

## THE JUDICIAL TECHNICAL EXPERT'S INVOLVEMENT IN THE CLARIFICATION OF LITIGIOUS SITUATIONS, FROM TOPOGRAPHY, CADASTRE AND GEODESY DOMAINS

Anca Alina LAZĂR, assistant Ph.D. Eng., TU Iasi, Faculty of Hydrotechnics, Geodesy and Environmental Engineering, anca\_danut@yahoo.com

Dan PĂDURE, lecturer, Ph.D. Eng., TU Iasi, Faculty of Hydrotechnics, Geodesy and Environmental Engineering, danny\_pad@yahoo.com

***Abstract:** The judicial technical expert is the individual citizen with a specialized knowledge in topography, cadastre and geodesy domains, to whom the court appeals to, as a consultant, in order to clarify some certain facts, that are forming the main subject of an action at law. The principal role of the judicial technical expert's report is to give help in finding out the truth, within a legal framework, according to the jural provisions.*

*For each action at law, there are defined some objectives at the court, objectives that must be solved in order to finalize a trial. In this study, we are presenting the dispute settlement method corresponding to some litigious situations, such as: **adverse possession and termination of joint tenancy actions at law.***

***Keywords:** judicial technical expert, cadastre, adverse possession, joint tenancy*

### 1. Introduction

The cadastre works realized after 1996, have as basis, the legal framework for a modern general cadastre organization and execution, at the requirement level of democratic societies. In the Law on cadastre and real – estate publicity No. 7/1996, a number of two different institutions was established: **the technical institution of cadastre and the juristic institution of the new real estate registers**, having as main purpose the cadastre works realization at national level, forming an unique estate publicity system for the entire country. According to the provisions of art 4 letter l) of Law no. 7/1996 on cadastre and real – estate publicity, republished, with the subsequent modifications and completions, the National Agency for Cadastre and Land Registration, technical advises the expertises made by judicial experts in topography, geodesy and cadastre specialisations, related to the used topographic data correctness, at the court request. The above mentioned opinions will be issued by the territorial offices, based on a common regulation, prepared by the National Agency for Cadastre and Land Registration and also by the Ministry of Justice.

The judicial expertise activity has a major importance in the judicial system, the expertise report being a **legal means** of proof, made by the judicial technical expert, consisting in the realization of field investigations, works, calculations, analyses, appreciations and conclusions. The expertise report is made at the prosecution body's provision, whose subject is represented by the property right of real – estate, in order to facilitate the pronouncing of a serious decision, that leads to the dispute settlement between the parties. The practical **scientific research** ends with the research report, that represents the technical document showing the main objective and the results of the realised activities, as well as the actual actions, in order to capitalize the obtained results.

The need for preparing the cadastral documentation will be possible only after the end of the action, because this **operation called judicial expertise is a technical and judicial data co-operation**, meant to explain to the court **the real situation from field and documents**. Also, preparing the **cadastral documentation** is an operation that transposes, in a requested form by the National Agency of Cadastre and Real Estate Publicity, the property documents co-operation, the transfer of property rights and of property itself data information, so that after a technical check and then, a check made by the real estate publicity regarding the possession mode of that property, it will be possible to give a **cadastral number and to register the property right**.

**The expertise report** is a document organized in different **sections**. This structured form of the expertise report is necessary for assuring a fluence and a clarity of the contained information.

A **judicial expertise report** contains the header and the following sections: Preamble, Parties, Short History, Expertise Objective, Expertise Flow, Expert's Findings, Conclusions, Annexes.

The **header** of the expertise report contains the name of the institution that ordered it, the number of the dossier and the judgement term of the expertise report received.

The **preamble** of the expertise report contains: the expert's name and surname, profession and qualification, the number of the expert card, the date when the expert qualification was received, the date and number of the local expertise Office recommendation.

The **parties** are mentioned with their names, surnames, residence adress and their quality in the action (claimant and defendant).

**Short history of the court case** – in this section, there are presented, in a chronological order, the main elements and information, that are key points in the dispute evolution.

The **objective** of the expertise – this section contains the literally presentation of the established objectives of the court for the expertise realisation, but also the questions that were written to the expert.

The **flow** of the expertise comprises the necessary followed actions, in order to obtain the expertise report.

The **expert's findings** represent the most important section of the report, containing data, observations, investigations, dossier extracts on one hand and also the results from the expert's investigations, on the other hand.

The **conclusions** of the expertise report must contain, in a brief description, the answers of the expert to the established expertise objects.

The **annexes** of the expertise report refer to the documents supporting the conclusions expressed by the expert.

## 2. Methods used for solving litigious situations

**Case study number 1:** It is presented the solving method at court, for the adverse possession action at law corresponding to a property, represented by a terrain surface area of 1384 m<sup>2</sup>, located within the built-up area of Draguseni village, Draguseni parish, Iasi county.

The objectives defined by the court are the following:

1. To specify if this surface is fenced.
2. To identify how many buildings are in the mentioned area.
3. To specify if the terrain belongs either to the public or private state domain, or to the Draguseni parish.
4. To prepare the documentation needed for the notification, in order to be authorised

by the Land Registry Office, together with the expertise report and the acceptance protocol.

In order to give answers to the objectives required by the court, the following phases are performed:

1. Initially, it is identified the location of the property. This is located within the built-up area of Draguseni village, Draguseni parish, Iasi county, having as a **cadastral identifier** the **T6 field, CC139, A138** parcels, according to the cadastral plan.

In order to determine the surface of the property, field measurements with the GPS technology were made, and finally, after calculations using the contour points coordinates, a surface area of **1384 m<sup>2</sup>** was determined. After data processing, the afferent draft of the property was obtained. As shown in Fig. 1, the terrain surface is defined by the contour points: **1, 2, 3, 4, 5, 6, 7**. The actual property is delimited by the following properties: to the North - the property owned by Butnaru P. Elena, to the South - the DS 140 rural road, to the East - the DS 155 rural road, to the West - the property having the cadastral number 60021.

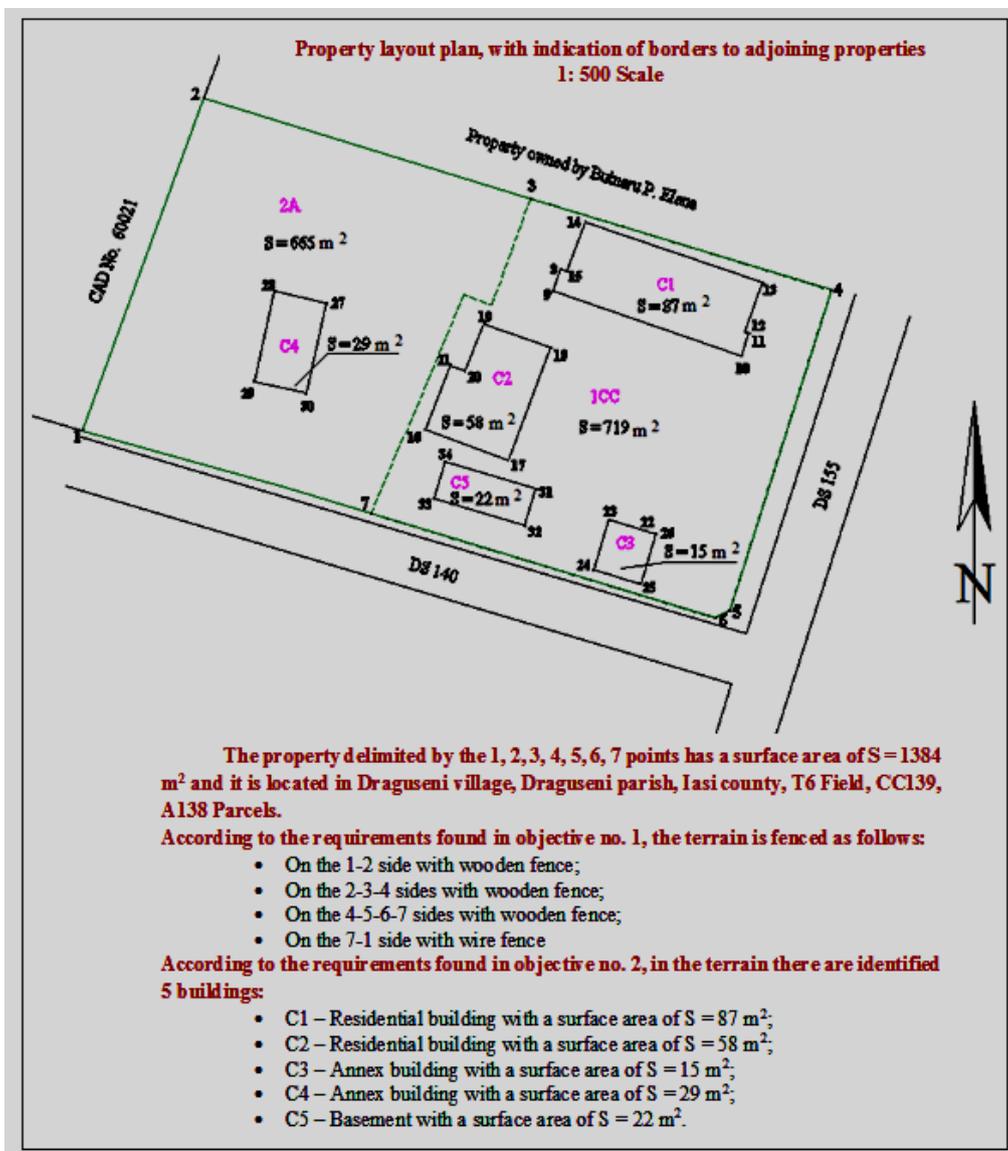


Fig. 1. Property layout plan, with indication of borders to adjoining properties corresponding to the property located in the built-up area of Draguseni village

According to the real situation found in the field trip, the property, with a total surface of  $S = 1384 \text{ m}^2$  is fenced as follows:

- On the 1-2 side with wooden fence;
- On the 2-3-4 sides with wooden fence;
- On the 4-5-6-7 sides with wooden fence;
- On the 7-1 side with wire fence

2. In the field measurements, there was identified a number of **5 buildings**, as they are shown in Fig. 1 :

- C1 – Residential building with a surface area of  $S = 87 \text{ m}^2$ ;
- C2 – Residential building with a surface area of  $S = 58 \text{ m}^2$ ;
- C3 – Annex building with a surface area of  $S = 15 \text{ m}^2$ ;
- C4 – Annex building with a surface area of  $S = 29 \text{ m}^2$ ;
- C5 – Basement with a surface area of  $S = 22 \text{ m}^2$ .

3. Information was requested from the local authority of Draguseni parish, regarding the legal situation of the corresponding terrain with the surface area of  $1384 \text{ m}^2$  and the answer shows that the property **is not included in the public or private domain inventory** of the Draguseni parish.

4. There was prepared the needed documentation for submitting, in order to be authorized by the Land Registry Office.

**Case study number 2:** It is presented the solving method in court, for the termination of joint tenancy action.

The objectives defined by the court are the following:

1. To identify the terrain surfaces that were owned by the deceased mother Gusa Maria, according to the Property Title No. 101432/09.11.1994, both within the built-up areas and outside of built-up areas.
2. Also, there have to be made certain parcelling proposals of the property, carefully that each successor receives his part in both, within the built-up areas and outside of built-up areas, according to the deserved share.

In order to give answers to the objectives required by the court, the following phases are performed:

1. In a first step, there are identified the **locations of the properties**. In this way, a property is located within the built-up area of the Oteleni village, Oteleni parish, Iasi county having a surface area of  $S = 1117 \text{ m}^2$ , containing a building C1 with a corresponding surface of  $S = 55 \text{ m}^2$ , as shown in Fig. 2. The cadastral identifiers, as found in the cadastral plan of the Oteleni parish, are: the T6 field, A942, CC943 parcels, with the following neighbors:

- to the North - the European Road DE;
- to the South - the DS 341 rural road;
- to the East - the property owned by Cretu Ion;
- to the West - the H.C 915 channel.

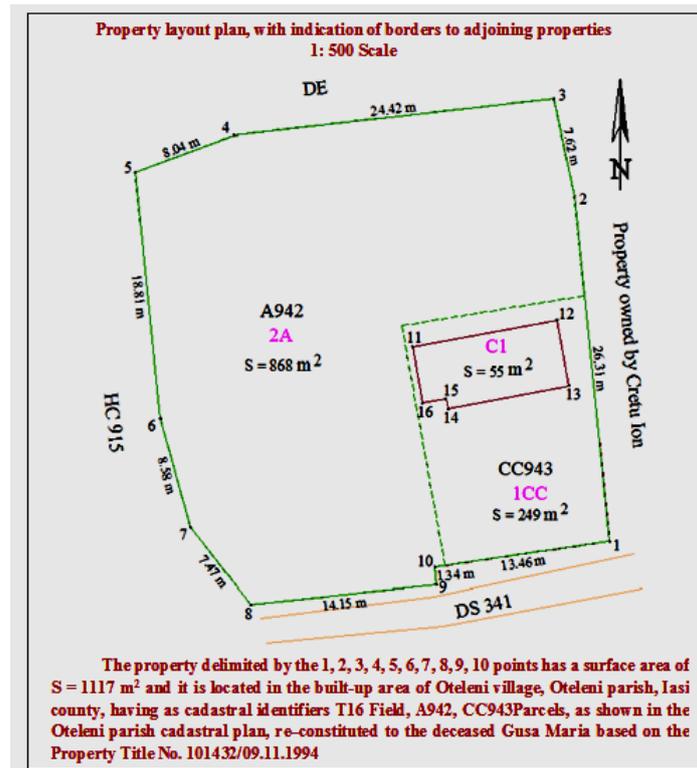


Fig. 2. Property layout plan, with indication of borders to adjoining properties corresponding to the property located in the built-up area of Oteleni village

The second property with a surface area of  $S = 4383 \text{ m}^2$  (Fig. 3) is located outside the built-up area of the Oteleni parish, in Iasi county. As shown in the property document, the cadastral identifiers are T25 field and A309/184 parcels and it has the following neighbors:

- To the North – the property owned by Constantin Ion;
- To the South - the property owned by Pricop Vasile;
- To the East – the European Road DE;
- To the West - the European Road DE.

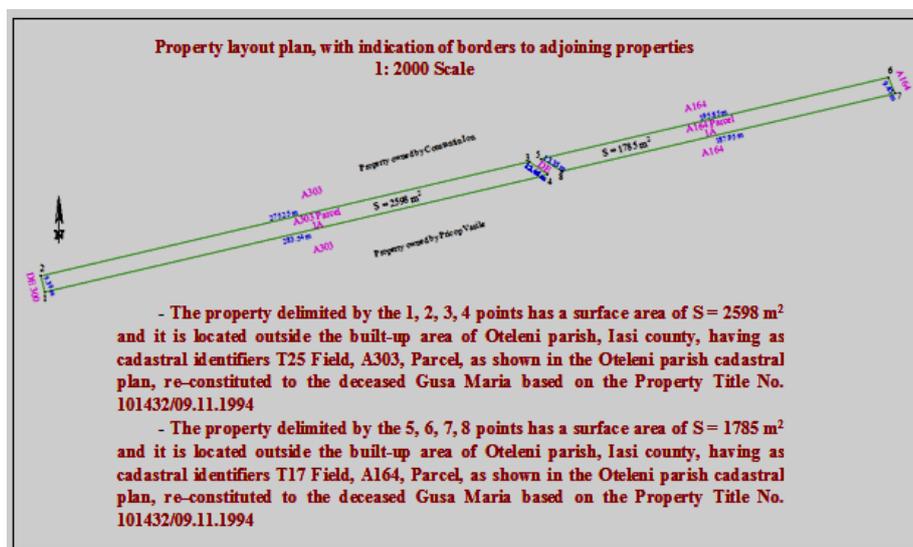


Fig. 3. Property layout plan, with indication of borders to adjoining properties corresponding to the property located outside of the built-up area of Oteleni village

After the field measurements and according to the information provided by the present parties at the date and hour established within the convocation and after the superposition of the measured data on the Oteleni parish cadastral plan, we concluded that the terrain with the surface area of  $S = 4383 \text{ m}^2$  registered in the Property Title No. 101432/11.09.1994, is located in fact, in the T25 field, A303 parcel and in the T17 field, A164 parcel.

2. After property locations are established, the next step is the parcelling proposal, taking into account that every successor (Fig. 4) to receive his terrain part in both, within the built-up areas and outside of built-up areas, according to the deserved share.

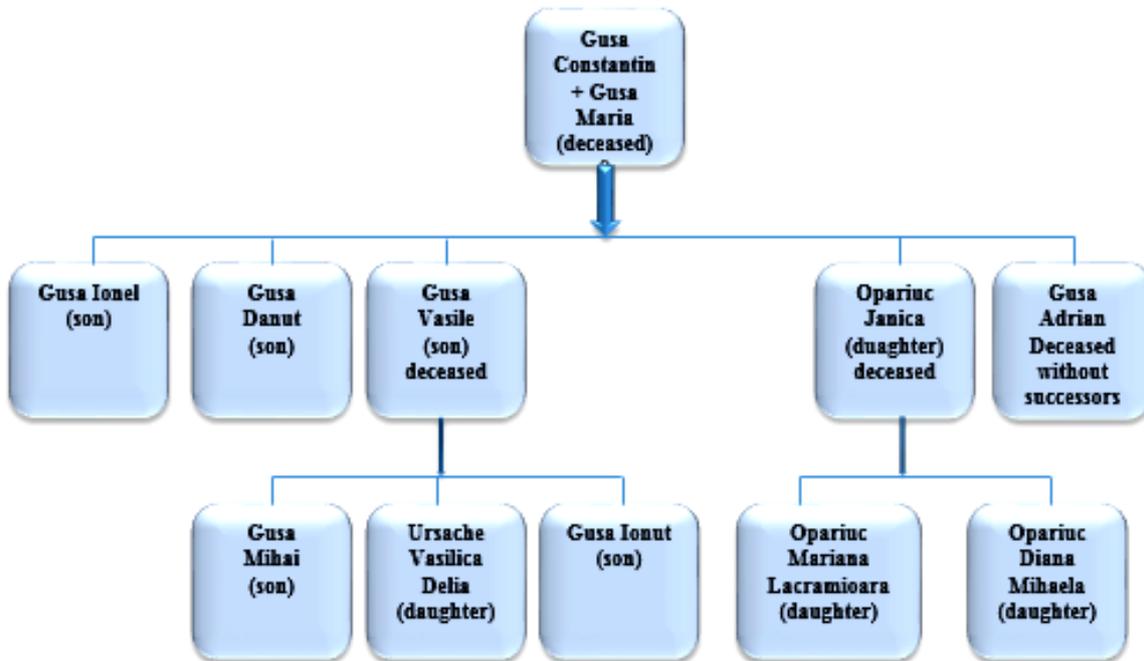


Fig. 4. The successors of the properties owned by Gusa Maria

Taking into account the fact that the deceased son Gusa Adrian doesn't have any successors, the expert suggests to subdivide the terrain into four equal lots, for both terrain types within the built-up areas and outside of built-up areas (Fig. 5 and Fig. 6).

In the field measurements, there was identified a building with a footprint area of  $55 \text{ m}^2$ , that contains a number of two rooms and a work access hall, fact that doesn't allow to be divided into four equal parts. For this reason, it was established that the building to be contained into a single lot, namely Lot 1.

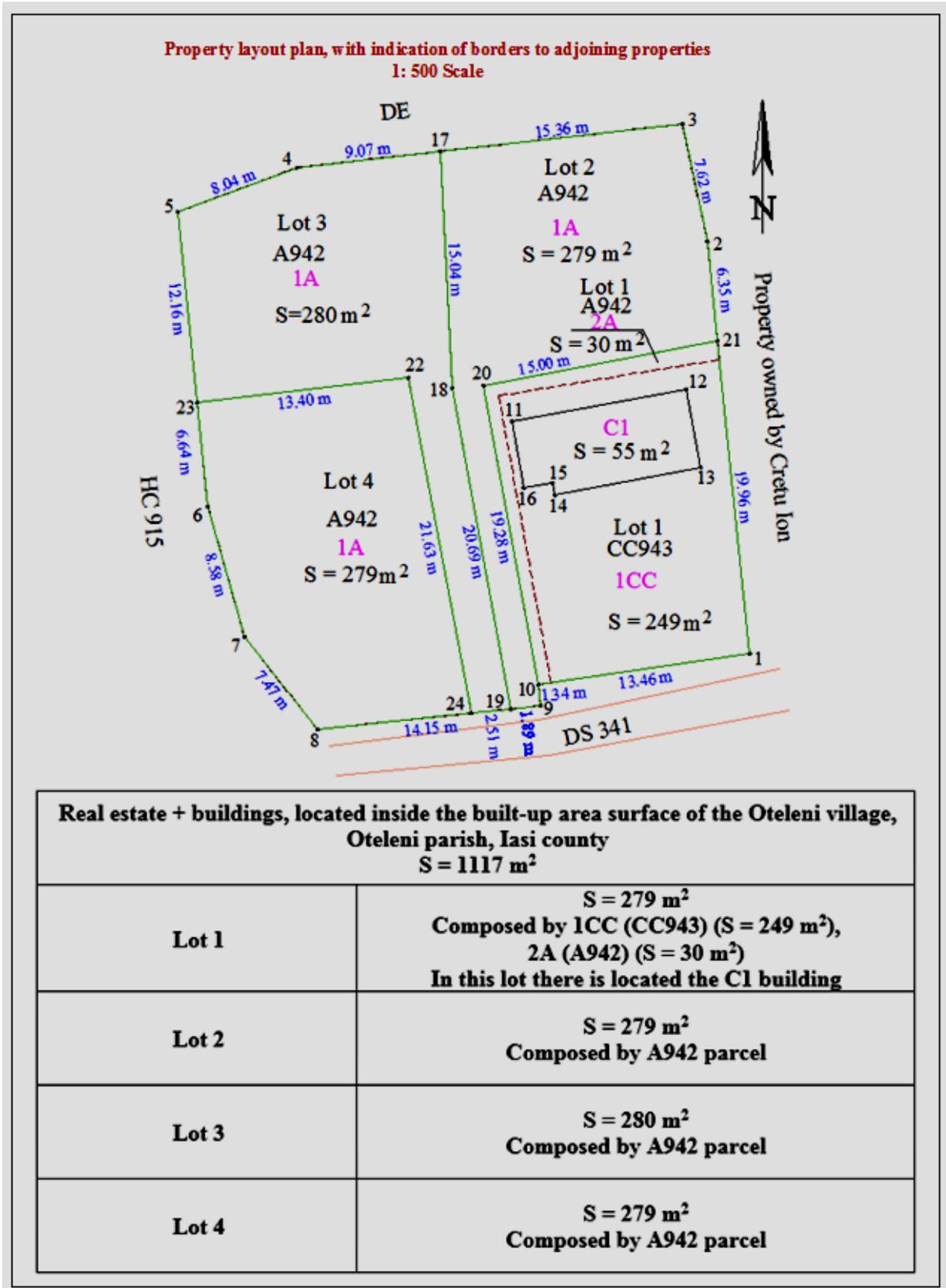


Fig. 5. The parcelling of the property located in the built-up area of Oteleni village

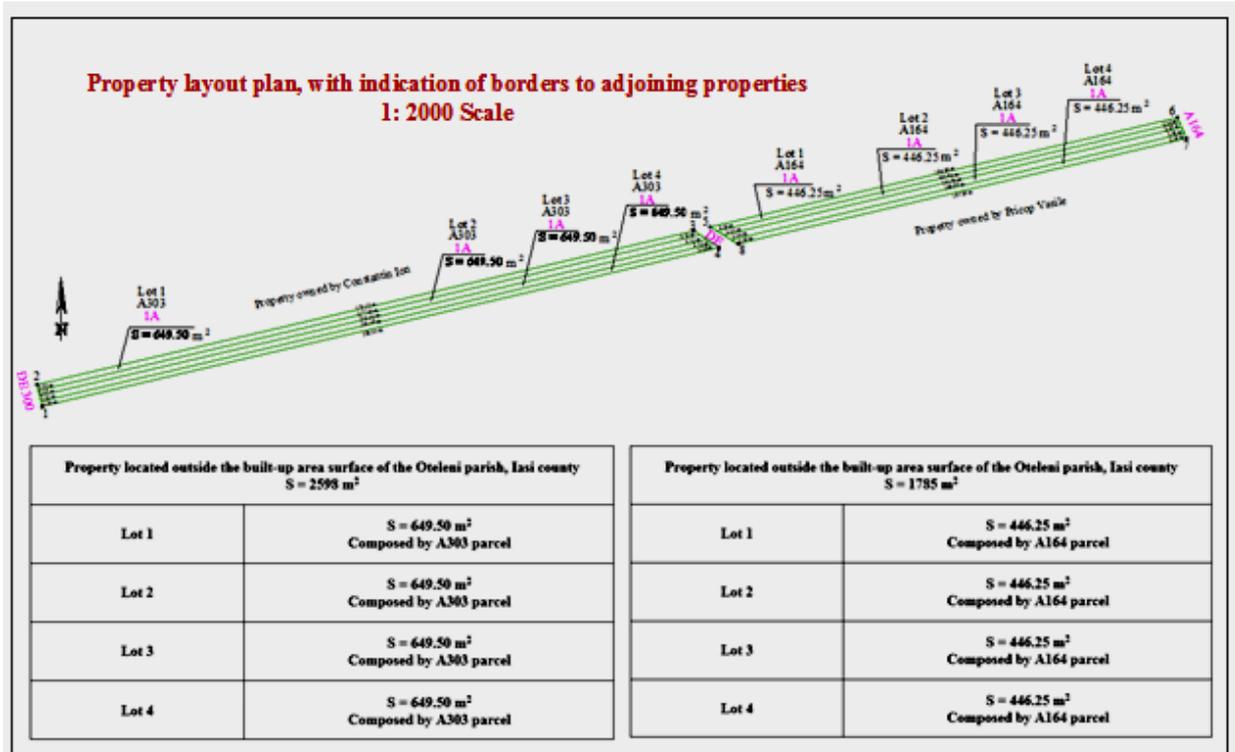


Fig. 6. The parcelling of the property located outside of the built-up area of Oteleni village

### 3. CONCLUSIONS

The objectives of an expertise represent an essential and fundamental condition used in order to completely and correctly finalize the problems that must be solved. The main objective that cannot be missing within an expertise from the topography, cadastre or geodesy domains, is the **identification of the property location** found in dispute. The expertise report analysis is a very important phase for the trial court, and the technical documentation preparing for the present work, represents a way of taking responsibility, it reflects the graphical and textual data correctness, through the signature and stamp of the judicial technical expert.

### 4. REFERENCES

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