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The New Packing Shed

A few months ago I became aware of a land development debacle in the area where I practice. I believe it is a great example of the benefits that come from having a land surveyor involved throughout the life of a land development project. It also illustrates the type of problems that can come from a land surveyor's absence from all phases of a land development project.

I've changed the names of the organizations and people in the list of events I'm about to provide. I've also changed some of the minor facts. However, the important facts pivotal to the lessons I want my readers to take away from this example have not changed.

The Request

Thomas Peterson is the owner of Peterson and Sons Land Surveying. He received a call from Ed Harrison, the owner of two adjoining large agricultural parcels. Ed grows row crops on the parcels. During the initial phone call Ed indicated to Thomas that there was a problem with the lot line adjustment another surveyor had performed to change the configuration of his two parcels. Ed wanted to hire Thomas to help straighten things out. Thomas requested a face to face meeting with Ed and asked that he bring documents related to the two subject parcels to the meeting.

In a meeting with Ed later that week Thomas was able to assemble a timeline of events related to the two subject parcels.

The Timeline

Ed's sister, Susan Mitchell, conveys to Ed her 1/2 interest in the smaller of the two subject parcels, *Parcel A*. After this transaction, Ed is the sole owner both subject parcels.

San Joaquin River Delta Surveys performs a lot line adjustment between the two subject parcels. The area of *Parcel A* increases as a result of the lot line adjustment, while the area of *Parcel B* decreases. The lot line adjustment is performed so that *Parcel A* has sufficient area to serve as collateral for a construction loan for two new packing sheds.

Ed Harrison receives a loan from Central Valley Merchants Bank. This loan finances the construction of two new packing sheds on *Adjusted Parcel A*. *Adjusted Parcel A* is supposed to be used as collateral for the construction loan.

Ed Harrison receives a loan from Pacific Bay Bank to fund his ongoing agricultural operations. *Adjusted Parcel B* is supposed to be used as collateral for this second load.

Construction of the two new packing sheds on *Adjusted Parcel A* is completed.

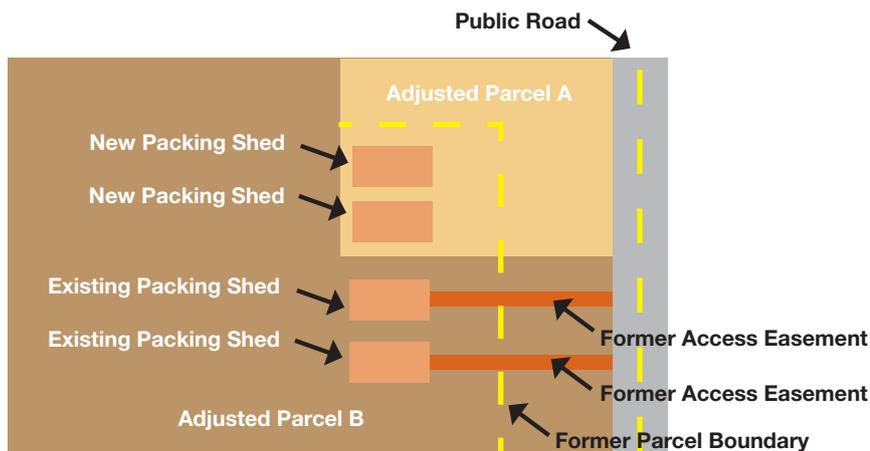
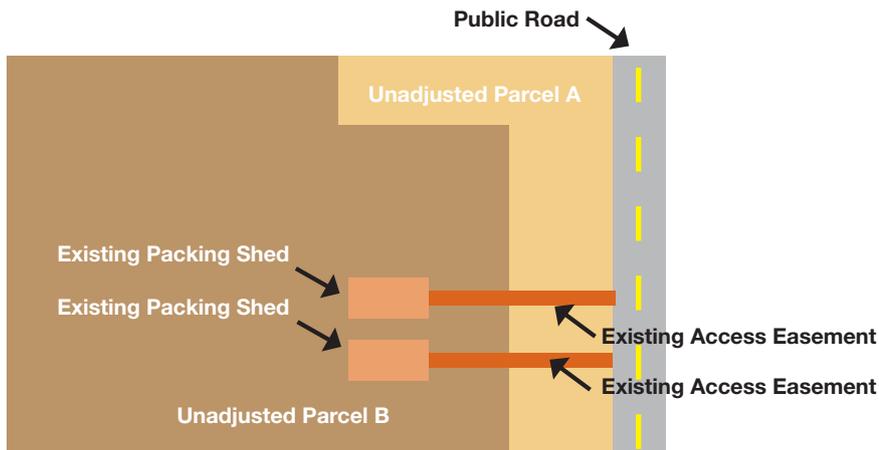
Ed Harrison defaults on the construction loan for the two new packing sheds. Central Valley Merchants Bank forecloses on the loans and takes control of what they presume is *Adjusted Parcel A*.

Ed Harrison begins negotiations with Pacific Bay Bank to avoid foreclosure on his second loan. Pacific Bay Bank claims the parcel it holds as collateral for the loan includes the two new packing sheds.

Ed Harrison contacts New America West Lands and Title Company, which insured the title on the deeds of trust for both loans he was issued, and on which the two parcels are collateral. He inquires about the claim Pacific Bay Bank is making for the two new packing sheds.

TIMELINE

- ▶ Susan Mitchell conveys 1/2 interest in Unadjusted Parcel A to Ed Harrison.
- ▶ San Joaquin River Delta Surveys performs lot line adjustment.
- ▶ Ed Harrison receives loan from Central Valley Merchants Bank.
- ▶ Ed Harrison receives loan from Pacific Bay Bank.
- ▶ Construction of the new packing sheds is completed.
- ▶ Ed defaults on the construction loan for the new packing sheds.
- ▶ Ed begins negotiations with Pacific Bay Bank to avoid foreclosure.
- ▶ Ed contacts New America West Lands and Title Company about the Pacific Bay Bank claim for the new packing sheds.



used the incorrect land description. The description used in the foreclosure was for unadjusted *Parcel A*, which doesn't include the land on which the two new packing sheds were built. Central Valley Merchants Bank is now in possession of two packing sheds and farmland NOT included in the deed of trust or foreclosure documents for its loan. A portion of the property it is in possession of is claimed by Pacific Bay Bank based on its deed of trust.

Take the Job?

Before Thomas Peterson made a decision about accepting Ed as a client, he did some homework. This included the following actions:

- A phone call to the San Joaquin River Delta Surveys, the company that had performed the lot line adjustment for Ed.
- A phone call to Ed's attorney.
- A review of the documents provided by Ed at their meeting.

After considering all the circumstances, Thomas Peterson respectfully declined to take Ed Harrison on as a client. He did this for a number of reasons:

There were already at least three (3) land surveyors involved. San Joaquin River Delta Surveys had prepared the lot line adjustment for Ed. French Camp Engineering and Surveying was hired by the title company to examine the problems with the real property transaction documents. Ed told Thomas he had hired a third surveyor previously to look into the problems. Thomas politely told Ed that getting a fourth surveyor involved wasn't going to help. Adding more pigs in the mire doesn't make for less mud.

New America West Lands and Title hired French Camp Engineering and Surveying to perform a boundary survey so that the claims of Pacific Bay Bank can be evaluated. It refuses to disclose the results of the land survey to Ed Harrison. Instead, it offers Ed Harrison a payment related to the foreclosure by Central Valley Merchants Bank, but admits no wrongdoing. In return for the payment Ed must agree to hold the title company harmless for issues related to the land transactions. Ed rejects the title company's offer.

Problems

Based on this timeline, and the examination of documents provided by Ed, Thomas Peterson, the owner of Peterson and Sons Land Surveying, was able to determine the following problems in relation to Ed's two agricultural parcels:

When the 1/2 interest of Ed's sister Sue was transferred to Ed, making him the sole owner, the access easement over *Parcel A* that served the existing packing sheds on *Parcel B* was extinguished.

When the title company prepared and insured the deed of trust for the loan from Central Valley Merchants Bank, it used the land description for the unadjusted *Parcel A*, which no longer existed after the lot line adjustment.

Then the title company prepared and insured the deed of trust for the loan from Pacific Bay Bank, it used the land description for unadjusted *Parcel B*, which no longer existed after the lot line adjustment.

When Central Valley Merchants Bank foreclosed on the *Parcel A* loan and took possession of the property, it

PROBLEMS

- ▶ Access easements were incorrectly extinguished.
- ▶ Incorrect land descriptions were used for loan deeds of trust.
- ▶ Incorrect land descriptions were used to foreclose Parcel A.

Thomas strongly encouraged Ed to work with San Joaquin River Delta Surveys to work through the issues related to the property. However, Ed spoke very poorly of this company and was critical of their work. This bothered Thomas, as he knew the firm to be one of the more reputable surveying firms in his area.

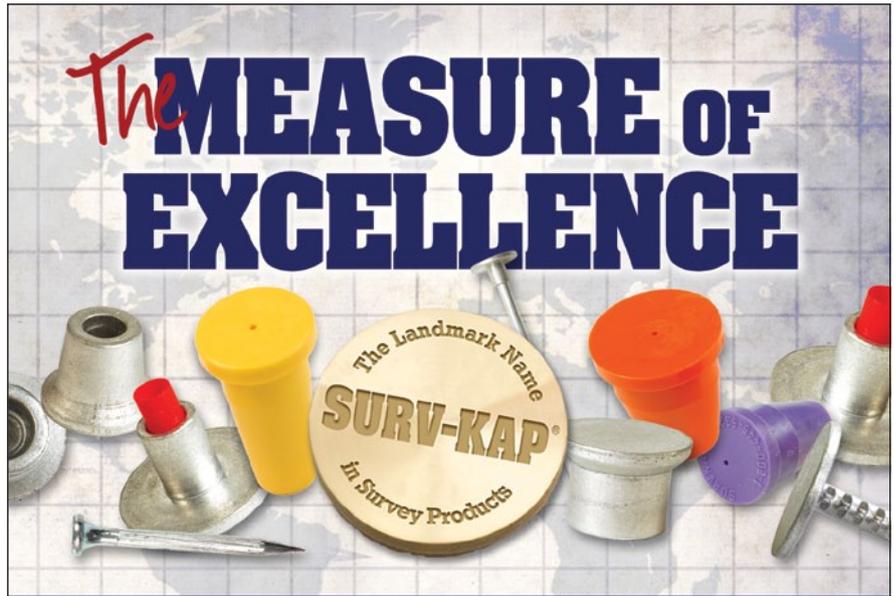
Ed had already had one of his properties foreclosed, and he was obviously in financial trouble with his remaining farming operations. Thomas was concerned about Ed's ability to pay for additional surveying services, especially if the surveying work was entangled in ongoing legal battles between the parties.

I believe that Thomas made the correct decision. It isn't easy to turn down work in a difficult economy, but you sometimes you have to say "No". Clients like Ed can cost you money, not make you money.

The Benefits of Involving a Land Surveyor Involvement

Not all land development projects turn out this bad. Certainly the fast and loose lending standards prevalent in the real estate boom present in the mid 2000s contributed to the demise of this project.

However, the sad series of events described in this article does show the benefits that come from keeping a land surveyor involved throughout the lifespan of a land development project. Had Ed, or one of his lenders, sought direction from a qualified land surveyor throughout this project, many of the problems listed above could have been avoided. I'm not talking about paying for the surveying work needed for each part of the project separately, and awarding the work to the lowest bidder. On the contrary, I'm talking about working with the same qualified land surveyor throughout the project. This consistency allows for potential problems to be identified and avoided in ways that aren't possible when a land surveyor is hired for only one small part of a project. This type of consulting isn't cheap, but it is certainly less expensive than fixing the problems that arise in its absence. It also requires the client to view the land surveyor as a trusted advisor, and not just a business man selling a service that is a necessary evil for land development.



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