



Wendy Lathrop is licensed as a Professional Land Surveyor in NJ, PA, DE, and MD, and has been involved since 1974 in surveying projects ranging from construction to boundary to environmental land use disputes. She is a Professional Planner in NJ, and a Certified Floodplain Manager through ASFPM.

Tough Times

The construction slow-down has hit different parts of the country with varying ferocity. The latest jolt to “life as we know it” is a uniform blow to businesses of all sorts, and has the potential to change the financial plans of a number of surveying firms. Within a week, three U.S. motor vehicle manufacturers announced they would cease offering leases or would limit the types of vehicles they would lease. Even some lenders seem to be turning down lease arrangements. I know of a number of firms that regularly lease rather than buy company cars and sometimes even trucks. This latest event has the potential to alter budgets and business plans dramatically.

While our traditional *modus operandi* may no longer function in the manner to which we are accustomed, there is no better time to reassess what we do for a living and to diversify the fields to which we offer our professional services.

Think for a moment about all the skills and knowledge possessed by the professional land surveyor. We use both hemispheres of our brains: the mathematical, scientific, and technical left half and the language, legal, and land use-oriented right half. This is more than can be said for many of our clients, who often lean strongly toward one half or the other and cannot always understand an alternative view that may not be opposing but is just different.

As gasoline prices cause commuting to consume a greater chunk of take-home pay, mass transit is struggling to accommodate the sudden increase in passengers. In my own region, some

scarcely used regional rail lines that the transit agency had tried for years to eliminate but staunch supporters had somehow managed to keep running are now packed to the limits. No one is standing in the aisles yet, but it is getting close to that point. The financially strapped Southeastern Pennsylvania Transit Authority is even in negotiations to buy used train cars from New Jersey Transit, which is buying new ones.

pursuing those resources were more interested in their bottom lines than in protecting the rights of the people on whose land they would be looking for and harvesting said resources. It is not uncommon to find deeds in northeastern Pennsylvania that give all subsurface rights to coal mining companies, divesting them of responsibility when houses disappear into the bowels of the excavated earth due to lack of vertical

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What this means for surveyors is that additional rail and regional light rail lines are under construction, and existing lines are finally being repaired and replaced (hopefully resulting in fewer derailments than were a scourge a few years ago). New lines require layout, possibly even boundary work if land acquisitions are involved. While repair-in-place does not entail surveying, reconstruction of disassembled lines does.

Then there is the oil crisis. Depending upon your point of view, either more drilling or alternative energy is the next step to energy independence and economic recovery. Both require our services.

In the earliest days of drilling and mining in our country, the companies

support. We can find all kinds of ancient case law regarding lateral support, preventing our neighbors from actions on their land that would cause ours to slide away or our buildings to collapse upon loss of half of the party wall. But it wasn't until just a few decades ago that support up and down as well as side to side came to the legal foreground. Our measuring, deed review, and description-writing skills are critical to protecting both parties during the resurging interest in King Coal.

Natural gas exists in great abundance in the geologic folds of the Appalachian Mountains. While many landowners are ecstatic about their chance to strike

continued on page 70

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Lathrop, continued from page 71

it rich through royalties in the same way as owners in the oil-endowed regions of the country, not everyone is willing to grant subsurface drilling rights. For these people, the vertical location of their property lines, as they extend to the earth's center from the zenith in the heavens, can be the basis for a moral battle. If a company drills laterally under my property but I did not grant such rights, a major trespass and theft have occurred. Of course, if I have agreed to such a grant, but the drill is located on a neighbor's lot and the gas sucked from beneath my land comes out next door, the same issues arise. Real property rights and interests are at the core of professional surveying.

Solar access easements have been around for a long time, and at least one municipality in New Jersey has enforced ordinances protecting such access to the sun's energy for more than twenty years.

Shadows from new buildings or additions to existing buildings must not extend over the property line, so that no sunlight access is blocked. Permit applications and construction layout require knowledge of the local orientation of the sun. In part this establishes the offset to the property line for any given height of building, although there is a maximum building height—a new kind of set back, as opposed to the usual set numerical limit in feet. But the orientation of solar panels to the sun is also critical to optimal function, gathering up those rays to convert them into usable heat and electricity. It isn't just small residential solar collection; San Diego's Alvarado Water Treatment Plant, recently featured in *Public Works*, boasts a roof-full of photovoltaic panels that cut at least 25% from its annual electricity bill.

If none of these means of diversification are appealing, there is always the tried and true legal arena. Folks do not stop suing each other just because the economy has tanked; that might even be the impetus for trying to make the quick buck. Someone trips over a water meter: whose property is it on, or is it in the right-of-way? Someone wants to maximize his land holdings to build more apartment units; isn't that unused piece over there part of his property? My favorite (and easiest to settle) case occurred when "the surveyor from Sears" decided where the neighbor's fence should go, so that the posts landed on my client's property. *A*

Leininger, continued from page 8

your pencils down now and close your booklets: your acquiescence experience is over. Proceeding further requires opining on unwritten acts and intentions.)

As I have pointed out before, gathering the relevant facts is the problem. Although it may be easy to determine the current limits of occupation (emphasis on *may*, here), determining the *longevity* of that occupation might prove more difficult. Factor in requirements as to the intent of both parties, and one should quickly realize opining on acquiescence is no walk in the park.

Opinionated Deficiency

Although I am a strong advocate for our being willing to opine on unwritten transfers of land as surveyors, the courts have several distinct advantages in this area. First, the courts can command participation of the involved parties. In contrast, parties are free to ignore us, and are not penalized for it. We can initiate all the contact we wish, but cannot compel response. Second, the courts can place witnesses under oath. In most jurisdictions, surveyors do not have that power. And, I'm sorry to say, even in those areas where we can elicit sworn testimony, I suspect many people would lie to us or stretch the truth if it suited their purposes. (Outside a court hearing, there is no real penalty for being untruthful. We have a former president to thank for that.) Finally, our results are not binding on either party. Should they be dissatisfied with our work, they are free to hire our competitor. (I point this out not to belittle our efforts, but to underscore the likely notion that people do not consider the analysis of a surveyor to have the same *gravitas* as a court proceeding. Thus, they can pick and choose what they say to us.)

Thorough records are an indispensable part of an acquiescence opinion. Signed affidavits by owners on either side of the line, stating the nature of their intent and understanding of the boundary line, as well as the age of the occupation, go a long way toward documenting the unwritten transfer. It's not that unwritten transfers are not good for society (they, of course, are), it's that the facts giving rise to their operation can be hard to reestablish as the years roll by. Sometimes the only fact left is the name of the surveyor who opined that the trespass ripened into title.

Tread carefully here. I can't think of a single doctrine laden with more minefields for us. *A*