

FeedBack

Dykes v. Arnold and Its Progeny

I enjoyed the attention the Court of Appeals of Oregon case, *Dykes v. Arnold*, received in your publication, *The American Surveyor*. As a result of considering this case and cases in other jurisdictions in conflict thereto, a couple of core issues facing land boundary retracement surveyors came to light:

1. What weight may or shall the retracement surveyor place on a land boundary monument whose location is clearly erroneous, however, such monument has been recognized by land owners and past surveyors as occupying the proper position?
2. Under what circumstances can a GLO interior sixteenth section corner, erroneously monumented by a private surveyor or county surveyor, and subsequently cited/identified in a conveyance or cited/identified in several conveyances, become the legally recognized position for said GLO sixteenth section corner and become conclusive evidence of the position/location of such GLO sixteenth section corner ?

Of course these questions have been presented in the field to many practicing surveyors and beg for an easy solution. However, where conflicting boundary evidence and possible conflicting case law and/or legal authority is presented during the course of the survey, seldom do we find an easy solution.

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Patterson responds:

These are great questions; the answers could fill chapters of a textbook. I am certainly not an expert on this and I do not have any authority to back up this theory, but here is my opinion: If the monument was set in the wrong place and you have the ability to set it correctly, why not put it where it goes and make it easier on everyone else in the future? However, if the monument has been used in subsequent surveys

or has been relied on by landowners, I would lean towards accepting the monument, even though it is technically wrong, in order to save everyone from an unnecessary conflict.

The other side of the argument is that it was incorrect then, it is still incorrect. This is certainly true, but the law favors stability and consistency, so after some amount of time there needs to be a definite answer, even if it is technically wrong. There is clearly a sliding-scale of sorts to weigh, and depending on your state statutes there may not be a right answer (or there may be two, conflicting right answers). I would try to adhere to the “no-pincushion corners” principle, if possible. Here is a simple test, in my opinion:

1. Was the corner monumented correctly at the time it was set?
Yes—if it is within reasonable tolerances of the time, accept it.
No—is there reliance, either by subsequent surveyors and/or landowners?
If *Yes*, go to step 2
If *No*, set the monument in the correct location, and remove any confusion, however you choose, for future surveyors and landowners.
2. If there is reliance by subsequent surveyors and/or landowners you must decide if that evidence outweighs the liability of accepting a clearly erroneous monument location. The whole point of the public lands system is to provide a simple, stable property boundary system; will your efforts promote or undermine that system? Also, will you be sued by your client or another landowner for not following the statutory requirements when they come out on the short end? Although land surveyors are not advocates for their clients, this is very much a reality.

I think that when a monument is mentioned in a conveyance or relied on by the landowners, courts may use the referenced monument on the ground

rather than the “true,” statutorily correct location for the property corner. This should not change the PLSS position; the system cannot be compromised for the sake of private possessory interests.

There seems to be some distinction made in a few court cases that indicate that county surveyors are held in higher regard than a private surveyor. *Dykes v. Arnold* relied heavily on *Adams v. Hoover*, a 1992 Michigan case which had a very similar fact pattern to *Dykes*. In that case the court held that the county surveyor’s erroneous survey would defeat a later, statutorily correct survey. However, in 1997, the Michigan Court of Appeals held differently than *Adams* in *Newfield Tp. v. Morningstar*. In that case the court upheld the newer, statutorily correct survey over the older, erroneous survey. The major distinction I see is that the old, incorrect survey in *Adams* was done by the county surveyor and the old, incorrect survey in *Newfield* was done by a private surveyor.

It bears mentioning that this entire discussion is unnecessary if the section would have been properly subdivided the first time. Also, you must follow your state’s law when making your decision, regardless of what general theory sounds the best.

Ultimately, a surveyor must balance the evidence and make the best decision within the given time, financial and statutory restraints. I do not think there is an easy answer; otherwise, we would not be talking about this 200 years after the GLO surveys.

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