

feedback

What Is An Easement and How Can One Be Created?

Mr. Demma,

I know that all States have different Laws and Statutes, I'm concern about Colorado. Our Town Attorney for the small Town of Pagosa Springs stresses that utility easements can be abandoned and/or vacated by Town Ordinance. His reasoning is that they were created for a Public benefit and if no utility exists within the easement, the Town as the Public representative can do away with them.

If utility easements were dedicated, granted or reserved to the "Public" for utilities then I might agree with him.

In the case were we disagree, the easements were dedicated, granted or reserved to utility companies, not the Public. Would not all Utility Companies that presently service our area have to Quit Claim or agree in writing that they no longer need or have any use for these easements.

—Dean P. Schultz, PS
Pagosa Springs, Colorado

Demma replies:

In response to your email of August 6, 2014, to the Editor of *The American Surveyor*, it is wise for you to know that all of the states have somewhat different statutory laws. For the most part, I am only versed in the laws of Maryland, however, I am interested in your issue. I understand that your town attorney is of the opinion that utility easements can be abandoned or vacated by an applicable town ordinance, even when the dedication or grant was made to a utility company, and not to the public at large. I hope that I have correctly understood your facts.

I have a hesitation in answering your concern, as I basically stated above that Maryland is my "home base," and not Colorado, but with some caveats, I tend to agree with you, that the affected utility company would have to agree that it had no use for the particular easement, if it is no longer needed. But again, Colorado, or

your local jurisdiction, may have a law or ordinance which may allow the contrary.

—JJD

Claim Jumpers & Drop Kickers III

Chad, just ran across your article in *The American Surveyor*. I have read and re-read §3.137 in the 2009 BLM manual and can't find your quote, "...local survey legal subdivision corners...can be set aside...when there is positive evidence of an intentional departure from the legal principles..."., was issued in full awareness of, and contrary to, the 2006 *Dykes* determination." Did I miss something here? What paragraph in §3.137 is your quote in? However, I did find in the fifth paragraph of said section "A decision to set aside previously fixed local survey subdivision corners must be supported by evidence that goes beyond mere demonstration of technical error, reasonable discrepancies between former and new measurement, and less than strict adherence to restoration and subdivision rules." Which, I read as being 180 degrees from the quote in your article.

—Anonymous
Via the Internet

The Ericksons respond:

Your question was fair and opened the discussion to some good points.

As you can see from the "... of our quote that the quote is a montage of five parts of the seven paragraphs of §3.137. While the assembly is convoluted, so is §3.137. In fact it was the reading of the second to last paragraph of §3.137 years ago that caused Chad to cry out "I think I've just had an aneurism." Though he had not, still, one should not attempt the reading of this section at home, without nearby medical attendance, or good medical insurance.

Apparently BLM's §3.137 places a hinge between "technical errors" and procedural errors. If the difference between the old and

new corner position is due to the imprecision of chaining then the old position is to hold. If the notes of the County Surveyor indicates an improper procedure, such as a stubbed out center 1/4 corner, then the clause that reads "there is positive evidence of an intentional departure from the legal principles..." comes into play and we may presume that BLM is advocating the rejection of tens of thousands of these 100+ year old stubbed-out center 1/4 corners.

State Law, as in *Dykes v. Arnold* places no such distinction between technical and procedural error, for in their courts neither error can overturn an original corner that the seller and buyer relied upon. This should not be surprising nor upsetting to BLM for they have applied this single standard to GLO errors for two hundred years. In contrast are the numerous times we have heard CFEDS graduates parrot §3.137, "if the local surveyor has not used correct procedures in setting his corners then I have no obligation to honor them."

Land boundary resurvey problems are land ownership problems and land ownership problems, in the United States, are reserved to the State Courts. Thus "... legal principles governing recovery of corner location..." do not originate in the BLM manual, nor any other manual, they originate in State Courts. The best resource for such research is *Clark on Surveying and Boundaries* and good relations with a local attorney. Such legal sources demand that original corner monuments be respected no matter what the error.

—Chad & Linda Erickson

Norman C. Caldwell's "Feedback" letter

Read Mr. Caldwell's "Feedback" letter in the August, 2014 edition of *The American Surveyor* and the mention of Professor Berry caught my attention. I assume the reference is to Professor Berry who taught

surveying at the University of Michigan. My recollection of Professor Berry and the other surveying professors was their emphasis on accuracy. I recall one incident while the class was surveying a traverse line on the U of M campus which passed by the women's dormitory. One class mate was caught aiming his transit towards the window of one of the dormitories. The professor that day gave the student an "F" for the day not because of where the transit was aimed but because he had one hand on the tripod impairing the accuracy of the sighting. Accuracy was always the first priority.

—Joseph Litvin, PE, PS, BSE(CE),58
Dayton, Ohio

Caldwell reponds:

Mr. Litvin is correct, Professor Berry was at the U/M, among other professional capacities, and a 'stickler' on accuracy.

Got some feedback?

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