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THE IMPORTANCE OF TITLE SEARCHES

A **Full** Narrative appraisal report is one that is comprehensive and detailed: prepared without invoking an Extraordinary Limiting Condition. ¹ [emphasis added]

An Extraordinary Limiting Condition is a necessary modification or exclusion of a Standard Rule (its inclusion may diminish the reliability of the report). A Narrative appraisal report, on the other hand, is one that invokes an Extraordinary Limiting Condition such as the lack of a title search. ²

Introduction

In the Province of Ontario, the Land Registry System, based on English Common Law, dates back to 1795 with the passing of an act in that year to properly record all property transactions. By 1797, Registry Offices had been located in various counties, registrars had been appointed and the registration system was essentially established. Over time, the Land Registry System expanded and it became more complex. The Land Titles System, that had been developed by Sir Robert Torrens of Australia, was introduced in Toronto and York County in 1885.

The Registry Act provided for a government controlled repository for documents and plans affecting land and records were recorded by geographic entity with no guarantee of title. A forty year search was required by the Registry Act in order to determine the nature of a property owner's title. The Land Titles system, on the other hand, provided a government guarantee with respect to ownership of, and interest in, land and documents were indexed by property. Here in Ontario, prior to the present and ongoing conversion to a fully automated system, in the early 1990's under the old manual system, about 2.2 million properties were registered under the Registry System and about 1.1 million properties were registered under the Land Titles System. Today, about 4 million of a total of about 4.5 million properties in the Province are in the "new" fully automated system now called Land Titles Conversion Qualified.

Prior to the Registry Act of 1795, surveyors had started to divide the land into townships and they then divided the land within the township into concessions and lots making provisions for roads and in some instances town sites. The early system that was popular between 1783 and 1815 was called the single front system and it resulted in rows (concessions) of long and narrow lots (each lot was 200 acres in size) that both fronted and backed onto a concession road. In light of the British influence, the basic unit of land measure in Ontario was the chain³ (66') and most lots were either 19 by 105.27 chains or 20 by 100 chains. Both of these dimensions created 200 acre "farm" lots that were usually patented as whole lots. The width of a road allowance between each concession was one chain or 66'. Similar 66' road allowances were also laid out between every 5th lot or in some instances every 6th lot. This type of township system was the type surveyed along the north shore of Lake Erie and Lake Ontario and also along the north shore of the St. Lawrence River.

These public road allowances remain open to this day unless they have been closed by a municipal by-law. Further, road allowances are one of the few types of properties that may not be acquired by adverse possession⁴ ("squatters' rights"). These two aspects of road allowances can create problems for appraisers and point out the need for full and proper title searches.

Title Searches

A full and proper title search, under the Land Registry System in Ontario requires an investigation of all encumbrances such as mortgages, easements, leases, rights of ways, life estates, wills regarding the flow of title and special bequests, any encroachments by neighbours as shown on registered building location surveys and land surveys, the boundaries of all adjoining lands for encroachments and or gaps, joint tenancy if owned by more than one party, any potential building restrictions, the chain of conveyances for the forty year search period (under the Land Registry System), sheriff's certificate on owners, liens, any outstanding work orders and back taxes.

Since an appraiser is not providing a report on title but only describing the interest appraised, a full and proper title search is carried out by a professional title searcher or a lawyer and not by real estate appraisers.

A rural property, that we were asked to appraise, was located in such a township as described above. Since the nature and extent of a property's boundaries are of

paramount importance in the initial inspection process – as they are the very foundation of the appraisal process that follows – one of the first questions always asked concerns a property’s boundaries. In the case of this property, winter conditions and snow-covered land did not help the inspection process. Non-travelled road allowances (noted later in the article) would not be so evident under these conditions. Several documents (such as an assessment notice, a deed or a survey) should assist the appraiser in this regard.

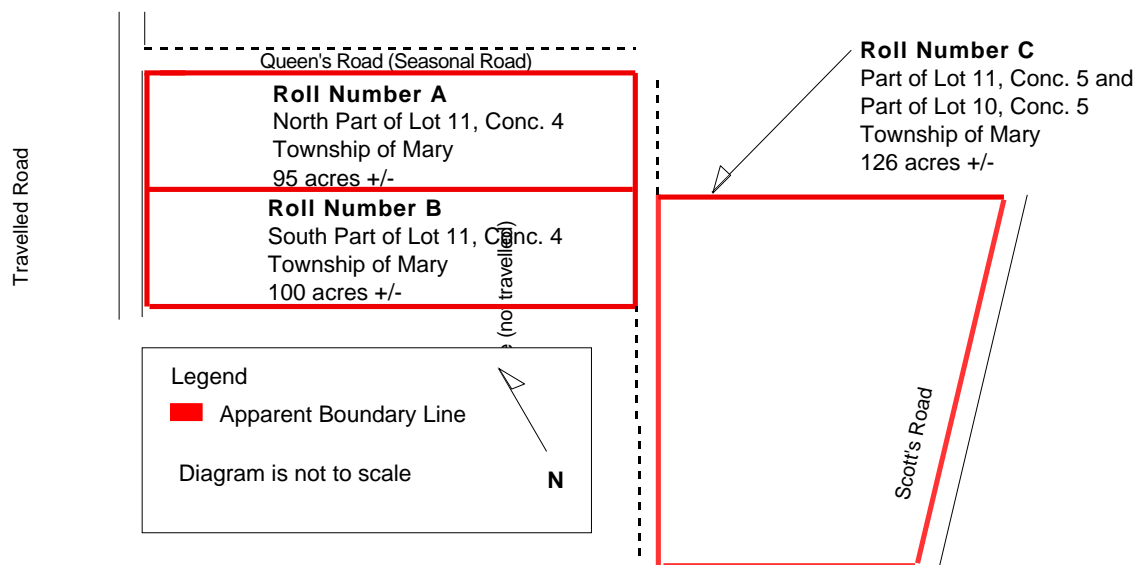
The Assessment Roll

In this instance, the first documents produced by the property owner, when asked about the extent of the property, were the most recent assessment notices. The owner also had a “sketch” (not a proper land survey) of the property. The sketch appeared to have been based on an assessment map and when the sketch was compared to the owner’s assessment notices there was an obvious problem.

The initial problem may be seen in Diagram 1⁵ below. While there were three assessment roll numbers, two of the roll numbers described two parcels that had actually “melded” together due to common ownership. Parcels 1a and 1b – described as two properties with two roll numbers – is actually just one Parcel.

Further, the third roll number depicted in Diagram 1 as Parcel 1c, described what was thought to be two Parcels (See Parcels 2 and 3 in Diagram 2).

DIAGRAM I: AS THE ROLL DESCRIBED THE PROPERTY



Since it was obvious that the number of roll numbers did not match the number of properties, we then asked the property owner if there was a copy of the latest deed that could be reviewed. The owner produced a copy of the deed and it was immediately obvious that there was a problem with the deed.

The Deed

The deed was about twenty five years old and it described the subject property in the following manner:

FIRSTLY: The North Half of Lot 11 in the 4th Concession of the said Township of Mary.

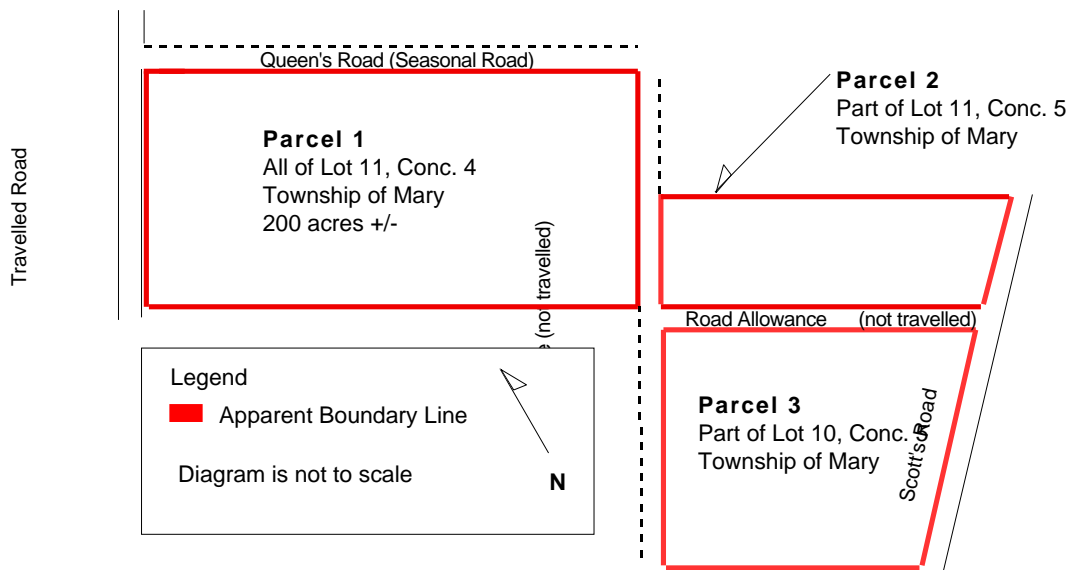
SECONDLY: The South Half of Lot 11 in the 4th Concession of the said Township of Mary.

THIRDLY: Lot 10 in the 5th Concession of the said Township of Mary, excepting that part lying south of the Public Road known as the Scott's Road.

FOURTHLY: The South Half of Lot 11 in the 5th Concession of the said Township of Mary, excepting that part lying south of the Public Road known as the Scott's Road.

It was obvious that there had been several severances from the property described in the deed as **FIRSTLY**. The severances had been taken at the northwest corner of the property (Parcel 1). Since the severances had taken place many years earlier (they were improved with older buildings), they should have been described as exceptions on the deed. Thus, the property could not be correctly described as the North Half of Lot 11 as the deed implied. Accordingly, the description on the deed created the erroneous image of the property as shown in Diagram 2 below.

DIAGRAM 2: AS THE DEED DESCRIBED THE PROPERTY



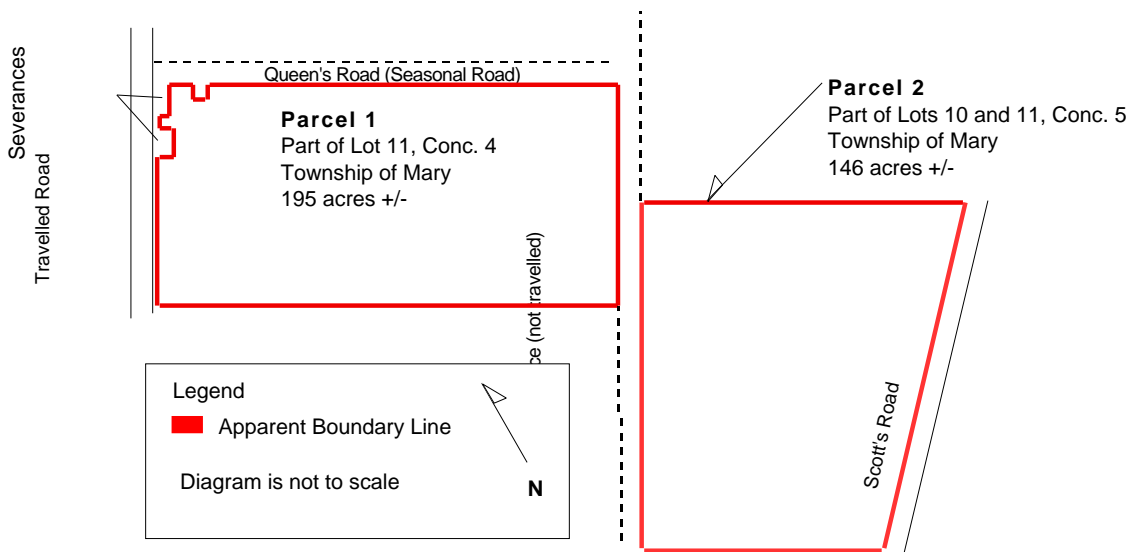
The Reference Plan

Subsequent to the date of the deed, there had been a Reference Plan placed on Parcel 2 in the Diagram below. The Reference Plan also indicated that an “abandoned” road ran through Parcel 2 in Diagram 3. The Reference Plan is not included here for confidentiality reasons. However, the Reference Plan noted the “original” road allowance between Lots 10 and 11 in Concession 5 as a Part of the Plan and it also described an abandoned road (a “forced” road) as another Part of the Plan.

The Mortgage Document

Subsequent to the date of registration of the Reference Plan, a mortgage had been registered on all of the property. While the mortgage document recognized the severances mentioned above as exceptions (there were actually five severances) in Lot 11, Concession 4 (Parcel 1), the mortgage document’s description of the land under charge included the road allowance dividing Lot 10 from Lot 11 (between Parcel 2 and 3) in Concession 5. In other words, the mortgage document implied that the road allowance had been closed and that former road allowance was now under private ownership and part of the subject property. The description on the mortgage created the following image of the property as shown in Diagram 3. Based on this description, there were just two properties.

DIAGRAM 3: AS THE MORTGAGE DOCUMENT DESCRIBED THE PROPERTY



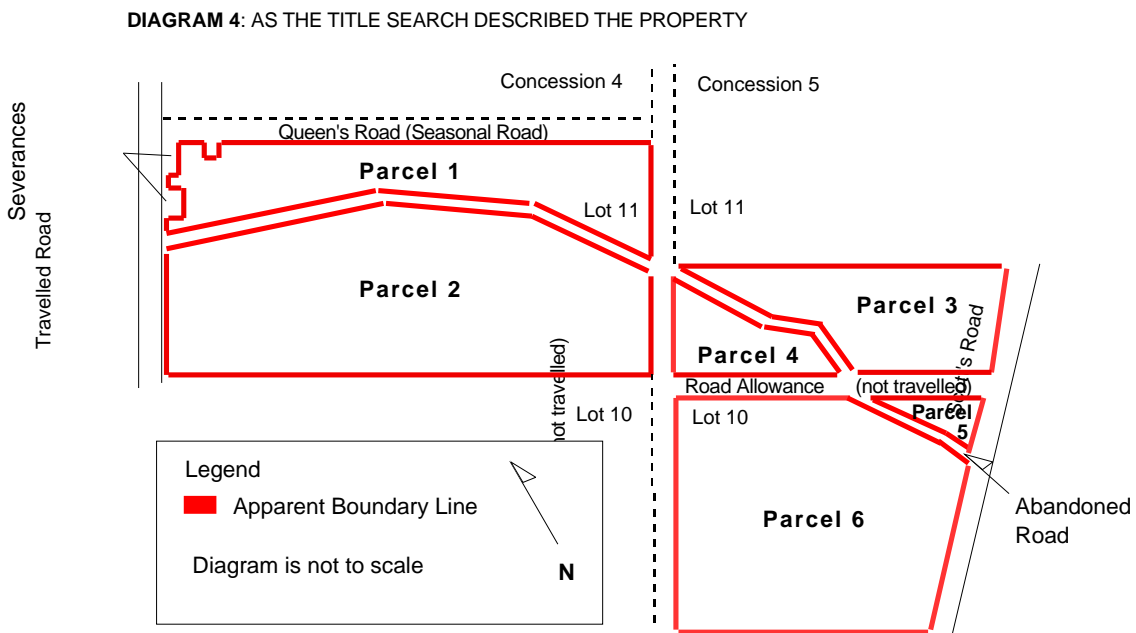
The Title Search

In light of the confusion indicated by the assessment, deed and mortgage documents, a brief discussion ensued with the land surveyor concerning the Reference Plan. It was not apparent from that discussion that the road allowance between Lots 10 and 11 in Concession 5 had ever been closed by the township. The reference plan did not deal with the status (ownership) of the road allowance between Concessions 4 and 5 (between Parcels 1 and 2) but merely referred to it as a road allowance. The surveyor did have some file notes that indicated that the township had sold an interest in the road allowance between the Lot 10 and 11, sometime in 1884, to an adjacent property owner.

While a survey describes the extent of the property, the lawyer describes the extent of the title. Accordingly, we suggested to our client (a financial institution) that the owners obtain a full and proper title search in order to determine the exact extent of their title.

A title search was subsequently completed by a lawyer and the title search determined that the road allowances and the “forced” road had never been closed by the township and were still under the ownership of the municipality ⁶.

Thus, the full and proper title search resulted in the following image of the property as shown in Diagram 4.



Conclusions

Based on the title search, the subject was actually made up of six separate legal entities and not three as described in both the deed and the assessment roll ⁷, nor was it two properties as it had been described in the mortgage document.

While the increase in the number of properties would generally enhance the property's marketability and thus its value, this would, of course, depend on a number of other factors that would also have to be analyzed.

This scenario also points out the importance and the obvious need for proper title searches but also for ones that have been completed by an expert (a lawyer or a title searcher).

Endnotes:

1. Practice Notes – line 6530, *CUSPAP 2004 Edition*, The Appraisal Standards Board, p 53 and Definitions.
2. Practice Notes – lines 6329 - 6330, *CUSPAP 2004 Edition*, The Appraisal Standards Board, p 51.
3. There are some interesting consequences regarding the use of the chain. While some “forced” road allowances are 40’ wide, most road allowances in Ontario are 66’ wide. In some town plans (such as in Cornwall, Ontario), certain streets were laid out to be 33’ wide (one half of a chain).
4. Limitations Act, R.S.O. 1990, Section 16 (Road Allowances), Queens Printer, p 41.
5. The diagrams are based on the various documents (Diagrams 1 to 3) and the results of the title search (Diagram 4). Only the legal descriptions (in both the diagrams and the deed descriptions) and the road names have been changed for confidentiality reasons.
6. The lawyer confirmed that the two road allowances had never been closed and were still owned by the Township. With regard to the forced road, the lawyer stated that “there is no evidence that the forced travelled road was ever closed or conveyed away by the Township”.
7. This is one of the most common errors to be found in assessment rolls involving farm properties. Often there are more roll numbers than properties or there is only one roll number when there are two properties.