IN THE SUPREME COURT OF THE STATE OF ALASKA

RAY M. COLLINS and **CAROL J. COLLINS,** Appellants, v. **DAVID W. HALL** and **MARGARET R. HALL,** et al, Appellees.	)	Supreme Court No. **S-16795**

Superior Court Case No. JU-14-00771 CI

APPEAL FROM THE SUPERIOR COURT, STATE OF ALASKA
FIRST JUDICIAL DISTRICT AT JUNEAU
THE HONORABLE PHILLIP PALLENBERG, PRESIDING

OPENING BRIEF OF APPELLANT

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Marilyn May, Clerk

By: _____
Deputy Clerk

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State Statutes

AS 40.15.010. Approval, Filing, and Recording of Subdivisions. Before the lots or tracts of any subdivision or dedication may be sold or offered for sale, the subdivision or dedication shall be approved by the authority having jurisdiction, as prescribed in this chapter and shall be filed and recorded in the office of the recorder. The recorder may not accept a subdivision or dedication for filing and recording unless it shows this approval.

AS 40.15.050. Plats Legalized. All plats filed or recorded with the recorder before March 30, 1953, whether executed and acknowledged in accordance with this chapter or not, are validated and all streets, alleys, or public thoroughfares shown on these plats are considered to be dedicated to public use. The last plat of the area of record on March 30, 1953, is the official plat of the area as of that date, and the streets, alleys, or thoroughfares shown on it are considered to be dedicated to public use. The streets, alleys, or thoroughfares shown on an earlier plat of the same area, or any part of it, that are in conflict with those shown on the official plat are considered to be abandoned and vacated.

AS 40.15.070. Platting Authority. (a) If land proposed to be subdivided or dedicated is situated within a municipality that has the power of land use regulation and that is exercising platting authority, the proposed subdivision or dedication shall be submitted to the municipal platting authority for approval. A subdivision may not be filed and recorded until it is approved by the platting authority.
(b) The Department of Natural Resources is the platting authority in the areas of the state not described in (a) of this section.

AS 40.15.300. Purposes of AS 40.15.300. The purposes of AS 40.15.300 - 40.15.380 are to provide the public with an improved mechanism for the recording of plats for subdivisions in areas of the state identified in AS 40.15.305 (a) and to ensure that provision has been made for access to those subdivisions. AS 40.15.300 - 40.15.380 are not intended to provide the

state with any authority to establish engineering or other standards for subdivisions beyond those expressly set out in AS 40.15.300 - 40.15.380.

AS 40.15.305. Examination of Plats Before Recording. **(a)** The commissioner shall exercise the platting authority for the state except within a municipality that has the power of land use regulation and that is exercising platting authority.
(b) The commissioner shall review and approve each plat under AS 40.15.300 - 40.15.380 before the plat is recorded under AS 40.17. The approval by the commissioner shall be affixed to the plat in the form of the following statement:

> PLAT APPROVAL
> This plat is approved by the commissioner of natural resources, or the commissioner's designee, in accordance with AS 40.15.
>
> _____ _____
> Commissioner Date

(c) The recorder may not accept for filing and recording a plat for which the commissioner's approval is required under this section without the approval of the commissioner endorsed on the plat.
(d) Within 45 days after a plat is filed, the commissioner shall approve the plat or return it to the applicant for modification or correction. Unless the applicant for plat approval consents to an extension of time, the plat is approved and a certificate of approval shall be issued by the commissioner if the commissioner fails to act within that period. The commissioner shall state in writing reasons for disapproval of a plat.
(e) A recorded plat may not be altered or replatted except on petition of the state, a municipality, a public utility, or the owner of a majority of the land affected by the proposed alteration or replat. The petition shall be filed with the commissioner and shall be accompanied by a copy of the existing plat showing the proposed alteration or replat. The provisions of AS 29.40.130 and 29.40.140(a) apply to an alteration or replat submitted under this subsection. The provisions of (d) of this section do not apply to an alteration or replat petition, but the commissioner shall state in writing reasons for disapproval of the petition.
(f) In the case of a vacation of a street, right-of-way, or other public area, the provisions of AS 29.40.140 (b) and 29.40.160(a) and (b) apply. When applying these provisions to land outside a municipality, the word "municipality" should be read as "state" when the context requires.
(g) Notwithstanding another provision of AS 40.15.300 - 40.15.380, the commissioner shall approve, without review under AS 40.15.300 - 40.15.380, a plat under AS 38.04.045 that consists solely of land owned by the state. The commissioner may not charge a fee for the approval under this subsection.

AS 40.15.310. Requirements For Plat Approval. (a) Each plat must show on its face a certificate of ownership, with the names and addresses of each owner listed. Each owner of record shall sign the certificate, and the signatures shall be acknowledged.
(b) The surveyor preparing the plat shall sign and affix the seal of the surveyor.

AS 40.15.320. Monuments. (a) In a subdivision with five or fewer lots, the existence of at least a 5/8 inch by 24 inch rebar and cap monument at controlling exterior corners of the subdivision shall be established by the surveyor.
(b) In a subdivision of more than five lots, each interior corner shall be monumented with at least a 5/8 inch by 24 inch rebar and cap.
(c) If a monument of record does not lie on the parcel or tract boundary, the plat shall reflect a boundary survey and tie to a monument of record.

AS 40.15.330. Plat Standards. The commissioner shall establish plat standards by regulation.

AS 40.15.350. Certified Copy of Plat as Evidence. A copy of a plat certified by the recorder of the recording district in which it is filed or recorded as a true and complete copy of the original filed or recorded in the recording office for the district is admissible in evidence in all courts in the state with the same effect as the original.

AS 40.15.370. Regulations. The commissioner may adopt regulations to implement the provisions of AS 40.15.300 - 40.15.380, but only those that are necessary and that are in accordance with the purposes stated in AS 40.15.300 .

Regulations

11 AAC 53.260. Amended plat If a technical error is detected on an officially filed plat, and if the commissioner determines that the error's correction will not adversely affect any valid existing right, the following correction procedure may be used in place of the replat procedure of 11 AAC 53.730:

(1) immediately above the title block on the original filed plat, the statement "Amended Plat" must be placed in bold letters;

(2) repealed 7/5/2001;

(3) the following separate certification must be prepared and presented with the original amended plat to the appropriate district recorder's office for filing:

CERTIFICATION

Name of plat, subdivision: .....

The above-referenced subdivision plat as filed in the ..... recording office under plat file number ..... has been revised as follows:

.....

(revision)

The above revision constitutes the sole change made to the plat aside from the notation above the title block on the plat. The above revision does not affect any valid existing rights. I am therefore submitting this plat for refiling as corrected.

Date ..... Registration Number .....

(surveyor's seal)

(signature in black ink)

.....

Registered Land Surveyor

(4) a true and certified blueline copy of the filed amended plat and a copy of the recorded certification must be submitted to the department within 14 days after filing and recording. The copy of the certification must be made by a mechanical reproduction process that produces a permanent copy.

History: Eff. 3/27/80, Register 73; am 7/5/2001, Register 159

Authority: AS 38.04.045

AS 38.04.900

AS 38.05.020

AS 40.15.305

AS 40.15.370

11 AAC 53.660. Amended plats Amending of plats must be done in conformance with 11 AAC 53.260 and requires approval of the department under that section.

History: Eff. 7/5/2001, Register 159

Authority: AS 40.15.330

AS 40.15.370

11 AAC 53.680. Monumentation requirements (a) In a subdivision with five or fewer lots, the monuments required to be established at controlling exterior corners include each angle point, each point of curvature, and any point on the subdivision exterior boundary that is more than 1,320 feet from a monument. Each monument at each controlling exterior corner must consist of a minimum 5/8-inch by 24-inch rebar with a minimum two-inch diameter aluminum cap. For monuments that are

(1) set by a survey under this subsection,

(A) the surveyor shall stamp the cap with the corner identification, year set, and surveyor's registration number, and shall orient this information so that it may be read when the reader is facing north; and

(B) if both the cap and the pipe are nonferrous metal, the surveyor shall permanently attach additives with magnetic qualities at both the top and bottom of the monument; or

(2) recovered, the surveyor shall

(A) certify that the existence of controlling exterior corners of the subdivision has been established in the field; and

(B) show the current condition, description, and markings of all recovered monuments.

(b) In a subdivision of more than five lots, each corner to be monumented must include each angle point and each point of curvature in the boundary of each lot in the subdivision. The surveyor shall monument each interior corner with a minimum 5/8-inch by 24-inch rebar with a plastic or aluminum cap bearing the surveyor's registration number.

(c) A surveyor who finds monuments and accessories in a disturbed condition shall make sufficient ties to existing monuments of record to properly control the field location of the parent parcel boundaries. The surveyor shall return disturbed monuments and accessories to the original position and condition as nearly as possible or replace them so as to perpetuate the position.

History: Eff. 7/5/2001, Register 159

Authority: AS 40.15.320

AS 40.15.370

AS 40.15.380

JURISDICTION

This court has jurisdiction to determine this appeal pursuant to AS 22.05.010 and Alaska Rule of Appellate Procedure 202(a).

PARTIES

Parties to this appeal are: Appellants Ray and Carol Collins (hereafter "Collins"), through counsel Joseph W. Geldhof and Appellees David and Margaret Hall (hereafter "Halls"), through counsel Lael Harrison.

ISSUES PRESENTED

The essential issue presented by this dispute is whether the trial court's decision to alter the boundaries of a subdivision plat established in 1975 and relied on by numerous land owners for decades was erroneous. More particularly, the trial court's decision in 2016 to adopt a new survey point of beginning for the subdivision plat established in 1975 shifts the boundaries of the subdivision in a manner that is inconsistent with long-established survey practice and contrary to legal doctrine.

Two other ancillary issues related to application of covenants governing land use and an issue of trespass were also presented to the trial court. The issues related to application of the covenants and trespass are believed to be of significantly less importance to the ultimate resolution of this case on appeal.

STATEMENT OF THE CASE

I. Introduction

This legal action originated over a boundary dispute between two landowners. At the core of this appeal are two contradictory surveys pertaining to a subdivision located on Colt Island in the Southeast Alaska. The original subdivision survey of Colt Island, completed in

1975 by Alaska surveyor J.W. Bean[1] ("Bean"), established the Colt Island Recreational Development (hereafter "Colt Island subdivision"). The Colt Island subdivision was established as ***Plat 75-11***, a document that was recorded with the State of Alaska. [Exc. 02].

Subsequently, in 2012, a survey of a single lot located in the Colt Island subdivision (Lot 15, Area 1), was completed by Alaska surveyor Mark Johnson ("Johnson"). Johnson's 2012 survey is titled ***2012-32*** [Exc. 14].

The trial court noted "discrepancies" existed between the surveys completed by Bean and Johnson. [Transcript of ***Decision on Record***, Exc. 49]. The source of the discrepancy between the two surveys results from each surveyor beginning his survey from a different location point on Colt Island. This issue about the discrepancy as to the initial point of beginning from which to start a survey is critical to resolving this dispute on appeal.

The trial court held that Johnson's 2012 survey utilized the correct beginning point. [Transcript of ***Decision on Record***, Exc. 51]. The companion finding of the trial court - that Bean used the "wrong" beginning point in 1975 when he conducted his survey work while preparing ***Plat 75-11*** - was clearly articulated by the trial court [Transcript of ***Decision on Record***; Exc. 55].

Either way, the trial court's determination that the 2012 Johnson survey used the correct point of beginning for determining the boundaries of the Colt Island subdivision (or, in the alternative, the court's rejection of Bean's actual point of beginning for the survey activities he utilized to establish ***Plat 75-11*** in 1975), misapprehends the law and creates property boundary chaos on Colt Island.

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[1] Alaska Licensed Professional Land Surveyor No.: LS-3650.

As a direct consequence of the trial court's holding, the boundaries of Lots 15 and 14 (belonging to the Halls and Collinses, respectively), as identified on ***Plat 75-11*** and all the boundaries of every other lot as well as all the access rights-of-ways for the Colt Island subdivision established by ***Plat 75***-11 will shift.

II. Statement of Facts

The specific dispute between the Collinses and the Halls arose out of their ownership of adjoining lots in the Colt Island subdivision. Colt Island is one of myriad islands in the Alexander Archipelago of Alaska. The island is located approximately 10 miles in a westerly direction towards Admiralty Island from the Juneau International Airport.

Legal title to Colt Island belonged to the United States Government until 1927. In 1927 the federal government conveyed the entire land mass of Colt Island to Albert Forsyth according to federal land disposal provisions. Forsyth obtained title to Colt Island based on ***U.S. Survey 1755***, a survey conducted and completed by Fred Dahlquist. [Exhibit. J1A; R. 001079; Exc. 001].

The Colt Island property was subsequently conveyed to William Black ("Black"). [Tr. 14]. In the early 1970's, Black worked with Howard Lockwood ("Lockwood"), to prepare a plan to sell portions of Colt Island and engage in other economic activities on Colt Island. [Tr. 15]. Black and Lockwood engaged Bean, a licensed Alaska land surveyor to conduct survey activities on Colt Island and prepare a plat of the island for the purpose of selling recreational and commercial lots. [Tr. 30—31].

In furtherance of the development plans for Colt Island, Bean prepared ***Plat 75-11***, essentially a subdivision of the entire parcel known as ***U.S. Survey 1755***, a survey description of the land encompassing the entirety of Colt Island. [Exc. 02]. This new subdivision was

designated by Black and Lockwood as the Colt Island Recreational Development, but typically referred to as the Colt Island subdivision. Recreational lots, several commercial lots, right-of-way trails and other access features for the Colt Island subdivision were established and delineated according to ***Plat 75-11*** from a point of beginning chosen by Bean, Lockwood and Black. [Tr. 42—44].

As part of his work assignment in assisting with the survey and lay out the Colt Island subdivision, Bean provided Lockwood and Black with limited monumentation of ***Plat 75-11***. [Tr. 46]. The first use of monuments placed by Bean was to establish and clear the Totem Pole access trail. [Tr. 47]. In order to delineate the various lots for purpose of marketing the property and sale of the property, Lockwood testified Bean placed surveying control points along the property lines for lots 1-18 in Area 1 of the Colt Island Recreational Subdivision. [Tr. 48]. Bean confirmed his placement of "probably 20" survey control points on the island as part of his survey work preparing ***Plat 75-11***. [Tr. 123—124]. Indeed, Dave Hall, appellant in this case, recognized and used some of the control point monuments established by Bean in the mid-1970's delineating the recreational lots, including Lot 15, Area 1, the lot he owned adjacent to the Collinses property.[2] [Exhibit. T; R. 001019]. Other witnesses during the trial confirmed the existence of monumentation delineating subdivision boundaries on Colt Island that existed in 1976. [Tr. 337]. Significantly, in response to questioning by the trial court, witness Barry Rohm, provided uncontroverted testimony that "stakes" delineating subdivision lots and trail access on Colt Island were present in 1976. [Tr. 350—351]

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[2] Mr. Hall referenced a "1x2 stake (recovered) with lath and flagging <u>from original survey</u> N.E. corner of Lot 18" [emphasis added].

In addition to delineating the lots to be sold on Colt Island along with the trails and access features for the island, Lockwood propounded the ***Colt Island Declaration of Protective Covenants*** to address and govern use of the Colt Island properties. [Exc. 03-06]. Following the preparation of ***Plat 75-11*** and the ***Colt Island Declaration of Protective Covenants***, Lockwood and Black commenced selling lots on Colt Island. [Tr. 52—53].

As a matter of routine practice, all the subdivided lots on Colt Island sold by Black starting in the mid-1970's to various buyers were done by deed together with recorded covenants running with land. [Tr. 54—55]. The sellers sold the property by deed that incorporated ***Plat 75-11***. [Tr. 53]. The buyers bought the property on Colt Island according to the delineation stated in ***Plat 75-11***. [Tr. 54—56].

The sale, acquisition and utilization of the subdivided Colt Island property according to ***Plat 75-11*** continued from the 1970's through the 1980's, the 1990's and beyond without obvious disharmony. For decades, the deeds used by Black to convey property to buyers were founded on property descriptions referencing ***Plat 75-11***. Construction of cabins for a period of at least 20 years on the Colt Island subdivision took place according to ***Plat 75-11***. [Tr. 458—459].

The Collinses purchased Lot 14 of Area 1 on Colt Island in 1990. [Tr. 463]. They built a cabin on the lot they acquired. [Tr. 465]. The Collinses located their cabin on Lot 14, Area using boundary "stakes from the original surveying in '79s..." [Tr. 466—467].

The Halls obtained Lot 15 of Area 1 on Colt Island in 1994. [Tr. 535—536]. According to Dave Hal, the lot the Halls acquired was actually defined, in part, by a "wood stake with yellow flagging on it." [Tr. 543]. Hall testified he "...assumed this (the stake), was from the original survey, you know, rotting away." [Tr. 543]. Hall then used the monument he found

from the original survey to "set a new piece of rebar at that locale." [Tr. 543]. Halls reliance on the existing monuments showing the boundaries of Lot 15, Area 1 were set out in Defendant's Exhibit T, admitted at the request of Hall's counsel without objection. [Tr. 545]. Subsequently, Hall testified he came to believe the original survey "control that John Bean set was in the wrong place. (emphasis added) [Tr. 595].

The definition of property boundaries on Colt Island that existed for decades based on the initial sale of subdivided parcels and in some instances subsequent resale of property was ruffled in 2008 when one owner of a Colt Island parcel owner brought out a surveyor purporting to alter the location of Totem Pole Trail. [Tr. 471]. As a result, Ray Collins became concerned that an outhouse privy and shop building belonging to the Halls and placed in close proximity to the shared Collins/Hall lot boundary might be encroaching on the Collinses property or built in a place and manner inconsistent with the restrictive covenants adopted for the Colt Island recreational subdivision. [Tr. 471].

In 2009, Ray Collins engaged Bean, the original Colt Island subdivision surveyor, to survey his lot. [Tr. 475]. Bean confirmed the boundaries of the Collinses lot were as shown on Plat 75-11 and "put in four rebar stakes with surveyor caps" defining the property. [Tr. 475]. The survey obtained by Ray Collins illustrated the cabin on his property was consistent with the covenant set back requirements. [Tr. 476]. The rebar monumentation Bean placed on Colt Island defining the Collinses lot also showed a small part of a privy and a shop owned by the Halls encroached on their lot. [Tr. 480—483].

In response to the survey work by Bean reaffirming the Collinses boundaries designated by ***Plat 75-11***, the Halls obtained a new survey prepared by surveyor Johnson that used a different point of beginning compared to the survey point of beginning Bean used in 1975. Not

surprisingly, the new Johnson survey boundary lines for the Colt Island subdivision deviated significantly from the boundaries delineated in ***Plat 75-11***. [Exc. 14]. This new survey, designated ***2012-32*** has the practical effect of shifting all of the lot boundaries on Colt Island. The Halls "admit" ***2012-32*** "do not coincide with the boundary lines suggested by the survey monuments" on Colt Island set in 2009. [Exc. 30 at paragraph 14]. The Halls also apparently concede and "admit" the existing access trail known and marked on the new survey (***2012-32***), purporting to show the boundaries of their lot is now seemingly located on their land. [Exc. 30 at paragraph 16].

Instead of attempting to reconcile the deviations in the boundaries of their new survey compared to the reality on the ground, the Halls opted to record the new survey, an act that has effectively clouded title to the other parcels on Colt Island. [Transcript of ***Decision on Record***; Exc. 49 & 70]. The Halls act in obtaining and recording a survey in 2012 that significantly shifted the existing property boundaries demarcated and established by ***Plat 75-11*** triggered the lawsuit in the Superior Court.

III. Procedural History

After bench trial lasting four days, the trail court made an oral determination on December 14, 2016 granting relief to the Halls. [Transcript of ***Decision on Record***; Exc. 44--74]. ***Final Judgment*** was entered by the Superior Court on July 6, 2017. [Exc. 75--77]. The trial court's entry of judgment included adoption of the ***Findings of Fact & Conclusions of Law*** prepared by defendant's counsel and adopted by the Superior Court as part of the ***Final Judgment***). [Exc. 78--92]. Collinses sought reconsideration on July 14, 2017. [Exc. 93--103]. The trial court denied reconsideration on July 19, 2017. [Exc. 104--105]. Collinses timely filed an appeal on August 17, 2017.

STANDARD OF REVIEW

The trial court's conclusion that the point of beginning surveyor Bean used to establish the subdivision boundaries contained in ***Plat 75-11*** in 1975 was incorrect and the trial court's alternative adoption of the different survey point of beginning used in ***Survey 2012-32*** combined with the trial court's failure to apply relevant legal standards related to subdivision re-platting presents questions of law. Whether the superior court applied the correct legal standard is a question of law which the appellate court reviews according to the "independent judgment" test.[3]

ARGUMENT OF APPELLANT

A. Summary

This case obviously reflects a dispute between two adjoining property owners. As such and not surprisingly, there is a high degree of emotional content packed into the record about who did what to whom along with charges about trespass, allegations and arguments related to use of the properties and where, exactly, the boundaries between the Collinses and the Halls rested.

But in analytical terms, and particularly with regard to determining a useful and coherent rule of jurisprudence, this appeal revolves around the choice the trial court made about which surveyor's work product should be accorded priority when determining boundary lines.

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[3] ***Sierra v. Goldbelt, Inc.,*** 25 P. 3d 697, 701 (Alaska 2001) ("independent judgment" test used when reviewing summary judgment decision and questions of statutory interpretation.); *see also*, ***Burton v. Fountainhead Development, Inc.***, 393 P.3d 387, 392 (Alaska 2017) (legal standard is question of law to which independent judgment is applied); *see also*, ***Sielak v. State***, 958 P.2d 438, 439 (Alaska 1998) (adoption of the rule of law most persuasive in light of precedence, reason and policy).

The essential choice on review is whether to honor the deeds conveying property on Colt Island that incorporated surveyor Bean's original 1975 subdivision plat or whether to adopt the boundary lines set out in a survey completed in 2012 that shift the entire subdivision boundaries.

The Collinses believe the property boundaries established in 1975 and used for decades, should be controlling. The subdivision plat Bean completed in 1975 ought to govern this dispute as a matter of common sense and law, a proposition that includes adoption of Bean's survey point of beginning when he established ***Plat 75-11***.

Rather than adopting the subdivision boundaries established by Bean in 1975, the trial court adopted the Johnson survey completed in 2012 as controlling the boundaries on Colt Island. Johnson's survey used a point of beginning that deviated from the point of beginning used by Bean but in all other regards ***Survey 2012-11*** uses the same surveying metrics Bean originally used to produce ***Plat 75-11*** in 1975.

Johnson selected a different survey point of beginning, an error on Johnson's part the trial court sanctioned. This adoption of Johnson's substitute survey point of beginning by the trail court appears to be a mechanistic preference based on what the court apparently thought was a more precise survey completed in 2012 instead of adhering to what Bean actually did in 1975.

The impact of the trial court's selection of a new survey point of beginning over three decades after the boundaries on Colt Island were established and used by various property owners creates obvious harm to the Collinses and other island property owners. The trial court's decision to sanction a new survey beginning point amounts to a *de facto* judicial replat of Colt Island, a matter that ignores statutory legal provisions and regulations. This *de facto*

judicial replat impacts other property owners by shifting their existing boundaries and will almost certainly spawn additional litigation if allowed to stand. Ironically, the judicial replat implicit in the trial court's determination doesn't give the Halls any additional property – all it does is shift the boundaries in a manner that creates as many problems as it purports to address.

As argued below, the trial court's recent decision alters and shifts the Colt Island recreational subdivision boundaries established, platted and recorded in 1975 and then conveyed by deed. Additionally, the trial court failed to address in a meaningful manner the obvious issues of trespass and applicability of the covenants presented during the trial.

The trial court's ruling in this dispute ignores long-standing survey practices, is inconsistent with legal precedent and contrary to express statutory provisions in Alaska that set out the process and procedures for altering existing subdivision boundaries.

A decision by the Alaska Supreme Court affirming the trial court's reconfiguration of the Colt Island subdivision boundary lines -- essentially a judicial replat of Colt Island – is wrong as a matter of law. Affirmation of the trial court's judgment allowing for the substitution of new survey point of beginning will establish a jurisprudential rule in Alaska that will destroy landowner repose, call into question the statutory structure related to subdivision re-plating, create mischief and invariably lead to increased litigation.

B. Historic Boundary and Land Use Litigation on Colt Island

Property disputes with regard to ownership and land use disputes among owners and residents of Colt Island have twice been the subject of previous decisions by the Alaska

Supreme Court.[4] These disputes, while not precisely related to the specific boundary issues at issue in this dispute and appeal, provide insight and have some bearing on the issues at stake in the instant case. Nothing in the Alaska Supreme Court's previous opinions addressing property disputes on Colt Island sanctions the wholesale shift in boundaries contemplated by the most recent ruling of the trial court.

C. The Property Deeds Should Control the Boundaries on Colt Island

At the core of this dispute is whether the law pertaining to interpretation of deeds, common sense and normal surveying techniques allow the Hall's to essentially top file a new survey that conflicts with ***Plat 75-11*** property boundaries and alter the existing Colt Island subdivision. By obtaining and recording a new survey that deviates from the boundaries established by Bean in ***Plat 75-11***, the Halls have effectively placed a cloud on all of the parcels previously established on Colt Island. The trial court's decision acknowledges as much. [Exc. 49, 50 & 70].

Adoption of the position advanced by the Halls will inevitably lead to disputes about alteration of property boundaries conveyed by deed as surely as night follows day. If deeds for property on Colt Island that incorporated ***Plat 75-11*** in the conveyance can be tossed aside by the preparation of a new survey inconsistent with the boundaries set out in the plat referenced in the deed, the certainty of property conveyance will be eroded.

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[4] *See generally*, ***Betty Black v. Todd and Joan Shumway***, 1JU-09-823 Civil (addressing covenants and other land use restrictions on Colt Island; *see also*, ***Shumway v. Betty Black Living Trust, et al*** 321 P. 3d 372 (Alaska 2014, (affirming Superior Court determination denying Shumway's claim to a homestead exemption but discussing application of Colt Island Declaration of Protective Covenants).

The position advanced by Halls in this dispute invites mischief as it will change long-established property boundaries on Colt Island and destroy repose, a state much favored by property law. [5]

In the current situation, the surveying work conducted by Bean on behalf of Black and his developer, Mr. Lockwood, resulted in the preparation and recording of ***Plat 75-11***. ***Plat 75-11*** is the underlying basis on which the Colt Island parcels were sold by deed.

Deeds in Alaska are interpreted using a three-step process,[6] as follows: first, courts must "look at the four corners of the document to see if it unambiguously presents the parties' intent. If the deed is ambiguous, the court must "consider 'the facts and circumstances surrounding the conveyance' to discern the parties' intent"; and finally, "[i]n the event the parties' intent cannot be determined, we rely on rules of construction."[7]

Applying the court's three-part test to the deeds in issue, Collinses believe the obvious reference in the original deeds to the plat prepared by Bean and designated as ***Plat 75-11*** convincingly illustrates the designated plat was incorporated within the four corners of the deed. The intention of Black and Lockwood, the owner of Colt Island in 1975 and Black's developer, respectively, was to incorporate the designated plat in the deeds when they commenced selling the Colt Island properties in the mid 1970's. This incorporation of ***Plat 75-11*** into the deeds conveying various parcels (including the subdivision lots that eventually were

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[5] *See generally*, ***Shilts v. Young***, 567 P.2d 769, 773 (Alaska 1977) (purpose of deed description is not to identify the land, but to furnish the means of identification – thus a property description is sufficient if it contains information permitting identification of the property to the exclusion of all others.).

[6] ***City of Kenai v. CINGSA***, 373 P.3d 473, 479 (Alaska 2016).

[7] ***Id***, citing ***McCarrey v. Kaylor***, 301 P.3d 559, 563 (Alaska 2013) (quoting ***Estate of Smith v. Speneli,*** 216 P.3d 524, 529 (Alaska 2009)).

purchased by both the Collinses and the Halls), is seemingly unambiguous. But even if an argument is advanced that the deed language is somehow ambiguous, the fact that the deed incorporates ***Plat 75-11*** as the description of the property to be conveyed supports the conclusion the lots designated by Bean in ***Plat 75-11*** were central to the conveyance when sold by Black and Lockwood. Why else would Black and Lockwood incorporate ***Plat 75-11*** in the deeds?

Significantly, trails and other features were created on Colt Island that relied on Bean's plat and the monumentation he provided for Black and Lockwood. Lockwood and Black sold lots by deed that incorporated ***Plat 75-11*** and the monumentation established on Colt Island by Bean. The record in this dispute substantiated Bean placed monuments for the Colt Island subdivision delineating the lots in the 1970's. [R. 000760]. Dave Hall admitted as much before seemingly repudiating his reliance on Bean's original monumentation on Colt Island. [Tr. 595]. In support of repudiating his acknowledgment of the boundaries of his subdivision lot established by the original control monuments, Hall observed: "Where's the point of beginning of all this mess? Where do you start? If you start in the wrong place, you end up in the wrong place. [Tr. 595]. The obvious retort here is that Johnson's survey started in the wrong place, not Bean's, as is argued below. But the essential point is that various property owners, including the Halls, all accepted and relied on the boundaries established by Bean in ***Plat 75-11*** when they purchased their property by deed incorporating the 1975 plat.

Buyers of the Colt Island lots established by ***Plat 75-11*** built homes and used their property as established and monumented by Bean. The intention of the original owner and principal developer appears clear – they were selling and buyers were purchasing specific designated parcels on Colt Island via deed that was specified according to ***Plat 75-11***.

Really, what other interpretation of what a reasonable buyer or seller would intend or assume in the circumstance makes sense? Would any sensible land developer attempt to convey an undefined or floating parcel of land? Certainly not for a subdivision. What potential buyer in the market for a recreational parcel would knowingly seek to purchase an undefined piece of land?

Individuals acquiring property typically procure the land for specific purposes. In the case of Colt Island, the individuals buying land were almost certainly interested in acquiring their lot on which to build a recreational cabin. All things considered, the aspect of the judicial test regarding the "facts and circumstance surrounding the conveyance" of the Colt Island deeds that incorporated ***Plat 75-11*** argues for resolving any alleged ambiguity in the deed document in favor of adoption of the boundaries set out by Bean.

Black and Lockwood were selling specific parcels of land on Colt Island starting in 1975. The conveyance of these Colt Island parcels was done by deed incorporating ***Plat 75-11***, as delineated by Bean, not Johnson. Lockwood and Black were not selling conceptual hunks of land on Colt Island any more than the Collinses, the Halls or any other eventual property owner of land on Colt Island were buy a conceptual piece of property.

There appears to be no dispute in this case that the deeds conveying the Colt Island parcels incorporated Bean's ***Plat 75-11***. Accordingly, Bean's plat fits neatly within the "four corners of the [deed] document." There is no ambiguity with regard to this conveyance by deed; even if one so argues, the intention to use the boundaries established by Bean when he created the plat are evident in the manner in which access trails were constructed on the island, the selling of actual delineated lots and the construction and use of cabins and other features within the boundaries of the lots designated by ***Plat 75-11***.

There doesn't appear to be any controversy in this dispute that various buyers built, cabins on the parcels acquired according to deeds incorporating Bean's ***Plat 75-11***. Eventually, some of the original owners of the Colt Island subdivision parcels sold the parcels to new buyers, including the Collinses and the Halls. All of these subsequent acquisitions were apparently based on the assumptions contained in the deeds that referenced ***Plat 75-11***.

An obvious issue here is whether the sale and conveyance of various Colt Island lots designated by ***Plat 75-11***, along with the actual creation and use of access trails on the island as well as the construction of cabins on the lots established by ***Plat 75-11*** can be ignored. The trial court was certainly aware of actual previous activity on Colt Island, whether cabin building, development and use of trails or construction of other improvements, that were conducted based on the boundaries established by Bean's ***Plat 75-11***. Ignoring the obvious reliance on the plat rendered by Bean is tantamount to pretending Colt Island is some virtual piece of property where the boundary lines can be redrawn without regard to actual improvements and uses completed and conducted on Colt Island for decades.

On the actual Colt Island, adopting the survey advanced by the Halls is not only inconsistent with the deeds by which property owners acquired their portion of the Colt Island subdivision, the boundary shift that flows from adoption of the ***Survey 12-32*** makes no sense in terms of where actual cabins or access to cabins and other improvements are located. The trial court's adoption of the Johnson survey alters, by judicial fiat, the Colt Island subdivision boundary lines. Not only is the trial court's decision wrong as a matter of judicial interpretation, the court's ruling creates obvious practical problems for every owner of the Colt Island subdivision. The trial court's adoption of new lines delineating property boundaries can

be done on paper in a courtroom but the long-established trails and structures built on Colt Island cannot be so conveniently relocated or shifted.

The deeds conveying the property (including the incorporation of Bean's ***Plat 75-11*** boundaries), not a survey filed decades later, should control as a matter of law.

D. The Boundaries of the Colt Island Subdivision are Established and Controlled by the Original Surveyor

Approval of the kind of subdivision boundary alterations the trial court sanctioned in this case is inconsistent with long-established surveying principles that require surveyors to "walk in the shoes of previous surveyors" in almost all instances. Bean, the surveyor who prepared ***Plat 75-11*** in 1975, is the original surveyor of the Colt Island subdivision. As the original surveyor of the Colt Island survey, Bean's selection of the original point of beginning to prepare ***Plat 75-11*** must be adhered to and honored.

This fundamental surveying principle was discussed by John Bennett, the expert witness the Halls called at trial. In the regard to the Colt Island surveying dispute, Bennett acknowledged the principle calling for subsequent surveyors to use the same survey point of beginning utilized by the original survey, stating "...the "X" marked rock and Bean's own intent as the surveyor in using the "X" marked rock as the point of beginning should override any subsequent conflicts such as we now see between the Hall ROS and the Collins ROS." [R. 000013]. Bennett's use of the term "ROS" refers to the record of surveys at issue in this dispute -- Bean's and Johnson's.

It follows that surveyor Johnson's selection of a different point of beginning for the survey work his firm conducted in 2012 instead of Bean's 1975 starting point is wrong. The trial court's adoption of an alternative survey point of beginning created 36 years after Bean's

original survey work and preparation of ***Plat 75-11*** misapprehends or ignores the very point Bennett makes about following the original surveyor's choice. Bean's intentional selection of his survey point of beginning for ***Plat 75-11*** must be confirmed, not discarded. To not give meaning to Bean's initial survey point of beginning is to sanction practical and legal hardship in determining what boundaries govern the lots and other features on Colt Island

Adoption of a legal standard that allows subsequent surveyors to substitute a new survey point of beginning for previously established survey beginning points will lead to chaos in administering property law in Alaska.

The reason for adhering to the common-sense principle that subsequent surveys must follow the delineation of boundaries previously established are not difficult to grasp.

Changes in technology, better application of information or adoption of new premises that would amend or alter previous survey documentation years after an initial survey is conducted has great potential to wreak havoc on property rights. Likewise, selection of a different point of beginning to commence a subsequent survey that deviates from the original surveyor's point of beginning for the Colt Island subdivision makes no sense.

The reliance by the Collinses and other Colt Island property owners on the boundary lines established by ***Plat 75-11*** is understandable. What rational property owner who acquires a parcel of land, builds on that land and uses that property would welcome a shift in their boundaries according to a new survey based on new technology or differing assumptions?

A fundamental principle of land surveying is that there is but one original surveyor. Bean is the original surveyor of the Colt Island subdivision, the subdivision he designated as ***Plat 75-11***.

There doesn't appear to be any dispute regarding Bean's status with regard to the Colt Island subdivision. Bean was the first surveyor to designate the boundaries of the Colt Island subdivision. Bean was the first surveyor to monument some of the corners of the lots of the Colt Island subdivision designated as ***Plat 75-11***. [R. 000761].

Bean established new subdivision lines on Colt Island in 1975 for Black, the owner and common grantor of the parcels. Bean's plat established all the various lots and access right of ways on Colt Island simultaneously in 1975, in accord with Black's developer, Mr. Lockwood.

Black's entire interest in Colt Island was laid out in a subdivision envisioned by his developer, Lockwood, in the form created by Bean and established in ***Plat 75-11.*** By completing and recording ***Plat 75-11***, Bean must be designated as the original surveyor of the Colt Island subdivision.

All subsequent surveyors of a parcel or subdivision after the original surveyor are engaged in work that essentially seeks to retrace the work of the original surveyor. "In making resurveys, great caution must be used in executing them. Lines long abided by should not be lightly changed by recent surveys."[8] [R. 000978]. "The cardinal principle guiding a surveyor who is running the lines of a previous survey is to follow in the footsteps of the previous surveyor."[9] [R. 000980]. An expert surveyor witness for the Halls testified according to a learned treatise that: "The original survey must govern if it can be retraced. It must not be disregarded. So too, the places where the corners were located, right or wrong, govern if they can be found." [Tr. 900]. The same expert witness for the Hall also noted "The role of the

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[8] ***A Treatise on the Law of Surveying and Boundaries***, Fourth Edition by John S. Grimes.
[9] ***Id.***

surveyor is therefore not to correct the earlier errors by application or modern procedure but to retrace the first surveyor's footsteps." [Tr. 900—901].

Surveyor Johnson, the surveyor used by the Halls in in 2012, was a retracing surveyor. Johnson's task, as a retracing surveyor of the Colt Island subdivision (including the Halls' portion of the island known as Lot 15, Area 1), was to follow in the footsteps of the original surveyor.

Surveyors typically endeavor try to adhere to prior survey work establishing boundaries and designating monuments for property completed in the past. This common-sense practice recognizes the importance surveyors place on previously determined property boundaries. As a practical matter and a practice of sound surveying technique, surveyors give great weight to previous surveys, a practice acknowledged by surveyor Johnson. [R. 000856].

The reason for applying this obvious rule of attempting to walk in the steps of a previous survey precedence is similar to the reason the law values previous judicial pronouncements. Failure to conform to previously prepared land surveys would be akin to abandoning established standards. Property regimes, like the law, require certainty and continuity for the beneficial working of a just society.

Allowing a new survey completed decades after various Colt Island parcels were sold, developed and even resold according to ***Plat 75-11*** would judicially shatter long-standing reliance on land use patterns dating back four decades, a result inconsistent with standard surveying technique and the law.

For the Colt Island subdivision, Bean was tasked in 1975 with completing a subdivision plat by Black and Lockwood for Colt Island. Bean's reduction of his survey work was incorporated into the document recorded as ***Plat 75-11***. Bean placed monuments in the ground

designating subdivision lots on Colt Island in the 1970's when the subdivision was created. [R. 000761].

Bean's adoption of the particular survey point of beginning he used when establishing ***Plat 75-11*** is significant and should be binding. In response to questioning by counsel for the Halls during a deposition, Bean confirmed the survey point of beginning he used in the 1970's. [R. 000764]. Bean substantiated his deposition testimony at trial about his use of his original point of beginning for ***Plat 75-11*** during the trial. [Tr. 297].

Regardless of whether someone else claims Bean's survey point of beginning is good or bad or even wrong from their perspective, as is the case in this appeal, Bean's selection of the particular survey point of beginning for the Colt Island subdivision must be given meaning from a practical surveying perspective and legal orientation. "The question as to boundary lines is not where an entirely accurate new survey would locate them but where the original stakes located them."[10] [R. 000981]. "No matter how inaccurate the original survey may have been, it will be conclusively presumed to be correct and, if there is error in the measurements or otherwise, such error is the error of the last surveyor.[11] [R. 00098].

Johnson's survey point of beginning deviated from Bean's beginning point. The error here is Johnson's, not Bean's, an error that was immediately obvious on the ground at Colt Island and ignited a lawsuit. Johnson failed to follow in Bean's surveying footsteps. As a result, the boundaries on Johnson's ***2012-32*** survey conflict with the longstanding Colt Island subdivision boundaries.

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10 ***Id.***

11 ***Id.***

Johnson's task, as retracing surveyor, was to confirm ***Plat 75-11*** as established by Bean, not alter ***Plat 75-11*** or correct what he believed might have been errors by Bean. Instead, Johnson selected a different survey point of beginning for ***Survey 12-32***, a substitution sanctioned by the trial court that is improper as a matter of established surveying technique and with no basis in law. As the original surveyor of the Colt Island subdivision, Bean's survey point of beginning must govern and is controlling of the subdivision boundaries.

The legal basis for honoring the original survey point of beginning is long established. The significant case of ***Diehl v. Zanger***[12] articulates the necessity of continued adherence to the initial surveyor's point of beginning as expressed by Justice Thomas Cooley in his concurring opinion. Justice Cooley's reasoned argument applied to the current dispute in Alaska suggests this case turns on the answer to a single question: what is the correct point of beginning for a re-survey of the boundaries of lot 15 of the Colt Island Subdivision? Is it the point of beginning John Bean used for his original Colt Island Subdivision survey in 1975? Or is it the point of beginning Johnson used for his re-survey of lot 15 in 2012?

Like the current Colt Island subdivision dispute, ***Diehl*** involved two surveys, separated in time, of a lot located in a Detroit subdivision first surveyed in 1851. Justice Cooley, noting the consequences of upholding the second survey, pointed out that the second surveyor of the subdivision was "mistaken entirely the point to which his attention should have been directed."[13] "The question", wrote Justice Cooley, "is not how an entirely accurate survey would locate these lots, but how the original stakes located them."[14]

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12 39 Michigan 601 (1878)

13 ***Id.*** at page 605.

14 ***Id.***

Applying Justice Cooley's reasoning to the current dispute, the issue, as a matter of sound surveying technique and judicial interpretation is evident. When Johnson elected to commence his resurvey of lot 15 of the Colt Island Subdivision, he made a serious mistake by failing to use the same point of beginning Bean used in his original survey of Colt Island Subdivision. This mistake by Johnson is the sole cause of the relocation of the subdivision boundaries for all the Colt Island subdivision boundary lines shown on his ***Survey 12-32***.

A widely publicized example discussing potential adjustment to an established boundary location illustrates the point about not altering established survey inputs and assumptions and the necessity of following the work of the original surveyor. The location of the fabled "four corners" boundary point defining the area where Arizona, Colorado, Utah and New Mexico join at a single spot is common knowledge. The four corners were established more than a hundred years ago by a survey specifying the bearing and distance from a known location in Washington, DC to a location far to the west. The goal of the survey was to define the place where four states would connect and establish the state's boundaries. Using the best available technology and survey techniques at the time, the four corners monument was established.[15]

Fast forward to the first decade of the 21st Century and the distance and bearing from the designated point in Washington D.C. where the survey was originally commenced were recalculated using Global Positioning System data and other modern technology. Based on the use of the modern technology, contemporary surveyors noted the original monumentation for the four corners was off from the point determined to be accurate in the 1800's. Did that result

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15 *See generally,* ***Why the Four Corners Monument is in Exactly the Right Place, https://www.ngs.noaa.gov/INFO/fourcorners.shtml***

in a change to the geographical boundaries of New Mexico, Colorado, Utah and Arizona? Of course not; the boundaries for New Mexico, Arizona, Utah and Colorado stayed as they were and as they had been relied on for decades. Significantly, the description about the establishment of the fabled four corners survey issue prepared by the National Geodetic Survey concludes:

> A basic tenet of boundary surveying is that once a monument has been established and accepted by the parties involved (in the case of the Four Corners monument, the parties were the four territories and the U.S. Congress), the location of the physical monument is the ultimate authority in delineating a boundary.[16]

The recitation about the Four Corners boundary issue supports the point Collinses believe is at the center of this dispute -- that the attempt by Halls to superimpose a new property boundary overlay on Colt Island is fraught from a legal, technical and practical perspective.

With regard to Colt Island, Bean conducted survey work on Colt Island prior to creating the ***Plat 75-11***. As part of his work for Black and Lockwood, Bean located and fixed monuments on Colt Island demarcating ***Plat 75-11***. [R. 000761]. The Colt Island parcels established by the control point monumentx Bean established were then sold, used and relied on by various Colt Island property owners for years until the Halls had Johnson complete ***Survey 2012-32*** in 2012, a document that when recorded challenged the property boundary *status* quo on Colt Island. The trial court's adoption of the Johnson survey as controlling is error and should be reversed.

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16 ***Id.***

E. Resolution as a Matter of Law by Application of the Doctrine of Boundary by Acquiescence

As an alternative to the legal analysis regarding deed construction and surveying technique problems argued above, the doctrine of Boundary by Acquiescence provides another solution, as a matter of law, to resolve the dispute between the Collinses and the Halls.

The relatively recent Alaska Supreme Court of ***Lee v. Konrad*** [17] is relevant and instructive with regard to this alternative.

Like the Colt Island subdivision dispute, the dispute in ***Lee v. Konrad*** "focused on the survey methods used in ... two competing surveys..."[18] Following a three-day trial the superior court ruled in ***Lee v. Konrad*** but "did not address or make findings on whether the boundary line may have been established by agreement between [the parties'] predecessors.[19]

In deciding ***Lee v. Konrad***, the Alaska Supreme Court noted it had "not considered a boundary line dispute of the type at issue here" before reversing the trial court's determination based on survey techniques.[20] The Alaska Supreme Court overturned the trial court's decision grounded on survey techniques and instead based their decision in favor of maintaining boundary *status quo* according to the boundary by acquiescence doctrine.

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17 *See generally*, ***Lee v. Konrad***, 337 P. 3d 510, 520 (Alaska 2014) (discussing "principles of public policy that preclude a party from setting up or insisting upon a boundary line in opposition to one which has been steadily adhered to.") (citing ***O'Hearne v. McClammer***, 163 N.H. 430, 42 A. 2d 834, 839 (2012) (further citations omitted).

18 ***Lee v. Konrad*** at page 516.

19 ***Id.***

20 ***Id.*** at page 517.

The adoption of the doctrine of boundary by acquiescence in Alaska acknowledges and ratifies the "Cooley Doctrine."[21] The Alaska Supreme Court substituted the "...the concise and accurate term of 'boundary by acquiescence'" for the Cooley Doctrine in ***Lee v. Konrad***.[22]

Appellants need not repeat or significantly elaborate extensively about the meaning and application of the Cooley Doctrine in regard to this appeal. Instead, appellants elect to emphasize the Alaska Supreme Court's summary of the Cooley Doctrine's essential meaning. After a lengthy recitation about how the Cooley Doctrine has been adopted and described by various state supreme courts, the Alaska Supreme Court noted:

> There is little functional difference between the various formulations of the standard for establishing a boundary line by acquiescence. We agree with the New Hampshire Supreme Court that "boundary by acquiescence is grounded 'Upon principles of public policy that preclude a party from setting up or insisting upon a boundary line in opposition to one which has been steadily adhere do'"[23]

In ***Lee v. Konrad*** the Cooley Doctrine was "aptly summarized ... as follows:

> The long practical acquiescence of the parties concerned, in supposed boundary lines, should be regarded as such an agreement upon them as to be conclusive even if originally located erroneously.[24] [Emphasis added].

The Alaska Supreme Court further observed:

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21 ***Id.,*** footnote 16 at page 517.

22 ***Id.***

23 ***Id.*** at page 517 (citing ***O'Hearne v. McClammer***, 163 N.H. 430, 42 A.3d 834, 839 (2012) (quoting ***Richardson v. Chickering***, 41 N.H. 380, 384 (1860) (alterations omitted)).

24 ***Lee v. Konrad***, footnote 19 at page 519 (citing ***Diehl v. Zanger***, 39 Mich. 601, 606 (Mich. 1878)) (other citations omitted).

> Boundary by acquiescence is "a rule of repose, with a view to the quieting of titles," which rests upon the "sound public policy ... of preventing strife and litigation concerning boundaries."[25]

The Alaska Supreme Court concluded that "... a boundary line is established by acquiescence where adjoining landowners (1) whose property is separated by some reasonably marked boundary line (2) mutually recognize and accept that boundary line (3) for seven years or more.[26]

In the Colt Island situation, the active and continued use of Totem Pole Trail and other obvious monumentation showing subdivision boundary lines for over three decades supports the contention that the Halls and their predecessors had accepted and acquiesced to the boundary lines set out in ***Plat 75-11***. Public policy and sensible application of the law and the need to prevent further strife and tamp down further litigation all support application of the doctrine of boundary by acquiescence to the Colt Island dispute before this court.

E. Johnson's Survey *12-32* is Legally Insufficient and Contrary to Alaska Law

As noted previously, Johnson's ***Survey 2012-32*** failed to use Bean's 1975 survey point of beginning, an obvious surveying mistake that results in an island wide shift of all the long-standing Colt Island subdivision boundaries established in 1975. In addition, Johnson's survey in 2012 is inconsistent with the standards required by the State of Alaska in terms of technical conformity with monumentation requirements. Additionally, adoption of the Johnson survey by the trial court amounts to a *de facto* judicial replat contrary to law.

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25 ***Lee v. Konrad***, at page 519 (citing ***Homes v. Judge***, 31 Utah 269, 87 P. 1009, 1014 (1906) (internal quotation marks omitted).

26 ***Lee v. Konrad***, at page 520 (footnote omitted).

1. Technical Inadequacies of Survey *12-32*

Johnson never set foot on Colt Island while completing survey ***2012-32***. [Tr. 736]. Johnson was aware of significant discrepancies between the Colt Island subdivision boundaries actually in use on the island and the boundaries indicated according to survey ***2012-32***. [Tr. 733—734]. Johnson apparently knew the deviation in the survey he prepared in his office didn't square with actual use by property owners on Colt Island or various monumentation points established on the island. As a result, Johnson directed his surveying assistants not to monument survey ***2012-32*** as required by Alaska law.[27] [Tr. 734].

Johnson's omission is curious. It either reflects a cautious approach to an obvious boundary survey problem on Colt Island or a conscious disregard to an obvious legal requirement. Either way, Johnson's directive to his field assistants to not monument Halls' Lot 15 in Area 1 underscore the technical surveying problem and legal issues associated with commencing a survey on Colt Island that fails to start at the same spot used by Bean when creating the Colt Island subdivision designated as ***Plat 75-11***.

2. Adoption of Survey 12-32 Essentially Replats Colt Island Contrary to State Law

The trail court's adoption of survey ***12-32*** as controlling of the boundaries on Colt Island additionally problematic because it essentially is a replat of property in a manner that is inconsistent with State of Alaska legal requirements. [28] Specific regulatory provisions require the Alaska Department of Natural Resources to review and complete any proposed replat of subdivision.[29] This is power to replat is administrative, not judicial. The judiciary can, of

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[27] *See generally*, **AS 40.15.320**; *see also*, **11 AAC 53.680**.

[28] *See generally*, **AS 40.15** (requirements for perfecting a plat).

[29] *See, e.g.*, **11 AAC 53.260 & 660.**

course, review any administrative act by the agency but the trial court's decision in the Colt Island case ignores relevant state statutory provisions. DNR, not the judiciary, is tasked with initially reviewing a proposal to alter a subdivision. Alteration of the boundaries of established subdivisions should not be lightly undertaken by surveyors, the judiciary or the agency tasked with passing judgment on any request to replat a previously subdivided parcel of land

The reasons underlying the reluctance to alter original subdivision lines and monuments is intuitively obvious. John Bennett, the expert witness called by the Halls in reference to the Colt Island boundary dispute referenced basic surveying principles in a report entered into evidence at trial. [R. 00032]. Bennett quoted from a learned treatise:

> Once a lot, street, or block line within a subdivision is established by the original surveyor and the land is sold in accordance with original plat, the lines originally marked and survey are unalterable except be resubdivision.[30] No subsequent surveyor has the authority to 'correct' any errors that are found. To do so would wreak havoc on possession, structure, and other improvements within the subdivisions. Neighborhoods that have enjoyed a long history of peace will be thrown into total disorder.[31]

The sound policy justification underlying the principles here are obvious. Original surveys like the initial subdivision plat for Colt Island embodied in ***Plat 75-11*** as incorporated in the deeds conveying parcels must be honored. For legal and practical reasons, the court should uphold Bean's original point of beginning for ***Plat 75-11*** as the basis for defining all the Colt Island boundaries. If the Halls or anyone else on Colt Island desires to replat the

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30 Section 12.10, Principle 9 – ***Brown's Boundary Control and Legal Principles***, 7th Edition, Robillard & Wilson – 2014.

31 ***Id.*** at page 395

subdivision laid out by Bean, the original surveyor of Plat 75-11 they should seek an administrative remedy.

F. Enforcement of the Covenants

The trial court's decision in this case acknowledged the Hall's structures on their property did not conform to the setbacks mandated by the covenants but then fails to meaningfully address the proper application of the ***Colt Island Declaration of Protective Covenants***. [Exc. 36—37].

As a result of the trial court's erroneous adoption of survey ***12-32*** as controlling for the boundary lines of the Colt Island subdivision, not only do the subdivision boundary lines shift, additional problems regarding land use and covenant application on Colt Island are created.

This boundary line shift creates conflicts with the covenant provisions relating to set-back requirements for structures. For example, the boundary shift contemplated by the court's ruling causes existing structures that previously were consistent the 20 feet set back requirements in the covenants to fall out of compliance. Application and enforcement of the covenants on Colt Island was at issue in this dispute but largely ignored by the trial court.

The trial court's decision did not meaningfully address the issue of compliance with the covenant requirements, a failure that is odd given previous judicial attention to enforcement of the covenants governing activity on Colt Island.[32] Remand to the trial court for further deliberation on this matter is warranted.

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32 ***Shumway v. Betty Black Living Trust, et al*** 321 P. 3d 372, 374 (Alaska 2014) (noting enforceability of Colt Island covenants and establishing damages for violating the covenants).

F. **Trespass by Halls**

Evidence was provided at trial about Halls trespass on property belonging to the Collinses. The evidence was unrebutted and without dispute even if the assumption was made that the Halls property shifted to the south and west as is contemplated by the trail court's ruling altering the subdivision boundary lines on Colt Island. [Tr. 489—493]. Pictures showing David Hall trespassing on the Collinses property were introduced in evidence at trial. [Exhibits 34 & 35; R. 000996—000997].

A "...trespasser may be liable for nominal damages even if 'his presence on the land causes no harm to the land..."[33] To establish a claim of trespass, a plaintiff must prove ...actual or constructive possession of the property in question at the time the alleged injury occurred.[34] At trial, Collinses proved Halls trespassed on their property, an act that requires the trial court to acknowledge the wrong and enter at least an award of nominal damages.

A remand to the trial court for further deliberation on this aspect of the dispute is warranted.

CONCLUSION

As a matter of sound policy and established law, the trial court's decision to adopt a new survey point of beginning for the Colt Island subdivision is error. As argued above, the court's adoption of survey ***2012-32*** as controlling of the boundaries for ***Plat 75-11*** is

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33 ***Lee v. Konrad***, footnote 36 at page 522 (citing ***Brown Jug, Inc. v. Int'l Bhd. Of Teamsters, Chauffeurs, Warehousemen & Helpers of Am., Local*** 959, 688 P.2d 932, 938 (Alaska 1984)) (other citations omitted).

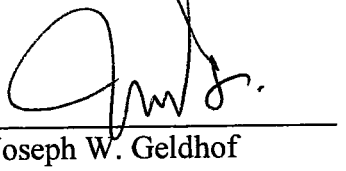
34 ***Lee v. Konrad***, page 523 (citing ***Cape Fox Corp. v. United States***, 456 F. Supp. 784, 804 (D. Alaska 1978) (footnote omitted), judgment reversed in part on other grounds by ***Cape Fox Corp. v. United States***, 646 F.2d 399 (9th Cir.1981).

inconsistent with proper surveying technique and law. Application of the trial court's ruling erodes repose and causes hardship for the Collinses and other Colt Island property owners.

Ironically, the trial court's determination doesn't provide the Halls with any additional property. Instead, the court's decision shifts the entire Colt Island subdivision boundaries in a manner that almost certainly creates as many problems as it purports to solve. Reversal and remand are justified in this dispute.

DATED this 27th day of December 2017, at Juneau, Alaska.

LAW OFFICE OF
JOSEPH W. GELDHOF



Joseph W. Geldhof
Alaska Bar # 8111097

IN THE SUPREME COURT OF THE STATE OF ALASKA

RAY M. COLLINS and **CAROL J. COLLINS,** Appellants,	)	
v.	)	Supreme Court No. **S-16795**
DAVID W. HALL and **MARGARET R. HALL,** et al,	)	
Appellees.	)	

Superior Court Case No. JU-14-00771 CI

APPEAL FROM THE SUPERIOR COURT, STATE OF ALASKA
FIRST JUDICIAL DISTRICT AT JUNEAU
THE HONORABLE PHILLIP PALLENBERG, PRESIDING

APPELLANT'S EXCERPT OF RECORD

Volume 1 of 1

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Filed in the Supreme Court
This ____ day of December, 2017

Marilyn May, Clerk

By: _____
Deputy Clerk

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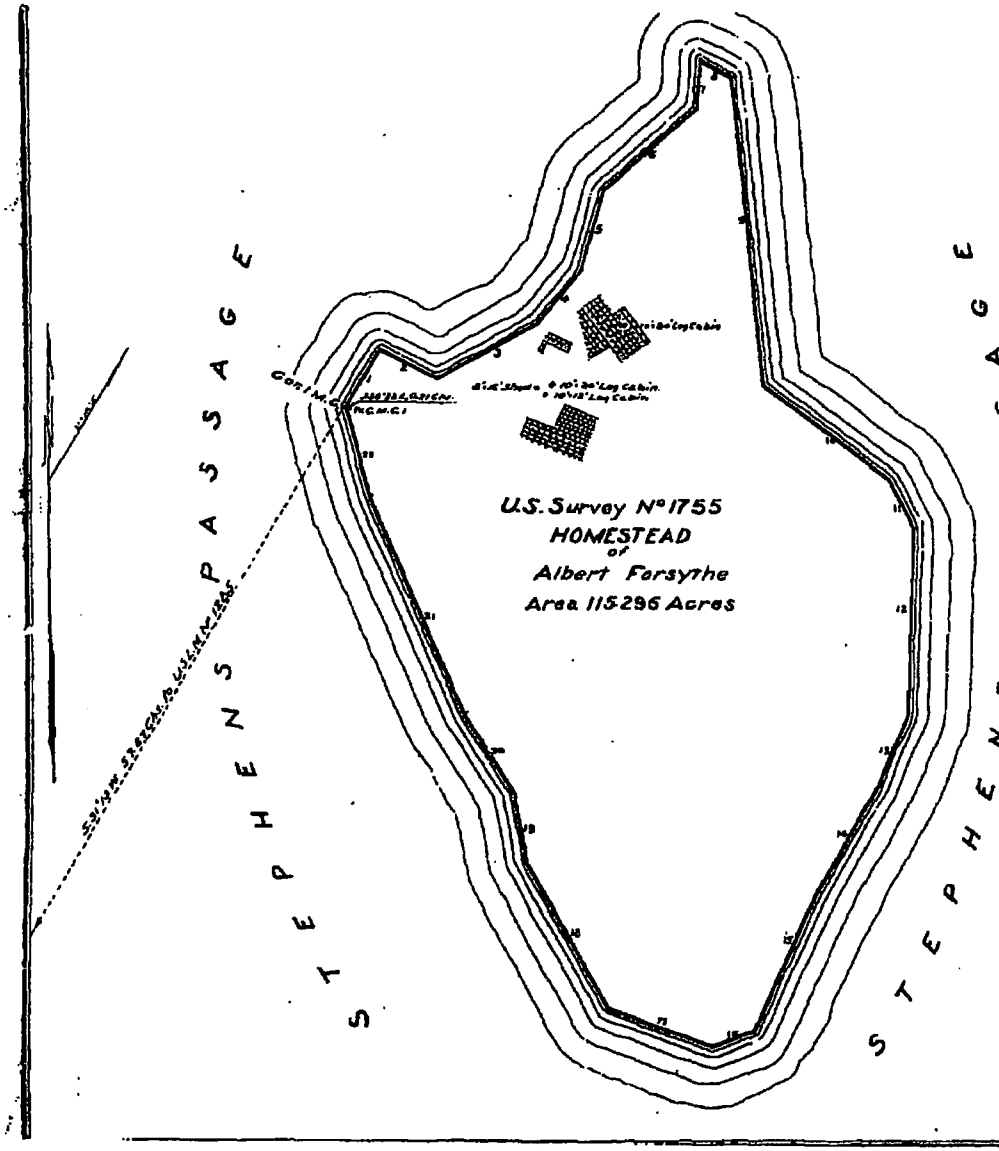


MEASURES

1-	N.71°41'E.	4.12 chains
2-	S.61°16'E.	4.06 "
3-	S.61°06'E.	7.12 "
4-	N.39°07'E.	4.28 "
5-	N.17°03'E.	5.06 "
6-	N.49°52'E.	7.58 "
7-	N. 5°04'E.	7.00 "
8-	S.63°34'E.	2.34 "
9-	S. 5°41'E.	18.06 "
10-	S.51°07'W.	9.70 "
11-	S.27°09'W.	7.41 "
12-	S. 2°07'E.	11.37 "
13-	S.63°30'E.	4.00 "
14-	S.11°57'W.	7.97 "
15-	S.25°08'W.	8.65 "
16-	S.69°40'W.	2.81 "
17-	N.71°27'W.	6.92 "
18-	N.29°27'W.	10.16 "
19-	N.11°59'E.	4.12 "
20-	N.32°54'W.	5.56 "
21-	N.24°25'W.	14.35 "
22-	N.14°52'W.	5.92 "

U. S. SURVEY No. 1755

of the

HOMESTEAD CLAIM

(Executed under the provisions of the Act of Congress, approved June 20, 1918.)

of

ALBERT FORSYTHE

Embracing all of Wolf Island, Stephens Passage, in the

TERRITORY OF ALASKA

Area, 115.296 Acres.
Declination, 31°15'E.
Scale: 5 Chains to the Inch.

Latitude 58°17'20"N; Longitude 134°43'12"W.

As executed by
Fred Dahlquist, U.S. Cadastral Engineer,
April 22-23, 1927.

—

U.S. SUPERVISOR OF SURVEYS' CERTIFICATE.
Denver, Colorado, November 22, 1927.

The original field notes of Survey No.1755, of the Homestead Claim of Albert Forsyth, from which this plat has been made, have been examined and approved, and I hereby certify that they furnish such an accurate description of said claim as will, if incorporated into a patent, serve fully to identify the premises, and that such reference is made therein to natural objects and permanent monuments, as will perpetuate and fix the bounds thereof.

And I further certify that this is a correct plat of said claim, made in conformity with said original field notes of the survey thereof, and the same is hereby approved.

U.S. Supervisor of Surveys.

DEPARTMENT OF THE INTERIOR
GENERAL LAND OFFICE
Washington, D.C., October 17, 1928.

The survey represented by this plat having been correctly executed in accordance with the requirements of law and the regulations of this office, is hereby accepted.

Acting Assistant Commissioner.

001041

001040

75-11

75-11

COLT ISLAND ALA

DECLARATION OF PROTECTIVE COVENANTS
PLAT NO. 75-11 BOOK 128 PAGE 934
JUNEAU RECORDING DISTRICT, ALASKA Juneau Recording District
USS 1755

This DECLARATION, made this eleventh day of June, 1976, by Alaska Trust Deed & Mortgage Brokers Inc., and Associates, hereinafter called the DECLARANT, as per that certain contract dated 15 May 1976, copies of which are on file in the Declarant's office, is herewith recorded and adapted as a Protective Covenant to run with the land and each Lot and/or Tract therein, so as to provide a recorded guide describing the conditions under which each prospective lot purchaser agrees to purchase and use each lot with the assurance of the enjoyment of the total recreational facilities with no greater restriction upon the free and undisturbed use of his property than is necessary to insure the same advantages to all other Lot owners, Tract owners, potential lodge members, and/or the related commercial facilities, as provided in this Covenant, which may be constructed from time to time.

WHEREAS, the Declarant intends to sell, dispose of, or convey from time to time all or a portion of Lots or Tracts in said Plat No. 75-11, and desires to subject the same to certain protective reservations, covenants, conditions, restrictions, (hereinafter referred to as "Conditions"), between itself and the acquirers and/or users of the Lots and Tracts in said Plat.

NOW, THEREFORE, the Declarant hereby certifies and declares that it has established and does hereby establish a general plan for the protection, development, and improvement of said Plat Number 75-11, recorded of Colt Island, Survey USS 1755, and that:

THIS DECLARATION is designed for mutual benefit of the Lots and Tracts in said Plat and that the Declarant has fixed and does hereby fix the protective conditions upon, and subject to which, all Lots and Tracts of said Plat, and all interest therein shall be held, leased, or sold and/or conveyed by the owners thereof. Each and all of which said conditions are for the mutual benefit of the Lots and Tracts, in said Plat and of the owners and/or the users thereof, and shall run with the land and shall pass with each such Lot and Tract of land in said Plat, and shall apply to and bind the respective successors in interest thereof, and further are imposed upon each and every Lot, Tract, or individual portion of said Plat as a mutual equitable servitude in favor of each and every other Lot, Tract, or individual portion of land therein as the dominant tenant, and in favor of this Declaration.

THE CONDITIONS OF USE ARE AS FOLLOWS:

THAT all of the Lots and Tracts in this Plat, and the use thereof shall be improved, used, and occupied in accordance with the provisions below:

Area #1 -- 1 thru 18 -- 18 Lots		
Area #2 -- 1 thru 34 -- 34 Lots		
Area #3 -- 1 thru 21 -- 21 Lots		
Area #4 -- 1 thru 34 -- 34 Lots		
TOTAL	107 Lots	- Recreational Cabin Sites (1 cabin per lot)
	6 Tracts	#A thru F (See page 2)
	2 Access Areas	
	115	

Tract A: Commercial Use: Including all rights to tidelands and accretions as may exist, however, subject to the provisions of General Provisions Number 1 page 2. Under Study. (Caretakers and/or lodge related facility)

Tract B: Commercial Use: Including all rights to tideland, and accretions as may exist, however, subject to the provisions of General Provisions Number 1 page 2.

Tract C: Commercial Use: Including all rights to tidelands and accretions as may exist, however, subject to the provisions of General Provisions Number 1 page 2. Sawmill Site for a period of five (5) years.

*Tract D: Commercial Use: Including all rights to tideland, and accretions as may exist, however, subject to the provisions of General Provisions Number 1 page 2. Under Study.

(1) Boat Harbor
   a. Boat stalls
   b. Fuel (gas and diesel, propane)
   c. Store (general)
   d. Restaurant/bar/liquor store
   e. Rental cabins and/or rooms
   f. Seaplane float
   g. Repair shop
   h. Commercial fisheries buying & selling and processing facility

DEFENDANT
IJU-I4-771CI
Exhibit J4D
Admitted

*Tract E: Lodge Site. Commercial Use: Including all related facilities
1. The original lodge charter may provide for a total membership not to exceed 1,000 members.

Tract F: Including beach area, and embracing land with tidelands and accretions as may exist. Reserved for the recreational use under the direction and control of the Declarant, and/or the Association.
Access areas, trail and paths will be used for ingress and egress for the benefit of all Lot and Tract owners, lodge members, and guests.

*Note: The Development of the boat harbor and lodge on Tracts D & E is strictly speculative. These improvements will depend entirely on buyer interest, sales potential and available investment capital. No claim is made herewith by the Declarant that these facilities will be completed.

GENERAL PROVISIONS

1. Included with the purchase of each Lot or Tract goes the privilege of all owners, members and guests to walk across any portion of Tract F along paths and trails and access areas, as shown on Plat #75-11; Recorded 16 July 1975, the beach area, and the embracing land, and further to enjoy the use of the facilities provided thereon on a first come first served basis in accordance with the provisions as set forth by the Declarant and/or the Association. It is further provided herewith that Tracts A, B, C, D, F, and all Lot owners, shall always provide access for the benefit of all Lot and Tract owners, lodge members, and guests, to walk across the tidelands abutting said Lots and Tracts.

   A. Each Lot or Tract owner may authorize guests and bring guests. Each owner will be responsible for the activity of their guests and also in direct association with this privilege agree herewith to sign the necessary documents releasing the Island Development Association, the Colt Island owners, and Colt Island, of any liability incurred through the use by themselves or their guest of any and all access areas, trails, paths, or the land, waters, and facilities on or embracing Colt Island.

   B. Regulations governing guests may be established by an Association of Lot and Tract owners at a later date.

   C. No dues or assessments will be charged by the Declarant. A majority vote of said Lot and Tract owners may establish dues if desired, at a later date.

   D. Provisions for an easement are provided in and across Tract F, for a possible water line and a subterranean leaching field for the benefit of Tract E. The exact location and design to be determined at a future date.

2. Cutting trees
   A. No trees may be cut on Colt Island without the permission of the Declarant or the Association.

3. Temporary living while constructing cabin.
   A. Trailers, campers, or job shacks are not allowed on Colt Island unless approved by the Declarant or the Association. Approval will be granted only on a year-to-year basis during the construction of a cabin. These temporary facilities must be removed after the cabin is occupied.

   B. Continued living in a temporary structure will not be allowed.

4. Wells
   A. A well or surface water system may be dug on individual Lots or Tracts down to bedrock. No wells will be drilled into bedrock on any Lot or Tract without a permit from the Declarant or the Association.

   B. The water supply of the spring adjacent to Tract B in the access area between Tract A and B will be shared equally for domestic use by all of the Lot and Tract owners.

5. Building Set Back
   A. All cabins, buildings, and storage facilities of any type must be at least 20 feet from any Lot line.

   B. No cabin will be built forward of the tree line on any Beach fronting Lot.

6. A cabin must be finished on the outside before it is occupied. Tar paper or building paper is not considered finished.

7. A neatly-fenced service yard is required on each Lot or Tract for the enclosure of service items, storage of tools and equipment, and refuge.

8. Trails, paths, and access areas are for the purpose of ingress and egress only, except where the picnic pavilion is presently located in the access area between Tract A and B and further except that the use of the access area between Tract B and C will remain in the control of the owner of Tract B. Provided however, the owner of Tract B will grant appropriate easement for foot traffic across said access area for the benefit of all Lot and Tract owners, lodge members, and guests.

9. Each buyer is responsible for compliance with the State of Alaska and federal regulations as they apply to sewer and waste disposal. Toilet facilities will be of the self-contained chemical holding tank, unless an alternate system is approved in advance by the Environmental Conservation Agency and the Declarant or the Island Development Association. Ref: Environmental Conservation Register 47, Title 18, Chapter 72, dated October 1973.

10. Cats or dogs will not be allowed on the trails, the paths, or the common land or beach land unless on a leash at all times. Any animal which creates or causes a nuisance will not be allowed on Colt Island.

11. Roofing material will be either wood shingles, wood shakes, composition shingles, or artificial shakes or shingles. Metal roofing will be allowed only if colored.

12. Power plants or Generators which operate continually must be muffled so as not to create a nuisance.

13. The Declarant reserves the right to replat the alignment of the Sourdough Trail, thereby moving said trail easement onto Tract F and Tract E and further to adjust the Lot lines of some of the Lots in area 2 and 4 thereby making some of the Lots deeper but in no case more than 150' in depth.

14. Colt Island is located outside of the Greater Juneau Borough, therefore purchasers are responsible for filing their Statement of Real Property Ownership. Alaska Division of Lands form #10-115 (112)

15. A plat showing the location of all improvements placed on any Lot or Tract, including measurements to all property lines, will be provided by the owner to the Declarant or the Association prior to commencement of construction upon said Lot or Tract.

RECREATIONAL ASSOCIATION

AFTER 80% of the Lots and Tracts have been sold and paid for in full, an Association may be formed from the land owners and the Declarant, or its appointee, for the purpose of administering and governing Colt Island. The name of this Association if formed will be the "Colt Island Alaska Recreational Association" (hereinafter referred to as the Association.

THE BOARD OF DIRECTORS of the Colt Island Alaska Recreational Association will be appointed by the Lot and/or Tract owners. This Board will include seven (7) persons: The Declarant or its appointee, and six (6) Lot or Tract owners appointed by the Lot or Tract owners by an election. If and when the lodge association is formed, then two (2) members will be elected from the lodge membership, making a total of nine (9) members. The duration of office for elected members will be for three (3) years. The Declarant or its appointee will serve permanently on this board.

THE ASSOCIATION shall determine whether the Conditions contained in this Declaration are being complied with.

THE ASSOCIATION shall adopt reasonable rules and regulations for the conduct of its proceedings and may fix the time and place for its regular meetings and for such extraordinary meetings as may be necessary, and shall keep written minutes of its meetings, which shall be open for inspection to any Lot and Tract owner. Said Association shall, by a majority vote, elect one of its members as chairman and one of its members as secretary, and the duties of such chairman and secretary shall be such as usually appertain to such offices. Any and all rules or regulations adopted by said Association regulating its procedure may be changed by said Association from time to time by majority vote and none of said rules or regulations shall be deemed to be any part or portion of said conditions, unless specifically stated as provided in "Amendment in these Covenants".

05

AMENDMENTS IN THESE COVENANTS

The Declarant or the Recreational Association may make amendments in this covenant provided approval from a majority of the Lot and Tract owners and purchasers pertaining to the matter of said amendment is obtained, and further, that said amendment is recorded with these documents.

DURATION

The Covenants and conditions of this Declaration shall run with the land and shall be binding upon all parties and all persons claiming under them for a period of twenty-five years from the date these covenants and conditions are recorded. At that time, the Covenants and Conditions shall be automatically extended for successive periods of ten years unless an instrument signed by a majority of the then owners of the Lots and Tracts, has been recorded agreeing to discontinue the Covenants and Conditions in whole or in part.

NOTICES

Any notice required to be sent to any owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed postpaid to the last known address of the person who appears as owner on the records of the Declarant at the time of such mailing.

ENFORCEMENT

In the event of any existing or threatened violation of any of the conditions or other provisions of this Declaration, the Declarant, any person, firm, or corporation to whom the Declarant may have assigned the right, or any owner of any Lot or Tract on Colt Island may file a complaint by sending a registered or certified notice to the Declarant and/or the Association and to the alleged violater outlining the nature of the violation and a suggested remedy. Within 30 days of receipt of said notice a special meeting of the Board will be called, where the matter will be presented. A ruling will be rendered. If this ruling is not satisfactory then a vote will be taken by all the registered Lot and Tract owners. The outcome of this vote will be final.

IN WITNESS WHEREOF, ALASKA TRUST DEED AND MORTGAGE BROKERS, INC. AND ASSOCIATES, the Declarant, this 24th day of JANUARY, 1977.

By _____ Pres.
Alaska Trust Deed & Mortgage Brokers, Inc.

I have read these Covenants and attest to the contents thereof. By my signature hereon I agree to and will comply with the rules and regulating provisions herein.

77-0309
RECORDED - FILED
JUNEAU REC. DIST.
DATE 1-25 1977
TIME 11:22 A.M.
TELCO
ALASKA

George L. M. Fisher 30 Oct ;
(Signature) Date

(Signature) Date

STATE OF WASHINGTON }
First Judicial District } ss.
County

On this 24 day of January, 1977, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Howard H. Lockwood and _____ to me known to be the President and Secretary, respectively, of Alaska Trust Deed and Mortgage Brokers, Inc the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that authorized to execute the said instrument and that the seal affixed (if any) is the corporate seal of said corporation.

Witness my hand and official seal hereto affixed the day and year first above written.

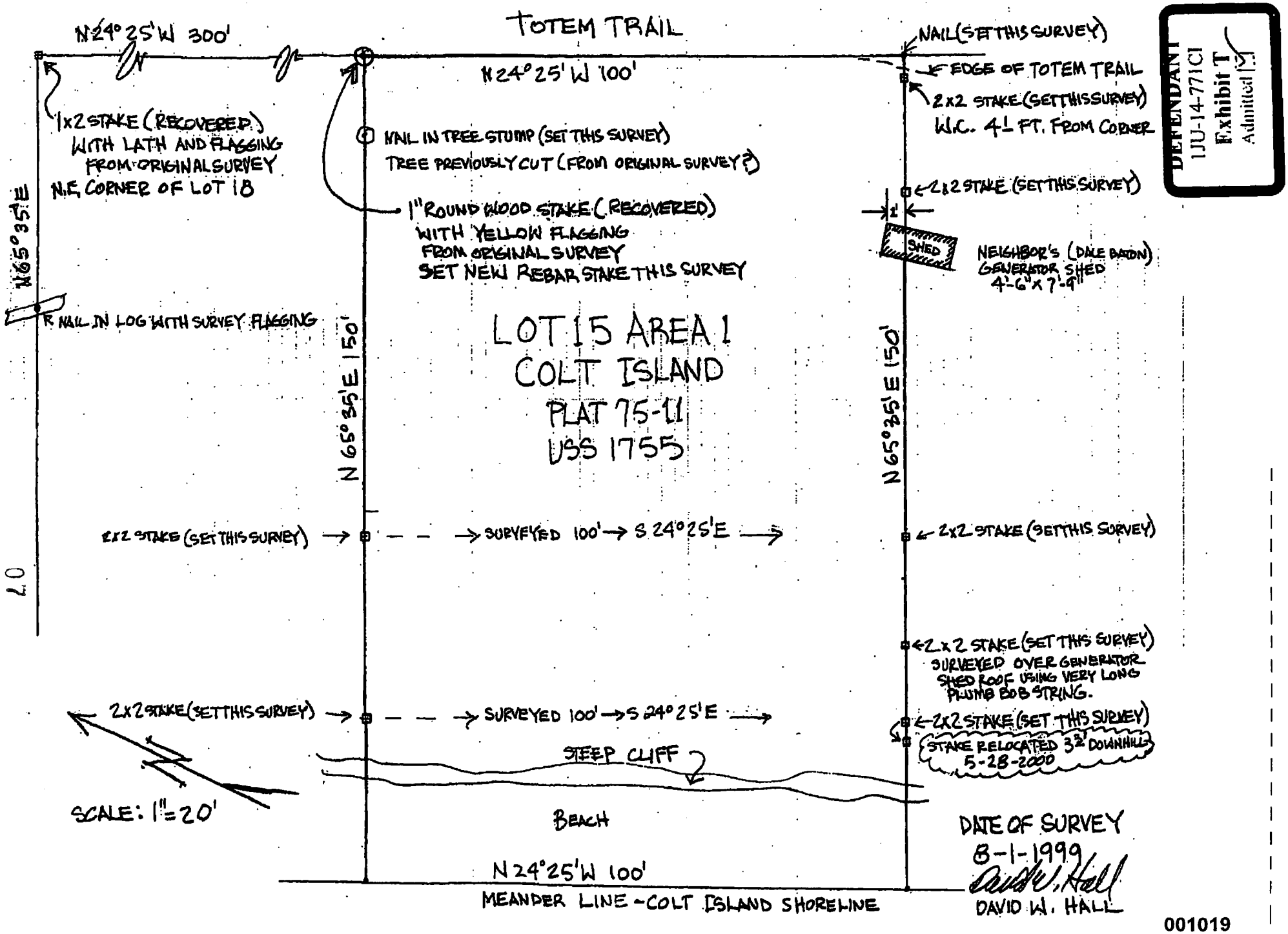
_____
Notary Public in and for the State of Washington,
residing at

My Commission Expires August 29, 1979

ACKNOWLEDGMENT, CORPORATION

06

001125



DEFENDANT
IJU-14-771CI
Exhibit T
Admitted

001019

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FIRST JUDICIAL DISTRICT AT JUNEAU

BETTY BLACK,

Plaintiff,

vs.

TODD SHUMWAY AND JOAN SHUMWAY

Defendants

TODD SHUMWAY AND JOAN SHUMWAY

Counterclaim Plaintiffs,

vs.

BETTY BLACK AND DALE LOCKWOOD,

Counterclaim Defendants.

FILED IN CHAMBERS
State of Alaska
First Judicial District at Juneau
By: KJK on : Oct. 8, 2011

Case No.: 1-JU-09-823 CI

LODGED DATE 10-24-11 BY TM INITIALS

GRUENING & SPITZFADEN
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
217 SECOND STREET, SUITE 204
JUNEAU, ALASKA 99801
PHONE (907) 586-8110
FAX (907) 586-8059

Return to →

AMENDED JUDGMENT

Judgment is hereby entered in favor of plaintiff Betty Black and Dale Lockwood against defendants Todd Shumway and Joan Shumway as follows:

1. Black owns the following real property.

Lot 2-9, 19-29, 31-34 Area 2;

Lots 2, 5-6, 8-12, 14-15, 18, Area 3;

Lots 1-14, 17-21, 24-34;

2 of 7
2011-006933-0

08

Tracts A, B, C, E, F;

Access area between Tracts B and C;

All access areas, trails and paths shown on Plat 75-11, according to Plat 75-11, Colt Island Subdivision, Juneau Recording District, First Judicial District, State of Alaska.

2. The Shumways have no easement by implication or necessity over Tract A according to Plat 75-11, Colt Island Subdivision, Juneau Recording District, First Judicial District, State of Alaska. A permanent injunction is granted prohibiting Shumways, their guests, successors and assigns, from entering upon or using those portions of Totem Pole Trail, or the northerly extension of that trial, that crosses Tract A without the prior permission of the owner of Tract A.

3. Shumways have trespassed on the real property owned by Black, described above, and has violated the Covenants, by the following actions:

   a. Removing gravel.

   b. Cutting trees without authorization.

   c. Damaging trails and obstructing their use.

   d. Creating trails where none are authorized.

   e. Destroying a spring.

   f. Burying garbage, human waste and debris without permission and

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in violation of applicable law.

g. Operating machinery without permission.

h. Unauthorized use of the trails.

i. Parking vehicles and equipment at the picnic area.

j. Widening trails without permission.

A permanent injunction is hereby entered against the Shumways enjoining the Shumways, their guests, successors and assigns, from trespassing upon Black's property and further enjoining defendants from engaging in the actions described in paragraphs a-j above.

4. The Shumways are only entitled to the use of such portion of the platted trails as may be reasonably necessary for ingress and egress. They do not have an automatic right to develop the trails to full width of 20 feet. A permanent injunction is granted prohibiting the Shumways from any use of the trails which exceeds the right of ingress and egress afforded by the Covenants.

5. The Shumways are enjoined from using the trails for recreational four-wheeling.

6. The Shumways are enjoined from using the beach and tidelands for recreational use of 4-wheelers or from extracting gravel with mechanized equipment except as permitted by the State of Alaska.

7. The Shumways are enjoined from using the picnic pavilion or access

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areas for storage of equipment or materials or in any other way that makes those areas unusable for other owners.

8. The Shumways are enjoined from using the spring in any way that renders it unusable by other owners, including but not limited to any unilateral modification, improvements, or construction activities.

9. Each of the injunctions herein are a permanent injunction binding upon the Shumways, their family members, guests and invitees, and their assignees or successors in interest.

10. Judgment is entered in favor of Betty Black and Dale Lockwood denying relief to Shumways for each and every counterclaim set out in their Counterclaim as well as denying all injunctive and declaratory relief sought by Shumways.

11. Judgment is hereby entered in favor of plaintiff Betty Black and against Todd Shumway for:

Damages	$ 173,000.00
Attorneys Fees	$ 19,800.00
Prejudgment Interest	$ 12,045.87
Costs	$ 2,127.92
Total	$ 206,973.79

Postjudgment interest shall run at the rate of 3.75% per annum.

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Joan Shumway is jointly and severally liable for the following portions of the above:

Attorneys Fees	$ 6,860.05
Costs	$ 2,127.92
Total	$ 8,987.97

Postjudgment interest shall run at the rate of 3.75% per annum.

12. Judgment is hereby entered in favor of plaintiff Dale Lockwood and against defendants Todd Shumway and Joan Shumway, jointly and severally, for:

Attorneys Fees	$7,391.40

Postjudgment interest shall run at the rate of 3.75% per annum.

DATED: 11/8/11

JUDGE OF THE SUPERIOR COURT

SEAL OF THE TRIAL COURTS OF THE STATE OF ALASKA FIRST JUDICIAL DISTRICT

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A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
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JUNEAU, ALASKA 99801
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FAX (907) 586-8059

CERTIFICATION
Copies Distributed
Date Nov. 9, 2011
To Spitzfaden
T. Shumway
J. Shumway
V. Sanders
By K. Koenig

I certify that this is a full, true and correct copy of an original document on file in the Alaska Trial Courts at Juneau.
Witness my hand and the seal of this court:
11-18-11
Date
Magistrate/Clerk

SEAL OF THE TRIAL COURTS OF THE STATE OF ALASKA FIRST JUDICIAL DISTRICT

CERTIFICATION

I HEREBY CERTIFY that on October 24, 2011, a true and correct copy of the foregoing was mailed to:

Todd Shumway
PO Box 210856
Auke Bay, AK 99821

Joan Shumway
1261 E. 1st Street
Mesa, AZ 85203

Mr. Vance Sanders
PO Box 240090
Douglas, AK 99824

Robert S. Spitzfaden

I certify that this is a full, true and correct copy of an original document on file in the Alaska Trial Courts at Juneau.
Witness my hand and the seal of this court:

11-8-11
Date

Magistrate/Clerk

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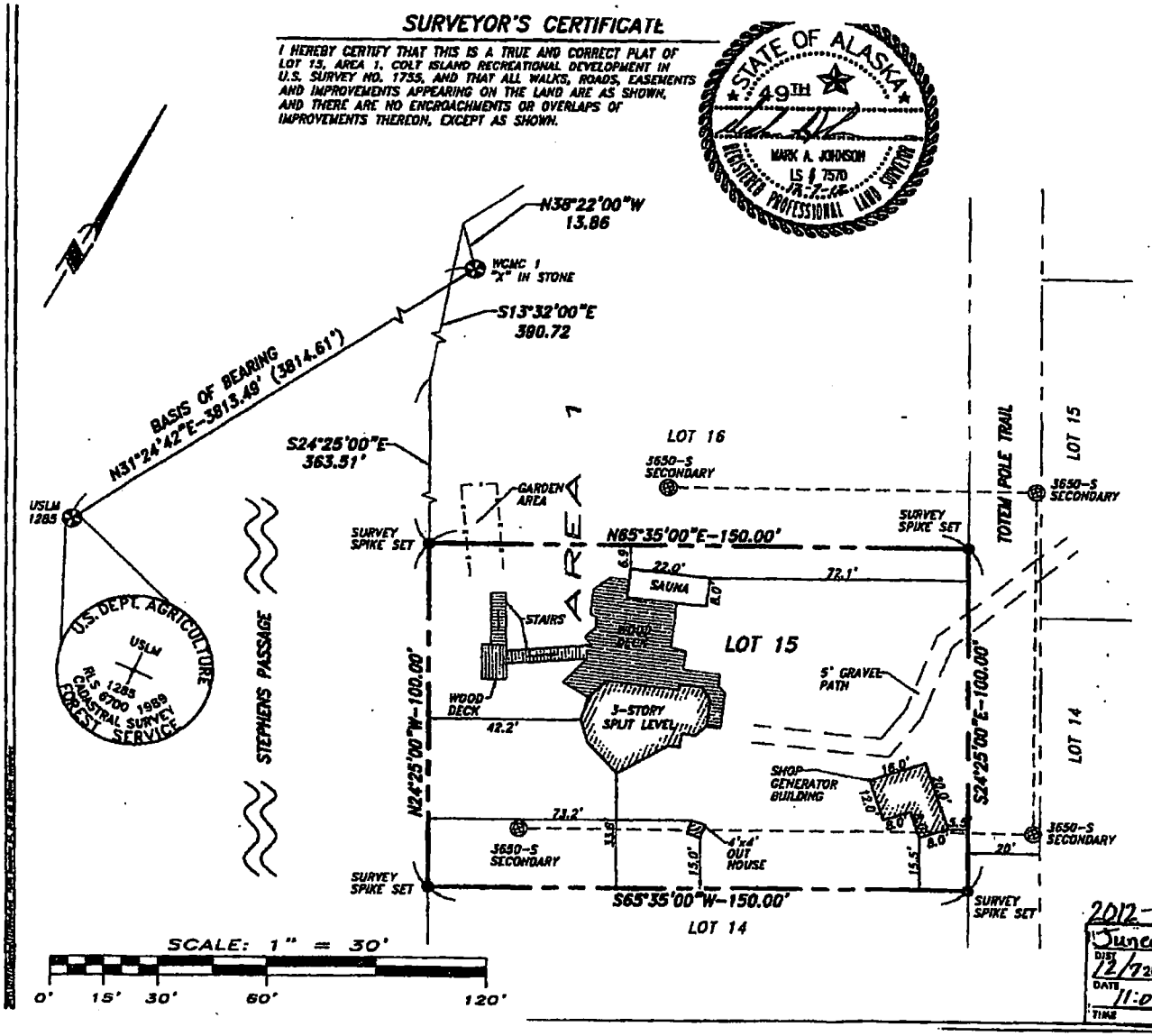
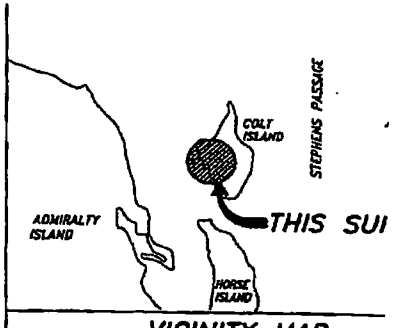
SURVEYOR'S CERTIFICATE

I HEREBY CERTIFY THAT THIS IS A TRUE AND CORRECT PLAT OF LOT 15, AREA 1, COLT ISLAND RECREATIONAL DEVELOPMENT IN U.S. SURVEY NO. 1755, AND THAT ALL WALKS, ROADS, EASEMENTS AND IMPROVEMENTS APPEARING ON THE LAND ARE AS SHOWN, AND THERE ARE NO ENCROACHMENTS OR OVERLAPS OF IMPROVEMENTS THEREON, EXCEPT AS SHOWN.

STATE OF ALASKA 49TH
MARK A. JOHNSON
LS # 7570
REGISTERED PROFESSIONAL LAND SURVEYOR





VICINITY MAP

SOURCE: U.S.G.S. QUADRANGLE JUNEAU (B-3) SE,
NOT TO SCALE

GENERAL NOTES

1. THE BASIS OF BEARING FOR THIS SURVEY WAS BETW
RECOVERED WCMC 1, U.S. SURVEY 1755 AND RECOVER
1285, U.S. SURVEY 1285, HAVING A RECORD BEARING
N31°24'42"E.

2. RECORD INFORMATION DENOTED BY THIS PLAT WAS
FROM PLAT OF U.S. SURVEY 1755 AND U.S. SURVEY
79-11, COLT ISLAND RECREATIONAL DEVELOPMENT, ON
JUNEAU RECORDING DISTRICT OFFICE.

3. WHERE RECORD SURVEY COURSES (BEARINGS AND/O
DISTANCES) DIFFER FROM THAT OF ACTUAL MEASURED
COMPUTED SURVEY COURSES THE RECORD SURVEY COU
SHOWN WITHIN PARENTHESIS WHILE THE ACTUAL MEASU
AND/OR COMPUTED SURVEY COURSE IS SHOWN WITHOU
PARENTHESIS.

4. PROPERTY SUBJECT TO EASEMENTS OF RECORD DEN
THIS SURVEY OR NOT.

2012-32
Juneau
DIST
12/7/2012
DATE
11:04am
TIME

RECORD OF SURVEY
OF
LOT 15, AREA 1
COLT ISLAND RECREATIONAL DEVELOPM
U.S. SURVEY 1755
JUNEAU RECORDING DISTRICT

OWNER:
D&M HALL COMMUNITY PROPERTY TRUST
DAVID W HALL TTE
MARGARET R HALL TTE
8310 COUNTERPANE LN.
JUNEAU, ALASKA 99801

SURVEYOR:
MARK A. JO
R&M ENGIN
6205 GLACI
JUNEAU, AL

SCALE: 1"=30'

DATE: DEC. 7, 2012 SHEET 1 OF 1
FIELD SURVEY DATE: SEPT. 21, 2012

001039

14

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FIRST JUDICIAL DISTRICT AT JUNEAU

RAY M. COLLINS and CAROL J. COLLINS,

Plaintiff,

vs.

DAVID W. HALL and MARGARET R. HALL Trustees, and their successors in trust, of the D & M HALL COMMUNITY PROPERTY TRUST, dated March 14, 2005, and also all other persons or parties unknown claiming a right, title, estate, lien, or interest in the real estate described in the complaint in this action,

Defendants.

Case No. 1JU-14-771 CI

COMPLAINT

Plaintiffs Ray M. Collins and Carol J. Collins, by and through counsel, Baxter Bruce & Sullivan P.C., allege and complain as follows:

1. Plaintiffs are, and at all times relevant herein have been, adult residents of the State of Alaska, First Judicial District, residing in Juneau, Alaska.

2. Defendant David W. Hall, Trustee, and his successors in trust, of the D & M HALL COMMUNITY PROPERTY TRUST, dated March 14, 2005, are, and at all times relevant herein have been, adult residents of the State of Alaska, First Judicial District, residing in Juneau, Alaska.

3. Defendant Margaret R. Hall, Trustee, and her successors in trust, of the D & M HALL COMMUNITY PROPERTY TRUST, dated March 14, 2005, are, and at all times relevant herein have been, adult residents of the State of Alaska, First Judicial District, residing in Juneau, Alaska.

BAXTER BRUCE & SULLIVAN P.C.
P.O. Box 32819, Juneau Alaska 99803
Ph: (907) 789-3166
Fax: (907) 789-1913

4. Plaintiffs are, and at all times relevant herein have been, the owners of the property (hereinafter "the Collins property") described as follows:

> Lot 14, Area 1, Colt Island Alaska Recreational Development, according to Plat No. 75-11, U.S. Survey No. 1755, Juneau Recording District, First Judicial District, State of Alaska.

5. Plaintiffs acquired title to the Collins property by deed dated April 30, 1990 and recorded June 1, 1990 in Book 331 at Page 671, a true and correct copy of which is attached hereto as Exhibit "1" and incorporated herein by reference as if set forth fully, and by deed dated February 12, 2013 and recorded February 13, 2013 at Serial No. 2013-001223-0, a true and correct copy of which is attached hereto as Exhibit "2" and incorporated herein by reference as if set forth fully.

6. Jurisdiction is proper pursuant to AS 22.10.020(a) and Rule 3, Alaska Rules of Civil Procedure, and venue is proper in this district because it is where the Collins property is situated and located, where the claim arose and where the defendant may be personally served.

7. Plaintiffs possess, and at all times relevant herein have possessed, the Collins property and have a right to the possession of it.

8. Defendants own and possess the land adjacent and contiguous to the Collins property. Defendants are, and at all times relevant herein has been, the owners of the property (hereinafter "the Hall property") described as follows:

> Lot 15, Area 1, Colt Island Alaska Recreational Development, according to Plat No. 75-11, U.S. Survey No. 1755, Juneau Recording District, First Judicial District, State of Alaska.

9. Defendants originally acquired title to the Hall property by deed dated July 15, 1994 and recorded July 18, 1994 in Book 409 at Page 767, a true and correct copy of which is attached hereto as Exhibit "3" and incorporated herein by reference as if set forth fully, as subsequently conveyed to their trust by deed dated March 14, 2005 and recorded March 14, 2005 at Serial No. 2005-001967-0, a true and correct copy of

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P.O. Box 32819, Juneau Alaska 99803
Ph: (907) 789-3166
Fax: (907) 789-1913

which is attached hereto as Exhibit "4" and incorporated herein by reference as if set forth fully.

10. The Hall property and Collins property boundaries, as well as platted ingress and egress trails within Colt Island Recreational Development, were surveyed and monumented by J. W. Bean, Registered Land Surveyor No. 3650 ("Bean") on or about July, 2009.

11. The survey monuments put in the ground by Bean have been used by all owners of developed lots within Colt Island Recreational Development other than defendants as a basis for construction of recreational homes and business developments, as well as for establishment of access trails within the subdivision.

12. It is clearly evident that original home construction by defendants and their predecessors, conformed to the survey monuments established by Bean.

13. However, defendants then constructed a shop-generator building and ~~an~~ remodeled the outhouse originally built by a predecessor in title which, according to Bean's survey monuments in the ground and established long before Defendants began construction, encroach upon the Collins property.

14. Subsequent to such construction, Defendants obtained a survey from R & M Engineering which places the boundary lines in a different location than what Bean's survey monuments show.

15. A true and correct copy of the Record of Survey by R & M Engineering, filed as Plat No. 2012-32R on December 7, 2012, is attached hereto as Exhibit 5 and incorporated herein by reference as if set forth fully.

16. The above-mentioned Record of Survey by R & M Engineering attached hereto as Exhibit "5" also shows that Defendants 5' gravel path travels across the 20' Totem Pole Trail and onto Lot 15, Area 2.

17. Lot 15, Area 2, is where Totem Pole Trail actually exists.

18. The above-mentioned Record of Survey by R & M Engineering attached hereto as Exhibit "5" therefore substantiates that Totem Pole Trail is actually located approximately twenty feet (20.0') northeasterly of where it is shown on Exhibit "5."

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P.O. Box 32819, Juneau Alaska 99803
Ph: (907) 789-3166
Fax: (907) 789-1913

19. A dispute exists between plaintiffs and defendants concerning the boundary lines of the Collins property.

20. Plaintiffs have had the Collins property surveyed by Bean on two different occasions.

21. On or about June 28, 2013, Defendants trespassed onto the Collins property and removed the marker establishing the outhouse encroachment, and tampered with personal property located on plaintiffs' property.

22. All of defendants' entry onto the Collins property has been intentional, without privilege and without plaintiffs' consent.

23. On or about January 25, 1977, protective covenants (hereinafter "protective covenants") were recorded in Book 128 Page 934, a true and correct copy of which are attached hereto as Exhibit "6" and incorporated herein by reference as if set forth fully.

24. Defendants' outhouse dumps raw sewage directly into a hole in the ground and does not have a self-contained chemical holding tank.

25. Defendants' shop generator building and outhouse have been constructed such that they encroach over the property lines established by Bean and onto the Collins property, and outside of the set-back requirements established in the protective covenants.

COUNT I – DECLARATORY JUDGMENT RE BOUNDARY LINES

26. Plaintiffs reallege paragraphs 1 through 25 herein.

27. Defendants' acts and omissions entitle plaintiffs to a declaratory judgment that the survey monuments placed by Bean as set forth in paragraphs 10 and 11 herein correctly set forth the boundary lines of the Collins property.

COUNT II – QUIET TITLE

28. Plaintiffs reallege paragraphs 1 through 27 herein.

29. Defendants' acts and omissions entitle plaintiffs to an order confirming their claim to ownership of the Collins property with the boundaries indicated by the survey monuments placed by Bean as set forth in paragraphs 10 and 11 herein.

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Fax: (907) 789-1913

COUNT III – ESTABLISHMENT OF BOUNDARIES

30. Plaintiffs reallege paragraphs 1 through 29 herein.

31. Defendants' acts and omissions entitle plaintiffs to an order confirming the boundaries of the Collins property as indicated by the survey monuments placed by Bean as set forth in paragraphs 10 and 11 herein.

COUNT IV – RECOVERY OF POSSESSION

32. Plaintiffs reallege paragraphs 1 through 31 herein.

33. Defendants' acts and omissions entitle plaintiffs to recovery of possession of the Collins property with the boundaries indicated by the survey monuments placed by Bean as set forth in paragraphs 10 and 11 herein and to damages for defendants' withholding of such possession.

COUNT V – TRESPASS

34. Plaintiffs reallege paragraphs 1 through 33 herein.

35. Defendants' acts and omissions entitle plaintiffs to recovery for trespass.

COUNT VI – DECLARATORY JUDGMENT RE PROTECTIVE COVENANTS

36. Plaintiffs reallege paragraphs 1 through 35 herein.

37. Defendants' acts and omissions entitle plaintiffs to a declaratory judgment that defendants' outhouse violates the protective covenants.

COUNT VII – DECLARATORY JUDGMENT RE SET-BACK REQUIREMENTS

38. Plaintiffs reallege paragraphs 1 through 37 herein.

39. Defendants' acts and omissions entitle plaintiffs to a declaratory judgment that defendants' shop generator building and outhouse violate the set-back requirements in the protective covenants.

WHEREFORE, plaintiffs pray for judgment against defendants as follows:

1. For Count I, a declaratory judgment that the boundary lines established by Bean as set forth in paragraphs 10 and 11 herein correctly set forth the boundary lines of the Collins property.

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P.O. Box 32819, Juneau Alaska 99803
Ph: (907) 789-3166
Fax: (907) 789-1913

2. For Count II, an order confirming plaintiffs' claims to ownership of the Collins property with the boundary lines established by Bean as set forth in paragraphs 10 and 11 herein.

3. For Count III, an order confirming the boundary lines of the Collins property established by Bean as set forth in paragraphs 10 and 11 herein.

4. For Count IV, an order restoring plaintiffs' possession of the Collins property with the boundary lines established by Bean as set forth in paragraphs 10 and 11 herein.

5. For Count IV, an award of damages in excess of $25,000.00, the exact amount to be proven at trial.

6. For Count V, an award of damages in excess of $25,000.00, the exact amount to be proven at trial.

7. For Count VI, a declaratory judgment that defendants' outhouse violates the protective covenants.

8. For Count VII, a declaratory judgment that defendants' shop generator building violates the set-back requirements.

9. An award of interest, costs and attorneys' fees as allowed by law.

10. Such other relief as is appropriate.

DATED this 29th day of July, 2014 at Juneau, Alaska.

BAXTER BRUCE & SULLIVAN P.C.
Attorneys for Plaintiff

By: _____
Daniel G. Bruce, ABA No. 8306022

THIS CASE FORMALLY ASSIGNED TO
JUDGE PHILIP PALLENBERG
BY ORDER OF THE PRESIDING JUDGE

BAXTER BRUCE & SULLIVAN P.C.
P.O. Box 32819, Juneau Alaska 99803
Ph: (907) 789-3166
Fax: (907) 789-1913

BOOK 0331 PAGE 671

QUIT CLAIM DEED

The grantor, Robert W. Brock, Director of Internal Revenue for the Anchorage District at 949 East 36th Avenue, Anchorage, Alaska, for and in consideration of the sum of Six Thousand Seven Hundred Fifty and 00/100 Dollars, ($6,750.00), conveys and quit claims to Ray and Carol Collins as tenants by the entirety, of 825 Calhoun, Juneau, Alaska, 99801, all right, title, and interest of S.E. Leasing as Nominee or Alter Ego of Robert G. Stillwell and Maude A. Stillwell in the following real property situated in the Juneau Recording District, State of Alaska, to wit:

> Lot 14, Area 1, Colt Island Alaska Recreational Development, According to Plat 75-11, USS 1755, Juneau Recording District, First Judicial District. Subject to covenants, conditions and restrictions as contained in the documents recorded January 25, 1977, in Book 128, Page 934.

The above property was sold to the above-named Ray and Carol Collins at a sale conducted in accordance with the provisions of Sub-chapter D, Chapter 64 of the Internal Revenue Code of 1986 and the Regulations promulgated thereunder for the non-payment of delinquent United States Internal Revenue taxes which were duly assessed and remained unpaid for more than ten days after notice and demand for payment had been served upon S. E. Leasing as Nominee or Alter Ego of Robert G. Stillwell and Maude A. Stillwell, of P.O. Box 3052, Juneau, Alaska 99803 at a public sale held at Internal Revenue Service, 709 West 9th, RM M-17, Juneau, Alaska.

The said real property has not been redeemed in the manner and within the time provided by law.

Dated this 30th day of April, 1990.

Everette Madison
Everette Madison
Chief, Special Procedures
For Robert W. Brock
District Director
Internal Revenue Service

UNITED STATES OF AMERICA)
)ss
STATE OF ALASKA)

On this day personally appeared before me Everette Madison, Chief, Special Procedures, for Robert W. Brock, District Director of Internal Revenue for the Anchorage District, to me known to be the individual described in, and who executed the within and foregoing instrument, and acknowledged that he signed the same as his free and voluntary act and deed for the uses and purposes therein mentioned.

Given under my hand and official seal this 30th day of April, 1990.

Notary Public in and for the
State of Alaska

My Commission Expires: May 14, 1990

90-3357

RECORDED-~~FILED~~ 10⁰⁰
JUNEAU REC.
DISTRICT
JUN 1 9 57 AM '90
REQUESTED BY

RETURN TO GRANTEE

RONALD A. DION NOTARY PUBLIC STATE OF ALASKA

Exhibit 1
Page No. 1 of 1 000207

CC

ALASKA

2013-001223-0

Recording District 101 Juneau

02/13/2013 10:32 AM Page 1 of 2

AETIA 44278

STATUTORY WARRANTY DEED

THE GRANTORS, **BURKE D. BARTON and KATRINA W. LANEVILLE, husband and wife,** of 8751 Dudley Street, Juneau, Alaska 99801, for and in consideration of Ten Dollars ($10.00) and other valuable consideration, in hand paid, conveys and warrants to the GRANTEES, **RAY M. COLLINS and CAROL J. COLLINS, husband and wife as tenants by the entirety,** of 3251 Pioneer Avenue Juneau, Alaska 99801, all of Grantors' interest in the following described real property, situated in the Juneau Recording District, First Judicial District, State of Alaska:

> Lot 14, Area 1, Colt Island Alaska Recreational Development, according to Plat No. 75-11, U.S. Survey No. 1755, Juneau Recording District, First Judicial District, State of Alaska.

SUBJECT TO:

1. Reservations and exceptions as contained in the U.S. Patent and acts relating thereto.

2. Any prohibition of or limitation of use, occupancy or improvements of the land resulting from the rights of the public or riparian owners to use any portion thereof which is now or formerly may have been covered by water, and the rights of the public as set forth in Alaska statutes 38.05.128.

3. Terms, provisions and reservations under the Submerged Land Act (43 USC 1301, 67 Stat. 29) and the Enabling Act (Public Law 85-508, 72 Stat. 339).

4. Paramount rights and easements in favor of the United States to regulate commerce, navigation, fishing and the production of power.

5. Easements and notes as shown on Plat No. 75-11.

6. Covenants, conditions, and restrictions, including the terms and provisions thereof, recorded January 25, 1977 in Book 128 at Page 934.

7. Reservations contained in Deed recorded February 14, 1977 in Book 129 at Page 251.

DATED this 12 day of February, 2013.

Burke D Barton

Burke D. Barton

Katrina W. Laneville

Katrina W. Laneville

STATE OF ALASKA)
: ss.
FIRST JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on this 12th day of February, 2013, before me, the undersigned, a notary public in and for the State of Alaska, duly commissioned and sworn, personally appeared **Burke D. Barton and Katrina W. Laneville,** to me known and known to me to be the persons named in and who executed the within and foregoing instrument, and they acknowledged to me that they signed the same freely and voluntarily for the uses and purposes therein mentioned.

WITNESS my hand and official seal the day and year in this certificate first above written.

STATE OF ALASKA
OFFICIAL SEAL
Audra Petersen
NOTARY PUBLIC
My Commission Expires 04/26/2016

Audra Petersen

Notary Public, State of Alaska
My commission expires: 04/26/2016

After recording return to:
GRANTEE

Page 2 of 2
2013-001223-0

Exhibit 2
Page No. 2 of 2

000209

22408
Title Insurance Agency
9097 Glacier Highway
Juneau, Alaska 99801
(907) 789-1671 FAX 789-2375

BOOK 409 PAGE 767

THIS SPACE RESERVED FOR RECORDERS USE

Filed for Record at Request of and Return to:

Name: DAVID W. HALL and MARGARET R. HALL
Address: P.O. BOX 20923
City, State, Zip JUNEAU, ALASKA, 99802

STATUTORY WARRANTY DEED

THE GRANTOR, **GEORGE L.M. FISHER, a married man , of 121 SLIM WILLIAMS WAY, JUNEAU, AK 99801,**

for and in consideration of **TEN DOLLARS and other valuable consideration**

in hand paid, conveys and warrants to **DAVID W. HALL and MARGARET R. HALL, tenants by the entirety**

the following described real estate, situated in the JUNEAU Recording District, First Judicial District, State of Alaska:

Lot Fifteen (15), Area One (1), Colt Island Recreational Development according to Plat 76-11, U.S. Survey 1755, Juneau Recording District, First Judicial District, State of Alaska

SUBJECT HOWEVER, to any easements, reservations, covenants, conditions, restrictions, plat notations, patent reservations, exceptions, right-of-way and agreements of record.

Dated JULY 15, 1994

GEORGE L.M. FISHER

State of ALASKA)
) ss.
FIRST JUDICIAL DISTRICT)

On this day personally appeared before me GEORGE L.M. FISHER AND to me known to be the individual(s) described in and who executed the within and foregoing instrument, and acknowledged that HE signed the same as HIS free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal hereto affixed the day and year first above written.

Notary Public for ALASKA
My Commission Expires:

STATE OF ALASKA
OFFICIAL SEAL
Rebecca J. Baxter
NOTARY PUBLIC
My Commission Expires 11/1/97

94- 005671
15.00 CC
JUNEAU REC. DISTRICT
REQUESTED BY TIA

'94 JUL 18 AM 8 48

Exhibit 3
Page No. 1 of 1

2005-001967-0
Recording Dist: 101 - Juneau
3/14/2005 3:21 PM Pages: 1 of 2
ALASKA

STATUTORY WARRANTY DEED

CC

DAVID WALTER HALL, and MARGARET RUTH HALL, Grantors, whose address is 8310 Counterpane Lane, Juneau, AK 99801, pursuant to §34.15.030, Alaska Statutes, for and in consideration of the sum of TEN DOLLARS ($10.00), lawful money of the United States of America, and other good and valuable consideration in hand paid, the receipt and sufficiency of which is hereby acknowledged, hereby grant, convey, and warrant to Grantees, DAVID W. HALL, and MARGARET R. HALL, Trustees of the D & M HALL COMMUNITY PROPERTY TRUST, Dated March 14, 2005, and Successors, whose address for receipt of notice is, 8310 Counterpane Lane, Juneau, AK 99801, the following real property situated in the Juneau Recording District, First Judicial District, State of Alaska and more particularly described as:

> Lot Fifteen (15), Area One (1), Colt Island Recreational Development according to Plat 75-11, U.S. Survey 1755, Juneau Recording District, First Judicial District, State of Alaska.
>
> Subject to any easements, reservations, covenants, conditions, restrictions, plat notations, patent reservations, exceptions, right-of-way and agreements of record.

Dated this 14th day of MARCH, 2005.

DAVID W. HALL, Grantor

MARGARET R. HALL, Grantor

STATE OF ALASKA)
) ss.
FIRST JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on this 14th day of March, 2005, before me, the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn, personally appeared David W. Hall and Margaret R. Hall, to me known and known to me to be

the identical individuals described in and who executed the within Statutory Warranty Deed and acknowledged that they signed the same as their free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN UNDER MY HAND and official seal the day, month and year last above written.

Notary Public, State of Alaska
My commission expires: 2/14/08

Shannon Devon Notary Public State of Alaska SEAL

Record in the Juneau Recording District
AFTER RECORDING RETURN TO:

Paul M. Hoffman
Robertson, Monagle & Eastaugh
801 W. 10th Street, Suite 300
Juneau, AK 99801

2 of 2
2006-001967-0

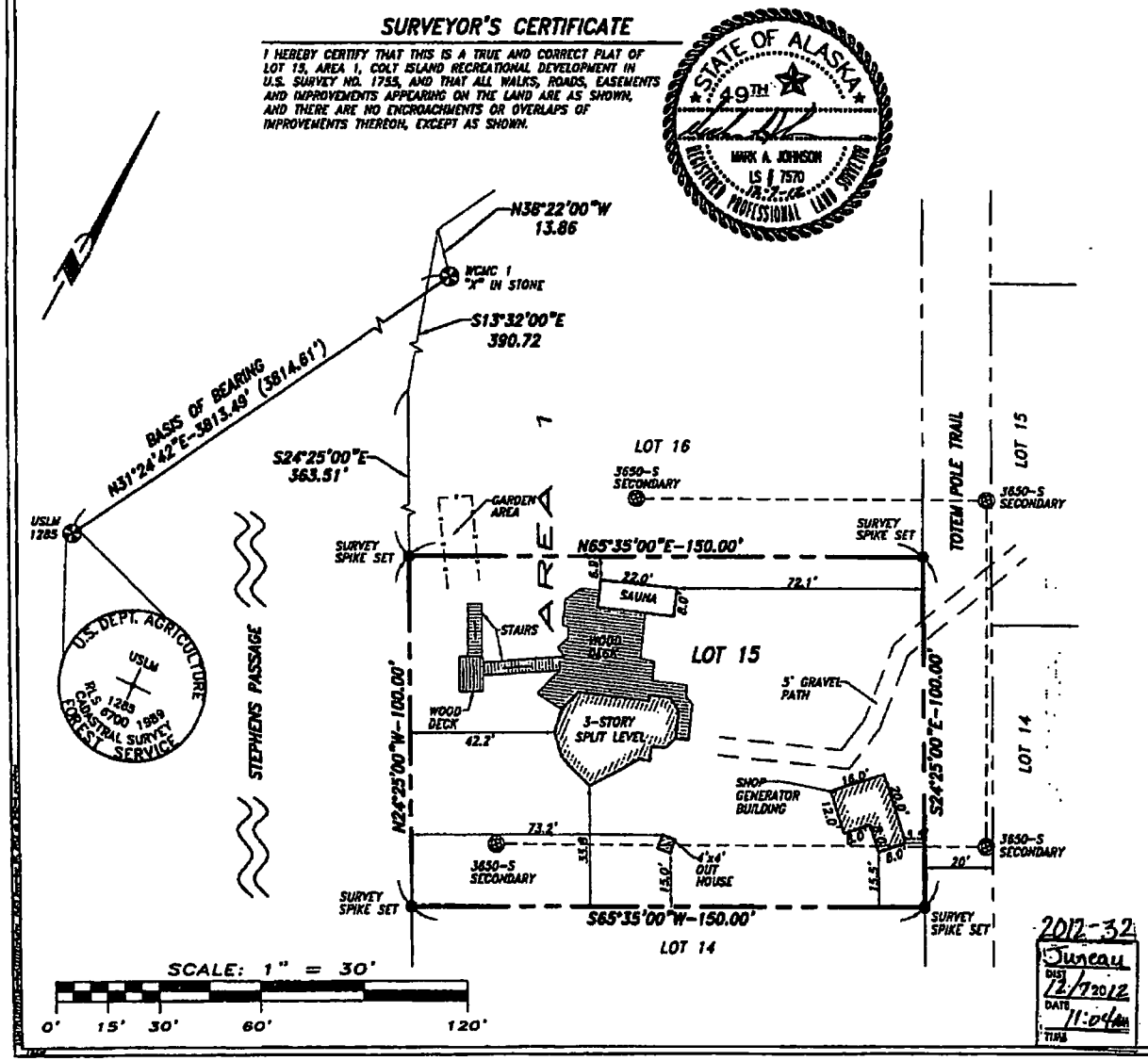
Exhibit 4
Page No. 2 of 2

R & M ENGINEERING, INC.

SURVEYOR'S CERTIFICATE

I HEREBY CERTIFY THAT THIS IS A TRUE AND CORRECT PLAT OF LOT 15, AREA 1, COLT ISLAND RECREATIONAL DEVELOPMENT IN U.S. SURVEY NO. 1755, AND THAT ALL WALKS, ROADS, EASEMENTS AND IMPROVEMENTS APPEARING ON THE LAND ARE AS SHOWN, AND THERE ARE NO ENCROACHMENTS OR OVERLAPS OF IMPROVEMENTS THEREON, EXCEPT AS SHOWN.

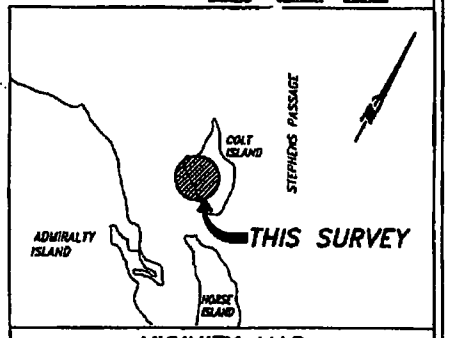
STATE OF ALASKA 49TH
MARK A. JOHNSON
LS 7570
REGISTERED PROFESSIONAL LAND SURVEYOR



SCALE: 1" = 30'

0' 15' 30' 60' 120'

2012-32
Juneau
DIST
12/7/2012
DATE
11:04 AM
TIME



VICINITY MAP

SOURCE: U.S.G.S. QUADRANGLE JUNEAU (B-3) SE, ALASKA
NOT TO SCALE

GENERAL NOTES

1. THE BASIS OF BEARING FOR THIS SURVEY WAS BETWEEN RECOVERED WCMC 1, U.S. SURVEY 1755 AND RECOVERED U.S.L.M. 1285, U.S. SURVEY 1285, HAVING A RECORD BEARING OF N31°24'42"E.

2. RECORD INFORMATION DENOTED BY THIS PLAT WAS DERIVED FROM PLAT OF U.S. SURVEY 1755 AND U.S. SURVEY 1285, PLAT 75-11, COLT ISLAND RECREATIONAL DEVELOPMENT, ON FILE IN THE JUNEAU RECORDING DISTRICT OFFICE.

3. WHERE RECORD SURVEY COURSES (BEARINGS AND/OR DISTANCES) DIFFER FROM THAT OF ACTUAL MEASURED AND/OR COMPUTED SURVEY COURSES THE RECORD SURVEY COURSE IS SHOWN WITHIN PARENTHESIS WHILE THE ACTUAL MEASURED AND/OR COMPUTED SURVEY COURSE IS SHOWN WITHOUT PARENTHESIS.

4. PROPERTY SUBJECT TO EASEMENTS OF RECORD DENOTED BY THIS SURVEY OR NOT.

RECORD OF SURVEY
OF
LOT 15, AREA 1
COLT ISLAND RECREATIONAL DEVELOPMENT
U.S. SURVEY 1755
JUNEAU RECORDING DISTRICT

OWNER:
D&M HALL COMMUNITY PROPERTY TRUST
DAVID W HALL TTE
MARGARET R HALL TTE
6310 COUNTERPANE LN.
JUNEAU, ALASKA 99801

SCALE: 1"=30'

DATE: DEC. 7, 2012 SHEET 1 OF 1
FIELD SURVEY DATE: SEPT. 21, 2012

SURVEYOR:
MARK A. JOHNSON, L.S.
R&M ENGINEERING, INC.
6205 GLACIER HIGHWAY
JUNEAU, ALASKA 99801

R&M PROJ. No. 121791

27

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FIRST JUDICIAL DISTRICT AT JUNEAU

RAY M. COLLINS and CAROL J. COLLINS,

Plaintiffs,

vs.

DAVID W. HALL and MARGARET R. HALL Trustees, and their successors in trust, of the D & M Hall Community property trust, dated March 14, 2005, and also all other persons or parties unknown claiming a right, title, estate, lien, or interest in the real estate described in the complaint in this action,

Defendant.

CASE NO. 1JU-14-00771 CI

Faulkner Banfield, P.C.
8420 Airport Boulevard, Suite 101
Juneau, Alaska 99801-6924

ANSWER AND COUNTERCLAIM

In response to the Plaintiff's Complaint in this action, Defendants David W. Hall and Margaret R. Hall, Trustees of the D & M Hall Community Property Trust ("Hall Trust"), by and through their attorneys of record, Faulkner Banfield., P.C., make the following answer and counterclaim.

I. ANSWER

1. Defendants admit that Plaintiffs are adult residents of the First Judicial District, residing in Juneau, Alaska.

2. Defendants admit that David W. Hall is and at all relevant times has been an adult resident of the First Judicial District, residing in Juneau, Alaska. Defendants deny that all successor trustees of the Hall Trust are residents of Juneau.

3. Defendants admit that Margaret R. Hall is and at all relevant times has been an adult resident of the First Judicial District, residing in Juneau, Alaska. Defendants deny that all successor trustees of the Hall Trust are residents of Juneau.

4. Defendants admit that Plaintiffs are the owners of the property described in the Complaint as Lot 14, Area 1, Colt Island Alaska Recreational Development according to Plat No. 75-11, U.S. Survey No. 1755 ("Collins property").

5. Defendants admit that Plaintiffs acquired title to the Collins property by deeds dated April 30, 1990 and February 12, 2013.

6. Defendants admit that this court has jurisdiction and venue is proper in this district.

7. Defendants admit that Plaintiffs have the right to possess the Collins property. The dispute in this case concerns the location and boundaries of the Collins property.

8. Defendants admit that they own and possess a lot adjacent to the Collins property described as Lot 15, Area 1, Colt Island Alaska Recreational Development according to Plat No. 75-11, U.S. Survey No. 1755 ("Hall property").

9. Defendants admit that they acquired title to the Hall property by deeds dated July 15, 1994 and March 14, 2005.

10. Defendants deny that registered land surveyor J. W. Bean ("Mr Bean") has ever surveyed and monumented the Hall property and Collins property boundaries and the ingress and egress trails within the Colt Island Recreational Development.

Faulkner Banfield, P.C.
8420 Airport Boulevard, Suite 101
Juneau, Alaska 99801-6924

11. Defendants deny the allegations in paragraph 11 of the Complaint that the survey monuments put in the ground by Mr. Bean have been used by all owners of developed lots within Colt Island Recreational Development other than Defendants as a basis for construction and establishment of trails.

12. Defendants deny that it is clearly evident that original home construction by the Defendants and their predecessors conformed to the survey monuments established by Mr. Bean.

13. Defendants deny that they constructed a shop-generator building that encroaches on the Collins property. Defendants deny that they remodeled the outhouse built by their predecessors in title. Defendants deny that any survey monuments were established by Mr. Bean before they began construction on their building.

14. Defendants admit that they obtained a survey, recorded as a Record of Survey in the Juneau Recording District at Plat No. 2012-32 ("Record of Survey"), that established boundary lines for the Hall property that do not coincide with the boundary lines suggested by the survey monuments that Mr. Bean appears to have set in 2009.

15. Defendants admit that Exhibit 5 to the Complaint is a true and correct copy of the Record of Survey.

16. Defendants admit that the Record of Survey shows a 5' gravel path extending across the area marked as the Totem Pole Trial and on to the area marked as Lot 15, Area 2.

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8420 Airport Boulevard, Suite 101
Juneau, Alaska 99801-6924

17. Defendants are without knowledge sufficient to respond to the allegations in paragraph 17 of the Complaint regarding the location of the Totem Pole Trail and therefore denies them.

18. Defendants are without knowledge sufficient to respond to the allegations in paragraph 18 of the Complaint regarding the location of the Totem Pole Trail and therefore denies them.

19. Defendants admit that there is a dispute between Plaintiffs and Defendants concerning the boundary lines of the Collins property.

20. Defendants are without knowledge sufficient to respond to the allegations in paragraph 20 of the Complaint regarding the surveys allegedly conducted by Mr. Bean and therefore denies them.

21. Defendants deny the allegations in paragraph 21 of the Complaint regarding trespass and tampering.

22. Defendants deny the allegations in paragraph 22 of the Complaint regarding any entry on the Collins property.

23. Defendants admit that protective covenants were recorded in Book 128 at Page 934 of the Juneau Recording District and that a true and correct copy of the protective covenants is attached as Exhibit 6 to the Complaint.

24. Defendants admit that their outhouse does not have a self-contained chemical holding tank.

Faulkner Banfield, P.C.
8420 Airport Boulevard, Suite 101
Juneau, Alaska 99801-6924

25. Defendants deny that their shop-generator building or their outhouse encroach on the Collins property or are outside the set-back requirements established in the protective covenants or that Mr. Bean has established any property lines relevant to this action.

COUNT I – DECLARATORY JUDGMENT RE BOUNDARY LINES

26. Defendants re-allege their responses to paragraphs 1-25 above.

27. Defendants deny the allegation that their actions entitle Plaintiffs to a declaratory judgment that the survey monuments allegedly placed by Mr. Bean correctly set forth the boundary lines of any property.

COUNT II – QUIET TITLE

28. Defendants re-allege their responses to paragraphs 1-27 above.

29. Defendants deny the allegation that their actions entitle Plaintiffs to an order confirming their claim to ownership of the Collins property with the boundaries supposedly indicated by the survey monuments allegedly placed by Mr. Bean.

COUNT III – ESTABLISHMENT OF BOUNDARIES

30. Defendants re-allege their responses to paragraphs 1-29 above.

31. Defendants deny the allegation that their actions entitle Plaintiffs to an order confirming the boundaries of the Collins property as supposedly indicated by the survey monuments allegedly placed by Mr. Bean.

COUNT IV – RECOVERY OF POSSESSION

32. Defendants re-allege their responses to paragraphs 1-31 above.

Faulkner Banfield, P.C.
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Juneau, Alaska 99801-6924

33. Defendants deny the allegation that their actions entitle Plaintiffs to recovery of possession the Collins property with the boundaries supposedly indicated by the survey monuments allegedly placed by Mr. Bean.

COUNT V – TRESPASS

34. Defendants re-allege their responses to paragraphs 1-33 above.

35. Defendants deny the allegation that their actions entitle Plaintiffs to recovery for trespass.

COUNT VI – DECLARATORY JUDGMENT RE PROTECTIVE COVENANTS

36. Defendants re-allege their responses to paragraphs 1-35 above.

37. Defendants deny the allegation that their actions entitle Plaintiffs to a declaratory judgment that their outhouse violates the protective covenants.

COUNT VII – DECLARATORY JUDGMENT RE SET-BACK REQUIREMENTS

38. Defendants re-allege their responses to paragraphs 1-37 above.

39. Defendants deny the allegation that their actions entitle Plaintiffs to a declaratory judgment that the location of their shop generator building or outhouse violates the set-back requirements in the protective covenants.

II. AFFIRMATIVE DEFENSES

1. Plaintiffs have failed to state a claim for which relief may be granted.

2. Plaintiffs' claims are barred by laches.

Faulkner Banfield, P.C.
8420 Airport Boulevard, Suite 101
Juneau, Alaska 99801-6924

3. Plaintiffs' claims are barred by the limitations on actions to recover real property set out in AS 09.10.030.

4. Plaintiffs' claims are barred by their unclean hands in that they have themselves encroached on the Hall property.

5. Plaintiffs' claims are barred by their unclean hands in that the buildings constructed on the Collins property violate the one cabin per lot limitation contained in the protective covenants and the location of their buildings does not meet the setback requirements contained in the protective covenants.

6. Plaintiffs' claims are barred by their unclean hands in that their outhouse does not comply with the requirements for sewage disposal contained in the protective covenants.

III. COUNTERCLAIM

A. Adverse possession

1. Defendants own and possess the land described as the Hall property.

2. Defendants originally acquired title to the Hall property by deed dated July 15, 1994 and recorded July 18, 1994 in Book 409 at Page 767, a true and correct copy of which is attached to the Complaint as Exhibit 3. They subsequently conveyed the parcel to their trust by deed dated March 14, 2005 and recorded March 14, 2005 at Serial No. 2005-001967-0, a true and correct copy of which is attached to the Complaint as Exhibit 4.

Faulkner Banfield, P.C.
8420 Airport Boulevard, Suite 101
Juneau, Alaska 99801-6924

3. At the time Defendants acquired the Hall property in 1994, the outhouse occupied its present location and it has not been moved since that time. Defendants have had actual, open, notorious, continuous, exclusive and uninterrupted possession of the outhouse and the area between their cabin and the outhouse for that entire period. Defendants had the good faith belief that the outhouse lay within the boundaries of the Hall property, which is adjacent to the Collins property. Since July 15, 1994, Defendants have treated the outhouse the area between their cabin and the outhouse as their property without the permission of any other person and under the color of title granted by the deed dated July 15, 1994.

4. Defendants are therefore entitled to ownership of the real property consisting of the outhouse and the area between their cabin and the outhouse.

B. Declaratory Judgment regarding boundary lines

5. In the fall of 2012, Defendants engaged Mark Johnson, a licensed surveyor from R & M Engineering, Inc., to survey the Hall property .

6. Mr. Johnson established the boundaries of the Hall property, including a boundary line between the Hall property and the Collins property, as shown on the Record of Survey (Exhibit 5 to the Complaint).

7. The Record of Survey shows that the structures on the Hall property do not encroach on the Collins property.

8. The Record of Survey was filed as Plat No. 2012-32R on December 7, 2012.

Faulkner Banfield, P.C.
8420 Airport Boulevard, Suite 101
Juneau, Alaska 99801-6924

9. The boundaries established in the Record of Survey are not consistent with the boundaries suggested by the survey monuments placed by Mr. Bean on or about July 2009.

10. Mr. Bean prepared the Colt Island Alaska Recreational Development plat filed as Plat No. 75-11 ("Plat No. 75-11").

11. Plat No. 75-11 was a paper plat, and was not confirmed by any monuments established by Mr. Bean on the ground at the time the plat was recorded. Plat No. 75-11 was not approved by any platting authority and contains at least one error, in that the distance shown between two points on the plat does not correspond to the size of the lots and rights of way proposed for inclusion within those points. The error occurs in a line along the westerly edge of Lots 10 through 18 in Area 1. Plat No. 75-11 describes the measured distance along that line as 947.76 feet, but the size of the individual lots, rights of way, and other distances proposed by Mr. Bean along that same line add up to 957.26 feet.

12. The boundaries established in the 2012 Record of Survey address and correct this error. The Record of Survey accurately describes the true location of the Hall property and the Collins property and the boundaries between those two parcels.

13. Defendants are therefore entitled to a declaratory judgment that the Record of Survey filed as Plat No. 2012-32R correctly sets forth the boundary lines of the Hall property and the Collins property.

Faulkner Banfield, P.C.
8420 Airport Boulevard, Suite 101
Juneau, Alaska 99801-6924

C. Declaratory Judgment regarding Set-Back Requirements

14. The lot owners on Colt Island have not consistently relied on accurate survey information in constructing improvements on their property.

15. The uncertainty regarding the proper boundaries between lots in the Colt Island Alaska Recreational Development has resulted in inconsistent compliance with the set-back requirements in the protective covenants.

16. It would be inequitable and constitute economic waste to force Defendants to comply with set-back requirements that are not enforced uniformly and that arise from good faith uncertainty about the location of boundaries.

17. Defendants are therefore entitled to a declaratory judgment that the structures presently located on the Hall property do not violate the protective covenants.

D. Declaratory Judgment regarding Protective Covenants

18. There has been inconsistent compliance among the lot owners in the Colt Island Alaska Recreational Development with the requirements for sewage disposal in the protective covenants.

19. It would be inequitable and constitute economic waste to force Defendants to comply with sewage disposal requirements that are not enforced uniformly and that are not consistently followed by the lot owners in the Colt Island Alaska Recreational Development.

20. Defendants are therefore entitled to a declaratory judgment that the location and operation of their outhouse does not violate the protective covenants.

Faulkner Banfield, P.C.
8420 Airport Boulevard, Suite 101
Juneau, Alaska 99801-6924

PRAYER FOR RELIEF

Wherefore, Defendant prays for the following relief:

1. An order dismissing the complaint in this action.

2. An order granting them title to the real property underlying their outhouse and the area between their cabin and the outhouse.

3. A declaratory judgment that the boundary lines established by the Record of Survey correctly set forth the boundary lines of the Hall property.

4. A declaratory judgment that the structures on the Hall property do not violate the set-back requirements in the protective covenants. .

5. A declaratory judgment that Hall's use and operation of their outhouse does not violate the protective covenants.

6. An award to Defendant of its costs, prejudgment interest, reasonable attorney's fees, and expert witness fees as provided by law or equity.

7. Such other relief as the court may deem just and proper.

DATED this 21st day of August, 2014

FAULKNER BANFIELD, P.C.

Eric A. Kueffner
AK Bar No. 8411124
Attorney for Defendant

Faulkner Banfield, P.C.
8420 Airport Boulevard, Suite 101
Juneau, Alaska 99801-6924

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FIRST JUDICIAL DISTRICT AT JUNEAU

RAY M. COLLINS and CAROL J. COLLINS,

Plaintiff,

vs.

DAVID W. HALL and MARGARET R. HALL Trustees, and their successors in trust, of the D & M HALL COMMUNITY PROPERTY TRUST, dated March 14, 2005, and also all other persons or parties unknown claiming a right, title, estate, lien, or interest in the real estate described in the complaint in this action,

Defendants.

Case No. 1JU-14-771 CI

FILED
14 SEP 11 PM 3:35
CLERK, TRIAL COURTS
BY: _____ DEPUTY

ANSWER TO COUNTERCLAIM

Plaintiffs Ray M. Collins and Carol J. Collins, by and through counsel, Baxter Bruce & Sullivan P.C., respond to defendants' counterclaim as follows:

A. Adverse Possession

1. Plaintiffs admit the allegations contained in paragraph 1 of the counterclaim to the extent it lies within the original boundaries as shown on Plat 75-11, Area 1, Colt Island Alaska Recreational Development U.S. Survey No. 1755.

2. Plaintiffs admit the allegations contained in paragraph 2 of the counterclaim.

3. Plaintiffs deny the allegations contained in paragraph 3 of the counterclaim.

4. The allegations of paragraph 4 are legal conclusions and therefore denied.

BAXTER BRUCE & SULLIVAN P.C.
P.O. Box 32819, Juneau Alaska 99803
Ph: (907) 789-3166
Fax: (907) 789-1913

B. Declaratory Judgment Regarding Boundary Lines

Plaintiffs incorporate by reference all answers set out in paragraphs 1 through 4 above.

5. Plaintiffs are without information sufficient to admit or deny the allegations contained in paragraph 5 and therefore deny the allegations contained in paragraph 5 of the counterclaim.

6. Plaintiffs deny the allegations contained in paragraph 6 of the counterclaim.

7. The allegations of paragraph 7 are legal conclusions and therefore denied.

8. Plaintiffs admit the allegations contained in paragraph 8 of the counterclaim.

9. Plaintiffs admit the allegations contained in paragraph 9 of the counterclaim.

10. Plaintiffs admit the allegations contained in paragraph 10 of the counterclaim.

11. Plaintiffs deny the allegations contained in paragraph 11 of the counterclaim.

12. Plaintiffs deny the allegations contained in paragraph 12 of the counterclaim.

13. The allegations of paragraph 13 are legal conclusions and therefore denied.

C. Declaratory Judgment Regarding Set-Back Requirements

Plaintiffs incorporate by reference all answers set out in paragraphs 1 through 13 above.

14. Plaintiffs deny the allegations contained in paragraph 14 of the counterclaim.

15. Plaintiffs deny the allegations contained in paragraph 15 of the counterclaim.

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16. The allegations of paragraph 16 are legal conclusions and therefore denied.

17. The allegations of paragraph 17 are legal conclusions and therefore denied.

D. Declaratory Judgment Regarding Protective Covenants

Plaintiffs incorporate by reference all answers set out in paragraphs 1 through 17 above.

18. Plaintiffs are without sufficient information to either admit or deny the allegations contained in paragraph 18 of the counterclaim, and therefore deny the allegations contained in paragraph 18 of the counterclaim.

19. The allegations of paragraph 19 are legal conclusions and therefore denied.

20. The allegations of paragraph 20 are legal conclusions and therefore denied.

AFFIRMATIVE DEFENSES

A. Defendants' counterclaims fail to state a claim upon which relief can be granted.

B. The claims of Defendants, as stated, are barred in whole or in part to the extent of Defendants' comparative fault, and/or to the extent Defendants' conduct caused the injuries complained of.

C. Plaintiffs have acted with clean hands and in good faith throughout this whole matter and Defendants have not acted with clean hands or in good faith and, as such, Defendants' claims are barred.

D. Plaintiffs reserve the right to amend their reply to include additional affirmative defenses as warranted by discovery.

WHEREFORE, plaintiffs pray for the following relief:

1. For judgment as set forth in plaintiffs' complaint.

2. That defendants' counterclaim be dismissed with them taking nothing.

3. An award of interest, costs and attorneys' fees as allowed by law.

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4. Such other relief as is appropriate.

DATED this 11th day of September, 2014 at Juneau, Alaska.

BAXTER BRUCE & SULLIVAN P.C.
Attorneys for Plaintiffs

By: _____
Daniel G. Bruce, ABA No. 8306022

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 11th day of September, 2014, a true and correct copy of the foregoing was delivered to the party below:

Eric A. Kueffner
Faulkner Banfield, P.C.
8420 Airport Boulevard, Suite 101
Juneau, AK 99801-6924
(907) 586-8090 – fax
ekueffner@faulknerbanfield.com
By: ☒ U.S. Mail
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☐ Email
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By _____
Gabrielle G. Keizer

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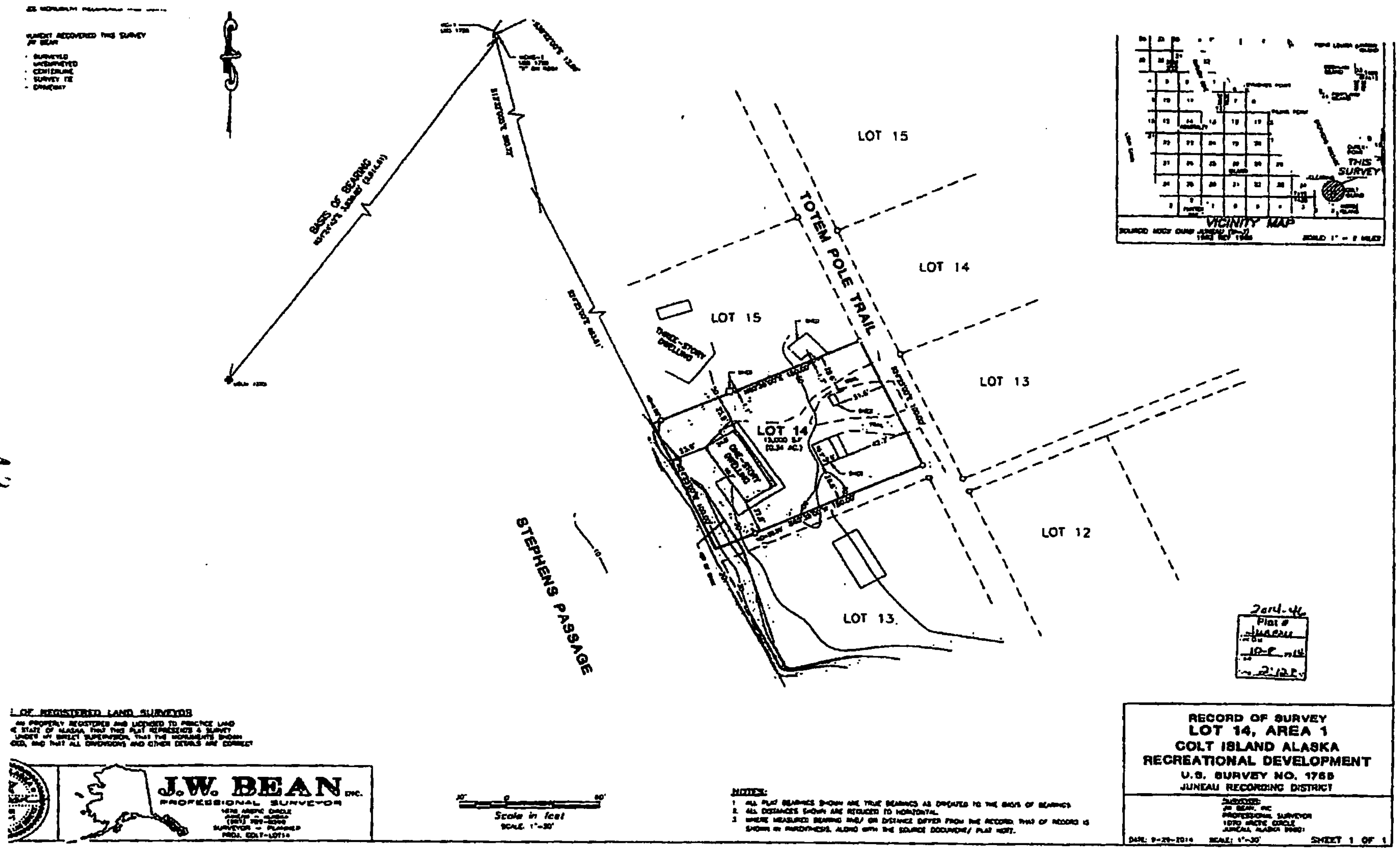
BASIS OF BEARING
LOT 15
TOTEM POLE TRAIL
LOT 14
LOT 15
THREE-STORY DWELLING
LOT 13
LOT 14
ONE-STORY DWELLING
LOT 12
LOT 13
STEPHENS PASSAGE
VICINITY MAP
THIS SURVEY
RECORD OF SURVEY
LOT 14, AREA 1
COLT ISLAND ALASKA
RECREATIONAL DEVELOPMENT
U.S. SURVEY NO. 1765
JUNEAU RECORDING DISTRICT
J.W. BEAN INC.
PROFESSIONAL SURVEYOR
Scale in feet
NOTES:
SHEET 1 OF 1

43

001038

In The Matter Of:

Collins v. Hall, et al.

Case No. 1JU-14-771 CI

Decision on Record

December 14, 2016

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Juneau, Alaska 99803

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FIRST JUDICIAL DISTRICT AT JUNEAU

CAROL J. COLLINS,)
)
Plaintiffs,)
)
)
DAVID W. HALL and)
Trustees, and their)
successors in trust,)
the D & M HALL COMMUNITY)
PROPERTY TRUST, dated)
March 14, 2005, and also)
all other persons or)
parties unknown claiming)
a right, title,)
estate,) lien, or
interest in the) real
estate described in)
the complaint in this)
action,)
)
Defendants.)
)

RAY M. COLLINS and)
)
v.)
)
MARGARET R. HALL,)

Case No. 1JU-14-771 CI

TRANSCRIPT OF DECISION ON RECORD

BEFORE THE HONORABLE PHILIP M. PALLENBERG
Superior Court Judge

Juneau, Alaska

December 14, 2016 3:58 p.m.

APPEARANCES:

FOR THE PLAINTIFFS:

JOSEPH W. GELDHOF, ESQ.
Law Office of Joseph W. Geldhof
2 Marine Way, Suite 207
Juneau, Alaska 99801

FOR THE DEFENDANTS:

LAEL A. HARRISON, ESQ. Faulkner Banfield PC
8420 Airport Boulevard, Suite 101
Juneau, Alaska 99801

P R O C E E D I N G S

[CourtSmart CD]

3:58:42 PM

THE CLERK: Juneau Superior Court is now in session with the Honorable Philip M. Pallenberg presiding.

THE COURT: Good afternoon. I'm sorry. I've made all of you wait around an unforgivably long time, and I'm really sorry about that. Today has been a bad day, and too many things that -- too many people needed to talk to me for too long. So I'm sorry about that. I hate to make people wait that long.

I had thought about setting this over to another day, but that would have meant making you wait even longer and come back a second time, and I thought it was better to finish what I needed to do and come back in here and talk to you all.

So I've given the matter a lot of

thought. I've spent a lot of time going through the exhibits and considering the evidence. And I guess I want to start with sort of this introduction.

I think it's obvious that there are significant surveying discrepancies on Colt Island, discrepancies between the surveyors and between the various surveys. And I think it's obvious that those things have caused significant problems for every property owner on the island. I think that the recording of the R&M survey, which itself shows two different sets of property lines, I would anticipate could cause problems even for property owners whose property isn't shown on that survey and create a cloud on their title, because it shows two separate sets of property lines.

You know, I don't know how the -- I'm not a title insurance person, and I don't know how title companies deal with that kind of thing and banks and potential buyers and all those kind of things; but I think it's obvious that there are lots of -- just the fact that you're all here today is further evidence that there are lots of people interested in the outcome, interested in trying to find a solution to these problems. And I think it's clear that ultimately an island-wide solution is what is

needed.

Unfortunately, as I said last week, I don't think this case will necessarily provide that island-wide solution. All I can do in a case is adjudicate the rights of the people who are parties to that case. I'm here to enter a decision in the case of Collins vs. Hall, and whatever order I enter will fix the property line between the Collinses and the Halls. It will not necessarily fix other people's problems or settle where other people's property lines are.

If I were the king, I could impose a comprehensive solution. I could issue an edict that would fix all the property lines on Colt Island in a way that would create the greatest good for the greatest number and try to make the properties as marketable as I could, eliminate any clouds on the title, and try to resolve everything.

Somebody once said it's good to be king. I'm not. My obligation as a judge is just to decide the case that's in front of me in a way that is based on the law and the facts of this case and the evidence presented to me. That might be a different result than what the king would impose for the benefit of everybody on the island. I think

ultimately that's maybe one of the shortcomings of the litigation process as a potential solution to problems.

Turning, I guess, to the specific issues, the first question that I have to decide, probably most important one, is just to try to determine which survey is correct. And that begins with determining which rock on the northwest corner of the island is Fred Dahlquist's rock, the original rock marked in the 1927 survey.

In many ways, I think that's the easiest decision in this case. I think the evidence is clear -- it's certainly sufficiently clear to persuade me; and, again, I don't think it's a close question -- that the rock with the vertical writing on it that says "WCMC1," the rock that R&M used as its beginning point, is Fred Dahlquist's rock.

I think that that's the only conclusion I can come to from the evidence. There's been some suggestion that somebody carved writing on that rock more recently than 1927, and I don't find that to be at all a plausible theory. I don't find that remotely plausible. Without question, the writing on that rock is strikingly visible now, now that somebody has put paint or chalk in it; but the idea that that -- somebody went out there with a chisel in the late '90s and chiseled lettering in that rock I just don't find remotely plausible.

The location of that rock is strikingly consistent with the description -- well, the description of the rock is entirely consistent with Fred Dahlquist's description in his survey notes.

The distance from that rock to Admiralty Island, to the marker on Admiralty Island, is strikingly close to what was determined by Fred Dahlquist.

Using that rock results in a meander line on the beach, which is what Fred Dahlquist described. If you use what I'll call John Bean's rock, the rock with the faint X on it, you wind up with a meander line halfway up the bluff. There is no way that isostatic rebound accounts for that. That island might have come up a little bit, but it didn't form a new bluff jutting up out of the ground since 1927. And Fred Dahlquist laid out a line down the beach from that marker, and you just don't get that if you use the rock with the faint X.

Now, you know, it would be interesting to go find all of Fred Dahlquist's witness corners that he laid out in the 1920s and see if they used vertical writing or horizontal writing. I don't have any idea. But, you know, that doesn't cause me to doubt Fred Dahlquist's -- it doesn't cause me to doubt -- the fact that the writing is vertical doesn't cause me to doubt that it's Fred Dahlquist's

rock.

Why would somebody faking the rock in the 1990s do vertical writing any more than why would Fred Dahlquist write it vertically? Somebody wrote it vertically, and it seems to me that somebody who was trying to fake the rock would have carved it in the way -- would have carved it horizontally. So that, to me, doesn't shed any light on it one way or the other, that it's vertical writing.

The fact that multiple people wandered around the island looking for it and didn't see it doesn't cause me to assume or to conclude that it's a recent fabrication. I think we all who've wandered around Southeast Alaska know that things get covered with moss. They get covered with dirt. And 70 years after the fact, in the 1990s, I think to me it's entirely plausible that people could walk past that rock a thousand times and never see the inscription on it. And by dumb luck, somebody found it. I don't find that remotely implausible or unlikely.

I think anybody who has ever looked for petroglyphs on a beach, where they are told there are petroglyphs and not found them, can understand how somebody could search for that rock and not find it. And I think everything about that rock, all of the evidence I've heard about it, points to that

being Fred Dahlquist's rock.

There certainly are some things about the testimony that are difficult to account for, particularly Howard Lockwood's testimony, that he found a rock with writing on it in the 1970s that he described as horizontal writing. Perhaps he's remembering that incorrectly, or perhaps he found the right rock and is -- well, perhaps he found the right rock but is misremembering whether the writing was vertical or horizontal. Perhaps he's remembering it incorrectly altogether. Perhaps he found the right rock but didn't show it to John Bean. That is unclear to me.

I will say -- and I mean no disrespect to Mr. Lockwood -- that there are several things about Mr. Lockwood's testimony that he's clearly remembering incorrectly. A lot of time has passed. For example, he testified that the

western boundary of the lots of Area 1 is at the top of the bluff. That's clearly not right. And I tend to think that what he's actually remembering is the reference line that John Bean ran down the top of the bluff, which he thought was the property line.

In fact, it wasn't. I think that was very clear from Mr. Bean's testimony and everything else about it. There is certainly no survey that found that the property line is at the top of the bluff. So obviously Mr. Lockwood's testimony about that is incorrect, as is his testimony that he saw horizontal writing, because there is no rock anyone has ever found that has horizontal writing.

Anyway, for all of those reasons, I think it is by far the most likely view of the evidence that the WCMC1 rock, the R&M rock, if you will, is Dahlquist's rock. Given that, it's clear to me that Mr. Bean used the wrong rock in his survey work in the '70s, and he's continued to do so in his

subsequent survey work in the subdivision.

It's curious to me that Mr. Bean used the WCMC rock in his ATS survey but not in his survey of the subdivision. Mr. Bean didn't give a clear

explanation to me of why he used a different

beginning point on the ATS survey. That survey showed -- I'm sorry. I'm forgetting the letter of the tract down there where the lodge is. I think it's Tract D, if I'm remembering right.

But he drew in those boundaries on that survey, and he drew in the boundaries of the

southernmost lots in the subdivision that butted up

against it on that survey. And all of those tracts would have been in an entirely different place if

he'd used one rock versus the other rock. And it's curious to me, and there is no good way to reconcile the inclusion of those boundaries on that survey with his use of WCMC1, as opposed to his other

surveys on which he used the faint X rock.

I think the only explanation that makes sense for why Mr. Bean did that is that, at least on some level, he recognized that the WCMC rock is the right rock, but he couldn't figure out how to fix that problem for the subdivision. And thus, when he surveys the subdivision, he kind of felt compelled to keep using the wrong rock, since he's been using it for 40 years.

In any event, based on that conclusion, I conclude that the R&M survey accurately lays out the boundaries of the Halls' lot as it was platted in Plat 75-11.

The Collinses suggest that even if R&M used the right rock, that I should adopt the Bean lines because doing otherwise would cause havoc on Colt Island. It very well might cause havoc on Colt Island, and I'm going to talk some more about that;

but I don't think I have the authority to simply fix

new property lines different from what is fixed in the written instruments merely because it would help folks to not have problems.

There has to be some legal theory under which I can do that. I can't simply say, "You know what? A different property line would be better." I have to have a legal theory to do that. There are some legal theories I'll talk about in a moment, but I can't do it just because it would work out better for everybody.

And I want to make clear that I guess I think, you know, there's been a lot talk here about

who is trying to move property lines. Property lines, as a starting point, are where they are fixed in written instruments. Fred Dahlquist did a survey in 1927, and he established a reference point. John Bean did a paper plat in 1975, in which he laid out some paper -- on paper, property lines keyed off of that reference mark.

The reference mark that he adopted is WCMC1. And, as I said, my conclusion is that WCMC1 is a rock on the beach that says WCMC1 on it. That means that the property lines fixed by those written instruments are the property lines that flow from WCMC1. And I guess I think, really, in my view, it's not the Halls who are trying to move the property lines; it's the Collinses.

Now, sometimes courts can move property lines, and there are legal theories under which a court can adopt property lines different from those that are surveyed. And we talked a fair amount at trial about one of those theories, the theory of boundary by acquiescence.

Under this theory, a boundary line is established by acquiescence where adjoining landowners -- and there are three elements that I'm going to lay out -- 1, whose property is separated by some reasonably marked boundary line; 2, mutually recognize and accept that boundary line; 3, for seven years or more. That's language that comes directly out of the Alaska Supreme Court case Lee

vs. Conrad.

The Supreme Court, in Lee vs. Conrad, did not specifically address the burden of proof of boundary by acquiescence, but there is substantial case law from other states and the trial court in Lee vs. Conrad that requires clear and convincing evidence to find boundary by acquiescence.

And I think that, from a legal standpoint, the rationale for adopting a clear and convincing evidence standard is that boundary by acquiescence is similar to the doctrine of adverse possession, although it's not exactly a species of adverse possession. The Supreme Court adopted that seven-year requirement from the adverse possession requirements. And I think if the Supreme Court were called upon to decide that, I think it would adopt a clear and convincing evidence standard, just as it adopted the seven-year requirement by essentially taking that requirement from the adverse possession standards. That's the law in most every state that's dealt with it. That's the general rule.

So in order to find a boundary by acquiescence here, I would have to find that the property owners here, for some seven-year period, mutually recognized and accepted a boundary line, a reasonably marked boundary line.

There certainly is evidence that stakes and markers were placed on the property in the 1970s. There is plenty of evidence of that. There is evidence that lot owners saw those stakes, and they bought lots in reliance on those stakes.

And I think those stakes were placed by John Bean, although there is a little bit of uncertainty in my mind about that, as to who did it between Mr. Bean and Howard Lockwood. Mr. Lockwood testified that he did some measurements and put in some markers. He testified that he measured 160 feet up from the stakes at the top of the bluff to mark the center line of Totem Pole Trail, which was then used by the Worrells to blast out the trail.

I would note that if, in fact, that's what Mr. Lockwood did, it would have put Totem Pole Trail in the wrong place, because it would be 160 feet up from the top of the bluff and not from the meander line on the beach. That would have put Totem Pole Trail in a place where neither R&M nor John Bean would have put it, and it would be too far to the east.

I tend to think that Mr. Lockwood is not remembering that right, and that, in fact, Totem Pole Trail is where John Bean would have surveyed it. And that's not -- I don't know that to a hundred percent certainty.

There is also some uncertainty about where those stakes were placed in a north-south direction. None of those stakes are still there, and there aren't any of the old stakes remaining on the Collins-Hall boundary.

There was testimony by Mr. Hall that he measured down from the corner on the -- from the northeast corner of the Barry Rohm property to try to mark that line in 1999. And I find it puzzling that there is a 10-foot discrepancy between the marker that Mr. Hall found in 1999, measuring down to the property line, and the John Bean markers. I

don't have any explanation for that 10-foot discrepancy.

I will say that my sense of Mr. Hall is that he's a pretty careful and meticulous person, and that he would have used some care in measuring that distance down from the Rohm corner. And it's not clear to me why he came up with a different spot than John Bean did.

If the Rohm corner placed by Mr. Bean were correct, or correctly measured from the faint X rock, one would expect that the line found by Mr. Hall off of that corner in 1999 would be exactly the same as the line found by John Bean in 2012. But instead, Mr. Hall got a line that matched up with nobody's property line, Bean or R&M.

The problem for me in finding a boundary by acquiescence is that I don't know where that boundary should be. It's easy to say, "Well,

everybody used the Bean lines in 1975, and people bought their lots knowing that the Bean lines were the lines." The problem is, which Bean lines are we talking about, and where do we put them? I can't find a boundary by acquiescence if I don't know where that boundary is.

And the reality is, as I see the evidence, that none of Mr. Bean's surveys are all that reliable. I would need to find by clear and convincing evidence that there is an identifiable line that was there from 1975 or '76 for a seven-year period, and I would have to fix the property line at that line. And I'm not able to find by clear and convincing evidence that the lines determined by Mr. Bean in 2012 are the lines that you would have seen if you went and looked at the stakes on the ground in 1976.

Every survey that Mr. Bean has done --

and I mean no disrespect to Mr. Bean -- but every survey that he's done has significant discrepancies. The paper plat he did in 1975 had a 10-foot discrepancy in the measurements of the lots, which would have to be accounted for somewhere in those lots. Somebody would have to lose 10 feet of their property, because you can't fit all the lots into the space available on the island because the numbers don't add up.

There is a 10-foot discrepancy between the markers that Mr. Hall found in 1999 and the markers that Mr. Bean found in 2012. The latest survey by Mr. Bean, in the second version of it that he issued to correct errors in the first, uses the wrong meander line from MC1 down to the start of the lots; and he really didn't give a clear explanation of that. It's certainly possible that's simply his reference line, although I don't think that's

correct surveying practice to put that reference line on the survey; but I don't know that. And I think it's entirely possible that if one were to actually follow that line, one would get to an entirely different place.

And it may be that that line is just wrong. Every time Mr. Bean was confronted about one of the errors in his survey, he said, "Well, that's a drafting error." And I simply don't have any confidence that the lines Mr. Bean found in 2012 are at all the same lines that were staked in 1976. There's another aspect of this that causes me to have a lack of confidence in those numbers. Mr. Collins testified that when -- I'm sorry. Mr. Fisher testified that when he bought what became the Hall property in the 1970s, that there was -- his recollection was that there was one stake on the ground. And at some point, that stake rotted away. He really didn't know when.

Even if one grants that that stake may have been there for seven years, Mr. Fisher then went and built an outhouse. And he built that outhouse right smack on the property line that Mr. Bean found between Mr. Fisher's property and what is now the Collins property. And Mr. Fisher testified that he really didn't have a clear idea of where the property line was. If he had a clear idea of where the property line was, he surely wouldn't have built his outhouse right smack on that line. In order for there to be a boundary by acquiescence, as I said, there has to be -- and I want to use the right wording -- an agreement settling a boundary -- I'm sorry. I've lost my wording here about that. There has to be property separated by a reasonably marked boundary line that is mutually recognized and accepted by the adjoining property lines.

Mr. Fisher didn't even know where the property line was, so how could he have mutually recognized and accepted with his neighbor a reasonably marked line if he couldn't even tell where it was to the extent that he built his outhouse right smack on that line, encroaching over it?

So that, to me, doesn't make any sense. If there was a line that everybody knew about, I think the people did generally feel like the Bean lines, whatever they were, should be the lines. But

nobody really knew exactly where those lines were, and I don't know where they are now. So I can't find a boundary by acquiescence under that legal theory.

There's another theory that I located in the case law. It's not in any Alaska case, but there's case law from other states that talks about a theory of boundary by agreement. It a case called Anderson vs. Fautin, a Utah case, that actually has a really helpful discussion of that theory and contrasting it with boundary by acquiescence. That case is 379 P.3rd 1186. It's a 2016 Utah case. And that case set out four elements to find a boundary by agreement: One, that there is an agreement between adjoining landowners; second, settling a boundary that is uncertain or in dispute; third, a showing that injury would occur if the boundary were not upheld; and, fourth, where the doctrine is being invoked against successors in interest, that there's demarcation of a boundary line such that a reasonable party would be placed on notice that the given line was being treated as the boundary line between the properties.

In Anderson, there was a fence line that had been there for years and years. Nobody knew exactly where the property line was, but everybody kind of agreed to live by the fence line. And it put a purchaser on notice that that was a line. There was no fence line on this land when

the Halls bought their property. Here, if the doctrine were invoked, it would be invoked against a successor in interest. Both parties here are successors in interest. And there's clearly no demarcated boundary line that would have put anybody on notice. There's sort of an imaginary paper boundary line that people -- that the court is being asked to recognize, but there is no on-the-ground line. And so I don't find that the doctrine of boundary by agreement could be adopted as well.

I have pondered without success some other legal theory on which to adopt Mr. Bean's current property lines, and I'm simply not able to come up with one.

I think the legally correct line, based on the surveys, is the R&M survey. I think adopting that line creates a lot of potential problems. Among those, adopting that line takes away 13 or 18 feet on the north side of the Collins property, but what happens on the south side of the Collins property? Does that mean that the Collins lot slides down 18 feet from where they thought it was? Well, Dale Lockwood might have something to say about that, because he's owned his property since the 1970s. He testified that he knew where his lines were. They were staked with wooden lines, and I think he replaced them with some successor

lines; and he has a pretty clear idea where his line is. I don't suppose he's going to give away 18 feet of his property without a fight.

And so it is possible that fixing that line at the R&M line means that the Collinses don't own a 100-foot-wide lot; they might own an 82-foot-wide lot. Mr. Lockwood is not a party to this case, and I can't adjudicate his rights.

And I think there is some potential for similar problems arising all over the island. Totem Pole Trail -- where in the world is Totem Pole Trail now? Certainly we know where Totem Pole Trail is in a physical sense, because people walk up and down it and drive their four-wheelers on it; and it is where it is.

But it may not be physically located on the easement, as that easement would be fixed off of WCMC1, because it might have been built in the wrong place in the 1970s when Marion Hobbs went through and improved it or when the Worrells went through and logged it. And I think there are all kinds of potential problems there.

Likely there is a prescriptive easement if the trail was physically built over lots in Area 2, which it might have been. Likely 40 years of use has created a prescriptive easement over those lots, which means that those lots -- those

property owners might lose some property because there is now a trail over the end of their lots. I think that other property owners might well be able to make a claim for boundary by acquiescence. If somebody built a fence down their property in 1977 and it's still there, I think they'd have a pretty good claim that that's the boundary line even if it's not on the surveyed boundary line.

I think there's a host of problems, and I'm probably creating more of them today. I don't mean to be cruel in saying this, but I think those problems stem from some problems with the surveys; and I can't fix that. It's a court of law, and I am obliged to follow the law. And I think that that leads me to the place that R&M has surveyed the Halls' property correctly, and I will enter a decree quieting their title according to the survey found by R&M.

Ms. Harrison, I guess I'd ask you to prepare some findings of fact and conclusions of law and a decree consistent with that ruling.

MS. HARRISON: Yes.

THE COURT: Are there questions about the ruling, Mr. Geldhof?

MR. GELDHOF: I would ask the court to be very mindful of the bearings from Admiralty Island and squaring the bearings of all three of the surveys that are relevant -- Dahlquist's, John Bean's 2015 survey, the bearing point -- to the MC. I think the MCs are more important than the witness corners.

But --

THE COURT: I didn't --

MR. GELDHOF: -- matching the bearings up is --

THE COURT: Right. I didn't find anything about the bearings that pointed me to John Bean's rock or to John Bean's corner. That -- I didn't find that there was anything about those bearings that caused me to think that he had the right rock. He testified that he measured the right bearing, and he measured that bearing in the 1970s. He didn't measure the distance, but he measured the bearing. But I don't know what the bearing is between the two rocks. No one ever measured that. And if it's right that John Bean's rock with the X

on it is on the right bearing, that might simply mean that one rock is right behind the other on that line. I don't know, because no one measured that bearing. So --

MR. GELDHOF: Well, Your Honor, it's not the distance; it's the bearings from the MC1 that Bean utilized or testified to in 2015, comparing that to Dahlquist's 1927 bearing from his MC1 and the bearing used in the R&M, which is an assumed MC1 because they didn't establish an MC1. They shot off from the witness corner. But --

THE COURT: I think that's something that can be calculated by triangulating, and I think R&M did that.

Ms. Harrison, any questions about the ruling?

MS. HARRISON: No questions. Thank you.

THE COURT: All right.

MS. HARRISON: Well, actually, I should ask -- unless the two of you have any questions.

MR. HALL: No questions.

MS. HARRISON: No, no questions.

THE COURT: We'll go off record.

THE CLERK: All rise. Court is in recess subject to call.

4:32:38 PM

END OF REQUESTED PORTION

C E R T I F I C A T E

SUPERIOR COURT)
) ss.
STATE OF ALASKA)

I, LYNDA BARKER, Registered Diplomate Reporter and certified for transcription services by the United States Courts and the Alaska State Courts, hereby certify:

That the foregoing pages contain a full, true and correct transcript of proceedings in the above-referenced matter, transcribed by me to the best of my knowledge and ability, or at my direction, from the electronic sound recording.

DATED at Juneau, Alaska, this 28th day of December, 2016.

SIGNED AND CERTIFIED TO BY:

LYNDA BARKER, RDR
Notary Public for Alaska My commission expires: 5/6/2020

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FIRST JUDICIAL DISTRICT AT JUNEAU

RAY M. COLLINS and CAROL J. COLLINS,

Plaintiffs,

vs.

DAVID W. HALL and MARGARET R. HALL Trustees, and their successors in trust, of the D & M Hall Community property trust, dated March 14, 2005, and also all other persons or parties unknown claiming a right, title, estate, lien, or interest in the real estate described in the complaint in this action,

Defendants.

FILED IN CHAMBERS
State of Alaska
First Judicial District at Juneau
by KJK on: July 6, 2017

CASE NO. 1JU-14-00771 CI

Faulkner Banfield, P.C.
8420 Airport Boulevard, Suite 101
Juneau, Alaska 99801-6924

LODGED 12/21 BY 05
DATE INITIALS

FINAL JUDGMENT

This matter having been tried to this court, and this court having found in favor of defendants David W. Hall and Margaret R. Hall on both the plaintiffs' claims and the defendants' counterclaims:

IT IS ORDERED that judgment is entered in favor of defendants David W. Hall and Margaret R. Hall against defendants Ray M. Collins and Carol J. Collins, jointly and severally, as follows:

a. All right, title and interest that Ray M. Collins and Carol J. Collins, and those claiming through them, have in Lot 15, Area 1, Colt Island Recreational Development according to Plat 75-11, U.S. Survey 1755, as surveyed in Plat 2012-

32, Juneau Recording District, First Judicial District. This transfer of interest shall be made by Deed of the Clerk of Court in the form attached to this Final Judgment.

b. As the prevailing party, defendants David W. Hall and Margaret R. Hall may move for attorney's fees and file a bill of costs within ten (10) days of the date of distribution of this judgment. The amount awarded for fees and costs will be entered below upon the court's ruling on the motion for attorney's fees and the clerk's assessment of costs.

c. Attorney's fees: $_____

Date awarded: _____

Judge: _____

d. Costs: $_____

Date awarded: _____

Clerk: _____

e. **Total Judgment:** $_____

f. Post-judgment interest rate: _____%

DATED 7/6/17

Judge Philip M. Pallenberg

DISTRICT

DISTRIBUTION

On 7/7/17, the above final judgment was distributed to:

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FIRST JUDICIAL DISTRICT AT JUNEAU

RAY M. COLLINS and CAROL J. COLLINS,

Plaintiffs,

vs.

DAVID W. HALL and MARGARET R. HALL Trustees, and their successors in trust, of the D & M Hall Community property trust, dated March 14, 2005, and also all other persons or parties unknown claiming a right, title, estate, lien, or interest in the real estate described in the complaint in this action,

Defendants.

FILED IN CHAMBERS
State of Alaska
First Judicial District at Juneau
by KJK on: July 19, 2017

CASE NO. 1JU-14-00771 CI

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Trial of this matter was heard by the Superior Court for the State of Alaska, First Judicial District at Juneau, by Judge Philip M. Pallenberg on November 28th through December 1st, and on December 7th, 2016. Ray Collins and Carol Collins were present and represented by Joseph Geldhof. David Hall and Margaret Hall were present and represented by Lael Harrison. All parties and counsel appeared in person, except that on December 7th the Collinses appeared telephonically (Mr. Geldhof, however, was present in the courtroom). Based on the evidence and testimony presented at trial, the court makes the following findings of fact and conclusions of law.

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FINDINGS OF FACT

1. Both parties are residents of Juneau, Alaska, and the property at issue in this case is within the First Judicial District, therefore this court had jurisdiction over the matter and venue was proper.
2. Ray and Carol Collins own Lot 14 Area 1, Colt Island Recreational Development according to Plat 75-11, U.S. Survey 1755, Juneau Recording District, First Judicial District, State of Alaska.
3. David and Margaret Hall own Lot 15, Area 1, Colt Island Recreational Development according to Plat 75-11, U.S. Survey 1755, Juneau Recording District, First Judicial District, State of Alaska. They own this property as trustees of the D&M Hall Community Property Trust dated March 14, 2005.
4. The property belonging to the Collinses shares a boundary with the property belonging to the Halls.
5. The Collinses sued the Halls for quiet title to Lot 14 according to a survey recorded as Plat 2014-46, prepared by surveyor John W. Bean. Mr. Bean later amended this survey. The amendment is recorded as Plat 2015-37. The amendment does not alter the boundary shown by Plat 2014-46. According to the boundary shown by these surveys, an outhouse and shop on Lot 15 encroach onto Lot 14.
6. The Halls counterclaimed against the Collinses for quiet title to Lot 15 according to a survey recorded as Plat 2012-32, prepared by surveyor Mark Johnson with

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R&M Engineering. This survey depicts the boundary found by Mr. Bean as well as the boundary found by R&M Engineering, and they are significantly different. The boundary between Lots 14 and 15 found by R&M Engineering is about 18' to the south of the boundary found by Mr. Bean.

7. The most significant difference between the R&M Engineering survey and Mr. Bean's amended survey is the "point of beginning" used.

8. The correct point of beginning for Plat 75-11, U.S. Survey 1755 is a monument created by U.S. Survey 1755 called "Witness Corner to Meander Corner 1" ("WCMC1"). Plat 75-11 is a "paper plat" that establishes no monuments, but it is an accurate representation of U.S. Survey 1755. Therefore, monuments established by U.S. Survey 1755 are used to locate lots created by Plat 75-11. U.S. Survey 1755 established only one monument, WCMC1. Therefore, WCMC1 is the correct point of beginning for Plat 75-11.

9. The field notes to U.S. Survey 1755 describe the creation of that monument. First, the notes explain that the true point of beginning is "Meander Corner 1," located 57.87 chains (3,819.42 feet) from United States Land Monument 1285 ("USLM 1285") on Admiralty Island at a bearing of S31°13'W. The notes then explain:

> As the above true point for meander corner falls at an unsafe place for corner, I establish a witness corner at a point which bears S.38°22'E, 0.21 ch[ain]s dist[ant] from this true corner point, as follows: On the sharply sloping face of a bedrock ledge, showing 2 ft. x 3 ½ ft. above ground and facing northwest, I mark with cross (+) and with letters: WC MC1 S1755, for witness corner to Cor[ner] No. 1 and M[eander] C[orner] of this survey.

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10. Because the field notes give the distance and bearing between USLM 1285 and Meander Corner 1, and also the distance and bearing between Meander Corner 1 and WCMC1, it is possible to calculate the distance and bearing between WCMC1 and USLM 1285. According to the information given in the field notes, the distance between WCMC1 and USLM 1285 is 3,814.61 feet and the bearing is N31°24'42"E.

11. In their survey for the Halls, R&M Engineering used as the point of beginning a monument engraved with a cross and the letters "WCMC1 S1755." R&M Engineering determined the distance between this monument and USLM 1285 to be 3813.49 feet, and the bearing to be N31°24'42"E.

12. In his amended survey for the Collinses, Mr. Bean used as a point of beginning a monument he created and determined to be Meander Corner 1 to U.S. Survey 1755 using as WCMC1 a very faint "x" engraved in rock without numbers or letters. The monument he placed where he determined Meander Corner 1 to be is 3,841.62 feet from USLM 1285 at a bearing of S31°13'04"W.

13. Mr. Bean's reason for using this faint "x" as WCMC1 was that, in the 1970s when he prepared Plat 75-11, he believed it was the correct WCMC1 created by U.S. Survey 1755, and he set some "control points" around the island based on it. However, he never recorded any of the surveying work that he did based on that monument or the location of these "control points."

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14. The monument used by R&M Engineering is the monument created by U.S. Survey 1755 and therefore the correct point of beginning for Plat 75-11. The engravings are consistent with the description in the field notes to U.S. Survey 1755, and it is only 1.12 feet closer to USLM 1285 than the field notes to U.S. Survey 1755 describe. This difference of 1.12 feet is likely due to the improvement in surveying equipment and techniques since U.S. Survey 1755 was done in the 1920s. In fact, considering the techniques and equipment available to them at the time, the surveyors who prepared U.S. Survey 1755 in the 1920s were quite accurate.

15. The monument used by Mr. Bean is not the WCMC1 created by U.S. Survey 1755. It does not have engraved numbers and letters as described in the field notes, and it results in a Meander Corner 1 about twenty-two feet further away from USLM 1285 than is described by U.S. Survey 1755.

16. Furthermore, surveying using the monument engraved with numbers and letters, R&M Engineering found the seaward boundary of Lot 15 to run along the beach. The field notes to U.S. Survey 1755 describe the seaward boundary of the survey as being the mean high tide line. Although it is likely that the mean high tide line has receded somewhat due to isostatic rebound, it likely still runs along the beach in the area R&M Engineering found it to be. However, surveying using the faint "x," Mr. Bean found the seaward boundary of Lot 14 to run about half-way up a steep bluff. The effects of isostatic rebound would not be so great as to create a

new bluff where the meander line was in 1927. So the placement of the seaward property line further confirms that R&M Engineering used the monument created by U.S. Survey 1755.

17. It was suggested at trial that the monument used by R&M Engineering was carved after the 1920s. I reject this suggestion as implausible. The suggestion was based on two facts: first, that many people (including Mr. Bean) searched for it without success at various times. Second, that the engravings read vertically (from top to bottom) rather than horizontally (from left to right). First, given the growth of moss and the number of shale rocks on Southeast Alaska beaches, it would not be surprising that some people might have looked unsuccessfully for the monument and others may have found it by dumb luck. Before the engravings were marked with bright chalk in 2008, it might easily have been missed. Second, it is not clear why the engravings are vertical rather than horizontal, but a forger would have no more reason to make them vertical than the original surveyors did. So the fact that the engravings are vertical does not make it more likely that they are the work of a forger.

18. Mr. Howard Lockwood testified that in the 1970s he located a monument in that area engraved with letters and numbers reading horizontally rather than vertically, but I find this testimony not credible. It is unlikely that there is a third monument in that area engraved with numbers and letters horizontally that no one has seen since. It is more likely that Mr. Lockwood misremembered the

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direction of the engravings after the passage of so much time. It was apparent from his testimony that he misremembered other facts from that time period, so he likely also misremembered this one. For example, he testified that the seaward boundary of the subdivision was at the top of the bluff, rather than along the beach where it actually is (the 1927 meander line).

19. I find further support for my conclusion in Alaska Tidelands Survey 1620, recorded as Plat 2004-10, prepared by Mr. Bean in 2002 and recorded in 2004. That survey depicts Tract D of Plat 75-11 and adjacent tidelands. In that survey, Mr. Bean used as the point of beginning the same monument that R&M Engineering used in their survey for the Halls, not the faint "x" that Mr. Bean later used in his amended survey for the Collinses. Mr. Bean did not give a clear explanation why he did this. The only sensible explanation is that Mr. Bean recognized in 2002 that the monument used by R&M Engineering is the correct WCMC1.

20. Finally, Mr. Bean's surveying work in general is made less credible by discrepancies in Plat 75-11 (which he prepared) and in his amended survey for the Collinses. In Plat 75-11, the meander line that runs along the seaward side of Area 1 is stated to be 947.76 feet. However, when all the lots, rights-of-way, and other distances subdivided along that line are added up, the total is 957.26 feet. So all of the lots, rights-of-way, and other distances allocated to that meander line do not fit in it. Also, in his amended survey for the Collinses, Plat 2015-37,

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the meander lines between Meander Corner 1 and Lot 14 are not the same distances or bearings as are written in Plat 75-11. Mr. Bean did not give a clear explanation of why that was so.

21. There was testimony at trial that Lot 15 was originally purchased from the developer Howard Lockwood by George Fisher. Mr. Fisher testified that when he purchased the property there was one stake marking the corner between Lots 15 and 14, but that he was never entirely sure where the property line was. Mr. Fisher testified that stake was gone by the time he sold the property to Mr. and Ms. Hall.

22. Mr. Fisher also testified that he built the outhouse on Lot 15 that Mr. Bean's survey determined encroaches onto Lot 14.

23. Mr. Hall testified that after he and Ms. Hall purchased Lot 15, he tried to locate the property boundaries in 1999. He located a stake that he believed marked the northeast corner of Lot 18, Area 1, and measured 300' feet from it locate the northeast corner of Lot 15 (Lots 18, 17, and 16 in between are each 100' wide). Mr. Hall is not a surveyor but it was apparent from his testimony that he is a careful and meticulous person who likely measured accurately from that stake. Based on that measurement, Mr. Hall set stakes where he believed the boundaries of Lot 15 to be. Those stakes have since been removed but he testified that he believed they were about halfway in between the boundary determined by R&M Engineering and the boundary determined by Mr. Bean.

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24. In 2009, Mr. Bean placed the corners on Lot 14 that he later documented in Plats 2014-46 and 2015-37. He placed those corners by measuring off corners he placed on a nearby lot in the 1990s. The corners he placed in the 1990s were based on the unrecorded control points he set in the 1970s based on the erroneous WCMC1.

25. Lot 15 is encumbered by covenants recorded at Book 127, Page 934, Juneau Recording District, First Judicial District, State of Alaska on January 25, 1977. The Collinses have alleged that the Halls have violated covenant number five regarding building setbacks and number nine regarding sewage disposal.

26. According to the property boundaries found by Mr. Bean, the Halls' outhouse and shop encroach on Lot 14. According to the property boundaries found by R&M Engineering, the Halls' outhouse and shop are about fifteen feet from the property line. Covenant number five calls for buildings to be set back at least twenty feet from property lines.

27. The Halls sewage disposal system is a pit privy outhouse. It has been in place since it was constructed by Mr. Fisher in the 1980s without complaint either as to its location or as to its sewage disposal system.

28. The covenants provide that they may be enforced as follows: any Colt Island property owner may send a complaint to a violator outlining the nature of the violation and a suggested remedy. Within thirty days of the complaint,

> a special meeting of the Board [of directors of the Colt Island Alaska Recreational Association] will be called, where the matter will be presented. A

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ruling will be rendered. If this ruling is not satisfactory then a vote will be taken by all the registered Lot and Tract owners. The outcome of this vote will be final.

No Colt Island Alaska Recreational Association was ever formed. In this case, no vote of the registered lot and tract owners was taken regarding the Halls' alleged violations.

29. There was testimony that a number of buildings on Colt Island are less than twenty feet from property lines and that there are a number of other outhouses on the Island. There was also testimony that those buildings and outhouses have never been the subject of violation complaints.

CONCLUSIONS OF LAW

1. The court is first tasked with determining which survey accurately depicts the boundary line between Lots 14 and 15, Area 1, Colt Island Recreational Development, according to Plat 75-11, U.S. Survey 1755, Juneau Recording District, First Judicial District, State of Alaska.
2. Property lines are determined by the property descriptions contained in the deeds, and the instruments referenced in the deeds. In this case, those instruments are Plat 75-11 and U.S. Survey 1755. Because Plat 75-11 does not establish any monuments, the property lines created by Plat 75-11 flow from WCMC1 established by U.S. Survey 1755. Plat 2012-32 prepared by R&M Engineering for the Halls uses the correct WCMC1 as the point of beginning, and is otherwise consistent with the recorded documents in all respects. Therefore I find that it

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accurately depicts the boundary between Lots 15 and 14, Area 1, according to Plat 75-11 and U.S. Survey 1755.

3. The final survey prepared by Mr. Bean for the Collinses does not use the correct WCMC1 and has other unexplained discrepancies making it less credible.

4. The equitable doctrine of "boundary by acquiescence" can alter property lines established in a deed. According to *Lee v. Konrad*, 337 P.3d 510, 520 (Alaska 2014):

> [A] boundary line is established by acquiescence where adjoining landowners (1) whose property is separated by some reasonably marked boundary line (2) mutually recognize and accept that boundary line (3) for seven years or more.

5. *Lee v. Konrad* does not state the burden of proof by which a party must establish these elements. The doctrine of boundary by acquiescence is similar to the doctrine of adverse possession, and the Alaska Supreme Court has held that the burden of proof for that doctrine is clear and convincing evidence.[1] And the *Lee v. Konrad* decision notes that the trial court in that case determined the burden of proof to be clear and convincing evidence.[2] Furthermore, other courts to have considered the question have determined that boundary by acquiescence must be established by clear and convincing evidence.[3] Therefore, I determine the burden of proof by which the Collinses would have to establish a boundary by

[1] *Nome 2000 v. Fagerstrom*, 799 P.2d 304, 309 (Alaska 1990).
[2] 337 P.3d at 516.
[3] *See e.g. Essential Botanical Farms, LC v. Kay*, 270 P.3d 430, 432 (Utah 2011); *Anchorage Realty Trust v. Donovan*, 880 A.2d 1110, 1112 (Me. 2004).

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acquiescence in order to move the property lines from those established by the deeds to be clear and convincing evidence.

6. I do not find clear and convincing evidence that the boundary established by Mr. Bean in 2009 and recorded in Plats 2014-46 and 2015-37 was established by acquiescence. It is apparent that the Halls never acquiesced in the boundary set by Mr. Bean, and less than seven years passed before this lawsuit. Before Mr. Bean set corners in 2009, both Mr. Fisher and Mr. Hall testified that the boundary between Lots 14 and 15 was not marked while the Halls owned the property. However, Mr. Fisher testified that when he purchased the property there was one stake that he believed marked the property boundary. There was not clear testimony about who set that stake or how it was set. Nor was there evidence about the location of that stake (which was gone by the time the Halls purchased the property in 1994). There was no evidence regarding whether it was along the property boundary determined by Mr. Bean in 2009. The fact that Mr. Fisher built his outhouse over the property boundary determined by Mr. Bean in 2009 indicates that the stake was not on that boundary. Alternatively, if the stake were along Mr. Bean's 2009 boundary, it shows that Mr. Fisher did not in fact acquiesce in that boundary line. Furthermore, in 1999, Mr. Hall located a stake on Lot 18 likely set around the same time as the stake observed by Mr. Fisher. When Mr. Hall used that stake to locate his property boundary, he found the boundary to be about ten feet away from where Mr. Bean located the

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property boundary in 2009. This casts further doubt on whether the stakes set in the 1970s were consistent with the boundaries found by Mr. Bean in 2009. Finally, Mr. Bean's surveying work presented in this case is unreliable in other ways, specifically in the discrepancies in Plat 75-11 and in Plat 2015-37. These discrepancies cast further doubt on whether the boundary he located in 2009 was consistent with the stake testified to by Mr. Fisher.

7. Additionally, although the Alaska Supreme Court has not considered such a case, other courts have held that in order to find a boundary by acquiescence, purchasers must be on notice of the location of the boundary. In *Anderson v. Fautin*, 379 P.3d 1186, 1189 (Utah 2016), the Utah Supreme Court explained that, when the doctrine of "boundary by agreement" is being invoked against successors in interest to the parties who originally agreed to the boundary, there must be "demarcation of a boundary line such that a reasonable party would be placed on notice that the given line was being treated as the boundary line between the properties." Because the stake testified to by Mr. Fisher was gone when the Halls purchased Lot 15, they were not on notice of any purported boundary by acquiescence.
8. I am not aware of any other equitable doctrine that would warrant altering the property boundaries from those created by the deeds and written instruments.
9. This court recognizes that many property boundary disputes likely remain on Colt Island, and this case cannot resolve them. This court can only adjudicate the

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rights of the parties before it. However, the court encourages the property owners on Colt Island to seek an amicable island-wide solution to those remaining problems.

10. This court further holds that the Collinses cannot enforce covenants number nine and number five against the Halls as to the location of their outhouse and shop, and as to their sewage disposal system. To the extent these covenants would prohibit pit privies or require the Halls' outhouse and shop to be farther from Lot 14, they have been abandoned and it would be inequitable to enforce them against the Halls. *See BBP Corp. v. Carroll,* 760 P.2d 519, 523-24 (Alaska 1988).

CONCLUSION

Based on the Findings of Fact and Conclusions of Law stated above, I hold that the defendants David Hall and Margaret Hall, as trustees of the D&M Hall Community Property Trust dated March 14, 2005, are entitled to quiet title against the plaintiffs Ray Collins and Carol Collins, and those claiming through them, to Lot 15, Area 1, Colt Island Recreational Development according to Plat 75-11, U.S. Survey 1755, Juneau Recording District, First Judicial District, State of Alaska as surveyed by R&M Engineering in Plat 2012-32. The Plaintiffs' claims are denied in their entirety. This court will issue final judgment in favor of the Halls and a clerk's deed quieting title in the Halls according to this court's holding.

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DATED 7/6/17

Judge Philip M. Pallenberg

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FIRST JUDICIAL DISTRICT AT JUNEAU

RAY M. COLLINS and
CAROL J. COLLINS,
Plaintiffs,

v.

DAVID W. HALL and
MARGARET R. HALL,
Trustees, and their successors in Trust, of the D & M Hall Community property trust, dated March 14, 2005, and also all other persons or parties' unknown claiming a right, title, estate, lien, or interest in the real estate described in this action,

Defendants.

Case No. JU-14-00771 CI

COMBINED MOTION AND MEMORANDUM IN SUPPORT OF RECONSIDERATION
[Civil Rule 77(k)]

Ray and Carol Collins, through counsel, seek reconsideration according to Alaska Civil Rule 77 (k), of the judgment entered by this court on July 6, 2017. The court's entry of judgement was based on findings and conclusions tendered by the defendants in this case. The underlying findings and conclusions adopted by the court mischaracterize or misapply relevant legal doctrine.

The Collins's believe the court has overlooked, and did not consider, an important legal principle that is highly relevant and controlling to the issue of property boundary lines on Colt Island.

This principle the court has overlooked in this case is the *Cooley Doctrine* and the case law that supports this doctrine. This legal doctrine is directly applicable to resolving conflicts between boundary disputes and was formulated by Justice Thomas Cooley, a preeminent 19th century jurist and scholar.[1] The essential core of the *Cooley Doctrine* is embodied in the following common-sense principle that "[h]owever erroneous may have been the original survey, the monuments that were set must nevertheless govern..." [*See,* Exhibit "A" at page 1].

As a matter of fact, Plat 75-11 was completed by surveyor John Bean in the 1970's and used by the owner of Colt Island to sell individual lots and delineate rights-of-ways that were obviously designated and monumented with wooden stakes. Plat 75-11 was monumented sufficiently to allow various recreational and commercial activities by numerous property owners on the designated lots for decades and constitutes the original survey of Colt Island. The long-standing actual use and reliance by numerous individuals, including the defendants, on the demarcated lots and trails delineated by Plat 75-11, was never seriously contested by defendants and seemingly an accepted fact.

The real problem with the court's ruling in this case is most evident regarding the misapplication of law. As a matter of law, the court's conclusion on the utilization of the point of beginning for future survey work related to the existing lots and trails defined by Plat 75-11 on Colt Island is wrong. Applying Justice Cooley's long-standing analytical construct to the Colt Island boundary dispute would result in a finding (contrary to the court's holding), that R&M's survey of the Hall property was fatally deficient because it failed to begin at the location of the identical monument rock John Bean used as the beginning point of his survey for Plat 75-11.[2]

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[1] Justice Cooley served as Chief Justice of the Michigan Supreme Court for over 20 years. He also served as Dean of the University of Michigan Law School for 12 years. And he served as the first Chairman of the Interstate Commerce Commission. His writings, among others, included: *The General Principles of Constitutional Law*, *A Treatise on Torts* and a *Treatise on Constitutional Limitations.*

[2] The Alaska Supreme court, in ***Lee v. Conrad***, 337 P.3d 510, 518 -519 (Alaska 2014), at notes 16, has commented favorably on the *Cooley Doctrine*.

The court's ruling overlooks more than long-standing doctrine and sound surveying practice. The court also overlooks clear legal holdings in other boundary disputes. The case of ***Diehl v. Zanger***, 39 Mich. 601 (1878), is both relevant and instructive to a proper legal resolution of the Colt Island property dispute. In ***Diehl,*** the Supreme Court of Michigan found that a subsequent survey that significantly shifted long-standing boundary lines was erroneous, a common-sense outcome that should guide the court in the Colt Island boundary dispute to adhere to repose instead of chaos.

Justice Cooley's thoughts on contradictory surveys, prompted no doubt by disputes over the accuracy of early surveys done in Michigan, have significant relevance for the comparatively young state of Alaska. "Justice Cooley's thoughts are not solely for his era." [*See,* Exhibit "B" at page 1].

The legal doctrine and cases calling for property boundary certainty based on long-standing use of the land support reconsideration. The court's conclusion that the R&M survey (incomplete and inconsistent as it is with Alaska statutory provisions), somehow trumps Plat 75-11 and decades of actual use and reliance on Plat 75-11 causes significant and unnecessary harm to the Collins's and every other Colt Island property owner; it doesn't even benefit the Halls in terms of net gain of land. The adoption of the findings and conclusions by the court in this case should be reconsidered.

A proposed Order granting reconsideration accompanies this application.

DATED this 14th day of July 2017 at Juneau, Alaska.

LAW OFFICE OF
JOSEPH W. GELDHOF

Joseph W. Geldhof
Alaska Bar # 8111097

PROOF OF SERVICE
CERTIFICATION

I certify that on this date, a copy of this document together with, Exhibit "A" & "B" and the proposed Order was mailed by pre-paid USPS to:

Lael Harrison &
Anthony Sholty
Faulkner Banfield, PC
8420 Airport Boulevard, Suite 101
Juneau, Alaska 99801

DATE: July 14, 2017

Joseph W. Geldhof

Judicial Functions of Surveyors

By Thomas M. Cooley, Chief Justice, Supreme Court of Michigan, 1864-1885
Reprinted from the *Treasure State Surveyor* magazine.)

This article appeared originally in the Michigan Engineering Society Journal (University of Michigan). It is reprinted in response to numerous requests for the full text publication of the article, the article has been widely quoted in surveying texts.

When a man has had a training in one of the exact sciences, where every problem within its purview is supposed to be susceptible of accurate solution, he is likely to be not a little impatient when he is told that, under some circumstances, he must recognize inaccuracies, and govern his action by facts which lead him away from the results which theoretically he ought to reach. Observation warrants us in saying that this remark may frequently be made of surveyors.

In the State of Michigan, all our lands are supposed to have been surveyed once or more and permanent monuments fixed to determine the boundaries of those who should become proprietors. The United States as original owner, caused them all to be surveyed once by sworn officers, and as the plan of subdivision was simple, and was uniform over a large extent of territory, there should have been, with due care, few or no mistakes; and long rows of monuments should have been perfect guides to the place of any one that chanced to be missing. The truth, unfortunately, is that the lines were very carelessly run, the monuments inaccurately placed and, as the record witnesses to these were many times wanting in permanency, it is often the case that when the monument was not correctly placed, it is impossible to determine by the record, by the aid of anything on the ground, where it was located. The incorrect record of course becomes worse than useless when the witnesses it refers to have disappeared.

It is, perhaps, generally supposed that our town plats were more accurately surveyed, as indeed they should have been, for in general there can have been no difficulty in making them sufficiently perfect for all practical purposes. Many of them, however were laid out in the woods; some of them by proprietors themselves, without either chain or compass, and some by imperfectly trained surveyors, who, when land was cheap, did not appreciate the importance of having correct lines to determine boundaries when land should become dear. The fact probably is that town surveys are quite as inaccurate as those made under authority of the general government.

RECOVERING LOST CORNERS

It is now upwards of fifty years since a major part of the public surveys in what is now the State of Michigan were made under authority of the United States. Of the lands south of Lansing, it is now forty years since the major parts were sold and the work of improvement begun. A generation has passed away since they were converted into cultivated farms and few, if any, of the original corner and quarter stakes now remain. The corner and quarter stakes were often nothing but green sticks driven into the ground. Stones might be put around or over these if they were handy, but often they were not, and the witness trees must be relied upon after the stake was gone.

> ***"However erroneous may have been the original survey, the monuments that were set must nevertheless govern ..."***

Too often the first settlers were careless in fixing their lines with accuracy while monuments remained, and an irregular brush fence, or something equally untrustworthy, may have been relied upon to keep in mind where the blazed line once was. A fire running through this might sweep it away, and if nothing was substituted in its place, the adjoining proprietors might in a few years be found disputing over their lines, and perhaps rushing into litigation, as soon as they had occasion to cultivate the land along the boundary.

If now the disputing parties call in a surveyor, it is not likely that anyone summoned would doubt or question that his duty was to find, if possible, the place of the original stakes which determined the boundary line between the proprietors. However erroneous may have been the original survey, the monuments that were set must nevertheless govern, even though the effect be to make one half-quarter section 90 acres and the one adjoining, 70; for parties buy, or are supposed to buy, in reference to these monuments, and are entitled to what is within their lines, and no more, be it more or less. While the witness trees remain, there can generally be no difficulty in determining the locality of the stakes.

When the witness trees are gone, so that there is no longer record evidence of the monuments, it is remarkable how many there are who mistake altogether the duty that now devolves upon the surveyor. It is by no means uncommon that we find men whose theoretical education is thought to make them experts, who think that when the monuments are gone the only thing to be done is to place new monuments where the old ones should have been, and would have been if placed correctly. This is a serious mistake. The problem is now the same that it was before: to ascertain by the best lights of which the case admits, where the original lines were. The mistake above alluded to is supposed to have found expression in our legislation; though it is possible that the real intent of the act to which we shall refer is not what is commonly supposed.

An act passed in 1869 (Compiled Laws 593) amending the laws respecting the duties and powers of county surveyors, after providing for the case of corners which can be identified by the original field notes or other unquestionable testimony, directs as follows:

Second. Extinct interior section corners must be reestablished at the intersection of two right lines joining the nearest known points on the original section lines east and west and north and south of it.

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Third. Any extinct quarter-section corner except on fractional lines, must be reestablished equidistant and in a right line between the section corners; in all other cases at its proportionate distance between the nearest original corners on the same line.

The corners thus determined, the surveyors are required to perpetuate by noting bearing trees when timber is near.

To estimate properly this legislation, we must start with the admitted and unquestionable fact that each purchaser from government bought such land as was within the original boundaries, and unquestionably owned it up to the time when the monuments became extinct. If the monument was set for an interior section corner, but did not happen to be "at the intersection of two right lines joining the nearest known points on the original section lines east and west and north and south of it," it nevertheless determined the extent of his possessions, and he gained or lost according as the mistake did or did not favor him.

EXTINCT CORNERS

It will probably be admitted that no man loses title to his land or any part thereof merely because the evidences become lost or uncertain. It may become more difficult for him to establish it as against an adverse claimant, but theoretically the right remains and it remains as a potential fact so long as he can present better evidence than any other person. And it may often happen that notwithstanding the loss of all trace of a section corner or quarter stake, there will still be evidence from which any surveyor will be able to determine with almost absolute certainty where the original boundary was between the government subdivisions. There are two senses in which the word extinct may be used in this connection: one, the sense of physical disappearance; the other, the sense of loss of all reliable evidence. If the statute speaks of extinct corners in the former sense, it is plain that a serious mistake was made in supposing that surveyors could be clothed with authority to establish new corners by an arbitrary rule in such cases. As well might the statute declare that, if a man loses his deed, he shall lose his land altogether.

"Unfortunately, it is known that surveyors sometimes ...disregard all evidences of occupation and claim of title and plunge whole neighborhoods into quarrels and litigation by assuming to 'establish' corners ..."

But if by extinct corner is meant one in respect to the actual location of which all reliable evidence is lost, then the following remarks are pertinent:

1. There would undoubtedly be a presumption in such a case that the corner was correctly fixed by the government surveyor where the field notes indicated it to be.
2. But this is only a presumption, and may be overcome by any satisfactory evidence showing that in fact it was placed elsewhere.
3. No statute can confer upon a county surveyor the power to "establish" corners, and thereby bind the parties concerned. Nor is this a question merely of conflict between State and Federal law; it is a question of property right. The original surveys must govern, and the laws under which they were made govern, because the land was bought in reference to them; and any legislation, whether State or Federal, that should have the effect to change these, would be inoperative, because of the disturbance to vetsed rights.
4. In any case of disputed lines, unless the parties concerned settle the controvesy by agreement, the determination of it is necessarily a judicial act, and it must proceed upon evidence and give full opportunity for a hearing. No arbiteary rules can be laid down whereby it can be adjudged.

THE FACTS OF POSSESSION

The general duty of a surveyor in such a case is plain enough. He is not to assume that a monument is lost until after he has thoroughly sifted the evidence and found himself unable to trace it. Even then he should hesitate long, before doing anything to the disturbance of settled possions. Occupation, especially if long continued, often affords very satisfactory evidence of the original boundary when no other is attainable; and the surveyor should inquire when it originated, how, and why the lines were then located as they were, and whether a claim of title has always accompanied the possession, and give all the facts due force as evidence. Unfortunately, it is known that surveyors sometimes, in supposed obedience to the State statute, disregard all evidences of occupation and claim of title and plunge whole neighborhoods into quarrels and litigation by assuming to "establish" corners at points with which the previous occupation cannot harmonize. It is often the case that, where one or more corners are found to be extinct, all parties concerned have acquiesced in lines which were traced by the guidance of some other corner or landmark, which may or may not have been trustworthy; but to bring these lines into discredit, when the people concerned do not question them, not only breeds trouble in the neighborhood, but it must often subject the surveyor himself to annoyance and perhaps discredit, since in a legal controversy the law as well as common sense must declare that a supposed boundary line long acquiesced in is better evidence of where the real line should be than any survey made after the original monuments have disappeared. (Stewart v. Carleton, 3 1 Mich. Reports, 270; Diehl v. Zanger, 39 Mich. Reports, 601.) And county surveyors, no more than any others, can conclude parties by their surveys.

The mischiefs of overlooking the facts of possession most often appear in cities and villages. In towns the block and lot stakes soon disappear; there are no witness trees, and no monuments to govern except such as have been put in their places, or where their places were supposed to be. The streets are likely to be soon marked off by fences, and the lots in a block; will be measured off from these, without looking farther. Now it may perhaps be known in a particular case that a certain monument still remaining was the starting point in the original survey of the town plat, or a surveyor settling in the town may take some central point as the point of departure in

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his surveys and, assuming the original plat to be accurate, he will then undertake to find all streets and all lots by course and distance according to the plat, measuring and estimating from his point of departure. This procedure might unsettle every line and every monument existing by acquiescence in the town: it would be very likely to change the lines of streets, and raise controversies everywhere. Yet this is what is sometimes done; the surveyor himself being the first person to raise the disturbing questions. Suppose, for example, a particular village street has been located by acquiescence and used for many years, and the proprietors in a certain block have laid off their lots in reference to this practical location. Two lot owners quarrel, and one of them calls in a surveyor, that he may make sure his neighbor shall not get an inch of land from him. This surveyor undertakes to make his survey accurate, whether the original was so or not, and the first result is, he notifies the lot owners that there is error in the street line, and that all fences should be moved, say 1 foot to the east. Perhaps he goes on to drive stakes through the block; according to this conclusion. Of course, if he is right in doing this, all lines in the village will be unsettled: but we will limit our attention to the single block. It is not likely that the lot owners generally will allow the new survey to unsettle their possessions, but there is always a probability of finding some one disposed to do so. We shall then have a lawsuit; and with what result?

FIXING LINES BY ACQUIESCENCE

It is a common error that lines do not become fixed by acquiescence in a less time than 20 years. In fact, by statute, road lines may become conclusively fixed in 10 years and there is no particular time that shall be required to conclude private owners, where it appears that they have accepted a particular line as their boundary, and all concerned have cultivated and claimed up to it. Public policy requires that such lines be not lightly disturbed, or disturbed at all after the lapse of any considerable time. The litigant, therefore, who in such a case pins his faith on the surveyor is likely to suffer for his reliance, and the surveyor himself to be mortified by a result that seems to impeach his judgement.

"Of course, it is desirable that all such agreements be reduced to writing ..."

Of course, nothing in what has been said can require a surveyor to conceal his own judgment, or to report the facts one way when he believes them to be another. He has no right to mislead, and he may rightfully express his opinion that an original monument was at one place, when at the same time he is satisfied that acquiescence has fixed the rights of parties as if it were at another. But he would do mischief if he were to attempt to "establish" monuments which he knew would tend to disturb settled rights; the farthest he has a right to go, as an officer of the law, is to express his opinion where the monument should be, at the same time that he imparts the information to those who employ him and who might otherwise be misled, that the same authority that makes him an officer and entrusts him to make surveys, also allows parties to settle their own boundary lines, and considers acquiescence in a particular line or monument, for any considerable period, as strong if not conclusive evidence of such settlement. The peace of the community absolutely requires this rule. It is not long since, that in one of the leading cities of the State, an attempt was made to move houses 2 or 3 rods into the street, on the ground that a survey under which the street had been located for many years had been found on a more recent survey to be erroneous.

THE DUTY OF THE SURVEYOR

From the foregoing, it will appear that the duty of the surveyor where boundaries are in dispute must be varied by the circumstances.

1. He is to search for original monuments, or for the places where they were originally located, and allow these to control if he finds them, unless he has reason to believe that agreements of the parties, express or implied, have rendered them unimportant. By monuments, in the case of government surveys, we mean, of course, the corner and quarter stakes. Blazed lines or marked trees on the lines are not monuments; they are merely guides or finger posts, if we may use the expression, to inform us with more or less accuracy where the monuments may be found.
2. If the original monuments are no longer discoverable, the question of location becomes one of evidence merely. It is merely idle for any State statute to direct a surveyor to locate or "establish" a corner, as the place of the original monument, according to some inflexible rule. The surveyor, on the other hand, must inquire into all the facts, giving due prominence to the acts of parties concerned, and always keeping in mind, first, that neither his opinion nor his survey can be conclusive upon parties concerned, and, second, that courts and juries may be required to follow after the surveyor over the same ground, and that it is exceedingly desirable that he govern his action by the same lights and the same rules that govern theirs.

It is always possible when corners are extinct, that the surveyor may usefully act as a mediator between parties and assist in preventing legal controversies by settling doubtful lines. Unless he is made for this purpose an arbitrator by legal submission, the parties, of course, even if they consent to follow his judgment, cannot, on the basis of mere consent, be compelled to do so; but if he brings about an agreement, and they carry it into effect by actually conforming their occupation to his lines, the action will conclude them. Of course, it is desirable that all such agreements be reduced to writing, but this is not absolutely indispensable if they are carried into effect without.

MEANDER LINES

The subject of meander lines is taken up with some reluctance because it is believed the general rules are familiar. Nevertheless, it is often found that surveyors misapprehend them, or err in their application; and as other interesting topics are somewhat connected with this, a little time devoted to it will probably

not be altogether lost. These are lines traced along the shores of lakes, ponds, and considerable rivers, as the measures of quantity when sections are made fractional by such waters. These have determined the price to be paid when government lands were bought, and perhaps the impression still lingers in some minds that the meander lines are boundary lines, and that all in front of them remains unsold. Of course this is erroneous. There was never any doubt that, except on the large navigable rivers, the boundary of the owners of the banks is the middle line of the river; and while some courts have held that this was the rule on all fresh-water streams large and small, others have held to the doctrine that the title to the bed of the stream below low-water mark is in the State, while conceding to the owners of the banks all riparian rights. The practical difference is not very important. In this State, the rule that the centerline is the boundary line is applied to all our great rivers, including the Detroit, varied somewhat by the circumstance of there being a distinct channel for navigation, in some cases, with the stream in the main shallow, and also sometimes by the existence of islands.

The troublesome questions for surveyors present themselves when the boundary line between two contiguous estates is to be continued from the meander line to the centerline of the river. Of course, the original survey supposes that each purchaser of land on the stream has a water front of the length shown by the field notes: and it is presumable that he bought this particular land because of that fact. In many cases it now happens that the meander line is left some distance from the shore by the gradual change of course of the stream, or diminution of the flow of water. Now the dividing line between two government subdivisions might strike the meander line at right angles, or obliquely; and, in some cases, if it were continued in the same direction to the centerline of the river, might cut off from the water one of the subdivisions entirely, or at least cut it off from any privilege of navigation or other valuable use of the water, while the other might have a water front much greater than the length of a line crossing it at right angles to its side lines. The effect might be that, of two government subdivisions of equal size and cost, one would be of great value as water-front property, and the other comparatively valueless. A rule which would produce this result would not be just, and it has not been recognized in the law.

"Each riparian lot owner ought to have a line on the legal boundary, namely, the centerline of the stream ..."

Nevertheless it is not easy to determine what ought to be the correct rule for every case. If the river has a straight course, or one nearly so, every man's equities will be preserved by this rule: Extend the line of division between the two parcels from the meander line to the centerline of the river, as nearly as possible at right angles to the general course of the river at that point. This will preserve to each man the water front which the field notes indicated, except as changes in the water may have affected it, and the only inconvenience will be that the division line between different subdivisions is likely to be more or less deflected where it strikes the meander line.

This is the legal rule, and is not limited to government surveys, but applies as well to water lots which appear as such on town plats. (Bay City Gas Light Co. v. The Industrial Works, 28 Mich. Reports, 182.) It often happens, therefore, that the lines of city lots bounded on navigable streams are deflected as they strike the bank, or the line where the bank was, when the town was first laid out.

IRREGULAR WATERCOURSES

When the stream is very crooked, and especially if there are short bends, so that the foregoing rule is incapable of strict application, it is sometimes very difficult to determine what shall be done; and in many cases the surveyor may be under the necessity of working out a rule for himself. Of course his action cannot be conclusive; but if he adopts one that follows, as nearly as the circumstances will admit, the general rule above indicated, so as to divide as near as may be the bed of the stream among the adjoining owners in proportion to their lines upon the shore, his division being that of an expert, made upon the ground and with all available lights, is likely to be adopted as law for the case. Judicial decisions, into which the surveyor would find it prudent to look; under such circumstances, will throw light upon his duties and may constitute a sufficient guide when peculiar cases arise. Each riparian lot owner ought to have a line on the legal boundary, namely, the centerline of the stream, proportioned to the length of his line on the shore, and the problem in each case is how this is to be given him. Alluvion — when a river imperceptibly changes its course — will be apportioned by the same rules.

The existence of islands in a stream when the middle line constitutes a boundary, will not affect the apportionment unless the islands were surveyed out as government subdivisions in the original admeasurement. Wherever that was the case, the purchaser of the island divides the bed of the stream on each side with the owner of the bank, and his rights also extend above and below the solid ground, and are limited by the peculiarities of the bed and the channel. If an island was not surveyed as a government subdivision previous to the sale of the bank, it is, of course, impossible to do this for the purposes of government sale afterward, for the reason that the rights of the bank; owners are fixed by their purchase; when making that, they have a right to understand that all land between the meander lines, not separately surveyed and sold, will pass with the shore in the government sale and, having this right, anything with their purchase would include under it cannot afterward be taken from them. It is believed however, that the Federal courts would not recognize the applicability of this rule to large navigable rivers, such as those uniting, the Great Lakes.

On all the little lakes of the State which are mere expansions near their mouths of the rivers passing through them such as the Muskegon, Pere Marquette, and Manistee, the same rule of bed ownership has been judicially applied that is applied to the rivers themselves: and the

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division lines are extended under the water in the same way. (Rice v. Ruddiman, 10 Mich., 125.) If such a lake were circular, the lines would converge to the canter; if oblong or irregular, there might be a line in the middle on which they would terminate whose course would bear some relation to that of the shore. But it can seldom be important to follow the division line very far under the water, since all private rights are subject to the public rights of navigation and other use, and any private use of the lands inconsistent with these would be a nuisance, and punishable as such. It is sometimes important, however, to run the lines out for considerable distance in order to determine where one may lawfully moor vessels or rafts for the winter or cut ice. The ice crop that forms over a man's land of course belongs to him. (Lorman v. Benson, 8 Mich., 18; People's Ice Co. v. Steamer Excelsior, recently decided.)

MEANDER LINES AND RIPARIAN RIGHTS

What is said above will show how unfounded is the notion, which is sometimes advanced, that a riparian proprietor on a meandered river may lawfully raise the water in the stream without liability to the proprietors above, provided he does not raise it so that it overflows the meander line. The real fact is that the meander line has nothing to do with such a case, and an action will lie whenever he sets back the water upon the proprietor above, whether the overflow be below the meander lines or above them. As regards the lakes and ponds of the State, one may easily raise questions that it would be impossible for him to settle. Let us suggest a few questions, some of which are easily answered, and some not:

1. To whom belongs the land under these bodies of water, where they are not mere expansions of a stream flowing through them?
2. What public rights exist in them?
3. If there are islands in them which were not surveyed out and sold by the United States can this be done now?

Others will be suggested by the answers given to these.

It seems obvious that the rules of private ownership which are applied to rivers cannot be applied to the great lakes. Perhaps it should be held that the boundary is at low water mark, but improvements beyond this would only become unlawful when they became nuisances. Islands in the great lakes would belong to the United States until sold, and might be surveyed and measured for sale at any time. The right to take fish in the lakes, or to cut ice, is public like the right of navigation, but is to be exercised in such manner as not to interfere with the rights of shore owners. But so far as these public rights can be the subject of ownership, they belong to the State, not to the United States, and so, it is believed, does the bed of a lake also. (Pollord v. Hagan, 3 Howard's U. S. Reports.) But such rights are not generally considered proper subjects of sale, but like the right to make use of the public highways, they are held by the State in trust for all the people.

"Surveyors are not and cannot be judicial officers, but in a great many cases they act in a quasi-judicial capacity ..."

What is said of the large lakes may perhaps be said also of the interior lakes of the State, such as, for example, Houghton, Higgins, Cheboygan, Burt's Mullet, Whitmore, and many others. But there are many little lakes or ponds which are gradually disappearing, and the shore proprietorship advances pari passu as the waters recede. If these are of any considerable size - say, even a mile across, there may be questions of conflicting rights which no adjudication hitherto made could settle. Let any surveyor, for example, take the case of a pond of irregular form, occupying a square mile or more of territory, and undertake to determine the rights of the shore proprietors to its bed when it shall totally disappear, and he will find he is in the midst of problems such as probably he has never grappled with or reflected upon before. But the general rules for the extension of shore lines, which have already been laid down, should govern such cases, or at least should serve as guides in their settlement. Where a pond is so small as to be included within the lines of a private purchase from the government, it is not believed the public have any rights in it whatever. Where it is not so included, it is believed they have rights of fishery, rights to take ice and water, and rights of navigation for business and pleasure. This is the common belief, and probably the just one. Shore rights must not be so exercised as to disturb these, and the States may pass all proper laws for their protection. It would be easy with suitable legislation to preserve these little bodies of water as permanent places of resort for the pleasure and recreation of the people, and there ought to be such legislation.

If the State should be recognized as owner of the beds of these small lakes and ponds, it would not be owner for the purpose of selling. It would be owner only as trustee for the public use; and a sale would be inconsistent with the right of the bank owners to make use of the water in its natural condition in connection with their estates. Some of them might be made salable lands by draining; but the State could not drain, even for this purpose, against the will of the shore owners, unless their rights were appropriated and paid for.

Upon many questions that might arise between the State as owner of the bed of a little lake and the shore owners, it would be presumptuous to express an opinion now and fortunately the occasion does not require it.

QUASI-JUDICIAL CAPACITY OF SURVEYORS

I have thus indicated a few of the questions with which surveyors may now and then have occasion to deal, and to which they should bring good sense and sound judgment. Surveyors are not and cannot be judicial officers, but in a great many cases they act in a quasi-judicial capacity with the acquiescence of parties concerned; and it is important for them to know by what rules they are to be guided in the discharge of their judicial function. What I have said cannot contribute much to their enlightenment, but I trust will not be wholly without value.

Thomas McIntyre Cooley and The Judicial Functions Of Surveyors

By Herbert W. Stoughton, Ph.D. Reprinted with permission from the ACSM Bulletin, No. 155, May/June 1995.

Judge Thomas M. Cooley was a member of the Michigan Supreme Court, and twice spoke at annual meetings of the Michigan Association of Surveyors and Engineers about judicial functions of surveyors. Two different versions of his paper, "The Judicial Functions Of Surveyors," were published in *The Michigan Engineer* (1881, pp. 18-25, and 1883, pp. 112-122). The 1883 version is cited most often.

The paper was widely acclaimed on publication. By 1886, it had been reprinted, without editorial changes, in *The Theory And Practice Of Surveying* by John Butler Johnson (Appendix A, 1886: John Wiley & Sons) and in *A Manual Of Land Surveying* by Charles Fitzroy R. Bellows and Francis Hodgman (pp. 349 - 364, 1886: Register Printing and Publishing House). It was reproduced, also, in *Surveying and Mapping* (vol. XIV, no. 2, pp. 161 - 168; 1954) and in Brown, Robillard, and Wilson's *Evidence And Procedures For Boundary Location*, (3rd ed., 1994, pp. 491-501; John Wiley & Sons).

Little has been written concerning Justice Cooley and the origins of his paper. The last General Land Office (GLO) contracts in Michigan were issued in 1852 (Upper Peninsula). Between the 1830s and 1870s, Michigan was the scene of extensive lumbering operations, which destroyed significant portions of the supporting evidence (bearing and witness trees, etc.). After the American Civil War, considerable settlement of the logged lands took place, and land surveying problems began to arise.

From the late 1840s, land surveyors in Michigan and elsewhere encountered problems in retracing the original GLO surveys. The National Archives has considerable correspondence between surveyors and GLO officials on file concerning retracements. In the general instructions for executing GLO contract surveys in Michigan, the Surveyor General recommended that Abel Flint's *Treatise On Surveying* be read by the deputy surveyors. However, this work contains nothing concerning the legal aspects of land/boundary surveying. The treatise discusses only the mathematical elements of surveying.

It was Justice Cooley's thoughts, presented in 1881 and expanded in 1883, that set the stage for the textbooks on land surveying that are available today.

After the American Civil War, there was only one land surveying book in print - *A Treatise On Land Surveying* by William Mitchell Gillespie. Gillespie's Treatise did not consider any legal aspects of land surveying. Besides surveying and mathematical topics, 19 pages address the surveying methodology employed in the contract surveys. Reference is made to the Oregon Instructions (1851).

In 1868, J.H. Hawes, former Principal Clerk of the General Land Office, wrote the *Manual Of United States Surveying*. This excellent work, however, only addresses federal legal aspects of GLO surveys. William A. Burt's *A Key To The Solar Compass And Surveyor's Compass* adds no further insight. The only other major work published prior to Cooley's appeared in 1873: Shobal V. Clevenger's *A Treatise On The Method Of Government Surveying*. Again, this work treats the federal surveying process, and omits any discussion of common law and state and local law, regulations, and rules.

Bellows wrote (1886; p. iii):

> *"In making subdivisions of Government Surveys, or in resurveying old boundary lines, every surveyor has felt the need of definite instructions relating to a multitude of questions found to arise in the work. The function of a surveyor in most of these cases is a judicial one, and the answers to those questions are to be found only in the decisions of courts which are practically inaccessible to him."*

In 1881, the Michigan Association of Surveyors and Engineers formed a committee to write a manual of instruction on the duties and responsibilities of surveyors and the legal documents governing land surveying practice. "Bellows and Hodgman," and later "Hodgman," were the products of the materials gathered. One hundred and thirty four pages of "Bellows and Hodgman" addresses land surveying practice (in Michigan). It was Justice Cooley's thoughts, presented in 1881 and expanded in 1883, that set the stage for the textbooks on land surveying that are available today.

JUSTICE COOLEY'S REMARKS

The opening paragraph of "Cooley" is the most important pronouncement. In these opening sentences, Cooley states the philosophy and conduct that a land surveyor should follow in practicing the profession:

> *"When a man has had training in one of the exact sciences, where every problem within its purview is supposed to be susceptible of accurate solution, he is likely to be not a little impatient when he is told that, under some circumstances, he must recognize inaccuracies, and govern his action by facts which lead him away from the results which theoretically he ought to reach. Observation warrants us in saying that this remark may frequently be made of surveyors."*

From this opening statement, Cooley proceeds to develop the ideas and to indicate their application to the (then) existing practice of land surveying. The

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Cooley commenced with the fundamental legal tenet that the original lines and monuments must hold-no matter the amount of "error" or deviation from the theoretically prescribed location.

first surveys in Michigan were Aaron Greeley's surveys of the French land claims in Detroit (commenced 30 January 1808). Actual surveys of the sectionalized portion commenced with a contract issued by Edward Tiffin to Alexander Holmes dated 18 April 1815. A second contract, dated 12 October of that year, was entered into with Benjamin Hough. The surveys would continue until the last contract was issued in April 1852. After that, lesser contract surveys were executed to address minor omissions found in the earlier work.

Cooley's writing is clear, concise and factual. Although not a surveyor, Cooley clearly understood the Michigan land surveying problems. He recognized the deficient quality of many of the original contract surveys and some real property subdivisions. He did not castigate the earlier surveyors, but outlined the general problems occurring throughout the state. Cooley commenced with the fundamental legal tenet that the original lines and monuments must hold - no matter the amount of "error" or deviation from the theoretically prescribed location. The description of reestablishing section corners is based upon Michigan statute (1869), and not on Restoration of Lost and Obliterated Corners (1883).

Cooley's four precepts about "extinct corners" are not pragmatic legal verbiage, but articulate rhetoric. The lay person (nonattorney) can comprehend the precepts and the technical/legal issues. The Michigan land surveyor must understand these principles because they override the GLO/BLM philosophy on "lost and obliterated" corners for all lands that have been patented. Land surveyors in other states could be governed by the "extinct corner principle" if court decisions elsewhere have been written and sustained through the appellate process.

Cooley continued his dissertation with a number of general but practical illustrations of *faux pas*. He did not clutter the document with bureaucratic legalese.

For a document of such brevity, it contains much useful information for members of the profession. There is a wealth of information incorporated in a broad spectrum statement of the duties and responsibilities of land surveyors. (Remember, land surveyor registration was more than two decades in the future.)

Little analysis of Cooley's paper has been written. Numerous writers have referenced the paper, but have not delved into the document. Recently, an in-depth discussion has been published. In the sixth edition of *Clark On Surveying And Boundaries*, Walter G. Robillard and Land J. Bouman provide an excellent commentary and analysis (e4.18; pp. 109-115). The authors comment on earlier interpretations, and present a candid discussion of the arguments and counter arguments for various points of Cooley's. This analysis is for both attorneys and land surveyors: although land surveyors have accepted "Clark" as a principal reference for more than seven decades, the work is an invaluable reference to the legal profession.

Cooley is not light reading, but it is a well-organized and well thought-out treatise, and a foundation for land surveying practice. Cooley should be mandatory reading for all professionals. It is interesting to note that the philosophy set out in Cooley applies equally to the other design professions (engineering, architecture and landscape architecture).

Thomas Cooley's paper is not a time-dated document stating era specific principles and doctrines. The document is a philosophical statement of the land surveyor's role in boundary determination and boundary retracement. Justice Cooley's thoughts from 11 decades past are not solely for his era, but a comprehensive treatise on the responsibilities and duties of land surveyors.

Herbert Stoughton, Ph.D., is a geodetic engineer and member of the Board of Direction of ACSM.

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FIRST JUDICIAL DISTRICT AT JUNEAU

RAY M. COLLINS and CAROL J. COLLINS, Plaintiffs, v. DAVID W. HALL and MARGARET R. HALL, Trustees, and their successor in trust, of the D & M HALL COMMUNITY PROPERTY TRUST, DATED March 14, 2005, and also all other persons or parties unknown claiming a right, title, estate, lien, or interest in the real estate described in the complaint in this action, Defendants.	FILED IN CHAMBERS STATE OF ALASKA FIRST JUDICIAL DISTRICT AT JUNEAU BY: KJK ON: July 19, 2017 Case No. 1JU-14-771 CI

ORDER DENYING MOTION FOR RECONSIDERATION

Plaintiffs moved on July 14, 2017 for reconsideration of the findings and judgment entered by the court on July 6. Plaintiffs argue that the court overlooked what they refer to as the Cooley Doctrine, after Justice Thomas Cooley of the Michigan Supreme Court.

What plaintiffs refer to as the Cooley Doctrine is referred to by the Alaska Supreme Court as the doctrine of boundary by acquiescence.[1] This doctrine was not overlooked by the

[1] *See, Lee v. Konrad*, 337 P.3d 510, 517 n. 16 (Alaska 2014). There are actually several principles that have been referred to as the "Cooley doctrine." One is the principle set out in *Cooley v. Board of Wardens of the Port of Philadelphia,* 53 U.S. 299 (1851) having to do with the regulation of interstate commerce. *See, e.g., Mid-Fla Coin Exchange, Inc. v. Griffin*, 529 F.Supp. 1006, 1015 (M.D.Fla. 1981). Another is the principle set out by Justice Thomas Cooley in *People v. Hurlburt*, 24 Mich. 44, 108 (Mich. 1981)(Cooley, J., dissenting), which defines local governmental authority as an inherent rather than delegated power arising from local self-

court. On the contrary, the court carefully considered the doctrine and the evidence at trial and came to a conclusion different than that advanced by the plaintiffs.

The court is not persuaded that its earlier decision was in error. Insofar as the court has already considered and rejected the arguments of law and fact presented in the motion for reconsideration, that motion is DENIED.

Entered at Juneau, Alaska this 19 day of July, 2017.

Philip M. Pallenberg
Superior Court Judge

SEAL OF THE TRIAL COURTS OF THE STATE OF ALASKA FIRST JUDICIAL DISTRICT

CERTIFICATION
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determination and popular sovereignty. *See, Syngenta Seeds, Inc. v. County of Kauai*, 2014 WL 4216022 (D. Hawaii 2014)(unpublished).

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IN THE SUPREME COURT OF THE STATE OF ALASKA

RAY M. COLLINS and **CAROL J. COLLINS,** Appellants,	)	
v.	)	Supreme Court No. **S-16795**
DAVID W. HALL and **MARGARET R. HALL,** et al, Appellees.	)	

Superior Court Case No. JU-14-00771 CI

CERTIFICATE OF TYPEFACE IDENTIFICATION

[Appellant Rules 513.5(c)]

I certify, pursuant to App. R. 513.5 (c), that the font used in preparation of the documents filed by Appellant in the above-referenced appeal are submitted using a 12-point font "Times New Roman" type face.

DATED this 27th day of December, 2017.

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IN THE SUPREME COURT OF THE STATE OF ALASKA

RAY M. COLLINS and **CAROL J. COLLINS,** Appellants, v. **DAVID W. HALL** and **MARGARET R. HALL,** et al, Appellees.	Supreme Court No. **S-16795**

Superior Court Case No. JU-14-00771 CI

CERTIFICATE OF SERVICE
[Appellant Rules 204(b)(7) & 514 (b)]

This is to certify that on December 27, 2017, a copy of ***Appellant's Opening Brief***, ***Appellant's Excerpt of Record, Volume 1 of 1*** and the ***Certificate of Typeface Identification*** filed by Ray and Carol Collins in the above captioned appeal was mailed via the United States Postal System, to Anthony Sholty and Lael Harrison, counsels of record for the appellees, at Faulkner Banfield, PC, 8420 Airport Boulevard, Suite 101, Juneau, Alaska 99801.

DATED this 27th day of December 2017.

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