

FILED  
FEB 08 2006  
ORANGE SUPERIOR COURT

**Orange Superior Court  
Docket No. 177-9-04 Oecv**

## 1

Environmental Conservation. The Town required a minimum lot size of one acre, however, so the Tremblays had Carter prepare a second plan, which he did, and the Tremblays used it to get a revised permit. The second plan (also not a professional survey) showed a parcel of 1.03 acres, and is marked "revised 6/3/92." See Appendix C for a rough depiction. Approval was obtained for the revised subdivision.

The Tremblays then hired an attorney to prepare the deed. They did not have a professional survey of the subdivision prepared. The warranty deed from Tremblays to Rowley was signed September 16, 1992, and recorded the next day. The subdivision permit was also recorded. It includes a reference to "the plan prepared by Robert Carter and listed as follows: Site Plan, Dated 11/20/91, last revised 6/3/92." The 'plan' itself was not recorded.

The contents of the deed is at the heart of this case. Plaintiffs are successors in interest to the Tremblays, and Defendants are the successors in interest to Rowley, and both sides agree that the description in the Tremblay-to-Rowley deed determines where their common boundary is. They disagree, however, about where the description places the line on the ground. Both sides presented expert testimony of a professional surveyor. Both surveyors agree that there are problems with the description. Each surveyor applied his knowledge, skill, education, and training to develop an opinion of the best construction of the deed language.

Exhibit H is the Tremblay-to-Rowley deed. The particular description begins with the following introductory paragraph: "Said land and premises are more particularly described as a triangular parcel of land situated on the northerly side of Town Highway #25 and is more particularly described as: . . ." Both surveyors agree that the parcel described thereafter is not triangular in shape. Both have depicted the parcel on surveys they prepared, but with different shapes, though each of them is of the opinion that his depiction most accurately reflects the intent of the grantor, the Tremblays.

The surveyors agree about the point of beginning and the first two lines. Both located the same pins at the end of line 1 and line 2. After that, they disagree. See Appendix D for a rough depiction of the Plaintiffs' surveyor's version (Townsend), and Appendix E for a rough depiction of the Defendants' surveyor's version (Abst).

Robert Townsend, surveyor for Plaintiffs Bizzozero, found that the distances on lines 3, 4, and 5 could not be made to close properly. No angles were specified for the corners, but general directions were given (northeasterly, southeasterly, and along the edge of the road). Townsend determined that he needed to adjust the distance of at least one line to make the perimeter close. Using the hierarchy for interpreting deeds, he reasoned that monuments control over distances, and that "the northerly edge of the right-of-way of Town Highway #25" was a monument with a fixed position. Thus, he worked with lines 3, 4, and 5 so as to determine the point where 330' *along TH #25*, which he treated as a monument, could intersect with the point at which line 4, after 430' of length met with TH #25, while maintaining the 30' distance of line 3.

He found it to be impossible, because it would break the parcel into two separate pieces, separated by land owned by others. He needed to adjust the distance of one of the three lines. By adjusting the distance along TH #25 to 335', he could maintain the distance of line 3 at 30', maintain the distance of line 4 at 430', and keep the adjustment along TH #25 to a variation of only 5'. He thought this was a reasonable variation, given the circumstance that the edge of the road is not a straight line, and therefore subject to variation in measurement. He also believes that this is consistent with the Lagerstedt survey, although he acknowledges that there is no reference to the Lagerstedt survey in the Tremblay-to-Rowley deed.

One significant consequence of this result is that it creates a narrow sliver of land as an appendage to the main piece, with a "neck" between the two portions only two feet wide. The neck is extremely narrow, making use of the land at the neck and within the appendage area impractical for many purposes. The total area of the parcel with this configuration is 0.92 acre. The deed recites, "Meaning and intending hereby to convey the lands and premises conveyed within the aforesaid bounds thought to contain one (1) acre, more or less." Townsend relies on the rule of construction that a metes and bounds description controls over recitation of acreage. He also concludes that 0.92 acre is within the margins of "more or less" one acre.

Another consequence of the Townsend version is that the angle of line 3 does not actually follow a "northeasterly" direction, as the deed recites, because the angle is enlarged significantly to accommodate the 430' distance to the road. The result is that the course of line 3 is actually slightly northwesterly, rather than northeasterly. In addition, the corner between lines 3 and 4 is a fairly sharp point.

Townsend does not use evidence of either Carter plan because neither was recorded, nor does he use any evidence about the Tremblays efforts to enlarge the parcel to comply with Town zoning requirements, because he based his analysis on the contents of the deed itself and not outside information. He does support his version, however, by noting what he believes to be consistency with the Lagerstedt survey, which is not a document referenced in the deed description. He particularly notes that the Lagerstedt plan shows 329.8' along the road from the point of beginning to another point, but it is not clear that the second point is related to any point described in the Tremblay-to-Rowley deed.

Jonathan Abst, surveyor for Defendants Lowes, agrees that literal adherence to the deed description would break the Lowe parcel into two separate pieces, one of them landlocked, and that it is therefore necessary to resort to rules of interpretation to determine the common boundary between the subdivided parcels. He agrees that the distance of at least one of the last lines (lines 3, 4, and 5) must be changed from the number included in the deed description (30', 430', and 330') in order to create a parcel that closes. Abst does not disagree with the use of the road as a monument for determining the end point of line 4.

Unlike Townsend, who chose to keep line 5 as close to 330' as he could while relying on 430' to the road as the most significant element in the description, Abst determined that the

distance in line 5 is the one for which an adjustment is most supportable because it is the last line, and therefore the actual distance should be the amount left over after all the other calls are made according to the description. His opinion is that it is more important to maintain the integrity of the course for line 3 in a “northeasterly” direction, rather than changing it to a northwesterly direction.

He therefore used for line 3 a course similar to the course for line 1, which also proceeds “in a northeasterly direction”. Using a northeasterly course, he fixed the end point of line 3 at a point from which he ran line 4 a distance of 430' feet to TH #25, as the deed describes. From that point, he returned along TH #25 to the point of beginning. The area of the parcel thus laid out is 1.11 acre.

Abst acknowledges that he relied on the outside evidence from the Carter sketch in determining the intent of the grantor, although his adjustments to the deed description do not result in the same configuration as the parcel sketched by Carter. He also relied on the outside evidence that there is one acre minimum zoning in the Town on the theory that the grantor would not have created an “illegal” lot. He gave no significance to the Lagerstedt survey, as it predated the subdivision, was not referenced, and does not show whether the distance along the road is straight or follows the centerline or the edge.

A significant consequence of the Abst version is that line 5, which is the final line and runs along TH #25, is 365.7' long. This is 35' longer than the distance described in the deed. The shape of the Abst version parcel includes not a long sliver but a “handle,” with the narrowest point of the neck being approximately 20' wide and with no sharp angle at the back end.

### **Conclusions**

Both sides agree that the description is faulty as written, and the court’s role is to interpret the deed in a manner that gives effect to the intent of the grantor. Plaintiffs argue that the court should use the hierarchy of evidence relied on by surveyors, specifically that monuments control over distances, and a metes and bounds description controls over acreage. Furthermore, the intent must be inferred only from the deed and recorded documents and not outside evidence. Defendants argue that outside evidence may be used to determine the intent of the grantor, and rely heavily on the argument that the grantor would not have intended to create an illegal lot.

The law provides that the court should apply the established rules of construction to the deed language. *Spooner v. Menard*, 124 Vt. 61 (1963), *Withington v. Derrick*, 153 Vt. 598 (1990). Therefore, the court must apply the rules to determine the grantor’s intent from the deed itself and referenced recorded documents. *Monet v. Merritt*, 136 Vt 261 (1978), *Pion v. Bean*, 2003 VT 79, 176 Vt. 1. This means that evidence concerning the Carter sketches, the Tremblays’ revisions that were done to create a lot of a full acre, and the Lagerstedt survey are all excluded from consideration. The determination depends on an analysis of which version is most faithful to the deed description and best reflects the intent of the grantor as expressed in that description.

The court concludes that both versions are within the scope of the grantor's intent insofar as the grantor intended to create a parcel "thought to contain one (1) acre, more or less." This language shows that the grantor acknowledged not being sure about the exact acreage, and that the one-acre designation was approximate. Both 0.92 and 1.11 acres are within this range.

This leaves the court with the task of evaluating the application of the rules of construction of deeds used by the two surveyors. Both of their methodologies are based on well-researched facts and sound reasoning, and both have faced a difficult challenge in a responsible and professional manner.

The court adopts the Abst version for two reasons. First, from a technical point of view, the heavy reliance by Townsend on the distance along the road caused him to change the angle of line 3 to one that is inconsistent with the deed description: from northeasterly to northwesterly. It is true that the Abst version results in line 5 being significantly longer than the deed description, but the Townsend version calls for a departure from the deed description in two ways: the angle of line 3 (northeasterly to northwesterly) and the distance of line 5 (330' to 335'), whereas the Abst version calls for a departure from the deed description in only one way: the distance of line 5 (330' to 365.7'). Admittedly, it is not clear that the fact of two departures versus one departure carries significant weight. More persuasive is the fact that the one adjustment in the Abst version is to the length of the last line needed to close the perimeter, and not to any other term in the description.

Townsend treats 330' along TH #25 as a monument. While the road is a monument for purposes of determining the point to which line 4 runs, the distance along the road cannot be treated as a monument in this instance, because the point at which line 4 meets the road is at issue. The distance of line 5 along the road is simply a distance, like the other distances, and not of monumental value. Thus it may be adjusted if necessary to give effect to the intent of the grantor. *Monet* at 265.

The second reason is based on a common sense interpretation of what a grantor would reasonably intend. The shape of the Townsend piece is very odd. The narrow two-foot neck, the long sliver at the back, and the sharp angle at the back end create a shape that severely limits reasonable use of the parcel for practical purposes. It must be inferred that a grantor intends to convey a parcel in a configuration that is reasonably usable. It is difficult to conceive that a parcel with the Townsend shape conforms with a common sense interpretation of a grantor's intent to convey usable land. The Abst shape creates a parcel that is more usable, and thus more in line with what can reasonably be inferred as the shape of a parcel a grantor would intend to convey.

For the foregoing reasons, the court declares that the common boundary between the parties' parcels is as shown on Exhibit M, the Abst survey.



## Order

Defendants' counsel shall prepare a form of judgment consistent with this decision and submit it to Plaintiffs' counsel for review as to form.

Dated at Chelsea, Vermont this 8<sup>th</sup> day of February, 2006.

*Mary Miles Teachout*

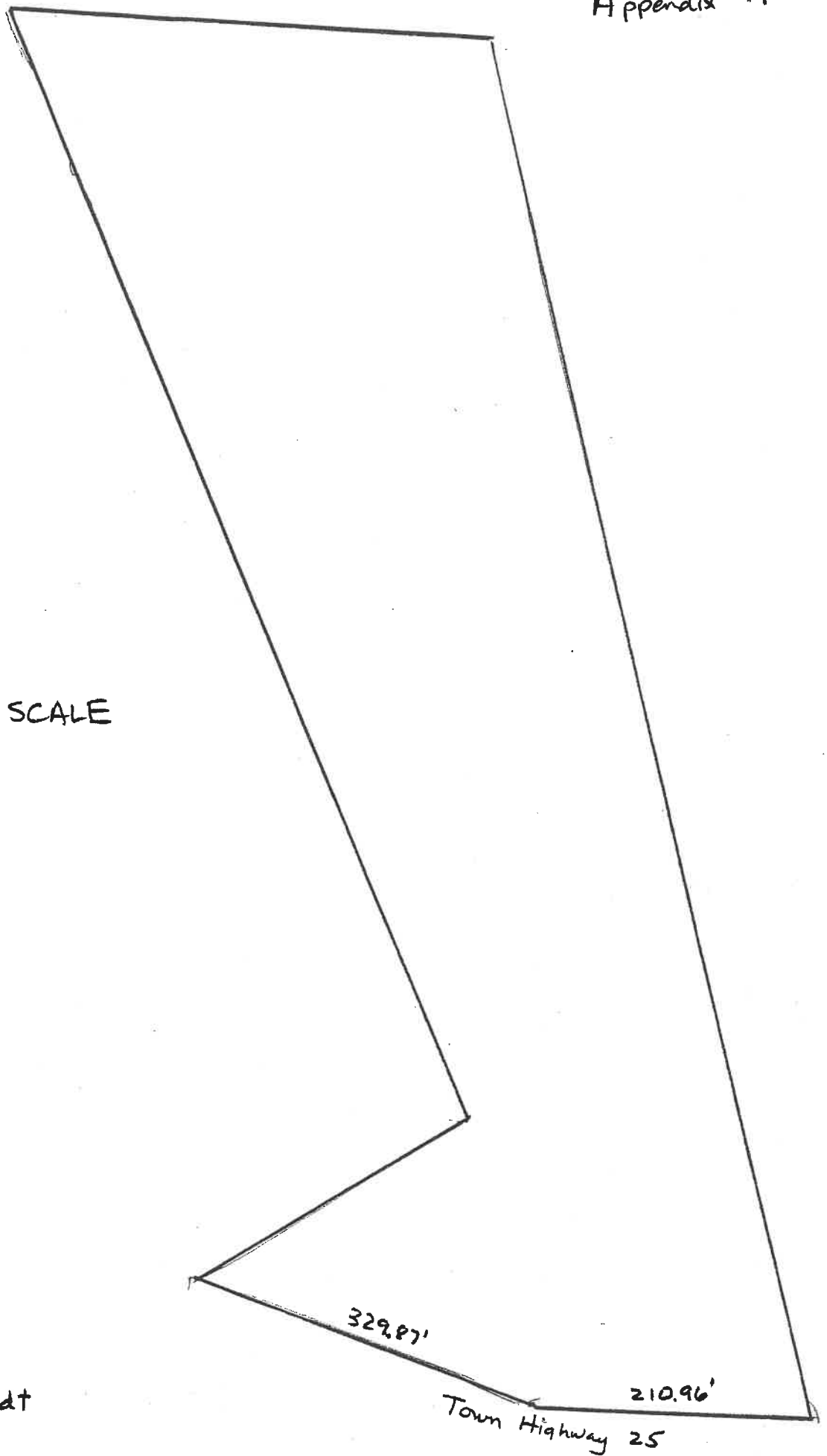
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Mary Miles Teachout  
Presiding Judge

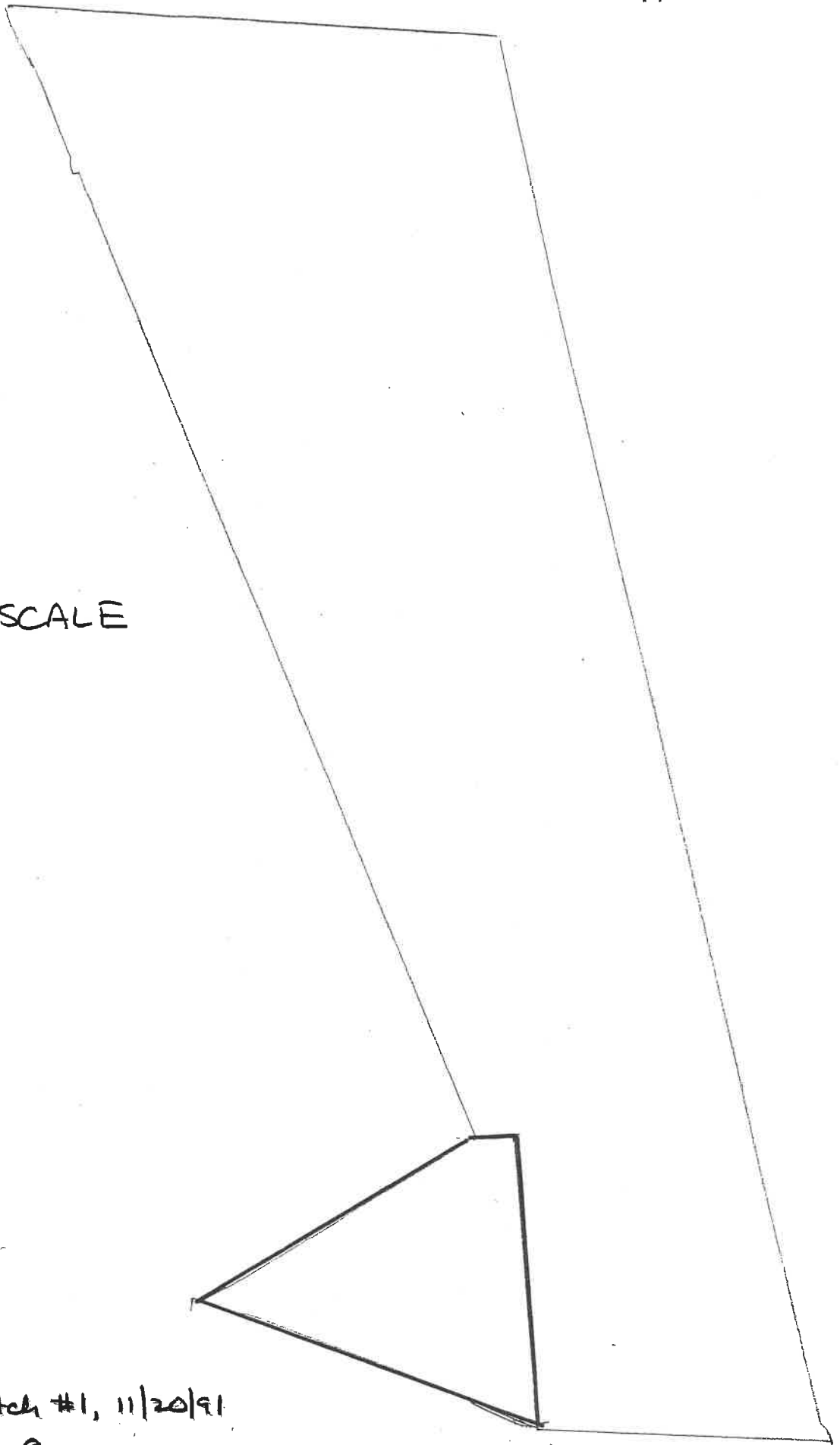
Appendix A

NOT TO SCALE

From Lagerstedt



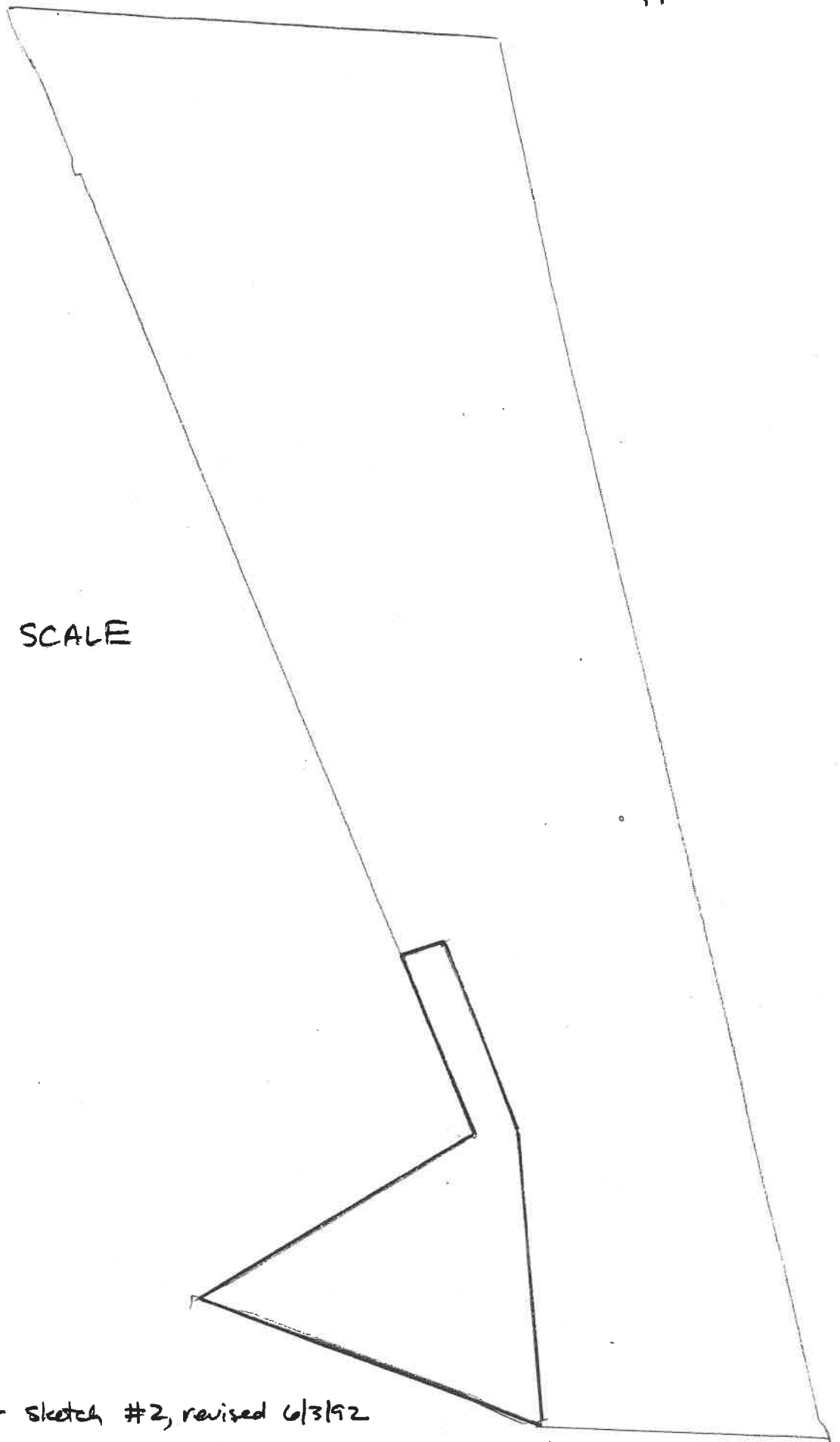
NOT TO SCALE



Carter sketch #1, 11/20/91  
.9 acre

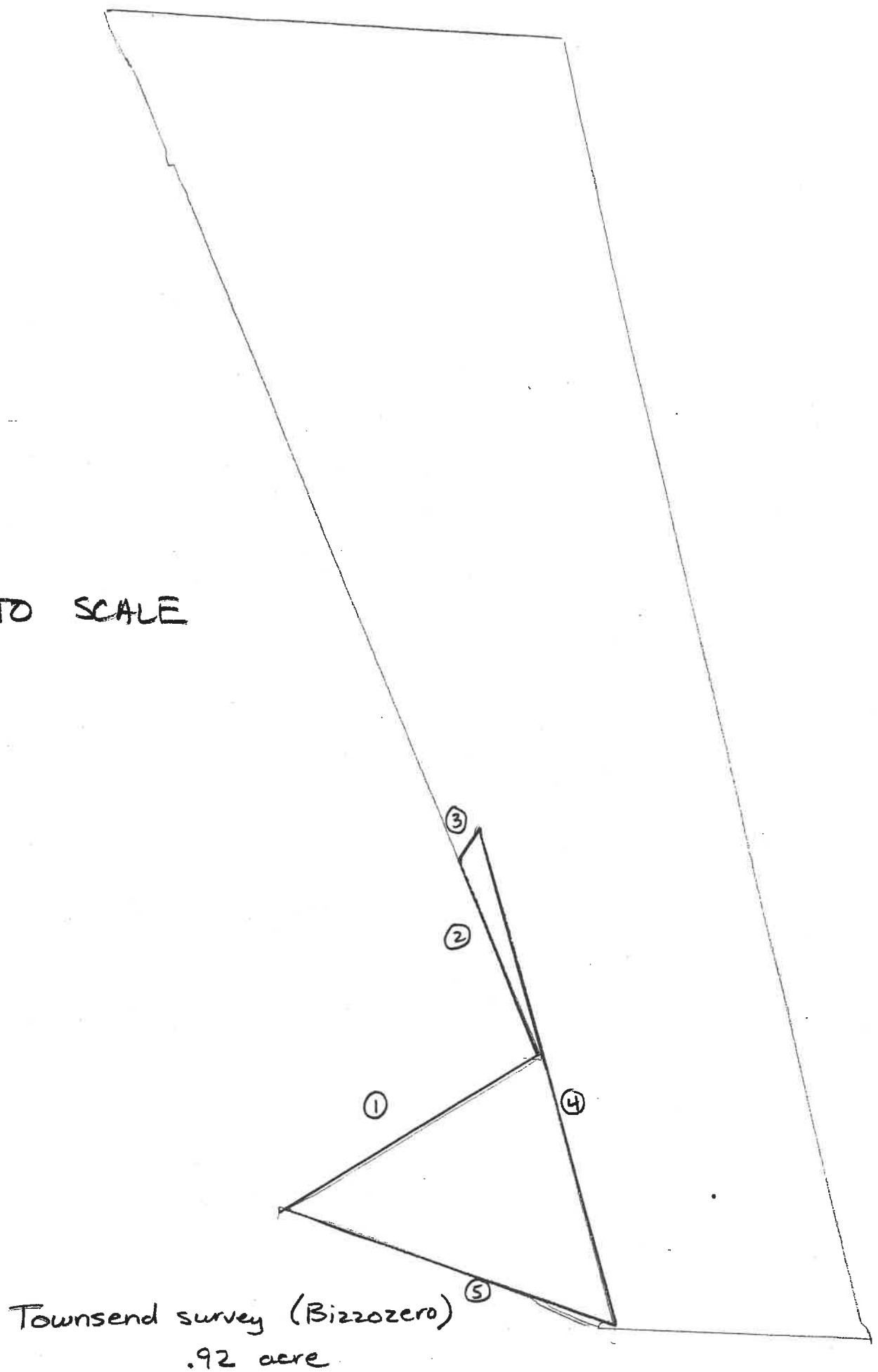


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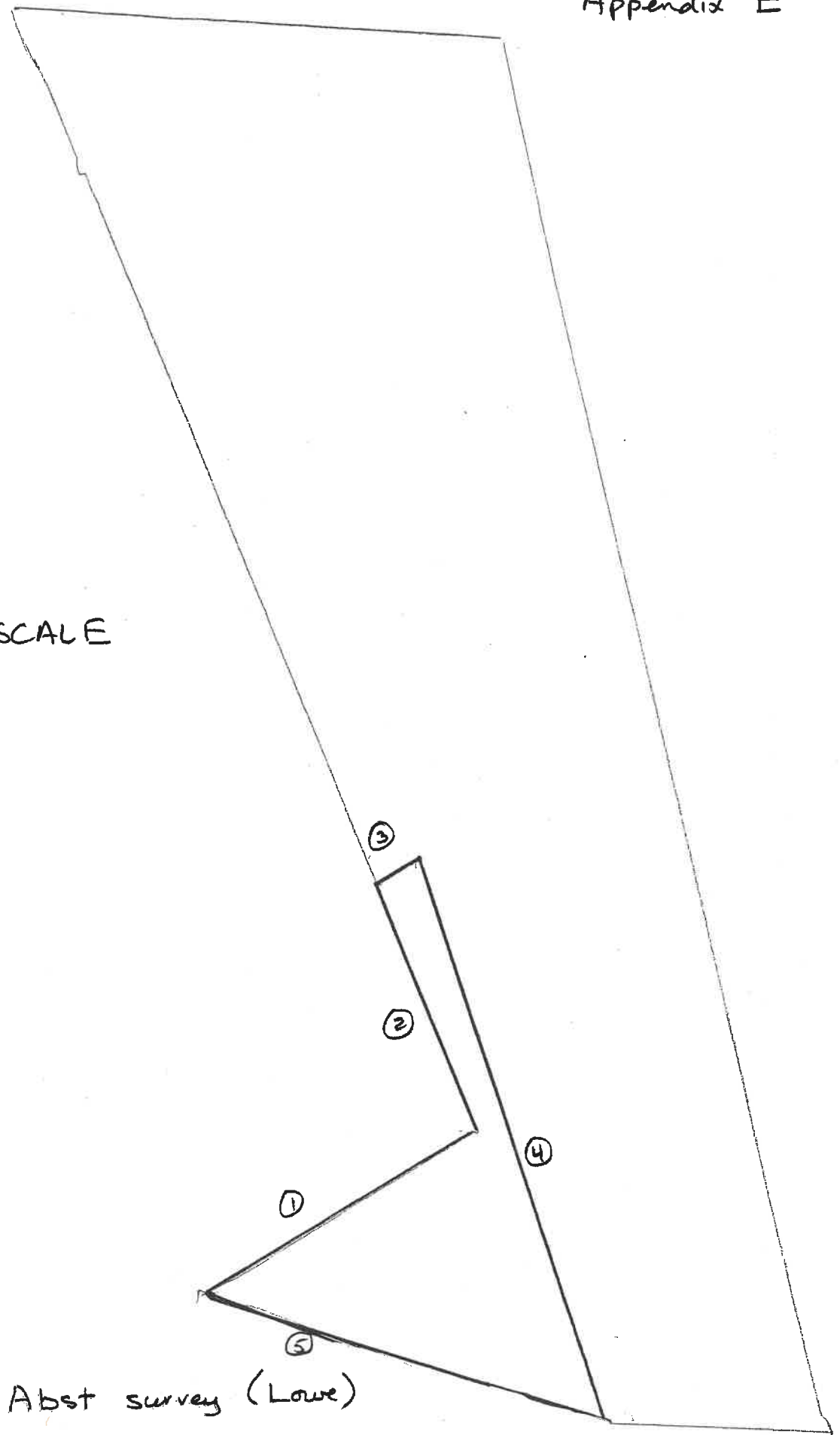
Carter sketch #2, revised 6/3/92  
1.03 acre

NOT TO SCALE



Townsend survey (Bizzozero)  
.92 acre

NOT TO SCALE



Abst survey (Lowe)  
1.11 acre