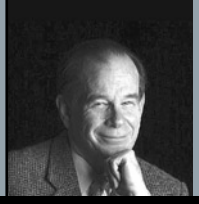
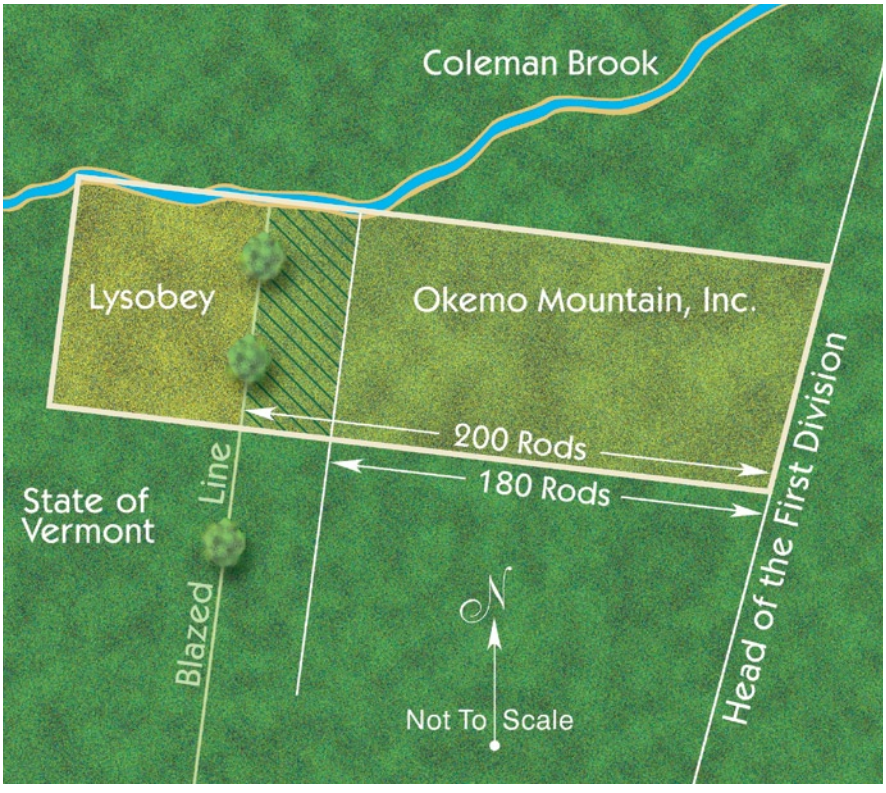


By James J. Demma, LS, Esq

Jim Demma is a Maryland licensed professional land surveyor and has practiced law in both the State of Maryland and the District of Columbia for more than 30 years. His extensive practice has included land use & development, real estate contracts and titles, condominiums, easements, land patents, boundary disputes, and all matters that touch and concern the land.

# Boundaries, Old Deeds, and a "Blazed Line"




In one of my previous articles there was a discussion of the word "pole." In this recent case, cited as *Okemo Mountain, Inc. v. Lysobey, et al*, 2005 VT 55, 883 A.2d 757 (2005), the discussion concerns the word "rod." For non-surveyors who may be reading this article, *Black's Law Dictionary* defines a "rod" as "*a lineal measure of sixteen feet and a half, otherwise called a "perch".*

In this Vermont case, adjoining parcels of land on Okemo Mountain were owned by the Lysobey family and Okemo Mountain, Inc. The records show that both parties had appeared in the appeals court three times prior to litigate matters relating to the Lysobeys' access to their land. This particular appeal concerned the location of the boundary between their respective parcels.

The Lysobeys' land is bounded to the south by state-owned lands, to the north and west by Coleman Brook, and to the east by Okemo's land, which extends east to the lines of a certain survey performed in 1788 that went by the name of the "Head of the First Division." It was undisputed that the eastern boundary ran approximately north-south; but what was at issue was whether the boundary was 180 rods west of the Head of the First Division (as stated in certain "old deeds"), as the Lysobeys claimed, or 200 rods west, as Okemo contended.

After the Appeals Court reviewed various chains of title for how the lines were described, the conflict at issue appeared to stem from several sources: an 1824 survey, "every relevant conveyance and survey since 1836," other deeds in the chains of title, maps, and what the Court referred to as other "land documents."

It would be impossible in this short article to explain the great volume of evidence that was offered at trial (yet with the lack of much actual monumentation on the ground), and what the Appeals Court had to consider in this appeal. The one principle that surveyors can take from this case is the great importance of a trial court decision, and how on an appeal, such as this one, it is so difficult for there to be a reversal of that decision.

As the Okemo decision states: *"The location of a boundary line is a question of fact, to be determined on the evidence…*

*Findings will be sustained on appeal unless, viewing the evidence in the light most favorable to the prevailing party, there is no credible evidence to support the findings."* My own personal homily has always been: You'd better do your best job to achieve a win in the trial court, because the chances of an appeals court overturning a lower court's decision in a boundary case are not that good.

One important point in this case was the conclusion by the trial court that the Lysobeys' predecessors in interest had **acquiesced** in the location of their eastern boundary at the 200-rod location for the statutory period, and that Okemo's claim of ownership was therefore superior to the Lysobeys'. The legal doctrine involved in this conclusion is that a boundary is established by **acquiescence** when there is mutual recognition of a given line by adjoining landowners, and continuous possession by one to the line for the same period of time as required to establish ownership by adverse possession. In Vermont the statute of limitations appears to be 15 years, but the statute varies in different jurisdictions.

This Appeals Court went on to state that continued satisfaction and compliance with a boundary marked on the ground is persuasive evidence that it is the correct boundary, and that acquiescence can be proved by *"occupation up to, but never over, the line, including construction, farming, irrigation, and raising livestock"* And, what piqued my special interest in this case was the Court saying that acquiescence to a boundary line can be proved by "silence or failure to object to a line *and that a boundary established by acquiescence between two landowners is conclusive upon their successors in title."*

In this case the court found that the Lysobeys' predecessors in interest acquiesced in the location of the boundary 200 rods west of the Head of the First Division, and the trial court found that both the Lysobeys' and Okemo's predecessors in interest recognized, since 1836, that the boundary in question was a straight north-south line about 200 rods west of the Head of the First Division.

The evidence showed that when the Lysobeys took title to their land in 1986, the 200-rod location was marked by "a blazed line of trees marking the boundary at the 200-rod location" that had been in existence since at least 1970. Furthermore, the Lysobeys had not taken any formal action to settle the location of the disputed boundary until 1997, by which time the blazed trees had been present for nearly thirty years.

The Appeals Court ended its decision with noting that because of the blazed line, the lack of ancient monuments on the ground is not fatal to Okemo's claim. Located as it is in a remote area **without any other boundary markings**, it is the equivalent of the claimant "**unfurling its flag**." The blazed line, coupled with many deeds and surveys, established that, for more than the statutory period, the eastern boundary of the Lysobeys' land had been a straight north-south line approximately 200 rods west of the Head of the First Division.