

LOCATION CERTIFICATES

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INTRODUCTION

Professional land surveying is the advising on, the reporting on, the supervising of and the conducting of surveys to determine the horizontal and vertical position of any point and the direction and length of any line required to control, establish, locate, define or describe the extent of limitations of title. (1)

It is ironic how the preciseness of the above definition provides notable contrast to the manner in which the survey profession and the legal profession deal with that familiar and odd piece of paper known as the plot plan, survey certificate, certificate of location, plan showing lands of, plan showing lot of, certificate of foundation of location, certificate of house location, plan showing building location, surveyor's certificate of location, location certificate, surveyor's certificate and certified plot plan.

The variety of titles for this document is readily matched by the variety and language of the certificates they contain.* There would appear to be as many different types of certificates presented to lawyers by surveyors as there are certificates of title presented by the same lawyers to their clients. One can only question what certainty John Q. Client ultimately gets.

I hope that question will be answered by the contents of this paper, and for reasons that I trust will become evident shortly, I intend to refer to the subject matter of this paper as a "Location Certificate".

PROFESSIONAL LIABILITY

It is certainly not my intention to delve into the broad mysteries of professional negligence and liability. I leave that area for those of you, and I know there are many, who are much more conversant with the topic.

In researching this paper it became evident that there have been a limited number of reported decisions in Canada dealing with the narrow area of solicitors' advice to clients and surveyors' liability in regard to location certificates. I have therefore taken the liberty of including some American jurisprudence and article references which are of assistance in this area. (2)

I would suggest as a brief overview that the criteria for establishing professional negligence applies equally to both the

* See Appendix I for the wording of various certificates.

solicitor and the surveyor and is summed up with commendable conciseness in Linden, Canadian Negligence Law where the author states:

An attorney is liable if it is shown that his error or ignorance was such that the ordinarily competent solicitor would not have made or shown it. He must bring to the exercise of his profession a reasonable amount of knowledge, skill and care in connection with the business of his client. (3)

In relation to the surveyor, I would refer to the decision of Judge Landry in Lawyers Title Insurance Company v. Carey Hodges and Associates, Inc., (4) a decision of the Louisiana Court of Appeal:

We reaffirm ... that surveyors are expected to perform with the same degree of care and skill exercised by others in the profession in the same general area. Ordinarily proof of lack of such skill and care or proof of failure to exercise such skill and care in a given instance rests upon the plaintiff No profession may, by adopting its own standard of performance, method of operation or paragons of care, insulate itself from liability for conduct which ordinary reason and logic characterize as faulty or negligent. (5)

SOLICITORS' LIABILITY

I think most of us are aware of the proposition that a solicitor would be negligent in not fully advising and discussing with his client the importance of obtaining a location certificate when purchasing property on which there is an existing residence. Unfortunately, the number of cases available to directly support that contention are few.

The case of Aaroe and Aaroe v. Seymour et al (6) discussed surveys in general and the case has been cited with approval on numerous occasions since it was decided in 1956. (7)

The facts dealt with the purchase of a piece of property on which the purchaser subsequently erected a home. A year after construction was completed, the earth around the foundation began to settle and cracks began appearing in the structure. It was discovered that part of the residence was located over a municipal sewer easement. The purchaser was unaware of the existence of the sewer at the time of purchase and construction.

The existence of an easement in that area was noted on plans filed at the registry and the solicitor involved indicated that he had satisfied himself that the easement did not affect his client's property. A sketch prepared by a municipal draftsman was attached to the plan in question and showed the easement as affecting the property.

At page 740 of his judgement, Mr. Justice LeBell, after having reviewed the facts, stated:

In my opinion the solicitors should not have passed the title to Lot 24 until they had at least required production of a survey by the defendant vendor. That was but a routine step, and if production had been refused it was their duty to have reported the fact to the plaintiffs. They should not have closed the purchase until they were satisfied by inspection of a survey or until the plaintiff had waived its production. It is with regret, therefore, that I must conclude that the solicitor's error "was such that an ordinarily competent solicitor would not have made" it in the circumstances.

Though our local practice would lead me to question the right of a purchaser's lawyer to demand the production of a survey from the vendor, I feel it is worth noting the Justice's remarks indicating that there should not have been a closing until a satisfactory survey had been done or its requirement waived by the purchaser.

The above rationale receives indirect support in the judgement of Grant, J. in Brenner et al v. Gregory et al. (8) Here the purchaser obtained property whilst fully aware that the building on the land encroached on an adjoining roadway but with the knowledge that he could subsequently purchase that area of land on which the building encroached from the municipality. Fixed with this knowledge, the purchaser decided to complete the transaction. Nevertheless, and as an excellent example of the fickleness of clients, the purchaser subsequently sued the defendant lawyer alleging that the solicitor was:

... negligent in not obtaining a survey or warning the plaintiffs of the danger of purchasing such a property without a survey. (9)

The trial judge accepted the facts as outlined above respecting the purchaser's prior knowledge, and found that:

The fact that they said nothing to Mr. Gregory in these circumstances indicates that they were

prepared to deal with the matter themselves and did not rely upon their solicitor therefor. (10)

The defendant solicitor (Mr. Gregory) had called in evidence a fellow solicitor "with considerable experience in closing real estate transactions" who in giving testimony stated that:

... in the circumstances of this case a reasonably competent and diligent solicitor in that area acting for a purchaser would not be expected either to secure a survey or to advise his client to do so and his failure to do so would not amount to negligence. (11)

After the above testimony, the trial judge cited Aaroe and Aaroe v. Seymour et al (12) with approval as to solicitors' liability and concluded by saying:

The obligation of a solicitor to exercise due care in protecting the interest of the client who is a purchaser in a real estate transaction will have been discharged if he has acted in accordance with the general and approved practice followed by solicitors unless such practice is inconsistent with prudent precautions against a known risk, as where particular instructions are given which the solicitor fails to carry out. (13)

I suggest there might well have been a different decision if the purchaser had not been fixed with prior knowledge of the encroachment.

Our own courts also considered this area in Marwood v. Charter Credit Corporation (14) which dealt with a situation where the purchasers entered an agreement of purchase and sale and subsequently closed the transaction. They took possession of the property only to find, less than a year later, that the home they had viewed and taken possession of was not in fact the one they had received a deed for.

I should mention that the solicitor involved was acting for both the purchaser and the defendant vendor who had obtained title by foreclosing a mortgage it previously held on the property.

In reviewing the evidence presented, Mr. Justice Coffin, speaking on behalf of the Appeal Court, states that:

It appears that the purchasers who were inexperienced in buying real estate were not advised by the defendant nor by the real estate agent nor by any solicitor involved of the necessity of obtaining a survey. The position of the appellants is that the action of the respondent and its solicitors in failing to warn them of the necessity of a survey was negligent amounting to fraud. (15)

Justice Coffin went on to add in pure obiter dicta that:

Certainly, this case makes it clear that a certificate of title under circumstances such as those with which the parties were met is completely useless in the absence of a survey. It may well be that purchasers do not always wish to go to the expense of making a survey, but as a matter of practice it is my view that solicitors should always advise them in advance on this matter... (16)

CERTIFICATE OF TITLE "SUBJECT TO SURVEY"

If one can conclude and accept from the foregoing cases that failure to discuss the importance of a location certificate or survey with a client, prior to closing, is negligent, then I suggest that a solicitor would be estopped from limiting his certificate of title to that extent. More precisely, from pleading that limitation as a defence.

After indicating the solicitor's responsibility to discuss surveys with clients, Justice Coffin, in Marwood v. Charter Credit Corporations (17) concluded his statement by indicating that it is a solicitor's duty to:

... make it clear that the certificate of title which will be issued is at all times subject to survey. If this is done ahead of time and a purchaser still insists on going forward without retaining a surveyor, than the responsibilities are obvious. (18)

This proposition would also receive support by referring to Toth et ux v. Vazquez et al (19) a 1949 decision of the Chancery Division of the Superior Court of New Jersey.

In this case the plaintiff purchaser had, through his attorney, retained the services of a surveyor and received a survey which did not reveal a substantial encroachment.

The attorney's certificate of title was in this case "subject to such state of facts as an accurate survey would disclose." (20)

In discussing the case against the attorney, Judge Jayne reiterated the professional duty of an attorney to exercise ordinary care, knowledge and skill but qualified this by stating that:

In the rendition of such services there is no implied duty imposed upon the attorney to use personally a theodolitic transit to discover the terrestrial characteristics of the property. The

latter performance belongs to another profession ...
And so, as here, attorneys uniformly declare in
their certificates that their opinions concerning
the record title are "subject to state of facts
as an accurate survey would disclose." (21)

The defendant attorney in this case made it quite clear in
his pre-trial affidavit that:

... (7) The plaintiffs well knew at the time
that I was a practicing attorney at law of the
State of New Jersey; that I am not, nor have I
ever held myself to be a civil engineer or
surveyor.

... (9) The plaintiffs at that time knew that the
said Morgan F. Larsen was to make the survey of
said premises and did not at that time or at any
time, subsequent thereto, raise an objection to
the employment of his services in their behalf... (22)

Both the real estate agent and the attorney had discussed
surveys, with the plaintiffs, prior to them receiving a certificate
of title "subject to survey".

In summary, if you have indicated to your client in
adequate time before the closing that your certificate of title is
subject to survey, you can probably rely on your disclaimer where
the client proceeds contrary to your advice.

It is interesting, though outside the scope of this paper,
that Judge Jayne mentions the relationship of the various parties,
in Toth et ux v. Vazquez et al (23) as being:

... either a contract between the plaintiffs and
the surveyor made through the agency of the attorney
for the plaintiffs, or perhaps an agreement of like
employment between the attorney and the surveyor
made for the benefit of the plaintiffs. (24)

Unfortunately, that point receives no further illumination
and the learned judge was content with "I express no present
opinion." (25)

MORTGAGEE'S INSTRUCTIONS

Having satisfied yourself that you have been (and I hope
we all are) a diligent, knowledgeable and careful lawyer in advising
your client, what then is the position of your relationship with
your client's lending institution who, in most cases, will require,
what I am calling, a location certificate.

If we agree that there are numerous titles in use to refer to location certificates, they are readily exceeded by the number and variety of instructions you will receive from financial institutions as to their requirements.*

The problem is that mortgage lenders, in most cases, aren't sure what they require, except to the extent that they do want "something" indicating that the building is located within the boundaries of the land.

Maybe I am being too harsh in my analysis, but their instructions to solicitors vary widely as shown by the following examples:

Nova Scotia Savings and Loan:

A surveyor's certificate satisfactory to Nova Scotia Savings and Loan Company is to be furnished at the applicant's expense prior to the disbursement of funds, and without limiting the generality of the foregoing, the certificate shall certify:

- (a) The boundaries and dimensions of the property.
- (b) Location of the building and other improvements on the land.
- (c) The location of all material encroachments.
- (d) The location of all material easements. (26)

Bank of Montreal:

Survey sketch or certificate; To be obtained from the Mortgagor and prepared by a qualified surveyor confirming that the property conforms to all governing regulations. (27)

Dartmouth Community Credit Union:

You must obtain a proper fresh survey certificate certifying all buildings within bounds of property, there are no encumbrances and the buildings conform with all governmental location requirements as well as any additional private location requirements that may attach to the land. (28)

Federal Business Development Bank:

Would you please have the borrower execute a statutory declaration to the effect that the building is located entirely within the boundaries of the land mortgaged to this Bank ... if a survey plan is not available, we would accept a hand drawn sketch indicating dimensions, directions, and adjacent properties. (29)

I would be reluctant to express an opinion as what a "proper fresh survey" constitutes, in the Credit Union instructions, but would presume that it means one without mould.

* See Appendix II for various examples.

When you receive instructions, particularly such as those of The Royal Bank, indicating, "A surveyor's sketch or certificate is required in a form satisfactory to our lawyer or notary." (30) then be particularly careful.

I will refer you to one case where a mortgage lender sued the solicitor who was involved in placing their mortgage. That portion of the decision, directed to the necessity of surveys, probably comes as close as possible to summarizing the basis of this paper.

In Financeamerica Realty Ltd. v. Gillies, (31) the facts are somewhat complicated, and for the sake of brevity can be reduced to the following. The defendant solicitor was instructed to place a first mortgage for the plaintiff, which he did. It was subsequently discovered that the house to be used as security for the mortgagees was not located on the mortgaged land but on nearby property also owned by the mortgagor.

Though the facts are briefly related, I will quote the findings of Adams, D.C.J. at some length. The judge states during his decision that:

The defendant is an experienced and careful solicitor and it is apparent how he fell into error but in my opinion in this transaction he failed to exercise the standard of care required of him to protect the interests of his client and he was thereby in breach of his duty to the client. The plaintiff did not purport to give the defendant a complete or accurate description of the property and the defendant was specifically informed of that in the instructions provided him. The defendant knew that the dwelling house was an important element of the security the plaintiff required and he ought to have advised his client that a surveyor's certificate was necessary in order to confirm the location of the house

It is true that the plaintiff did not require location certificates in relation to second mortgages, the defendant knew the reason for that, but this was a first mortgage, the first of its kind accepted by the plaintiff during the short period it was doing business in this province and the existence of a location certificate in the hands of a prior mortgagee could not be assumed. In my opinion the only way the defendant could have discharged the duty and standard of care he owed to his client was to advise his client that a survey of the property was necessary; to certify the security without a location certificate was exposing the plaintiff to the risk that the security may be faulty or incomplete as, in fact, it was later found to be. (32)

I presume the judge's use of the word "client" is in reference to the mortgage lender. If it is not, it lends even

greater weight to interpreting his finding as burdening the solicitor with the requirement to discuss surveys with his client irrespective of whether or not they are financial institutions.

In summary, I would strongly emphasize that the mortgagee's requirements are instructions to you as the solicitor and unless you stipulate otherwise, to the mortgage lender, you are obligated to carry them out. The responsibility and the liability rest with you.

SURVEYORS' OBSERVATIONS AND LIABILITY

It was initially my intention as part of this paper to consider, in some detail, the professional liability of surveyors. That liability is the general liability of any profession and is succinctly stated in Corporation of Stafford v. Bell (33) where Burton, J.A., indicates at page 274 that:

The law respecting land surveyors does, it is true, define the method of procedure to be observed in making a survey in many supposable cases, and affords greater facilities for proving negligence than in actions against others undertaking a professional duty; but a surveyor is under no statutory obligation to perform the duty, but undertakes as a matter of contract, like any other professional man, to do the service required of him; and as in all other cases of a cognate kind, there must be evidence of a want of a reasonable skill and knowledge or of gross negligence before he can be made liable in this form of proceeding.

This rationale has been approved and applied in more recent times and you can at your leisure, if you feel so inclined, review some of these cases. (34)

In collecting information for this paper, I had the benefit of discussions, meetings and written input by various members of The Association of Nova Scotia Land Surveyors. Their comments were of considerable interest and assistance.

A frequently recurring observation was that most solicitors do not have a sufficient understanding of the surveyor's function when producing a location certificate. Additionally, instructions received from solicitors, if one can call them instructions, are in most cases vague and frequently non-existent.

This problem appears to be compounded by a noticeable lack of uniformity in the minds of surveyors themselves as to their burden when producing and drafting a location certificate and in preparing the wording of the certificate itself.

In response to this problem, The Association of Metropolitan Land Surveying Consultants (sometimes irreverently referred to as the "Metro Mafia") have prepared a proposed standard form location certificate.* I understand that this standard certificate was presented to the governing council of the Provincial Association and received it's approval in January, 1982.

That Council approval is, in fact, a mere suggestion to the membership that they should consider use of this certificate in an attempt to standardize location certificates from surveyor to surveyor with respect to both format and certification. Hopefully, the membership will see fit to do so.

I am not convinced that this proposed standard location certificate goes far enough to provide the protection that the solicitor will be looking for on behalf of his client or lending institution. I will leave that discussion until later in the paper when reviewing solicitor's instructions to the surveyor.

This might be the appropriate point to mention that the reason the Metro Association settled on the term "location certificate" was a direct attempt to get away from the use of the word "survey". The word "survey" when used by the profession means that defined boundary work is being done and, as you are aware, that is a totally separate job function from that envisaged when a surveyor is requested to provide a location certificate.

If we assume that all of the previously mentioned areas of concern have been examined and discussed with our clients, we should give some consideration to the ability of the client to recover from a surveyor after the client has maintained a successful suit for negligence. I only wish to mention one point--that of surveyor's liability insurance.

I understand that there are approximately 300 certified Nova Scotia Land Surveyors of which approximately 100 are engaged in private practice. It is the latter group with whom the solicitor would normally deal in the course of his or her business.

That group of 100 or so surveyors contains, I believe, only 14 who are carrying liability insurance. This may give you some food for thought when considering the fact that it is you, the solicitor, who recommends and usually engages the surveyor for your client.

REDUCTION OF LIABILITY

Very little of the foregoing information will be of any use if solicitors are not willing to take time and care when

* See Appendix III

discussing, ordering and examining location certificates. I would like to make a number of suggestions which hopefully will assist in reducing the chance of our own liability and, at the same time, provide protection for our clients.

File Opening

Fully discuss the necessity of location certificates with your client by telephone or in the office as soon as the file is opened. You should note on your intake sheet both that the discussion took place and your client's instructions on the matter.

Your client must fully understand what he will be receiving when he obtains a location certificate. The contents of this paper should not be interpreted as restricting the necessity of discussing boundary surveys and monumentation of the property with your client.

Follow Up

Confirm in your opening letter to the client that the matter of obtaining a location certificate was discussed and further confirm his instructions to you, particularly where your advice has not been followed.

Existing Certificates

You should not, as a general rule, accept existing certificates. The client should be aware that if he does, no privity of contract exists with the surveyor and the certificate will not reflect any subsequent changes or additions to the property. This is particularly relevant where the existing certificate is one for foundation footings only.

You should be prepared to discuss with the client your conflict if he or she does not want a new location certificate but you feel that one should be obtained to protect the mortgage lender. I find that if you discuss the problem with the mortgagee they will usually insist that a new certificate be obtained.

As an alternative you may wish to try and find an existing certificate and have the original surveyor recertify that document for your client. Some form of certificate is usually in existence for most properties less than 10 years old. Take the time to check with the present or former mortgagees, the vendor's solicitor or the municipal building office. One will frequently turn up.

I should note that many surveyors will reduce their fees, in some cases substantially, if they have prepared the original certificate at some previous point in time. Needless to say, this factor will be influenced by changes to the property that have taken place subsequently.

One might also consider dealing with the surveyor who was involved in obtaining approval for the original subdivision. He

will normally have his field notes available and be more familiar with the area.

If all else fails and your client chooses to proceed with an existing certificate, then check to be sure it is a certificate and not a proposed location plan, engineering elevation diagram or something similar.

I would suggest that when the above situation arises you have your client sign a release at closing indicating that you have discussed the survey question with him and, after being advised of the possible ramifications, he has instructed you to proceed without survey information.

If you feel you are doing your client a service or impressing him with your ability to dig up an old location certificate at little or no cost, I suggest giving the matter a second thought.

Choosing and Instructing the Surveyor

I think it is extremely important that you give careful consideration to the surveyor you choose. In all likelihood you will be directing the bulk of your work to him.

Examine the manner, neatness and layout of the certificate that the surveyor prepares. Rightfully or wrongfully, it will frequently be this factor against which the client will gauge whether or not he or she got their money's worth.

You will have to make your own decision as to the quality and accuracy of the surveyor's work. I mentioned previously, though I didn't answer the question, the legal relationship that may arise when a solicitor engages a surveyor on behalf of the client. It is frequently the solicitor who recommends and contacts the surveyor, and one may ponder what problems may arise for the solicitor when the client has acted on that recommendation as in Toth et ux v. Vazquez et al (35) discussed previously.

In his pre-trial affidavit the defendant attorney attempted to forestall any argument as to the ability of the surveyor he had contacted where he states that:

... (6) In selecting said Morgan F. Larsen to survey said premises I did rely upon the excellent reputation for accuracy and professional skill as well as upon the high personal integrity enjoyed by said Morgan F. Larsen ... (36)

I hope that all of the surveyors we use can claim the same attributes.

You should, if possible, order your certificate after your title search is completed, though I appreciate the timing involved frequently does not allow this luxury. Nevertheless, you might

avoid having to send a surveyor back to recheck or determine the existence and/or location of, for example, a right-of-way that your search has revealed.

I have attached as a guide the form of survey request used by our office which can be adapted to your own requirements.* Try to avoid verbal instructions to the surveyor and provide as much information to him as possible.

In conclusion, I would suggest that you take the opportunity of sitting down and discussing with the surveyor you choose precisely what you want when you are ordering a location certificate. In turn, find out what he is willing to provide you with, bearing in mind that the cost factor is important to your client. If you can develop a relationship with and confidence in the surveyors you choose you will find yourself much more at ease when reviewing their work. In short, they will be keeping an eye out for you.

The Finished Product

You have now reached that point where the completed location certificate is back on your desk. This is not the time to put it away in your file until closing day.

As a first step, check the certificate against the legal description and the approved plan if one is available. The certificate may vary to some extent due to physical evidence found by the surveyor.

Check the location certificate for compliance with municipal standards for side and front yard clearance. This can be done by sending a standard form letter, with the location certificate attached, if available, to the municipal building office.** This letter will also allow you to deal with building and occupancy permits, work orders and zoning confirmation and compliance. I have found our local municipal building offices more than happy to assist you.

You should verify that easements, rights-of-way and building restrictions, as revealed by your abstract of title, have been noted on the certificate where appropriate. Don't forget to confirm and check the basic factors such as appropriate access, driveway location, encroachments, et cetera.

Finally, send a copy of the certificate to your client as far in advance of the closing as possible. It is amazing how often their visual inspection of the property gives a different picture from that which the certificate reveals. (37) You may also wish to direct a copy of the certificate to your mortgage lender, in advance, and request their comments.

* See Appendix IV

**See Appendix V

If you neglect to carefully examine the certificate that has been prepared, I would refer you to the statement of Judge Palmore in the case of Owen v. Neely, (38) a decision of the Kentucky Court of Appeal. Though certainly not binding jurisprudence, I think its substance is readily applicable.

In this case a discrepancy existed between the obtained location certificate and the legal description. The attorney pleaded as a defence that:

His certificate was made expressly "subject to any information that would be revealed by an accurate survey of the real estate and subject to any information that would be revealed by a personal inspection of the premises..." (39)

The Court's response at page 708 of the decision was:

We are of the opinion that a lawyer certainly may protect himself by reservations and disclaimers expressly set forth in a certificate of title, but only if he has no reasonable grounds to suspect the actual existence of defects not mentioned. The average layman is not familiar with and ordinarily does not understand a legal description, and if his lawyer, accidentally or otherwise, receives information that should reasonably put him on notice of a defect we think it is his duty to investigate or report to his client.

Whether Mr. Neely, upon discovering the discrepancies between the deed description and the survey description, in the exercise of that degree of care owed a client by his attorney should have pursued an inquiry or reported the circumstances to the Owens is a factual question we think cannot be resolved in his favour ...

Conclusion

It is always a problem to summarize a paper in a concise and informative manner.

As an alternative may I suggest that you examine the five "certificates" which are appended.* They all deal with the same property but have been prepared at various points during the property's development.

Hopefully they will graphically demonstrate the problems that can arise.

* See Appendices VI (a), (b), (c), (d) and (e)

FOOTNOTES

1. Nova Scotia Land Surveyors Act 1977, C. 13, S. 2(1)(i)
2. See the following in addition to other citations in the text:

McLaughlin and Dobbin, Notes and Materials on Survey Law,
Cadastral Studies, Department of Surveying Engineering,
University of New Brunswick

Felder, Surveyor's Failure to Exercise Due Care in Making
Survey, 11 POF 2d, 397

Ytreberg, Surveyors Liability for Mistake in, or Misrepresenta-
tion as to Accuracy of, Survey of Real Property, 3 ALR 3d 504

Fletcher & Son v. Jubb, Booth & Helliwell, (1920) 1 K.B. 275
(C.A.)

Recent Canadian Solicitor Negligence Cases, (1980) Research
Paper No. 4, University of Alberta
3. Linden, Canadian Negligence Law (1st ed., 1974), p.39
4. Lawyers Title Insurance Company v. Carey Hodges and Associates,
Inc. La. App., 358 So. 2d 964
5. Ibid., at pp. 967-968
6. Aaroe and Aaroe v. Seymour et al., (1956) O.R. 736; Affirmed on
other grounds, 7 D.L.R. (2d) 676 (C.A.)
7. For example:

Brenner et al. v. Gregory et al., (1973) 1 O.R. 252 (H.C.) or
Charette et al. v. Provenzand et al., 5 R.P.R. 209 (Ont. S.C.)
8. Ibid.
9. Ibid., at p. 256
10. Ibid., at p. 257
11. Ibid., emphasis added
12. Supra, note 6
13. Supra, note 7 at p. 257
14. Marwood v. Charter Credit Corporation (1971), 2 N.S.R. (2d) 743
(S.C. App. Div.)
15. Ibid., at p. 745
16. Ibid., at pp. 745-746
17. Supra, note 14
18. Supra, note 14 at p. 746
19. Toth et ux v. Vazquez et al. 65 A. 2d 778
20. Ibid., at p. 779
21. Ibid., at p. 780

22. Ibid., at p. 780
23. Supra, note 19
24. Supra, note 19 at p. 780
25. Supra, note 19 at p. 780
26. Standard Form Instructions to Solicitors, p. 2; Clause (9)
27. Stand Form Letter of Instruction to Solicitor, Clause (4), which also contains the general proviso "Should you become aware of anything which is not in good order, please refer the matter to us."
28. Standard Form Instructions to Solicitors, Clause (11)
29. Standard Form Letter to Solicitor with survey requirements determined and added to the Standard Letter
30. General Conditions of Lending, Clause (1)
31. Financeamerica Realty Ltd. v. Gillies 32 Nfld. & P.E.I. R. 14 (Nfld. Dist. C.)
32. Ibid., p. 28
33. The Corporation of The Township of Stafford v. Bell (1881), 6 O.A.R. 273
34. For example:
MacLaren-Elgin Corp. Ltd. et al. v. Gooch, (1972) 1 O.R. 474 (H.C.)
R. H. Bowman Associates, Inc., v. Richard Danskin, 338 N.Y.S. 2d 224
Wicks v. Milzolo Builders, Inc., Pa. Super., 435 A. 2d 1260
Philips v. Ward, (1956) 1 All E.R. 874. (C.A.)
Baxter v. F. W. Gapp & Co., Ltd., (1939) 2 All E.R. 752 (C.A.)
35. Supra, note 19
36. Supra, note 19 at p. 779
37. In this regard see:
Nielsen v. Watson et al. (1981) 19 R.P.R. 253 (currently under appeal to the Ontario Court of Appeal)
38. Owen v. Neely, Ky. 471 S.W. 2d 705
39. Ibid., at p. 707

APPENDIX I

VARIOUS CERTIFICATES USED BY SURVEYORS

I hereby certify that I have surveyed the above named lot and have found it to be free of encroachments with a depth and frontage as shown. I further certify that this plan accurately shows the manner in which the _____ shown has been located by me with respect to the true boundary lines of the lot.

This is to certify that I have surveyed and found the foundation of the above shown building or buildings to be entirely within the bounds of the said lot and to be located as shown hereon.

I certify that the _____ of the dwelling being constructed on lots _____ said lot owned by _____ is within the metes and bounds of said lot and is located as shown on the above plan encroachments or easements _____.

I hereby certify that this plan of the lands of _____ as described in a deed recorded in Book _____ Page _____ accurately shows the location of the dwelling thereon and that the said lot is free of apparent encroachments.

I hereby certify that this plan of lot _____ in the _____ subdivision accurately shows the location of the foundation footing constructed thereon.

I certify that the _____ located on lot _____ as shown on "Plan of _____ Subdivision dated _____ signed _____ lies wholly within the bounds of the said lot _____ and has the clearances as shown on the above diagram. This certificate is subject to the following conditions.

I certify that the foundation of the building being constructed on this lot is located as shown on this plan dated _____.

This certificate is given and certification is hereby made for the restricted purpose of confirming that the house is located within the property lines and the lot is free from apparent encroachments and rights-of-way except as indicated, and is not to be taken as certifying the absolute accuracy of the house location and boundary line distances.

I hereby certify that the building situate at civic # _____ is located as shown hereon.

I hereby certify that the footing of the building situated on lot _____ of the _____ subdivision lies wholly within the bounds of this lot as shown on plan of subdivision of lands owned by _____ dated _____. I further certify that the said footing has at least the clearances indicated in the above diagram, exclusive of all chimneys and abutments.

I certify that the _____ built on _____ of the _____ subdivision in the county of _____ is situated as shown in the above plot note.

- (a) Subdivision prepared by _____
- (b) Easements _____
- (c) Encroachments _____
- (d) (Special notes) _____

This is to certify that on (date) we performed a survey of lot _____ block _____ situate on the _____ side of _____ street at _____, in the City of _____, Province of _____ said lot _____ block _____ shown on a plan attached to a deed recorded at the office of the Registrar of Deeds at _____ in Book _____ Page _____ and being further shown on a plan showing property of _____ said plan prepared by _____ dated _____ signed by _____ N.S.L.S. approved by the _____ Planning Board on date _____ and recorded at the office of the Registrar of Deeds at _____ as plan _____ drawer _____. We have the following to report.

1. A _____ bearing civic # _____ is situate on lot _____ block _____ and is entirely within the limits thereof.

2. There are no encroachments of other buildings on said lot _____ block _____.

3. The location of said _____ is accurately shown on the above plan.

This is to certify that I have surveyed the above named lot and have found it to be free from apparent encroachments and rights-of-way except as indicated and that the said lot has depth and frontage as shown on the above plan. I also certify that I have found the _____ for a _____ being constructed thereon to be entirely within the bounds of said lot and to be located as shown above.

This is to certify that the dwelling known as civic _____ located on lot _____ lies wholly within the boundaries of the said lot as said boundaries are shown on a plan showing lots _____ signed by _____ dated _____ and revised _____. The undersigned further certifies that, giving due regard to recognized and registered easements and rights of way presently existing, the subject parcels are free from apparent encroachments and rights of way.

I certify that I have inspected the above named property and have found it to be free from apparent encroachments except as shown and that the building located thereon lies entirely within the metes and bounds of the said land as shown on this plan.

This is to certify that the existing dwelling is entirely within the boundaries of the said lot and is more particularly shown below.

APPENDIX II

SURVEY REQUIREMENTS OF VARIOUS LENDING INSTITUTIONS

1. The Dominion Life Insurance Company
A survey of the mortgaged premises showing all final improvements and other physical conditions including parking area and access facilities and showing no easements or encroachments which would in any way be detrimental to the security, shall be required for Dominion Life's approval.
2. League Savings & Mortgage
Surveyor's plot plan or certificate of location, showing the location of improvement within the property lines, and no material encroachments.
3. Central Trust Company
A surveyor's mortgage certificate or plot plan, satisfactory to the solicitor, showing the location of improvements within the property lines and no material encroachments, is required prior to any funds being advanced by the company.
4. The Toronto-Dominion Bank
A surveyor's sketch or certificate, satisfactory to the Bank showing the improvements located entirely within the property lines and with no material encroachments.
5. HFC Trust
A survey certificate prepared by a qualified land surveyor is to be furnished by you.
6. Bank of Nova Scotia
A Survey or Certificate of Survey which may include a Sketch prepared by a qualified Surveyor showing the position of the building on the lot is REQUIRED BEFORE THE FUNDS MAY BE ADVANCED.
7. Co-Operative Trust Company of Canada
You will be required to obtain a Proper Survey at your expense. Serious encroachments may change the acceptability of the security.
8. Atlantic Trust Company
 - (a) For new construction and commercial loans we require an up-dated surveyor's plot plan.
 - (b) For existing residential properties, we would like a plot plan; but if one is not available, we will require an updated written surveyor's certificate stating that the foundation lies wholly within the boundary lines of the property.
9. Montreal Trust Company
A survey is to be furnished in duplicate by a duly registered Land Surveyor for each mortgage loan and should show the lot lines of the property, buildings in relation

thereto, and the lines of any lots, blocks, alleys, adjoining owners, waterways, etc., referred to in the description, as well as all easements, encroachments and rights-of-way. Building dimensions, parking areas and driveways must also be shown on all surveys for loans on properties other than one to four-family dwellings. Each survey should be thoroughly inspected to insure that there is proper ingress and egress to a thoroughfare deeded to and maintained by the municipality.

10. Canada Permanent Trust Company

Survey sketch/certificate indicating land and location of buildings on property is required.

11. Investors Syndicate Realty Limited

Satisfactory survey showing the location of the buildings on the land.

LOCATION CERTIFICATE

- G21 -

APPENDIX III

NOTE 1. CLEARANCES SHOWN ARE PERPENDICULAR TO THE BOUNDARY AND ARE TO THE CLOSEST CORNERS OF THE STRUCTURE
2. CLEARANCES ARE DEFINED TO A TOLERANCE OF _____ FT.

SCALE _____

TO : _____
RE : _____

I HAVE SUPERVISED AN INSPECTION OF THE SUBJECT LANDS AND HAVE CAUSED SUCH MEASUREMENTS TO BE MADE AS I DEEMED NECESSARY TO CERTIFY THAT:

- (1) THE _____ SHOWN HEREON IS _____ LOCATED ENTIRELY WITHIN THE BOUNDARIES OF THE SUBJECT LANDS AS SAID BOUNDARIES ARE DEFINED BY _____
- (2) CULTURAL FEATURES SHOWN HEREON ARE LOCATED TO PLOTTING ACCURACY UNLESS SPECIFICALLY DIMENSIONED.
- (3) ALL EASEMENTS, DOCUMENTED IN THE DEED RECORDED IN BOOK _____ PAGE _____ IN THE COUNTY OF _____, ARE REFLECTED HEREON.

NO FURTHER CERTIFICATION OR ASSURANCE IS IMPLIED BY OR TO BE INFERRED FROM THIS DOCUMENT.

THIS DOCUMENT IS NOT TO BE USED FOR BOUNDARY DEFINITION OR CONVEYANCING PURPOSES.

THOMPSON AND PURCELL SURVEYING
LIMITED

2973 OXFORD STREET
HALIFAX, NOVA SCOTIA

DATE _____

PROJECT No. _____

CROWE, THOMPSON, HAYNES & ASHWORTH

BARRISTERS, SOLICITORS, NOTARIES

ALAN M. CROWE
ROSS H. HAYNES
DAVID F. ENGLISH
K. H. ANTHONY ROBINSON

HARRY D. THOMPSON
DENNIS ASHWORTH
JOSEPH M. J. COOPER
JAMES M. HAUGHN

BAYERS ROAD SHOPPING CENTRE, SUITE 19
HALIFAX, NOVA SCOTIA B3L 2C2
TELEPHONE (902) 453-1732

POST OFFICE BOX 277
ENFIELD, NOVA SCOTIA B0N 1N0
TELEPHONE (902) 861-3048

TO:

PLEASE REFER TO

RE: Present Property Owner -

Property Location -

Our File Number -

ENCLOSED:

- (a) Copy of legal description with Registry reference ()
- (b) Copy of plan ()
- (c) Other data ()
 - (i)
 - (ii)
 - (iii)

Please prepare a location certificate for our office, which we would appreciate having in our possession on or before _____.

Your certificate should indicate, in addition to building location, method of access to a municipal thoroughfare, easements contained in the deed description, easements or encroachments visible on the ground and cultural features as applicable.

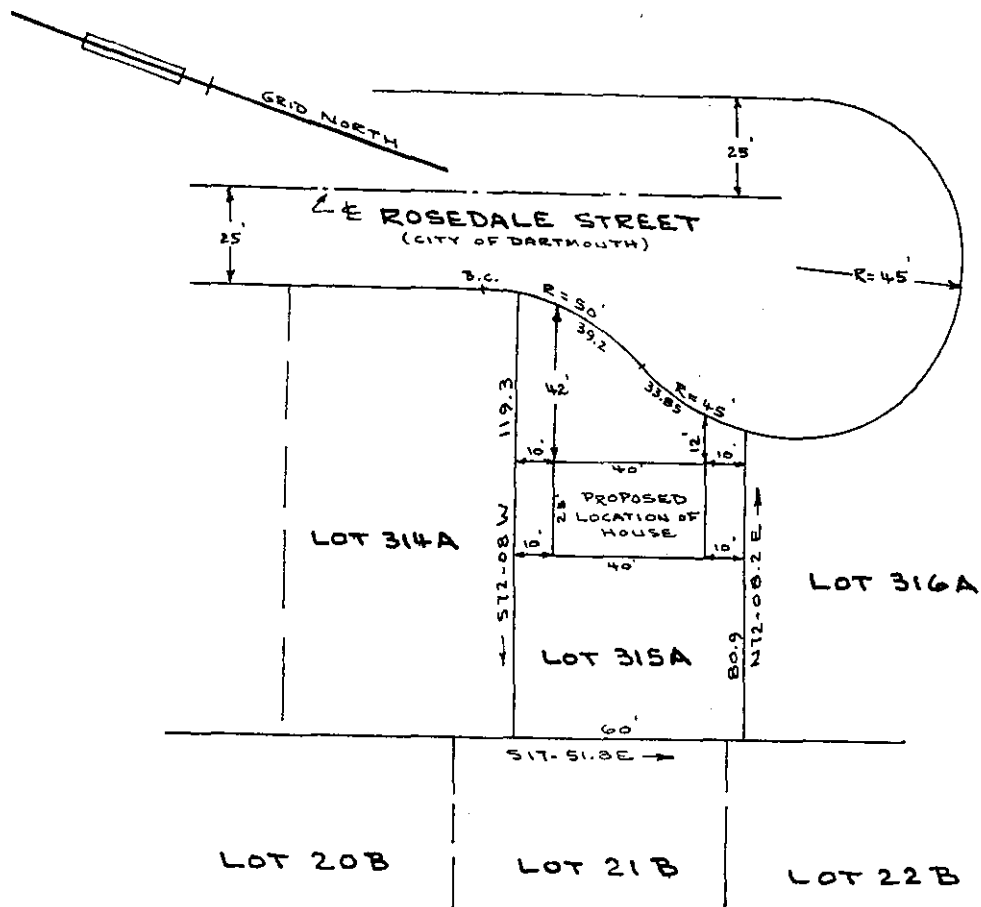
Please certify to:

Additional comments:

Yours sincerely,

CROWE, THOMPSON, HAYNES & ASHWORTH

Property Assistant



SCALE - 1" = 40'

To: Mr. Your Purchaser et ux
c/o Arc Law Offices, Halifax, Nova Scotia.

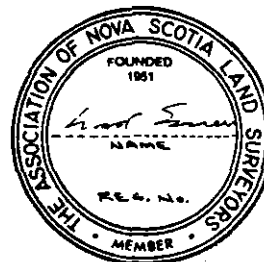
Re: Lot 315A Rosedale Street, City of Dartmouth, Halifax County, N.S.

Plot Plan showing proposed location of house on Lot 315A, as shown on "Plan of Rosedale Subdivision", dated June 20, 1975, signed by John Doe, Nova Scotia Land Surveyor, approved by the City of Dartmouth Planning Board on July 15, 1975, filed at the Registry of Deeds at Halifax in Drawer 96 under Plan #12345, is situated on the said Lot 315A as shown on the above diagram.

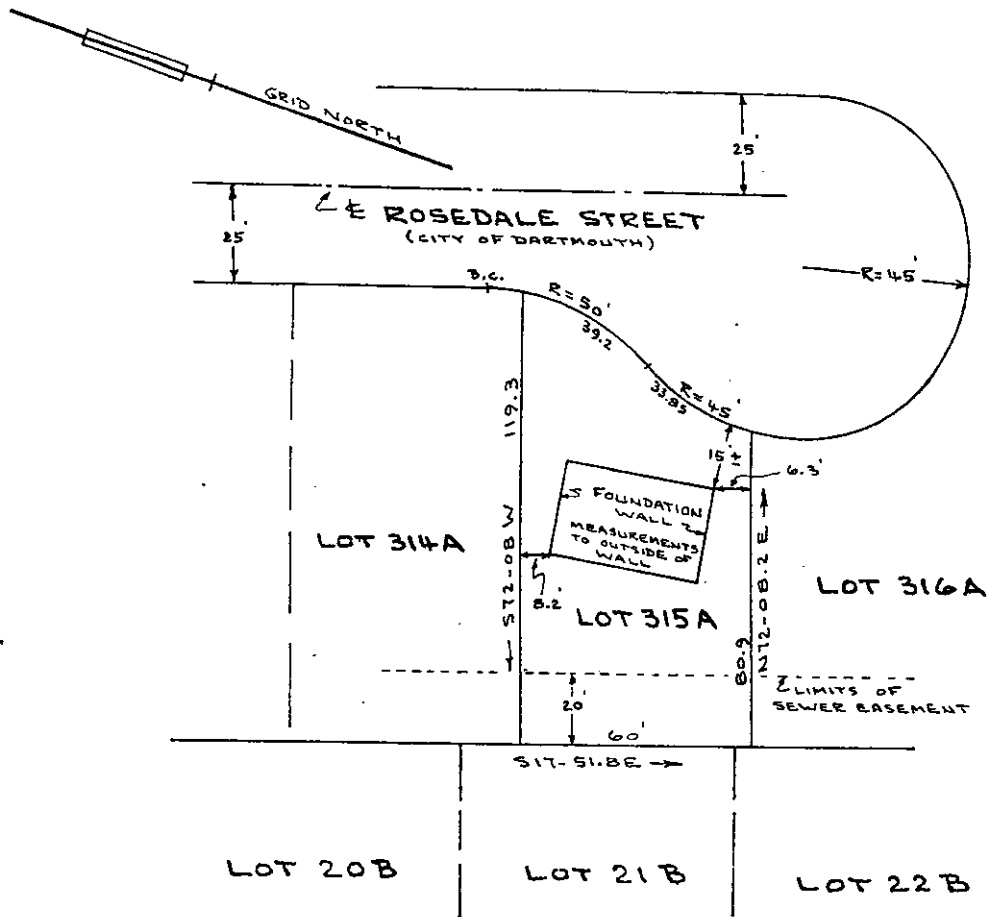
Dated this 20th day of May, 1976.

David Denny

Nova Scotia Land Surveyor



APPENDIX VI (b)
CERTIFICATE OF LOCATION



TO: Mr. Your Purchaser et ux
c/o Arc Law Offices, Halifax, Nova Scotia.

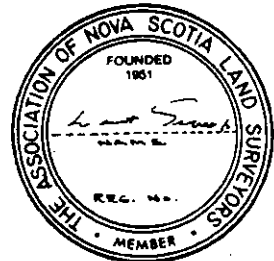
Re: Lot 315A Rosedale Street, City of Dartmouth, Halifax County, N.S.

I certify that the foundation located on Lot 315A, as shown on "Plan of Rosedale Subdivision", dated June 20, 1975, signed by John Doe, Nova Scotia Land Surveyor, approved by the City of Dartmouth Planning Board on July 15, 1975, filed at the Registry of Deeds at Halifax in Drawer 96 under Plan #12345, is situated on the said Lot 315A as shown on the above diagram.

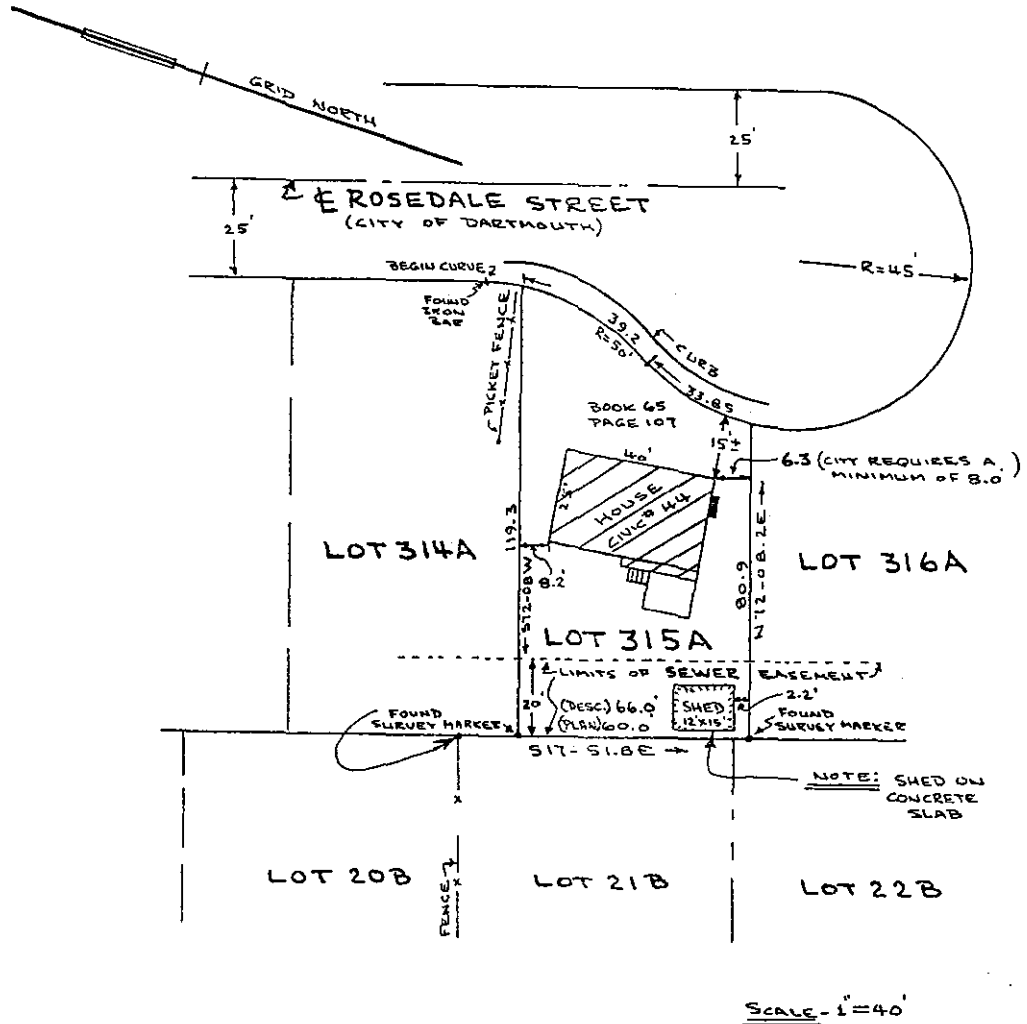
Dated this 30th day of June, 1976

Arnold Dunning

Nova Scotia Land Surveyor



APPENDIX VI (c)
CERTIFICATE OF LOCATION



To: Mr. Your Purchaser et ux
 c/o Arc Law Offices, Halifax, Nova Scotia.

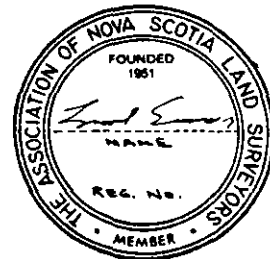
Re: Civic #44 Rosedale Street, City of Dartmouth, Halifax County, N.S.

I certify that the house located on Lot 315A, as shown on "Plan of Rosedale Subdivision", dated June 20, 1975, signed by John Doe, Nova Scotia Land Surveyor, approved by the City of Dartmouth Planning Board on July 15, 1975, filed at the Registry of Deeds at Halifax in Drawer 96 under Plan #12345, is situated on the said Lot 315A as shown on the above diagram.

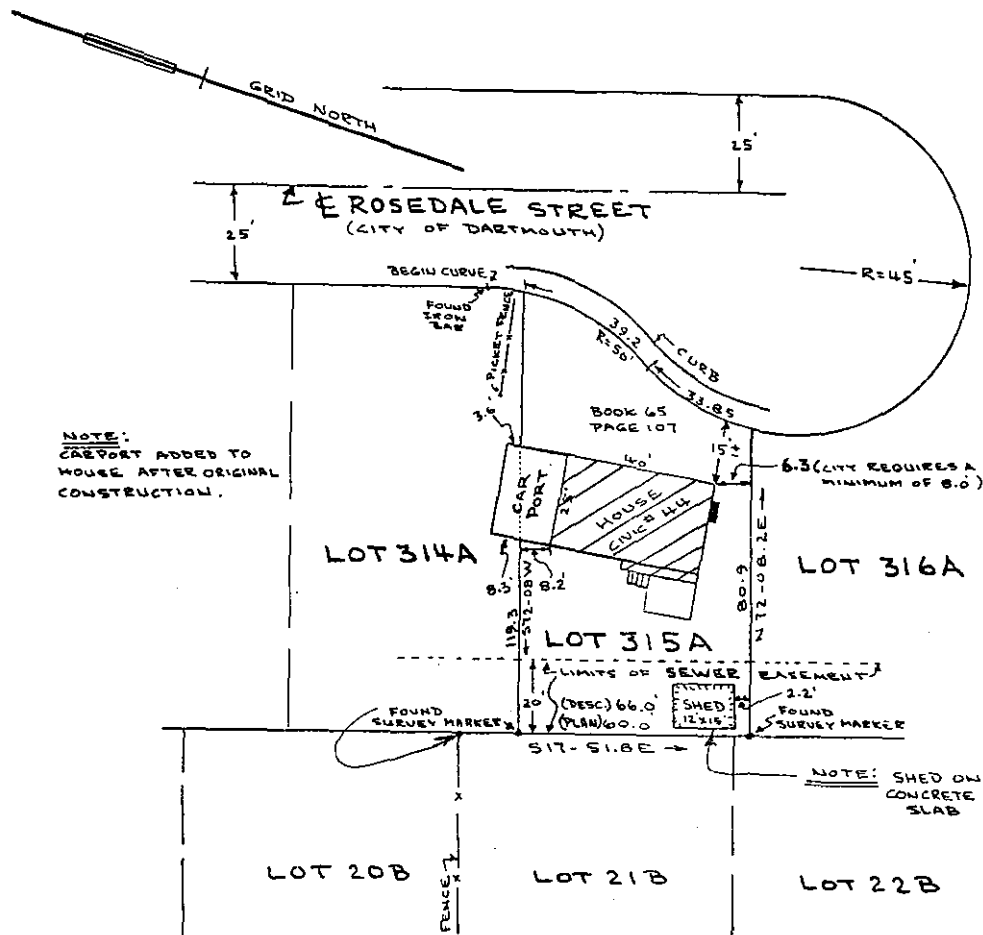
NOTE: Encroachment of shed on sewer easement. Also, deed description notes rear distance as 66.0 feet, while the subdivision plan shows the rear distance as 60.0 feet. Field surveys confirm 60.0 feet is correct.

Dated this 20th day of July, 1978.

John Doe
 Nova Scotia Land Surveyor.



APPENDIX VI (d)
CERTIFICATE OF LOCATION



NOTE:
CARPORT ADDED TO
HOUSE AFTER ORIGINAL
CONSTRUCTION.

6.3 (CITY REQUIRES A
MINIMUM OF 8.0)

NOTE: SHED ON
CONCRETE
SLAB

SCALE - 1" = 40'

TO: Mr. Your Purchaser et ux
c/o Arc Law Offices, Halifax, Nova Scotia.

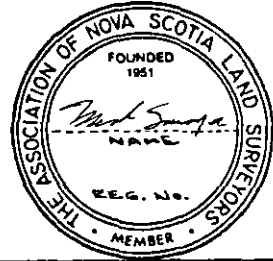
Re: Civic #44 Rosedale Street, City of Dartmouth, Halifax County, N.S.

I certify that the house located on Lot 315A, as shown on "Plan of Rosedale Subdivision", dated June 20, 1975, signed by John Doe, Nova Scotia Land Surveyor, approved by the City of Dartmouth Planning Board on July 15, 1975, filed at the Registry of Deeds at Halifax in Drawer 96 under Plan #12345, is situated on the said Lot 315A as shown on the above diagram.

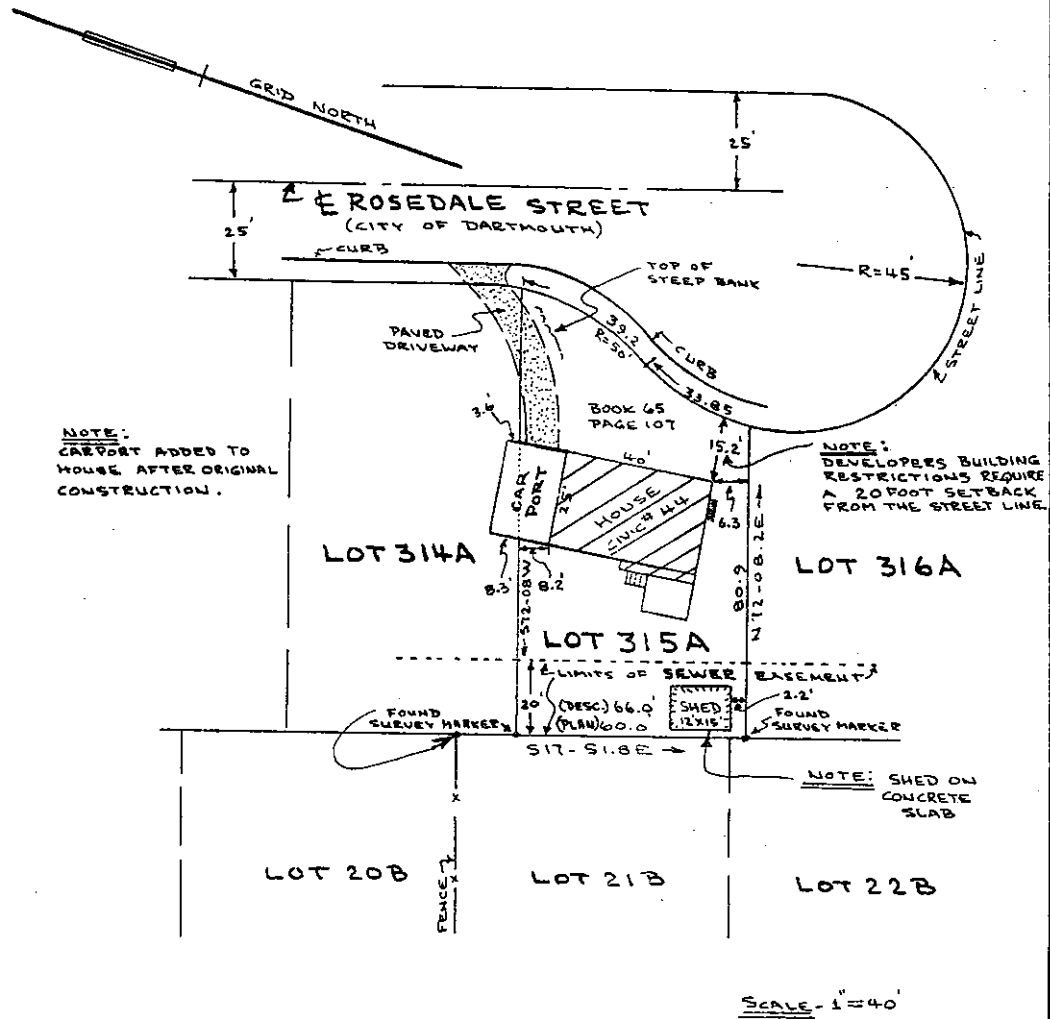
NOTE Encroachment of carport on Lot 314A and shed on sewer easement. Also, deed description notes rear distance as 66.0 feet, while the subdivision plan shows the rear distance as 60.0 feet. Field surveys confirm 60.0 feet is correct.

Dated this 30th day of May, 1980

Paul Surry
Nova Scotia Land Surveyor



APPENDIX VI (e)
CERTIFICATE OF LOCATION



TO: Mr. Your Purchaser et ux
 c/o Arc Law Offices, Halifax, Nova Scotia.

Re: Civic #44 Rosedale Street, City of Dartmouth, Halifax County, N.S.

I certify that the house located on Lot 315A, as shown on "Plan of Rosedale Subdivision", dated June 20, 1975, signed by John Doe, Nova Scotia Land Surveyor, approved by the City of Dartmouth Planning Board on July 15, 1975, filed at the Registry of Deeds at Halifax in Drawer 96 under Plan #12345, is situated on the said Lot 315A as shown on the above diagram.

NOTE Encroachment of carport on Lot 314A and shed on sewer easement. Also, deed description notes rear distance as 66.0 feet, while the subdivision plan shows the rear distance as 60.0 feet. Field surveys confirm 60.0 feet is correct. Also, portion of driveway on Lot 314A.

Dated this 20th day of May, 1981

John Doe
 Nova Scotia Land Surveyor

