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Failures of Interpretation

I have noticed a curious phenomenon over the years. It seems we surveyors have a tendency to divorce theory from practice. Put another way, there is little disagreement in the abstract among us over doctrine. But out in the real world, when concrete situations demand opinions, other influences compete for equal consideration along with established tenets, and we forget that the tenets matter and the influences might not. Here's an example: we are sitting in a seminar dealing with the rules of construction for conflicting title elements – monuments, courses and distances, etc., and no one is out of step. All agree on both the principle and the order of the elements. Yet, when faced the next business morning with a decision over whether to honor a field monument or not, we somehow convince ourselves that, in the real world, things are not so simple.

No Error of Position?

Were someone to argue that the boundary stone found might not have been placed in exactly the right spot 125 years ago, we would all scoff and say, the monument, as placed, has no error of position. In effect, it does not matter whether the stone was placed where intended or not; where it landed is where the correct position lies.

Perhaps it has taken longer than it should have taken to get surveyors in agreement on this point, but I believe most understand and agree that original, undisturbed monuments have no locational error. (We are assuming for this discussion that the monument is referenced in a controlling grant.) Now, fast forward 124 years and consider a newly monumented subdivision.

Upon discovering that the placement of the property corners by the original surveyor was sloppy, in that his markers vary anywhere from 0.25 feet to 1.25 feet from where the newly recorded subdivision plat specifies, would we again get unanimous agreement that the field monuments control, even when they conflict with the subdivision plat?

Alas, not. For some among us, these newly placed, undisturbed monuments are *incorrect*. Although they would not be able to articulate any particular doctrine as authority, somehow they see a distinction between “old undisturbed, original monuments” and “recent undisturbed, original monuments.”

Let's complicate the scenario even more. Assume that the subdivision regula-

owner was to comply with the subdivision and zoning regulations. But consider the doctrine necessary to give effect to this position: the order of conflicting elements would have to be modified to place “compliance with subdivision regulations” ahead of artificial monuments.

Does that change the complexion of the discussion for you?

What is the effect of a conveyance that violates the subdivision regulations? Subconsciously, and probably because we are so heavily involved with the subdivision approval process, we tend to equate non-compliance therewith with actual title failure. This is not so.

Grantors are perfectly able to convey property in a manner inconsistent with subdivision and zoning regulations,

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tions require a minimum area for new lots to be 10,000 square feet, but because of the sloppy placement of the markers, some lots, as monumented, have less area than that required. Worse, buildings proposed to be placed directly on a required setback line might have been staked assuming the subdivision plat controlled, not the monuments. More potential zoning violations. Do the monuments still control? I suspect that some surveyors who were with us in the first scenario will abandon us here. After all, surely the intent of the

which conveyances will, in fact, pass title. Undesirable side effects may result from that non-compliance, such as an inability to obtain building permits, for example, but those consequences do not nullify the conveyance itself. So our opinion as to the efficacy of that grant should vary depending on the question we are asked. From a title or boundary perspective, the deed passes muster. From a future development perspective, the conveyance might be problematic.

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(I realize that non-surveyors involved in real estate assume that the public records dealing with land unquestionably define boundary limits, and regard those of us who do not hold that view as uninformed, but again, consider the doctrines involved in the question. Has any appellate court ruled that monuments control *except when they disagree with county records*? Of course not.)

Who's in Charge?

On a related subject, I had a county official argue with me not long ago over which entity, the courts or the county development review agency, had final say over a proposed subdivision change. (I was acting in accordance with a consent decree which settled an adverse possession suit. Part of the settlement required that the parties memorialize the agreed-upon lines by revising an affected subdivision plat. In the county where this took place, as in most localities, the county government controls that process.) Having apprised the development coordinator of the history of the case, I was annoyed, but not surprised, that he intended to require full compliance with current county regulations, even if those regulations dictated a result different from the settlement agreement, essentially overruling the court-approved location. I pointed out to him that the courts, in deciding adverse possession cases, were not subject to county subdivision regulations (or any other regulations, for that matter). He laughed at such obvious nonsense until I asked him what his remedies were if my clients decided to thumb their noses at county regulations and erect a 40-story office tower in the middle of a residential zoning district. Sheepishly he admitted that the county's only recourse was in court – before the very judge he now proposed to second-guess. We encountered no further resistance from the county on that project, but I did hear him grouching under his breath about “meddling judges.”

My point here is not to ridicule the parties involved, but to underscore the importance of remembering the big picture, our place in it, and the place of the doctrines we hold dear. These events actually happened, and illustrate the need to keep focused on the theories underpinning our work. Whether in the abstract or on-the-ground, we are the experts on this subject, and others rely on our correct understanding of it. 