

DONNELLY CRT



55

59

65



**Presentation to Priorities Committee of November 9, 2004
Donnelly Court, Garson**

Overview

To review the acceptance by the municipality of an existing 35 year old street. It was the full intention of the Township of Neelon-Garson to create this street in 1972, but through a clerical oversight the formal dedication was overlooked in the transition to the amalgamation of this municipality into the Town of Nickel Centre. Presently the city continues to sand and snowplow the street. The current administration has an ethical, if not legal, obligation to honour the commitment and intentions that they inherited and accept this street as it exists.

Neighbourhood

This is an enclave of three substantial homes, being each in the \$200000. value range. They are serviced with municipal water, municipal sewer, natural gas, a yard and street drainage system, sanitary sewer manhole and 6 inch sanitary sewer line, approved and registered easements for the sanitary line including extension outside the neighbourhood, street lights, 3 paved driveways and the street is defined as parts on a registered plan.

Reasons for Resolution

The current situation impedes the resale of properties when legal counsel advises prospective buyers that the street is a private road.

Ever vigilant insurance carriers have concerns about providing coverage when access is over a private road.

The homes are substantial enough that they will be there for many years and hurdles for resolutions seem to get ever higher.

These homes have been in the community a long time and the owners deserve to be dealt with fairness and justice.

Our comfort level with right-of-ways was disturbed somewhat when your Mr. Ron Swiddle suggested there may be some gaps in our joint easement coverage.

Verification of Obligation

As a young man and the second builder, I recall, making the application for the building permit and being advised that we had to wait for council to make a decision. I, Lloyd Blanchard, am personally aware that council agreed to accept the road and was advised by a councillor to pick up my approved building permit the next day.

The offer to purchase required fulfilment of conditions.

The building permit defines our street as the 'existing road'. **This is compelling because it concludes that the approving authority acknowledges the street.**

Set backs are shown from the 'existing road'.

Minimum frontage requirement would not have been obtainable except along our street ('existing road') and a minor variance would have been required.

A minor variance was not required or applied for.

The street was defined on a plan of survey.

The only logical reason for this plan of survey of the street would be to dedicate it to the municipality. It was not required for the transfer or any other purpose.

History

There is compelling evidence that someone miscued and an intended transfer of the right-of-way for the street was not completed in 1972.

Over the years Regional Planning approved the construction of a third home on our street.

The Town of Nickel Centre was supportive in upkeeping the street over the years.

Subsequently they also approved a double garage facing onto our street for that home.

The Town of Nickel Centre entertained a delegation concerning the property in the spring of 2000. The administration did a very thorough review of the situation and eventually presented council with a proposed bylaw that would accept the street with the residents paying \$4500. for the quoted cost of paving and also the legal cost of transferring the right of ways. Some councillors felt that the residents had already contributed substantially and amended the bylaw to require the residents to pay only the legal cost of the transfers.

The residents felt justice had been served.

Unfortunately this expenditure triggered the involvement of the Transition Board.

The Transition Board rejected the spending of any funds but did direct staff to resolve the situation.

Mr. Ron Swiddle has spent considerable time reviewing the situation with me over the last couple of years.

Considerations

If the transfer had been completed in 1972, the street would have been maintained over the years, paved when other streets were paved and regularly upgraded.

Donnelly Court as it exists, is not out of character with the area. It is basically the same composure as the other 2 short streets that run off of Donnelly Drive (large lots, open drainage). Laurelwood and Glen Eden do not have storm sewers, drains and gutters although they are fairly recent construction.

The Town of Nickel Centre did an arms length, in-depth, extensive review of this situation. They had some very good suggestions, such as the naming of the street as Donnelly Court, and the suggestion that they do the 'right thing' and correct the oversight of the dedicating this street.

Conclusion

This has gone on for far too long.

If an unbiased person reviewed this situation it would be apparent that the city has an obligation to take possession of the street.

We urge you to do the 'right thing' and expedite the acceptance of the existing street.

Attachments

Letter - Town of Nickel Centre Oct. 4, 2000 2 pages

Letter - to Transition Board Nov.1, 2000 2 pages

By-Law No. 2000-38

Resolution #2000-194

Presentation Oct. 23, 2000

Why you should assume this street

Sketch of 55,59 and 65 Donnelly

Sketch - ownership

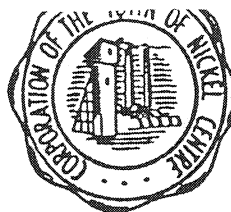
Improvements

Survey Plan 53R-4680 June 21, 1972

Original building permit - 2 pages

Pictures 2 pages

MAYOR
CLERK
TREASURY
(705) 693-2771



ENFORCEMENT

PARKS/RECREATION
ARENA

FIRE CHIEF
(705) 693-3010

CORPORATION OF THE TOWN OF NICKEL CENTRE

190 Church Street, Garson, Ontario P3L 1T8
Tel: (705) 693-2771 Fax: (705) 693-2710

PUBLIC WORKS
(705) 693-4500

October 4, 2000

Mayor John Fera
and
Members of Council

Your Worship and Members of Council:

Re: Donnelly Drive, Garson, Right-Of-Ways

At the Council Meeting of September 25, 2000, some concerned residents from Donnelly Drive made their appeal for the Town of Nickel Centre to accept the right-of-ways off Donnelly Drive. I was asked by Council to investigate further the right-of-ways and my report is as follows.

The enclosed photocopies of the area clearly shows that the right-of-ways are already registered. The only problem is that they were never accepted by the Town of Nickel Centre because of the unfortunate death of Mr. Telfer.

If this was 1970 and the applicants approached Council with their plans of dedicating the road to the Town there would have been no problem. However, today the Town of Nickel Centre has a policy which does not allow us to accept the road unless it is up to Ministry of Transportation standards.

I have been in contact with Mr. Art Potvin from Regional Planning and he explained that the right of ways (road) would have to be accepted by a By-Law. I realize that the Transition Board may not be receptive to the idea of the Town of

Page 2

Nickel Centre accepting the road as it exists however, I feel that this is the right thing to do considering the circumstances.

Currently there is no street name on this right-of-way and the homes are numbered with respect to Donnelly Drive. A simple solution would be to name the road Donnelly Court and no numeric changes would be required.

Therefore the following resolution is brought to Mayor and Council:

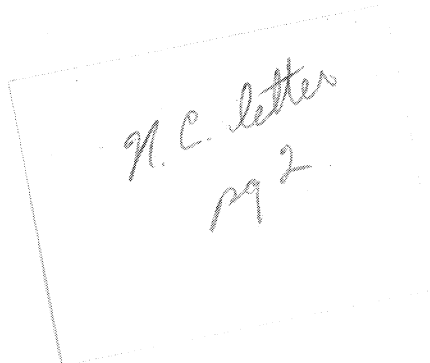
"Be it resolved that By-Law Number 2000-38 being a by-law to assume a road allowance be read a first, second and third time and passed in open Council."

Yours truly,

A handwritten signature in cursive script, appearing to read "J. Sartor/KC".

Jim Sartor,
Project Superintendent.

Encl.

A rectangular piece of paper with handwritten text in cursive script that reads "N.C. letter pg 2".

Copey

November 1, 2000

Transition Board for the City of Greater Sudbury,
199 Larch Street,
Suite 1102,
Sudbury, Ontario.
P33 5P2

Attention: Mr. Fred Dean,
Solicitor.

At the Council meeting of September 25, 2000, a request was brought forth by three homeowners who reside off of Donnelly Drive. Enclosed you will find a self-explanatory letter that they sent to Mayor and Council.

Since that time the matter has been discussed at two other Council meetings of October 10, 2000, and October 23, 2000. The questions and discussions that emanated from these meetings addressed everything from the history of this area, Town policy then and now and the possible solution.

Briefly the finding of the history of the area is that the residents here have already installed their own water line from the main Regional line off of Donnelly Drive. They have also installed their own sewer line and manhole which are connected to the main trunk line owned by the Region. They also have installed their own storm sewer system with five catch basins. Their street lighting system is also adequate. Finally and most notable is the fact that they were granted building permits over a designated right-of-way which in essence is a road that was never turned over to the Town because of the unfortunate death of Mr. Telfer.

When Town policy with regards to road acceptance was discussed, it became apparent that the policy had changed greatly from 1970 to 2000.

Mayor and Council reached what they feel is a fair solution to the problem. Since the residents have already paid for the following

- (A) Water and sewer lines.
- (B) Storm sewer system.
- (C) Street lighting.

NOV. 1, 2000

Page 2

(D) Surveys of the right-of-ways.

Then the Town of Nickel Centre should bear the cost of the paving at an estimated cost of \$4,500.00 including taxes and that the residents should further pay for the legal costs of transferring the right-of-ways as outlined on Plan 53R-8634 and Plan 53R-4680.

The residents who attended the Council meeting are in agreement to pay for the legal costs.

The Town of Nickel Centre is willing to pay for the paving of this road however, it is an unbudgeted item. This would also be a new service area for the Town.

It is for this reason that we are asking the Transition Board for permission to take \$4,500.00 out of reserves to pave this road and accept it.

I am hoping that when the Transition Board discusses this that I will be notified so I may be in attendance.

Yours truly,

Jim Sartor,
Project Superintendent.

Encl.

(E)

BY-LAW NO. 2000-38

**BEING A BY-LAW OF THE CORPORATION OF THE TOWN OF
NICKEL CENTRE TO ACCEPT A ROAD ALLOWANCE**

WHEREAS the Council of The Corporation of the Town of Nickel Centre deems it expedient to accept a 33 foot road allowance over all of Part 11, according to Plan 53R-8634, Lot 4, Registered Plan M-252, Part of Parcel 23718, S.E.S. Township of Garson, now in the Town of Nickel Centre

AND a 33 foot road allowance over all of Part 3 and 4 according to Plan 53R-4680 Lot 4 Registered Plan M-252 Part 4, Parcel 23718 S.E.S..

NOW THEREFORE the Council of the corporation of the Town of Nickel Centre

ENACTS AS FOLLOWS:

1. **THAT** the Corporation of the Town of Nickel Centre accepts a combined 66 foot road allowance over part of Parcel 23718 S.E.S., Lot 4, Plan M-252, Township of Garson, designated as Part 11 on Plan 53R-8634 and Parts 3 and 4 on Plan 53R-4680 of record in the Office of Land Registry in Sudbury.
2. **THAT** the said Part 11, Plan 53R-8634 and Parts 3 and 4 on Plan 53R-4680 be assumed as a common and public road.
3. **THAT** all by-laws at variance with this by-law are hereby rescinded.

READ a first, second and third time and finally passed in open Council this 10th day of October.

Resolution #2000-193

Boyd - Dittburner

Be it resolved that the Council of the Corporation of the Town of Nickel Centre approves the event of the Nickel Belt Snow Spirits on Saturday January 20, 2001 to be held at the Falconbridge Community Centre in accordance with Section 4 of By-law No. 93-1 to regulate, govern and prohibit motorized snow vehicles in the Town.

Carried.

UNFINISHED BUSINESS

Item 9

Donnelly Drive

Garson Right-of-way

Delegation residents were Mr. Lloyd Blanchard, Mr. Gerry Laferriere and Mr. Allan Kuzenko. Documents regarding the matter were distributed.

Letter dated October 19, 2000 from the Project Superintendent regarding Donnelly Drive, Garson right- of-way was received.

The Project Superintendent will obtain estimates of the related costs, correspond with the Transition Board and residents.

With the approval of the mover and seconder, condition #1 was removed.

The following motion was presented:

Resolution #2000-194

Boyd - Dittburner

Be it resolved that Council authorizes the Project Superintendent to approach the affected residents to sign an agreement to provide that the following condition is adhered to:

2. The affected residents pay all legal costs to have the road transferred to the Town of Nickel Centre.

And further that upon completion of the above stipulations the Project Superintendent would then approach Council to pass the appropriate By-law to be submitted to the Transition Board for approval.

Carried.

ACCOUNTS

Presentation for Town of Nickel Centre – Oct.23, 2000
Re: Donnelly Court

As long time residents of this municipality we are looking for the support, and deserve the support of our local council in a just cause.

Attached in our letter of June 20, 2000 is a chronology of events.

If the parties had proceeded as intended in 1972 the street would have been maintained over the years, paved when other streets were paved and regularly upgraded.

There is strong evidence that the intent was there to create a street in 1972. As well as a recollection of the council meeting, there was a building permit issued without restriction or minor variance to accommodate the situation. There was a very conscious effort to create the street by defining it on a plan of survey. What other purpose would there be to create these parcels on the plan. Additional building permits issued in 1982+- make reference to these right-of-ways as access. We didn't abuse the system, or break any rules, everyone got a building permit and the authorities were aware of the situation.

When reviewed in depth at council's request by your own personel (Mr. Sartor) the injustice was apparent and his recommendation was to do the **right** thing and accept this street.

We understand your concerns with a road policy that came into effect in the 1980's but we ask you to correct an historical oversight; to **right** a wrong in our history.

Why you should assume this street:

It was clearly the intention of the Township of Neelon-Garson to accept this street in 1972. Neelon-Garson was amalgamated into the Town of Nickel Centre.

This intent is confirmed by personal recollection and the facts that:

- A survey of the street was completed.
- The street parcels are registered at the Registry Office.
- A survey was not necessary to transfer the lot - it was done only to define the street.
- As an alternative to the street being established, a minor variance would have been required to issue a building permit – none was issued or requested.
- A building permit was issued.
- The **existing street** is shown on the building permit.

There was some urgency in issuing this permit because of a desire to build during the summer and the council had an extended summer recess scheduled.

Unfortunately the developer, Mr. Telfer, passed away that year and the change to the new municipality allowed this to fall through the cracks and the street was not formally accepted.

Additional reasons:

The region continued to issue building permits utilizing this street.

(Allowing a severance, building permit for a home and building permit for a garage facing the street, building permit to renovate, additional severance from parcel 1982-1998) They treated it as a street for all intent and purpose.

The municipality was generous in its interest. (sanding, gravel, etc.)

The residents paid for water and sewer, including a manhole and 6 in. line and acquiring an easement.

The residents paid for drainage and street lights.

These homes are substantial therefore the street is not going to disappear.

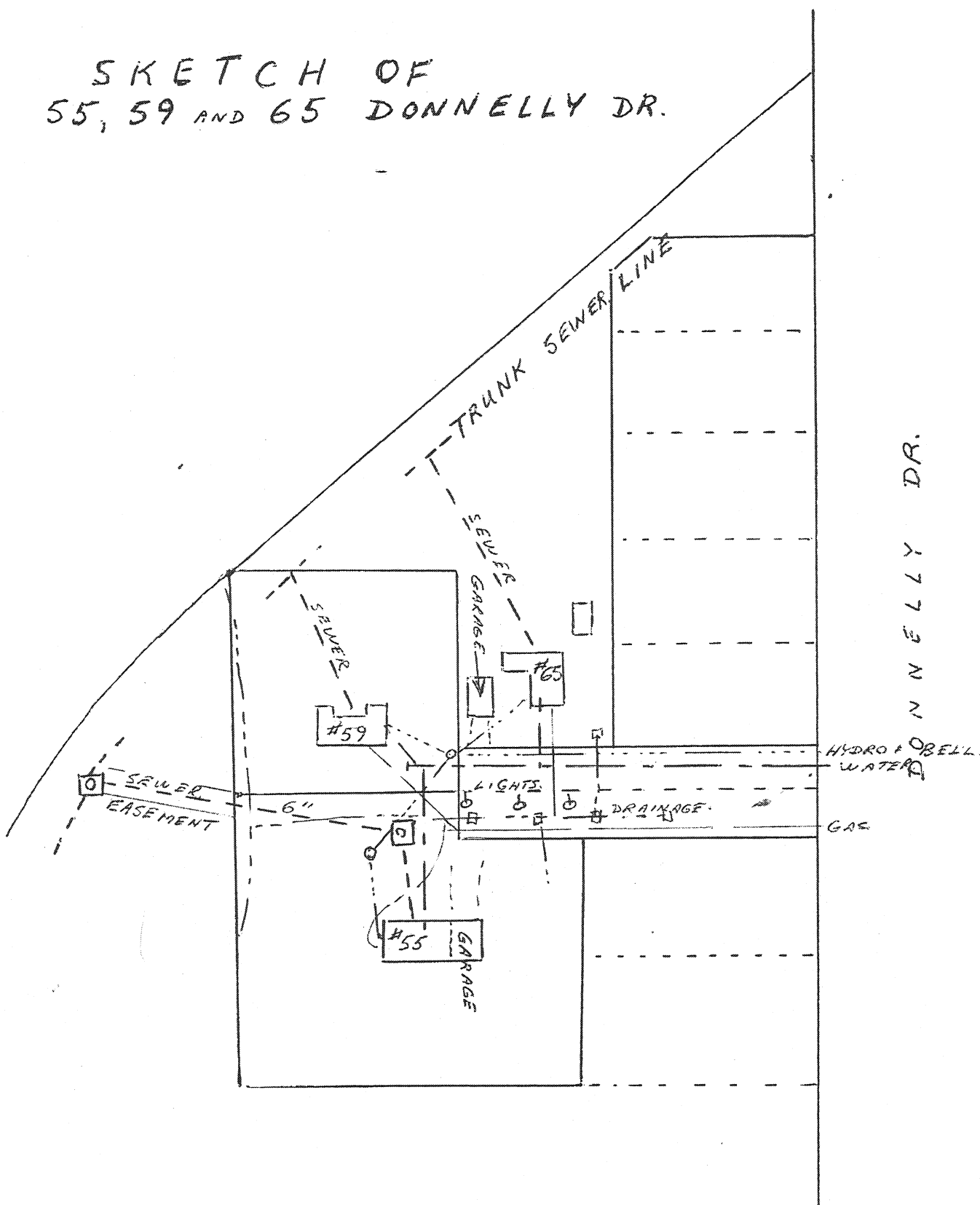
We have reached a time to conclude this after 30 + years.

The standard applied by Nickel Centre was the same as the "Estate Subdivision" in the area and the same as Donnelly Drive.

The Town of Nickel Centre did an **extensive review** of this issue and reached a decision to accept this street. This was a year long, thorough, arms length review, and the decision should be respected.

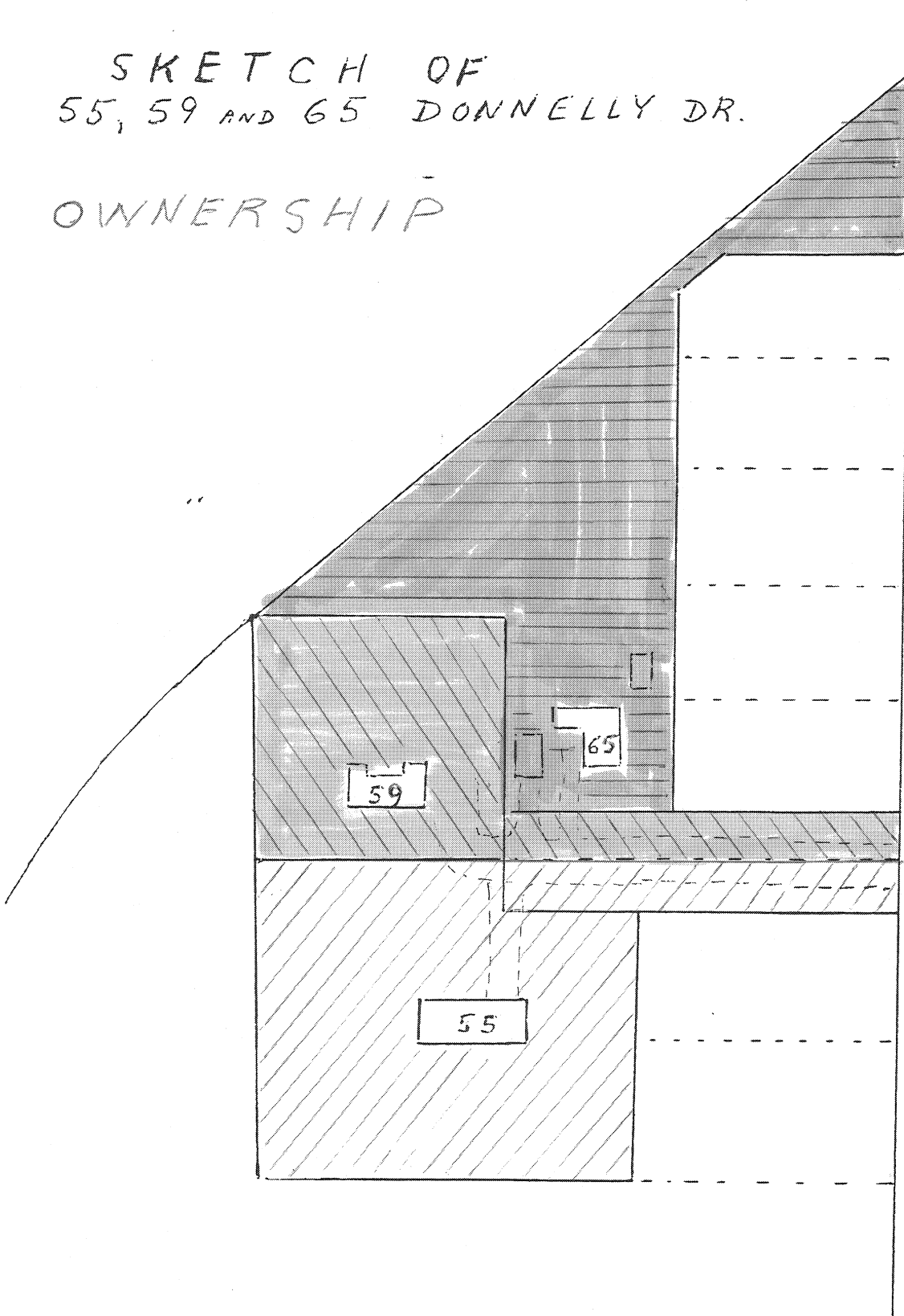
Donnelly Court, Garson

SKETCH OF
55, 59 AND 65 DONNELLY DR.



SKETCH OF
55, 59 AND 65 DONNELLY DR.

OWNERSHIP



Improvements

Re: Donnelly Drive

Three inch water line	(300 x 30)	\$5000.00
Three only - 1 inch lateral water lines	(240 x 20)	\$4800.00
Two only - four inch sewer line	(260 x 30)	\$7800.00
One only manhole		\$3500.00
Six inch sewer line	(182 x 40)	\$7280.00
Four inch sewer line	(81 x 30)	\$2430.00
Purchase of easement		\$3000.00
Survey for easement		\$1200.00
Original survey for road		\$1000.00
Legal fees, registration of easement, committee of adjustment		\$1800.00
Catch basins (5) and drainage lines		\$2400.00
Three street lights	(3 x 1500)	\$4500.00

\$44710.00

Maintenance

Three street lights	Bulbs and hydro	(250 x 20)	\$5000.00
Gravel and grading		(250 x 30)	\$7500.00
Snowplowing		(350 x 30)	\$10500.00

\$23000.00

Total \$67710.00

PLAN 53R-4680

APPROVED - 21 JUNE 1972

[Signature]
ASSISTANT EXAMINER OF SURVEYS

RECORDED UNDER No

DATE _____

MASTER OF TITLES

PARTS 1, 2 & 3 - REMAINDER OF PARCEL 13605 S.E.S.
PART 4 - PART OF PARCEL 23718 S.E.S.

NOTE.

ALL BEARINGS SHOWN HEREON ARE ASTRONOMIC AND DERIVED FROM THE BEARING OF N 89° 05' W FOR THE SOUTH LIMIT OF LOT 5 AS SHOWN ON PLAN M - 252 ON RECORD IN THE OFFICE OF LAND TITLES AT SUDBURY

SURVEYOR'S CERTIFICATE

WARRANTY CERTIFICATE

IT THAT THIS SURVEY AND PLAN ARE CORRECT AND IN ACCORDANCE WITH THE SURVEYS ACT AND THE LAND TILES ACT AND THE REGULATIONS MADE THEREUNDER

2) PMA. I WAS PRESENT AT AND OIL PERSONNEL SUPERVISE THE SURVEY REPRESENTED BY THIS PLAN.

3. THAT THIS PLAN CONTAINS A TRUE COPY OF THE FIELD NOTES OF SURVEY;

4) THAT THE SURVEY WAS COMPLETED ON THE 16TH DAY OF JUNE, 1972.

JUNE 16, 1972

JUNE 16, 1972

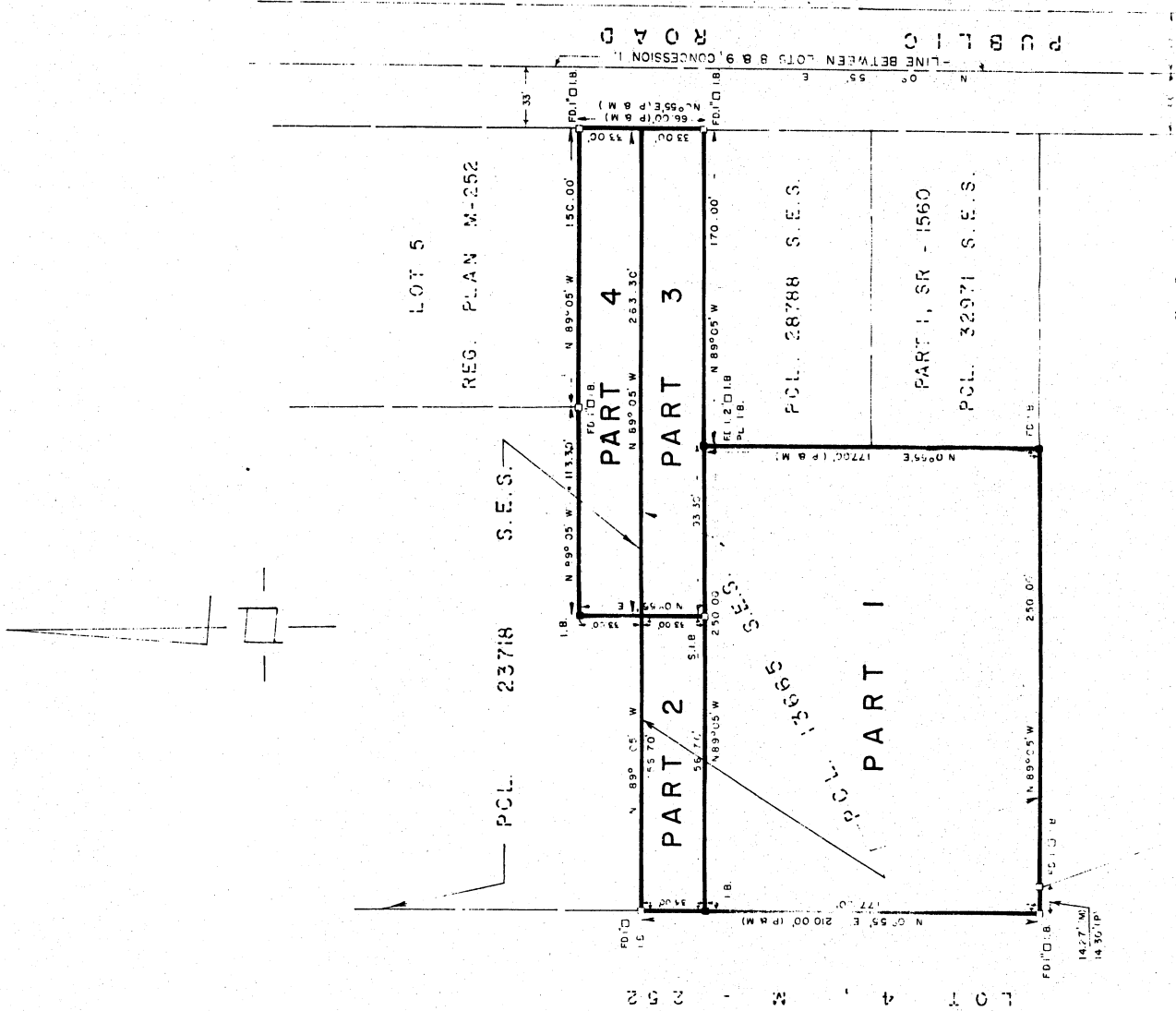
M. R. NADLER
MINIARIO AND SURVEYING

CONFIDENTIAL

7518 18" LONG IRON RAIL

DESIGNER: J. J. LONG K&N BAR

18. DINOVIS, S., J. CONCIN, BAO.

[illegible]

THE UNITED TOWNSHIPS OF
NEELON and GARSON

Building Inspection Department

Application No. B 4602

Plan No. _____

Plans must be submitted with application. Ownership and detail must be complete.

Application for Permit to Erect, Alter, Repair or Remove Buildings

TO THE INSPECTOR OF BUILDINGS:

The undersigned hereby applies for permit to ERECT

[Erect, Alter, Repair, Remove, Etc.]

a FRAME & BRICK building on the WEST

[Frame, Brick, Veneer, Stucco]

[East, West, North, South]

side of DONNELLY [Street - Avenue] Land Titles Parcel No. 13663

Plan No. 3222 Lot No. 9 House No. _____ Concession I

Distance from property line at street _____ Distance from Garage ATTACHED

Building to be used as 2 WHEELING GARAGE Any other building on same lot NO

[Dwelling, Store, Apartment]

[YES or NO]

Location of Building on lot 93 feet from WEST line of property.

[East, West, North, South]

Description of Building—

Width 24 feet Length 40 feet. Number of Storeys 1

Foundation CONCRETE BLOCK Thickness 10" Height 96"

[Concrete, Concrete Blocks, Stone, Posts]

Exterior Walls BRICK Height 96" Roof ROOFING

[Frame, Veneer, Brick, Stucco]

[Built-up, Asphalt, Roofing]

Chimney built of BRICK Lined with _____ Size _____ No. of Flues 1

[Brick, Tile, Cement Blocks]

Interior Finish GYPROC No. of Rooms, Exclusive of bathroom 6

[Gyproc, Plaster, Beaverboard, Lumber]

Trim - Base PINE 1st floor " 2nd floor " 3rd floor _____

[Pine, Fir, Oak, Gumwood]

Floors - Base PINE 1st floor " 2nd floor " 3rd floor _____

[Pine, Birch, Oak]

[Pine, Birch, Oak]

[Pine, Birch, Oak]

[Pine, Birch, Oak]

Heating HOT AIR Plumbing Fixtures: Toilets 2 Bath 1

[Stoves, Hot Air, Hot Water, Steam]

Basins 1 Urinal _____ Sinks 2 Laundry Tray 2 Septic Tank 1 Grease Trap 1

Type of Building PRIVATE GARAGE & SINGLE HOUSE

[Bungalow, Cottage, Single House, Double, Duplex, Etc.]

Value of Building without Land \$ 21,000.00

Permit Fee \$ 25.00

Owner's Name MR. A. LLOYD BLANCHARD

Plumber's Name SELF

Electrician's Name SELF

Builder's Name SELF

Min. Floor Joist Size 2"x8"

Min. Ceiling Joist Size 2"x8"

Min. Roof Rafter Size 2"x8"

Min. Beam Size 8"x8"

Plan Rec. MAY 25TH 1972

Architect NONE

Size of Entrance Culvert Required TWO STANDARDS

DECLARATION

I hereby certify that I have knowledge of the particulars contained in the foregoing statement and I solemnly declare that the same are, in every respect, fully and truly stated to the best of my knowledge and belief.

I further agree to strictly adhere to and abide by the United Township By-Laws and Regulations relating to the work, and at all times to rigidly follow the advice and instructions of the Township Building Inspector and also to save and protect the Township and all its servants and officials from any and all damages and claims for damages of any kind whatsoever arising out of or pertaining to the work referred to herein.

Dated at Garson, Ont.,

Sign here A. L. Blanchard

[Signature of Owner, or his Agent]

this 24 day of April 19 72

Address 522 Churchill St.

Sudbury

NOTE---To complete the application, a drawing must be submitted showing the location of the building on the lot. This drawing may be made on the back of this form.

**The Townships Do Not Guarantee to Provide Local Improvements
To Any Property**

DATTA

EXISTING ROAD SHOWN
ON ORIGINAL BUILDING PERMIT
TOWNSHIP OF NEELON & GARSON

N

