



JOEL LEININGER / PS

point
to point

the
**American
Surveyor**

amerisurv.com

October 2015 / Vol. 12 No. 9
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PUBLISHER Allen E. Cheves
allen.cheves@chevesmedia.com

EDITOR Marc S. Cheves, PS
marc.cheves@chevesmedia.com

ASSOCIATE EDITOR Joel Leininger, PS
ASSISTANT EDITOR Jacalyn Cheves

CONTRIBUTING WRITERS

| | |
|------------------------------|--------------------------|
| Shawn Billings, PS | Wendy Lathrop, PS |
| C. Barton Crattie, PS | John Matonich, PS |
| James J. Demma, PS, Esq. | Michael J. Pallamary, PS |
| Dr. Richard L. Elgin, PS, PE | Jerry Penry, PS |
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| Linda Erickson | Fred Roeder, PS |
| Jason E. Foose, PS | Angus W. Stocking, PS |
| Gary Kent, PS | |

The staff and contributing writers may be reached via the online Message Center at amerisurv.com

GRAPHIC DESIGN LTD Creative, LLC
WEBMASTER Joel Cheves

OFFICE ADMINISTRATOR Becky Sadler
AUDIENCE DEVELOPMENT Edward Duff
ACCOUNT EXECUTIVE Richard Bremer

The American Surveyor (ISSN 1548-2669) is published monthly by Cheves Media LLC. Editorial mailing address: 905 W. 7th St., #331, Frederick, MD 21701. Tel: (301) 620-0784.

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Subscriptions prices in the U.S.: Free for qualified professionals. Canada: 1 year \$56.00 US; international subscriptions \$72.00 per year (Airmail), U.S. funds prepaid. Back issues (subject to sufficient stock) are available for \$4.95 + S/H.

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ALTA/ACSM Standards and the Record Description

Did you realize that the 2011 ALTA/ACSM standards prefer you *not* to show your surveyed geometry of the boundary outline on the plat? I didn't, until recently. (Thankfully, I have a trump card, in that the minimum standards in my state require that my plats show "the results of the field work, as compiled and checked." Your state may have similar provisions, the effect of which is to trump the ALTA specification on the point.) But for everyone else...

The culprit is the following: "6. A plat ... shall show ... B.i. The current record description of the surveyed property, and any new description of the surveyed property that was prepared in conjunction with the survey, including a statement explaining why the new description was prepared. Preparation of a new description should be avoided unless deemed necessary and appropriate by the surveyor *and insurer*..." (emphasis mine) And "B.iii All distances and directions identified in the record description of the surveyed property (and in the new description, if one was prepared)."

Notice that the default is that the record description be placed on the survey plat, and only if deemed necessary and appropriate by the surveyor *and* title insurer do the actual results of the survey make the cut. Who agreed to this?

But wait, it gets better: the standards (Section 3.D.) specify that "The boundary lines and corners of any property being surveyed as part of an ALTA/ACSM Land Title Survey shall be established and/or retraced in accordance with appropriate boundary law principles governed by the set of facts and evidence found in the course of performing the research and survey." Let me see if I get this straight: I'm to correctly retrace the boundary, but for reporting purposes I'm to use off-the-shelf data, and ignore my findings.

The Underlying Issue

As a preamble, for anyone who does not grasp the underlying issue, it is this: measurement differences are a surveying fact of life. Although it has been the custom in this country to describe courses out to the nearest second and distances out to the nearest one-hundredth of a foot (or one-thousandth!), we surveyors cannot (except in the longest of lines) retrace *our own work* to that precision. Good, careful surveyors should get close, but one second of arc displaces less than 0.03 of a foot *a mile out*; few property lines are that long—at least in the metes and bounds states, and I suspect that's the case nearly everywhere. At 200 feet, one second displaces less than 0.001 of a foot. Given the nature of physical boundary evidence—pipes, stones, walls, etc.—it is impossible to field-replicate measurements to that precision. And it will never happen; not because the instruments will never be that precise, but because the field evidence will never admit that level of definiteness. Building walls are considered plumb despite there being an eighth-inch or quarter-inch variation in the regularity of the surface. Iron pipes have a diameter and no human can hold a prism over the exact center of it again and again to a tolerance of 0.001 of a foot. Such is the nature of what we are measuring. So the precision of the geometry we report is (and has been for a while) a bit overstated. (In fact, one of the litmus tests we use around our office to determine whether we're examining an actual boundary survey or a mere copy of earlier work is to compare the geometry noted with that of earlier surveys. If it is identical, it's either a copy or the surveyor ignored field evidence in favor of record geometry—a violation of the Rules of Construction, in most cases. It's that simple.)

This results in new, slightly different, geometry every time an actual boundary survey is conducted. And title people generally dislike geometric differences, probably because they don't understand why they occur and probably because they are afraid that differences in numbers can result in some sort of title failure (like a wrong phone number).

So now come the ALTA standards to cure their discomfort.

Say what??

This emphasis on the record description over the actual survey results is disturbing on a number of levels. First and foremost, it relegates the surveyor's opinion to an also-ran status. The reason surveys are to be conducted only by licensed surveyors is that the public has entrusted the parcel fabric to them. The foundation of the surveyor's report, in most instances, is his opinion on the location of the boundary. Everything else he does flows from that. Now we are directed to mute that foundation and yet still report other aspects of our results. Are found monuments not mentioned in the record to be omitted because they weren't mentioned? After all, the record description normally addresses both geometry and monuments. Are we to omit one without the other? Other sections of the standards seem to require all monuments to be shown. But how about monuments called-for but not found? If the record description is to be elevated to a status trumping the current work, all parts of it get elevated—not only the geometry. By the way, which record description should be used? The first one describing the parcel as a discrete lot, or the last one? This is an ugly downward spiral of what-ifs.

Second, substituting a record description for the genuine opinion is misleading and will create confusion. Take the case where a tract is surveyed for purposes of subdivision. The developer settles on the property and the ALTA survey, pursuant to the silliness above, notes only the previous record geometry. Next, the surveyor prepares a subdivision plat, and, *pursuant to every other standard in existence*, notes the actual results of his survey on that plat. Later the surveyor prepares a new ALTA survey for construction financing, only now using the geometry from his subdivision plat, because somehow it is now relevant. Within the space of perhaps months, the surveyor appears to have changed his opinion on the boundary outline. Who, exactly, is served by this?

Is there a statement on the face of the plat warning readers that the geometry shown is not actually the results of the field-run survey? Actual distances from objects to the boundary (the surveyed boundary, not the off-the-shelf boundary) probably will not agree with the reported figure. In other words, surveyors trying to retrace the tract using only the published survey will encounter unnecessary anomalies when trying to correlate their measurements to the published (off-the-shelf) outline. In fact, they will be comparing unrelated data, although they probably will not realize it. One of the hallmarks of top-drawer surveying is that later surveyors can retrace the earlier work, based solely on the published data, and have good correlation between

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the later locations of that work. The glue holding the data together is the outline geometry. Substituting an inconsistent geometric figure on the plat robs future surveyors of the ability to use that plat as a stand-alone source for retracement. It's akin to having two unconnected traverse loops underpin various plat elements.

Third, this is fundamentally at odds with professional reporting of every stripe. Imagine if the environmental professional were directed to echo the findings of the previous Phase 1 report in the one he is preparing, unless his findings are significantly different—and even then only if the insurer deems it necessary. Or an accountant being required to re-use last year's numbers unless he had a good reason not to. Name any professional report and the theory holds. This fails on many levels.

More carnage

Positional tolerance wonks should be particularly offended by this standard. Usually the plat is the only document certified as correct by the surveyor. No one is reporting statistical data on every monument represented by the survey. Yet the standards specify that (and I'm paraphrasing here to keep readers from lapsing into a coma) monuments or witnesses to property corners

be no farther than 0.07 feet plus 50 parts per million away from each other [as represented on the survey]. Since any meaningful analysis of conformity to the positional tolerance provisions depends on knowing the *actual* geometry computed by the surveyor, why would he be encouraged not to disclose it? This renders the entire section moot, I might add—if it ever had any significance.

How about the area? Should we toss out the area computed from the actual boundary in deference to the latest one of record? Might those expressing zoning opinions expect an area statement that someone actually stands behind? Where is the benefit to society when we cloak mere repetition under the guise of certified opinion?

It is not difficult to speculate that title

people were the likely movers behind this provision. As noted above, they have never been comfortable with surveys that “don't match” the latest description of record. What is puzzling to me is why the surveyors around that table did not push back and explain why substituting record geometry over actual results is (and will ever be) a non-starter. The concerns of title people can be completely cured by a statement on the plat saying that the land surveyed is the same land conveyed in such and such deed. I've done that a number of times at the request of parties in deals, and everyone is satisfied. Lest someone say that “we've always done that around here,” note that the problems outlined above are timeless. Surveyors make a habit of whining when they perceive a lack of respect for the profession, and yet they offer no objection when the very core of their contribution to society is discarded.

Someone, somewhere on behalf of NSPS and the rest of us, rolled over. And we all look silly as a result. ■

Joel Leininger is a principal of S.J. Martenet & Co. in Baltimore and Associate Editor of the magazine.