

June 20, 2005

J. Patrick Morris
344 King Street
Bridgewater, NS
B4V 1A9

Re: your file 784-97 Proposed Land Trade

Dear Sir;

As you are no doubt aware, the volunteer Committee mandated to address issues of public access and public ownership in the Sperry's Beach area has been corresponding with Richard Hurlburt, Minister NS Department of Natural Resources over the past year. At 2pm on the afternoon of Saturday, June 25, 2005 we will deliver a report to a public meeting which will, among other things, detail the contents of your 1998 Letter of Opinion re title and ownership. We will be pointing out (as we have to Minister Hurlburt) various anomalies we have identified, and are writing to invite you to attend to respond to any questions.

For reference purposes, please find enclosed copies of

- letter from Trevor Dalgleish to you, dated August 20, 1997
- your reply dated January 13, 1998

In our research we have established that the original Grant was made to Matthew Parks in 1771. A portion of that Grant (which today includes the Sperry's Beach area) was sold by Matthew Parks to his son John in 1790. Title remained intact in the hands of John Parks until 1812, when a section of those lands was purchased by the Crown for the purpose of a public road from Petite Riviere to Broad Cove

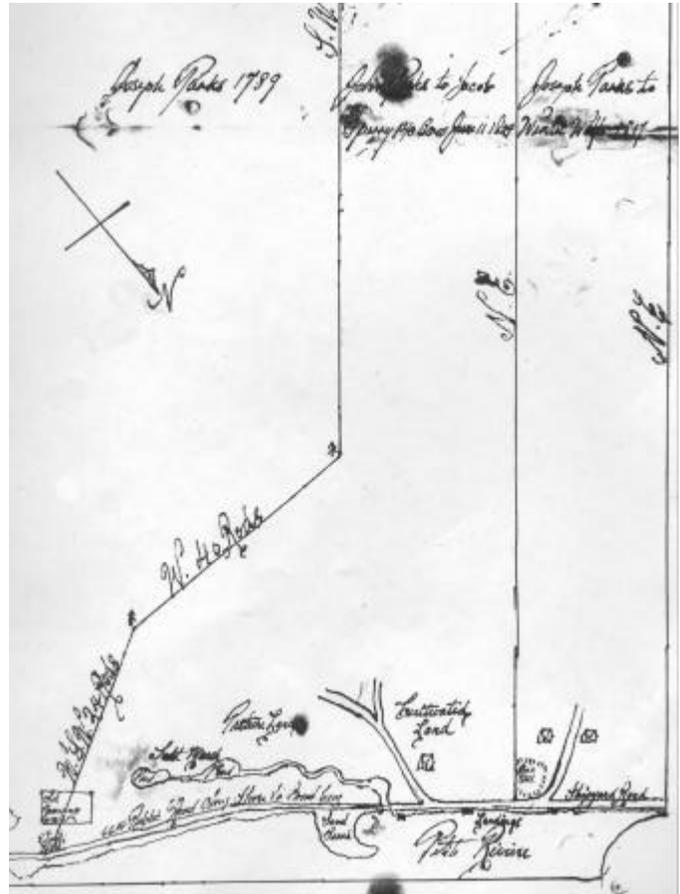
Whereas Leonard Vogler and seventeen others presented a memorial to the General Sessions asking for a Public road around the shore towards Broad Cove which was considered at the October term 1812 and Michael Hirtle, Christopher Lohnes and John Cross appointed a commission to lay out and inquire into the advisability of granting the prayers of petitioners the Commissioners reported favourably upon said road, which they laid out the legal width of sixty six feet and allowing Mathew Parks ten shillings land damages, the rest of the property owners were allowed no recompense for land damages. On Nov 5 1812 the Sessions confirmed the action of the Commissioners and granted this public road described as follows:- Beginning from the main road at Robert Parks and to go along the shore of John Parks then to cross the sand beach, then to run the various courses of the shore to run thru Cherry Point and then again the various courses of the shore towards Broad Cove and to be as near the shore as can be made and continue on till to Broad Cove as mentioned in Petition.

The Crown retains ownership of those lands (NS Public Highways Act, Section 11(1-2) and Section 17 [<http://www.gov.ns.ca/legi/legc/statutes/pubhighw.htm>] and Order in Council 95-737 [<http://www.gov.ns.ca/legislature/oic/OICDetails.asp?OrderPK=5461>])

Twelve years later, in October 1824, John Parks sold the property to Jacob Sperry, described in the deed as:

Beginning at Wandel Wolf's lot at the shore on the north side of a Flax Hill thence running south east untill it meets Joseph Parks Land or bounds on the Shore to an alder bush a parcel of stones and sand hill. Thence running west south west twenty four rods, through the middle of the burying ground to a small spruce tree marked, thence west forty rods untill it meets the southwest line near a large rock with a heap of stones on it, thence south west five hundred and twenty rods, or one mile and three quarters, thence north west thirty rods to Wandle Wolf's lot aforesaid, thence in a straight course north east to the shore and bounds first mentioned

We had made available to us the original Plan of Land- John Parks to Jacob Sperry 1824 (on file at the Halifax offices of Stewart McElvey Stirling Scales). The "66 Ft Public Road Along Shore to Broad Cove" is clearly labelled, as are the metes and bounds markers, dimensions etc noted in the above deed description. As is evident even in the reproduction here, the boundary lines of the property do not extend across the Public Road, which would have been but twelve years new at the time of the Parks – Sperry transaction.



Title remained intact in the hands of the Sperry family until the early 1900's. In November 1900, a report was delivered:

To His Honor the Warden and the Councillors of the Municipality of Lunenburg, now in session convened.

Gentlemen:

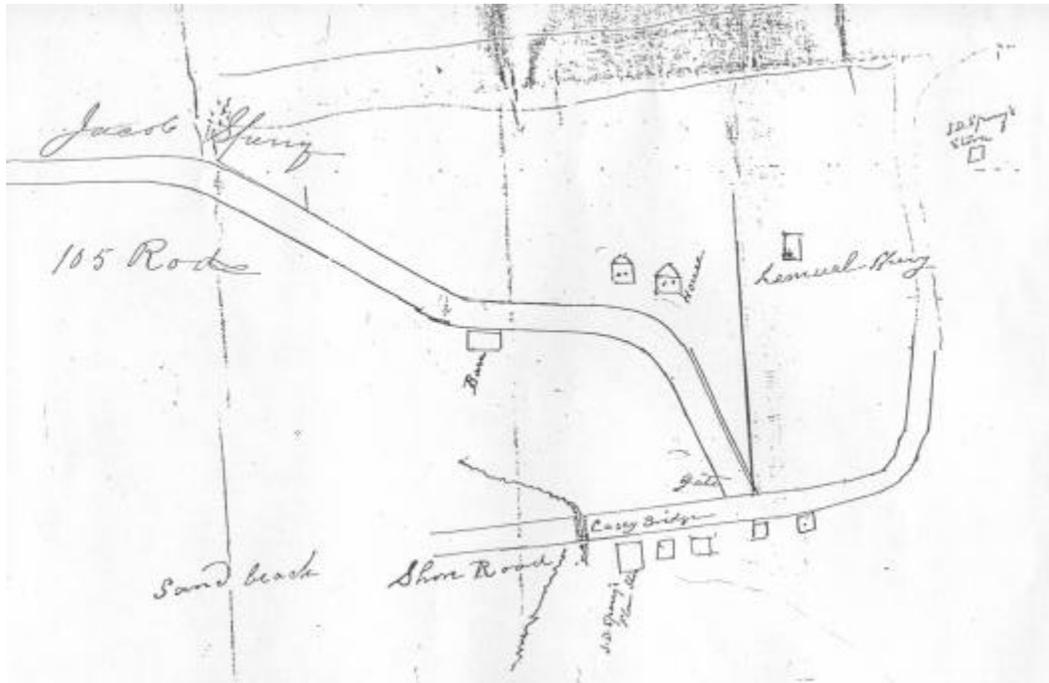
According to the instructions contained in the Precept addressed to me by the Municipal Clerk to make diligent inquiry with reference to a proposed new Road, petitioned for by the inhabitants of Petite Riviere in the said Municipality, I beg to report as follows:

That a Public Road passing through the lands of the proprietors is necessary as the so-called Shore road from Jacob Sperry's gate to Smelt Brook oftentimes is impassible. The illegible illegible sea carrying away the Bridge and destroying the road in such a manner rendering illegible impossible until repaired and then in not very good condition for travel. I could not agree with Mr Jacob Sperry for land and improvements for the proposed new road illegible agreed with the other proprietors illegible in agreement. Annexed will be found a plan of proposed new Road, shewing its length and width and the proprietors of the land over which it will run. Also an Agreement with the owners of the land, stating the total amount of damages to soil and total cost of fencing.

All of which is respectfully submitted

Edwin Sperry, Appraiser

November 6, 1900



The disagreement “with Mr Jacob Sperry for land and improvements for the proposed new road” was resolved three years later:

*To The Warden and Councillors of the Municipality of Lunenburg
 Report of Arbitrators appointed to appraise damages to land of Jacob A Sperry in connection
 with proposed new road to cross his property
 We have gone carefully over his premises; have looked at the proposed site, as laid out by Mr
 Edwin Sperry, Commissioner, and have taken into consideration the various advantages and
 disadvantages of the proposed road. To our minds the main argument against the proposed road
 is the fact that it cuts a large pasture through the centre and leaves the one-half without water.
 He will also have to dig a new well, for watering stock, to replace one which the proposed road
 will cause to be filled up
 We have decided that the sum of One Hundred and Ninety Five Dollars (\$195.00) is a fair and
 just valuation for damages and the same is satisfactory to Mr Sperry
 Dated at Petite Riviere, NS
 this third day of September, A.D. 1903
 William E illegible
 Truman Jodrey
 Aubrey H. Sperry*

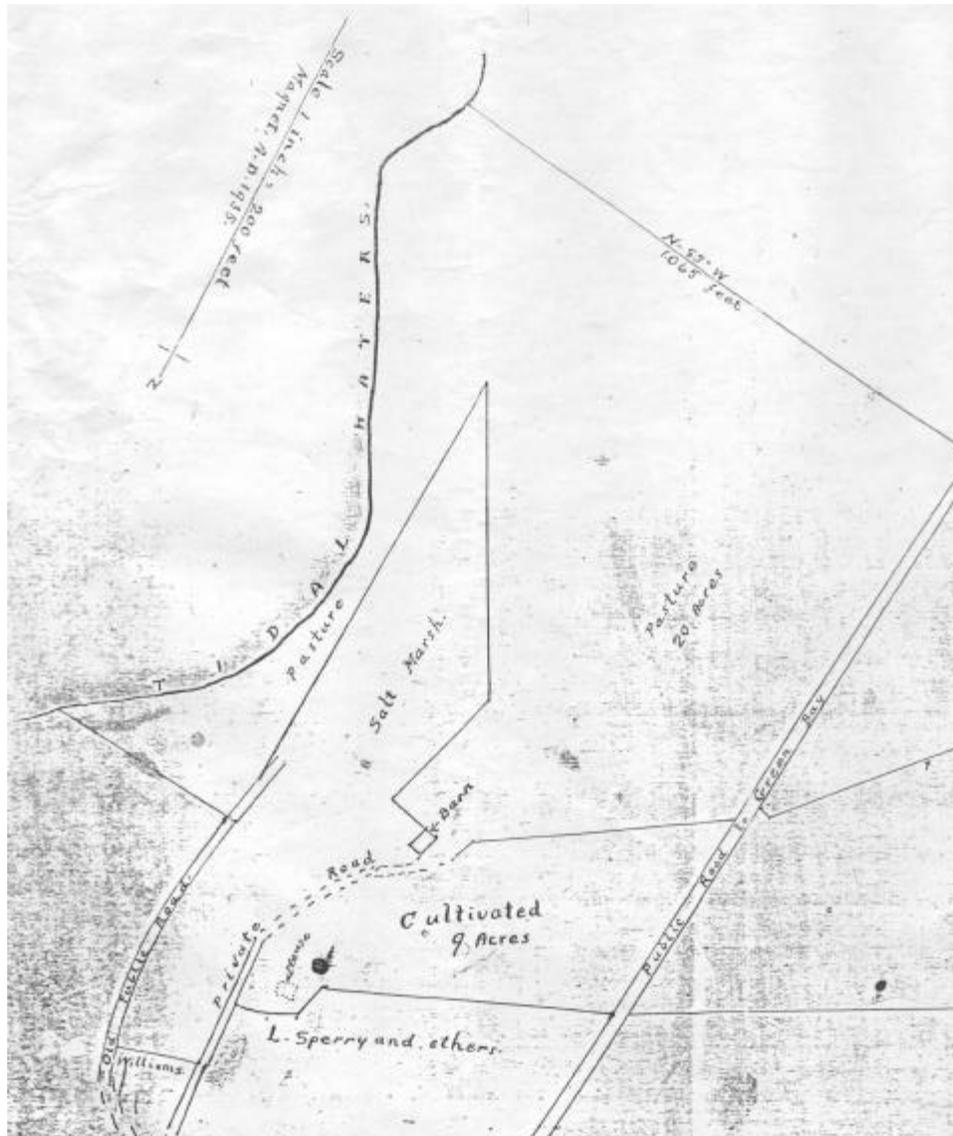
It was not, however, until 1910 that a final decision was made

*Road at Petite Riviere
 Samuel Sperry, Commissioner, who laid out and reported upon the road. Notices were posted
 and approved of by the Council in 1909. J.D. Sperry was then illegible for No8 and Warden of
 the County, which position he resigned to become a candidate for the Dominion Parliament to
 which he was elected in 1910. Dr. Messenger was then elected Councillor that that District and
 he opposed the route being too near the shore. The old proceeds were thus thrown out and a new*

route laid out, with right of way amounting to 515.00 allowed the landowners L.C and J.A. Sperry, John Himmelman, James and Edgar Parks. Confirmed April 19 1910.

Title is passed by Will between several generations of Sperry, but between the original purchase by Jacob Sperry in 1824 and the eventual sale to the Himmelman family in 1940 there is no record of purchase by or transfer of title to any member of the Sperry family of any lands or property between the public road granted November 5, 1812 and the shore.

A Survey and Plan of the lands of Mrs Elizabeth Sperry at Petite Riviere N.S. was drawn by C.H. Starratt P.L.S. dated August 1935 and registered October 21, 1935.



This Plan shows both the 'new' "public road to Green Bay" on the right, and a partial representation of the 'old' public road along the shore on the left.

The property was sold by Mrs Elizabeth Sperry to Ernest Himmelman in 1940:
beginning at the shore, at the north-east bound, between the said Jacob A. Sperry
and lands formerly owned by Wendle Wolf, deceased- now in possession of one Lemuel C.
Sperry- from thence running in a south-easterly direction, over the beach until it comes to the
northern bound of land formerly owned by one W. Elkanah Sperry- now by one John
Himmelman- thence westerly etc

Comparing this description with that of 1824, it is clear that the Sperry family sold what
had been originally purchased by Jacob Sperry, and no more.

When we studied your Letter of Opinion (dated January 13, 1998 in response to Trevor
Dalglish to you, dated August 20, 1997) several anomalies were noted, for which we
would like clarification:

1. The boundary lines of the property conveyed in 1824 by John Parks to Jacob Sperry
do not extend beyond the landward boundary of the Public Road created in 1812. In
the period between the original Jacob Sperry purchase in 1824 and the 1940
conveyance from Mrs Elizabeth Sperry to Ernest Himmelman, there is no record of
conveyance of any property between the road and the shore to any member of the
Sperry or Himmelman families, nor to any member of the Himmelman family
between 1940 and the present. If Mrs Elizabeth Sperry conveyed legitimate title in
1940 to Ernest Himmelman of property to the seaward of the Public Road created in
1812, by which member of the Sperry family was it purchased, when and from
whom?

2. On page 2 of your letter you state:

*The Starratt plan from 1935, filed at the Registry under No. 220, indicates to me that the area in
question existed in 1935, but it is unclear as to what extent it existed. Unfortunately, this Plan
raises a question of whether the spit is part of the Himmelman property (referred to thereon as
Elizabeth Sperry), but when I compared it to the Turner Plan of 1991 and the air photographs, I
concluded that Starratt's representation of the line from the old road to the shore line is
inaccurate and unreliable, bringing me back to the position that the area outlined in pink is in
fact correctly attributable to Himmelman as the riparian owner.*

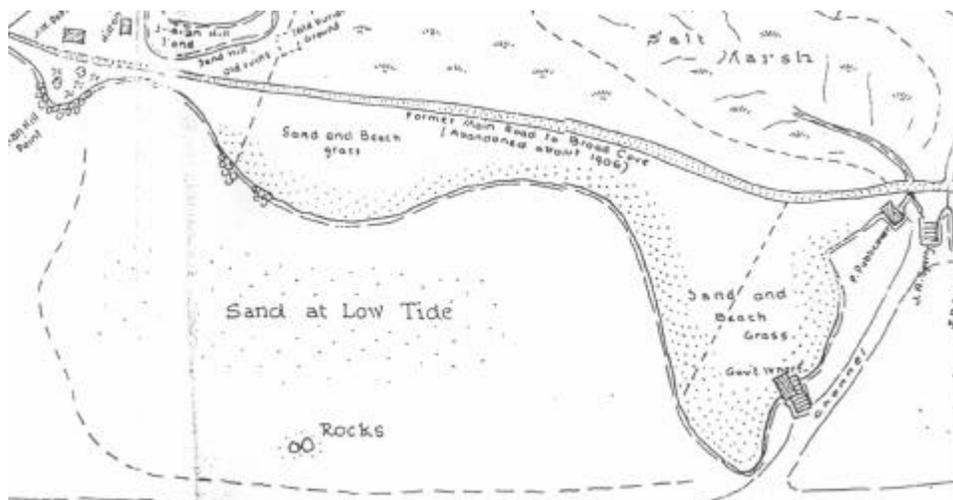
Why is it "unfortunate" that "*this Plan raises a question of whether the spit is part of
the Himmelman property*", and for whom?

3. The Turner plan of 1991 is the Hebb Turner Himmelman Surveys plan No. H-362,
supplied to you by Mr Dalglish. As you are aware, and as David Himmelman-
principle owner of Hebb Turner Himmelman Surveys at the time- would have been
aware, "No person shall survey a boundary of Crown lands without first obtaining an
order of survey from the Director of Surveys; No person shall survey any boundaries
touching or bordering Crown lands without first advising the Director of Surveys;
Upon completion of a boundary survey involving Crown lands, the surveyor shall,
where prepared, submit a return of survey and a legible copy of field notes to the
Director of Surveys; and No changes in any records or plans on file with the
Department shall be made on the basis of a return of survey until such return is
approved by the Director of Surveys"

<http://www.gov.ns.ca/legislature/legc/statutes/crownlan.htm>

As you are aware, the Hebb Turner Himmelman Surveys plan No. H-362 includes many boundaries of Crown lands, amongst which are those of the Shore Road. What methods did you utilize to ascertain compliance of the Hebb Turner Himmelman Surveys plan No. H-362 with the requirements of Section 13(1-4) of the Crown Lands Act referenced above?

4. Which property boundary data on the photocopies of air photographs did you compare to which features on the Starratt plan and the Hebb Turner Himmelman plan No. H-362 in order to conclude that Starratt's representation of the line from the old road to the shore line is inaccurate and unreliable?
5. As the Crown has held title to the Shore road right-of-way since November 5 1812, we are curious as to why you do not refer to the omission of this fact in both the Starratt or Himmelman plans. Would you please explain why you did not reference either?
6. You refer to *the "Sperry Plan from 1946, redrawn by Bates in 1964 . . . provided by Bruce Turner"*. Did Mr Turner provide you with the original 1946 Sperry plan, the original 1964 Bates redraw, or a reproduced print? If the latter, please describe any steps you took to ensure that the reproduction was unaltered with respect to its source. Please describe any steps you took to ensure that the Bates reproduction did not alter the Sperry original.
7. *"I am not able to ascertain the origin of the dashed line running eastwardly from the old road to the shore line."* As you are aware, there are two such dashed lines



"running eastwardly from the old road to the shore line". To which does your comment *"I am not able to ascertain the origin"* refer, and from what source were you able to ascertain the origin of the other?

You also note *"I was unable to obtain any information from the Federal Government about the so-called Government Wharf"*- we have obtained a sworn affidavit regarding

the 1929 sale of the wharf buildings “from the Public Works Department of the Government of Canada” to Paul D. Mosher, including photographs.

8. You refer to case law as follows:

“Where land is conveyed and described as bounded by a shore, or is actually so bounded, the rule of common law is that, as such boundary becomes extended by alluvial accretion due to the ‘gradual, slow and imperceptible’ retirement of the water or deposit of alluvium, the accretion belongs to the owner of the land so extended and not to the Crown.”

As you are aware, the land conveyed by Mrs Elizabeth Sperry to Ernest Himmelman in 1940 is not “described as bounded by a shore”- but rather as “*running in a south-easterly direction, over the beach until it comes to the northern bound*” etc, which is consistent with the earlier 1824 Parks – Sperry description “*thence running south east untill it meets Joseph Parks Land.*” As you are also aware, the Shore Road is “described as bounded by a shore”- *Beginning from the main road at Robert Parks and to go along the shore of John Parks then to cross the sand beach, then to run the various courses of the shore to run thru Cherry Point and then again the various courses of the shore towards Broad Cove and to be as near the shore as can be made”.*

Would you please explain the rationale for your conclusion that “the estate of Lawrence Himmelman has title to the area” and how the area does not “[belong] to the owner of the dry land to which it is added”- i.e. the Crown, owner of the Public Road- as your case law states?

9. *“I have no doubt that the Himmelman estate is the owner of the land on the opposite side of the old road”.* As you are aware, the salt marsh wetland upland of the Shore road is documented in the 1824 Parks – Sperry plan, the 1935 Starratt Plan, and the 1946/64 Sperry/Bates plan. As you are also aware, “every watercourse . . . is vested forever in Her Majesty in right of the Province and is deemed conclusively to have been so vested since May 16, 1919”. Would you please explain your rationale for the Himmelman estate’s ownership of the salt marsh wetland and the Indian Hill pond (both of which were partially infilled in 1987)? Did the Department of Natural Resources make available to you correspondence dated October 16, 1996, from then-Minister of Natural Resources Ms Eleanor Norrie in which she refers to the salt marsh wetland: “I will ensure that the owner of the adjoining upland is advised that the Crown still holds title to the subject infilled area”?

We would like to meet with you before the June 25 public meeting to discuss these matters, and to explore the opportunity for you to rescind your January 13, 1998 Letter of Opinion due to new documentation having been made available. Please call me at 688 2883 to arrange a mutually convenient time and venue.

Sincerely

per Sperry's Beach Committee
John Bell
Phillip Carter
Tom Daly
Laila Glanville
Anne Greer