

DISAGREEING WITH PREVIOUS SURVEYS

"The Surveyor's Dilemma"

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THE SURVEYOR'S DILEMMA

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There is a phenomenon that has been occurring in our office in London over the last few years. I imagine that it has been occurring in many of your offices as well.

What is this phenomenon? Simply this. It is the change that has been gradually taking place in our view of Section 55 of the Surveys Act.

The following is a copy of Section 55.

55. A surveyor in re-establishing a line, boundary or corner shown on a plan of subdivision shall obtain the best evidence available respecting the line, boundary or corner, but if the line, boundary or corner cannot be re-established in its original position from such evidence, he shall proceed as follows:

1. If a part of a line or boundary is obliterated, he shall re-establish it by joining the nearest ascertainable points thereof in the manner shown on the plan of subdivision.
2. If a corner on a line or boundary is lost, he shall re-establish it by the method that accords with the intent of the survey as shown on the plan of subdivision and, if it is consistent with the intent of the survey as shown on the plan of subdivision, he shall determine the distance between the two nearest undisputed corners, one being on either side of the lost corner, and he shall re-establish the corner by dividing the distance proportionately as shown on the plan of subdivision having due regard for any road allowance, highway, street, lane, walk or common shown on the plan of subdivision.
R.S.O. 1970, c. 453, s. 55.

This section basically sets out how surveyors are to replace lost corners and lines in a retracement survey of a registered plan of subdivision.

We used to view this section as follows: First, the measurements that appeared on the registered plan were taken to be a major clue that was to be used in re-establishing points and lines on that plan. Second, old monuments and sidewalk cuts that had existed for many years were usually accepted as marking the original corners or lines. Third, these two previous facts were combined together to reproduce all corners or lines that were viewed as missing. We did not ignore the occupation. We measured to it all within the area of the survey and then we tried to apply a mathematical solution that would best fit that occupation. If the solution happened to fit the occupation well, then we considered ourselves fortunate. If the solution happened to miss the occupation, then we found ourselves reasoning that we tried to accommodate the situation, but the intent of the registered plan had to be held. We were, therefore, restricted in what could be done. Adverse occupation in that particular case obviously prevailed.

As an example of this, in London, it was the practice for many years to place a monument, of some kind, when a street corner was established. Sometimes, this monument was a cut cross on two intersection offsets run along the sidewalks of two streets; or it was a back of walk cut on the projection of the streetline itself; or it was a steel bar planted at the street corner. The custom was not, however, to place a monument at the site of a survey. Therefore, what occurred

in London was that many street intersections were monumented but few parcels in between these intersections were monumented. The frequent methods of survey used in later years to establish parcel limits within a block was either to proportion the lots within the block; or to hold the registered plan distances from one end of the block; or to use some other mathematical solution that could be justified to best fit the occupation of the block itself.

Contrary to this, we also have many surveys in our files where the occupation of a line was accepted as the best evidence of that line. For the most part, this was done whenever there was a total lack of monumentation. As soon as monuments appeared, they were quickly accepted as evidence for other surveys and the occupation was shoved to the bottom of the evidence pile again.

By now, I imagine many of you are recognizing your own practices. I do not wish to condemn our practice or that of others who surveyed in this manner. I feel that if I did I would be condemning a good majority of the private practicing members of the Association. We were performing in a manner that we felt was correct and in the way that we were trained.

I believe, though, that it did become an easy way to survey. In an attempt to find a formula for deciding how to survey all boundaries during a period when most of us were rushed off our feet producing work, it became all too easy to apply a simple

mathematical solution that could be provide to our crew chiefs to help them to decide the location of boundaries quickly, right there in the field.

Now, of course, we in our office view Section 55 with a different point of view. We now look at the words "A surveyor shall obtain the best evidence available respecting the line, boundary or corner" with the occupation of those lines playing more heavily on our ~~minds~~^{minds}. We keep cases such as "Bateman and Bateman v Pottruff" and "Home Bank of Canada v Migt Directoriēs Limited" and "Diehl v Zanger" and others at the front of our thoughts. We note the words of Justice Cooley of the Michigan Supreme Court quoted in "the Jucicial Functions of Surveyors"

"He is not to assume that a monument is lost until after he has thoroughly sifted the evidence and found himself unable to trace it. Even then he should hesitate long before doing anything to the disturbance of settled possessions. Occupation, especially if long continued, often affords very satisfactory evidence of the original boundary when no other is attainalbe; and the surveyor should inquire when in originated, how and why the lines were then located as they were, and whether a claim of title has always accompanied the possession, and give all facts due force as evidence."

We have come to realize that before we attempt the mathematical solution to define a line we must assume that the occupational evidence of that line is the best evidence of the original posting of the line until we can find evidence that will refute this fact.

What do we do then with all the surveys that have been done over the last 20 years or so? Do we reject them all! I hope not! I feel we have a duty to both the public and to our profession to extend our best effort to respect the work of previous Surveys. This is important especially where these surveys have been accepted as correct and the property owners have built to them. There are other times, however, when we can not accept a previous survey

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Following are some examples of surveys that have cropped up in our office recently. They will illustrate to you why, in some cases, we have accepted an older survey as correct and why in other cases we felt that we could not.

EXAMPLE NO. 1

The first example is a fairly straight forward case of a recent survey that we encountered. I am sure that nobody will have any trouble in agreeing with this solution.

A copy of the plan for this example is shown as Diagram No. 1.

This particular survey was done by another surveyor back in 1964. On this survey we found large differences between the distances shown on the plan & those that we measured. I am sure many of have surveys like this that you have to deal with frequently.

We were asked to survey lines A - B and C - D so that the new owner of the outlined parcel could erect a fence to keep his horses in. From our registry office search we noted that the subject parcel and others shown on the plan were created by this survey. The descriptions used in the first conveyances had probably been written by the surveyor because they read with that peculiar smoothness that only a surveyor can get into a description.

In the field we found the surveyor's monuments at points A, B, C, D and E. We noted, as well, that the occupation lines as evidenced by grass lines, trees and bits and pieces of fencing were pretty well along the surveyor's surveyed lines. In speaking with our client's neighbours, they both knew that there were survey monuments on their property corners. Although they could not exactly point these monuments out, they knew

roughly where they were. They mentioned that they accepted these monuments to mark their property lines.

After measuring some angles and distances between these monuments, we discovered some fairly significant differences with the plan measurements. We found, for example, that the depth was about 7 feet short of the 1100 foot distance that appeared on the surveyor's plan and we found that the lot corner tie was about 0.8 feet short of the plan distance. We also found that the angle formed at the road limit with the sidelines of our parcel was about 30 minutes smaller than we calculated from the plan. We did find, however, that the measurements between the monuments that marked our parcel were exactly 120.0 feet.

What did we accept to mark the deed lines? - the monuments of course. I am sure that nobody will have any trouble with that decision, but for those who do, I suggest that you read Section 5(3) of the Conveyancing and Law of Property Act and note the words from the case *Kingston v Highland* (1919) 47 N.B.R. which states:

"erroneous as may have been the original survey, or even if there were no survey at all, technically speaking the monuments that were set, the trees that were marked and blazed, must nevertheless govern, even though the effect be to give one proprietor a much greater acreage than his deed would seem to entitle him and give to the adjoining proprietor very much less".

EXAMPLE NO. 2

In the second example the peril of accepting measurements that appear on a plan as primary evidence is exemplified.

Diagram No. 2 is a copy of a section of the Registered Plan of Subdivision that we were dealing with. This plan was registered in 1956. Our recent task was to do a Building Location Survey on Lot 325. In 1969, we did a survey on Lot 342. At that time, we found the original monument marked at Point A on Diagram 2. We also found a monument we had previously established in 1963 at Point B. The monument at Point B had been established by using sound surveying methods from original found evidence along Deer Park Circle at Biscay Road. At that point in time the relationship of our monument at Point B to the monument at Point A checked very closely with the plan measurements. In our survey of 1969, then, we laid off the plan tangent distance to establish the beginning of the curve at Point C. We carried on and laid out the remainder of Lot 342 using the distances that appeared on the Registered Plan.

The plan that we prepared is included as Diagram No. 3. Note the location of the chain link fence along the Northerly limit of Lot 342, being almost 3 feet North of the limit. This should have been a clue that something was wrong.

When we returned recently to survey Lot 325 we immediately discovered a monument at the Southwest corner of Lot 325. When we read the angle at this corner it was found to be about 1 degree too large and the monument was not in line with the monuments along the South limit of Lot 342 by a substantial amount.

Further investigation revealed that this monument at the Southwest corner of Lot 325 was placed by the surveyor who surveyed Block "C". He established it by laying off the plan distance from the South. Obviously something was wrong and further investigation would be necessary.

A mathematical misclosure of 3 feet was found in the Block included within Lots 325 to 342 inclusive. This same misclosure was found in Lot 334 along the same bearing which was in the direction of Biscay Road. We then became suspicious that in Lot 334 the distance of 107.34 feet should be 104.34 feet and in Lot 342 the distance of 50.52 feet should be 53.52 feet and that the distance of 24.62 feet along the arc should be 3 feet smaller.

To test our theory we obtained the field notes for the original foundation surveys. We discovered that our theory was correct and that by applying this 3 foot error we were very close to the original foundation ties. We also found that the fence along the Northerly limit of Lot 342 was almost on the line instead of being 3 feet North of it.

We realized that we had erred in 1969 by just holding the plan distances and not checking these distances against all the evidence that existed on the ground. We realized that we also erred in not obtaining the field notes for the original foundation surveys.

We decided that we had to swallow our pride on this survey (and a bit of money too) and produce a new survey of Lot 342, especially since the owner was still the same client we had previously worked for. We proceeded to remove our old monuments and place new ones at the correct locations and we produced a new plan. This plan is shown as Diagram No. 3A.

This example illustrates a point I would like to stress. Every now and then you happen across a situation where you are faced with the fact that you "goofed". Someone either has, or will suffer from it. I believe that you have a professional responsibility to correct the situation no matter what the cost.

EXAMPLE NO. 3

The third example is a Boundaries Act case that we were fortunate enough to be successful with.

The problem was the location of the line between Lots 4 and 5 South of Water Street as shown on Diagram No. 4.

Surveyor "A" was from an old established firm in the area and his firm had surveyed the block bounded by points A, B, C, and D some years ago. They had established the block from East to West by using the Registered Plan distance of 66 feet per lot. Over the years there had been a number of surveys done in the block that accepted this same arrangement of 66 feet per lot. All of these surveys were in agreement and there appeared to be no survey problems.

Surveyor "B" in 1978 surveyed Lot 5, establishing the sidelines in the same manner, by setting them at plan distance. He then monumented the corners. The owner of Lot 4 objected to Surveyor "B"'s survey from the very first moment he saw his stakes. The owner saw that the stakes did not agree with the remaining occupation of the line by a foot or so. He discovered that if he measured 66 feet across his lot to the West boundary from these stakes, the Westerly fence would be off the lot line by about 1 foot as well. The owner then unsuccessfully appealed to Surveyor "B" to reconsider his survey.

The owner became adamant about his objection. He did not rest until he finally contacted our office in 1980. This was after unsuccessfully appealing for help from the other local surveyors. We recommended to the owner that these matters were usually resolved by a Boundaries Act application if two surveyors could not agree. We cautioned him, however, that we would have to investigate the situation first to see if an application was warranted.

In the course of our investigation we found that within the block bounded by Points A, B, C and D there was not one piece of occupation that fell on the theoretical lot lines. The neighbourhood was an old residential part of the town and in talking to local residents we found that much of the fencing had either been in place for many years or it had replaced older fencing.

The survey we eventually produced is shown as Diagram No. 5.

Without going into too much technical detail about the survey, I will say that we found that by accepting some of the local occupation we could arrive at a location for the line between Lots 4 and 5 that fell exactly in the spot where our client remembered the old fence being. To substantiate this fact, the line passed through the one remaining fence post that still remained, as well as clearing the narrow area between the eaves of two old garages at the rear of the line.

There is one aspect of the testimony that took place at the hearing for this case that I would like to share with you. The solicitors for the objector, the owner of Lot 5, had the three different surveyors from the local area all testify on behalf of his client. Of these surveyors, it is the testimony of Surveyor "A" that I would like to look at.

Surveyor "A" you will recall was with the old established firm from the area. With his notes in hand of a few surveys that they had done in the block Surveyor "A" gave a very convincing argument of his experiences with owners erecting fences. He testified that from his view point, persons replacing old fences would not be able to replace them exactly in the same location. Surveyor "A" explained that during his career

he had observed and talked to people who had told him of the methods they used to decide on the location of a fence. He stated that it was only reasonable to assume that some of these same crude methods would have been used years ago by the first property owners in this block. He went on to conclude that it was, therefore, only reasonable to expect inconsistencies in the measurements from fence to fence and that in this particular situation the fences actually fit the lot lines fairly well for an old established neighbourhood.

Surveyor "A"'s arguments appeared quite convincing but we next heard the testimony of the owner of Lot 3 and another owner from down the Street to the East that refuted Surveyor "A"'s views.

The owner of Lot 3, as it happened, had lived in the same house on Lot 3 since she was a child in the 1930's. When she was questioned about the fence along the East limit of Lot 3 by the applicant's solicitor she testified that the fence had stood on the line for as long as she could remember. When she was asked by the objector's solicitor about any replacement of the fence she admitted that it had been replaced about 20 years ago. The solicitor noted this statement and questioned her further about the accuracy of the relocation. She responded that she had observed very closely as the workman pulled out the old cedar fence posts of the old fence and carefully put the new posts back in the same post hole to make sure that

they did not move the location of the fence. When she was questioned again about how accurately the workman could do this she held firm in her reply. She again testified that the new fence was exactly in the same location as the old fence.

There was very similar testimony from an old resident near Lot 7 who had knowledge of the replacement of the fence along the line between the East and West halves of Lot 7. We sought this man's testimony because the current owners of Lot 7 were relatively new and had little knowledge of their property lines.

This example shows the value of seeking the knowledge of long time residents in an area. Most neighbourhoods have at least one owner who makes it his business to know everything about his neighbours, including where their property lines are and what has happened to them over the years. This is the kind of person that you want to find if you need to know independant history of an occupation line.

In this particular neighbourhood we were fortunate to find two good witnesses who could help our case. I am sure these type of witnesses exist in most neighbourhoods. It is your job to seek them out.

EXAMPLE NO. 4

This example is a Boundaries Act case that we were recently involved in as well.

Rather than discuss the line which was the subject of the case however, I would like to examine some of the other lines that were a part of the survey.

In Diagram No. 6, which is a copy of the original Registered Plan, we were asked to survey the rear of Lot 8, East Queen Street for the applicant. In order to do that, of course, we had to establish other lines as well. Note that the width of Queen Street in Diagram No. 6 is only 33 feet.

In 1969 we did a survey of Lot 9 which is shown as Diagram No. 7. To do this survey we accepted the occupation of the line between Lots 10 and 11 to be the best evidence of the location of that line. To the South we accepted one of our previous surveys on the South side of Isabella Street to mark that limit and then we laid off the plan width of 49.50 feet to establish the North side of the street. We then established the limits of Lot 9 by proportioning the distance between these limits equally to arrive at a width of 66.4 feet for each Lot. There was no occupation of the line between Lots 9 and 10 but there was a corner fence post and an old frame shed at the rear of the line between Lots 8 and 9 that constituted occupation of that line. The proportioned line missed this occupation by about 3.5 feet South of the corner

post running through the shed. To establish the rear of Lot 9 we accepted previous surveys along the West side of Queen Street and laid off the plan width for Queen Street of 33 feet to establish the East Street limit. As you can see in Diagram No. 7, this line fell short of the town sidewalk by about 11 feet, leaving the sidewalk totally within Lot 9. We then laid off the plan depth for Lot 9 of 132 feet to establish the rear of the Lot. As you can again see in Diagram No. 7 this rear limit fell over 11 feet short of the occupation of the rear line. We then monumented the corners of Lot 9.

In doing the survey in 1982 for the Boundaries Act application, we had to take these inconsistencies that were created by our 1969 survey into consideration.

The survey for the Boundaries Act application is shown in Diagram No. 8.

In the survey for the Boundaries Act application we established various lines as follows:

Firstly, we accepted our previous establishment of the line between Lots 10 and 11 and the Northerly limit of Isabella Street because they were based on sound surveying principles and were consistent with the occupation of those lines. Secondly, although not a part of the survey of Lot 8, we accepted our previous location of the line between Lots 9 and 10 because there was no occupation of that line in 1969 to refute our location. We found out from talking to old neighbourhood residents that there never was any occupation of this line. This meant that our survey was the first

posting of the line since the original survey and since there was no evidence to the contrary or any objections to its location we accepted our survey as the best evidence of the lot line.

Thirdly, although it caused us some concern, we accepted our previous location of the Easterly limit of Queen Street. In 1976 we prepared a reference plan for a 10 foot easement to provide for a water line that was being placed along the West side of the sidewalk. Since that time it has become widely accepted by both the municipal authorities and by the local residents that their properties lie well beyond the sidewalks. For this reason, we felt that it was best to leave the situation alone and accept our previous location of the street limit.

Fourthly, we could not agree with our previous location of the line between Lots 8 and 9 nor the rear establishment of the Lots. The occupation of these lines had not changed since our survey in 1969 and the residents did not view the survey of these lines as correct. This was evidenced by the fact that the monument that we had placed at the Southeast corner of Lot 9 has been removed. We suspected that the owner of Lot 8 had removed it.

In the course of our investigation for the establishment of the rear of Lot 8, the subject boundary of the Boundaries Act application, we found in talking to both the owner of Lot 8 who had owned the Lot for many years and a previous long time owner of the lands to the East of Lots 8,9,10 and 11 that the corner fence post

at the Northeast corner of Lot 8 had been in place since at least 1949 when they first owned their respective parcels. We felt, therefore, that we had no other choice but to disagree with our previous establishment of the rear of Lots 8,9,10 and 11 and the Southerly limit of Lot 9. We plainly admitted this in our testimony at the Boundaries Act hearing.

We did accept, however, our previous location of the front of the line between Lots 8 and 9. At the time of our 1969 survey there was no other occupation of the line other than at the rear. The proportioning that we made along Queen Street in 1969 to establish this front corner was perfectly acceptable. The current occupation by a wire fence and hedge along the Lot line, as shown on Diagram No. 8, was found to be only about 5 years of age and therefore was ignored.

Again, the value of seeking the oral evidence of local residents about their property lines can be seen in this example. If people have rejected their property line occupation and accepted the monuments as being correct, there may be a reason for holding those monuments. I will address this matter later. However, if the monuments do not agree with the occupation and the owners reject the survey and maintain their occupation as better evidence of the line, then it will be difficult for the surveyor to come up with better evidence that will overrule the owners. This evidence would have to

be direct evidence of the original location of the line that predates the occupation.

For an example of this type of survey you can resort to the Boundaries Act decision reported in the Winter of the 1984 issue of the Ontario Land Surveyor magazine.

EXAMPLE NO. 5

In the next illustration we have a situation where, back in 1959, we surveyed a parcel and in doing that survey we established the lot divisions down a street. The parcel surveyed contained a total of 4 of the lots namely Lots 5,6,7 and 8. This survey is shown on Diagram No. 9.

The method used to establish the lot limits was to use the angles and dimensions obtained from the Registered Plan. The occupation was ignored and there is no report in our files about the status of the occupation.

Recently, in 1983, we were asked to do a Building Location Survey for a house that was situated on Lot 5. This survey is shown on Diagram No. 10.

As can be seen on Diagram No. 9, in 1959 a row of fence posts existed along the line between Lots 4 and 5. The location we monumented in 1959 disagreed with these fence posts by 4.7 feet at the front and 1.7 feet at the back. In 1983, we discovered that the occupation had changed drastically. As can be seen on Diagram No. 10 the iron bars were still in place in 1983, but the occupation had changed, to be almost right on the line that we had established. Obviously in selling the Lots

individually, sometime after 1959 (and subsequently to that, however
& fences were constructed), people had ignored the old line of posts
and they had accepted our survey as correct. In this
situation, I have no problem in accepting our old surveyed
line. Twenty four years later, we really have no idea of
what the history of the line of posts was. Perhaps the two
owners at that time were responsible for erecting the posts
and they agreed that the posts were in the wrong spot. In
any event, the owners appear to have made a parole agreement
that the survey was correct and the line of posts was wrong.

Contrary to this, in Diagram No. 11, we can see a survey
that our office did and deposited as a Reference plan in 1974.
This survey is just 3 lots East of the one shown on Diagram 10.
The row of fence posts and snow fence that is situated along
the Westerly boundary of Part 1 has now been upgraded to a
chain link fence built on top of a concrete wall. We talked
to the person who owns Lot 3, in the course of doing a survey
recently that was undertaken to enable the owner of Part 1 to
erect a fence between Part 1 and Part 2. The owner of Lot 3,
as we discovered, had lived in his house for about 25 years. He
said that he and the former owner of Lot 2 erected the line of
posts about 20 years previous on a line that they both agreed
to. Although we were not asked to comment on this boundary for
the particular survey we were doing, it is interesting to
speculate about which location a Boundaries Act application would
define as the Lot line. My own opinion is that it is a classic
example of the case that was before Bolard J. of the Ontario

Supreme Court, reported as *Bea v Robinson*, If you are not familiar with that case, the learned Judge in giving the reasons for her decision stated,

"On the basis of *Grasett v Carter*, supra, and the other cases referred to above, it would seem that a conventional line was established in the case at bar and that therefore the plaintiffs should succeed; however, I have not reached this conclusion for the reasons below.

In *Grasett v Carter* one of the prerequisites for finding a conventional line was that there be uncertainty as to the dividing line of the two lots and that the uncertainty be resolved by the agreement of the parties. In that case it was impossible to determine the true boundary of the properties because of errors made in the original and subsequent surveys and because the land had been physically altered. In my view when the parties do not know the location of the line because they have made no inquiries or other attempts to discover it, that is not an uncertain boundary that can be varied by agreement. In the case at bar although there had been some problems with surveys, it is clear that it was possible to determine the true boundaries, and from this fact I conclude that the boundaries of the adjoining lots were not uncertain, they were merely unknown. I doubt therefore that the facts support a finding of a conventional line that could be enforced as against the true boundary. If the true boundaries were determined and found to differ from the agreed line, to enforce the agreed line would result in a transfer of title to the property situated between the true and agreed lines. This cannot be...."

Similar to that case these two owners erected the line of posts and snowfence without obtaining a survey first. Therefore, as in *Bea v Robinson*, the fence cannot be considered as good evidence of the location of the lot line and our surveyed location should prevail.

We cautioned the owner of Part 1, however, that his title to the area beyond the fences was doubtful and before he assumed anything about his claim to the area outside the fence we urged that he consult with his lawyer.

Another boundary that is interesting to speculate about is the limit between Lot 1 and Part 2 shown on the same Diagram. We s
Lot 1 in 1959 and wrote a written certificate that listed an encroachment of 1.2 feet over the Westerly boundary of Lot 1 by the house and chimney that is location on Lot 2. The field notes clearly show this encroachment and the method of survey but the field notes do not show any fence along the limit. We have had no reason to talk to any owners about this limit since this reciting is for interest sake only, so, I will assume that the notes were correct and no fence exists. If that is the case, the fence may have been erected using the rear monument and a set distance that would clear the old house say 4 feet as the local zoning by-law required for side yards. If this is true, then the obvious question one would have to ask is - "where is the lot line?". Is the lot line as shown on the reference plan, since the old house has been removed for some time now; or is it at a spot that the occupation of the old house would govern; or is it along the wire fence which still exists? One would, no doubt, have to carry out a thorough investigation which would include gathering oral evidence from the current owners and any previous owners or

neighbourhood residents who could shed a little more light on the subject.

There is another conventional line case which could offer some help in boundary problems such as this. This case is reported as *Jollymore v Acker* (1915) 49 N.S.R. 148, 24 D.L.R. 503 (C.A.) In this matter, a fence was erected by two owners on a line of surveyor's stakes that were placed to aid the owners in erecting the fence. The owners were uncertain about the location of the line so they had a surveyor run the line and then they agreed to build the fence on the surveyed line. The fence was renewed by subsequent owners and was treated as the boundary until the defendant asserted that the fence was not on the true line and that he therefore had a right to remove it. The plaintiff was successful at the trial, but the defendant appealed. The appeal was dismissed on the basis that the fence was a conventional line boundary.

At this point in time the judgement in *Bea v Robinson* may limit the *Jollymore v Asker* case, depending on the circumstances, but I feel that for the most part, *Bea v Robinson* actually enhances *Jollymore v Acker*.

I submit that if two owners accept a line that they had a surveyor run as correct and they then built to that line, then surely they have made the attempt that Boland J. required in *Bea v Robinson* to find the true line. If it is later discovered that the surveyor erred in his retracement of the line, but that the owners had already built to his surveyed line assuming it to be the true line, then surely the conventional

line doctrine outlined in Jollymore v Acker and Grasett v Carter should prevail.

EXAMPLE NO. 6

The next situation is a rather common one. This is a potential survey that we have not had to make a decision about yet. The survey came to our attention when we were asked to give an estimate for fees.

On Diagram No. 12 is shown a survey that we did in 1967. We monumented the parcel as it was fenced, but we showed the "theoretical deed lines" on the plan that was prepared. As you can see from the Diagram, the variances differed from about 2.5 feet to about 36 feet.

What has apparently happened since is that the owner of the parcel outlined has given a Quit Claim to the area hatched on this Diagram. This occurred some time after the plan was prepared and attached to a registered document. The description in this Quit Claim used the distances that appeared on this plan.

We mentioned to the lawyer, in our recent discussion, that the plan probably was not correct in showing the theoretical position of the deed lines and that the location of the original parcel was probably best evidenced by the fences that enclosed it. We suggested to him that if we were doing a reference plan of the parcel today we would probably show only one part within the limits of the fences and we would show the prevailing deed to include just this area. The lawyer understood our theory, but he suggested that since the process of exchanging Quit Claims

had already been started he felt it would be confusing to future title searchers and lawyers if the process was not completed. He asked if we would include extra parts for the areas of encroachment that our old plan showed when we produced the reference plan. We indicated to him that we could perhaps show the area of the registered Quit Claim document as peripheral information, but we did not feel that it was necessary to show the extra parts that he required.

What would you do? Do we have an obligation to provide the parts that the lawyer wants to enable the proceed of exchanging Quit Claims that our plan initiated to be completed? The lawyer felt we would be affecting the owner's title if we did not. He felt the owner's title in the Registry Office would not appear clean.

CONCLUSION

In conclusion, I would like to emphasize some steps that should be a part of every surveyors investigation when he is doing a retracement survey of established property lines.

First, the surveyor should thoroughly research the survey before he does his field investigation. This research should include a Registry Office search of the subject parcel and all the parcels that surround it. The documents that created the parcels should be reviewed to ensure that the description is the same as the one currently being used. If it is not, the surveyor should investigate to find out why and when the

description was changed. In the Registry Office search, the date that the parcels were first created should be noted, - and so on. Basically, the surveyor is searching the title for all the evidence that he can find that concerns the parcel boundaries. Of course he is also obtaining required title information.

The general research should also include a thorough search of the surveyor's own files and those of other surveyors who work in the area, to enable him to review what evidence he will expect to find when he does his field examination.

In the field the surveyor should ensure that he has reviewed all the occupational evidence of a boundary. He should seek out the history of that occupation by talking to the owners and other residents who may have knowledge of the occupation. In taking oral evidence the surveyor should ask how long the occupation has existed ; who erected it ; did the occupation replace older occupation ; have all the owners abutting that occupation accepted it to be the property line ; if they did not, where did they feel the property line was and why. The surveyor should keep asking questions of people until he is satisfied that he has discovered everything there is to know about the occupation of the boundary.

Even though the surveyor has obtained the available field notes for the area from his own files and those of others, he should make a thorough search in the field for monuments.

While he is talking to neighbours, the surveyor has a good opportunity to ask them if they know of any survey monuments in the neighbourhood. If he finds previous surveyor's monuments he should examine them and their relationship to the occupation. He should ensure that he knows the methods that were used to place these monuments. Before the surveyor disagrees with these monuments he should thoroughly review his opinion to be sure he has taken all accepted legal principles into consideration. If the monuments have been accepted by the abutting owners to be in the correct location, the surveyor should be prepared to accept them, especially if that surveyed line has been built to - (there may at times be the odd exception to this rule. If on the other hand the monuments have not been accepted by the adjoining owners as correct and if they conflict with the occupation of that limit, the surveyor should become cautious about accepting them.

Before I finish, I would like to leave you with one last example survey. We have not been instructed to do this survey yet. The owner is down South for the winter and when he comes back from Florida in April he wants to have our opinion about his boundaries and the correctness of his deed description.

This property is in the quiet resort Village of Bayfield along Lake Huron.

The Village was basically created by a plan of subdivision registered in 1860. I have shown a section of this plan that includes the subject property as Diagram No. 13.

The subject parcel is described by registered deed as Lots 375 to 380 inclusive along the South side of Christy Street. It will be noticed that there is not one measurement that appears on the registered plan. This is the case for the whole plan.

As I understand the history, this registered plan was the only plan that surveyors had for many years to aid them in doing their surveys. In 1957, while a local surveyor was working in the Village, a lady came up to him and showed him a plan that her father had passed down to her. The surveyor was pleased to discover that this plan was almost identical to the registered plan but instead the plan had measurements on many of the Lots and Streets. Subsequent to that, about 7 years ago, another plan of the Village was found in the Regional Historical Library of the University of Western Ontario. This plan also had measurements throughout, that agreed very closely to the first found plan.

A section of the University of Western Ontario plan is shown in Diagram No. 14.

You will notice that on each corner of this plan there is a little quarter circle. From notes that appear in the margin on this plan it has been thought that these circles represent the staking of a particular corner. Indeed, it is thought that this plan is the original field notes of the first surveyor.

In 1949, Surveyor "A" surveyed the entire block bounded by Tuyl Street, Cameron Street, Margaret Street and Christy Street. He surveyed the block as one parcel, placing monuments at the exterior corners. This survey is shown as Diagram No. 15.

In 1960, Surveyor "A"'s new apprentice, whom I recently spoke to about this survey, was told by Surveyor "A" to attend at the site and divide the area bounded by the previous survey into equal Lots. The apprentice, whom I will call Surveyor "B", told me that he had no knowledge of the plans that contained measurements. He said that he placed Victoria Street in the middle of the block because his instructions were to create all of the Lots of equal size. The plan that was produced on this survey is shown as Diagram No. 16.

If we go back and examine Diagram No. 13 and scale the depth of the tiers of Lots between Cameron Street and Victoria Street and then do the same for the tiers of Lots between Victoria and Christy Streets we can easily see that there was quite a difference intended between the depths of the Lots North and South of Victoria Streets.

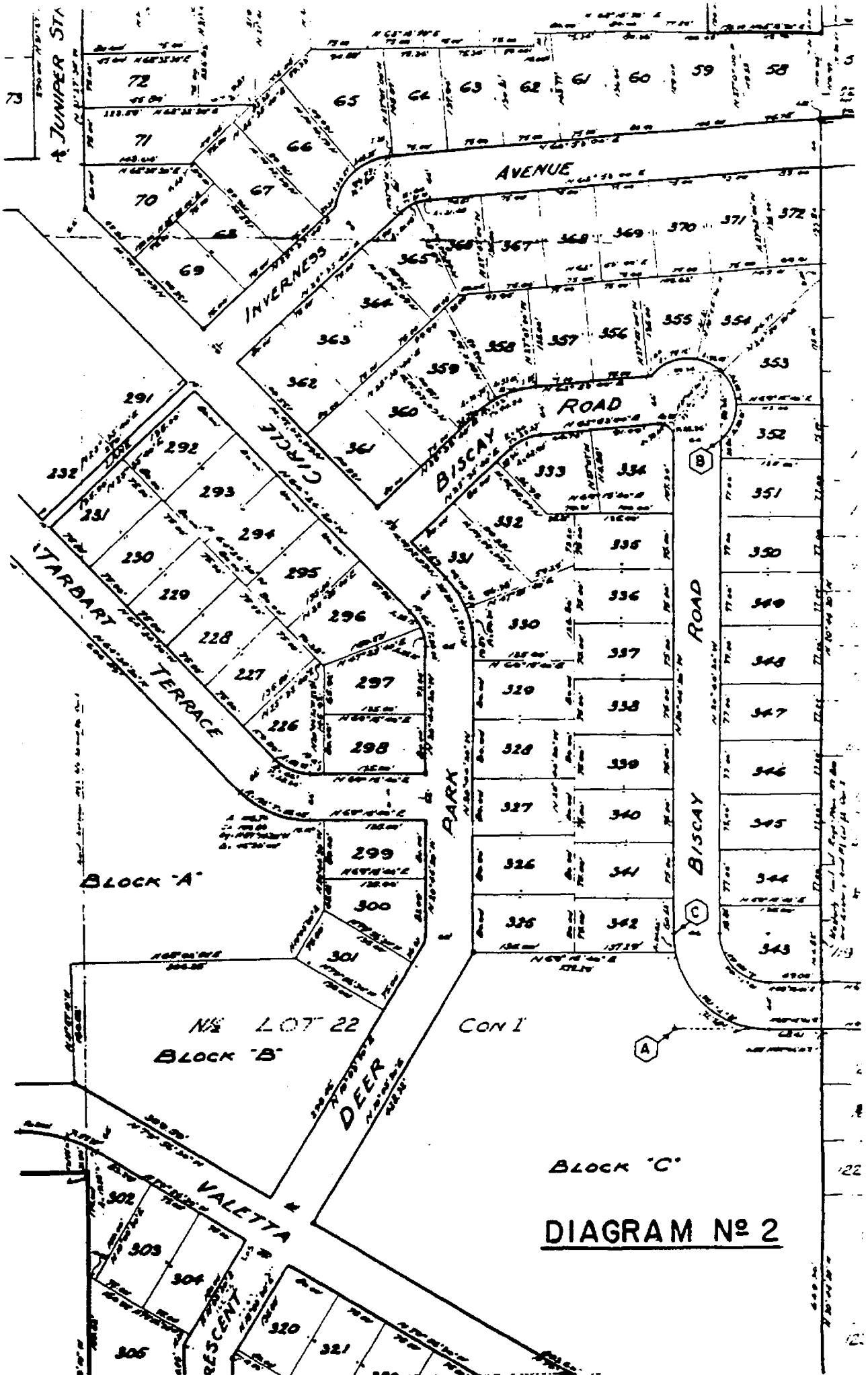
If we examine Diagram No. 14, we can see that the total depth of the Lots North of Victoria Street is about 94 feet deeper than the total depth of the Lots South of Victoria Street.

When Surveyor "B" did his survey in 1960 he said that the whole area was just one open field. Since then, all of the Lots have been sold by the original owner and while Lots 375 to 380 are still unoccupied, the remaining Lots are all occupied by houses.

The owners of the Lots have deeds containing descriptions that use the original registered plan and the plan's lot numbers. The parcel boundaries that the owners have assumed as their property lines however are the surveyed lines of Surveyor "B".

To add to the situation Surveyor "C" prepared a reference plan a few years ago to create a new Victoria Street. The old Victoria Street had been closed in 1948 and the owners gained access to the interior Lots over a private road. Surveyor "C"'s reference plan provided for a narrower road, 66 feet wide, and of course the location of this road as it had been physically travelled was North of where Victoria Street was intended by the registered plan. Surveyor "C", in preparing his survey, established the original Victoria Street using the distances that appeared on the University of Western Ontario plan. The portions of the original Victoria Street that were not going to be used for the new road were deeded to the adjoining owner

You will recall that our client owns Lots 375 to 380 inclusive. He accepts that his Southerly boundary goes no further then Surveyor "B"s surveyed limit. This limit is now occupied by a fence. The basic question that he is asking us is - "do I own the whole of Lots 375 to 380 or do I own only the Northerly 126.37 feet of these Lots and if that is the case do I need a reference plan prepared to clean up my title description?". What would your answer be?



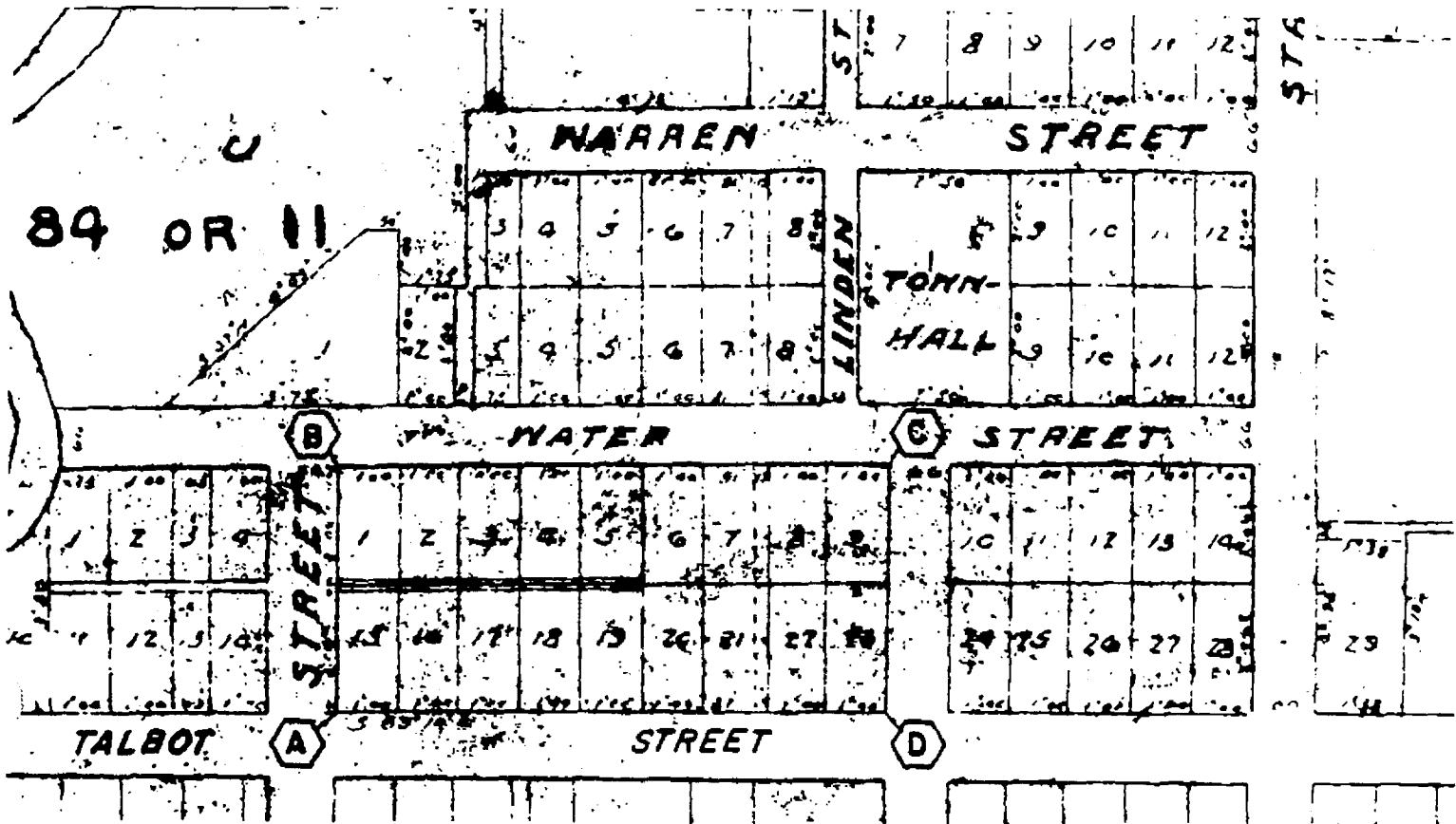


DIAGRAM No 4

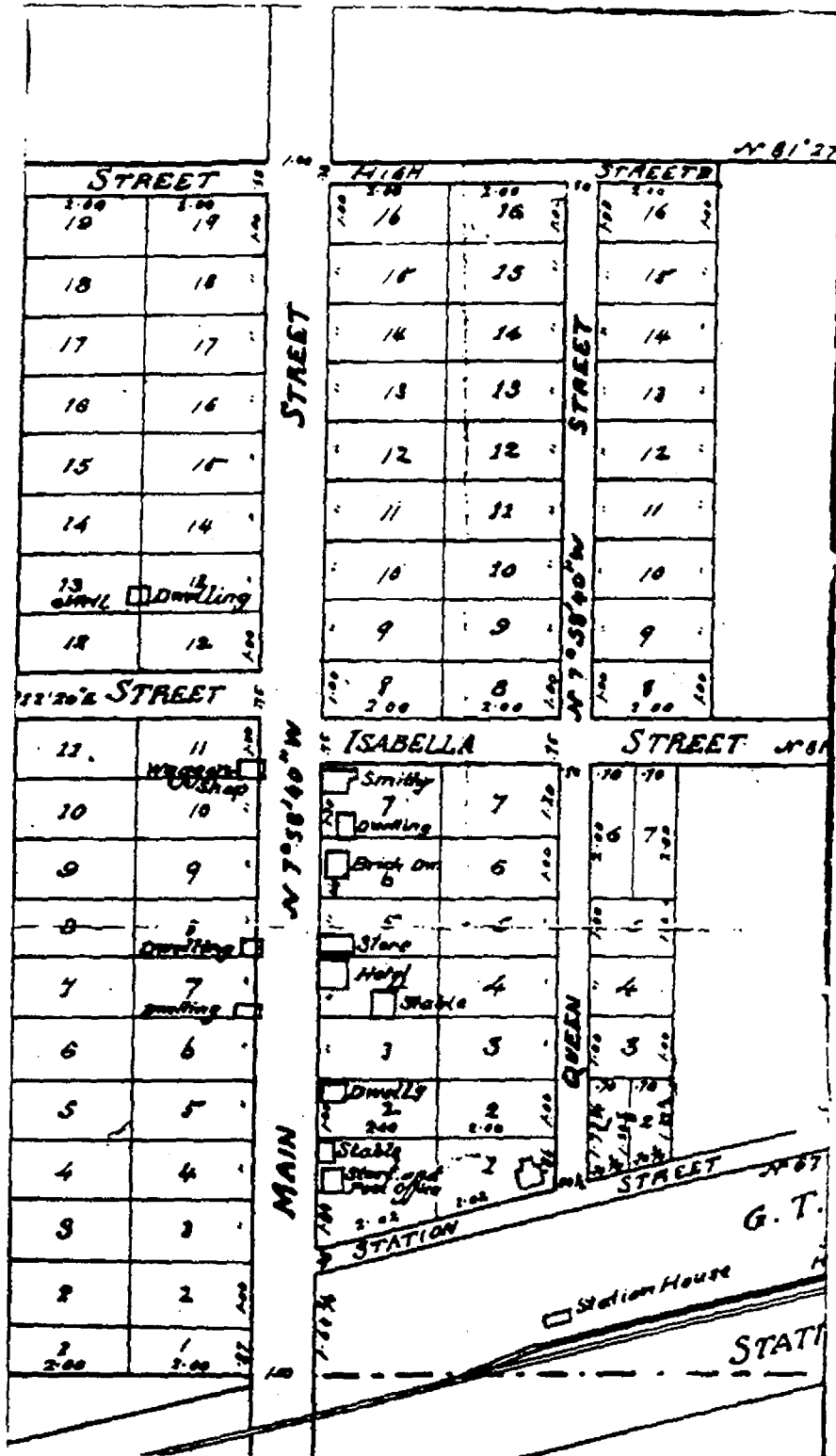


DIAGRAM No 6

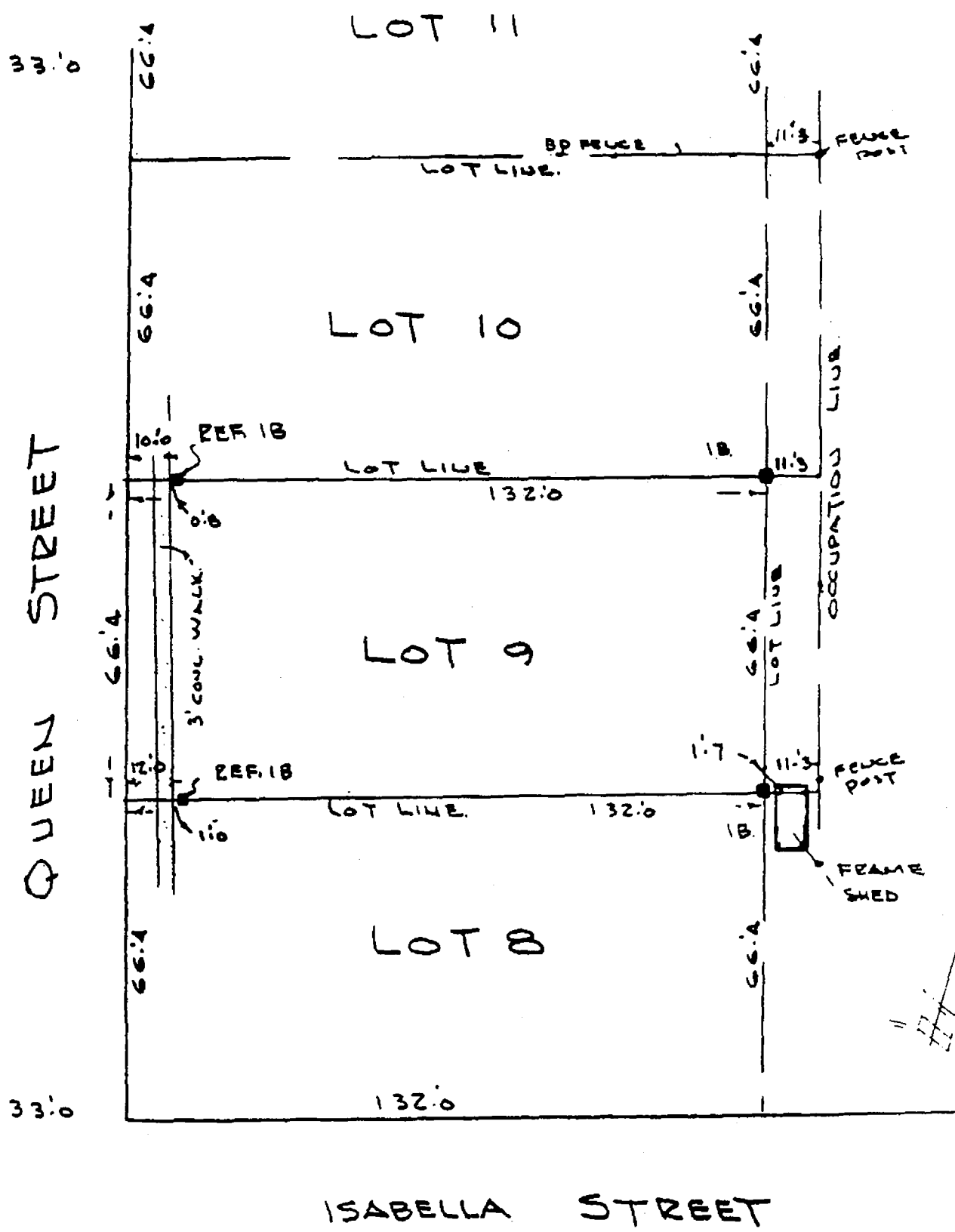
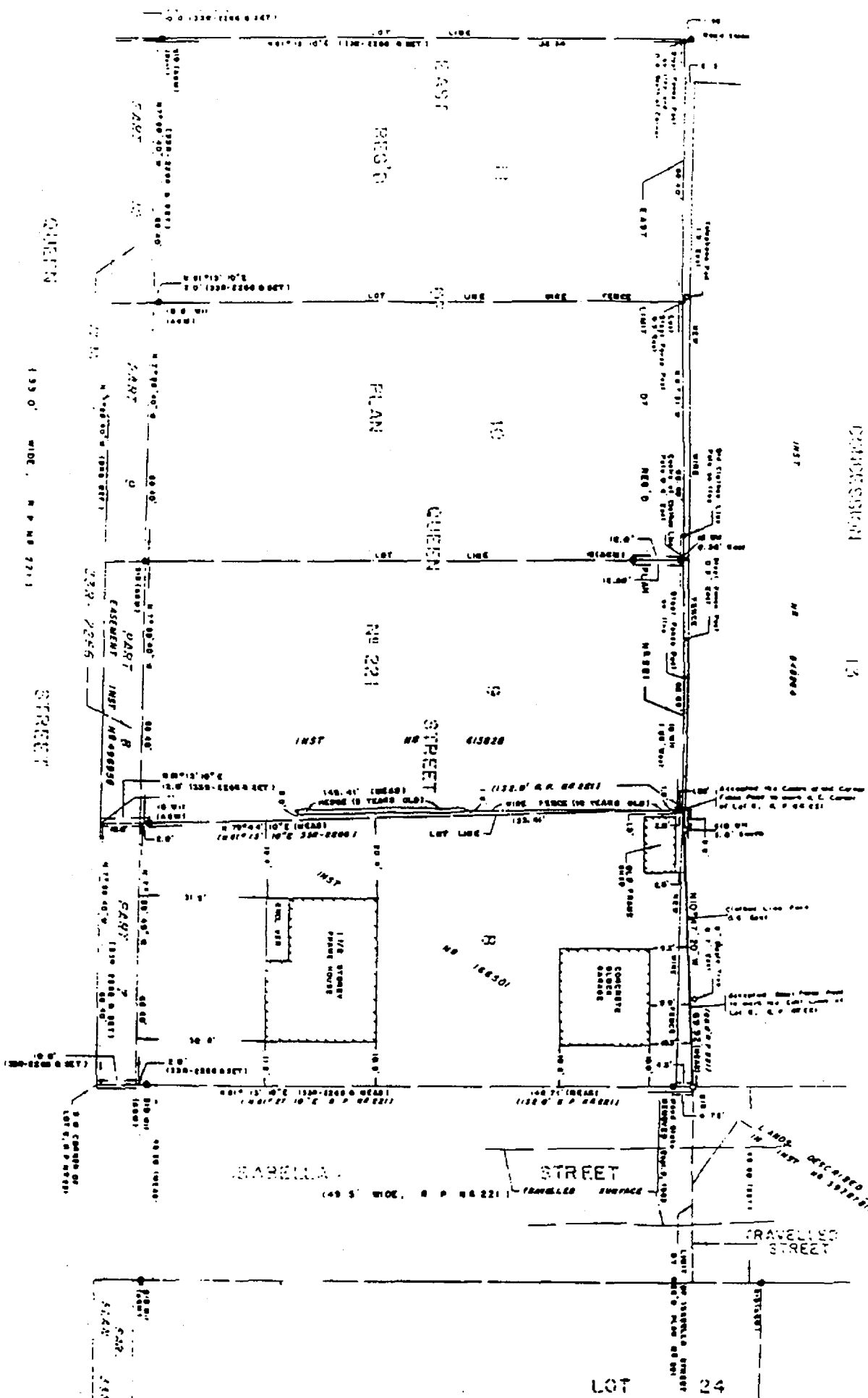


DIAGRAM N^o 7



QUEEN STREET
 133' 0" WIDE, R.P. NO. 221

BARBELLA STREET
 49' 5" WIDE, R.P. NO. 221

TRAVELLER STREET

LOT 24

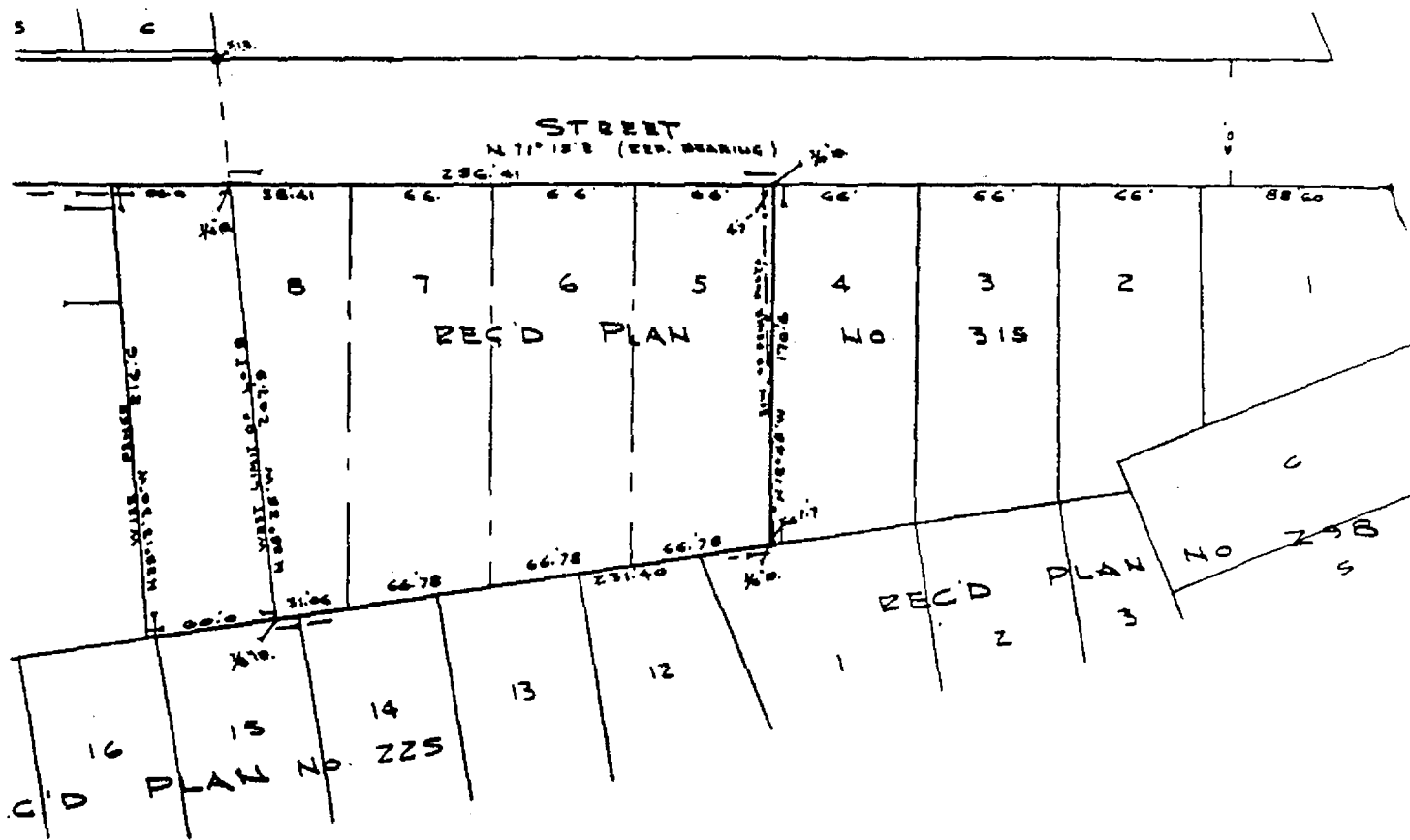


DIAGRAM N° 9

CLARENCE

(66' WIDE)

STREET

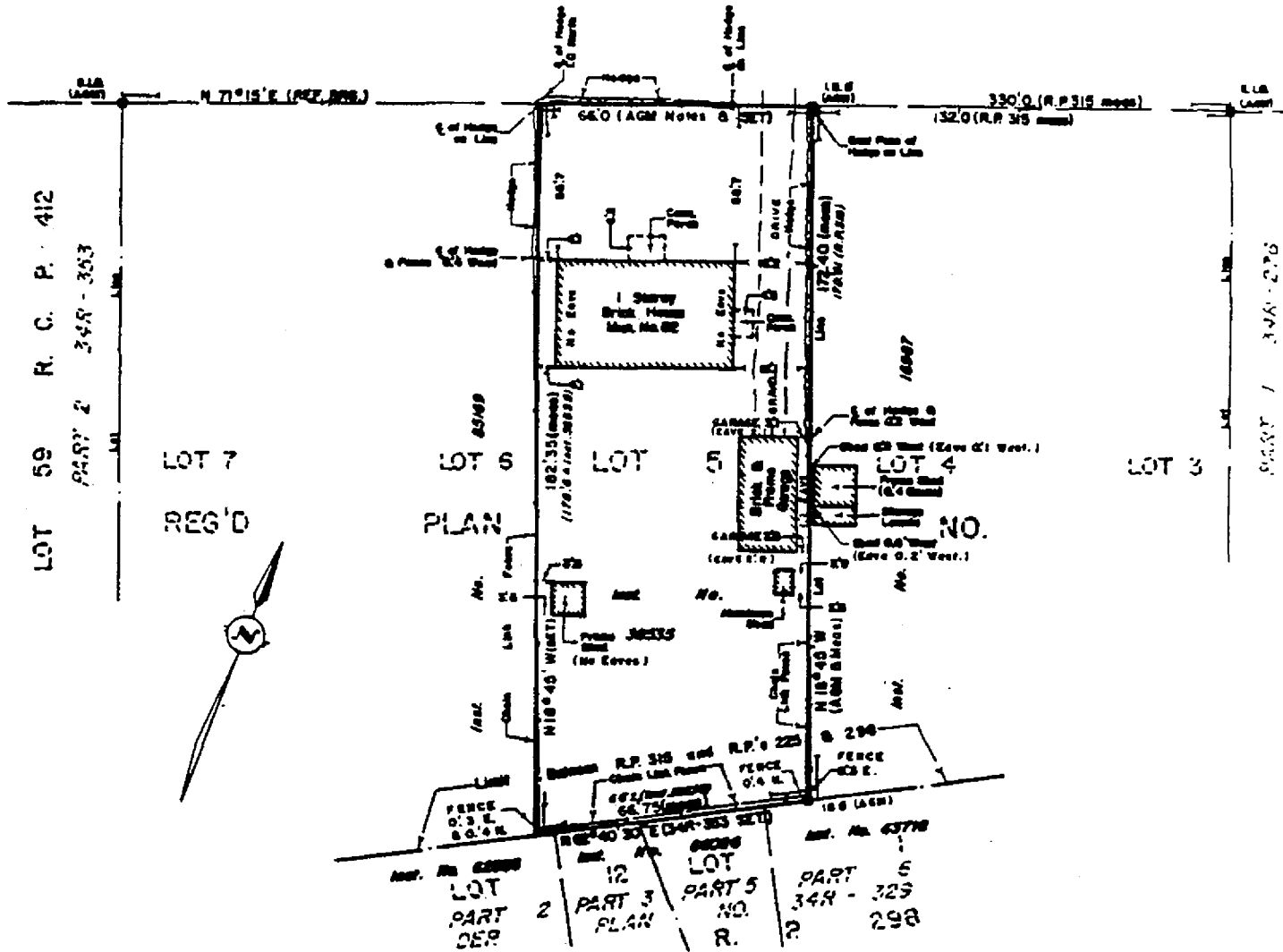


DIAGRAM N° 10

CLARENCE

STREET

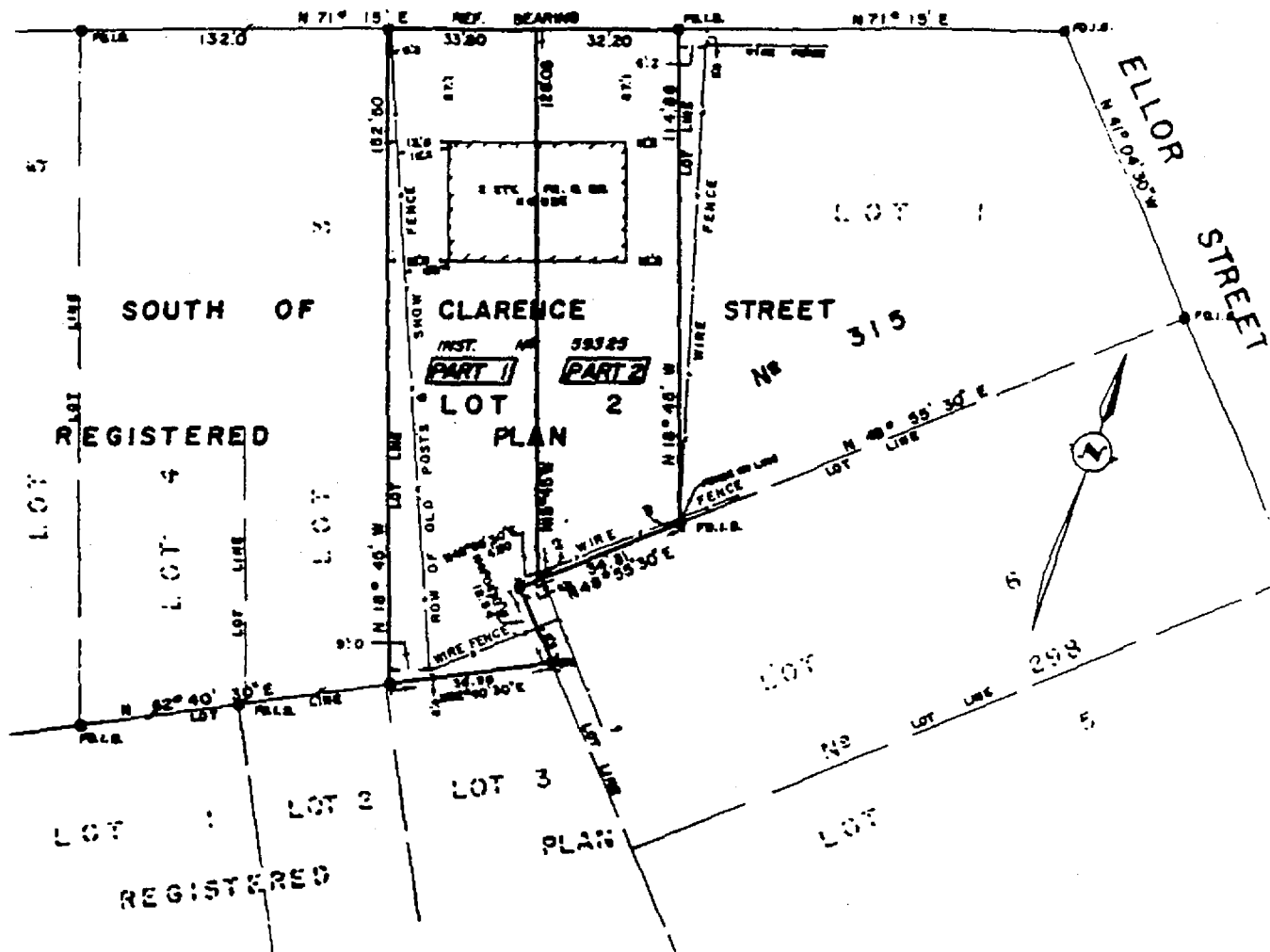
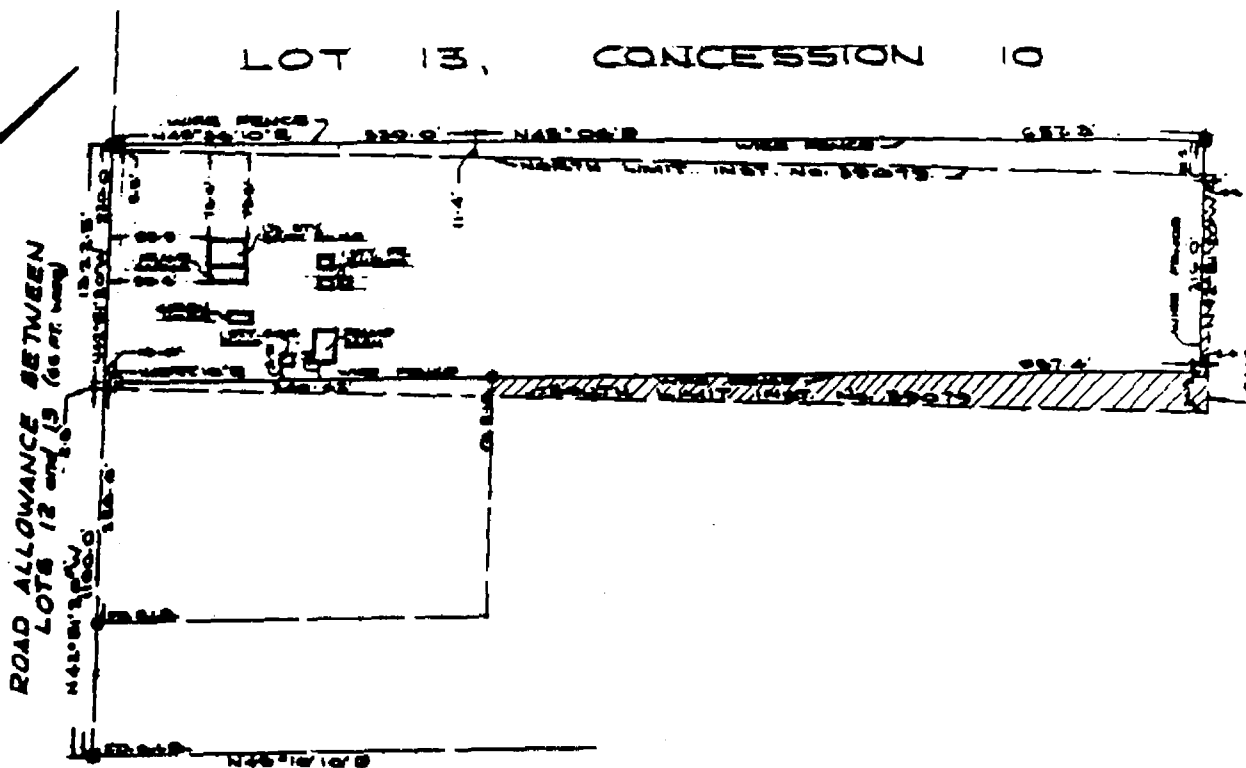


DIAGRAM N^o 11

LOT 13, CONCESSION 10



ROAD ALLOWANCE BETWEEN
CONCESSIONS 9 and 10.

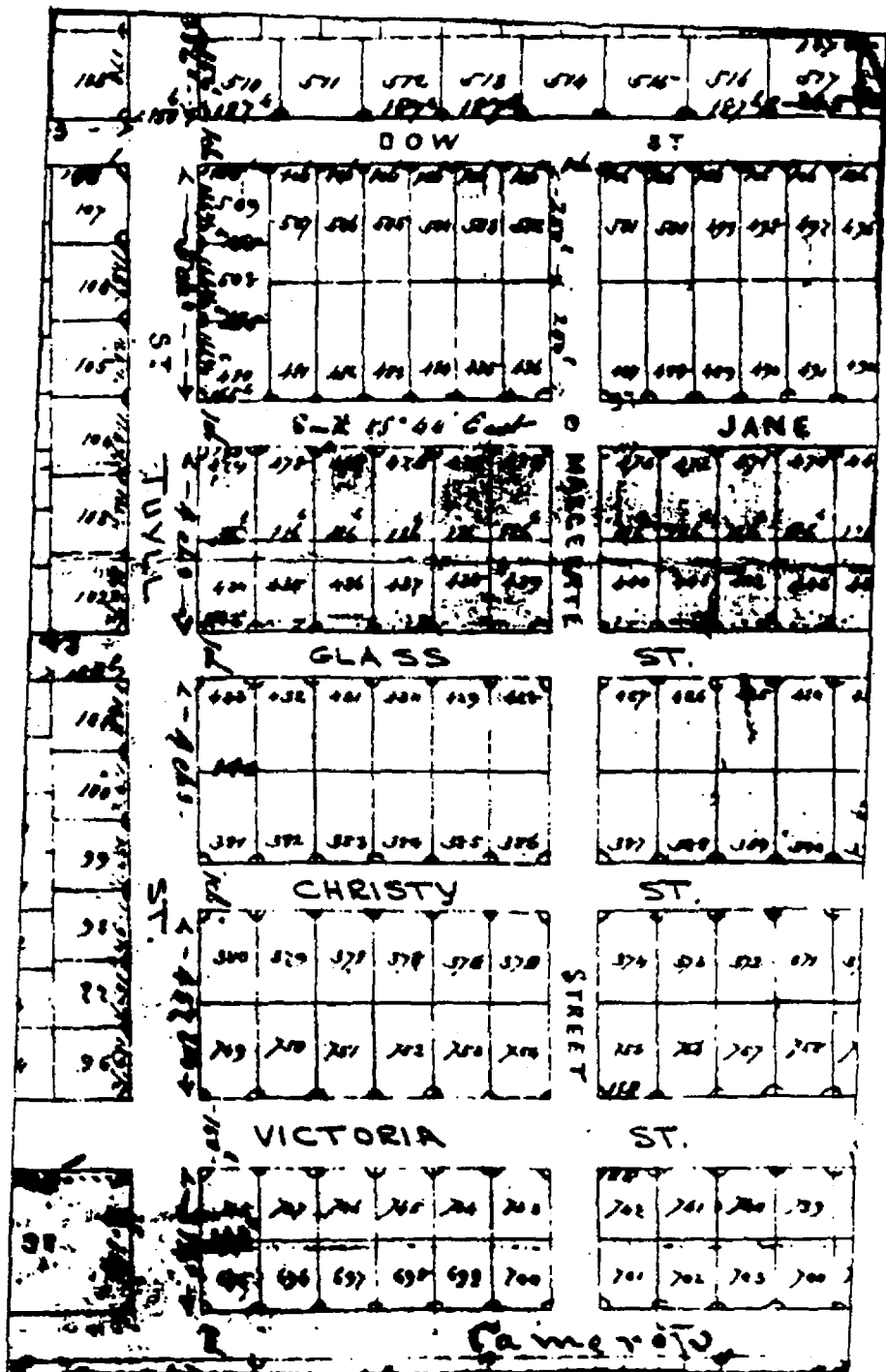
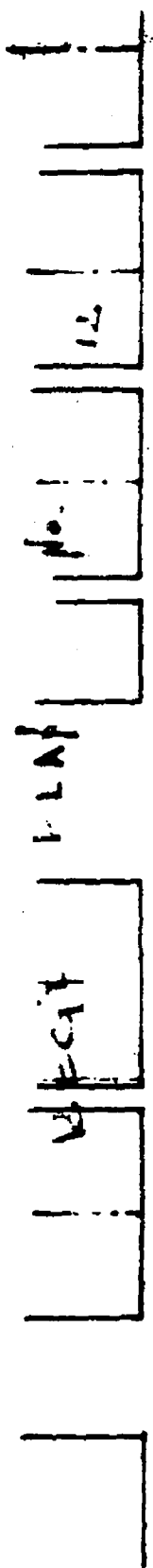


DIAGRAM N° 14



TULL STREET

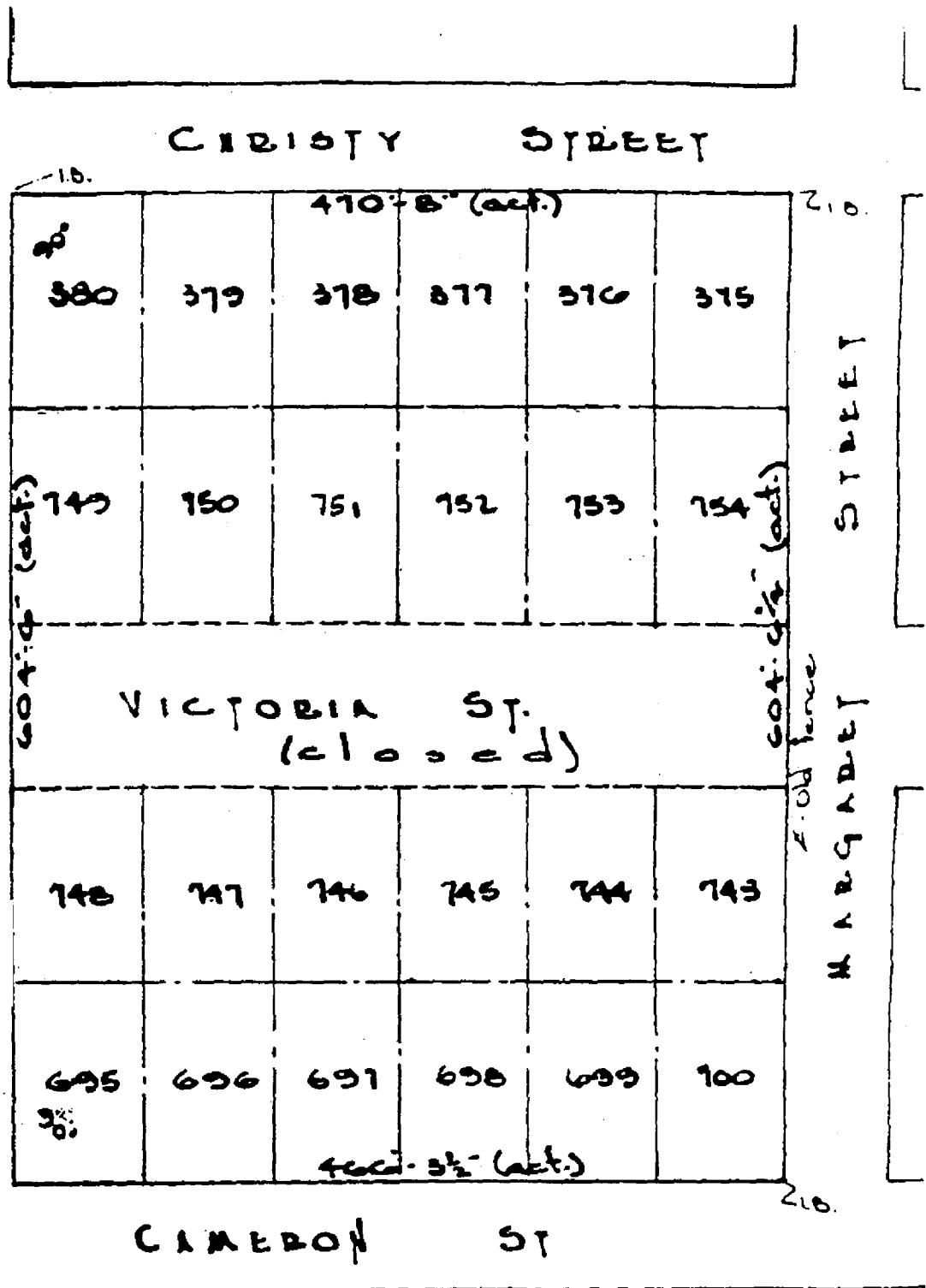


DIAGRAM N° 15



CHRISTY

ST.

78 44' 126 37' 393 110	78 44'	78 44'	78 44'	78 44'	78 44'	78 44' 126 37' 393 110
380	379	378	377	376	375	
78 23'						78 23'
126 37'	749	750	751	752	753	126 37'
78 14'						78 14'

ST.

VICTORIA

ST.

78 42'						78 42'
126 87'	748	747	746	745	744	126 87'
77 87'						77 87'
126 87'	695	696	697	698	699	126 87'
126 45'						
126 87'						126 87'
77 72'						77 72'

TUYLL

MARGAQUET

CAMERON

ST.

DIAGRAM N°16