
34 Howard St - survey question

Meredith Zane <kennedy.shatzer@gmail.com>
To: Christina Stacey <cstacey@portlandmaine.gov>
Cc: Robert van Wert <bob@portlandrenovations.com>

Tue, Mar 14, 2017 at 2:17 PM

Hello Christina,

My name is Meredith Kennedy and I and my husband, Zane Shatzer own 34 Howard Street. As you may remember, Bob van Wert, our builder is leading the permit process for our new house to be built at 34 Howard once the existing structure is removed.

As noted in your previous email to Bob, you asked us to provide additional information from the surveyor concerning the discrepancy between the deed and the survey.

The attached survey highlights the area in question (app. 2' to the south side of the property).

Directly below I've attached correspondence between John Swan and Randy Loubier at Owen Haskell Surveyors to Ben Lund our attorney. I think this should clear-up any questions remaining concerning the deed/survey discrepancy.

Please let me know if you need anything else. You can contact me at 207 245 4472. We are under a big time crunch since we are trying to close on our construction loan but would first like to assure our lender the city will ok the deed through Zoning Compliance as stated.

Thank you in advance.

Meredith

From: John Swan [mailto:jswan@owenhaskell.com]
Sent: Sunday, March 12, 2017 9:16 AM
To: Ben Lund
Cc: bob@portlandrenovations.com; rloubier@owenhaskell.com
Subject: Shatzer-Kennedy-34 Howard Street-Land Survey

Good Morning Ben – I understand from Bob van Wert at Portland Renovations that we have a mutual client in Meredith and Zane owners of property on the corner of Turner and Howard Streets in Portland. In August of 2016 we complete a survey of that property through Portland Renovations. Since then an issue has been raised about the size of the lot. It sounds like Two Lights Settlement services are questioning our survey.

Our client has a perfectly good, current survey of their property. Because the deed has a 40' call in it along Turner Street someone totally ignored the rest of that call which calls for the abutter. By requiring our client to get a boundary agreement they are saying that the 40' (distance) holds over the call for the abutter (monument). That goes against all the rules of evidence which have been in place for ever. It would also cut off the corner of our client's house. By that reasoning if the abutter were only 38' from Howard Street not 42' would the Title Company still insure our client the full 40'?

I just though you should have some explanation of why we did what we did. I have left a message for Bill Walsh from Chicago Title, but have not heard back yet. This is a big issue to Owen Haskell, Inc. and the survey community in general if the long standing rules of evidence are now being changed outside the court room. I am not trying to practice law, but the rules of boundary evidence are clearly with in the purview of the Land Surveyor in my opinion.

Hope I have not over stepped my bounds.

Thanks

John



John W. Swan, PLS

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Ben Lund <BLund@brannlaw.com>

9:08 AM (4 hours ago)

to rlobier, John, me

Thanks, Randy. The good news is that the neighbor's property description is consistent with the conclusions that you and John reached about the correct description of Zane and Meredith's property, as depicted on the survey.

John, after a review of the earlier deeds and researching the case law, I agree with your view; if this issue comes up for you in the future, the Maine Supreme Court decision which is on point is Edmonds v. Becker, 434 A.2d 1012 (Me. 1981). The best way to describe this is that a call to the land of an adjacent owner is construed as a monument, and a monument takes priority over a conflicting distance call. For purposes of construction, when a call runs to adjacent land, the deed is interpreted to convey the entire parcel, and not that the grantor intended to retain title to a narrow strip of land.

Zane and Meredith, after considering this issue overnight and receiving the neighbor's deed and mortgage from Randy, I now agree with John that there's no need for the boundary line agreement. (I was concerning that the neighbor's description was inconsistent with the description for your property.) Given this, if Two Lights Settlement is the source of concern, it would be more efficient for me to speak to the attorney who's conducting the title review for your lender to explain my conclusion, and there is no need for you to contact your neighbor about a boundary line agreement.

Also, I'm glad to work with the City of Portland if necessary to address this if necessary. The City's tax maps show your property as 40 feet by forty feet, but if I'm using the correct scale on that plan, they get there by "rounding" to showing you and your neighbor as having a little more than 40 feet each, and the other two lots on that side of the street as having slightly more than 94 feet, rather than 93 feet; in fact, your property includes the "missing" 1.4 feet. (This is an excellent example of how tax maps lack the precision of a survey.)

Let me know how you'd like to proceed. Thanks.

On Thu, Feb 23, 2017 at 1:51 PM, Christina Stacey <cstacey@portlandmaine.gov> wrote:

Hi Bob and Zane,

Thank you for sending the additional requested information. I have one last question before I can sign off for zoning compliance. I noticed that the deed description for the lot and the surveyed boundaries of the lot are slightly different. The deed description describes the lot as a 40' square, but the surveyed boundaries vary a bit from that. I am guessing this is the result of the simple fact that this land was surveyed many years ago, before modern techniques existed. But it would be helpful to get an opinion from your surveyor about the discrepancy and whether there is any way to resolve it, such as by revising the deed description. Could you get in touch with your surveying company and ask if they could send me any info and opinion they can on the


discrepancy?

Thanks,
Chris

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