

**STATE OF
COLORADO****Lennberg - DNR, Patrick <patrick.lennberg@state.co.us>**

Orlando Pit

1 message

Alan Altman <pls31542@att.net>
To: Patrick.Lennberg@state.co.us
Cc: Melanie Bounds <mbounds@huerfano.us>

Fri, Mar 20, 2020 at 7:23 PM

Patrick,

Concerning our retracement survey of the Huerfano County Orlando pit, we found significant discrepancies between the recorded legal description and the field location of the existing pit.

A retracement survey's purpose is to ascertain the original intent and location of the given survey with the legal description acting as a guide and evidence of such. However, the legal description is just one form of evidence in determining said location, with monuments, fence lines, occupation, etc. in the field holding a higher value than the written description.

Evidence of the original layout of the Orlando pit was sparse. We did find T-Post colored/painted in the same manner around the existing pit in locations that would serve no purpose other than to define the pit itself. Based on the found T-Post and their relative shape matching the written description, we determined that they were likely the original monuments for the pit.

I've attached an article from point of beginning magazine, written by Jeffery Lucas, who is an attorney and land surveyor that goes into a bit more detail about retracement surveys if you're interested.

Let me know if there is any other way I can assist you with this matter.

Please call or email with any questions, comments, or concerns.

Thanks,

Alan Altman, PLS

Southern Colorado Surveying and Mapping

#1 North Parkway

Colorado City, CO 81019

(719) 676-3665 office

(719) 679-7343 cell

**Measurements Are the Evidence in Retracement Surveys _ 2019-08-01 _ Point of Beginning.pdf**

2966K



Measurements Are the Evidence in Retracement Surveys



August 1, 2019

Jeffery N. Lucas, PLS, Esq.

In my last [column](#) (*POB*, June 2019), we discussed the “complete and accurate” survey of property relative to the issuance of an Owner’s Policy of Title Insurance, that provides “survey coverage” by removing the “survey exception” from Schedule B of the policy. If you are not certain what these terms mean in the context of property title and property line location insurance, you should refer to my last column because achieving the “complete and accurate” survey of property is the ultimate objective of this column.

The vast majority of property boundary surveying being conducted today is retracement surveying, as opposed to original surveys of property. To be in the original surveyor’s shoes, there must be unity of ownership of the property being subdivided. The goal of the original surveyor is to, as precisely as possible, “stake-out” the geometry of the plan of subdivision. There is very little to do relative to [evidence gathering](#) and evaluation. In contrast, the retracement survey is largely an evidentiary exercise where measurements are merely evidence and the lowest form thereof; meaning that measurements are to be given the least amount of weight when the evidence that has been gathered is being evaluated or “weighed.”

In the 2015 Kentucky case of *Boak v. Beaver*,¹ surveyor Smith captured the essence of retracement surveying in three sentences:

Mr. Smith testified that when a surveyor is required to re-trace a survey, he is required to first find the line and then to measure it. A retracement of the survey does not mean that one measures to create the line, because the line is already there. Retracement surveys require the surveyor to find the line and then to measure it.

This sums up all of the law and the prophets on retracement surveying. It’s all about finding the line that is already in existence and established on the ground, and then maybe we should go ahead and measure it as well just to see how it compares to the record documents. Finding where a property boundary line has become established on the ground requires gathering the best available evidence that the reasonably prudent surveyor would find, evaluating that evidence, and then rendering a well-reasoned opinion on the factual question of location. If the surveyor can explain the boundary establishment doctrine that was employed in rendering that opinion, in all probability the surveyor has accurately identified the true boundary line—i.e., the limits of ownership.

The mere matter of the locating the boundary of lands, however, does not involve the title. *It relates only to the limit to which the land covered by the title extends.* ... The statute of frauds is inapplicable to an award made under a parol submission which had nothing in view beyond the settling of a dispute as to the boundary of land, and not the title of it. No right or title passes in virtue of the award. *It merely fixes the boundary, and the title which existed previously becomes precisely located and limited by it.*² [Emphasis added.]

Boundary Evidence

Evidence of boundaries comes in many forms. The most important form of boundary evidence is oral evidence of the landowners, i.e., your client and all of the adjoiners. We know that this is the most critical evidence because no other evidence is necessary to make a boundary determination where a dispute goes to court for adjudication. There is also documentary evidence of boundaries. This would generally include deeds, maps, plats, and other such documents. Then there is physical evidence such as [monuments](#), fences, occupation—and we could include measurements in this category.

Evidence is not proof of a matter, but evidence can be used to produce proof of a matter; in other words, to establish a fact. The ultimate fact to be determined in any boundary dispute case where the title to the property is not being challenged (a title action such as an adverse possession claim), is the location of the property line on the ground.

The purpose of the surveys in this boundary dispute is to *locate accurately* the boundary between the plaintiff’s and defendant’s *property*.³ [Emphasis added.]

For instance, a monument is evidence of the location of a terminal point in a property boundary line, but standing alone the monument cannot prove that it is the property corner. A corner of property exists in legal contemplation. A survey monument is a physical object that exists at a certain location on the Earth’s surface. In a perfect world they would be one-in-the-same, but we don’t live in a perfect world so something else is needed. This is where the concepts of presumptions and inferences come into play in evaluating boundary evidence. In order to be an expert evaluator of evidence, the surveyor certainly needs to understand these concepts and how they apply.

Legal Presumptions

Black’s Law Dictionary (Black’s), gives us a working definition of a legal presumption.

A presumption is a rule of law, statutory or judicial, by which finding of a basic fact gives rise to existence of presumed fact, until presumption is rebutted. ... A presumption is an assumption of fact that the law requires to be made from another fact or group of facts found or otherwise established in the action. A presumption is not evidence.

In other words, a presumption is a fact until the opponent of the presumption can overcome it by proving the presumption to be wrong. The burden of proof will be on the opponent to the presumption.

To help us understand how a presumption can aid in the evaluation of evidence that will lead to the ultimate determination of the fact of location, we can consider the legal presumption underlying the basic retracement surveying doctrine of “Following in the Footsteps.” That doctrine is nicely stated in the case of *McGhee v. Young*:⁴

In establishing the original boundary on the ground the original surveyor is *conclusively presumed* to have been correct and if later surveyors find there is error in the locations, measurements or otherwise, *such error is the error of the last surveyor*. Likewise, boundaries originally located and set (right, wrong, good or bad) are primary and controlling when inconsistent with plats purporting to portray the survey and later notions as to what the original subdivider or surveyor intended to be doing or as to where later surveyors, working, perhaps, under better conditions and more accurately with better equipment, would locate the boundary solely by using the plat as a guide or plan.⁵ [Emphasis added.]

Find the original monuments set by the original subdividing surveyor and the factual question of location will be answered. The burden will be on the opponent to the presumption to prove that the property lines exist in a different location. In the *McGhee* case (above), the opponent to the presumption was the surveyor who ignored the original monuments and “staked-out” the geometry from the plat as if he was an original surveyor. This was a direct violation of yet another boundary presumption, as stated in the case of *Northrop v. Opperman*:⁶

The evidence of undisputed occupation and fencing in accordance with the originally surveyed line for about 30 years, not only of the piece of land in controversy, but of other parcels of land in that immediate neighborhood, raises a presumption that the line so recognized is the true line. *So strong a presumption* is thus raised in the present case that we do not regard it as overcome or seriously weakened by *the simple fact that upon a resurvey, based upon no original monument, another line several rods distant is established*.⁷ [Emphasis added.]

Inferences

An inference is not a presumption. Stated otherwise, an inference is not a presumed fact. It is a thought process of an observer, like a retracement surveyor, that leads to conclusions that can be either right or wrong, logical or illogical, pass the common-sense test or make no sense at all. Black’s puts it this way:

Inferences are deductions or conclusions which with reason and common sense lead the jury to draw from facts which have been established by the evidence in the case.

Stated otherwise, an inference must pass the “reasonable” and “common sense” test. If the inference drawn by the surveyor doesn’t pass the reasonable and common-sense test, then the inference is legally invalid and proves nothing. This is where surveyors need to pump the brakes. I have spent the last 15 years of my professional life battling for the case for reason and common sense in the practice of land surveying. From my vantage point, reason and common sense seem to be woefully lacking—maybe evidenced by how many times sections are broken down (re-subdivided even though that process has already been accomplished—maybe multiple times); by how many pincushion corners are created, perpetuated and added to by surveyors; and by the utter nonsense I have seen, heard and experienced in my career.

Presumptions are facts in the eyes of the law; inferences are merely conclusions in the eyes of the beholder. The boundary establishment doctrines (e.g., Common Grantor Doctrine, Following in the Footsteps, Boundary by Acquiescence, etc.) and the application of those doctrines are all underwritten by legal presumptions. Presumptions can aid the intellectually honest retracement surveyor in the rendering of a well-reasoned opinion on the location of the existing and established property lines, resulting in a complete and accurate survey of the limits of ownership—a survey that might be utilized for the issuance of property line insurance, depending on what the landowner and the title company decide to do with the survey.

What they do is out of your hands. The only thing you can control is the opinion you render on the location question.

Endnotes:

1. Boak v. Beaver, Civil Action No. 10-CI-00269, Meade Circuit Court, Division I, Ky.2015. This is an unpublished trial court Judgment from a Kentucky Circuit Court, and an excellent one at that.
2. Shaw v. State, 28 So. 390, 392 (Ala.1899). Restated: When the true and established property line is located by the retracing surveyor, the result is that the limits of ownership have been identified. This does not mean that the surveyor determines who owns the property, but “the title which existed previously becomes precisely located and limited by” an accurate survey of the property.
3. Andrews v. Barton, 974 So.2d 1144, 1147 (Fla.App.3rd.2008).
4. McGhee v. Young, 606 So.2d 1215 (Fla.App.1992).
5. Id. at 1218
6. Northrop v. Opperman, 2011 WI 5 (Wisc.2011
7. Id. at 43.

Don't miss Jeffery Lucas' latest book, "The Pincushion Effect." The book can be purchased through the [Point of Beginning Store](#).

Neither the author nor POB intend this column to be a source of legal advice for surveyors or their clients. The law changes and differs in important respects for different jurisdictions. If you have a specific legal problem, the best source of advice is an attorney admitted to the bar in your jurisdiction.

Recent Articles By Jeffery Lucas, PLS, Esq.

Principles of Riparian Boundary Location

Riparian Boundaries In The Face of Existing Improvements

Perception of Surveyors Driven by Lack of Awareness

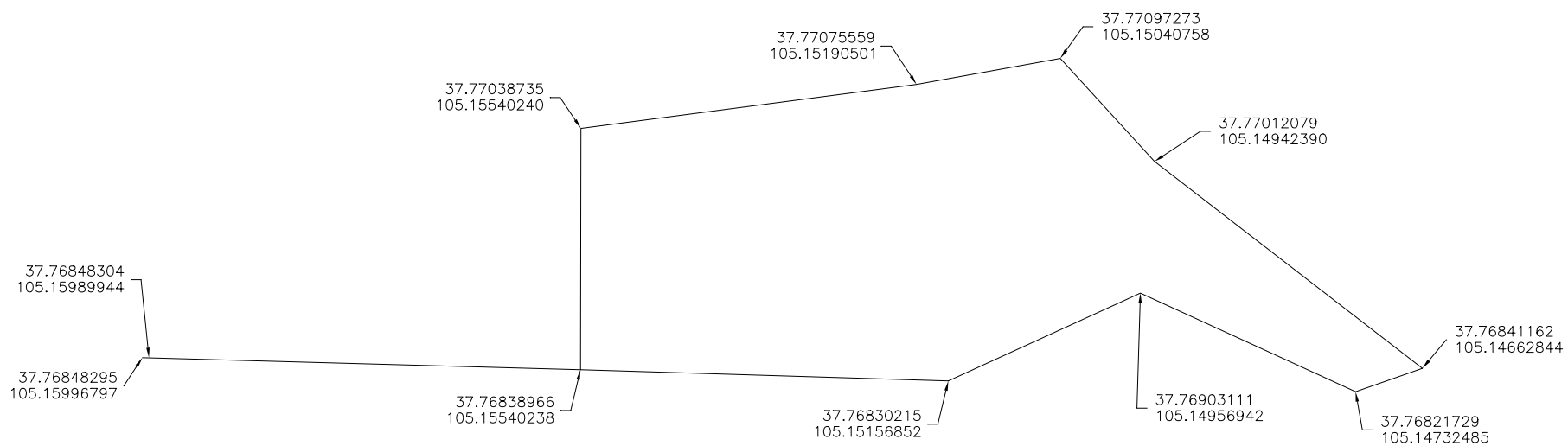
The Surveyor's Role in Title Insurance







Jeff Lucas is in private practice in Birmingham, Ala. He is president of Lucas & Co. LLC, and publisher of "The Lucas Letter," a legal newsletter for the surveying and engineering community. He can be contacted through www.LucasAndCompany.com. For a more in-depth study of the legal principles that affect our everyday practice, subscribe to "The Lucas Letter" at www.LucasAndCompany.com.

Copyright ©2020. All Rights Reserved BNP Media.

Design, CMS, Hosting & Web Development :: ePublishing



Legend

-  2019 Inspection 35.4 acres
-  County Surveyed
-  M-2001-106 Orlando Pit
-  Orlando Pit Permit Boundary

M-2001-106 Orlando Pit

