

THE RETRACEMENT SURVEYOR JUDICIOUSLY APPLIES DECISIONS OF THE COURTS TO THE PRACTICE OF LAND SURVEYING.

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INTRODUCTION

I'LL BEGIN THIS PRESENTATION BY ASSURING THE AUDIENCE THAT THIS LAST TALK OF THE MEETING IS A SERIOUS EFFORT AT DISSEMINATING INFORMATION.

I AM NOT GOING TO BRING UP THE TIME MR. CLINTON MCLAGAN AND I WERE AT A TRIAL IN CENTRAL MINNESOTA WHERE MR. MCLAGAN, L.S. 9393 AND AN ATTORNEY, USED A SURVEYING EXPRESSION AND TOLD THE JUDGE "THAT WAS A TERM OF ART". I THEN TOLD THE JUDGE "THAT I DIDN'T KNOW WHO ART WAS, BUT HE WASN'T ON OUR CREW". THINGS ARE A LITTLE LOOSER IN OUT-STATE COURT.

I ALSO WON'T BRING UP ANOTHER CASE IN CENTRAL MINNESOTA WHERE AN ATTORNEY WAS CROSS EXAMINING A SURVEYOR WITNESS AND THE CONVERSATION WAS IRRITATING TO BOTH OF THEM. TEMPERS ROSE. THE ATTORNEY SAID, "YOU SEEM TO HAVE A VERY SHORT FUSE, MR. SURVEYOR". TO WHICH THE SURVEYOR REPLIED, "MY FUSE IS JUST AS LONG AS ANYBODY ELSE'S IN THIS COURTROOM". IN THE HEAT OF THE MOMENT NOT EVERY STATEMENT HAS THE BENEFIT OF THOUGHT BEFORE IT GLIDES OVER THE LIPS. AND THAT'S THE END OF WHAT I WON'T BRING UP.

THE FIRST PART OF THIS PRESENTATION IS BASED ON WRITINGS IN THE LEGAL ELEMENTS OF BOUNDARIES AND ADJACENT PROPERTIES BY RAY SKELTON (1930). THE COMMENTARY IS MINE AND INCLUDES DISCUSSIONS WITH OTHER SURVEYORS WHO HAVE REQUESTED ANONYMITY. WELL, MORE LIKE BEGGED THAN REQUESTED.

THE SECOND PART IS BASED ON WRITINGS IN EVIDENCE AND PROCEDURES FOR BOUNDARY LOCATION (1962) BY CURTIS BROWN AND WINFIELD ELDRIDGE AND THE COMMENTARY IS THE SAME. THIS PRESENTATION SHOULD ENCOURAGE FURTHER STUDY IN THOSE BOOKS FOR SECTIONS NOT WITHIN THE SCOPE OF THIS WORK. THE PURPOSE OF THIS PRESENTATION IS TO CREATE A BALANCE OF UNDERSTANDING BETWEEN THE FORMAL AND TECHNICAL WORLD OF WRITTEN LAW AND THE COURTS AND THE PRACTICAL APPLICATION OF THOSE LAWS BY THE SURVEYOR IN THE DAY TO DAY PRACTICE OF RETRACEMENT SURVEYING, ESPECIALLY IN REGARD TO MONUMENTS. THE FORTUNATE SURVEYOR MAY SELDOM GO TO COURT BUT IS PRESUMED TO KNOW THE LAW AS IT APPLIES TO RETRACEMENT SURVEYING.

A COPY OF THIS PRESENTATION IS AVAILABLE THROUGH MSPS OR THE AUTHOR, BUT HE IS NO LONGER PAYING PEOPLE TO READ IT.

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THE RETRACEMENT SURVEYOR JUDICIOUSLY APPLIES DECISIONS OF THE COURTS TO THE PRACTICE OF LAND SURVEYING

DETERMINE WHAT APPLIES TO THE SITE YOU ARE SURVEYING.

A. ORIGINAL MONUMENTS

1. ORIGINAL MONUMENTS AS DEFINED BY THE COURTS

ORIGINAL MONUMENTS ARE LIMITED TO THE MONUMENTS SHOWN ON THE FACE OF THE PLAT, UNLESS THERE IS CORROBORATING EVIDENCE SUITABLE TO THE COURTS.

2. ORIGINAL MONUMENTS AS DEFINED BY THE SURVEYOR

ALL THE MONUMENTS OR SURVEY MARKS SET OR USED FOR POINTS IN THE PLAT BY THE ORIGINATING SURVEYOR ARE ORIGINAL MARKS. WHERE THE SURVEYOR WHO SIGNED THE PLAT ONLY SET BLOCK CORNERS, AND NOT LOT CORNERS, THIS INCLUDES THE FIRST LOT CORNERS SET BY SOMEONE ELSE.

B. MONUMENTS AND/OR SURVEY MARKS FOUND OR SET BY THE RETRACEMENT SURVEYOR

1. SEEK ORIGINAL MONUMENTS AND/OR SURVEY MARKS

RETRACEMENT SURVEYORS LOOK FOR ORIGINAL MONUMENTS OR MARKS OF POINTS IN THE PLAT SET BY THE ORIGINATING SURVEYOR OR SURVEYORS AND MONUMENTS OR MARKS FOUND OR SET BY EARLIER RETRACEMENT SURVEYORS.

IN THE OLDER PLATS WHERE WOOD STAKES OR SMALL IRON PIPES WERE USED AND THEIR PROVENANCE CANNOT BE IDENTIFIED, THE RECORDS OF THE OLDER RETRACEMENT SURVEYORS WILL OFTEN SHOW THE PRESENT RETRACEMENT SURVEYOR WHAT DID OR DID NOT EXIST ON THE GROUND AT THE TIME OF THEIR SURVEYS, WHAT WAS SET, WHY IT WAS SET AND WHERE IT WAS SET. WITNESS MONUMENTS MAY ALSO BE NOTED.

2. IDENTITY AND STAKES

WHILE THE IDENTITY OF THE SURVEYOR WHO PLACED THE STAKE IS IMPORTANT TO THE COURTS, WHEN AND IF A CASE COMES BEFORE THEM, IT IS MORE IMPORTANT TO THE RETRACEMENT SURVEYOR THAT A STAKE EXISTED AND IS FOUND. IT'S POINTLESS TO TRACK DOWN THE PROVENANCE UNTIL THE STAKE IS FOUND. THE COURT CASES I HAVE READ DON'T SAY THAT STAKES WERE NOT SET TO MARK LOT CORNERS. A LOT OF THE CASES REFERRED TO STAKES FOUND OR SET. THE COURTS ONLY STATE THAT BECAUSE STAKES DO NOT CONFORM TO THE FIVE REQUIREMENTS FOR A MONUMENT, BEING VISIBILITY, PERMANENCE, STABILITY, CERTAINTY OF IDENTITY AND INDEPENDENCE OF MEASUREMENTS CONSIDERED SIMULTANEOUSLY THEY WERE CONSIDERED UNSUBSTANTIAL. THEY CAN BECOME MONUMENTS WITH THE APPROPRIATE CORROBORATIVE EVIDENCE.

3. **IDENTITY OF SMALL PINS AND PIPES**

WHERE OTHER TYPES OF SURVEY MARKS WERE SET BY THE RIGINATING SURVEYOR, SUCH AS SMALL IRON PINS OR PIPES, THE COURTS WOULD BE CONCERNED ABOUT IDENTITY, BUT THE PRACTICING RETRACEMENT SURVEYOR'S FIRST CONCERN IS LOCATING ANY SURVEY MARKS IN THE FIELD.

4. **SURVEY RECORDS**

SURVEY RECORDS ARE IMPORTANT FOR WHAT THEY SHOW AND ALSO WHAT THEY DON'T SHOW. IF AN OLDER SURVEYOR OF GOOD REPUTATION GOES THROUGH A BLOCK AND ONLY FINDS FOUR SURVEY MARKS IN THAT BLOCK, IT'S A STRONG INDICATION THAT NO OTHER SURVEY MONUMENTS WERE THERE AT THAT TIME.

C. **MAN MADE MONUMENTS CREATED AFTER PLAT RECORDATION.**

1. **STREET, ALLEYS AND STREET IMPROVEMENTS.**

SURVEYORS HAVE USED STREET AND STREET IMPROVEMENTS TO LOCATE BLOCK PERIMETERS FOR A VERY LONG TIME. STREETS FULFILL THE REQUIREMENTS OF THE COURTS FOR MONUMENTS, AS DO CURBS AND SIDEWALKS.

IN THE CITY OF MINNEAPOLIS, STREET STANDARDS HAVE BEEN PUBLISHED SINCE 1892 AND ARE NOW ON LINE. THE INFORMATION AS TO STREET OPENING WAS AVAILABLE TO THE SURVEYOR AT THE CITY ENGINEERS OFFICE PRIOR TO THAT.

MANY OF THE FIELD NOTES I'VE VIEWED IN THIS STUDY, AND OVER 60 YEARS IN THE BUSINESS, SHOW THE SURVEYOR MEASURING FROM CURBS OR SIDEWALKS TO DEFINE THE BLOCK BOUNDARY AND DETERMINE EXCESS OR DEFICIENCY.

2. **BUILDINGS AS MONUMENTS**

THE COURTS FIND BUILDINGS TO BE WONDERFUL MONUMENTS. THEY HAVE ALL FIVE ELEMENTS OF A MONUMENT: VISIBILITY, PERMANENCE, STABILITY, CERTAINTY OF IDENTITY AND INDEPENDENCE OF MEASUREMENTS CONSIDERED SIMULTANEOUSLY. SURVEYORS AGREE THAT THEY ARE WONDERFUL MONUMENTS, BUT STILL HAVE TO DETERMINE IF THEY EXACTLY MARK THE PROPERTY LINES OR WITNESS THEM. AND YOU DON'T HAVE TO DIG THEM OUT IN WINTER.

THE DOWNTOWN AREAS AND COMMERCIAL AREAS OF CITIES LARGE AND SMALL CONTAIN BLOCKS OF THESE STONE OR BRICK OR BLOCK OR STEEL BUILDINGS AS MONUMENTS. THEY WERE MOSTLY SET WITH CARE. CONSIDERABLE SUMS OF MONEY AND RESPONSIBILITY ARE CONTAINED WITHIN THEIR PROPER LOCATION. HAVING TO MOVE A 12 STORY BUILDING A FOOT IS A REAL DOWNER.

THE STANDARD SURVEY IN ST. PAUL PRIOR TO 1900 SHOWED BUILDINGS ALONG THE STREETS AND AT BLOCK CORNERS. I THOUGHT IT TYPICAL OF A GROWING COMMUNITY THAT THERE WOULD BE A BRICK BUILDING

CONTAINING A BAR ON ONE CORNER AND A BLOCK AWAY A CHURCH OR SCHOOL. BOTH ARE MONUMENTS.

RETRACEMENT SURVEY RECORDS IN THE CITY OF ST. PAUL OFTEN SHOW THE BUILDING LINES AND CORNERS TO BE WITHIN HUNDREDTHS OR TENTHS OF A FOOT OF THE ACTUAL LINES OF THE PROPERTY, IF NOT SPOT ON. MOST OF THE TIME THEY DON'T ENCROACH, BUT SOMETIMES THEY DO. IT IS IMPORTANT TO REVIEW WHAT THE RETRACEMENT SURVEYORS WHO HAVE GONE BEFORE YOU DID IN THESE HIGH DOLLAR PROPERTIES. THE BUILDING HASN'T MOVED SINCE THEY SURVEYED IT.

IN ST. PAUL THERE HAVE BEEN SURVEYS LOCATING THE CENTERLINES OF STREETS WITH THE CENTERLINE - CENTERLINE HAVING BUILDING CORNERS AS WITNESS MONUMENTS.

IN THE CITY OF MINNEAPOLIS THE FIRM OF PETERS PRICE AND SAMSON SURVEYED THE CONVENTION CENTER. THEIR SURVEYS SHOW THE BUILDINGS AS CONSTRUCTED, BUT NO SURVEY PIPES OR MARKS ON CONCRETE AS EVIDENCE OF THE CORNERS. THEY CONSIDERED THE BUILDINGS TO BE MONUMENTS, WHICH OF COURSE THEY ARE, EITHER ON THE LINE OR AS WITNESS TO THE LINE.

IN THE CITY OF ST. PAUL, GEORGI-SCHMIDT SURVEYED THE WALKWAYS WITHIN MANY BUILDINGS CONNECTING TO THE SKYWAYS BETWEEN BUILDINGS. THOSE SURVEYS ARE IN THEIR RECORDS.

THE RETRACEMENT SURVEYOR WORKING IN AREAS OF HIGH BUILDING DENSITY SHOULD ALWAYS LOCATE THE BUILDING CORNERS AND LINES WITHIN THE BLOCK, NOTING WHETHER OR NOT NEW FACING HAS BEEN ADDED FOR COSMETIC PURPOSES. THE ECONOMIC VALUE OF THOSE BUILDINGS AND THE LIABILITY TO THE RETRACEMENT SURVEYOR IN THOSE AREAS MAKES RESEARCH INTO THE RECORDS OF PREVIOUS RETRACEMENT SURVEYORS IN THAT AREA A MATTER OF SELF PRESERVATION.

RETRACEMENT SURVEYING IS HISTORY, IT IS OUR BUSINESS TO LOCATE OUR SURVEYS WHERE THEY WERE ORIGINALLY FIXED IN THE GROUND AND THE FARTHER BACK IN TIME WE CAN TRACE THEM THE CLOSER WE GET TO RIGHT.

3. **PARTY WALLS**

PARTY WALLS ARE IMPORTANT MONUMENTS FOR THE COURTS. THEY REQUIRE AGREEMENTS TO BE BUILT AND THERE SHOULD BE A WRITTEN RECORD OF THAT AGREEMENT. THEY WERE VISIBLE DURING CONSTRUCTION, BUT NOT ALWAYS SO LATER, AND ARE PERMANENT, STABLE, AND CERTAIN OF IDENTITY AND INDEPENDENT OF MEASUREMENTS CONSIDERED SIMULTANEOUSLY. THEY ARE ALSO GREAT MONUMENTS FOR THE SURVEYOR, ALTHOUGH NOT ALWAYS EASY TO LOCATE.

WHERE A LOT LINE GOES THROUGH A WALL COMMON TO ADJACENT UNITS, LAND SURVEYORS HAVE FOUND THAT THE OWNERS ARE SOMEWHAT RELUCTANT TO HAVING THE WALLS OPENED UP FOR MEASUREMENT PURPOSES. THE LAND SURVEYOR THEN MEASURES INTO THE WALL FROM BOTH SIDES, WITH THE CENTER OF THE AREA BETWEEN THE SIDES OF THE WALL BEING THE COMMON LOT LINE. THE WALL IS A MONUMENT SUPERIOR TO ANY LOT LINE MARKS.

4. **INCLOSURES: FENCES, WALLS AND RETAINING WALLS**

I GAVE SOME THOUGHT TO THE WORD INCLOSURE. IT'S AN EXCELLENT WORD FOR RETRACEMENT SURVEYORS AND AN EXCELLENT SURVEYING CONCEPT. INCLOSURES ARE PHYSICAL STRUCTURES PLACED ALONG PROPERTY LINES TO INCLOSE THAT PROPERTY FROM OTHER PROPERTIES. THE PROPERTY OWNER IS CLAIMING THIS LINE AS HIS PROPERTY LINE AND IT HAS ALL THE PROPERTIES OF A MONUMENT TO THE COURTS. THEY ARE OBVIOUS LINES OF DEMARCATION. FENCES, WALLS AND RETAINING WALLS HAVE A HIGH RATING FROM THE COURTS AS MONUMENTS. THEY MAY, IN CITY WORK, BE CONTROLLING. A WELL BUILT ENDURING FENCE OR RETAINING WALL IS IMPORTANT EVIDENCE AND SHOULD BE LOCATED BY THE RETRACEMENT SURVEYOR.

LINES OF BUSHES OR TREES ARE ALSO CLAIMS OF OWNERSHIP AND SEPARATION AND SHOULD BE LOCATED BY THE RETRACEMENT SURVEYOR. *HOWEVER, ALL FENCES ARE NOT WELL BUILT AND ENDURING OR SET FROM SURVEY STAKES. THAT DOESN'T MEAN THEY CAN'T MARK THE LINE, BUT CAUTION SHOULD BE OBSERVED.*

MANY FIELD BOOKS WILL NOTE FENCES. FEW WILL SHOW WHETHER OR NOT THE FENCE IS WOOD, WIRE OR ESTIMATE AGE. WHERE THE FENCE IS ON THE SUBJECT PROPERTY THE FIELD BOOKS OF THE RETRACEMENT SURVEYOR MAY BE MORE SPECIFIC.

OTHER LINES OF OCCUPATION SHOULD ALSO BE CONSIDERED BY THE RETRACEMENT SURVEYOR. WHEN TWO GARAGES ON ADJACENT LOTS ARE TWO FEET APART THEY SHOULD BE LOCATED AS THE PROPERTY LINE IS MOST LIKELY BETWEEN THEM.

SET BACKS ARE ANOTHER TOOL OF THE RETRACEMENT SURVEYOR. IF A SURVEYOR KNOWS THE SETBACKS PERTINENT TO A SPECIFIC PLAT HE HAS SOME IDEA OF WHERE THE LOT LINE SHOULD BE. ALSO IN MANY CASES THE HOUSE WAS CONSTRUCTED HAVING LOT IRONS PLACED ON THE SIDE LOT LINES AT THE FRONT SET BACK LINE, AND THAT'S A GOOD PLACE TO LOOK FOR SURVEY MARKS.

D. **WITNESS MONUMENTS**

WHEN RETRACEMENT SURVEYORS OR ORIGINATING SURVEYORS TIE OUT SURVEY MARKS TO EXISTING OBJECTS, THOSE OBJECTS BECOME FIELD WITNESS MONUMENTS TO THE SURVEYORS MARK. IT IS COMMON IN THE FIELD BOOKS OF BOTH ORIGINATING SURVEYORS AND RETRACEMENT SURVEYORS TO FIND A LOT

OR BLOCK CORNER OR EVEN THE CENTER OF THE INTERSECTION OF TWO STREETS TIED OUT TO NEARBY MONUMENTS.

WHERE THE SURVEYOR TIES OUT A LOT OR BLOCK CORNER OR EVEN A POINT ON LINE, TO A NEARBY HOUSE, THAT HOUSE BECOMES A WITNESS TO THE POINT TIED OUT. WHERE POINTS ARE TIED TO TREES THE TREES BECOME WITNESSES TO THE POINT. WHERE FENCES ARE NOTED WITH A DISTANCE TO A LINE, THE FENCE BECOMES A WITNESS MONUMENT. IF THE POINT IS TIED TO A FIRE HYDRANT, POWER OR TELEPHONE POLE OR MANHOLE, THEY BECOME MONUMENTS.

IF A FENCE LINE IS MONUMENTED ON ONE SIDE OF AN ALLEY AND THE NOTES SHOW THAT ANOTHER FENCE IS DIRECTLY ACROSS THE ALLEY THEY BECOME A WITNESS TO EACH OTHER: BOTH ARE ON THE SAME LINE.

THE BEST PLACE TO FIND INFORMATION AS TO WITNESS MONUMENTS IS IN SURVEYOR'S FIELD NOTES AND SOMETIMES IN THEIR PLATS OF SURVEY.

1. WITNESS MONUMENTS BY THE ORIGINATING SURVEYOR

CARTWRIGHT AND OLSON, LAND SURVEYORS, WERE DILIGENT ABOUT TYING OUT MONUMENTS. THEY DID A PLAT ON A LAKE IN ANOKA COUNTY WHICH WAS PURCHASED AND SET DORMANT FOR 30 TO 40 YEARS. IT WAS WOODED WHEN THEY SURVEYED IT. IT DIDN'T GET ANY LESS WOODED DURING THE TIME IT SAT DORMANT. THE OWNERS DECIDED TO SELL OFF THE LOTS AND OUR CREW WENT INTO THE WOODS AND FOUND NOTHING. THE PLAT WAS TIED TO A SECTION LINE AND A MEANDER CORNER. WE FOUND THE LINE AND THE CORNER AND SURVEYED THE LOT IN FROM THERE. WE DID NOT KNOW THAT THE COUNTY SURVEYOR HAD MOVED THAT CORNER 70 FEET FROM WHERE THE PLATTING SURVEYOR NOTED IT. WE DID NOT KNOW THAT CARTWRIGHT AND OLSON HAD TIED OUT ALMOST ALL THE LOT CORNERS IN THE PLAT. ERNIE RUD, L.S. 9808, HAD OBTAINED THE TIES FROM HARVEY CARTWRIGHT, SURVEYED A LOT NEAR OURS AND NOTED THAT OUR MONUMENTS DIDN'T MATCH THE ORIGINAL PLAT MONUMENTS. WE WENT OUT WITH THE TIES AND MOST OF THE ORIGINAL PLAT MONUMENTS STUCK UP 4 INCHES OUT OF THE GROUND. IT WAS AMAZING WE DIDN'T TRIP OVER THEM THE FIRST TIME IN. THIS WAS A CASE OF SLOPPY AND EXPENSIVE SURVEYING. AN EXPERIENCED PARTY CHIEF DID NOT DO AS DILIGENT A JOB AS WAS REQUIRED AND AN EXPERIENCED LAND SURVEYOR DID NOT GET OUT OF HIS OFFICE CHAIR AND CHECK OUT AN OBVIOUS ANOMALY HIMSELF.

WHAT WE NEEDED WAS AVAILABLE. WE DID NOT RESEARCH IT.

2. ***WITNESS MONUMENTS BY THE RETRACEMENT SURVEYOR***

IN THE CITY OF ST. PAUL, IN ST. ANTHONY PARK NORTH, AN 1885 PLAT WHERE THE BLOCK CORNERS WERE SHOWN IN THE PLAT, COMSTOCK & DAVIS, INC. WAS EMPLOYED TO REPRESENT THE OWNERS OF LOTS 5 AND 6, BLOCK 40, IN 1997. RESEARCH AT DEVELOPMENT ENGINEERING, NOW LAKE AND LAND INC., SHOWED THAT A HOME WAS CONSTRUCTED ON LOT 6 IN 1888. IN 1898, J.H. FITZ, OF FOWBLE AND FITZ, SURVEYED LOT 6, FINDING EIGHT 1 ½" X 1 ½" PINE STAKES PAINTED WHITE WITH LOT NUMBERS MARKED ON THE SIDES ALONG THE ALLEY LINE OF THE BLOCK. HE NOTED THEM AS ORIGINAL STAKES AND SURVEYED THE LOT FROM THOSE BACK LOT LINE STAKES. THE HOUSE WAS MEASURED AND TIED TO THE SOUTH LINE OF THE LOT AT 3 POINTS. IT BECAME A MONUMENT TO THAT LINE. COMSTOCK AND DAVIS, INC. SET UP THE SOUTH LINE OF THE LOT FROM THESE TIES AS THE HOUSE WAS STILL EXISTENT. A PRE 1950'S FENCE, BEING TORN DOWN BY THE ADJOINER, AGREED WITH THIS LOT LINE. SEE MINNESOTA SURVEYOR, FALL 1997.

SURVEY RECORDS CAN PROVIDE AMAZING INFORMATION. BUT YOU HAVE TO LOOK FOR THEM AND YOU HAVE TO KNOW WHERE TO LOOK. START WITH THE LOCATION OF CERTAIN SURVEYORS NOTES IN THE MSPS ROSTER. FOR MINNEAPOLIS THE RECORDS OF EGAN, FIELD AND NOWAK ARE A RETRACEMENT SURVEYORS DELIGHT. THE RECORDS OF CARTWRIGHT AND OLSON ARE ALSO USEFUL AT SUNDE LAND SURVEYING, LLC. IN ST. PAUL, LAKE AND LAND SURVEYING, INC. IS A TREASURE HOUSE OF SURVEY HISTORY. THE RECORDS OF GEORGI-SCHMIDT AND JOHN B IRVINE AND MILNER CARLEY AT SUNDE LAND SURVEYING, LLC ARE AGAIN VERY USEFUL.

THE RETRACEMENT SURVEYOR WHO UTILIZES OLD SURVEY BOOKS, RECORDS AND SURVEYS CAN PROVIDE A HISTORY OF THE SURVEYS DONE PRIOR TO THE SURVEY BEING WORKED ON. IT MAKES A DIFFERENCE, A HUGE DIFFERENCE, IN ACTUALLY BEING ABLE TO FOLLOW THE FOOTSTEPS OF THE ORIGINAL SURVEYOR

WHEN THOSE OLD SURVEY NOTES AND SURVEYS ARE NOT KNOWN THERE IS A SIGNIFICANT GAP LEFT BETWEEN THE ORIGINATING SURVEYOR AND WHAT IS ON THE GROUND TODAY. THAT GAP LEAVES AN AREA OPEN TO QUESTION SHOULD THE SURVEY GO TO COURT. THE CLOSER OUR RESEARCH TAKES US TO THE ORIGINAL SURVEY THE BETTER OFF WE AND OUR CLIENTS ARE.

E. **SURVEYS IN PLATTED AREAS USING PLAT, MAGNETIC LOCATOR AND SHOVEL**

1. **RETRACEMENT SURVEYS WITH ONLY THE ABOVE**

MANY OF THE LOT SURVEYS I'VE REVIEWED IN THIS STUDY HAVE BEEN DONE BY RETRACEMENT SURVEYORS WHO HAVE THE PLAT, A HALF SECTION, A DESCRIPTION AND NOTHING ELSE OF RECORD. WHAT THEY CAN FIND ON THE GROUND IS WHAT THEY HAVE TO WORK WITH.

THE EXCEPTIONS TO THIS STATEMENT ARE THOSE FIRMS WHO HAVE EXTENSIVE SURVEY RECORDS THEY'VE BUILT UP OVER THE YEARS. EGAN, FIELD AND NOWAK IN MINNEAPOLIS AND LAKE AND LAND SURVEYING IN ST. PAUL COME TO MIND.

AS I THINK ABOUT THAT STATEMENT AS TO USING MINIMAL RECORDS TO SURVEY WITH, IT SEEMS TO ME THAT THAT IS THE CASE WITH THE BULK OF THE SURVEYS, IN NOT ONLY PLATTED LAND, BUT METES AND BOUNDS SURVEYS ACROSS THE STATE. RETRACEMENT SURVEYORS WHO ACQUIRE OR BUILD SURVEY HISTORY ACROSS THE STATE ARE FEW IN NUMBER.

IT IS THE DUTY OF THE RETRACEMENT SURVEYORS TO ENTER INTO A BLOCK AND LOCATE THE LOT OR LOTS TO BE SURVEYED TO THE BEST OF THEIR ABILITY. THERE IS NO STATUTORY LAW SAYING THAT A RETRACEMENT SURVEYOR IS TO LOOK FOR OR BE SUPPLIED WITH THE SURVEY HISTORY WITHIN A BLOCK. THERE IS NO JUDICIAL OPINION STATING THAT SUCH A HISTORY IS MANDATORY FOR A SURVEY. AT PRESENT THERE IS NO WAY TO GATHER THAT HISTORY AND MAKE IT AVAILABLE TO ALL.

WHAT'S OUT THERE ON THE GROUND IS WHAT MOST RETRACEMENT SURVEYORS HAVE TO WORK WITH. THE SURVEYOR LOOKS FOR SURVEY MARKS, LINES OF OCCUPATION, MAN MADE MONUMENTS AND WITNESS MONUMENTS WHERE THEY ARE KNOWN. WHERE CAPPED MONUMENTS ARE FOUND, THAT RETRACEMENT SURVEYOR CAN BE CONTACTED FOR COPIES OF THE NOTES AND SURVEY, WITH THE INTENT OF REVIEWING THAT WORK AND TO HARMONIZE WITH IT WHERE POSSIBLE. TWO IRON MONUMENTS NEXT TO EACH OTHER TO MARK THE SAME POINT IS NOT GOOD SURVEYING. DUPLICATION OF MONUMENTS IS TO BE AVOIDED WHERE POSSIBLE. THAT IS NOT TO SAY ONE SHOULD AGREE WITH SURVEYS ONE FINDS INCORRECT. RATHER DISCUSS THE EVIDENCE WITH THE OTHER RETRACEMENT SURVEYOR; THERE MAY BE EVIDENCE AND REASONING NOT KNOWN TO YOU.

2. **RETRACEMENT SURVEYORS WITH OLD RECORDS IN PLATTED AREAS.**
DOES THE RETRACEMENT SURVEYOR WITH THE OLD RECORDS HAVE A BETTER CHANCE OF PLACING THE LINES AND MONUMENTS WHERE THEY WERE? CONSIDER THAT RETRACEMENT SURVEYING INCLUDES HISTORICAL ANALYSIS, AND THAT THE HISTORY TO BE ANALYZED IS THE LAYERS OF SURVEYS WHICH HAVE OCCURRED IN THAT BLOCK SINCE THE FIRST MONUMENTS WERE FIXED IN THE GROUND. THAT HISTORY ALSO INCLUDES TITLE CHANGES, EASEMENTS, VACATIONS AND OTHER MATTERS OF TITLE WHICH MAY AFFECT THE SURVEY. MY OPINION, AFTER WORKING IN THE SURVEYING AND ENGINEERING FIELD FOR WHAT SEEMS LIKE A VERY LONG TIME, AND BEING A LICENSED LAND SURVEYOR FOR 39 YEARS AND BEING FAMILIAR WITH MANY OLD SURVEY RECORDS ACROSS THE STATE, IS THAT, IN GENERAL THOSE WITH RECORDS CAN DO A MORE THOROUGH JOB OF RETRACEMENT.

THAT IS NOT TO SAY THAT RETRACEMENT SURVEYORS WITHOUT OLD RECORDS IN THE AREA THEY ARE SURVEYING IN CAN'T ALSO DO A GOOD

JOB. BUT WITHOUT THE OLD RECORDS AS GUIDES IT IS MORE DIFFICULT TO PLACE THE MONUMENTS WHERE THEY WERE SET.

NOR AM I SAYING THAT EVERY SURVEY DONE BY THOSE WITH OLD RECORDS IS A GREAT SURVEY. ALL OF US HAVE SURVEYS WE COULD HAVE DONE BETTER; NONE OF US IS WITHOUT ERROR. WELL, ALMOST NONE OF US. THE TWO SURVEYORS WHO DID CLAIM THAT THEY HAD NEVER MADE AN ERROR ARE NOW DEAD, LEVELING THE PLAYING FIELD AGAIN. YOU KNOW WHO THEY ARE, THE ONES WHOSE GRAVES ARE MARKED WITH YELLOW SNOW IN WINTER AND YELLOW GRASS IN SUMMER, AND I SPEAK WITH MALICE TOWARD NONE, WITH CHARITY FOR ALL.

THE OLDER PLATS PRIOR TO CAPPED IRON MONUMENTS ARE THE MOST DIFFICULT TO RETRACE. WITH FEW EXCEPTIONS, WHAT WAS SET ISN'T KNOWN, AND WHEN RETRACED IT ISN'T KNOWN WHO DID WHAT. IN THOSE PLATS I THINK THE CURRENT RETRACEMENT SURVEYOR IS FINDING THE WORK OF PREVIOUS RETRACEMENT SURVEYORS, AND ONLY SELDOM THE ORIGINAL MONUMENTS OR SURVEY MARKS. WITH IDENTITY SUCH A PROBLEM WE HAVE TO ASK, "NOW THAT I'VE FOUND IT, WHAT HAVE I FOUND?"

SUBDIVISION PLATS HAVING CAPPED MONUMENTS AND ESPECIALLY THOSE SINCE 1980, SHOWING ALL THE MONUMENTS IN THE PLAT WERE SET, INCLUDING LOT CORNERS, MAKE IDENTITY A GREAT DEAL EASIER. THE REGISTRATION NUMBER OF THE SURVEYOR SIGNING THE PLAT SHOULD BE THAT ON THE CAPS.

F. SURVEYING METHODS BASED ON RULES OF CONSTRUCTION BY THE COURTS
THE LEGAL ELEMENTS OF BOUNDARIES AND ADJACENT PROPERTIES (1930) BY RAY H. SKELTON IS QUOTED IN THIS STUDY. THE SECTION NUMBER IN THE BOOK IS ALSO NOTED. THE COURTS HAVE LAID DOWN A LOGICAL ORDER OF PRECEDENCE IN THE APPLICATION OF SURVEYING METHODS.

1. FIND THE LINES ACTUALLY RUN AND THE CORNERS AND MONUMENTS ACTUALLY ESTABLISHED BY THE ORIGINAL SURVEYOR. - SKELTON #76

AND WOULDN'T THAT BE GREAT IF WE COULD DO IT? THIS IS A REALISTIC ENDEAVOR IN NEW PLATS WHERE NEW CAPPED IRON MONUMENTS HAVE BEEN FIXED IN THE GROUND. THE OLDER THE PLAT THE MORE DIFFICULT THIS BECOMES.

IN CITIES WHERE MONUMENTS SET TO MARK BOUNDARIES ARE USUALLY ARTIFICIAL, THE MORTALITY OF PRIVATE MONUMENTS IS HIGH. FENCES WHICH HAVE ROTTED ARE OFTEN NOT REPLACED, STAKES DECAY, AND PIPES SET NEARBY TO MORE PERMANENTLY MARK THE CORNER ARE HEAVED BY THE FROST AND ULTIMATELY DISAPPEAR. BUILDING OPERATIONS AND PROPERTY IMPROVEMENTS ACCOUNT FOR THE LOSS OF NUMEROUS MONUMENTS. - SKELTON #36

THE CUSTOM OF DEPENDING UPON IRON PINS SIMILAR TO HUNDREDS OF OTHERS, SUBJECT TO REMOVAL, AND WITH NO DISTINCTIVE CHARACTERISTIC TO MARK THEM AS SURVEYOR'S CORNERS, IS TO BE CONDEMNED.
- SKELTON #78

REMEMBER THAT FROM 1851 TO 1922 ONLY ONE STONE NEEDED TO BE SET FROM WHICH TO MAKE FUTURE SURVEYS BY STATUTORY LAW, ALTHOUGH IN THE 1880'S SOME SURVEYORS BEGAN FIXING MONUMENT'S IN THE GROUND AT BLOCK CORNERS AND SHOWING THEM ON THE FACE OF THE PLAT. FROM 1923 TO 1959 STATUTORY LAW REQUIRED AT LEAST 3 IRON OR STONE MONUMENTS. FORMING TWO OR MORE BASE LINES, TO BE FIXED IN THE GROUND AND SHOWN IN THE PLAT. THAT'S NOT A LOT TO GO ON.

HOLDING WITH THE COURTS DEFINITION OF ORIGINAL MONUMENTS REQUIRES ACQUIRING A HISTORY OF RETRACEMENT SURVEYS AND SURVEY RECORDS IN THE AREA. TIME DESTROYS MAN MADE MONUMENTS, THE PARTIES TO THE ORIGINAL PLAT AND TRANSFERS OF TITLE ARE LONG DEAD, MAKING PAROLE EVIDENCE DIFFICULT.

IN SOME INSTANCES WE CAN TRACE BACK TO THE ORIGINAL MONUMENTS BUT IN MOST WE CAN'T. WE MAY BE MORE FORTUNATE WITH LINES ACTUALLY RUN, IF THEY'VE BEEN MAINTAINED.

HOWEVER, IF WE INCLUDE ALL THE MARKS SET BY THE ORIGINATING SURVEYOR WE CAN INCLUDE STAKES, IRONS PINS AND IRON PIPES NOT NOTED ON THE FACE OF THE PLAT - ALL THE MARKS SET OR USED BY THE ORIGINATING SURVEYOR. AND I THINK WE WOULD BE REMISS IN OUR DUTIES IF WE DID NOT DO THAT.

WHERE THE RETRACEMENT SURVEYOR DIFFERS FROM THE COURTS IS NOT SO MUCH WHAT WAS SET IN THE ORIGINAL PLAT, BUT WHAT CAN BE USED AS EVIDENCE OF AN ORIGINAL MONUMENT. THE COURTS FIND THAT MONUMENTS NOTED ON THE FACE OF THE PLAT ARE SURELY ORIGINAL MONUMENTS. THE COURTS DON'T SAY THAT STAKES AND SMALL PIPES WEREN'T USED TO MARK SURVEY CORNERS IN PLATS, BUT THAT IT IS DIFFICULT TO PRESENT THEM AS EVIDENCE OF THE CORNER DUE TO PERMANENCY LIMITS OF WOODEN STAKES AND IDENTITY ISSUES OF STAKES AND SMALL PIPES, AS THEY ALL LOOK ALIKE.

LONG EXPERIENCE AND COMMON SENSE ESTABLISH THAT LONG OCCUPANCY OF CITY LOTS AND IMPROVEMENTS THEROF IN ACCORDANCE WITH LINES AND CORNERS WHICH HAVE BEEN MARKED AT THE TIME THE PLAT WAS FILED ARE BETTER EVIDENCE OF THE CORRECT LOCATION OF THE LINES THAN DEDUCTIONS AND MEASURES OF A SURVEYOR BASED ON ASSUMED CORNERS.
- SKELTON #79

THE RETRACEMENT SURVEYOR KNOWS THAT LOTS HAD TO BE STAKED TO BE SOLD. THEY HAD TO BE STAKED TO HAVE BUILDINGS PLACED ON THEM. THE LOT LINES SHOWN ON THE FACE OF THE PLAT ARE WHERE SURVEY MARKS WERE SET FOR DEFINING THE LOT. HOW WERE STREETS CONSTRUCTED IF NOT FROM MORE MONUMENTS THAN SHOWN ON THE

FACE OF A PLAT? BECAUSE STREETS WERE CONSTRUCTED, BECAUSE TITLE TO LOTS WAS TRANSFERRED, BECAUSE STRUCTURES WERE BUILT, IT IS LOGICAL THAT SURVEY MARKS WERE FIXED IN THE GROUND.

THE RETRACEMENT SURVEYOR HAS TO USE A MORE PRACTICAL APPLICATION: IF IT FITS THE LOT LINES OR LINES OF OCCUPATION AND IS IN HARMONY WITH THE BLOCK, IT'S A SURVEY MARK, WHOEVER SET IT. THE RETRACEMENT SURVEYOR USES THE SAME ARGUMENTS ONE USES TO DEFINE A SKUNK: IF IT LOOKS LIKE A SKUNK AND IT SMELLS LIKE A SKUNK, DON'T KICK IT: IT'S A SKUNK.

THE SOURCE OF MUCH OF OUR EVIDENCE AS TO WHAT WAS SET IS IN THE NOTES OF THE ORIGINAL SURVEYOR OR RETRACEMENT SURVEYORS.

2. **RUN LINES FROM KNOWN, ESTABLISHED OR RECOGNIZED CORNERS AND MONUMENTS OF THE ORIGINAL SURVEY. - SKELTON #76**

WORDS HAVE MEANING ESPECIALLY TO THE COURTS AND LAW.

THE WORDS KNOWN, ESTABLISHED, OR RECOGNIZED ARE NOT THE SAME AS THE WORD ORIGINAL. THIS IS A STEP REMOVED FROM ORIGINAL SURVEY LINES AND MONUMENTS. NOW WE ARE WORKING WITH RETRACEMENT SURVEYS. RETRACEMENT SURVEYS BEGIN WITH ALL THE MARKS FIXED IN THE GROUND BY THE ORIGINATING SURVEYOR, ALONG WITH ALL THE OTHER MONUMENTS WE'VE DISCUSSED.

IN RETRACEMENT SURVEYING WE ARE BETTER OFF THE FARTHER BACK IN TIME WE CAN GET TO THE ORIGINATING SURVEY. CAN WE PUT TOGETHER A SERIES OF OLD SURVEYS AND RECORDS ON THE WORK SITE THAT WILL BRING US TO MONUMENTS AND LINES OF LONG STANDING AND ACCEPTANCE, IF NOT DIRECTLY TO ORIGINAL MONUMENTS AND LINES? THAT'S OFTEN THE VERY BEST WE CAN HOPE FOR. THIS IS WHERE SURVEY RECORDS HAVE VALUE.

ON THE OLDER PLATS WE OFTEN FIND RETRACEMENT SURVEYS LAYERED OVER AND ALONGSIDE ONE ANOTHER. MORE OFTEN THAN NOT, WE DON'T KNOW WHO DID THE SURVEY OR WHEN. WE MAKE DO WITH WHAT WE FIND ON THE GROUND: THE TRACES OF A WOOD STAKE, A FENCE POST OR TWO, TRACES OF A FENCE, SIDEWALKS AND CURBS, LINES OF OCCUPATION AND A FEW IRONS IN THE BLOCK. PERHAPS WE HAVE WITNESS MONUMENTS TO SOME POINTS.

IN MANY CASES WE HAVE NO KNOWLEDGE OF PREVIOUS SURVEYS, NO RECORDS OF OTHER SURVEYORS IN THE BLOCK. IF WE ARE SURVEYING A SINGLE LOT IN THE BLOCK WE TRY TO STAY WITHIN THE BLOCK AND WORK WITH WHAT IS THERE. THAT IS NOT ALWAYS POSSIBLE.

ONCE WE LOCATE THE MONUMENTS, SURVEY MARKS OR LINES WE HAVE TO ASK, "NOW THAT WE'VE GOT IT WHAT HAVE WE GOT?" HOW DOES THIS VARIETY OF MONUMENT INFORMATION WORK TOGETHER? ARE WE ABLE TO IDENTIFY THE MONUMENTS ON A LINE OF OCCUPATION AS AN ORIGINAL MONUMENT, OR A MONUMENT SITTING IN THE ORIGINAL MONUMENTS POSITION, OR IS IT A MONUMENT WHICH TERMINATES A

LINE OF OCCUPATION WHICH EITHER DOES OR DOES NOT WORK WITHIN THE BLOCK LAYOUT?

HOW WELL KNOWN ARE THESE LINES? HOW WERE THEY ESTABLISHED AND WHEN? ARE THEY RECOGNIZED AS THE PROPERTY LINES? CAN WE SAY WITH CERTAINTY THAT THESE LINES AND MONUMENTS ARE FROM KNOWN, ESTABLISHED AND RECOGNIZED CORNERS AND LINES OF THE ORIGINAL SURVEY? CAN WE MEET THE COURTS ORDER OF PRECEDENCE?

THAT DEPENDS. HOW WELL KNOWN DOES IT HAVE TO BE? HOW WELL ESTABLISHED, HOW WELL RECOGNIZED? THAT GETS PRETTY SUBJECTIVE. HOW MANY SURVEYS REMOVED ARE THEY FROM THE ORIGINAL?

THE CLOSER IN TIME OUR RESEARCH AND FIELD LOCATION TAKE US TO THE KNOWN, ESTABLISHED OR RECOGNIZED CORNERS AND MONUMENTS OF THE ORIGINAL SURVEY THE MORE CERTAIN WE CAN BE. AS RETRACEMENT SURVEYORS WE INCLUDE STAKES AND SMALL PIPES IN THOSE SURVEY MARKS OF THE ORIGINAL SURVEY. WE ARE ALSO BETTER OFF THE CLOSER IN DISTANCE TO OUR SURVEY SITE WE CAN GET TO THOSE KNOWN, ESTABLISHED OR RECOGNIZED MONUMENTS OR SURVEY MARKS OF THE ORIGINAL SURVEY. THERE IS LESS ERROR IN PROXIMITY. FOR THE PURPOSES OF THIS STUDY THE RETRACEMENT SURVEYOR CAN EXPAND THE COURTS DEFINITION OF MONUMENTS TO INCLUDE STAKES AND SMALL PINS OR PIPES. IN FACT, WE MUST.

AS RETRACEMENT SURVEYORS WE PROVIDE THE PRACTICAL APPLICATION OF THE COURTS RULES AND DECISIONS.

IT IS VERY RARE THAT MEASUREMENTS FROM ONE ORIGINAL OR ACCEPTED MONUMENT OR LINE IS ADEQUATE FOR A RETRACEMENT SURVEY. WE NEED TO HAVE OTHER MONUMENTS TO PROVIDE DIRECTION AND TO CHECK FOR EXCESS OR DEFICIENCY. THE COURTS HAVE GLOSSED OVER HOW THAT DIRECTION HAS OCCURRED WITHOUT OTHER PLAT MARKS NOT SHOWN ON THE FACE OF THE PLAT PROVIDING THE LOCATION OF THE STREET WHEN STREETS ARE HELD AS MONUMENTS.

THE FIRST ORDER OF PRECEDENCE IS TO FIND THE LINES ACTUALLY RUN AND THE CORNERS AND MONUMENTS ACTUALLY ESTABLISHED BY THE ORIGINAL SURVEYOR. I TAKE THIS TO MEAN ON THE LOT IN QUESTION. IF WE ARE DEALING WITH A PLAT WHERE ALL THE MONUMENTS WERE SET AND ARE CAPPED IRON PIPES, WE MAY FIND 2 OF THOSE CORNERS ON A LOT. THE OLDER THE PLAT THE LESS LIKELY WE ARE TO FIND ORIGINAL MONUMENTS OR EVEN ORIGINAL MARKS.

THE SECOND ORDER OF PRECEDENCE IS TO RUN LINES FROM KNOWN, ESTABLISHED OR RECOGNIZED CORNERS AND MONUMENTS OF THE ORIGINAL SURVEY. I TAKE THIS TO MEAN THAT THE KNOWN, ESTABLISHED OR RECOGNIZED CORNERS OF THE ORIGINAL SURVEY ARE NOT ON THE LOT IN QUESTION AND MAY NOT BE ORIGINAL SURVEY LINES OR CORNERS, BUT ARE KNOWN, ESTABLISHED OR RECOGNIZED AS

THE PERPETUATED POSITION OF THE ORIGINAL MONUMENTS. ON NEWER PLATS WHERE ALL THE MONUMENTS WERE SET AND WERE CAPPED IRON PIPES, THE RETRACEMENT SURVEYOR WILL LIKELY FIND ENOUGH EXISTING MONUMENTS TO COMPLETE THE SURVEY IN THE BLOCK. AGAIN THE OLDER THE PLAT, THE MORE DIFFICULT IT IS RELY ON THE EXISTENCE OF MONUMENTS SET BY THE ORIGINAL SURVEYOR, AND MAN MADE MONUMENTS SET AFTER THE PLAT WAS RECORDED WILL MOST LIKELY BE NEEDED.

3. *RUN LINES ACCORDING TO THE COURSES AND DISTANCES MARKED ON THE PLAT OR CALLED FOR IN THE DEED. THIS IS THE LAST ORDER OF PRECEDENCE LAID DOWN BY THE COURTS.*

WHERE ARE ORIGINAL MONUMENTS MENTIONED IN THIS RULE? WHERE ARE ANY MONUMENTS MENTIONED IN THIS RULE? WHAT IS THE RETRACEMENT SURVEYOR TO USE WHEN THERE ARE NO ORIGINAL MONUMENTS ON THE SITE AND NO KNOWN, ESTABLISHED OR RECOGNIZED CORNERS AND MONUMENTS OF THE ORIGINAL SURVEY AROUND TO USE?

THE FIRST TWO RULES WILL IN MOST CASES APPLY TO RECENT PLATS WHERE ALL OR ALMOST ALL OF THE ORIGINAL MONUMENTS WERE SET AND CAPPED. IT WILL ALSO APPLY TO SOMEWHAT OLDER PLATS WHERE IT IS KNOWN WHAT TYPE OF MONUMENT THE ORIGINATING SURVEYOR SET.

WOODALE PARK, IN ANOKA COUNTY WAS SURVEYED BY JOHN CARDARELLE, L.S. 566, AND WAS RECORDED IN FEBRUARY OF 1941. MR. CARDARELLE USED THE STANDARD WORDING FOR HIS CERTIFICATION FOUND IN CH. 505.

THE FACE OF THE PLAT SHOWS EIGHT IRON MONUMENTS. SEVEN ARE ON THE EXTERIOR LINES OF THE PROPERTY DESCRIBED, IN STREET CENTERLINES OR ON SECTION LINES. THE OTHER ONE MARKS A LOT CORNER AND ALSO CENTERLINE POINT ON THE SOUTH LINE OF ANOTHER LOT. THE FACE OF THE PLAT SHOWS NO BLOCK CORNERS OR OTHER LOT CORNERS SET. YET THIS WAS A VERY WELL MONUMENTED PLAT. FRANK CARDARELLE, L.S. 6508, JOHN'S SON, WHO WORKED WITH JOHN, TOLD ME JOHN SET ALL THE LOT CORNERS IN THAT PLAT AND THEY WERE PINCH TOP IRONS. NONE OF THOSE SURVEY MARKS WERE SHOWN ON THE FACE OF THE PLAT BUT TESTIMONY STATES THAT THEY WERE SET AND WHAT THEY WERE.

GIVEN THAT THE BULK OF RETRACEMENT SURVEYING REMAINS OUTSIDE OF ORIGINAL MONUMENTS SHOWN ON THE FACE OF THE PLAT, WHICH USUALLY NO LONGER EXIST ON THE OLDER PLATS, WHAT HAVE WE TO WORK WITH?

THE SURVEY MARKS SET BY THE ORIGINATING SURVEYOR WHICH MARK THE CORNERS AND LINES OF THE LOTS ON THE GROUND ARE A GOOD PLACE TO START. THE MARKS ON THE GROUND SET BY RETRACEMENT SURVEYORS OVER THE YEARS ARE SOMETHING WE LOOK FOR. MAN

MADE MONUMENTS SUCH AS STREETS, CURBS AND SIDEWALKS SET BY A CITY OR VILLAGE THROUGH A LEGAL PROCESS ADD TO THE LIST. BUILDINGS, FENCES, WITNESS MONUMENTS AND PARTY WALLS ARE MORE EVIDENCE.

WE ALSO HAVE THE RECORDS OF THOSE SURVEYORS WHO HAVE GONE BEFORE US. THEIR WORK OVER THE YEARS, DONE IN THE LAYERS OF THEIR TIME AS SURVEYORS, IS A PATTERN AND A HISTORY OF THE LANDS WE WORK ON.

THE SECOND PART OF THIS PRESENTATION IS BASED ON WRITINGS WITHIN EVIDENCE AND PROCEDURES FOR BOUNDARY LOCATION WITH SECTIONS ON FIELD NOTES AS WRITTEN EVIDENCE, ANCIENT SURVEY PLATS, BEST AVAILABLE EVIDENCE, PREPONDERANCE OF EVIDENCE, UNDERSTANDING THE LAW OF BOUNDARIES AND EVIDENCE, AND A CONCLUSION TO THE PRESENTATION, WHICH WILL HAVE EXCERPTS FROM SECTIONS ON SEARCH FOR MONUMENTS AND IDENTIFICATION OF PROPERTY DESCRIPTIONS, ALL WITH MORE OR LESS APPROPRIATE COMMENTARY.

FIELD NOTES AS WRITTEN EVIDENCE

2.27

PRINCIPLE: *WHERE THE LAW REQUIRES FIELD NOTES AS A PART OF A SURVEY AND THE NOTES ARE STORED IN A PUBLIC PLACE, REFERENCE TO THE SURVEY INCLUDES REFERENCE TO ALL OF THE FIELD NOTES OF THE SURVEY.*

EVIDENCE OF THE FIELD NOTES OF A SURVEY, IF FILED IN A PUBLIC PLACE, ARE EASILY INTRODUCED IN COURT. PRIVATE FIELD NOTES MUST, IN GENERAL, BE IDENTIFIED BY THE PERSON TAKING THEM, AND IN THE ABSENCE OF SUCH EVIDENCE, THE NOTES ARE RARELY ADMISSIBLE. EVEN IN THE EVENT THAT PRIVATE FIELD NOTES ARE INTRODUCED TO EXPLAIN AN ERROR OR OMISSION, OTHERS CANNOT BE HELD TO KNOW THE SECRET INFORMATION OF THE SURVEYOR. FOR THIS REASON PRIVATE SURVEY NOTES, KEPT IN PRIVATE FILES, HAVE LITTLE EFFECT ON THE OUTCOME OF LITIGATION INVOLVING THE INTERPRETATION OF WRITTEN DOCUMENTS.

FIELD NOTES KEPT BY PUBLIC OFFICIALS, AS REQUIRED BY LAW, HAVE A SIMILAR EFFECT AS DOES RECORDING A DEED; THE PUBLIC IS CHARGED WITH KNOWLEDGE OF INFORMATION CONTAINED WITHIN THEM. FURTHER, THE CONTENTS OF THE FIELD NOTES, ACCORDING TO COURT CASES, ARE MORE CERTAIN THAN THE PLAT ITSELF; THE FIELD NOTES REPRESENT WHAT THE SURVEYOR DID, WHEREAS THE PLAT IS A COPY OF WHAT HE DID.

PRIVATE SURVEYS AND FIELD NOTES CAN BE INTRODUCED IN COURT AS AN EXCEPTION TO HEARSAY IN THE RULES OF EVIDENCE FOR RECORDS OF REGULARLY CONDUCTED BUSINESS ACTIVITY OR STATEMENTS IN ANCIENT DOCUMENTS (EXISTENT 20 YEARS OR MORE).

THE PHRASE "SECRET INFORMATION OF THE SURVEYOR" IS ONE ATTORNEYS USE TO PLACE FECAL MATTER IN THE PUNCH BOWL. WHAT IT MEANS IS THAT YOUR SIDE WAS DILIGENT IN THE SEARCH FOR PERTINENT OLD RECORDS AND SURVEYS AND THEIRS WAS NOT. OUR SIDE HAD WON A CASE IN DISTRICT COURT AND IT WAS APPEALED TO APPELLATE COURT. A PART OF THE APPEAL DEALT WITH "THE SECRET INFORMATION OF THE SURVEYOR".

MR. CLINTON MCLAGAN, ARGUING BEFORE THAT COURT, WAS ABLE TO CONVINCE THE COURT THAT SAID SECRET INFORMATION WAS ONLY THE BUSINESS RECORDS OF THE SURVEYOR, NO

DIFFERENT THAN THAT OF THE DOCTOR, DENTIST, ACCOUNTANT OR ANY OTHER BUSINESS. THEY ARE AN EXCEPTION TO HEARSAY IN THE RULES OF EVIDENCE. THOSE CHARGES WERE DISMISSED. THE SURVEYS ARE PRIVATE, NOT SECRET. THEY ARE USUALLY AVAILABLE TO OTHER SURVEYORS. THEY ARE ALSO AVAILABLE TO THE COURTS SHOULD THEY HAVE A LEGAL REASON TO EXAMINE THEM AND USE A LEGAL PROCESS TO OBTAIN THEM. SECRETS AREN'T THAT AVAILABLE.

THE LAW DOES NOT REQUIRE FIELD NOTES OF RETRACEMENT SURVEYS OR OF CH. 505 PLATS TO BE STORED IN A PUBLIC PLACE. CH. 389.08 REQUIRES THE FILING OF SURVEY IN ANY COUNTIES WHERE THERE IS COUNTY SURVEYOR WHO MAINTAINS AN OFFICE ON A FULL TIME BASIS IN A BUILDING MAINTAINED BY THE COUNTY FOR COUNTY PURPOSES. A TRUE AND CORRECT COPY OF THE SURVEY IS TO BE FILED IN THE OFFICE OF THE COUNTY SURVEYOR AND MADE AVAILABLE FOR INSPECTION. CERTAIN COUNTY ATTORNEYS HAVE TAKEN LIBERTIES WITH THAT LAW AND I SUGGEST THAT ALL SURVEYS BE FILED UNSIGNED OR STAMPED FOR INSPECTION ONLY TO TERMINATE ANY USE OTHER THAN INSPECTION. THESE SURVEYS ARE PUBLIC RECORDS.

IF A SURVEYOR BUTTS UP AGAINST A SURVEY BY ANOTHER SURVEYOR AND DISAGREES WITH IT, THE PROPER RESPONSE IS TO CALL THAT SURVEYOR, NOTE THE DIFFERENCE IN SURVEYS AND SHARE EACH OTHER'S RECORDS. SEE IF YOU ARE PLAYING WITH THE SAME MARBLES OR IF ONE OF YOU HAS LOST A FEW. THE PURPOSE IS NOT TO SHOW SOMEONE ELSE THEY ARE WRONG, BUT TO SEEK OUT THE DIFFERENCES AND RESOLVE THEM.

I DISCUSSED A POSSIBLE VOLATILE SITUATION ONCE WITH ED SUNDE, L.S. 8612, WHO COUNSELED, "DON'T GET INTO PISSING MATCHES, ITS EXPENSIVE, IT UPSETS ALL PARTIES, AND YOUR SHOES GET WET." THAT'S GOOD ADVICE.

LET'S NOT GET CAUGHT UP IN WHAT EVIDENCE MAY OR MAY NOT BE ADMISSIBLE IN COURT TO THE EXTENT THAT IT IS EXCLUDED FROM OUR CONCLUSIONS IN THE DAY TO DAY WORK IN OLDER PLATS. WHERE NO MONUMENTS SHOWN ON THE FACE OF THE PLAT EXIST WE HAVE TO USE ALL THE EVIDENCE WE CAN OBTAIN TO PROVIDE A PREPONDERANCE OF EVIDENCE.

ANCIENT SURVEY PLATS 2:30

PRINCIPLE: AN ANCIENT SURVEY, RECORDED OR ACCEPTED AS A PUBLIC DOCUMENT, MADE BY A COMPETENT AUTHORITY, AND PRODUCED FROM PROPER CUSTODY, IS GENERALLY ADMISSIBLE AS EVIDENCE TO PROVE THE LOCATION OF A BOUNDARY LINE.

A PRIVATE SURVEY MAY BE ADMISSIBLE UPON PROOF OF ITS CORRECTNESS BY THE PARTY MAKING IT; WHEREAS AN ANCIENT SURVEY, BY PROPER AUTHORITY, AND RECORDED AS A PUBLIC RECORD, MAY BE ACCEPTED WITHOUT FURTHER VERIFICATION. PRIVATE SURVEYS, IN GENERAL, ARE NOT ACCORDED THE SAME STANDING AS PUBLICLY RECORDED SURVEYS.

AGAIN WE ARE TALKING ABOUT A PROCEEDING IN COURT, AND AGAIN THIS IS AN EXCEPTION TO HERESAY IN THE RULES OF EVIDENCE, STATEMENTS IN ANCIENT DOCUMENTS (20 YEARS IN EXISTENCE) OR RECORDS OF REGULARLY CONDUCTED BUSINESS ACTIVITIES.

IN THE ACTUAL PRACTICE OF THE RETRACEMENT SURVEYOR SURVEYS BY A PUBLIC AUTHORITY ARE NO BETTER OR WORSE THAN THOSE DONE BY SURVEYORS IN PRIVATE PRACTICE, BOTH ARE SUBJECT TO THE SAME LIST OF ERRORS.

BEST AVAILABLE EVIDENCE

2.18

AFTER A CONVEYANCE IS MADE, THE LOCATION OF THE LAND IS DETERMINED BY CONCLUSIONS DRAWN FROM THE BEST AVAILABLE DISCOVERED EVIDENCE, ALL IN ACCORDANCE WITH THE LAW OF EVIDENCE. THE SURVEYOR'S AREA OF NECESSARY KNOWLEDGE INCLUDES WHAT IS ACCEPTABLE EVIDENCE, WHAT CONCLUSIONS CAN BE DRAWN FROM EVIDENCE, AND WHAT EVIDENCE MUST BE REJECTED. THE LAW OF EVIDENCE, IN EFFECT, ASSIGNS AN ORDER OF IMPORTANCE TO EVIDENCE, AND, IF TWO PIECES OF EVIDENCE ARE IN CONFLICT, CONCLUSIONS ARE DRAWN IN ACCORDANCE WITH THE EVIDENCE'S IMPORTANCE AS STRESSED IN THE LAW OF EVIDENCE.

ALL CONVEYANCES MUST BE IN WRITING; WRITINGS ARE THEN THE MOST IMPORTANT FORM OF EVIDENCE. BUT WRITINGS ALONE ARE NOT PROOF OF SUPERIOR TITLE; TWO PEOPLE MAY HAVE WRITTEN CONVEYANCES TO THE SAME LAND. JUNIOR AND SENIOR RIGHTS ARE TREATED FIRST. FOLLOWING THIS, EVIDENCE OF WRITINGS, EVIDENCE OF INTENT OF WRITINGS, EVIDENCE OF A SURVEY, EVIDENCE OF MONUMENTS, AND EVIDENCE OF MEASUREMENTS ARE DISCUSSED.

THIS PRESENTATION IS PRIMARILY CONCERNED WITH MONUMENTS IN A SUBDIVISION PLAT. IN THE OLDER PLATS WHERE THE FACE OF THE PLAT SHOWS BETWEEN ONE AND THREE MONUMENTS, THOSE MONUMENTS, FOR THE MOST PART, ORIGINAL OR PERPETUATED, NO LONGER ENDURE. AS MONUMENTS BECOME RARE THE CONCEPT OF WHAT IS AVAILABLE AND ACCEPTABLE EVIDENCE WILL EXPAND. THE LAW OF EVIDENCE ASSIGNS AN ORDER OF IMPORTANCE TO EVIDENCE AND IN OLDER PLATS SOMETIMES THE BEST AVAILABLE EVIDENCE IS A PIPE WHOSE ORIGIN IS UNKNOWN, A TRACE OF FENCE OR OLD RETAINING WALL OR OTHER LINES OF OCCUPATION, EVIDENCE WHICH FALLS FAR BELOW THE STRENGTH OF ORIGINAL MONUMENTS SHOWN ON THE FACE OF THE PLAT OR THEIR PERPETUATED POSITIONS. THAT MAY BE ALL THE RETRACEMENT SURVEYOR HAS TO WORK WITH, BUT CAN PROVIDE A PREPONDERANCE OF EVIDENCE.

THE THEORY IS THAT LINES OF OCCUPATION HAVE RESULTED FROM THE PLACING OF MONUMENTS ORIGINAL TO THE LOT, AND AT SOME TIME OTHER MONUMENTS HAVE BEEN PLACED TO PERPETUATE THE LINES AND CORNERS OF THE LOTS.

PREPONDERANCE OF EVIDENCE

2:11

PRINCIPLE: IN CIVIL CASES IT IS NOT NECESSARY TO PROVE "BEYOND A REASONABLE DOUBT" AS IN CRIMINAL CASES; IT IS ONLY NECESSARY TO PROVE A "PREPONDERANCE OF EVIDENCE."

THE SURVEYOR CANNOT ALWAYS PROVE CONCLUSIVELY "BEYOND A SHADOW OF DOUBT" THAT HIS MONUMENTS ARE POSITIVELY IN THEIR CORRECT POSITION. IF HE IS TO BE UPHELD BY THE COURTS, HE MUST BE PREPARED TO PROVE THAT THE PREPONDERANCE OF EVIDENCE IS IN HIS FAVOR. A SECOND SURVEYOR, IN DISAGREEMENT WITH HIM, MUST BE PREPARED TO PROVE BY A PREPONDERANCE OF EVIDENCE THAT THE OTHER IS WRONG.

A PREPONDERANCE OF EVIDENCE IS NOT NECESSARILY JUST MORE THAN 50 PERCENT OF THE WEIGHT OF THE EVIDENCE. IT HAS BEEN VARIOUSLY DEFINED

AS, "TO INCLINE AN IMPARTIAL MIND AS TO ONE SIDE RATHER THAN THE OTHER," AND "TO REMOVE THE CAUSE FROM THE REALM OF SPECULATION." IN A SURVEY, THE SURVEYOR SHOULD SATISFY HIMSELF AS TO THE PREPONDERANCE OF EVIDENCE, GIVING DUE WEIGHT TO PRESUMPTIONS, PRIMA FACIE EVIDENCE, AND LAW, THAT HIS LOCATION IS PROBABLY CORRECT TO THE EXCLUSION OF OTHER POSSIBLE METHODS OF MONUMENTING THE PROPERTY. THE SURVEYOR INVESTIGATES ALL POSSIBILITIES, EXCLUDES THE UNLIKELY OR IMPROBABLE, AND MONUMENTS IN ACCORDANCE WITH THE MOST CERTAIN.

IF THE RETRACEMENT SURVEYOR LOCATES THE ORIGINAL MONUMENTS TO THE PARCEL BEING SURVEYED, AND THEY ARE SHOWN ON THE FACE OF THE PLAT, HE CAN PROVE BEYOND THE SHADOW OF A DOUBT THAT THE MONUMENTS ARE IN THE CORRECT POSITION. THIS CAN BE MORE EASILY DONE IN THOSE PLATS FILED SINCE 1980 WHERE ALL THE MONUMENTS ARE SHOWN ON THE FACE OF THE PLAT AND ALL HAVE BEEN SET AND CAPPED BY THE ORIGINATING SURVEYOR. THE MORE MONUMENTS SHOWN ON THE FACE OF A PLAT THE BETTER CHANCE THE SURVEYOR HAS OF RETRACEMENT BEYOND THE SHADOW OF A DOUBT.

WHERE THE FACE OF THE OLD PLAT SHOWS BETWEEN ONE AND THREE ORIGINAL MONUMENTS THE DEFINITION OF WHAT IS AN ACCEPTABLE MONUMENT EXPANDS. THOSE PLATS WOULD BE PRIOR TO 1959.

WHERE NO ORIGINAL MONUMENTS AS SHOWN ON THE FACE OF THE PLAT EXIST, OR THERE ARE NO MONUMENTS MARKING THEIR PERPETUATED POSITIONS, THE SURVEYOR IS COMPELLED TO WORK WITH OTHER EVIDENCE OF SURVEY MARKS AND MONUMENTS, INVESTIGATING ALL POSSIBILITIES OF LINE AND CORNER PERPETUATION, INCLUDING OLD SURVEY NOTES AND PLATS AND WHATEVER IS OUT THERE ON THE GROUND THAT MIGHT FIT THE PLAT. THAT IS THE EVIDENCE THE SURVEYOR COLLECTS TO OBTAIN A PREPONDERANCE OF EVIDENCE.

THE BULK OF THE MONUMENTS WE FIND IN OLD PLATS ARE UNCALLED FOR MONUMENTS. OFTEN THE ONLY APPROPRIATE EVIDENCE IS UNCALLED FOR MONUMENTS.

UNDERSTANDING THE LAW OF BOUNDARIES

2.19

PRINCIPLE: *THE SURVEYOR IS PRESUMED TO KNOW THE LAW OF BOUNDARIES AND THE LAW OF EVIDENCE, AND, WHEN HE AGREES TO LOCATE A WRITTEN CONVEYANCE ON THE GROUND, HE AGREES TO LOCATE IT IN ACCORDANCE WITH THE LAWS GOVERNING HOW WRITTEN CONVEYANCES SHALL BE LOCATED.*

THE SURVEYOR DOES NOT TAKE VERBAL EVIDENCE TO EXPLAIN THE LAW. THE LAW IS A MATTER OF JUDICIAL NOTICE AND IS GATHERED FROM STATUTES AND WRITINGS OF LEARNED MEN. EVERYONE IS PRESUMED TO KNOW THE LAW, AND THE SURVEYOR IS NO EXCEPTION. THIS IS AN IRREBUTTABLE PRESUMPTION THAT MAY NOT BE OVERCOME BY CONTRARY EVIDENCE. IF HE AGREES TO MONUMENT A CERTAIN WRITTEN CONVEYANCE ON THE GROUND, HE ALSO AGREES TO LOCATE THE CONVEYANCE IN ACCORDANCE WITH THE LAWS REGULATING THE INTERPRETATION OF WRITTEN CONVEYANCES. THE SURVEYOR IS A PROFESSIONAL SPECIALIST WHO KNOWS HOW TO READ AND INTERPRET DEED WORDS, AND HOW TO SET MONUMENTS IN ACCORDANCE WITH THE WORDS.

UNDERSTANDING AND APPLYING THE CORRECT LAW (AND THAT INCLUDES THE LAWS OF EVIDENCE) IS CERTAINLY A PART OF HIS DUTIES.

THE SURVEYOR MAY NOT PRACTICE LAW; HE MERELY OBEYS THE LAW AS IT EXISTS. LAW IS WRITTEN. IT IS NOT THE OPINION OF A LAY WITNESS. WHEN PERFORMING A PROPERTY SURVEY IT IS THE PREROGATIVE AND DUTY OF A SURVEYOR TO INTERPRET THE MEANING OF THE WRITTEN WORDS OF A CONVEYANCE. IT IS THIS FACT THAT ELEVATES HIM ABOVE THE LAYMAN AND PROMOTES HIM TO PROFESSIONAL STATURE.

THERE HAVE BEEN RECENT INSTANCES OF RETRACEMENT SURVEYORS SETTING LOT CORNERS FROM COORDINATES PICKED OFF THE LINES SHOWN ON A COUNTY GIS MAP, A MAP PREPARED FOR TAX PURPOSES AND NOWHERE NEAR SURVEY QUALITY, WITHOUT LOOKING ON THE GROUND FOR EXISTING MONUMENTS.

THE COUNTY SURVEYOR HAS PHYSICALLY SURVEYED IN THE GOVERNMENT CORNERS AND PLACED COORDINATES ON THEM. THE GIS TECHNICIAN HAS CREATED AN ELECTRONIC SECTION MAP FROM WRITTEN RECORDS WITHIN THAT ACTUAL SURVEY BY THE COUNTY SURVEYOR. THE TECHNICIAN HAS SURVEYED NOTHING. THE ONLY FIELD SURVEY DONE WAS THE PERIMETER OF THE SECTION. THE TRACTS SHOWN ARE NOT BASED ON FIELD SURVEYS BY THE COUNTY SURVEYOR. THEY WERE NOT DONE WITH SURVEY QUALITY PRECISION, NOR WERE THEY MEANT TO BE. ANY COORDINATES DEVELOPED FROM THOSE MAPS ARE APPROXIMATE AND SHOULD NOT BE USED TO PLACE LOT CORNERS.

NO COUNTY SURVEYOR WOULD CERTIFY THAT COORDINATES SO OBTAINED REPRESENT THE ACTUAL LOCATION OF THE CORNERS ON THE GROUND.

WHAT LAW DOES SURVEY BY COORDINATES WITH NO FIELD RESEARCH OBEY? WAS THIS HOW THE ORIGINAL PLAT MONUMENTS WERE PLACED? MONUMENTS CONTROL, NOT COORDINATES. IGNORING LONG HELD RULES OF EVIDENCE PLACES THAT SURVEY ON THE EVIDENCE CHART AS SOME PLACE BELOW SCALING OFF A CENTURY OLD 1" = 400' SCALE PLAT AND MONUMENTATION BY METEOR SHOWER.

A PAST MEMBER OF THE STATE BOARD OF REGISTRATION SUGGESTED THAT THE LICENSE OF THE TRANSGRESSING SURVEYOR MIGHT NOT BE AS PERMANENT AS THE SURVEYOR WOULD LIKE.

CONCLUSION

LAW IS WRITTEN. WHEN THE LEGISLATURE CREATED A PLATTING STATUTE WHEREIN ONLY ONE MONUMENT FROM WHICH TO MAKE FUTURE SURVEYS' WAS CALLED OUT ON THE FACE OF THE PLAT IT LIMITED THE CONTROLLING MONUMENTS TO THAT ONE, FOR TO BE A CONTROLLING MONUMENT IT MUST BE SHOWN ON THE WRITING OR MAP. THE LAW REFERS TO THE CONTROLLING MONUMENTS AS ORIGINAL MONUMENTS. IT DIDN'T GET A WHOLE LOT BETTER 65 YEARS LATER WHEN THE LEGISLATURE DECREED A MINIMUM OF TWO MORE MONUMENTS WERE TO BE SHOWN ON THE FACE OF THE PLAT. IT WAS NOT UNTIL 1980 THAT ALL THE MONUMENTS SET BY THE ORIGINATING SURVEYOR WERE SHOWN ON THE FACE OF THE PLAT AND ALL BECAME CONTROLLING MONUMENTS. THAT'S THE LAW. IN THE 1880'S SOME SURVEYORS SHOWED ADDITIONAL MONUMENTS AT EACH BLOCK CORNER OR MADE A STATEMENT THAT ALL THE LOT CORNERS HAD BEEN SET. AGAIN THEY BECAME CONTROLLING MONUMENTS. EVEN THOUGH THE ORIGINATING SURVEYOR MAY HAVE SET OTHER MONUMENTS TO MARK THE LOT OR BLOCK CORNERS AT THE SAME TIME AS THE CONTROLLING MONUMENTS WERE SET THEY ARE NOT REFERRED TO AS ORIGINAL MONUMENTS. THEY ARE

UNCALLED FOR MONUMENTS EVEN THOUGH THEY WERE SET BY THE ORIGINATING SURVEYOR AT THE SAME TIME AS THE ORIGINAL MONUMENTS. WITH ADDITIONAL PROOF THEY CAN ADVANCE TO THE RANK OF ORIGINAL MONUMENTS.

WHAT DOES THE RETRACEMENT SURVEYOR DO WHEN THE ORIGINAL MONUMENTS SHOWN ON THE FACE OF THE PLAT HAVE FADED AWAY AND NOT BEEN PERPETUATED, WHEN THERE ARE NO KNOWN WITNESS MONUMENTS, WHEN NO BUILDINGS OR INCLOSURES CAN BE TRACED BACK TO ORIGINAL MONUMENTS, WHEN THE PRIMARY RANKING EVIDENCE OF THE COURT AS TO RETRACEMENT SURVEYING DOES NOT APPLY? THE RETRACEMENT SURVEYOR THEN JUDICIOUSLY APPLIES THE COURTS LESSER CHOICE OF THE BEST AVAILABLE EVIDENCE, WHICH IS LAID OUT IN SECTION 10.18 OF EVIDENCE AND PROCEDURES FOR BOUNDARY LOCATION.

USE UNCALLED FOR MONUMENTS.

TECHNICALLY, UNCALLED-FOR MONUMENTS, EXCEPT AS NOTED IN CHAPTER 2, DO NOT CONTROL A DEED, BUT UNCALLED-FOR MONUMENTS ARE ONE OF THE BEST SOURCES OF EVIDENCE USED BY THE SURVEYOR. THEIR POSITION INDICATES WHERE OWNERS THINK THEIR LINES OUGHT TO BE AND, THOUGH THEY MAY NOT BE PAPER-TITLE LINES, THEY MAY BE UNWRITTEN OWNERSHIP LINES. THE SHEER WEIGHT OF EVIDENCE OF NUMEROUS MONUMENTS, ALL PROPERLY INTERRELATED, MAY PROVE A LOCATION. SOMETIMES THE ONLY EVIDENCE IS UNCALLED-FOR MONUMENTS. ANY CONVEYANCE, SUFFICIENT AS OF THE DAY OF ITS EXECUTION, CANNOT BE MADE INSUFFICIENT BECAUSE OF DESTRUCTION OF EVIDENCE OF MONUMENTS. IT IS THE DUTY OF THE SURVEYOR TO HUNT, PROBE, INTERVIEW WITNESSES, SPADE THE EARTH, EXAMINE TREES, FENCES AND OTHER OBJECTS, UNTIL SUCH TIME AS HE HAS FOUND THE BEST AVAILABLE EVIDENCE FROM WHICH TO MAKE HIS SURVEY.

PRINCIPLE: THE SURVEYOR HUNTS AND SEARCHES IN THE FIELD UNTIL HE HAS FOUND THE BEST AVAILABLE EVIDENCE UPON WHICH TO BASE HIS SURVEY. TIME IS NOT A CONSIDERATION.

THE MONUMENTS SET BY RETRACEMENT SURVEYORS, FROM THE FIRST IN AFTER THE PLAT WAS FILED TO THE PRESENT, ARE ALL UNCALLED FOR MONUMENTS, AND AS SUCH DO NOT CONTROL A DEED UNLESS IT CAN BE CLEARLY SHOWN THAT THEY PERPETUATED THE POSITION OF AN ORIGINAL MONUMENT. BUT THEY ARE THE BEST AVAILABLE EVIDENCE OF WHERE THE ORIGINAL LINES AND MONUMENTS WERE ONCE THE ORIGINAL MONUMENTS HAVE FADED AWAY. THERE HAVE BEEN MANY MONUMENTS SET IN THE OLD PLATS BY THE ORIGINATING SURVEYOR WHICH ARE NOT SHOWN ON THE FACE OF THE PLAT AND DON'T MEET THE COURTS REQUIREMENTS FOR ORIGINAL MONUMENTS WITHOUT FURTHER PROOF, BUT THEY WERE SET BY THE ORIGINATING SURVEYOR TO MARK THE POSITION OF LOT OR BLOCK CORNERS.

THE MONUMENTS SHOWN ON THE FACE OF A PLAT OR DEED, AS ARE ALL MONUMENTS, ARE SUBJECT TO THE RIGORS OF TIME. SECTION 2.22 OF EVIDENCE AND PROCEDURES CITES SOME COURT CASES OUTSIDE OF MINNESOTA AND DISCUSSES THE METHODS LEFT OPEN TO THE RETRACEMENT SURVEYOR WHEN EVIDENCE OF THE ORIGINAL MONUMENTS NO LONGER EXIST.

AFTER 90 YEARS HAVE ELAPSED AND TIME HAS DESTROYED IN LARGE MEASURE THE EVIDENCE LEFT BY THE ORIGINAL LOCATOR, IT IS THEN PERMISSIBLE, NOT ONLY PERMISSIBLE, BUT OF NECESSITY IS REQUIRED, THAT WE RESORT TO ANY EVIDENCE TENDING TO ESTABLISH THE PLACE OF THE ORIGINAL FOOTSTEPS

WHICH MEETS THE REQUIREMENT THAT IT IS THE BEST EVIDENCE OF WHICH THE CASE IS SUSCEPTIBLE.

- *TAYLOR V. HIGGENS OIL AND FUEL CO., 2 SW 3ND 300.*

WHERE MARKS LEFT BY THE ORIGINAL SURVEYOR HAVE DISAPPEARED IT IS PERMISSIBLE AND NECESSARY TO RESORT TO THE BEST EVIDENCE OF WHICH THE CASE IS SUSCEPTIBLE.

- *REYNOLDS V. BRADFORD, 233 SW 2ND 464.*

THE PURPOSE OF A RESURVEY IS TO TRACE THE FOOTSTEPS OF THE ORIGINAL SURVEYOR. WHEN THE MARKS OF HIS FOOTSTEPS ARE FOUND, THEY CONTROL. WHEN THEY CANNOT BE FOUND, OLD USE AND OCCUPANCY, OLD RECOGNITION, MUST SUFFICE.

- *BALLARD V. STANOLIND OIL & GAS CO., 80 F 2ND 588.*

USING THE EVIDENCE OF UNCALLED-FOR MONUMENTS AND LINES FOUND IN THE FIELD, ALONG WITH HISTORIC DATA AVAILABLE FROM THE SURVEYS AND MONUMENTS OF PAST RETRACEMENT SURVEYORS IN THE AREA, THE CURRENT RETRACEMENT SURVEYOR CAN, BY MEASUREMENT, TIE THE WHOLE OF THE EVIDENCE INTO A COHERENT PATTERN SERVING THE ENTIRE BLOCK, NEITHER ADDING TO OR DETRACTING FROM THE LAND DUE EACH OWNER.

THANK YOU FOR EXPLORING THESE CONCEPTS WITH ME.