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The \$15,000 Question

The fax arrived at my office on one of those fine, sunny afternoons, one of those days you get up early just to stretch your legs and feel the warmth of the sun. It read: “Finally, it’s over!!!! The Court entered Judgment last Friday...!!!! I’m faxing it to you—of particular interest to you should be that paragraph re: your two surveys being recognized as *the surveys* setting the property line. (Can you believe she still says she doesn’t know where the property line is located.....)”

My client was referring to two boundary line surveys I performed on a property located in Point Loma, a prominent peninsula that juts out into the Pacific Ocean where homes enjoy spectacular views of downtown San Diego, the Coronado Bay Bridge and San Diego Harbor.

My initial survey was performed on behalf of a bank in connection with a foreclosure and sale. The second survey was in response to a boundary dispute between neighbors, one of the more foolish ones I have been involved with, arising because of some boorish behavior by my client’s neighbor, and involving the tossing of trash and debris against my client’s house and in their yard. The second survey was pretty straight forward as I recovered sufficient control from the first survey to reset the disputed line.

As noted by my excited client, both surveys, one done in 1981 and the other in 1995 were deemed correct, precise, and accurate. The court added:

For the purpose of driveway location, construction of any fence or wall and for all other purposes, the property boundary between the Plaintiff and Defendant’s property shall be the line as set forth in the 1981 [Pallamary] survey of that line



Street view of improvements located adjacent to contested boundary line in Point Loma. The one-hundredth “discrepancy” is at the rear of the property.

as more particularly set forth in the 1995 [Pallamary] survey...”

With regards to the associated activities, the judge also ordered:

[The defendants] are hereby enjoined and restrained from entering onto the property of the other without the express written permission of the other, from annoying or harassing the other either verbally or otherwise, from placing any property, material, debris, trash, or other matter on the property of the other.

In the weeks and months leading up to this dispute, the neighbor hired a local surveyor to challenge my survey. I was not surprised at their selection as I had run into this individual several times before. He was one of those “exceptional” surveyors, devoted to leaving his “mark” upon the land, sort of like an unleashed dog marks your lawn.

Several years before, this “Master of Measurement” challenged another of my surveys performed in the Mission Beach

section of San Diego, also in connection with a contested matter. In that case, he immodestly claimed his survey was far more accurate than mine because *he used State Plane Coordinates and I did not*. What a great opening line. After digesting his declaration of egotism, I wasted no time in demonstrating that his survey was in error by five feet because he had used the wrong starting point. But hey, *he used State Plane Coordinates!* Consequently, I renewed my membership in the Star Trek transporter decoder ring, post haste—with extra postage.

When my client’s attorney deposed this *measuring person*, he claimed that his equipment, staff, and capabilities were far superior to mine, citing a lengthy number of reasons. For starters, I used a theodolite, some plumb bobs and a chain, at the time, pretty common surveying tools. Anxious for enlightenment, when we got to look at the measuring person’s



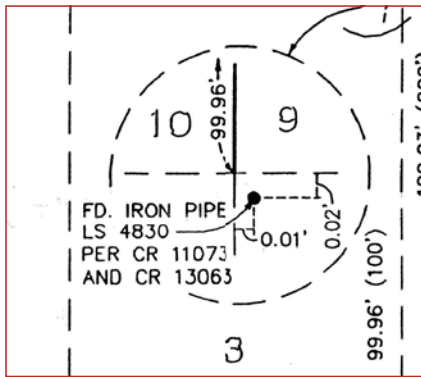
How much does the public pay for minor disagreements between surveyors?

survey, neatly accompanied by his sworn deposition, he argued that my 16 year old survey was in error because I purportedly missed the trash strewn boundary line by a hundredth of a foot. It wasn't until I read the other measuring person's deposition and saw his detailed drawing, calling my monument out, that I realized this wasn't a joke. A hundredth!

Being otherwise sane and rational, my first reaction was to surrender the one hundredth of a foot to the other measuring person; I explained to my client's attorney that I was painfully embarrassed to be arguing over the width of a pencil tip. "You can't do that," said the attorney, informing me that I could not cede anything. He explained, in painful detail, how, in the eyes of the judge and a potential jury, that if I ceded the hundredth of a "pencil," that that would constitute acquiescence to a "superior" survey and that would call my entire survey into question. Moreover, seeing that I had issued a survey report and plat, I had to defend my work, regardless of how vacuous the challenge was. Indeed, if I caved in on the hundredth, that would constitute the admission of an error or, less than proper work. As Charles Dickens so eloquently wrote, "The law is a ass."

In spite of my protest, I had to submit my 1981 survey and my 1995 survey to intense scrutiny and assault. With regards to the detailed discussion by the measuring person about my "bad" corner, it was an iron pipe, centered with a surveyor's stamped disc, in the backyard of a residential property located on a slope, in a neighborhood where the streets and sidewalks were full of cracks and moving earth. I had to argue that over the span of twenty or thirty years, slight movements can occur and that the entire neighborhood, every yard and street and power pole was in a constant state of minor fluctuation.

As any sensible surveyor would conclude, given the fact that I had set the



An "important" detail showing my 1981 monument, set with a tape and plumb bobs, "out" by 0.01 feet.

original pipe twenty years earlier using a chain, transit, and plumb bobs, making all the requisite adjustments for temperature, sag, and wind—in other words by real old fashioned land surveying, hitting the pipe within a hundredth was about as rewarding as it can get. I was delighted.

After we went round and round, and back and forth and up and down arguing over a hundredth, the court eventually arrived at its decision, much to the chagrin of the other measuring person; licensed to stamp letters and numbers on little brass discs. As part of the forensic analysis of the documents produced by the measuring person, a closer examination of his detailed map reveals that his block traverse did not close by five hundredths of a foot. Now if you want to play with the numbers, you could say that his work was in error five times as much as mine or, perhaps you could say, his work had 500 percent of the error my work did. No matter how you attempt to characterize his position, it is dreadful at best and did nothing to advance the public perception of land surveying.

Here's the punch line, pathetic as it can be. After all the debate and argument, my client had to expend an additional \$15,000 in legal fees, expert witness fees and costs so that I could defend my survey, a debate promoted and promulgated and fueled by the gross incompetency and ego of the neighbor's measuring person. When one reads the transcript, you begin to understand what the problems were and why this occurred. In response to my client's attorney's examination of this measuring person, the attorney asked how the work was performed:

A: (Measuring Person) Well, we did a survey of the entire block in order to establish and determine the location of the property line.

Q: Now, did you find any discrepancies other than at this corner?

A: (Measuring Person) Oh, yeah. We found small discrepancies throughout. We found discrepancies at the property line in question. I think Mr. Pallamary had set some points out there that were to represent the line between Lots 9 and 10. We show him missing by a few hundredths of a foot here and there... We found it to be to the northwest of the property line by four hundredths of a foot, and we found it to be a hundredth of a foot off of the 15-foot offset line... as shown in our detailing on the rear property line.... At the rear of the lot we found a monument to the southeast of the true property corners. It's one-hundredth of a foot is what we measured its true position...

Upon further prodding by the attorney, who sought clarification as to the import of all this, he had one more question. Remember that the measuring person was before the court as an expert witness.

Q: Well, I won't pretend to understand that. I'm sure it's meaningful to a surveyor.

A: (Measuring Person) Yes.

In other words, he represented that an argument over one hundredth of a foot was "meaningful" and significant. After all, he (the measuring person) knew exactly where the "true property corner" was.

There's a lot to be learned from this incident at many levels. Perhaps the most significant lesson has to do with the concept of measurement and land surveying. Anyone can measure; it takes a professional land surveyor to determine a boundary line. *A*