Simcoe Street, to a point 14'-7" west of the brick base of a dwelling situated on Parcel 299 on the east side of Simcoe Street as shown on a plan of survey by Wadsworth, Unwin and Browne, P.L.S., (F. L. Blake), dated May 26th, 1873 and registered as Plan D-143, and to produce this line northerly to its intersection with the southerly limit of Elm Street. A tie of 11'-3½" was noted from the easterly limit of Simcoe Street so

re-established to the north-west corner of an old church, built in 1898 and situated at the south-east corner of Elm and Simcoe Streets. This tie compared favourably with a tie of 11'-2" to the same corner of the church as noted in a previous survey by C. J. Murphy, O.L.S., dated 1914, but disagreed with the tie of 10'-5" as noted in a previous survey by the same firm in 1898 and referred to in the Hearing as the W. A. Browne Survey of 1898. Mr. M., O.L.S. came to the conclusion as evidenced by his field report of 1928 that an addition had been made to the building or tavern at the south-west corner of Elm and Simcoe Streets as the building was now 1'-2½" over the street line, whereas the previous surveys of 1874 and 1878 indicated the tavern to be 0'-1½" clear of the street line. Mr. M., O.L.S. also came to the conclusion that the tie of 10'-5" as noted on the Browne survey of 1898 was in error and accordingly notified the firm of Speight and van Nostrand, Ontario Land Surveyors, as J. B. Howard, O.L.S. of that firm had on June 26th, 1925 used the tie of 10'-5" in re-establishing the westerly limit of Simcoe Street for a survey of the Cosgrove Brewery property.

No evidence was presented before the Hearing other than as noted in Mr. M., O.L.S. field report, that Speight and van Nostrand had been notified of Mr. M., O.L.S. findings, but on September 27th, 1929, T. B. Speight, O.L.S. and A. T. Ward, O.L.S., both principals in the firm of Speight and van Nostrand, performed a survey on the east side of Simcoe Street immediately south of the property surveyed by C. J. M., O.L.S. in 1928 in which they accepted the easterly limit of Simcoe Street as re-established and marked by C. J. M., O.L.S. In running this street line, Messrs. Speight and Ward noted that the stone base of the north-west corner of the newly erected 'National Life Assurance Co. of Canada' building (previously an old church was noted by Mr. M., O.L.S. in 1928) situated at the north-east corner of Elm and Simcoe Streets was just on the street line of Simcoe Street. Subsequent surveys by the firm of Speight and van Nostrand on the easterly side of Simcoe Street, i.e. on February 17th, 1961 signed by John van Nostrand, O.L.S. and recorded in the Office of Land Titles at Toronto as Plan R-883, and on October 24th, 1966, signed by Surveyor "C", O.L.S., both surveyors being principals of the firm, accepted the easterly boundary of Simcoe Street as re-established by C. J. M., O.L.S. in 1928.

The plan of survey, signed by J. C. Daly, O.L.S., dated November 6, 1969 of the National Life Assurance Co. of Canada property at the south-east corner of Elm and Simcoe Streets and extending southerly a distance of 205

feet, more or less, along Simcoe Street also accepted the line of the easterly limit of Simcoe Street as re-established by C. J. M., O.L.S. in 1928.

The only other survey, other than the Browne Survey of 1898, which disagreed with the "M" line was a survey by the municipality in December of 1967 which re-established the northerly and southerly limits of Elm Street between McCaul Street and University Avenue. In this survey, which was mainly concerned with the positioning of Elm Street, the south-east corner of Elm and Simcoe Streets was re-established 60 feet east of found evidence for the south-west corner, believed to have been created by the firm of Speight and van Nostrand.

The Objector, through the testimony of Surveyors "C", attempted to discredit the survey by F. L. Blake in 1873 on the grounds, firstly that Mr. Blake was not a commissioned surveyor and secondly that his field notes did not indicate the evidence found and used to re-establish the easterly boundary of Simcoe Street.

Regardless of whether or not Mr. Blake was a commissioned land surveyor, the plan of survey was signed by the firm of Wadsworth, Unwin and Browne, Provincial Land Surveyors, and I must presume that the principals of the firm were satisfied with Mr. Blake's ability and the validity of his retracement method. Concerning the lack of survey evidence shown in the field notes, I have found from examining old survey records in support of numerous Boundaries Act Applications that it was a common occurrence for old field notes not to expressly indicate what evidence was found, but, in my view, this does not invalidate the survey method used.

The Objector through the counsel, Solicitor "B", would have the south-east corner of Elm and Simcoe Streets repositioned by accepting the tie of 10'-5" from the church as noted in the 'Browne' survey of 1898, rather than the tie of 11'-3½" by C. J. M., O.L.S. in his survey of 1928. This would have the effect of placing the north-west corner of the former National Life Building 10 inches on the street property. This contention, I reject.

The problem before the Hearing is to re-establish by the best available evidence the original positioning of the east and west boundaries of Simcoe Street. Evidence was presented before the Hearing that Simcoe Street in this area was created by Plan No. "X", drawn by John G. Howard, P.L.S., dated 1846 and registered on February 26th, 1853. No evidence was presented at the Hearing that any original stakes were found in the survey under Application, or in any previous survey, and we are forced

ST. PATRICK ST
(Formerly DUMMER ST)



7EBNM
7EBNR
DUNDAS
(Formerly ANDERSON ST)
Registered Plan 49

24

25

26

27

28

Registered Plan 49

N17°10'15"W

SIMCOE

(Formerly WILLIAM ST)

N17°10'15"W

491.51'

PLAN R-883
Stone Building

Part 2
PLAN R-683

0

7

PART 1

5

4

3

2

1

27

PRIVATE LANE

Parcel 283

Parcel 285

Parcel 287

Registered Plan 133-E

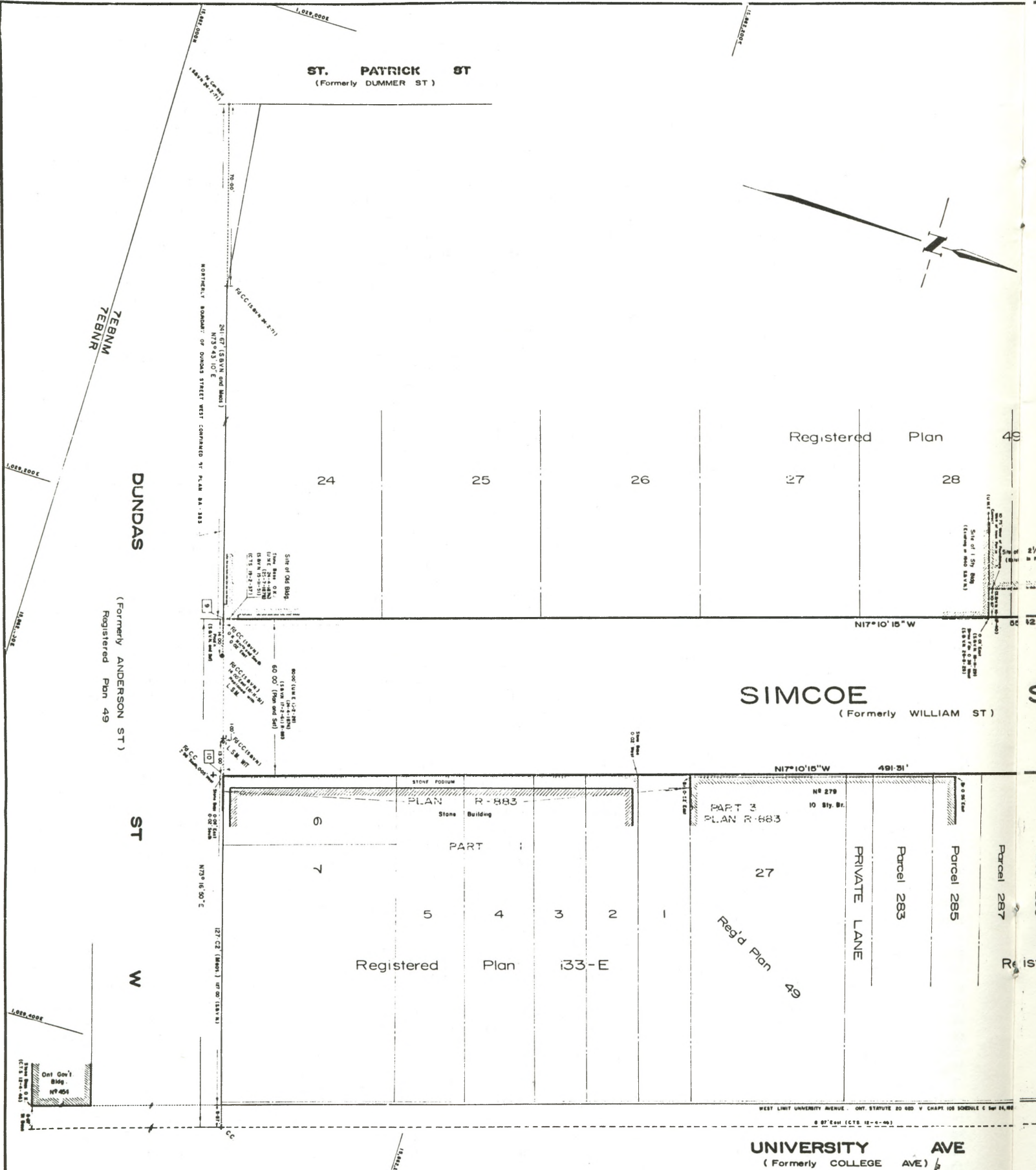
Reg'd Plan 49

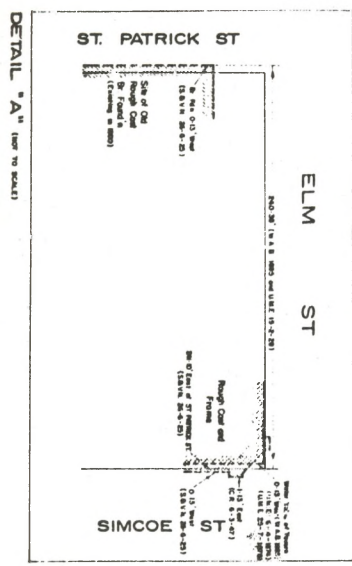
WEST LIMIT UNIVERSITY AVENUE - ONT. STATUTE 20 88D V CHAPEL 108 SCHEDULE C Part 14, 1982

© 87' ESM (CTS 12-2-00)

UNIVERSITY AVE
(Formerly COLLEGE AVE)

Ont Gov't
Bldg
No 454



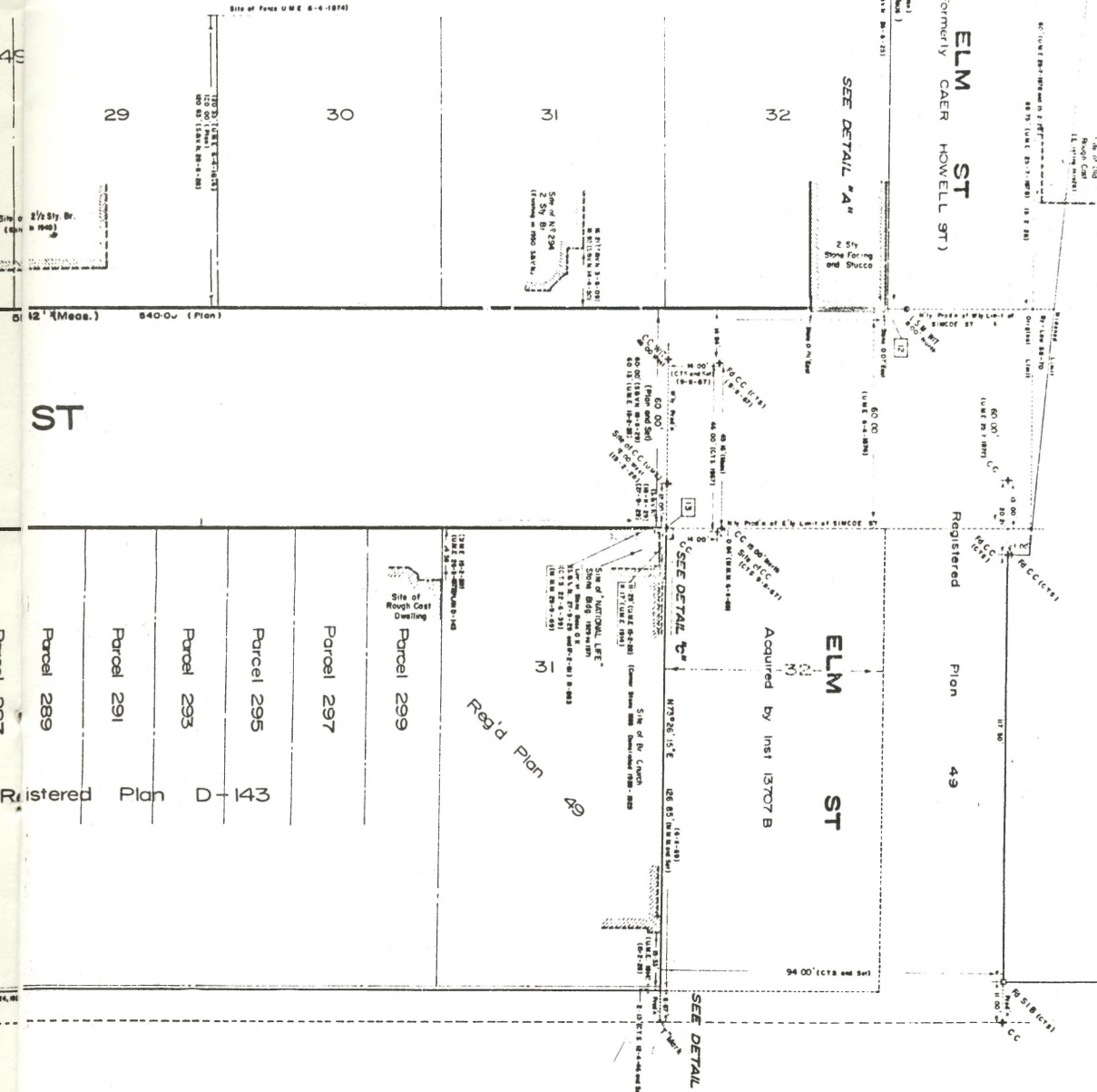
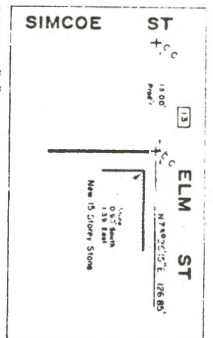


ST. PATRICK ST
(Formerly DUMMER ST)

MURRAY ST

ELM ST
(Formerly CAER HOWELL ST)

Pt A
Registered Plan 55



Registered Plan D-143

Parcel 297
Parcel 299
Parcel 295
Parcel 293
Parcel 291
Parcel 289
Parcel 287

to go back to the first surveys of Simcoe Street of which we have knowledge and whose positioning has been re-established and verified by subsequent surveys done through the years.

In my view, the weight of evidence clearly indicates that the easterly limit of Simcoe Street as shown on the draft plan before the Hearing has been re-established by the best available evidence of its true position. Practically every survey down through the years and as recently as 1969, support the positioning of the Applicant's line.

Having considered all the evidence in support of the Application and of the objection, and for reasons stated above, the objection by D.W.S. concerning the easterly boundary of Simcoe Street between Dundas Street West and Elm Street is denied, and I DO SO RULE.

As to the westerly boundary of Simcoe Street between Dundas Street West and Elm Street, evidence was presented by the Applicant's surveyor, Surveyor "A", and by Surveyor "B", that two different positionings have been used at various times down through the years.

The positioning accepted by the Applicant's surveyor was the boundary as re-established by C. J. M., O.L.S. of the firm of Unwin, Murphy and Esten, Ontario Land Surveyors on February 15th, 1928, previously referred to in this order. Mr. M., O.L.S. as evidenced by his field notes and field report, had based his positioning for the westerly limit of Simcoe Street from Dundas Street West to Elm Street upon the previous surveys by Coleman in 1878 and by W. A. Browne in 1885.

The field notes of the R. H. Coleman survey of July 25, 1878, indicate that the westerly limit of Simcoe Street was re-established by accepting the west face of the brewery building at the north limit of Anderson Street (now Dundas Street West) as O.K., and a straight line was run northerly $1\frac{1}{2}$ " east of a hotel at the south-west corner of Caer Howell (now Elm Street) and Simcoe Streets. This line was produced to the northerly limit of Elm Street and measurements were taken westerly to the easterly face of a building and then to the easterly limit of Murray Street.

The W. A. Browne survey of 1885 accepts the westerly limit of Simcoe Street as being $1\frac{1}{2}$ " east of the water table of the tavern and measured westerly along the southerly limit of Elm Street, $240'-4\frac{1}{2}$ " to occupation at the easterly limit of William Street (now St. Patrick Street).

Mr. M., O.L.S. in 1928 re-established the westerly limit of Simcoe Street

as positioned by the Coleman and Browne surveys and determined that the tavern was no longer $1\frac{1}{2}$ " clear of Simcoe Street, but was approximately $1'-2\frac{1}{2}$ " over, or east, of the street line. From this he concluded that an addition had been made to the front of the tavern.

The other positioning of the westerly limit of Simcoe Street, claimed by the Objector to be the correct one, is based on a survey by J. B. Howard, O.L.S. of the firm of Speight and van Nostrand, dated June 26th, 1925. Mr. Howard, as evidenced by his field notes and the testimony of Surveyor "B" during the Hearing, accepted the easterly face of the brewery building as O.K. at Dundas Street and ran a straight line northerly to a point opposite the church at the south-east corner of Elm and Simcoe Streets by measuring westerly $10'-5"$ from the church to the easterly limit of Simcoe Street as shown on the Browne survey of 1898 and then laid off a further 60 feet for the width of Simcoe Street. This line was produced northerly to intersect the southerly limit of Elm Street. It should be noted that the southerly limit of Elm Street at the easterly side of Simcoe Street is approximately 60 feet south of the same limit of Elm Street at the westerly limit of Simcoe Street, as Lot 32, Plan was incorporated into the street property.

The majority of subsequent surveys by the firm of Speight and van Nostrand have accepted the Howard line for the westerly limit of Simcoe Street, including those in 1936, 1940, 1947, 1950, 1951 and 1971. But on November 18, 1929, G. E. Ward, O.L.S. of the firm of Speight and van Nostrand for a "survey to fix the street line opposite the Malt Brewing Building" re-established the westerly limit of Simcoe Street as positioned by "M" in 1928. and also a survey by Mr. van Nostrand in 1909 appears to be in harmony with the "M" line.

From the evidence it then appears that the firm of Speight and van Nostrand have used two positionings for this limit of Simcoe Street at various times since 1909.

Surveyor "B" gave evidence that when he performed the field survey in February of 1961 of lands lying on the east side of Simcoe Street, which plan was recorded in the Office of Land Titles as R-883, he became aware of the "M" survey report concerning the westerly limit of Simcoe Street and accordingly made a note on the firm's previous notes of Simcoe Street to the effect that Mr. "M" disagreed with Speight's positioning of this boundary.

In summary, the evidence indicates that Speight and van Nostrand in 1925

re-established the westerly limit of Simcoe Street near its northerly end by laying off plan distance of 60 feet westerly from the easterly boundary of Simcoe Street. The evidence accepted for the easterly limit at this point was the tie of $10'-5"$ to the old church as shown on the Browne survey of 1898. Speight and van Nostrand in their surveys for the easterly boundary of Simcoe Street in 1929 and in subsequent surveys accepted the "M" line of 1928 as best evidence of this boundary, but the "M" survey indicated that the tie of $10'-5"$ was in error and, in fact, the tie to the church should have been $11'-3\frac{1}{2}"$. Therefore, the 1925 survey of Speight and van Nostrand was based in part on a survey line for the easterly boundary of Simcoe Street which subsequently was not accepted by this firm, and in my view, invalidates their 1925 survey method and all subsequent surveys based on this method.

Argument was put forth on behalf of the Objector that the 1925 survey method used by Howard, O.L.S. was validated by a measurement of $1\frac{1}{2}"$ from his line to the water table of the Dell Tavern; this tie of $1\frac{1}{2}"$ was noted in the previous surveys of 1874, 1878 and 1885.

In counter argument, the report by "M" in 1928 indicates that, in his opinion, an addition had been made to the front of the tavern, which conclusion was based on the re-establishment of Simcoe Street from independent measurements shown in the 1878 and 1885 surveys.

Also, evidence was before the Hearing that a plan of survey of the Dell Tavern lands by C. Reuben and Sons, Ontario Land Surveyors, dated March 6th, 1947, indicated that the front of the building on these lands was, in fact, $1'-1\frac{1}{2}"$ over the street line. Notations on the print of the plan of survey by Reuben, O.L.S., filed in support of the Application, indicate that the purpose of the survey was to re-establish the westerly limit of Simcoe Street in front of the 'Dell Tavern' prior to certain renovations being made to the building. Subsequent measurements were noted on the plan indicating that the newly renovated front of the building on June 10th, 1947 was just clear of the street line. It would appear then that the owners of the 'Dell Tavern' property were satisfied as to the position of the street line as re-established by Reuben, O.L.S.

OUR LUNCHEON SPEAKER

Mr. Jeremy Brown, personality of Toronto's CKFM Station, will both amuse and enlighten those present at the Thursday Luncheon at the Annual Meeting.

Evidence before the Hearing also indicates that the line by Reuben, O.L.S., in 1947 and the boundary of Simcoe Street claimed by the Applicant are in very close agreement, if not identical lines.

Counsel for the Objector submitted that the width of Simcoe Street is not fixed by its plan width, but is governed by the position of the original stakes planted to create these boundaries. Counsel referred to the surveys of W. A. Browne in 1885 and of Speight and van Nostrand in 1961 indicating the width of Simcoe Street at its northerly end to be approximately 59 feet.

The principle of original stakes governing the positioning of boundaries is a well known common law principle, but concerning the re-establishment of the boundaries of Simcoe Street presently before us, no evidence was presented that original stakes were planted at the time of Registered Plan "X" in 1853 which created Simcoe Street, or if stakes were planted that these stakes or their position was found in any of the subsequent surveys. As stated earlier, we are forced to seek the best available evidence of the earliest surveys of the boundary in question.

In my view, the "M" survey of 1928 did employ the best available evidence at that time of these previous surveys and determined the width of Simcoe Street to be approximately 60'-2" at its northerly end.

Counsel for the Objector referred to the occupation of the only building still standing on the westerly side of Simcoe Street north of Dundas Street, the 'Dell Tavern' building, dating back to the 1870's, as evidence of the true position of Simcoe Street, and noted in the surveys of 1874, 1878 and 1885 to be 0'-1½" clear of the street line.

Counsel referred to the case of Home Bank of Canada v. Might Director-ies Limited (1914) 31 O.L.R. 340, 20 D.L.R. (C.A.), where Meredith, C.J.O. at P. 345 states:

"the statute (The Surveys Act) not being applicable, and the original posts or monuments not being in existence, and there being no direct evidence as to their position, some other mode of ascertaining the boundaries of the lots must be resorted to; and in such a case the best evidence is usually to be found in the practical location of the lines made at a time when the original posts or monuments were presumably in existence and probably well known", which principle was adopted by the State of Michigan in Diehl v. Zanger (1878), 39 Mich. 601.

This case is often referred to in

boundary disputes, but, in my view, is not applicable to the problem before us. No evidence was presented before the Hearing that the building or tavern noted as being 1½" clear or west of the westerly limit of Simcoe Street in the surveys of 1874, 1878 and 1885 was the same building and in the same condition as found by Howard, O.L.S. in 1925. The evidence of the field notes of 1874, 1878 and 1885 indicates, in my view, that the north-east corner of the building to which the tie of 1½" is noted is not in the same configuration as shown by Howard, O.L.S. in 1925. C. J. "M", O.L.S. in 1928 also came to the conclusion that the building had been altered. The owners of the 'Dell Tavern' lands accepted that their building was over the street line as indicated by the Reuben survey of 1947 and in renovating the front of the building brought it back to the street line. No objection was brought before me in the Hearing by the owners of the 'Dell Tavern' lands to indicate that they were not in agreement with the boundary as re-established by the Applicant's surveyor and illustrated on the draft plan.

Concerning the position of the westerly limit of Simcoe Street at the northerly limit of Dundas Street to which there is no objection, field notes of early surveys

indicate that a malt house or brewery building had existed at this corner as early as 1868 and that the easterly face of this building was accepted as being 'O.K.' or just on the street line. The position of this point was confirmed under provisions of The Boundaries Act of Ontario in 1972 as shown on Plan BA-383 of record in my office and was not in contention.

After considering all the evidence in support of the Objection and of the Application, for the reasons stated above, the Objector has failed to refute the evidence of the Applicant's surveyor that he has re-established the westerly limit of Simcoe Street in its true position, and, therefore, the Objection by D.W.S. must fail, and I DO SO RULE.

Having given full consideration to the evidence before the Hearing, in reliance in all the material filed in connection with this Application, on the evidence adduced and the law applicable, I DO HEREBY CONFIRM the true location on the ground of the boundaries of Simcoe Street from Dundas Street West to Elm Street, as shown by heavy, solid lines on the draft plan of survey, signed by Surveyor "A", dated November 27th, 1972.

DIRECTOR OF TITLES

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