

Exhibit "GS3" on the ground that the areas of the lots specified on that plan for lots 3 to 20 correspond exactly with the areas for the lots listed in the Schedule; the orientation of lots 1 and 2 on that plan is the same as on the Suttle Plan and the proposed road reserve runs alongside the Eastern boundary of lots 1 and 2 as shown on the Suttle Plan.

[54] On the other hand it is the contention of System Sales that the proposed subdivision plan Exhibit "GS3" was revised primarily because of the obligation of the Suttles to provide a right of way over lots 1 and 2 to the land being sold. When efforts to locate half of the right of way partially lots 1 and 2 and the other half on the lands of the adjoining owners to the East failed, it then became necessary to locate the entire right of way over the lots with the result that the lots became too narrow and hence the need to shift the orientation of the lots as seen on the SSL Plan being the revision of Exhibit "GS3". Accordingly, System Sales contends that the proposed subdivision plan referred to in the Schedule is the SSL Plan.

[55] The testimony of Mr. Gittens is supported in this regard by the land surveyor Horace King, (maker of both the SSL Plan (Exhibit "SSL 2b") and (Exhibit "GS3")) called to give evidence on behalf of System Sales.

[56] In his evidence in chief on being shown the Suttle Plan Horace King testified: