


Item No. 10.1.3
Halifax Regional Council
June 7, 2011

TO: Mayor Kelly and Members of Halifax Regional Council

Original signed by 

SUBMITTED BY: _____

Richard Butts, Chief Administrative Officer

Original Signed by 

Mike Labrecque, Deputy Chief Administrative Officer, Operations

DATE: May 20, 2011

SUBJECT: Appointment of Commissioner under *Private Ways Act*

ORIGIN

This report arises out of the motion passed by Council on March 1, 2011, Item No. 11.1.1, to appoint a commissioner pursuant to section 17 of the *Private Ways Act* to consider the petition of Susan Sheehan.

RECOMMENDATION

It is recommended that:

1. Halifax Regional Council appoint Ms. Deborah Baker as commissioner pursuant to section 17 of the *Private Ways Act*, to consider the petition of Susan Sheehan for a private right of way across lands at 5 Milton Drive; and
2. The remuneration payable to Ms. Baker shall be limited to a maximum amount of \$10,000.00 in fees plus HST, and reasonable disbursements.

BACKGROUND

On March 1, 2011, Council approved the request of Susan Sheehan to appoint a commissioner under section 17 of the *Private Ways Act (PWA)*, to consider her petition for a private right of way across lands at 5 Milton Drive. At that time, staff indicated that the matter would be returned to Council at a later date with a recommendation with respect to who should be appointed.

Ms. Sheehan's father, Harold Sutherland, petitioned Council in 1997 for a private way pursuant to the *PWA*. In January 1998, Council granted the application and appointed Deborah Baker as commissioner. Ms. Baker met with both Ms. Sheehan and the Crons on a number of occasions, visited the properties involved, reviewed the history of the public foot path, reviewed old surveys and had a new survey of the properties prepared. It was ultimately determined that the land over which the proposed private way would be located was Crown land and therefore under federal jurisdiction. As the *PWA* does not apply to Crown land, this brought the petition to an end. Ms. Baker reported her findings to Council in a report dated September 14, 1999. Ms. Sheehan's access issue was resolved temporarily at that time, with the federal government granting her a 10 year lease over the land for the purpose of a driveway. The issue with respect to the property being Crown land has since been resolved in the Crons' favour, again leaving 9 Milton Drive without road access.

DISCUSSION

It is recommended that Council appoint Deborah Baker as the commissioner pursuant to section 17 of the *PWA* to consider the petition of Susan Sheehan. Ms. Baker is familiar with the history of this matter, the properties involved and both Ms. Sheehan and Dr. and Mrs. Charles Cron. This should result in a lower overall cost and a faster process than appointing someone unfamiliar with the file. Ms. Baker has agreed to the appointment.

Under the *PWA*, HRM is required to pay for the services of the commissioner, who shall receive such remuneration as Council allows. Ms. Baker is a lawyer. Her hourly rate is a confidential matter, but this can be discussed in detail In Camera should Council require further information. Ms. Baker has agreed to a fee schedule of her standard hourly rate, but with a fee cap of \$10,000.00, exclusive of HST and disbursements.

It is intended that work will not commence until an agreement is in place between HRM and Ms. Sheehan, with respect to reimbursement to HRM of all expenses incurred as the result of Ms. Sheehan's petition and which are recoverable by HRM under the *PWA*. On May 19, 2010, the Province passed Bill No. 57 to amend the *PWA*. One of the amendments enables HRM to enact a by-law respecting the recovery of the compensation paid to the affected landowner from the applicant in a manner similar to the recovery of local improvement charges. This will allow for another means of recovery from Ms. Sheehan.

BUDGET IMPLICATIONS

HRM is required to pay for the remuneration of the commissioner, in the amount allowed by Council. Ms. Baker has agreed to act as commissioner in this matter, and to limit her fees to \$10,000.00, plus HST and disbursements. These costs are not recoverable from Ms. Sheehan.

As indicated in the report dated February 17, 2011, Item No. 11.1.1, funds for payment of the commissioner's fees will be paid out of Account No. M351-6999. There are sufficient funds available in this account to pay the commissioner's fees.

FINANCIAL MANAGEMENT POLICIES/BUSINESS PLAN

This report complies with the Municipality's Multi-Year Financial Strategy, the approved Operating, Project and Reserve budgets, policies and procedures regarding withdrawals from the utilization of Project and Operating reserves, as well as any relevant legislation.

COMMUNITY ENGAGEMENT

Not applicable.

ALTERNATIVES

Council could refuse to appoint Deborah Baker as the commissioner and instruct staff to find an alternate individual to act as commissioner. Staff does not recommend this alternative. Any other individual appointed would not have the extensive knowledge of this file that Ms. Baker has, and this will probably result in the process taking much longer and being more costly.

ATTACHMENTS

Appendix A - February 17, 2011 report to Regional Council

If the report is released to the public, a copy can be obtained by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by: Karen E. MacDonald, Legal Services, 490-4226

Report Approved by: M.E. Donovan, Q.C., Director Legal Services & Risk Management, 490-4226

Financial Approval by: For Bruce Fisher, MPA, CMA, A Director of Finance/CFO, 490-6308

Original Signed

APPENDIX "A"



P.O. Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

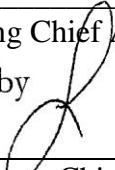
Halifax Regional Council
March 1, 2011

TO: Mayor Kelly and Members of Halifax Regional Council

Original Signed by 

SUBMITTED BY:

Wayne Anstey, Acting Chief Administrative Officer

Original Signed by 

Mike Labrecque, Deputy Chief Administrative Officer

DATE: February 17, 2011

SUBJECT: **Petition for Private Right-of-Way**

ORIGIN

This report arises out of a petition received from Susan Sheehan to Council to lay out a private right-of-way across lands at 5 Milton Drive, for the benefit of her property located at 9 Milton Drive. The petition has been made pursuant to the *Private Ways Act*, R.S.N.S. 1989, c. 358.

RECOMMENDATION

It is recommended that:

1. Council appoint a Commissioner pursuant to Section 17 of the *Private Ways Act*, to consider the petition of Susan Sheehan; and
2. Before the Commissioner is engaged, Council enter into an agreement with Susan Sheehan for reimbursement to HRM of any and all expenses incurred by HRM as the result of Ms. Sheehan's petition and which are recoverable by HRM under the *Private Ways Act*. Specifically, all expenses associated with the Arbitrators, and any compensation payable to Dr. and Mrs. Charles Cron.

BACKGROUND

Susan Sheehan is the owner of property located at 9 Milton Drive in the Halifax Regional Municipality. To the north of her property are the waters of the Northwest Arm, to the east are lands owned by Marterra Inc., and to the south and west are the lands of Dr. and Mrs. Charles Cron (5 Milton Drive). Ms. Sheehan has access to her property by way of a public footpath that runs from the parking lot of Fleming Park, along the waters of Northwest Arm to Purcells Cove. The public footpath crosses the property of Dr. and Mrs. Charles Cron. Ms. Sheehan does not have any vehicular access to her home. Ms. Sheehan inherited the home from her father, Harold Sutherland, when he passed away in December, 1997.

Ms. Sheehan has filed a petition pursuant to the *Private Ways Act (PWA)* to Council for the laying out of a private way across the property of Dr. and Mrs. Cron, located at 5 Milton Drive. A copy of Ms. Sheehan's petition is attached as Appendix "A".

A copy of the *PWA* is attached as Appendix "B". Part 2 of the Act provides a means whereby landlocked property owners can acquire a right-of-way across neighboring lands. Under the Act, a property owner may apply to Council asking for the laying out of a private way or road. Council must hear the application, but has the discretion as to whether or not to grant it. If Council is not satisfied that the application should be granted, that is the end of Council's involvement.

If Council decides to grant the application, then the next step is for Council to appoint a Commissioner. The Commissioner is to:

1. Examine whether the proposed private way or road is the most practicable and reasonable means of access for the person petitioning for the way or road to his or her land;
2. If satisfied that the proposed private way or road is the most practicable and reasonable means of access, the Commissioner is to lay out the private way or road in the manner most advantageous to the person applying for the private way or road and least detrimental to the owner of the land through which the private way or road shall pass; and
3. Work with the owners of the property over which the right of way will pass and the petitioner under the Act, to attempt to reach an agreement as to the compensation to be paid for the land.

Council is required to pay for the services of the Commissioner, who shall receive such remuneration as Council allows. If Council chooses to grant the application, a further report will be submitted to Council recommending who should be appointed as Commissioner. These costs cannot be recovered from the Applicant.

If the Commissioner cannot get the parties to agree to compensation, there is a procedure under the Act for determining the amount to be paid. This procedure involves the appointment of three arbitrators. One is appointed by the Commissioner, one is appointed by the owner of the land over which the right of way will go, and a third is to be appointed by the Mayor.

The compensation ascertained by either agreement or by appraisal, and the expenses occurred in respect thereto, shall be paid by Council under the Act. However, these expenses may be charged against and recovered from any polling district in which the private way or road is made or may be recovered in whole or in part from the applicant, as Council may direct.

Once the Commissioner has fulfilled his or her duties and either an agreement is reached or an award for compensation is made, the Commissioner will prepare a report to Council, setting out his or her findings and recommendations. Council may accept or reject any recommendations contained in the report, including recommendations made with respect to compensation. If a private way is ultimately granted to the petitioner by Council, a copy of the plan setting out the private way shall be registered in the Registry of Deeds.

Ms. Sheehan's father, Harold Sutherland, petitioned Council in 1997 for a private way pursuant to the *PWA*. Unfortunately Mr. Sutherland passed away before the matter could be heard by Council, but Ms. Sheehan, as beneficiary and Executrix of his Estate, continued with his petition. The matter went before Council in January 1998. Council granted the application and a Commissioner, Ms. Deborah Baker, was appointed. Ms. Baker determined that the land over which the private way would be located was Crown land and therefore under Federal jurisdiction. The *PWA* does not apply to Crown land and as such the Commissioner could not make a decision affecting these lands under the Act. This brought the petition to an end.

In 2000, the Halifax Port Authority entered into an agreement with Ms. Sheehan to cross the Crown land in order to access her home. The agreement was for a ten year period, but was not subject to renewal. Ms. Sheehan was permitted to construct a driveway across the Crown land that ran along the frontage of the property of Dr. and Mrs. Cron at 5 Milton Drive. The Crons disputed the Crown's assertion that the property was Crown land. The dispute was ultimately settled as between the Federal Crown and the Crons, with the Crown deeding any interest it had in the land in front of 5 Milton Drive to the Crons by way of Deed dated January 14, 2010. The Crons respected the lease between the Crown and Ms. Sheehan, and permitted Ms. Sheehan to continue to use the driveway until such time as the lease expired on April 30, 2010. The driveway has since been removed. Ms. Sheehan has not had vehicular access to her home since that time. Attached as Appendix "C" is an aerial photo of 5 and 9 Milton Drive, taken from HRM's GISS. The photo appears to have been taken before the driveway installed by Ms. Sheehan under the Port Authority lease was removed.

In anticipation of Ms. Sheehan's petition, on October 1, 2010 the Crons filed an application in the Supreme Court of Nova Scotia for an order declaring that Ms. Sheehan's proposed petition for a private way under the *PWA* is beyond the jurisdiction of Halifax Regional Municipal Council. Ms. Sheehan filed her petition on November 15, 2010, but it was agreed that her petition would not proceed until such time as the Crons' application was heard and a decision rendered. The Crons' application was heard on December 8, 2010, and was dismissed by the Court on December 15, 2010. Justice Rosinski of the Supreme Court of Nova Scotia declared that as a matter of law, Part 2 of the *PWA* is operative legislation and any municipal Council petitioned for the obtaining and laying out of a private way or road may properly consider the petition as per the provisions of the *PWA*.

On January 13, 2011 the Crons filed a Notice of Appeal appealing the decision of Justice Rosinski. The appeal will be heard on September 20, 2011.

DISCUSSION

In accordance with the decision of Justice Rosinski of the Supreme Court of Nova Scotia, Council may consider the petition of Susan Sheehan under the *PWA*. The *PWA* is silent with respect to the procedure to be followed by Council when considering the application. It is staff's opinion that both Ms. Sheehan and the Crons should have an opportunity to present their position to Council on March 1, 2011. Both Ms. Sheehan and the Crons were advised on February 1, 2011 that this matter would be on the March 1st Council Agenda. This is in keeping with the rules of procedural fairness.

It is recommended that Council appoint a Commissioner pursuant to the *PWA* to consider the application of Susan Sheehan. Ms. Sheehan has no means of vehicular access to her home. As indicated in her petition, this raises concerns over access to 9 Milton Drive for emergency services, as well as access for basic necessities such as heating oil delivery. Further, other possible remedies have been considered and denied. For example, the Supreme Court of Nova Scotia determined in 1968 that Ms. Sheehan's father did not meet the requirements necessary to establish a right-of-way of necessity under the common law.

Council will have to consider, however, whether to hear the petition at this time or wait until the appeal of Justice Rosinski's decision has been heard and determined by the Court of Appeal. If Council chooses to proceed at this stage, there is a risk that the matter will be determined by the Court of Appeal prior to the Commissioner submitting his or her report. If the Court of Appeal determines that a petition for a private way under the *PWA* is beyond the jurisdiction of Halifax Regional Municipal Council, then all proceedings under the *PWA* must come to an end. Council will be responsible to compensate the Commissioner for any work done up to that point.

BUDGET IMPLICATIONS

The budget implications are as follows:

1. As indicated, Council is required to pay for the remuneration of the Commissioner, in an amount as allowed by Council. When Deborah Baker was appointed as Commissioner in 1998, Council had approved remuneration to Ms. Baker in the amount of \$1,500.00. However, the actual time spent by Ms. Baker resulted in fees of just over \$7,000.00, inclusive of HST. Ms. Baker did not request additional payment from Council, as she had agreed to undertake the task for the agreed upon fee of \$1,500.00. However, it is unlikely that a Commissioner today would agree to undertake this project for a payment of \$1,500.00. It is anticipated that the Commissioner's fees would likely be in the range of \$7,500.00 to \$10,000.00. These costs are not recoverable from Ms. Sheehan.
2. Under the *PWA*, if an agreement for compensation cannot be reached, arbitrators must be appointed to enter the land and appraise the compensation payable to the owner. The expenses associated with the arbitrators, including compensation for their time, are to be

paid by Council. However, it may be charged against and recovered from any polling district in which such private way or road is made, or may be recovered in whole or in part from the applicant, as Council may direct.

3. Should a right-of-way be granted to Ms. Sheehan over the property of Dr. and Mrs. Cron, the compensation payable to the Crons is to be paid by Council. However, it may be charged against and recovered from any polling district in which such private way or road is made, or may be recovered in whole or in part from the applicant, as Council may direct.

Staff recommends that any expenses associated with the arbitrators and the compensation payable to the Crons be recovered from Ms. Sheehan, as she is the one who will benefit from the creation of the private right-of-way. If Ms. Sheehan's application is granted, staff further recommends entering into an agreement with Ms. Sheehan that outlines how she will reimburse HRM. This agreement should be signed before the Commissioner begins his or her work.

Funds for payment of the Commissioner's fees will be paid out of Account Number M351-6999. There are sufficient funds available in this account to pay the Commissioner's fees.

FINANCIAL MANAGEMENT POLICIES/BUSINESS PLAN

This report complies with the Municipality's Multi-Year Financial Strategy, the approved Operating, Project and Reserve budgets, policies and procedures regarding withdrawals from the utilization of Project and Operating reserves, as well as any relevant legislation.

COMMUNITY ENGAGEMENT

Not applicable.

ALTERNATIVES

The alternatives are:

1. Council could postpone hearing Ms. Sheehan's application until the appeal of Justice Rosinski's decision has been heard and determined by the Court of Appeal.
2. Council could hear Ms. Sheehan's application and, if granted, postpone appointing a Commissioner until the appeal of Justice Rosinski's decision has been heard and determined by the Court of Appeal.
3. Council could hear Ms. Sheehan's application and refuse to grant it. This would conclude Council's involvement in the matter.

ATTACHMENTS

Appendix "A" Petition of Susan Sheehan

Appendix "B" *Private Ways Act*

Appendix "C" Aerial photo of 5 and 9 Milton Drive, taken from HRM's GISS

A copy of this report can be obtained online at <http://www.halifax.ca/council/agendasc/cagenda.html> then choose the appropriate meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by: Karen E. MacDonald, Solicitor, 490-4226

Report Approved by: _____
M. E. Donovan, Director, Legal Services & Risk Management, 490-4226

Financial Approval by: _____
Cathie O'Toole, CGA, Director of Finance, 490-6308

Original Signed

ATTACHMENT "A"

IN THE MATTER OF: *The Nova Scotia Evidence Act*, R.S.N.S. 1989. C.154.

and

IN THE MATTER OF: A Petition to The Halifax Regional Municipality
pursuant to s.17 of the *Private Ways Act*, R.S. N. S. 1989, 358.

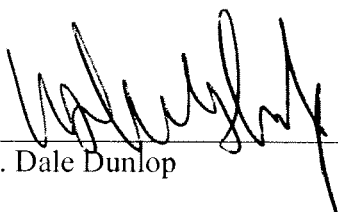
I, Susan Dawn Sheehan, of 9 Milton Drive, in the Halifax Regional Municipality, make oath and say as follows:

- (1) I am the owner in fee simple of lands situate at 9 Milton Drive, in the Halifax Regional Municipality, formerly known as 9 Milton Drive, Jollimore, in the County of Halifax. My property is bounded on the north by the waters of the Northwest Arm, on the east by the lands of Marterra Inc., and on the south and west by the lands of Dr. and Mrs. Charles Cron.
- (2) I inherited this home from my father, Harold Sutherland as sole heir and executrix to his estate in December of 1997. My father's Will was probated on January 7th 1998.
- (3) At the time that I inherited the property at 9 Milton Drive, the only access that existed was by foot on a public footpath that crossed what I believed to be the property of Dr. and Mrs. Charles Cron. This public footpath runs from the parking lot of Flemming Park, along the waters of the Northwest Arm to Purcell's Cove. The pathway is about three feet wide, now gravelled and accessed through an opening in a fence which runs the length of the Cron property.
- (4) In August of 1997, my father was diagnosed with cancer, and a request to his neighbours, Charles and Marie Cron to permit an ambulance to cross their land in order to attend hospital treatments was denied.
- (5) In 1997 my father submitted a petition to the Halifax Regional Municipality under the Private Ways Act with regard to the restrictions imposed on him by the lack of a private way to his home and his failing health. A copy is attached as Exhibit A.
- (6) My father died from his illness before the matter could be brought before council, as a result he did not receive necessary medical treatment during a difficult illness that may have extended his life span.

- (7) In 1998, in consideration of the recent events and the seriousness of the situation, I resubmitted the petition under the private ways act before HRM council.
- (8) HRM council accepted the petition and appointed Deborah Baker as the commissioner to oversee the process. The commissioner agreed with the proposed access route which followed the existing public footpath.
- (9) HRM employed a surveyor to survey the surrounding lands as part of the process that underlies the act. That survey revealed that the proposed access route crossed lands that belonged to the Federal Government and fell under the jurisdiction of the Halifax Port Authority.
- (10) The commissioner concluded that HRM did not have the authority to impose access across Crown land, and the process under the act was discontinued.
- (11) In 2000 The Halifax Port Authority offered my family a lease agreement to cross the Crown land in order to access our home and receive all manner of services including emergency vehicles and oil delivery.
- (12) I accepted the lease agreement and undertook the costs to construct a private way across federal land as allowed by the agreement. A copy is attached as Exhibit B.
- (13) In April, 2010 the lease agreement expired. Charles and Marie Cron, in a letter from their lawyer claimed to have "resolved" the issue of title to the formerly owned Port Authority lands although no transfer of title had been produced at that time. A copy of the letter to my solicitor is attached as Exhibit C.
- (14) On July 12, 2010 a Crown Grant was registered which gave my neighbours full ownership of what was previously deemed public land. A copy of the Grant is attached as Exhibit D.
- (15) I was not informed by either party that transfer of the land was being considered or that a dispute over title between the Port Authority and my neighbours was resolved. No consideration was given to the fact that a return of title to private landowners would leave my family once again without access to our home
- (16) As a result of the land transfer and the loss of access to my property, I cannot obtain heating fuel by delivery, I have no legal place to park a vehicle over night that is closer than half a kilometre away from my home, and once again I may be faced with no emergency services should the need arrive for me or my two children.
- (17) It is not feasible to sell a landlocked home and therefore the usual rights associated with selling my home are not afforded to me.

- (18) My insurance company has determined that lack of access may be considered as an unprotected risk, if I cannot resolve the issue I may not be able to obtain home owners insurance. A copy of a letter from my insurer is attached as Exhibit E.
- (19) On July 8th, 2010 my neighbours used a bulldozer to remove a guard rail and a portion of the seawall at the boundary of our property. On July 9th, they removed the swing gate (installed in 2000 as agreed to in the licence agreement) at the entrance of the driveway location and replaced it with fast growing thorn bushes. They also covered the entire distance of what was my access route with approximately 5 inches of dirt.
- (20) I believe that 9 Milton Drive is the only residence in the HRM that does not have legal means for access.
- (21) I make this petition praying for a private way or road following the course of the public footpath described above and sufficiently wide to allow for vehicular access over the lands of Dr. and Mrs. Charles Cron, pursuant to s. 17(1) of the *Private Ways Act*.

SWORN to at Halifax, in the Halifax
Regional Municipality, Province of Nova
Scotia, this 15th day of November
A.D. 2010, before me:



W. Dale Dunlop



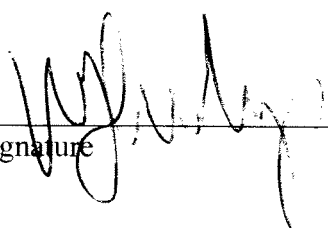
Susan Sheehan

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TAB	DESCRIPTION
A	Petition to the Halifax Regional Municipality Dated November 5, 1997
B	License Agreement dated May 1 st , 2000
C	Letter dated April 13, 2010 from John A. Keith to Dale Dunlop
D	Crown Grant registered July 12, 2010
E	Letter dated June 4, 2010 from Donna White to Leslie Sutherland

Exhibit Stamp

This is Exhibit "A" referred to in the Affidavit
of Susan Sheehan sworn before me this
day of November, A.D. 2010

Signature 

Walker, Dunlop

BARRISTERS & SOLICITORS

ALISON W. SCOTT

CORRESPONDENCE:

HALIFAX

P.O. BOX 3368 (S)
HALIFAX, NOVA SCOTIA
B3J 3J1

1485 SOUTH PARK STREET

TELEPHONE (902) 423-8121
FACSIMILE (902) 429-0821

November 7, 1997

CORRESPONDENCE:

ST. MARGARET'S BAY

Ms. Vi Carmichael
Municipal Clerk
1849 Argyle Street
P.O. Box 1749
Halifax, Nova Scotia
B3J 3A5SITE 9 BOX 1
RR# 2 TANTALLON
NOVA SCOTIA
B0J 3J0TELEPHONE (902) 826-7723
FACSIMILE (902) 826-7723

Dear Ms. Carmichael:

Re: Lands of Harold James Sutherland -
9 Milton Drive, Regional Municipality of Halifax
and the Private Rights of Way Act, R.S.N.S. 1989 c. 358.

This firm has been retained by Mr. Harold Sutherland to advance petition on his behalf under the Private Rights of Way Act, R.S.N.S. 1989 c. 358, s. 17, in respect of his property located at 9 Milton Drive, in the Halifax Regional Municipality. Please consider this letter and the attached Affidavit Mr. Sutherland's petition.

In the enclosed Affidavit sworn by Mr. Sutherland, he sets out the particulars of the circumstances which have forced him to the situation where he must seek the assistance of the Halifax Regional Municipality in order to ensure he has access to his property and the usual amenities associated with home ownership in the Halifax Regional Municipality. Indeed, as the Affidavit reveals, Mr. Sutherland is in a particularly vulnerable position at present, making the assistance of council not only a matter of convenience to him, but a matter of importance to his health and welfare.

Briefly, when Mr. Sutherland acquired the property at 9 Milton Drive in 1963, he assumed he was acquiring an easement over the lands to the east of his property which would allow him legal access to his otherwise land locked property. The Deed conveying the property to him purported to convey the easement. In 1966 the neighbour to the east took action against Mr. Sutherland in trespass and sought a declaration in the Supreme Court of Nova Scotia against him, prohibiting him access to this easement. The

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Nova Scotia Supreme Court Trial Division found that an easement had been properly granted in the chain of title establishing Mr. Sutherland's ownership. The decision of the Court is attached to Mr. Sutherland's Affidavit as Exhibit "B". At page 329 the Court notes the problem created by its decision. The Court acknowledges that as a result of the findings it has made, Mr. Sutherland's land is land locked. The Court then goes on however to state that Mr. Sutherland has rights under the Private Ways Act, then c. 237 of R.S.N.S. 1967, s. 16.

After the decision of the Nova Scotia Supreme Court, Mr. Sutherland did make an appeal to the Nova Scotia Supreme Court Appeal Division. That appeal was denied.

As a result of the decisions of the Court, Mr. Sutherland's only access to his property was by way of a public foot path which runs from the parking lot of Flemming Park, commonly known as the Dingle along the waters of the North West Arm towards Purcells Cove. This public pathway starts at the easterly boundary of the Dingle at the west boundary of lands owned by Dr. and Mrs. Charles Cron. The lands of Dr. and Mrs. Charles Cron bound the Sutherland property on the east. The pathway crosses the lands of Dr. and Mrs. Cron, the Sutherland property, and continues along the shores of the Northwest Arm. The distance from the Sutherland property boundary to the entrance of the pathway is approximately 250 feet. The entrance to the pathway is through a gap in a wire fence on the Cron's property. It is sufficiently wide to allow pedestrian traffic through, but will not allow vehicular traffic. The access from the Sutherland house to the pathway is through a path which descends a very steep incline.

As Mr. Sutherland sets out in his Affidavit, for the past 34 years he has not enjoyed the usual amenities associated with home ownership in the Halifax Regional Municipality. Because he does not have a driveway or a right-of-way to his property, he must take care of garbage disposal by removing it from his property and depositing it in Flemming Park where it is picked up by garbage collection. He does not have regular mail delivery. In the summer time Canada Post will cross the public foot path described above to accomplish mail delivery. In the winter months however the foot path is often not usable and Canada Post will not allow its employees to cross it. Mr. Sutherland must retrieve his mail from the Armdale Post Office.

Mr. Sutherland's access to home delivery for heating oil is completely at the discretion of his neighbours. The Crons have permitted oil trucks to enter their lands and drag hoses across their property to the Sutherland property. However Mr. Sutherland does not have a "right" to this access which may be refused at any time in the future. In light of recent events it is apparent that the Crons or subsequent title holders may feel this trespass intrusive or ill advised and stop the access at any time without

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notice. Similarly heavy or large deliveries are either very difficult to accomplish along the public foot path, or must depend on the good will of neighbours to allow trespass.

In his usual day-to-day routines, Mr. Sutherland has always had to park his car in the Dingle parking lot. To transport groceries and other items to and from his house, he must cross the footpath which in winter time is often treacherous.

As a result of parking his car in the Dingle parking lot, Mr. Sutherland's car and that of his family has been vandalized countless times. Windows have been broken, gas siphoned, and the body of the car dented. The car itself was even stolen on one occasion.

Mr. Sutherland's property is serviced by electrical power. The pole located on the property however is in a very poor state of maintenance. Nova Scotia officials have indicated they are unwilling to enter the property to replace the pole because Mr. Sutherland doesn't have a right-of-way across his neighbour's land.

Several years ago the City of Halifax installed a fire hydrant on the Sutherland property, locating a waterway easement along the public pathway. Despite this, there is no obvious way for a fire truck to gain access to the hydrant, as the wire fence blocks access along the public pathway, and Mr. Sutherland's property is otherwise landlocked by neighbours' lands.

As a result of the landlocked condition, Mr. Sutherland does not enjoy the usual amenities associated with home ownership in the Regional Municipality of Halifax. This has led not only to simple denial of access to municipal and other services, but has culminated to the point where his life, health and welfare are in jeopardy.

The vulnerability of Mr. Sutherland and his family is demonstrated by limitations the family faces in access to medical services because of the lack of vehicular access to their property.

In 1988 Mr. Sutherland's wife was diagnosed with stomach and liver cancer. The disease was extremely painful. Because of the pain she was not able to walk along the public foot path to get to the car to attend at the hospital for treatment for her illness. Mrs. Sutherland died in 1988.

In 1992 Mr. Sutherland fell breaking several ribs and puncturing a lung. He was able to contact an ambulance immediately. However it took three hours for the emergency personnel to locate him. Because he does not have driveway access to a street, emergency personnel were confused and could not find him. Even when they did find him, they had severe difficulty getting Mr. Sutherland down

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the steep incline described and had to essentially mount a rescue mission in order to get him out.

Since 1994 Mr. Sutherland's health has failed him. He has not been able to regularly walk to and from the Dingle parking lot. He has had the good fortune of a family physician who has been willing to make house calls. Again, however, he is at the mercy and discretion of another to gain access to what most of us consider a basic fundamental right to service.

Recently Mr. Sutherland was diagnosed with cancer. He is not well enough to walk the public pathway to and from his property to attend at physicians' offices or the hospital for treatment. On his behalf, his son-in-law, Shaun Sheehan, wrote to his neighbour Dr. and Mrs. Cron to request permission to remove a portion of the fence to allow vehicular access to the Sutherland property so that they could take Mr. Sutherland to and from his house with greater ease and convenience. Dr. and Mrs. Cron refused this request. I refer you to Exhibits "E" and "F" of Mr. Sutherland's Affidavit, a letter from Shaun Sheehan, Mr. Sutherland's son-in-law to Dr. and Mrs. Cron, and a letter from Dr. and Mrs. Cron's solicitor, William Jordan.

Section 17(1) of the Private Ways Act provides:

"17(1) Any freeholder or freeholders of any municipality may present a petition to the Council praying for the obtaining and laying out of a private way or road, either open or pent."

The duties of Council when such a petition is placed before it are described in ss. 2 of s. 17:

"17(2) Where the Council is satisfied that the application should be granted, it shall order a precept to be issued to a competent person as a commissioner, directing him, within a convenient time, to

(a) examine whether the proposed private way or road is the most practicable and reasonable means of access for the person or persons petitioning for the way or road to his or their lands or property or rights;

(b) if satisfied with respect thereto, layout the same in the manner most advantageous to the person or persons applying for the

- 5 -

way or road and least detrimental to the owner or owners of the land through which the same shall pass; and

(c) mark out the same on the land.

In light of Mr. Sutherland's state of health, it is a matter of urgency that you address this issue with all due expediency. It is difficult to imagine more pressing circumstances which could give rise to a petition under this Act.

Aside from the current pressing health issue however there is ample evidence that this is an appropriate case for Council to exercise its discretion to grant a right-of-way to Mr. Sutherland.

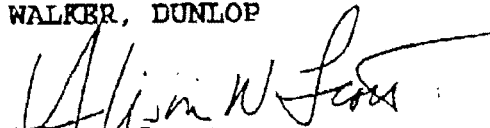
The lack of a private right-of-way to the property creates additional risk to residents of 9 Milton Drive in the case of fire. Will the Fire Department be able to find 9 Milton Drive? Will valuable time be lost locating 9 Milton Drive or negotiating permission to cross the Cron's or others property for access? The lack of a private right-of-way results in a denial to the Sutherland property of all the usual amenities associated with home ownership: access to Access a Bus service, mail delivery, and a safe place to park a car.

It is recognized that the process in the Act anticipates several steps after appointment of the Commissioner before the right-of-way can be granted. It is of the utmost importance however that this process commence and hopefully that it will conclude within sufficient time to be of benefit to Mr. Sutherland in his current circumstances. On Mr. Sutherland's behalf, we urge Council to appoint a commissioner pursuant to ss. 2 of s. 17 of the Act immediately. We would suggest the appointment of William Grant, Q.C. recently retired from the Supreme Court Trial Division as the commissioner.

If it is considered appropriate, I would be pleased to attend at Council to speak in favour of this petition on Mr. Sutherland's behalf. I am at your convenience in that regard.

Yours very truly,

WALKER, DUNLOP



Alison Scott

AS/jm

Encls.

c.c. Harold Sutherland

IN THE MATTER OF: *The Nova Scotia Evidence Act*, R.S.N.S. 1989, c.154.

and

IN THE MATTER OF: A petition to the Halifax Regional Municipality pursuant to
s.17 of the *Private Ways Act*, R.S.N.S. 1989, c.358.

I, Harold James Sutherland, of 9 Milton Drive, in the Halifax Regional Municipality,
make oath and say as follows:

1. I am the owner in fee simple of lands situate at 9 Milton Drive, in the Halifax Regional Municipality, formerly known as 9 Milton Drive, Jollimore, in the County of Halifax. My property is bounded on the north by the waters of the Northwest Arm, on the east by the lands of Kathleen Mack (formerly Kathleen Finley), and on the south and west by the lands of Dr. and Mrs. Charles Cron.
2. I acquired the premises at 9 Milton Drive from Janet Marshall by warranty deed dated the 1st day of April, 1963. Attached hereto and marked Exhibit "A" to this my affidavit is a true copy of the aforementioned warranty deed.
3. When I acquired this property, I believed I also acquired an easement over adjacent lands which would allow me ingress and egress to my property. I refer to the concluding paragraph of the description of the lands acquired in the warranty deed to establish my belief.
4. The land I believed was subject to the easement was located to the east of my property and owned by Kathleen Finley. On the 21st day of November, 1966, Kathleen Finley commenced an action in the Nova Scotia Supreme Court, Trial Division, in trespass against me and sought a perpetual injunction against me, preventing me from interfering with her property by passing over it or in any way affecting trees or growth on the property.
5. On the 22nd day of April, 1968, Justice Coffin rendered a decision in this action in favour of the plaintiff, Kathleen Finley. Attached hereto and marked as Exhibit "B" to this my affidavit a true copy of that decision. The effect of the decision of Justice Coffin was to render my property at 9 Milton Drive land-locked.
6. The only access to my property at 9 Milton Drive is through a public pathway or right-of-way which runs from the parking lot of Flemming Park, commonly known as the Dingle along the waters of the Northwest Arm to Purcell's Cove. This public pathway crosses the lands of my neighbours, Dr. and Mrs. Charles Cron to my property, crosses my property and continues along the shore of the Northwest Arm. The distance from the parking lot to my property boundary along this pathway is approximately 250 feet. The pathway is about three feet wide, unpaved, rough and treacherous in wet or icy weather. There are times in the winter it is impossible to cross. To get access to the pathway, I

- 2 -

must descend a steep incline from my house to the path. The entrance to the pathway from the Dingle parking lot is accessed through an opening in a fence which runs the length of the Cron property. The opening will not permit vehicular access.


7. Because of the serious consequences of the decision of Justice Coffin referred to above, I appealed the decision to the Supreme Court of Nova Scotia, Appeal Division. The decision of the court dismissing my appeal is reported at (1969) 4 D.L.R. (3d) 586.
8. During the course of the trial, I gave evidence as to the condition of this foot path and the difficulties I experienced in gaining access to my home using this foot path. I attached hereto as Exhibit "C" to this my affidavit a true copy of the transcript of evidence taken at trial in this regard.
9. After the decision of the Nova Scotia Supreme Court Appeal Division, I continued to use the foot path described. By letter dated July 27, 1992, I requested the assistance of Ron Hanson, Alderman for Ward 8 in the former City of Halifax. In that letter I set out in detail the difficulties I have in gaining access to and from my property. I attach hereto as Exhibit "D" to this my affidavit a true copy of that letter. Mr. Hanson subsequently advised me there was nothing he could do.
10. Briefly, for the past 34 years I have not enjoyed the usual amenities associated with home ownership in the Halifax Regional Municipality. Because I do not have a driveway or a right-of-way to my property, I must take care of garbage disposal by removing garbage from my property and depositing it in garbage receptacles at Flemming Park. I do not have regular mail delivery. In the summertime Canada Post will cross the public footpath to accomplish mail delivery. During the winter months, when the foot path is not usable, Canada Post does not provide me with postal service and I must retrieve my mail from the Armdale Post Office.
11. To obtain heating oil I must make arrangements two weeks in advance to secure delivery by a truck with an extra long delivery hose as the oil delivery must be accomplished from the property my neighbours - the Crons. The Crons have given permission for oil delivery, but may refuse permission in the future at their discretion.
12. Transporting groceries to and from my property has not improved in the last 34 years. In the wintertime, traversing the snowbound foot paths of the public pathway from Flemming Park to my property is treacherous.
13. While my property is serviced by a fire hydrant, I am not aware of any roadway by which Fire Department vehicles can access my property to hook up to the fire hydrant. Fire vehicle access to my property is completely at the discretion of my neighbours.

- 3 -

14. My property is serviced by electrical power. The power pole located on my property delivering electricity is in a poor state of maintenance. I have been advised by officials from Nova Scotia Power that they are unwilling to enter my property to replace the pole because I do not have a right-of-way for them to cross my neighbour's property to bring their repair vehicles close to the pole.
15. I have parked my car in the public parking lot at the Dingle since 1963, as has my family and visitors. In the past eight years, my family's cars have been vandalized. On one occasion a windshield was broken, on eight occasions side windows were broken, a car battery has been stolen twice and the car itself and its contents stolen once. The gasoline tank has been siphoned countless times, four spare tires have been stolen, three gas caps have been stolen, and the body of the vehicles dented by vandals. The previous 20 years were similar to the past eight.
16. In 1992 I fell, breaking several ribs and puncturing a lung. I contacted an ambulance immediately. It took three hours for emergency personnel to locate me and remove me to a hospital as they were unable to locate my address because I do not have a driveway. When emergency personnel did finally find me, they had considerable difficulty getting me from my house to the ambulance. They had to use two different methods of transporting me and finally had to carry me in a chair for the last portion of the trek as they were unable to use a gurney for the entire trip.
17. In 1994 my failing eyesight prevented me from driving and my health had failed to the point where it was difficult for me to walk the distance to the public parking lot. Because I had no vehicular access to my home, I am not even able to make use of the Access a Bus service usually available to other citizens of this jurisdiction. Since 1994 I have had to rely upon my physician to make house calls if I require medical attention. Since 1994 the over all quality of my life has been severely diminished.
18. I have recently been diagnosed with cancer. I have been advised by my physician to attend at the hospital for cancer treatments on a regular basis. I am not well enough to traverse the public walkway at the front of my property and consequently have been unable to attend at the hospital for treatment.
19. On my behalf, my son-in-law Shaun Sheehan who resides with me and my daughter at 9 Milton Drive, requested permission of our neighbours Dr. and Mrs. Charles Cron to remove a portion of the fence in front of the public walkway on their property to allow a car to get close to my house to take me for cancer treatments and doctors appointments. I do believe my son-in-law offered to pay for any expense associated with this access and the permission for access was requested for only as long as I am alive. I am informed by my son-in-law that Dr. and Mrs. Cron refused permission.

- 20. Attached to this my affidavit as Exhibit "E" is a true copy of the letter dated August 1, 1997, sent by my son-in-law to Dr. and Mrs. Cron after this refusal.
- 21. I also attach to this my affidavit as Exhibit "F" a true copy of the reply from Dr. and Mrs. Cron's solicitor, William Jordan, received by my son-in-law on or about August 18, 1997.
- 22. In 1988 my wife, Ruth, was diagnosed with stomach and liver cancer. She was in extreme pain. Because of the pain, she was not able to walk along the public footpath to attend for treatments for her illness. Ruth died in 1988. I believe my wife's suffering could have been reduced if she could have attended for cancer treatments and necessary hospitalizations.
- 23. I make this application in support of my petition praying for a private way or road following the course of the public footpath described above and sufficiently wide to allow ^{HS} vehicular access over the lands of Dr. and Mrs. Charles Cron, pursuant to s.17(1) of the *Private Ways Act*.

SWORN to at Halifax, in the Halifax)
 Regional Municipality, Province of Nova)
 Scotia, this 5th day of November,)
 A.D. 1997, before me:)


 Harold Sutherland


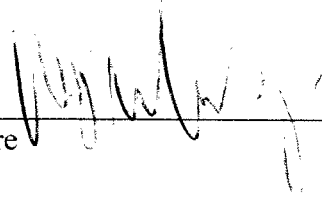

 A Barrister of the Supreme Court of
 Nova Scotia

Exhibit Stamp

This is Exhibit "B" referred to in the Affidavit
of Susan Sheehan sworn before me this
day of November, A.D. 2010

Signature

A handwritten signature in black ink, written over a horizontal line. The signature is cursive and appears to be "J. J. [unclear]".

BETWEEN:

HALFAX PORT AUTHORITY

OF THE FIRST PART

- and -

SHAUN SHEEHAN AND SUSAN SHEEHAN

OF THE SECOND PART

LICENCE AGREEMENT

Lawrence A. Freeman
McInnes Cooper & Robertson
1601 Lower Water Street
P. O. Box 730
Halifax, Nova Scotia
B3J 2V1
LF-1588 (244928.2)

LIC-2000 - 54

THIS LICENCE TO USE RIGHT OF WAY AGREEMENT made this *1st* day of *May*, 2000

BETWEEN:

HALIFAX PORT AUTHORITY, a body corporate established pursuant to the Canada Marine Act and having an office at 1215 Marginal Road, P. O. Box 336, Halifax, Nova Scotia, B3J 2P6,

(hereinafter referred to as the "Licensor")

OF THE FIRST PART

- and -

SHAUN SHEEHAN AND SUSAN SHEEHAN, both of Halifax, in the Halifax Regional Municipality, Province of Nova Scotia

(hereinafter called the "Licensee")

OF THE SECOND PART

The Licensor, in consideration of the mutual covenants contained herein, hereby grants to the Licensee a licence in respect of a 10 foot wide right of way, which said location is shown on Schedule "A" attached hereto, (the "Lands"), for a term of ten (10) years commencing on the 1st day of May, 2000, to the 30th day of April, 2010, for reasonable ingress and egress (prohibiting any parking on the Lands or otherwise obstructing movement over the lands) to their property at 9 Milton Drive, in the City of Halifax, Halifax Regional Municipality, including delivery vehicles, emergency vehicles, utility vehicles and invited guests of the licensees herein referred, subject to the following terms and conditions:

1. The Licensee shall pay to the Licensor the sum of One Dollars (\$1.00) per year on the 1st day of May in each and every year.
2. The Licensee shall comply with all laws and rules, regulations and by-laws of the Licensor and any other Government Acts or Regulations from time to time in force which in any way

bear upon the rights and obligations arising out of or in connection with this Agreement and, without limiting the generality of the foregoing, the *Navigable Waters Protection Act* (Canada). The Licensee shall comply with all applicable environmental laws, regulations, guidelines or standards and shall indemnify and hold harmless the Licensor from any claims that may be made against the Licensor arising from the failure of the Licensee to comply with such laws, regulations, guidelines or standards. This indemnity and hold harmless obligation shall survive the expiration or earlier termination of this Agreement.

3. The Licensee shall not produce on or bring onto the Lands any toxic or hazardous substances, including, without limitation, PCB's radioactive materials, noxious gases or other substances which may, in the opinion of the Licensor, be injurious to human life or health ("Hazardous Substances") and the Licensee shall indemnify and hold harmless the Licensor from all liability from whatever source, for pollution from any cause whatsoever to or escaping from the Lands, and this indemnity shall survive the expiration or earlier termination of this Agreement.
4. The Licensee shall be responsible for the maintenance of the right of way to the satisfaction of the Licensor and any necessary repairs to the seawall adjacent to the Lands that might need to be made in order to accommodate the license. All costs associated with the maintenance and repairs are to be the responsibility of the Licensee.
5. The Licensor may, at any time, inspect any works constructed or placed on the Lands and further require additional maintenance thereto. Failure to maintain the right of way to the satisfaction of the Licensor will result in immediate termination of the License at the sole discretion of the Licensor.
6. The Licensee shall indemnify and hold harmless the Licensor from all claims, losses, liabilities and expenses (including, but not limited to, legal fees and other professional assistance) of any kind in respect of damage to the Licensor's property or loss suffered by the Licensor including, but not limited to, liability of the Licensor to third parties arising out of or in any way connected with the exercise of any rights hereunder, except to the extent that the loss arises out of the gross negligence of the Licensor, its officers or servants.
7. The Licensee shall not have any claim or demand against the Licensor for loss, damage or injury of any nature whatsoever or howsoever caused, arising out of or in any way connected with the exercise of any rights hereunder, to the person or property of the Licensee and the Licensee assumes all risk incurred while using or maintaining the Lands.

-
8. The Licensor does not provide any express or implied warranty of title to the Lands.
 9. The Licensee shall, if required by the Licensor, extend, alter, or relocate said right of way. If the Licensee fails to make the required changes as soon as reasonably possible upon notice from the Licensor, the Licensor may make the required changes at the Licensee's risk and expense or terminate the agreement
 10. Upon the expiration or earlier termination of this Agreement, the Licensee shall, at its expense, if required by the Licensor, remove any work constructed or placed on the Lands so that the Lands are returned so far as practicable to the condition that existed immediately prior to the commencement of this Agreement. Where, in the opinion of the Licensor, the Licensee has failed to remove its works and restore the Lands within a reasonable time, the Licensor may carry out the removal and restoration of these works at the Licensee's expense.
 11. No waiver of a breach of any term of this Agreement is a waiver of any subsequent breach. A waiver must be in writing and signed by the party waiving the breach to be effective.
 12. The Licensor shall have the right to enter upon the Lands at any time to carry out work thereon whether or not such work will interfere with the Licensee's rights under the Agreement and in such an event the Licensee shall not be entitled to claim against the Licensor.
 13. This Agreement may not be assigned without the prior written consent of the Licensor.
 14. Any notice required or permitted to be given hereunder may be given by mailing the notice registered mail with postage prepaid to the party at the address for that party listed below:
 - (a) To the Licensor: Halifax Port Authority
P. O. Box 336
Halifax, NS B3J 2P6
 - (b) To the Licensee: Shaun and Susan Sheehan
9 Milton Drive
Halifax, Nova Scotia

Service of any notice by registered mail shall be deemed complete on the date of actual delivery as shown on the addressee's registry receipt. Any party may, by notice in writing, designate a different address for service.

15. This agreement shall enure to the benefit of and binding upon the parties hereto, their successors and assigns.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date first above written.

SIGNED, SEALED AND DELIVERED

in the presence of

Witness

Witness

Witness

(244928.2)

HALIFAX PORT AUTHORITY

President & Chief Executive Officer

CIS

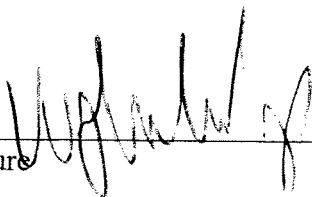
SHAUN SHEEHAN

SUSAN SHEEHAN

Exhibit Stamp

This is Exhibit "C" referred to in the Affidavit
of Susan Sheehan sworn before me this
day of November, A.D. 2010

Signature

A handwritten signature in black ink, written over a horizontal line. The signature is cursive and appears to be "Michael J. [unclear]".

April 13, 2010

Via Email: daledunlop@walkerdunlop.ca

Mr. Dale Dunlop
Walker, Dunlop
1485 South Park Street
PO Box 36057
Halifax, NS B3J 3S9

Dear Mr. Dunlop:

**RE: Charles C.E. Cron and R. Marie Cron v. Shaun Sheehan and Susan Sheehan, et al
Hfx No. 267600**

We write to confirm that any interests which the Crown or the Halifax Port Authority may have previously claimed over the lands in question are resolved with my clients being recognized as the true and exclusive owners in fee simple.

Your client previously used these lands pursuant to a license agreement dated May 1, 2000. That license agreement expires on April 30, 2010 and will not be renewed.

Could you please ensure that your clients make every necessary arrangement in anticipation of the lands being restored to their original condition as contemplated under the license agreement and as will otherwise be required by my clients. My clients will not permit the ongoing use of their lands as a driveway and ask that your clients respect their wishes and their entitlement to peaceful enjoyment of their property.

If you or the Sheehans have any questions, please do not hesitate to contact me.

Yours very truly,



John A. Keith
JAK/amb

John A. Keith | Partner

Direct 902 491 4217 Main 902 421 6262 Fax 902 421 3130 Email jkeith@coxandpalmer.com

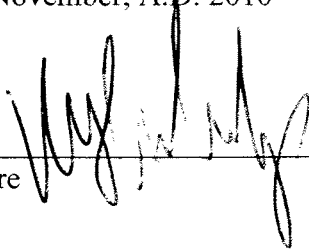
Purdy's Wharf Tower I 1100-1959 Upper Water Street Halifax NS

Correspondence PO Box 2380 Central Halifax NS B3J 3E5

Exhibit Stamp

This is Exhibit "D" referred to in the Affidavit
of Susan Sheehan sworn before me this
day of November, A.D. 2010

Signature

A handwritten signature in black ink, written over a horizontal line. The signature is cursive and appears to be "W. J. [unclear]".

Form 24

Purpose: to change the registered interest, benefits or burdens

(Instrument code: 450)

(If change(s) requested relate(s) to one or more of the following and no other interests are being added or removed on this form: manner of tenure, description of manner of tenure, non-resident status, parcel access or NSF/LB occupant. Note: This form cannot be used to correct an error in a parcel register).

(Instrument code: 451)

(Change to existing servient or dominant tenement PID number in a parcel register as a result of subdivision or consolidation. Note: This form cannot be used to correct an error in a parcel register)

For Office Use

Registration district: Halifax
Submitter's user number: 8151
Submitter's name: Marc A. Beaubien/Cox & Palmer

HALIFAX COUNTY LAND REGISTRATION OFFICE
I certify that this document was registered or recorded as shown here.
Kim MacKay, Registrar
96319760 LRD RODD
Document #
JUL 09 2010 11:07 AM
MM DD YYYY Time

In the matter of Parcel Identification Number (PID)

Table with 2 columns: PID, 279968

(Expand box for additional PIDs, maximum 9 PIDs per form)

The following additional forms are being submitted simultaneously with this form and relate to the attached document (check appropriate boxes, if applicable):

- Form 24(s)
Form 8A(s)

Additional information (check appropriate boxes, if applicable):

- This Form 24 creates or is part of a subdivision or consolidation.
This Form 24 is a municipal or provincial street or road transfer.
This Form 24 is adding a corresponding benefit or burden as a result of an AFR of another parcel.
This Form 24 is adding a benefit or burden where the corresponding benefit/burden in the "flip-side" parcel is already identified in the LR parcel register and no further forms are required.

Power of attorney (Note: completion of this section is mandatory)

- The attached document is signed by attorney for a person under a power of attorney, and the power of attorney is:
recorded in the attorney roll
recorded in the parcel register
incorporated in the document

OR

X No power of attorney applies to this document

This form is submitted to make the changes to the registered interests, or benefits or burdens, and other related information, in the above-noted parcel register(s), as set out below.

The registered interests and related information are to be changed as follows:

Instrument type	Crown Grant
Interest holder and type to be removed (if applicable)	N/A
Interest holder and type to be added (if applicable) Note: include qualifier (e.g., estate of, executor, trustee, personal representative) if applicable	Charles C. E. Cron – Fee Simple R. Marie Cron – Fee Simple
Mailing address of interest holder to be added (if applicable)	5 Milton Drive, Halifax, NS B3P 1A1
Manner of tenure to be removed (if applicable)	
Manner of tenure to be added (if applicable)	
Description of mixture of tenants in common and joint tenancy (if applicable)	N/A
Access type to be removed (if applicable)	N/A
Access type to be added (if applicable)	N/A
Percentage or share of interest held (for use with tenant in common interests)	N/A
Non-resident (to qualified solicitor's information and belief) (Yes/No?)	No
Reference to related instrument in parcel register (if applicable)	N/A
Reason for removal of interest (for use only when interest is being removed by operation of law and no document is attached) <i>Instrument code: 443</i>	N/A

May 4, 2009*25456/1*1151091

The following burdens are to be added and/or removed in the parcel register(s):
 (Note: An amending PDCA is required if the changes being made to the burden section are not currently reflected in the description in the parcel register).

Instrument type	Expropriation
Interest holder and type to be removed (if applicable)	N/A
Interest holder and type to be added (if applicable) <i>Note: include qualifier (e.g., estate of, executor, trustee, personal representative) (if applicable)</i>	Halifax Regional Municipality - Easement /Right of Way Holder (Burden)
Mailing address of interest holder to be added (if applicable)	P.O. Box 1749, Halifax, Nova Scotia, B3J 3E5
Reference to related instrument in names-based roll/parcel register (if applicable)	Document number 1708
Reason for removal of interest (for use only when interest is being removed by operation of law) <i>Instrument code: 443</i>	N/A

Instrument type	Expropriation
Interest holder and type to be removed (if applicable)	N/A
Interest holder and type to be added (if applicable) <i>Note: include qualifier (e.g., estate of, executor, trustee, personal representative) (if applicable)</i>	Halifax Regional Municipality - Easement /Right of Way Holder (Burden)
Mailing address of interest holder to be added (if applicable)	P.O. Box 1749, Halifax, Nova Scotia, B3J 3E5
Reference to related instrument in names-based roll/parcel register (if applicable)	Document number 1711
Reason for removal of interest (for use only when interest is being removed by operation of law) <i>Instrument code: 443</i>	N/A

Instrument type	Crown Grant
Interest holder and type to be removed (if applicable)	N/A

May 4, 2009*25456/1*1151091

Interest holder and type to be added (if applicable) <i>Note: include qualifier (e.g., estate of, executor, trustee, personal representative) (if applicable)</i>	Various owners - Easement /Right of Way Holder (Burden)
Mailing address of interest holder to be added (if applicable)	Address unknown
Reference to related instrument in names-based roll/parcel register (if applicable)	N/A
Reason for removal of interest (for use only when interest is being removed by operation of law) <i>Instrument code: 443</i>	N/A

The textual qualifications are to be changed as follows:

Textual qualification on title to be removed (insert any existing textual description being changed, added to or altered in any way)	A PATH TO THE WALLACE HOUSE AS SHOWN ON THE PLAN OF J.T. CRUICKSHANK PROPERTY , MADE BY F.B.DYER IN JANUARY 1951 AND REVISED BY H.K.WEDLOCK DECEMBER 9 1955 DESCRIBES A LINED AREA AS "FOOTPATH" AND SHOWS THE SAME PASSING OVER P.I.D. 279968 AND CONTINUING OVER P.I.D.279968 .THE FOOTPATH APPEARS TO HAVE EXISTED FOR AT LEAST 200 YEARS FOR PUBLIC ACCESS ALONG THE NORTH WEST ARM. SUBJECT TO EXPROPRIATION TO THE CITY OF HALIFAX BEING PLAN NUMBER 1708 DATED FEBRUARY 21,1966 REGISTERED AT THE COUNTY OF HALIFAX ; SUBJECT TO EXPROPRIATION TO THE CITY OF HALIFAX BEING PLAN NUMBER 1711 DATED FEBRUARY 21,1966 REGISTERED AT THE COUNTY OF HALIFAX ;
Textual qualification on title to be added (insert replacement textual qualification)	PID 279968 appears to be subject to an Easement /Right of Way in favour of PID 279877 as shown on a plan of survey entitled "Plan of Survey of Lot 6-PR John T. Cruikshank Subdivision Consolidation of lands conveyed to Charles C. E. & R. Marie Cron and Lands Claimed by Halifax Port Authority Milton Drive, Halifax, Halifax County, Nova Scotia", recorded at the Land Registration Office, Halifax, as Plan No. 96261020. Said easement being shown as "Proposed Easement-6PR on the aforementioned plan.

May 4, 2009*25456/1*1151091

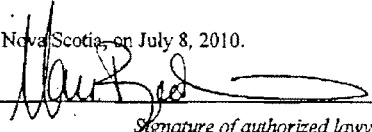
Reason for change to textual qualification (for use
only when no document is attached) Instrument code:
838

N/A

Certificate of Legal Effect:

I certify that, in my professional opinion, it is appropriate to make the changes to the parcel register(s) as instructed on this form.

Dated at Halifax, in the County of Halifax, Province of Nova Scotia, on July 8, 2010.



Signature of authorized lawyer

Name: Marc A. Beaubien

Address: 1100-1959 Upper Water Street
Halifax, NS B3J 3E5

Phone: 421-6262

E-mail: mbeaubien@coxandpalmer.com

Fax: 421-3130

- This document also affects non-land registration parcels. The original will be registered under the *Registry Act* and a certified true copy for recording under the *Land Registration Act* is attached.

May 4, 2009*25456/1*1151091

CANADA

INSTRUMENT OF GRANT

THIS INSTRUMENT HAS THE SAME FORCE AND EFFECT
AS IF IT WERE LETTERS PATENT

(Subsection 5(7), Federal Real Property and Federal Immovables Act)

ELIZABETH THE SECOND, by the Grace of God of the United Kingdom, Canada and Her other Realms and Territories, QUEEN, Head of the Commonwealth, Defender of the Faith.

TO ALL TO WHOM these Presents shall come,

GREETING:

WHEREAS a portion of the lands hereinafter described are or may be vested in Us in right of Canada and are under the administration of Our Minister of Transport, Infrastructure and Communities;

AND WHEREAS the Minister of Transport, Infrastructure and Communities has agreed to execute this Quit Claim Deed in respect of lands located at 5 Milton Drive, Halifax, Province of Nova Scotia, bearing P.I.D. No. 00279968 with respect to an alleged encroachment on lands administered by the Minister and managed by the Halifax Port Authority under the Letters Patent for the Halifax Port Authority;

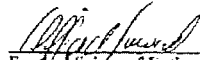
AND WHEREAS authority has been given for the grant of the portion of the lands hereinafter described or the interest therein that is or may be vested in Us in right of Canada to CHARLES C. E. CRON and R. MARIE CRON, both of Halifax Regional Municipality, of the Province of Nova Scotia, as Joint Tenants, hereinafter called the Grantees, at or for the price or sum of Ten (\$10.00) Dollars in Canadian currency;

NOW KNOW YE that We have remised, released and quitted claim and do by these Presents remise, release and quit claim unto the Grantees and their heirs all the right, title, interest, claim, property, estate and demand both at law and in equity, as well in possession as in expectancy, which We or our Heirs or Successors have, or may have, for the use of or in the Right of Canada, of, in and to, ALL AND SINGULAR those lands described Schedule "A" attached;

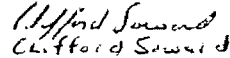
TO HAVE AND TO HOLD the said lands unto the Grantees and their heirs, forever.

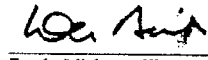
IN WITNESS WHEREOF these Presents have been signed and countersigned under the Federal Real Property and Federal Immovables Act of Canada.

DATED this _____ day of JAN 14 2010, 20__



For the Minister of Justice
Clifford Soward
Counsel
Department of Justice


Clifford Soward



For the Minister of Transport, Infrastructure
And Communities

I hereby certify that:
The Deed Transfer Tax has been paid
No Deed Transfer Tax is due and payable
within described property transfer.
Dated this 9 day of July 20 10 AD



Halifax County Land Registration Office
Registrar

Schedule "A"

LOT 6-PR

MILTON DRIVE

HALIFAX, HALIFAX COUNTY, NOVA SCOTIA

ALL that certain lot of land situated on the southeastern boundary of Milton Drive in Halifax, County of Halifax, Province of Nova Scotia shown as Lot 6-PR on a plan (Servat, Dunbrack, McKenzie & MacDonald Plan No. 14-1424-0) of Survey of Lot 6-PR, John T. Cruikshank Subdivision, Consolidation of Lands Conveyed to Charles C. E. & B. Marie Cross and Lands Claimed by Halifax Port Authority, signed by Terrance R. Doozue, NSLS, dated October 16, 2009 and being more particularly described as follows:

BEGINNING at the eastern corner of Lot 3-3A, lands conveyed to Roy & Elsie M. Jellimore by indenture recorded at the Registry of Deeds for the County of Halifax in Book 1681, Page 399 on the northwestern boundary of Block A, lands conveyed to Gordon A. & Robert S. M. Finley by indenture recorded at the Registry of Deeds for the County of Halifax in Book 5100, Page 84; said place of beginning being distant 1,316.17 feet on a bearing of N 10 degrees 03 minutes 46 seconds E from Nova Scotia Coordinate Monument No. 6010;

THENCE N 40 degrees 02 minutes 00 seconds W, 244.03 feet along the northeastern boundary of Lot 3-3A, Lot 2-2A, lands conveyed to Anthony C & Chai-Chu Thompson by Indenture recorded at the Registry of Deeds for the County of Halifax in Book 2287, Page 1006; Lot 1-1A, Lands conveyed to James & Jane A. McNiven by indenture recorded at the Registry of Deeds for the County of Halifax in Book 5008, Page 249 and lands now or formerly conveyed to John T. Cruikshank by indentures recorded at the Registry of Deeds for the County of Halifax in a Portion of Book #68, Page 271; Book 908, Page 249 and Book 1177, Page 530 to the southeastern boundary of lands conveyed to Bradford L. & Vera A. Blackford by Indenture recorded at the Registry of Deeds for the County of Halifax in Book 3713, Page 1227;

THENCE N 43 degrees 28 minutes 06 seconds E, 54.32 feet along the southeastern boundary of lands conveyed to Bradford L. & Vera A. Blackford to a point;

THENCE N 14 degrees 21 minutes 00 seconds W, 40.62 feet along the eastern boundary of lands conveyed to Bradford L. & Vera A. Blackford to a point;

THENCE N 69 degrees 53 minutes 43 seconds W, 44.58 feet along the northern boundary of lands conveyed to Bradford L. & Vera A. Blackford to the southern boundary of Milton Drive;

THENCE S 84 degrees 35 minutes 07 seconds E, 125.11 feet along the southern boundary of Milton Drive to a point;

THENCE N 52 degrees 21 minutes 17 seconds E, 171.53 feet along the southeastern boundary of Milton Drive to the Ordinary High Water Mark of North West Arm;

THENCE easterly, southerly, easterly southeasterly, southwesterly and southeasterly following the various courses of the Ordinary High Water Mark of North West Arm for a distance of 238 feet more or less to the northwestern boundary of lands conveyed to Susan Dawn Sheehan recorded at the Halifax County Lands Registration Office in Document No. 90565232; said point being distant 23.80 feet on a bearing of S 83 degrees 39 minutes 30 seconds E; distant 149.59 feet on a bearing of S 27 degrees 03 minutes 15 seconds E and distant 42.05 feet on a bearing of S 24 degrees 56 minutes 10 seconds W from the last described point;

THENCE S 43 degrees 04 seconds 26 minutes W, 120.34 feet along the northwestern boundary of lands conveyed to Susan Dawn Sheehan to a point;

THENCE S 33 degrees 52 minutes 18 seconds W, 69.28 feet along the northwestern boundary of lands conveyed to Susan Dawn Sheehan to the northeastern boundary of Block A;

Lot 6-PR (continued)

THENCE S 37 degrees 37 minutes 33 seconds W, 68.81 feet along the northwestern boundary of Block A to the place of beginning.

CONTAINING 65,490 square feet more or less.

ALL bearings are Nova Scotia Coordinate Survey System Grid Bearings and are referred to Central Meridian 64 degrees, 30 minutes, West.

THE above described Lot 6-PR being a portion of Lot 6, lands conveyed to Charles C. E. & R. Marie Cron by indenture recorded at the Registry of Deeds for the County of Halifax in Book 3135, Page 703 and a portion of lands claimed by Halifax Port Authority.

SUBJECT to Proposed Easement 6-PR as shown and mathematically delineated on the subject plan over the western corner of Lot 6-PR containing an area of 168 square feet in favour of Civic No. 3 (Milton Drive).

SUBJECT also to a Service Easement as shown mathematically delineated on the subject plan over the southern corner of Lot 6-PR in favour of the Halifax Regional Municipality as acquired by Expropriation No. 1708.

SUBJECT also to a Service Easement as shown mathematically delineated on the subject plan over the northeastern portion of Lot 6-PR containing an area of 3,831 square feet in favour of Halifax Regional Municipality as acquired by Expropriation 1711.

SUBJECT also to the public right to travel over the Public Foot Path as shown graphically on the subject plan.

Terrance R. Doogue, NSLS
Halifax, Nova Scotia
November 9, 2009

Form 28

Purpose: to record certain types of non-enabling documents in a parcel register

For Office Use

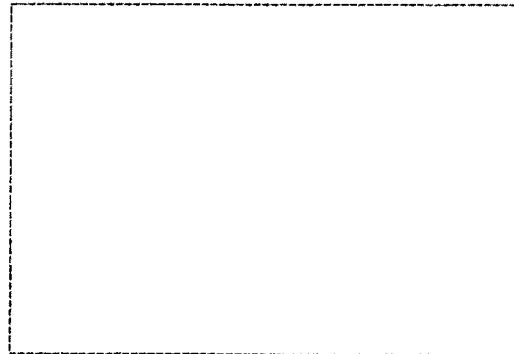
Registration district: Halifax County

Submitter's user number: 8151

Submitter's name: Marc A. Beaubien

The attached plan/document relates to the following parcels registered under the *Land Registration Act*

PID	00279968
PID	



Municipal file number or land registration file number (*insert file number used when PIDs were originally assigned during pre-approval*): _____

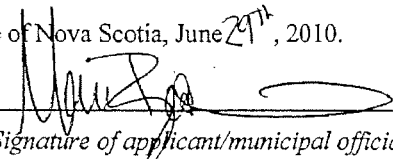
This form is submitted to record the following non-enabling instrument in the above-noted parcel register(s) (*select one*):

- plan
- boundary line agreement
- instrument of subdivision
- statutory declaration regarding de facto consolidation
- condominium declaration
- initial condominium bylaws
- condominium plan
- repeal of subdivision
- termination of condominium
- other (*specify*) _____

And in the matter of registered owner (*insert name*) Charles Claudius Edward Cron and Rita Marie Cron:

Note: An amending Parcel Description Certification Application may be required.

Dated at Halifax, in the County of Halifax, Province of Nova Scotia, June 29th, 2010.



Signature of applicant/municipal official/owner/agent

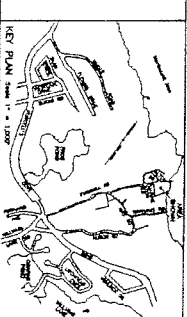
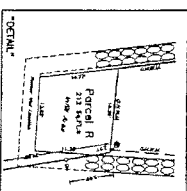
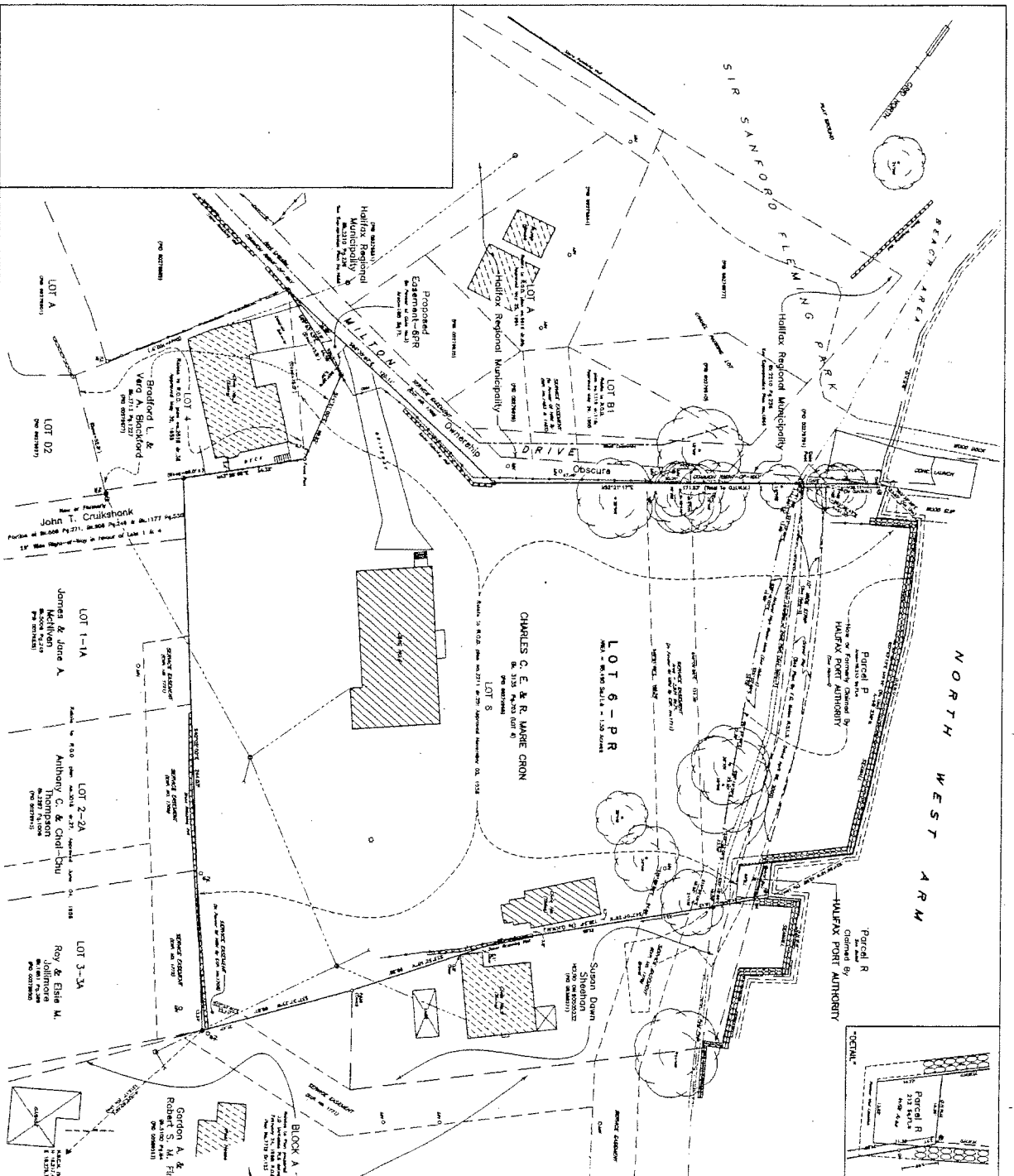
Name: Marc A. Beaubien

Address: 1100-1959 Upper Water Street
Halifax, NS B3J 3T5

Phone: 421-6262

E-mail: mbeaubien@coxandpalmer.com

Fax: 421-3130



NO.	DESCRIPTION	REMARKS
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NOTES:

1. Lot 6-PR is subject to the rights of the Halifax Regional Municipality as shown on the plan and is to be used for the purpose of a public park.
2. The Halifax Regional Municipality is the owner of the land shown on the plan and is to be used for the purpose of a public park.
3. The Halifax Regional Municipality is the owner of the land shown on the plan and is to be used for the purpose of a public park.
4. The Halifax Regional Municipality is the owner of the land shown on the plan and is to be used for the purpose of a public park.
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7. The Halifax Regional Municipality is the owner of the land shown on the plan and is to be used for the purpose of a public park.
8. The Halifax Regional Municipality is the owner of the land shown on the plan and is to be used for the purpose of a public park.
9. The Halifax Regional Municipality is the owner of the land shown on the plan and is to be used for the purpose of a public park.
10. The Halifax Regional Municipality is the owner of the land shown on the plan and is to be used for the purpose of a public park.

PLANNING CONCEPT

PLAN OF SURVEY OF LOT 6-PR

JOHN T. CRUIKSHANK SUBDIVISION

CONSIDERATION OF LOTS CONVERTED TO CHARLES C. E. & R. MARIE CRON

HALIFAX PORT AUTHORITY

HALIFAX COUNTY, NOVA SCOTIA

SPMM

Sherwin, Dunbrack, Makenda & MacDonald Ltd.

NOVA SCOTIA LAND SURVEYORS & CONSULTING ENGINEERS

1000 WEST BROAD STREET, HALIFAX, NOVA SCOTIA B3H 2Y1

PHONE: (902) 421-1111

FAX: (902) 421-1112

SCALE: 1" = 20'

DATE: 11/16/09

FILE NO. 1-2-23 (27138)

PLAN NO. 11-1324-D

SPMM

Sherwin, Dunbrack, Makenda & MacDonald Ltd.

NOVA SCOTIA LAND SURVEYORS & CONSULTING ENGINEERS

1000 WEST BROAD STREET, HALIFAX, NOVA SCOTIA B3H 2Y1

PHONE: (902) 421-1111

FAX: (902) 421-1112

SCALE: 1" = 20'

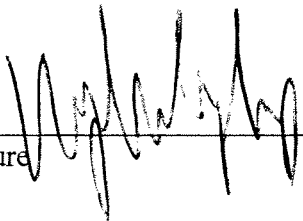
DATE: 11/16/09

FILE NO. 1-2-23 (27138)

PLAN NO. 11-1324-D

Exhibit Stamp

This is Exhibit "E" referred to in the Affidavit
of Susan Sheehan sworn before me this
day of November, A.D. 2010

Signature 



June 4, 2010

Leslie Sutherland
A. J. Bell & Grant Ltd.
Halifax, NS

Policy #: PPL035567683
Insured: Susan Sheehan
Address: 9 Milton Drive, Halifax, NS B3P 1A1

Subject: Dwelling Inspection

Hi Leslie:

Please find attached an inspection that has been completed on the insured's home. An endorsement is on its way effective July 4, 2010 (giving 30 days notice) increasing the value of the home to \$402,000 and amending the auxiliary heat to a fireplace. The result is an additional premium of \$167.

The inspector notes that there is an ongoing dispute with access to vehicular traffic and lease granting same. The risk is currently rated hydrant protected, however, unless this dispute gets resolved this risk may indeed need to be reconsidered as an unprotected risk as there will be no way for the fire department to gain access to the property to fight a fire. Please check with the insured and obtain full information on when the lease actually expires and some idea of when she expects to get this resolved.

We require the following recommendations are required by **July 15, 2010** due to possible fire hazard when dealing with wiring.

Inspection Recommendations:

- 1) The amperage of the wiring coming into the home was undetermined at the time of the inspection. A qualified electrician is to inspect the wiring to ensure it has a minimum of 100amp wiring. While the electrician is at the home, the following are also to be completed:
 - a. Check fusing of the fuse panel and reduce fuses wherever possible.
 - b. Move flammables away from the fuse panel area.
 - c. Reattach the panel solidly to the rear wall of the basement and check all connections.

The following recommendations are required to be completed by **August 15, 2010**.

- 2) A qualified mason is required to inspect the chimney and make all repairs to the mortar as required. He is also required to inspect the firebox of the fireplace and make any adjustments necessary to bring it up to code.
- 3) The cause of the water damage seepage in the basement is to be investigated and corrected to prevent further damage.
- 4) Handrails are to be installed on the exterior stairs of the dwelling.
- 5) Handrails are to be installed on the interior stairs of the dwelling.
- 6) The exit to the dwelling on the 2nd level of the dwelling does not have the proper steps and railings. If the exit is used, it must have same installed. If it is not used, please confirm what measures have been taken to ensure it can't be opened and pose a liability hazard.
- 7) A oil heating technician it to make the following changes to the oil tank:
 - a. Vent pipe must terminate 6 inches above the fill pipe.
 - b. Pipe connections at the tank must be tightened to prevent further spillage of oil.
 - c. The fuel line must be protected from mechanical damage.

Following are suggestions for Policyholders safety:

- 1) A fire extinguisher should be installed in the dwelling.
- 2) A carbon monoxide detector should be installed in the dwelling.
- 3) A deadbolt is suggested to be installed on the front door to help offer better resistance to would be intruders

If you have any questions or concerns, please give me a call. Please confirm when wiring recommendations have been completed and then when the remainder have been taken care of.

Yours truly,

Donna White, CIP
Underwriter

Enclosure



Private Ways Act

CHAPTER 358

OF THE

REVISED STATUTES, 1989

NOTE - This electronic version of this statute is provided by the Office of the Legislative Counsel for your convenience and personal use only and may not be copied for the purpose of resale in this or any other form. Formatting of this electronic version may differ from the official, printed version. Where accuracy is critical, please consult official sources.

An Act Relating to Necessary Private Ways

Short title

1 This Act may be cited as the *Private Ways Act*. R.S., c. 358, s. 1.

PART I

AUTHORITY OF GOVERNOR IN COUNCIL

Petition for right of way

2 (1) Every owner or occupier of any mine, mill, quarry, farm or factory who is desirous of transporting the produce of such mine, mill, quarry, farm or factory to a railway or public way, or to tidal or other waters or elsewhere, and every owner or occupier of any timber lands who desires to enter upon such lands and cut the timber or wood thereon and remove the same to a mill, railway or public way, or tidal or other waters or elsewhere, and who is unable to agree for a right of way with the owner or owners of any lands which it is necessary to cross in order to effect such entry or transportation, may present a petition to the Governor in Council.

Content of petition

(2) Such petition shall set forth

- (a) the nature of the business which such owner or occupier is desirous of carrying on;
- (b) a description of the property over which it is sought to obtain a right of way;
- (c) the width of such right of way;

(d) the nature and extent of the right required; and

(e) the amount which such owner or occupier has offered to pay the owner or owners of the lands sought to be crossed for a right of way across the same,

and shall pray that proceedings be taken under this Part to enable the petitioner to acquire a right of way across such land. R.S., c. 358, s. 2.

Commissioner and powers on inquiry

3 (1) Upon the presentation of the petition the Governor in Council may appoint a commissioner who, for the purposes of the inquiry herein provided, has power to summon before him any persons and to require them to give evidence on oath or affirmation and produce such documents and things as such commissioner deems requisite.

Service of documents

(2) Upon such presentation, the Attorney General shall forthwith, at the expense of the petitioner, cause the owner of the land over which it is sought to obtain a right of way to be served with a copy of the petition, together with a notice that a commissioner appointed by the Governor in Council will, at a time and place to be named in such notice, hear the application for such right of way and any objections thereto, and the petition and notice shall be so served not less than twenty days before the day so appointed.

Substituted service

(3) If such owner is absent from the Province, service on him of such petition and notice may be made by publishing the same in a newspaper published in the county in which such lands lie for at least four issues of such newspaper. R.S., c. 358, s. 3.

Hearing and report

4 (1) At the time and place so named, such commissioner shall hear such application and all objections thereto and report the evidence taken by him to the Governor in Council.

Order to grant right of way

(2) The Governor in Council, if satisfied that the right of way sought to be obtained is actually necessary for the purposes for which it is sought and that it is otherwise just and reasonable that the same should be obtained, shall thereupon by order in council declare that the petitioner is entitled to acquire under this Part a right of way over the lands mentioned in the petition or a part thereof.

Content of order

(3) Such order shall define the boundaries of such right of way and shall specify the nature and extent of the right and whether the right is to be acquired in perpetuity or for a term of years. R.S., c. 358, s. 4.

No right of way through building or orchard

5 Where the commissioner finds on examination that the proposed right of way runs through any house, building, orchard or garden, he shall, without further inquiry, so report to the Governor in Council and no further proceeding shall take place on such petition. R.S., c. 358, s. 5.

Remuneration of commissioner

6 The petitioner shall pay such commissioner for his services such sum as is determined by the Governor in Council and the Governor in Council may make the payment of such sum a condition precedent to the making

of the order in council declaring the petitioner entitled to acquire a right of way. R.S., c. 358, s. 6.

Costs

7 Where the application of the petitioner is refused, the Governor in Council may order such petitioner to pay to the owner of the land, to defray the expenses incurred by such owner in opposing the application, such sum as the Governor in Council determines. R.S., c. 358, s. 7.

Deposit

8 Before such commissioner is appointed, the petitioner shall deposit with the Attorney General the sum of one hundred dollars, towards the payment of the commissioner for his services, and of any expenses incurred by the Governor in Council in connection with such petition, and of any sum ordered to be paid by the petitioner to the owner of the lands over which the right of way is sought in case of the application being refused. R.S., c. 358, s. 8.

Notice to appoint arbitrator

9 Within thirty days after the making of such order in council, the petitioner shall serve a notice on the owner of the land over which it is sought to acquire a right of way, stating the name of one arbitrator, and requiring such owner to name another arbitrator, for the purpose of assessing the compensation and damages to be paid to the owner of such lands on account of the right of way sought to be acquired and, if such owner refuses or fails to notify the petitioner of the appointment of an arbitrator within ten days after service of such notice, a judge of the Trial Division of the Supreme Court or of a county court may appoint such arbitrator. R.S., c. 358, s. 9.

Appointment of third arbitrator

10 The two arbitrators so appointed shall be notified by the petitioner of their appointment and within twenty days after such notice choose a third arbitrator and, if they fail to choose such third arbitrator within twenty days after such notice to them, such third arbitrator shall be appointed by the Governor in Council. R.S., c. 358, s. 10.

Duty of arbitrators

11 Such arbitrators shall, without delay, proceed to assess the compensation to be paid with respect to the lands over which such right of way is acquired, and for the damages, if any, occasioned by the acquisition of such right of way, and shall file their award with the Attorney General. R.S., c. 358, s. 11.

Vesting of right of way

12 On payment to such owner of the amount so awarded, a right of way as in the said order in council defined shall vest in the petitioner. R.S., c. 358, s. 12.

Registration of copy of order and award

13 (1) A copy of the order in council and of the award, certified under the hand of the Attorney General, shall be registered in the registry of deeds for the registration district in which is situated the land over which the right of way is acquired.

Fee for registration

(2) The fees for such registration shall be those provided for the registration of deeds and shall be paid by the petitioner. R.S., c. 358, s. 13.

Insufficient deposit

14 If the amount deposited by the petitioner with the Attorney General is insufficient for the purposes for which the same is required to be deposited, he shall pay any deficiency before any award is made by the arbitrators. R.S., c. 358, s. 14.

Application of Part to sluice

15 This Part shall apply to a right of way for and a right to build a sluice by which to convey, transport, or remove the produce, timber and wood mentioned in Section 2 by water or otherwise. R.S., c. 358, s. 15.

PART II

AUTHORITY OF MUNICIPAL COUNCIL

Interpretation

16 In this Part,

- (a) "commissioner" means the person appointed by the council under this Part;
- (b) "council" means the council for the municipality in which the road, alteration, landing or work is situated;
- (c) "land" includes any easement or right in land;
- (d) "owner" includes any person having an interest in land or in an easement or right in land;
- (e) "road" includes a bridge or approach to a bridge, except in the provision prescribing the width of a road;
- (f) "warden" means the warden for the municipality in which the road, alteration, landing or work is situated. R.S., c. 358, s. 16.

Petition for private way or road

17 (1) Any freeholder or freeholders of any municipality may present a petition to the council praying for the obtaining and laying out of a private way or road, either open or pent.

Commissioner and duties

- (2)** Where the council is satisfied that the application should be granted, it shall order a precept to be issued to a competent person as a commissioner, directing him, within a convenient time, to
 - (a) examine whether the proposed private way or road is the most practicable and reasonable means of access for the person or persons petitioning for the way or road to his or their lands or property or rights;
 - (b) if satisfied with respect thereto, lay out the same in the manner most advantageous to the person or persons applying for the way or road and least detrimental to the owner or owners of the land through which the same shall pass; and
 - (c) mark out the same on the land. R.S., c. 358, s. 17.

Further duties of commissioner

18 (1) If the commissioner considers that the proposed way or road is reasonable and practicable and requisite for the purposes of the person or persons applying therefor, he may lay out and mark the same and make plans thereof, in duplicate, and if he considers otherwise he shall so report to the council.

Maximum width of way or road

(2) Such way or road shall be not more than twenty-five feet in width. R.S., c. 358, s. 18.

Agreement for compensation

19 (1) The commissioner may make an agreement in writing as to the compensation therefor with the owners of the land, the use of which is required for the purposes of the proposed private way or road.

Content of agreement

(2) Such agreement shall contain a description of such land, a reference to the plan and the amount agreed upon for compensation.

Transmission of documents for council

(3) The commissioner shall transmit to the municipal clerk, to be laid before the council with his precept, such agreement and a full report of his proceedings thereon. R.S., c. 358, s. 19.

Appointment of arbitrators

20 Where no agreement for compensation is made, arbitrators to appraise the same shall be appointed in the following manner:

(a) one arbitrator shall be appointed by the commissioner, another by the owner of the land and a third by the warden;

(b) the county court judge for the district in which the dispute arises may appoint an arbitrator to act on behalf of any owner, who is under disability, or absent from the Province, or who fails to appoint an arbitrator in his own behalf, after three days notice to him when he is within the municipality and fifteen days notice when he is not within the municipality but is within the Province;

(c) such notice may be given by the commissioner and may be served by delivering the same to the owner or, if he is not within the municipality, by mailing the same to his last known address, postage prepaid;

(d) no notice shall be necessary in the case of the disability of the owner or of his absence from the Province. R.S., c. 358, s. 20.

Joint appointment of arbitrator

21 (1) Where the land of more than one owner is required, the owners with whom no agreement has been made, instead of each appointing an arbitrator, may join in the appointment of one arbitrator to act with the two arbitrators appointed as hereinbefore provided in appraising the amount of the compensation to be paid to each of the owners represented by such arbitrator.

Failure to appoint

(2) If any of the owners fails to join in making such appointment after seven days notice by the commissioner to do so, the county court judge for the district in which the dispute arises shall appoint an arbitrator to act on behalf of those who do not so join, and such appointment is as valid as if they had joined in making such appointment. R.S., c. 358, s. 21.

Oath

22 The three arbitrators, before entering upon their duties, shall take an oath before a justice of the peace that they will faithfully and impartially discharge the same. R.S., c. 358, s. 22.

Appraisal by arbitrators

23 (1) The arbitrators shall enter upon the land and appraise the compensation payable to the owner in respect thereto.

Award of majority binding

(2) The award of the majority of such arbitrators is valid and binding.

Transmission of documents for council

(3) The precept, with the report of the commissioner and the award, accompanied by a plan and containing or referring to a description of the land, shall be transmitted to the municipal clerk to be laid before the council. R.S., c. 358, s. 23.

Notice to interested person

24 After the report of the commissioner, with an agreement or award for compensation, is transmitted to the clerk, he shall, not less than thirty days previous to the next meeting of the council, serve a notice containing the substance of such report, agreement or award, upon each of the persons interested in the lands through which the way or road is proposed to be laid out, and service of such notice may be effected by mailing the same to the last known address of each of the persons, postage prepaid and registered. R.S., c. 358, s. 24.

Consideration of report

25 At the meeting of the council next after the receipt of the report, or at any subsequent meeting to which the consideration of the same is adjourned, the report, with the agreement or award for compensation, and any objections thereto shall be considered. R.S., c. 358, s. 25.

Decision of council

26 (1) The council may confirm or disallow the report and, if it is satisfied that the amount of the compensation is either insufficient or excessive, it may disallow and set aside the agreement or award and direct a new appraisal of the compensation to be made, unless an agreement is entered into in respect thereto, and may delay action on the precept until a new agreement or award is made and transmitted.

New agreement or award

(2) The council may also either confirm or disallow the new agreement or award. R.S., c. 358, s. 26.

Filing of documents

27 If any agreement or award is confirmed, the municipal clerk shall file the same, and the papers in connection therewith, and shall enter the fact of such confirmation in a book to be kept by him for that purpose. R.S., c. 358, s. 27.

Calculation of compensation

28 The compensation to which an owner shall be entitled shall include the value of the use of the land so taken, if any, and the damages to the land of the owner directly caused by such private way or road. R.S., c. 358, s. 28.

Payment of compensation and expenses

29 The compensation ascertained by the agreement or by the appraisal of the arbitrators, and the expenses incurred in respect thereto, shall be paid by the council, and may be charged against and recovered from any

polling district in which such private way or road is made, or in whole or in part from the applicant or applicants therefor, as the council may direct. R.S., c. 358, s. 29.

Entry on land

30 (1) No ascertainment or tender of the amount of compensation is necessary before entering upon land required for a private way or road.

Notice

(2) When the amount is ascertained, the municipal clerk shall, under his hand, give such owner notice in writing that such amount is subject to his order in the hands of the municipal treasurer.

Service of notice

(3) Such notice may be mailed to his last known address, postage prepaid, and, if he resides out of the Province and his address is not known, no notice or tender shall be necessary. R.S., c. 358, s. 30.

Registration of documents and effect

31 One of the plans and the agreement or, if there is no agreement, a copy of the award shall be registered in the registry of deeds for the registration district in which the land lies, and such registration shall be held to vest the title as an easement to the land or rights of the person or persons applying for such private way or road. R.S., c. 358, s. 31.

Appeal

32 (1) Any person petitioning for a private way or road, and any person who is interested in the lands through or over which such way or road is to be laid out, may, within ten days after the decision of the council, appeal from the decision of the council to the county court in the county wherein it is proposed to lay out such way or road, by giving notice thereof to the warden or municipal clerk, in writing, stating the grounds of appeal.

Transmission of documents

(2) The municipal clerk shall thereupon transmit the proceedings to the clerk of such court.

Hearing

(3) The appeal shall be heard at the next sittings of the court in the said county or, if it sits in more than one place in the county, then at the next sittings held at the place nearest by the usual route of travel to the proposed private way or road.

Powers of court upon appeal

(4) After hearing the appellant, the other parties interested and the municipal council, and any witnesses produced, the court shall finally determine the questions raised, and either allow the appeal and quash, set aside or reverse the decision of the council, or confirm the same, either with or without costs, in the discretion of the court. R.S., c. 358, s. 32.

Gate on private way or road

33 (1) The council may direct gates to be placed on private ways or roads, and make regulations respecting the placing and keeping thereof.

Offence

(2) Every person guilty of a breach of such regulations shall, for every offence, be liable to a penalty of not less than one dollar and not more than eight dollars. R.S., c. 358, s. 33.

Remuneration of commissioner

34 The commissioner shall, for his services, receive such remuneration as the council allows. R.S., c. 358, s. 34.

Petition to shut up altered or abandoned way or road

35 (1) Where a private way or road or any part thereof has been altered or abandoned, any person interested therein or any of the owners of land adjoining the same may, by petition stating the facts and the names of all persons interested in the way or road and in the lands on either side thereof, apply to the council to shut up or otherwise dispose of the same.

Notice to interested person

(2) At least thirty days previous notice in writing of the application shall be given to the persons interested and posted up on two conspicuous places near the way or road and the petition shall be accompanied by an affidavit proving that such notice has been so given and posted.

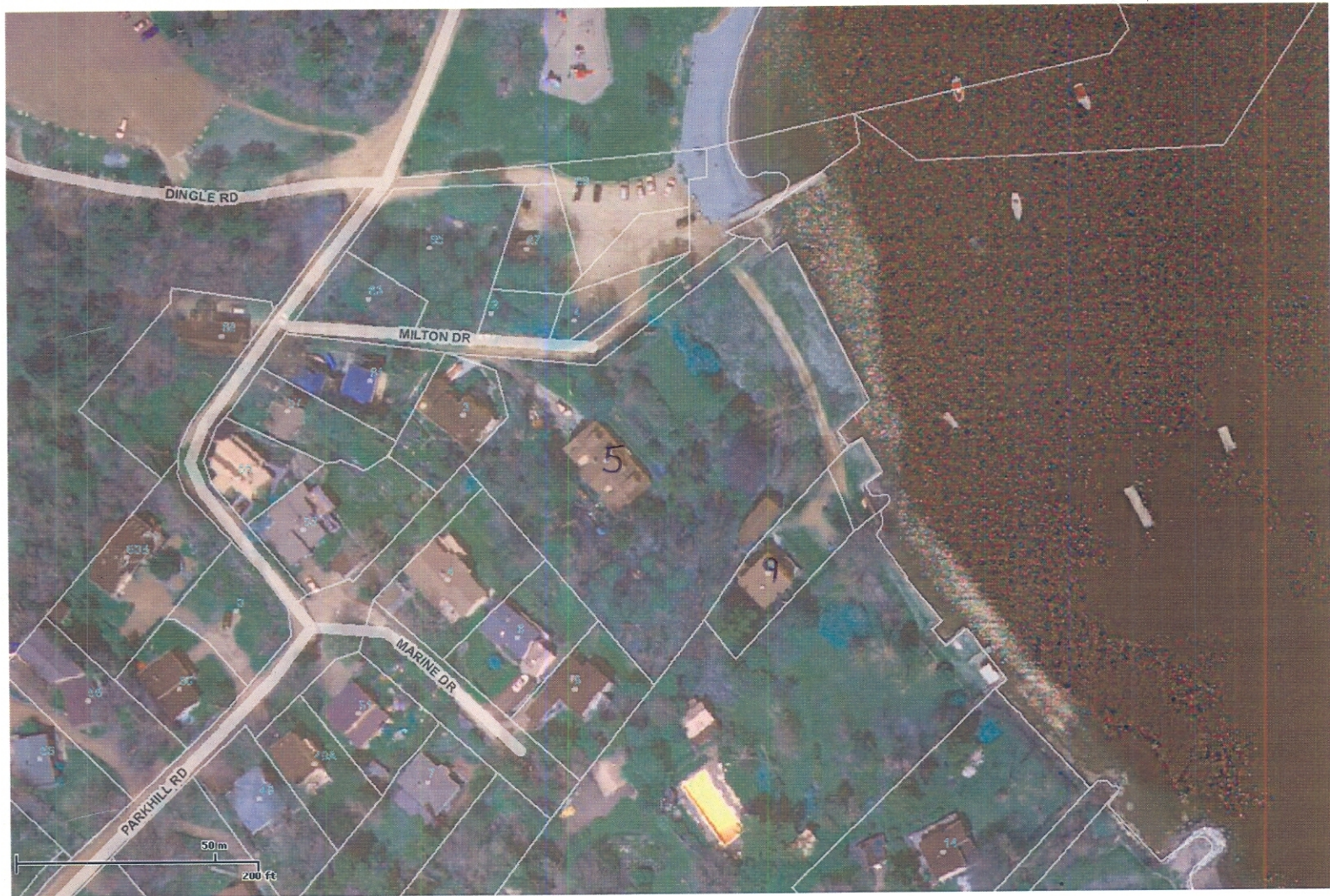
Hearing and determination by council

(3) The council shall hear the person or persons making the application, the persons who have been notified and any witnesses produced on behalf of any such persons and shall make an order either dismissing the application or granting the same in whole or in part. R.S., c. 358, s. 35.



5 and 9 Milton Drive

APPENDIX "C"



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