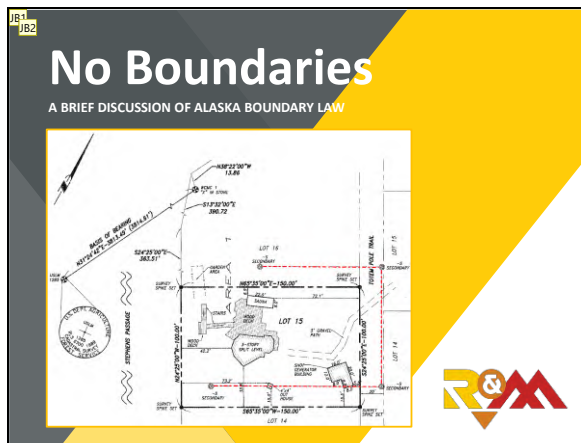
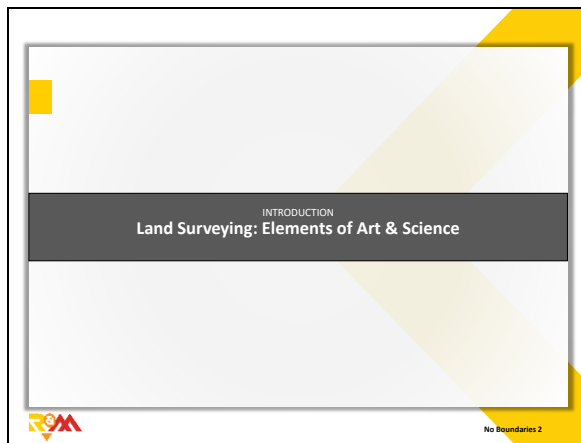


Slide 1

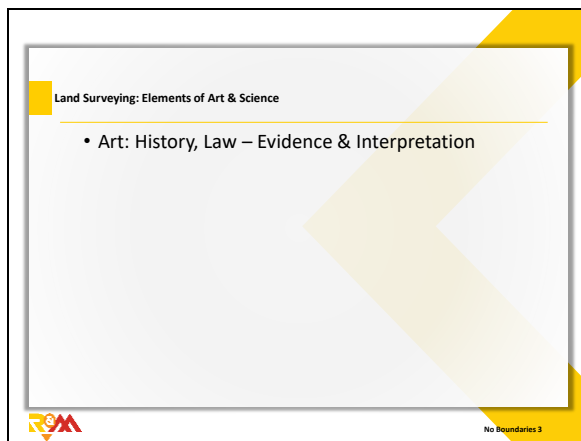


Presented Thursday February 22, 2024 – ASPLS Conference – Anchorage – You think kids have no boundaries, well surveyors need a bit of guidance also.

Slide 2

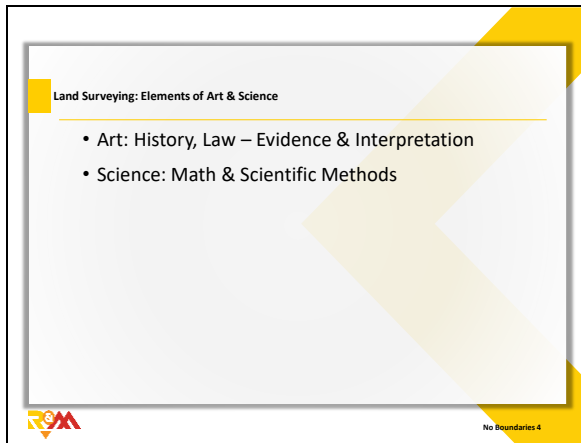


Slide 3



This is what attracted me to the profession – not just math! Particularly in ROW research.

Slide 4



Land Surveying: Elements of Art & Science

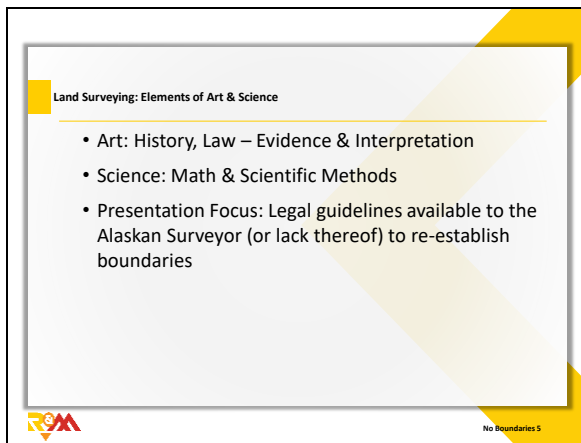
- Art: History, Law – Evidence & Interpretation
- Science: Math & Scientific Methods

RAM

No Boundaries 4

This slide features a light gray background with a large, stylized yellow 'X' shape. A yellow square is in the top-left corner. The title 'Land Surveying: Elements of Art & Science' is at the top left. Two bullet points are listed below it. The RAM logo is at the bottom left, and 'No Boundaries 4' is at the bottom right.

Slide 5



Land Surveying: Elements of Art & Science

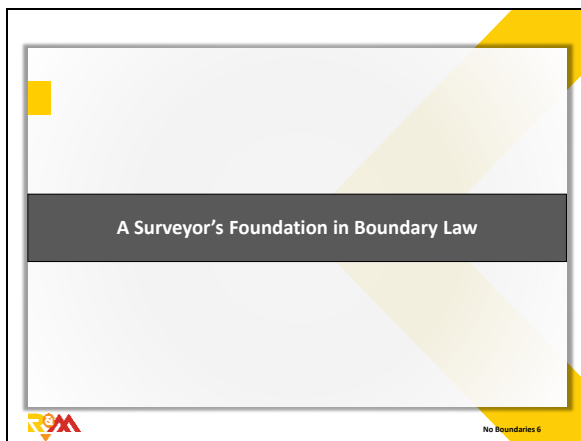
- Art: History, Law – Evidence & Interpretation
- Science: Math & Scientific Methods
- Presentation Focus: Legal guidelines available to the Alaskan Surveyor (or lack thereof) to re-establish boundaries

RAM

No Boundaries 5

This slide features a light gray background with a large, stylized yellow 'X' shape. A yellow square is in the top-left corner. The title 'Land Surveying: Elements of Art & Science' is at the top left. Three bullet points are listed below it. The RAM logo is at the bottom left, and 'No Boundaries 5' is at the bottom right.

Slide 6



A Surveyor's Foundation in Boundary Law

RAM

No Boundaries 6

This slide features a light gray background with a large, stylized yellow 'X' shape. A yellow square is in the top-left corner. A dark gray horizontal bar across the middle contains the title 'A Surveyor's Foundation in Boundary Law' in white. The RAM logo is at the bottom left, and 'No Boundaries 6' is at the bottom right.

Slide 7

A Surveyor's Foundation in Boundary Law

Brown's Boundary Control
Clark on Surveying & Boundaries

- Guidelines based on National Case Law

ROM

No Boundaries 7

And other “Learned Treatises” - Snippets of other state’s case law to guide us - Mention disposition of my professional library. Brown is a standard text for any surveyor’s library.

Slide 8

A Surveyor's Foundation in Boundary Law

Brown's Boundary Control
Clark on Surveying & Boundaries

- Guidelines based on National Case Law
- Case of First Impression
 - Legal Issues not previously addressed
 - Brown, Clark & other Treatises may be cited in support of the adoption of a boundary law principal in such a case

ROM

No Boundaries 8

When no Alaska cases have previously considered the issue being argued.

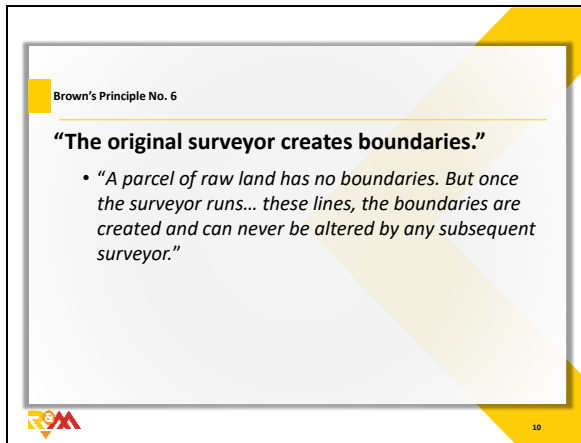
Slide 9

Brown's Principle No. 6

ROM

9

Slide
10



Brown's Principle No. 6

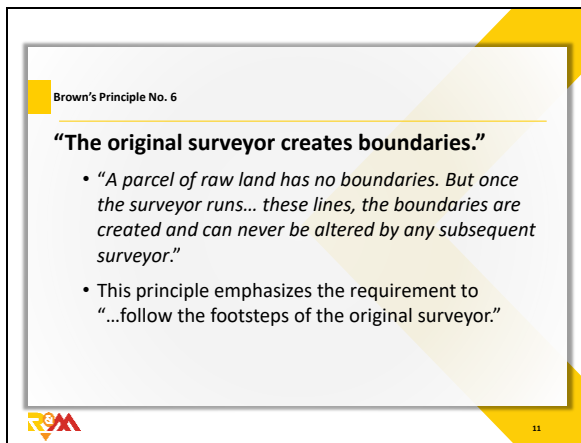
"The original surveyor creates boundaries."

- *"A parcel of raw land has no boundaries. But once the surveyor runs... these lines, the boundaries are created and can never be altered by any subsequent surveyor."*

10

Original boundaries are sacrosanct.

Slide
11



Brown's Principle No. 6

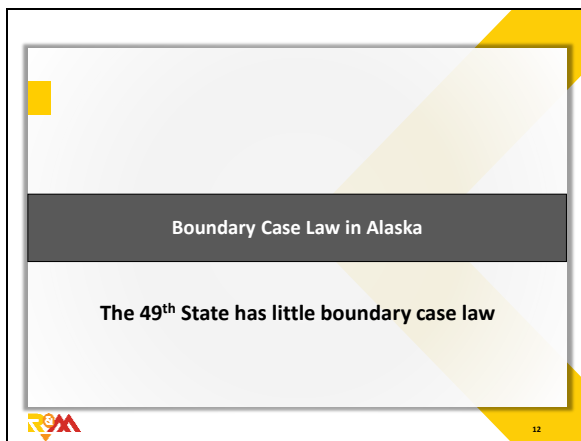
"The original surveyor creates boundaries."

- *"A parcel of raw land has no boundaries. But once the surveyor runs... these lines, the boundaries are created and can never be altered by any subsequent surveyor."*
- This principle emphasizes the requirement to "...follow the footsteps of the original surveyor."

11

Original boundaries are sacrosanct. You might be able to measure more accurately with your GPS, but the original monument will control.

Slide
12



Boundary Case Law in Alaska

The 49th State has little boundary case law

12

Slide
13

Boundary Case Law in Alaska

Most cases address boundaries by unwritten means or less than fee land interests

- Adverse Possession
- Estoppel
- Acquiescence
- Riparian Boundaries
- Easements
- Dedication
- Rights-of-Way
- Deed Interpretation
- Title Issues

ROM 13

Adverse Possession: Open, Notorious, exclusive, hostile, continuous and now “good faith”. Estoppel – when a person takes a position and others rely upon it to their detriment.

Slide
14

Boundary Case Law in Alaska

Alaska Case Law Service Search

- “right of way AND highway AND title” - 94

ROM 14

Westlaw Alaska website – One good thing during Covid – Open Access to Westlaw to avoid mingling in the Law Library

Slide
15

Boundary Case Law in Alaska

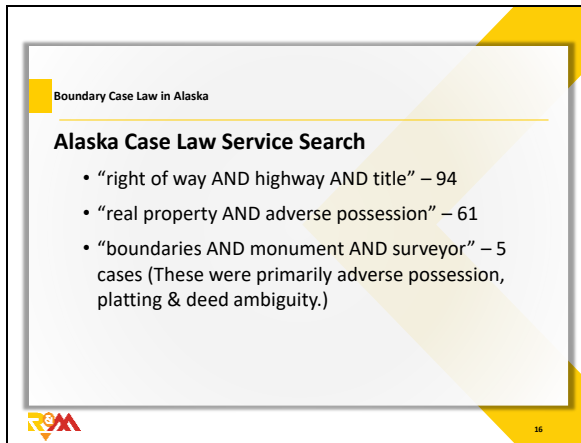
Alaska Case Law Service Search

- “right of way AND highway AND title” – 94
- “real property AND adverse possession” - 61

ROM 15

Prior to 2003 “Good Faith” was not a requirement for adverse possession. Explain attempt to do away with the concept of adverse possession.

Slide
16



Boundary Case Law in Alaska

Alaska Case Law Service Search

- “right of way AND highway AND title” – 94
- “real property AND adverse possession” – 61
- “boundaries AND monument AND surveyor” – 5 cases (These were primarily adverse possession, platting & deed ambiguity.)

16

Slide
17



Boundary Case Law in Alaska

Alaska Reporter Subject Index

- Boundaries – 11 Cases

17

“Boundaries” is a standard subject in the Reporter – can be found at law library or public library.

Slide
18



Boundary Case Law in Alaska

Alaska Reporter Subject Index

- Boundaries – 11 Cases
- Lee v. Konrad – most cited – 7 References

18

2014 and first case to be discussed today.

Slide
19

Boundary Case Law in Alaska

Alaska Reporter Subject Index

- Boundaries – 11 Cases
- Lee v. Konrad – most cited – 7 References
- Hawkins v. Alaska Freight – 5 References

REM 19

Relates to meanders and mean high tide line as boundary.

Slide
20

Boundary Case Law in Alaska

Alaska Reporter Subject Index

- Boundaries – 11 Cases
- Lee v. Konrad – most cited – 7 References
- Hawkins v. Alaska Freight – 5 References
- Municipality of Anchorage v. Suzuki
 - "A 'boundary' is a separation that marks the limits of property."

REM 20

AS 9.55.275 required replat for acquiring property that results in a boundary change. The muni acquired an easement to avoid replat. Suzuki said replat required for a ROW acquisition even if it was an easement; statute revision changed this to replat only when fee is taken.
Hawkins – meander, mean high tide, boundary

Slide
21

The Surveyor as an Expert Witness

REM Boundaries 21

Slide
22



The Surveyor as an Expert Witness


- Surveyors are not lawyers. We are experts in measurement.

Boundaries 22

This slide features a yellow header bar with the title 'The Surveyor as an Expert Witness'. The main content area is white with a large, faint yellow arrow pointing right. A small logo is in the bottom left corner, and the text 'Boundaries 22' is in the bottom right corner.

And lawyers are not surveyors -

Slide
23



The Surveyor as an Expert Witness

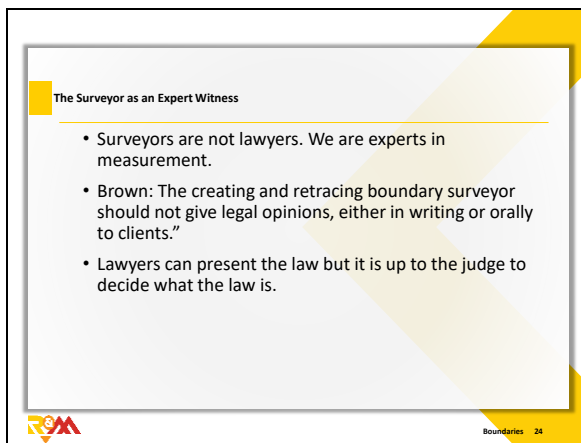
- Surveyors are not lawyers. We are experts in measurement.
- Brown: The creating and retracing boundary surveyor should not give legal opinions, either in writing or orally to clients."

Boundaries 23

This slide features a yellow header bar with the title 'The Surveyor as an Expert Witness'. The main content area is white with a large, faint yellow arrow pointing right. A small logo is in the bottom left corner, and the text 'Boundaries 23' is in the bottom right corner.

"Stay in your lane."

Slide
24



The Surveyor as an Expert Witness

- Surveyors are not lawyers. We are experts in measurement.
- Brown: The creating and retracing boundary surveyor should not give legal opinions, either in writing or orally to clients."
- Lawyers can present the law but it is up to the judge to decide what the law is.

Boundaries 24

This slide features a yellow header bar with the title 'The Surveyor as an Expert Witness'. The main content area is white with a large, faint yellow arrow pointing right. A small logo is in the bottom left corner, and the text 'Boundaries 24' is in the bottom right corner.

According to attorney – An expert witness is not to present the law, only the facts. Beardsley expert report, even though he is an attorney, he was acting as an expert. However, if you decline to make any reference to the law as you understand it in your expert report, it will be difficult for the court and others to understand the basis for your opinions.

Slide
25



Unless of course, it is... - But this is so there is always an exception to the rules.

Slide
26




Slide
27



Yes because we are interpreting statutes, regulations and case law.

Slide
28



The Surveyor as an Expert Witness

- Distinction becomes hazy with expert reports and boundary retracement.
- Does the surveyor practice law every time they apply their experience and judgment to determine the location of a boundary?
- “Practice of Land Surveying” – AS 8.48.341: “Special knowledge of ...the relevant requirements of law...locating land.”

Boundaries 28

And the statutory definition of Surveying Practice requires the surveyor to have special knowledge of the relevant law.

Slide
29



The Surveyor as an Expert Witness

- With little case law to guide us, we try to apply general rules from texts.

Boundaries 29

Alaska case law is not sufficiently mature to provide boundary law guidance.

Slide
30



The Surveyor as an Expert Witness

- With little case law to guide us, we try to apply general rules from texts.
- Every retracement survey will include some ambiguity and varying facts.

Boundaries 30

No cookie cutter scenarios, no black & white cases – all shades of gray.

Slide
31



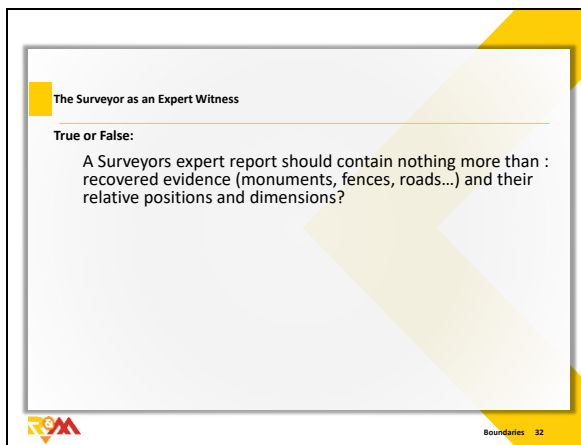
The Surveyor as an Expert Witness

- With little case law to guide us, we try to apply general rules from texts.
- Every retracement survey will include some ambiguity and varying facts.
- It is not practical to obtain an attorney's opinion with regard to every boundary survey.

Boundaries 31

Except in special situations.

Slide
32



The Surveyor as an Expert Witness

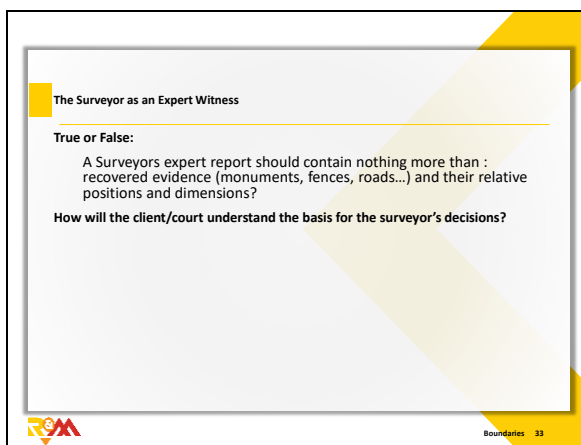
True or False:

A Surveyors expert report should contain nothing more than : recovered evidence (monuments, fences, roads...) and their relative positions and dimensions?

Boundaries 32

I Disagree: How and why did you conclude what you did?

Slide
33



The Surveyor as an Expert Witness

True or False:

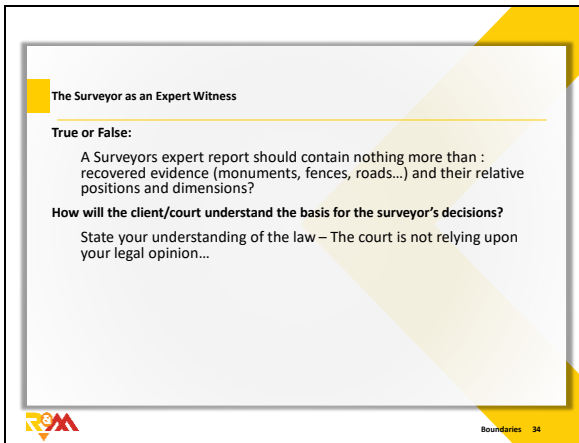
A Surveyors expert report should contain nothing more than : recovered evidence (monuments, fences, roads...) and their relative positions and dimensions?

How will the client/court understand the basis for the surveyor's decisions?

Boundaries 33

The same with plat notes. Explain your reasoning or have future reviewers conclude that you had no reason. Don't want to give anyone more rope to hang us with. Besse & self identifying caps.

Slide
34




The Surveyor as an Expert Witness

True or False:

A Surveyor's expert report should contain nothing more than : recovered evidence (monuments, fences, roads...) and their relative positions and dimensions?

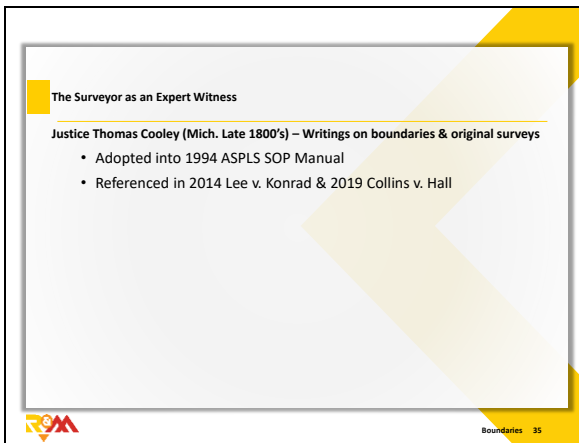
How will the client/court understand the basis for the surveyor's decisions?

State your understanding of the law – The court is not relying upon your legal opinion...

 Boundaries 34

But you should be able to show a reasonable understanding of the law in your application.


Slide
35



The Surveyor as an Expert Witness

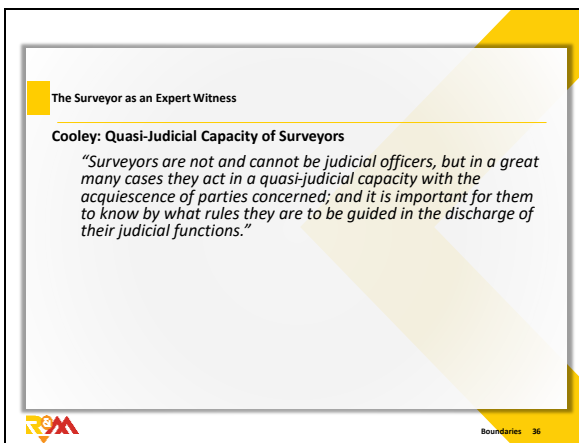
Justice Thomas Cooley (Mich. Late 1800's) – Writings on boundaries & original surveys

- Adopted into 1994 ASPLS SOP Manual
- Referenced in 2014 Lee v. Konrad & 2019 Collins v. Hall

 Boundaries 35

Added to SOP when I became SOP committee chair. Solely because it seemed to be very reasonable and practical advice.


Slide
36



The Surveyor as an Expert Witness

Cooley: Quasi-Judicial Capacity of Surveyors

"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 functions."

 Boundaries 36

Unlike the Quasi-Surveying Capacity of Lawyers – there is none. Quasi: apparently but not really...almost.

Slide
37

The Surveyor as an Expert Witness

Ira Tillotson, PE, RLS – ACSM 1968

"When determining property lines, the surveyor places his stakes and presents a plat showing where he believes that the property lines should be, his belief being founded upon what he thinks the court will uphold in the event of litigation involving his survey. He is constantly interpreting what the statutes say and what the courts have determined to be right and wrong, but such interpretation is correct only to the extent to which the courts will uphold it. He is in the unfortunate position of being the middleman who must determine for a client what he thinks the court will accept."

Boundaries 37

Montana You have to accept that in presenting your knowledge of the law, the court might suggest that you are entirely out to lunch. (As in McCarrey v. Kaylor – Small Tract Dedications)

Slide
38

The Surveyor as an Expert Witness

Why Use a Disclaimer? Murphy's Law:

Q: "Have you heard of Murphy's law?"

A: "Yeah."

Q: "What is it?"

A: "If something can go wrong, it will go wrong."

Q: "Right. Have you heard of Cole's Law?"

A & Q: "No, what is it?"

Boundaries 38

Your expert report must have a disclaimer.

Slide
39

The Surveyor as an Expert Witness

Why Use a Disclaimer? Murphy's Law:


A: "A thinly sliced cabbage."

Boundaries 39

Slide
40

The Surveyor as an Expert Witness


Sample Disclaimer:
"R&M Consultants, Inc. is not a law firm, does not offer legal services and this paper is not presented as legal advice. It is offered solely to provide a discussion of the subject and present the views of the author. Should you require legal advice on the issues outlined in this paper, we recommend that you obtain the services of an attorney."



Boundaries 40

Slide
41

Lee V. Konrad – Supreme Court 2014



Boundaries 41


Slide
42

Lee V. Konrad

Location: Shelikof Subdivision – NE4 Sec 5, T12N, R2W, SM – West of Lake Otis and South of Dowling Road.
Parties: Lee owned Lot 13 of Block 3 & Konrad owned Lot 14.
General: Small lots approximately 8,600 SF to the West of Ivan Drive.

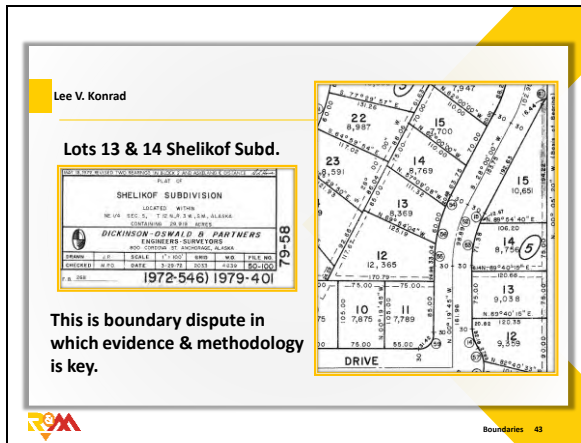
THE SUPREME COURT OF THE STATE OF ALASKA

CORRY LEE and STACEY DEAN, }
Appellants and } Supreme Court No. S-1450514524
Cross-Appellants, }
v. } Superior Court No. 3AN-08-09722-03
J.P. NIELSEN }
HARRIKA KONRAD, } No. 0818 August 26, 2014
Appellee and }
Cross-Appellant. }
} **I. INTRODUCTION**
Corry Lee and Stacey Dean (collectively referred to as "Lee") and Barbara Konrad dispute the boundary between their lots in an Anchorage subdivision.



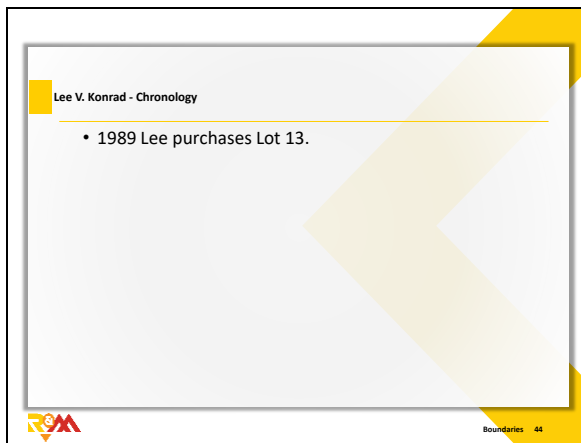
Boundaries 42

Slide
43

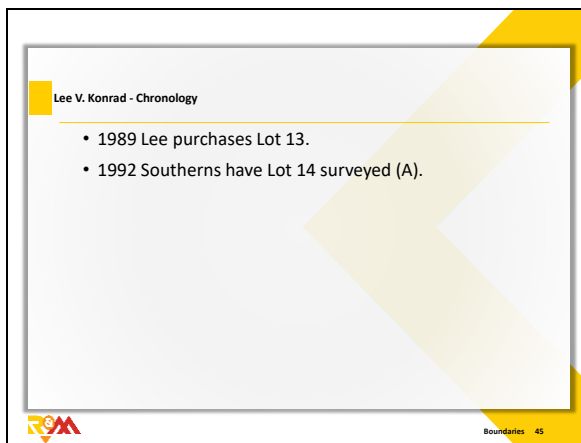


DOWL 1972

Slide
44



Slide
45



Explain using A, B C & D instead of surveyors names and companies.

Slide
46

Lee V. Konrad - Chronology

- 1989 Lee purchases Lot 13.
- 1992 Southernns have Lot 14 surveyed (A).
- 1999 Lee erects partial fence between lots.

Boundaries 46

Based on Lot 13/14 line surveyed by A.

Slide
47

Lee V. Konrad - Chronology

- 1989 Lee purchases Lot 13.
- 1992 Southernns have Lot 14 surveyed (A).
- 1999 Lee erects partial fence between lots.
- 2006 Lee digs crawl space & places fill next to fence encroaching into L14 by 2-3'. (No objection by owner of Lot 14)

Boundaries 47

14 years after Lot 13 survey by A. Did Southernns forget where the surveyed line was?

Slide
48

Lee V. Konrad - Chronology

- 1989 Lee purchases Lot 13.
- 1992 Southernns have Lot 14 surveyed (A).
- 1999 Lee erects partial fence between lots.
- 2006 Lee digs crawl space & places fill next to fence encroaching into L14 by 2-3'. (No objection by owner of Lot 14)
- 2007 Lee completes fence between lots.

Boundaries 48

Slide
49

Lee V. Konrad - Chronology

- 1989 Lee purchases Lot 13.
- 1992 Southernns have Lot 14 surveyed (A).
- 1999 Lee erects partial fence between lots.
- 2006 Lee digs crawl space & places fill. next to fence encroaching into L14 by 2-3'. (No objection by owner of Lot 14)
- 2007 Lee completes fence between lots.
- 2008 Konrad buys L14 & hires surveyor B who finds & accepts 3 of 4 corners set by A, then sets missing corner between Lots.

ROM

Boundaries 49

Slide
50

Lee V. Konrad - Chronology



ROM

Boundaries 50

Improvements occupy most of lots

Slide
51

Lee V. Konrad - Chronology

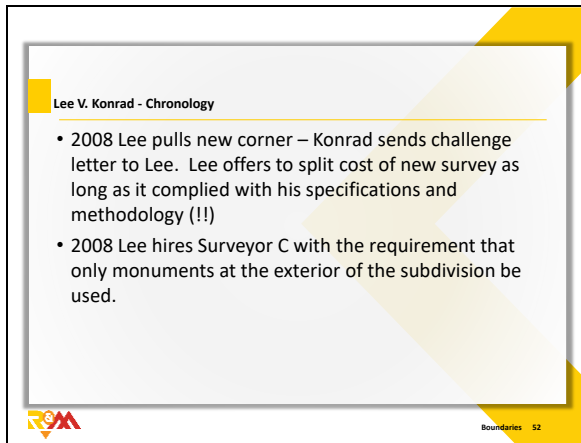
- 2008 Lee pulls new corner – Konrad sends challenge letter to Lee. Lee offers to split cost of new survey as long as it complied with his specifications and methodology (!!)

ROM

Boundaries 51

Any surveyors here that would accept that demand from a client? Lawyers are supposed to be advocates – not surveyors.

Slide
52



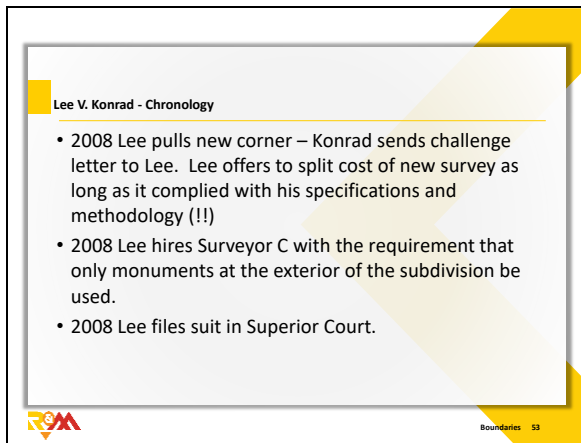
Lee V. Konrad - Chronology

- 2008 Lee pulls new corner – Konrad sends challenge letter to Lee. Lee offers to split cost of new survey as long as it complied with his specifications and methodology (!!)
- 2008 Lee hires Surveyor C with the requirement that only monuments at the exterior of the subdivision be used.

Boundaries 52

This is Lees specification – do not use local corners.

Slide
53

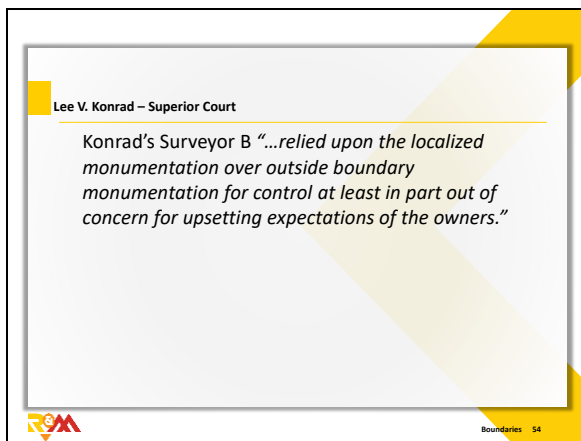


Lee V. Konrad - Chronology

- 2008 Lee pulls new corner – Konrad sends challenge letter to Lee. Lee offers to split cost of new survey as long as it complied with his specifications and methodology (!!)
- 2008 Lee hires Surveyor C with the requirement that only monuments at the exterior of the subdivision be used.
- 2008 Lee files suit in Superior Court.

Boundaries 53

Slide
54



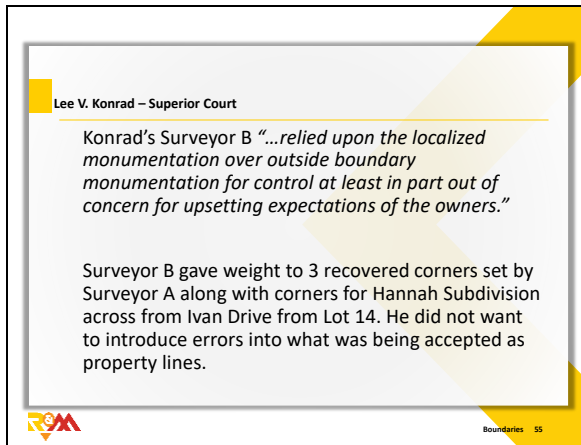
Lee V. Konrad – Superior Court

Konrad's Surveyor B *"...relied upon the localized monumentation over outside boundary monumentation for control at least in part out of concern for upsetting expectations of the owners."*

Boundaries 54

The settled expectations of the community.

Slide
55

The slide has a white background with a yellow diagonal stripe from the top-left to the bottom-right. A yellow square in the top-left corner contains the text "Lee V. Konrad – Superior Court". The main text is in a black serif font. At the bottom-left is a logo with the letters "R" and "M" in red and yellow. At the bottom-right, the text "Boundaries 55" is visible.

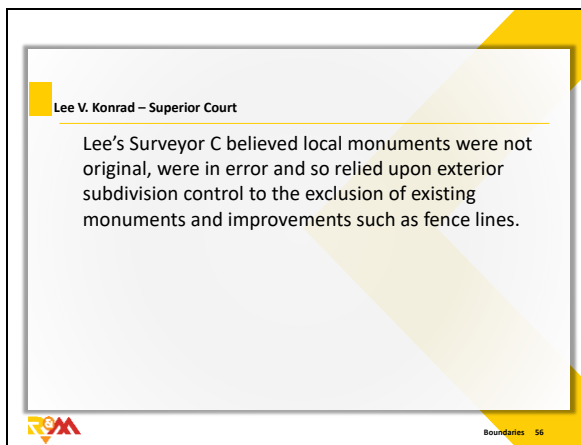
Lee V. Konrad – Superior Court

Konrad's Surveyor B *"...relied upon the localized monumentation over outside boundary monumentation for control at least in part out of concern for upsetting expectations of the owners."*

Surveyor B gave weight to 3 recovered corners set by Surveyor A along with corners for Hannah Subdivision across from Ivan Drive from Lot 14. He did not want to introduce errors into what was being accepted as property lines.

The 3 recovered corners were not original subdivision monuments, but those reset by surveyor A.

Slide
56

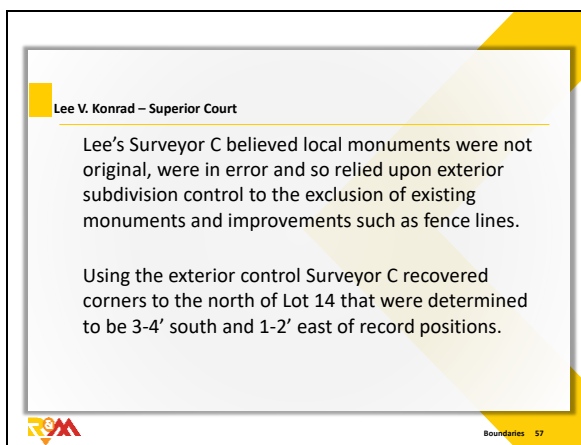
The slide has a white background with a yellow diagonal stripe from the top-left to the bottom-right. A yellow square in the top-left corner contains the text "Lee V. Konrad – Superior Court". The main text is in a black serif font. At the bottom-left is a logo with the letters "R" and "M" in red and yellow. At the bottom-right, the text "Boundaries 56" is visible.

Lee V. Konrad – Superior Court

Lee's Surveyor C believed local monuments were not original, were in error and so relied upon exterior subdivision control to the exclusion of existing monuments and improvements such as fence lines.

Relationship between exterior boundary and lot corners not very good.

Slide
57

The slide has a white background with a yellow diagonal stripe from the top-left to the bottom-right. A yellow square in the top-left corner contains the text "Lee V. Konrad – Superior Court". The main text is in a black serif font. At the bottom-left is a logo with the letters "R" and "M" in red and yellow. At the bottom-right, the text "Boundaries 57" is visible.

Lee V. Konrad – Superior Court

Lee's Surveyor C believed local monuments were not original, were in error and so relied upon exterior subdivision control to the exclusion of existing monuments and improvements such as fence lines.

Using the exterior control Surveyor C recovered corners to the north of Lot 14 that were determined to be 3-4' south and 1-2' east of record positions.

Surveyor C also found Surveyor A's R/C between Lot 13/14 at the Ivan Drive ROW. Surveyor B said if he had found it, it was inconsistent with others and would not have used it.

Slide
58

Lee V. Konrad – Superior Court

Konrad then hires Surveyor D to evaluate and provide expert testimony as to the work of Surveyors B (Konrad) & C (Lee).

REMA

Boundaries 58

4 Surveyors involved in establishing the boundaries between these two small lots!

Slide
59

Lee V. Konrad – Superior Court

Konrad then hires Surveyor D to evaluate and provide expert testimony as to the work of Surveyors B (Konrad) & C (Lee).

A judgement was issued in favor of the boundary determined by Surveyor B. *"When infirmities exist in the original survey and plat or it is difficult to determine the validity of found monuments, a community's settled expectations of on-the-ground location of boundary lines may prevail."*

REMA

Boundaries 59

Konrad (Lot 14) wins in Superior Court. – I love the concept that your survey could have “infirmities”! Definition: “A physical or mental weakness” May better describe the surveyor rather than the survey...

Slide
60

Lee V. Konrad – Supreme Court

Lee appeals to Supreme Ct. September of 2012

Issues Briefed:

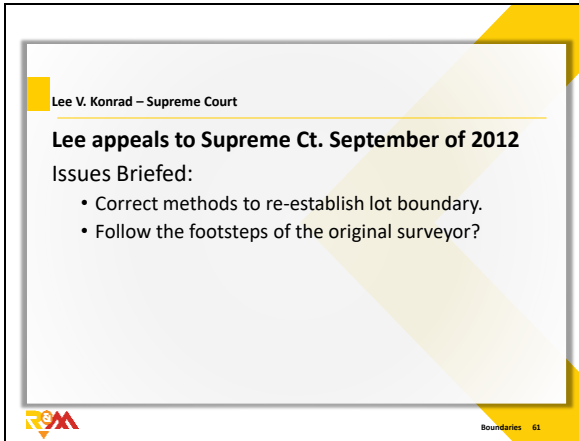
- Correct methods to re-establish lot boundary.

REMA

Boundaries 60

The opposing briefs are the story as viewed by each party.

Slide
61



Lee V. Konrad – Supreme Court

Lee appeals to Supreme Ct. September of 2012

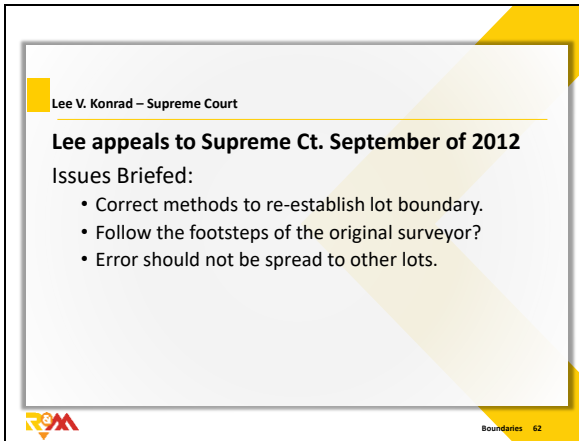
Issues Briefed:

- Correct methods to re-establish lot boundary.
- Follow the footsteps of the original surveyor?

Boundaries 61

Should they be followed, and if so, how?

Slide
62



Lee V. Konrad – Supreme Court

Lee appeals to Supreme Ct. September of 2012

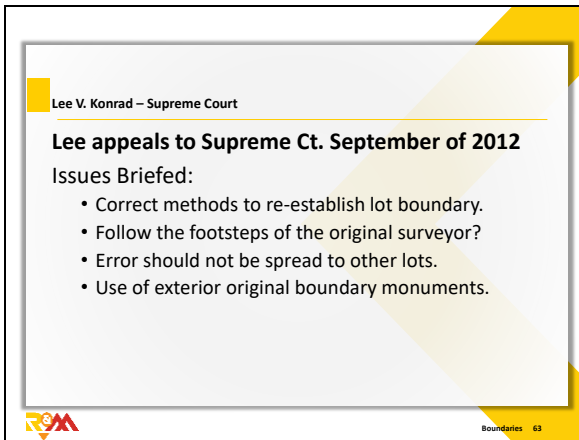
Issues Briefed:

- Correct methods to re-establish lot boundary.
- Follow the footsteps of the original surveyor?
- Error should not be spread to other lots.

Boundaries 62

Should local, non-original monuments be used if they create conflict?

Slide
63



Lee V. Konrad – Supreme Court

Lee appeals to Supreme Ct. September of 2012

Issues Briefed:

- Correct methods to re-establish lot boundary.
- Follow the footsteps of the original surveyor?
- Error should not be spread to other lots.
- Use of exterior original boundary monuments.

Boundaries 63

Should they control over the local corners?

Slide
64

Lee V. Konrad – Supreme Court

Lee appeals to Supreme Ct. September of 2012

Issues Briefed:

- Correct methods to re-establish lot boundary.
- Follow the footsteps of the original surveyor?
- Error should not be spread to other lots.
- Use of exterior original boundary monuments.
- Use of non-original local monuments.

Boundaries 64

Replacements – how close might they be to the original positions?

Slide
65

Lee V. Konrad – Supreme Court

Lee appeals to Supreme Ct. September of 2012

Issues Briefed:

- Correct methods to re-establish lot boundary.
- Follow the footsteps of the original surveyor?
- Error should not be spread to other lots.
- Use of exterior original boundary monuments.
- Use of non-original local monuments.
- Control based on use or settled expectations.

Boundaries 65

Fence lines, paving, non-original monuments.

Slide
66

Lee V. Konrad – Supreme Court

Lee appeals to Supreme Ct. September of 2012

Issues Briefed:

- Correct methods to re-establish lot boundary.
- Follow the footsteps of the original surveyor?
- Error should not be spread to other lots.
- Use of exterior original boundary monuments.
- Use of non-original local monuments.
- Control based on use or settled expectations.
- Boundary by practical location: agreement, acquiescence or estoppel.

Boundaries 66

How do these recovered monuments relate to fixing the boundary by unwritten means?

Slide
67

Lee V. Konrad – Supreme Court

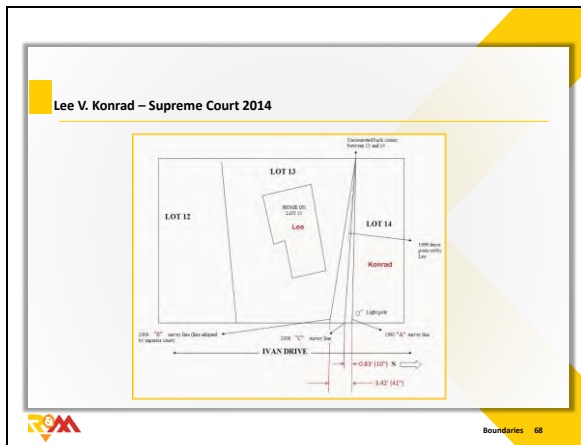
Lee's initial brief suggested a case that would focus on the methodology of boundary re-establishment:

"Published Alaska cases afford little guidance in boundary law disputes not involving waterways. The evidence shows that Alaska surveyors follow widely disparate methods, some of which in this case conflict with boundary law principles which, we submit, were misconstrued, misapplied or disregarded by the court below."

Boundaries 67

This is what we were looking for – clear Alaska law on re-establishing boundaries. – Supreme Court Oral Arguments in this case...scary listening to two attorneys explain surveying!

Slide
68



No problem with back corner. Supreme Court will hold Corner set by A according to acquiescence.

Slide
69

Lee V. Konrad – Supreme Court

The Court determined that this was not a case of survey methodology or weight of evidence, but a case of *"Boundary by acquiescence... an equitable gap-filling doctrine that may be available where estoppel and adverse possession are unavailable."*

Boundaries 69

No boundary survey law to be made in this case.


Slide
70

Lee V. Konrad – Supreme Court

The Court determined that this was not a case of survey methodology or weight of evidence, but a case of *“Boundary by acquiescence... an equitable gap-filling doctrine that may be available where estoppel and adverse possession are unavailable.”*

For the first time, citing Justice Thomas Cooley:

“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.”



Boundaries 70

And Justice Cooley prevails from the grave...

Slide
71

Lee V. Konrad – Supreme Court

The Court discussed the varying approaches to acquiescence held by other states and then defined the doctrine of acquiescence for Alaska:

“Accordingly, we hold 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.”



Boundaries 71


This is our new Alaska Law defining Acquiescence.

Slide
72

Lee V. Konrad – Supreme Court

Applying the Doctrine of Acquiescence to the Lee v. Konrad boundary, the Supreme Court held that:

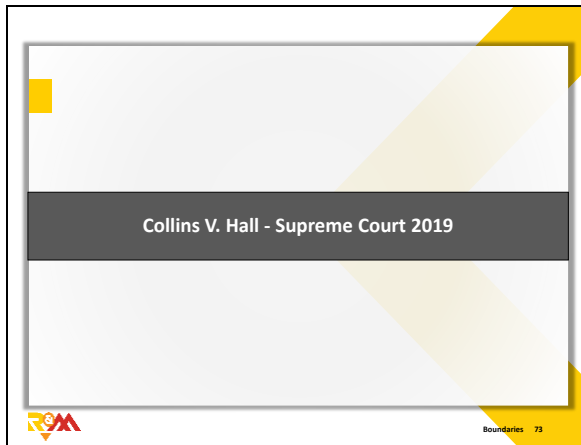
“The basic requirements for boundary by acquiescence are established by undisputed evidence in this case: the boundary line between Lots 13 and 14 was definitely marked by rebar survey markers placed by [Surveyor A - 1992], fence posts and later a fence, and the owners of the adjacent lots mutually recognized and accepted that boundary line for more than seven years.”



Boundaries 72

I don't have a sketch showing the precise relationship between the fence and the Surveyor A boundary.

Slide
73



Not sure how I got involved. No Juneau surveys, focus primarily on ROW. June 2012 – Collins contact SOP ASPLS re: guy performing his own survey... Dec. 2012 R&M Mark Johnson plat for Hall.

Slide
74

Collins v. Hall

Location: Colt Island
Recreational Development
– USS 1755 – S35, T41S,
R65E, CRM along
Stephens Passage 10.5 air
miles SW of Juneau

Parties: Collins owns Lot
14 and Hall owns Lot 15,
both in Area 1.

General: 100' x 150' small
lots adjoining westerly mean
high tide line of Colt Island.

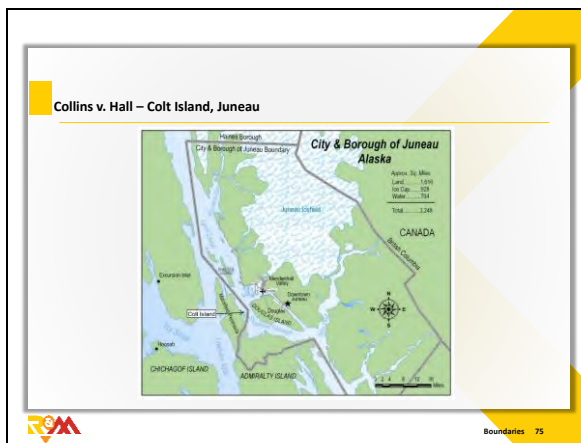
THE SUPREME COURT OF THE STATE OF ALASKA

RAY M. COLLINS and CAROL J. COLLINS,	Supreme Court No. S-86795
Appellants,	Superior Court No. 183-14-00771 CI
v.	<u>DEFENDANT</u>
DAVID W. HALL and MARGARET R. HALL, as Trustees of the D&M Hall Community Property Trust, dated March 14, 2005,	No. 7410 September 27, 2009
Appellees.	

I. INTRODUCTION

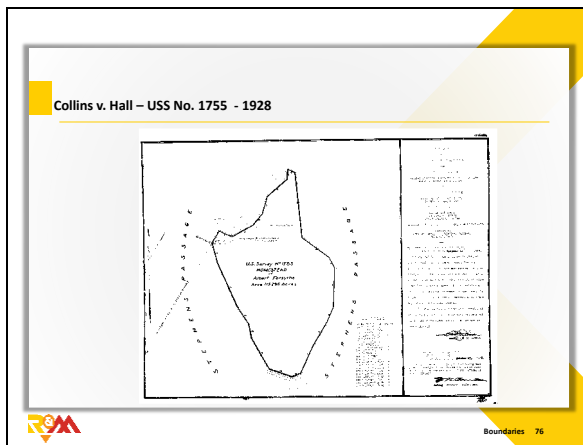
This case concerns a boundary dispute between the Collinses and the Halls, who are adjoining property owners in a recreational subdivision on an island near Juneau.

Slide
75



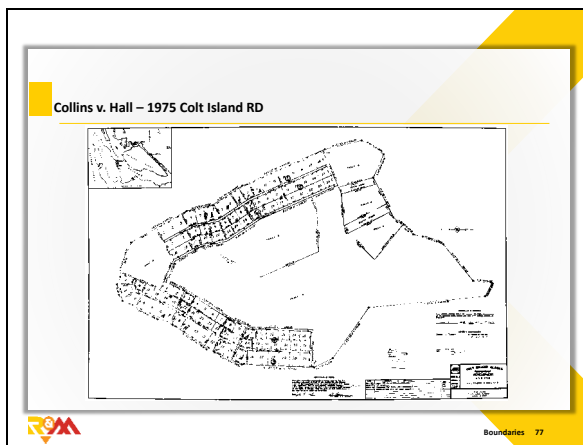
Colt Island is outside of Juneau platting authority and subdivided before DNR platting authority in the Unorganized Borough.

Slide
76



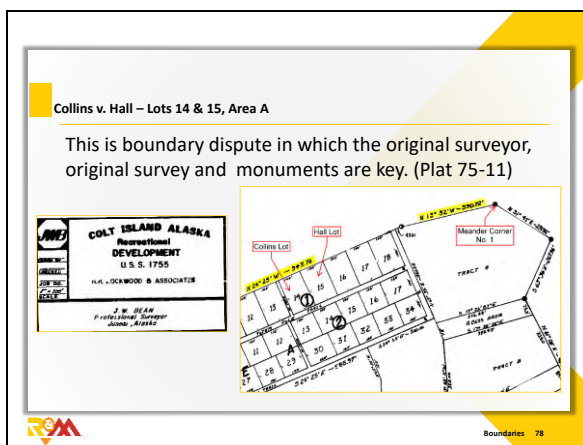
Boundary is mean high water line – Only one monument set, WCMC1 – BOB from WCMC1 to USLM on Admiralty Island

Slide
77



Plat does not identify WCMC1 but bearings and distances on exterior boundary exactly match those of USS 1755

Slide
78



Lots 14/15 only 700-800' SE of WCMC1

Slide
79

Collins v. Hall - Chronology

- 1928 USS No. 1755 Approved

R&M

Boundaries 79

Slide
80

Collins v. Hall - Chronology

- 1928 USS No. 1755 Approved
- 1975 Colt Island Recreational Development - Paper Plat Subdivision

R&M

Boundaries 80

Plat 75-11 John W. Bean

Slide
81

Collins v. Hall - Chronology

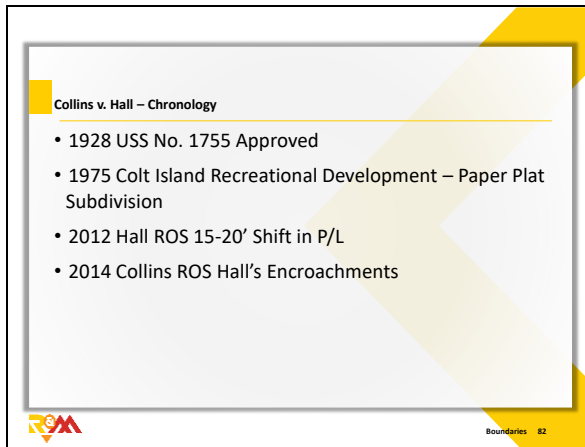
- 1928 USS No. 1755 Approved
- 1975 Colt Island Recreational Development - Paper Plat Subdivision
- 2012 Hall ROS 15-20' Shift in P/L

R&M

Boundaries 81

Hall is survey client for R&M Engineering (Juneau) and expert witness client for R&M Consultants, Inc. (R&M Engineering Consultants in Fairbanks)

Slide
82



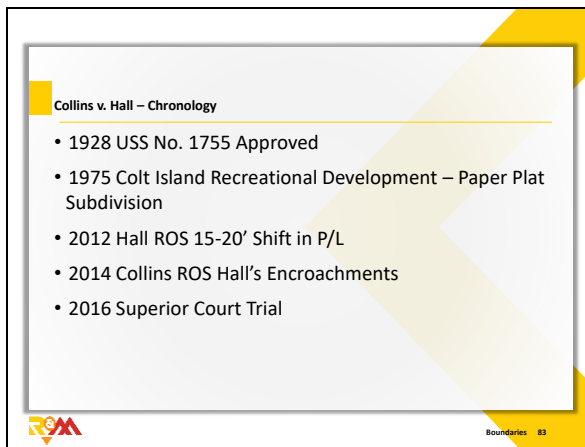
Collins v. Hall – Chronology

- 1928 USS No. 1755 Approved
- 1975 Colt Island Recreational Development – Paper Plat Subdivision
- 2012 Hall ROS 15-20' Shift in P/L
- 2014 Collins ROS Hall's Encroachments

Boundaries 82

Collins ROS by John W. Bean – Dec 2015: Hall & Collins atty jointly hire JFB to review conflicting plats. Dec 2015 submit boundary report. Note: in 2012 Collins had emailed me as ASPLS SOP Chair regarding “illegal” surveying by Hall. I referred him to AELS.

Slide
83



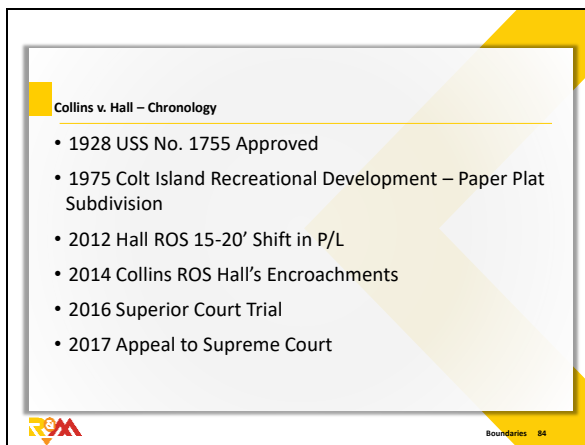
Collins v. Hall – Chronology

- 1928 USS No. 1755 Approved
- 1975 Colt Island Recreational Development – Paper Plat Subdivision
- 2012 Hall ROS 15-20' Shift in P/L
- 2014 Collins ROS Hall's Encroachments
- 2016 Superior Court Trial

Boundaries 83

Collins objects to JFB testimony as my role was to be in “settlement”. As a result both of my reports are entered into evidence. Initial boundary assessment and review of Bean deposition. Not typical to have expert reports entered into evidence.

Slide
84



Collins v. Hall – Chronology

- 1928 USS No. 1755 Approved
- 1975 Colt Island Recreational Development – Paper Plat Subdivision
- 2012 Hall ROS 15-20' Shift in P/L
- 2014 Collins ROS Hall's Encroachments
- 2016 Superior Court Trial
- 2017 Appeal to Supreme Court


Boundaries 84

Superior ct. finds in favor of Hall.

Slide
85

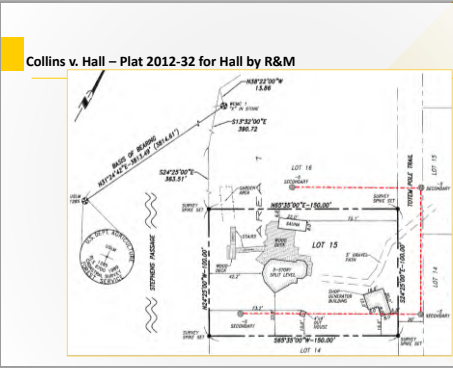
Collins v. Hall – Chronology


- 1928 USS No. 1755 Approved
- 1975 Colt Island Recreational Development – Paper Plat Subdivision
- 2012 Hall ROS 15-20' Shift in P/L
- 2014 Collins ROS Hall's Encroachments
- 2016 Superior Court Trial
- 2017 Appeal to Supreme Court
- 2019 Supreme Court Decision

 Boundaries 85

Slide
86

Collins v. Hall – Plat 2012-32 for Hall by R&M



 Boundaries 86

Same as paper cover image – Hall ROS – Hall south boundary o/s 15.5' & east boundary o/s 20' – Note improvements

Slide
87

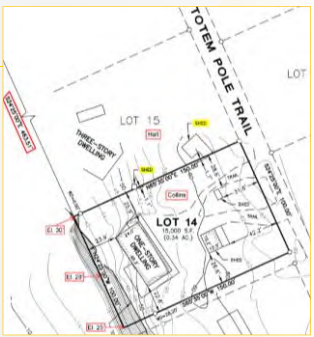
Collins v. Hall


Plat 2014-46

For Collins by J.W. Bean

Note shed locations...

Also note lot bluff line location...



 Boundaries 87

West boundary Lot 14 on incline across Bluff. Note size of encroachments.

Slide
88

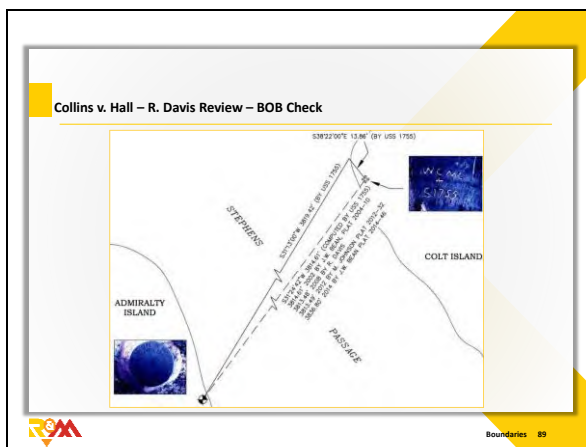
Collins v. Hall

Lot 14 Bluff Line:

USS 1755 Field Notes: *"Thence from the true meander corner point. With meanders of Colt Island. Along line of mean high tide, over stony, sandy, and rocky beach."* – The Lot 14 Bluff Line should be the line of mean high tide...on the beach. Why did this line shift from the beach to the bluff? What was the POB for ROS 2014-46 (Collins/Bean)?

Boundaries 88

Slide
89



USS 1755/Hall ROS/Davis Field Ties – Distance within 0.9' – USS 1755 by Trig – Collins ROS matches 1755 Record (?)
Hall ROS & Davis Field Ties w/ Total Station

Slide
90

Collins v. Hall

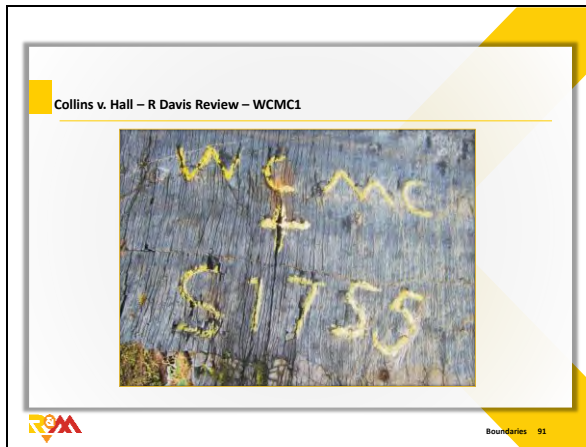
Point of Beginning/Basis of Bearing:

- Davis Review Sketch suggests that ROS 2014-46 (Bean) used a different POB than other surveys including the initial USS 1755. BOB distance is off by 22'.
- 2012 Davis Survey and 2012 Hall Survey both used WCMC1 marked according to USS 1755 Field Notes.

Boundaries 90

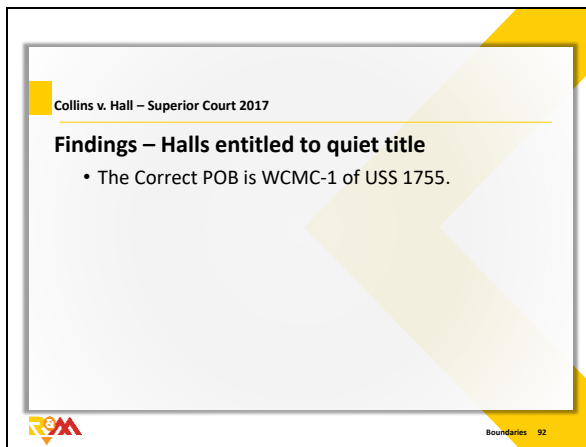
Good example of why BOB distance should always be measured.

Slide
91



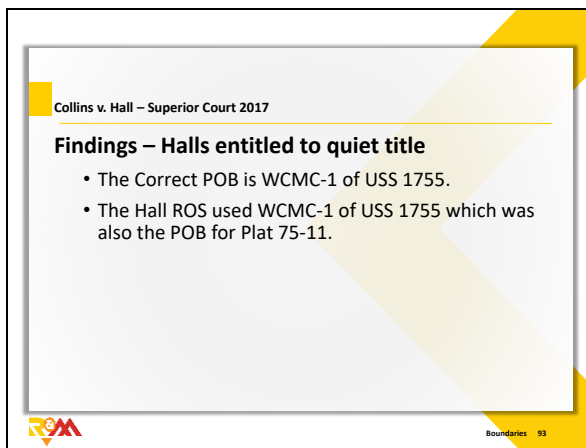
WCMC1 USS 1755 Chisel marks enhanced with yellow keel.

Slide
92



Correct POB for survey on any lot defined by Plat 75-11 Colt Island Subdivision

Slide
93



Slide
94

Collins v. Hall – Superior Court 2017

Findings – Halls entitled to quiet title

- The Correct POB is WCMC-1 of USS 1755.
- The Hall ROS used WCMC-1 of USS 1755 which was also the POB for Plat 75-11.
- The Collins ROS & subsequently established Plat 75-11 lot corners were based on an incorrect POB and do not control.

Boundaries 94

Control and separate lot surveys by Bean using incorrect POB.

Slide
95

Collins v. Hall – Superior Court 2017

Findings – Halls entitled to quiet title

- The Correct POB is WCMC-1 of USS 1755.
- The Hall ROS used WCMC-1 of USS 1755 which was also the POB for Plat 75-11.
- The Collins ROS & subsequently established Plat 75-11 lot corners were based on an incorrect POB and do not control.
- Lot 14/15 boundary could have been fixed by Adverse Possession, Estoppel or Acquiescence but none applied in this case.

Boundaries 95

But application of boundary by unwritten means did not meet statutory time frames or conditions.

Slide
96

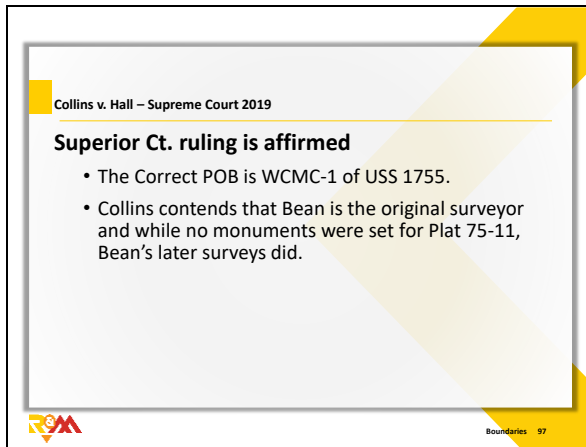
Collins v. Hall – Supreme Court 2019

Superior Ct. ruling is affirmed

- The Correct POB is WCMC-1 of USS 1755.

Boundaries 96

Slide
97

The slide has a white background with a yellow diagonal stripe from the top right to the bottom left. At the top left, there is a small yellow square followed by the text "Collins v. Hall – Supreme Court 2019". Below this, the text "Superior Ct. ruling is affirmed" is displayed. A bulleted list follows: "• The Correct POB is WCMC-1 of USS 1755." and "• Collins contends that Bean is the original surveyor and while no monuments were set for Plat 75-11, Bean's later surveys did." At the bottom left is a logo with the letters "REM" in red and yellow. At the bottom right, the word "Boundaries" is written above the number "97".

Collins v. Hall – Supreme Court 2019

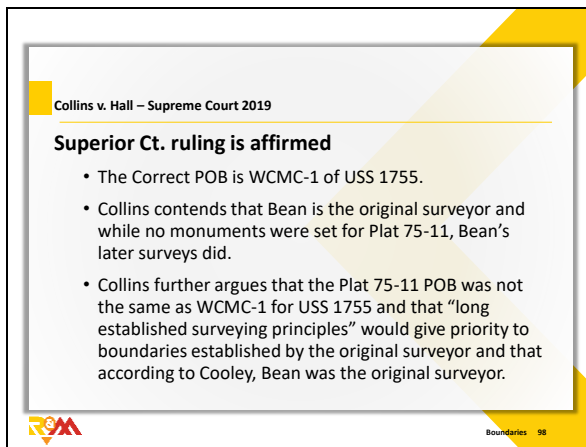
Superior Ct. ruling is affirmed

- The Correct POB is WCMC-1 of USS 1755.
- Collins contends that Bean is the original surveyor and while no monuments were set for Plat 75-11, Bean's later surveys did.

Boundaries 97

Suggesting that any subsequent monuments set by Bean inherit status as “original” monuments.

Slide
98

The slide has a white background with a yellow diagonal stripe from the top right to the bottom left. At the top left, there is a small yellow square followed by the text "Collins v. Hall – Supreme Court 2019". Below this, the text "Superior Ct. ruling is affirmed" is displayed. A bulleted list follows: "• The Correct POB is WCMC-1 of USS 1755.", "• Collins contends that Bean is the original surveyor and while no monuments were set for Plat 75-11, Bean's later surveys did.", and "• Collins further argues that the Plat 75-11 POB was not the same as WCMC-1 for USS 1755 and that “long established surveying principles” would give priority to boundaries established by the original surveyor and that according to Cooley, Bean was the original surveyor." At the bottom left is a logo with the letters "REM" in red and yellow. At the bottom right, the word "Boundaries" is written above the number "98".

Collins v. Hall – Supreme Court 2019

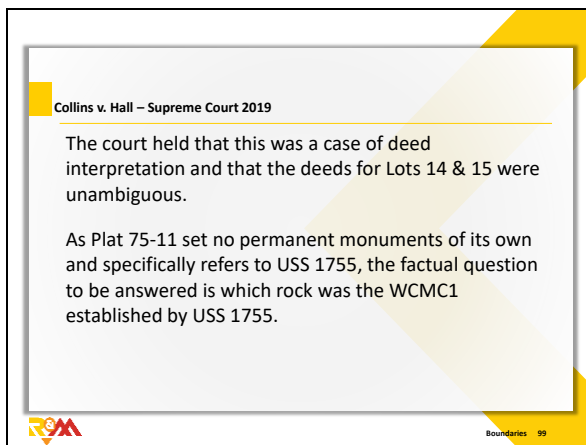
Superior Ct. ruling is affirmed

- The Correct POB is WCMC-1 of USS 1755.
- Collins contends that Bean is the original surveyor and while no monuments were set for Plat 75-11, Bean's later surveys did.
- Collins further argues that the Plat 75-11 POB was not the same as WCMC-1 for USS 1755 and that “long established surveying principles” would give priority to boundaries established by the original surveyor and that according to Cooley, Bean was the original surveyor.

Boundaries 98

Suggesting that using WCMC1 of USS 1755 was never intended by Bean, testimony indicates Bean thought he had found the original WCMC1.

Slide
99

The slide has a white background with a yellow diagonal stripe from the top right to the bottom left. At the top left, there is a small yellow square followed by the text "Collins v. Hall – Supreme Court 2019". Below this, the text "The court held that this was a case of deed interpretation and that the deeds for Lots 14 & 15 were unambiguous." is displayed. A paragraph follows: "As Plat 75-11 set no permanent monuments of its own and specifically refers to USS 1755, the factual question to be answered is which rock was the WCMC1 established by USS 1755." At the bottom left is a logo with the letters "REM" in red and yellow. At the bottom right, the word "Boundaries" is written above the number "99".

Collins v. Hall – Supreme Court 2019

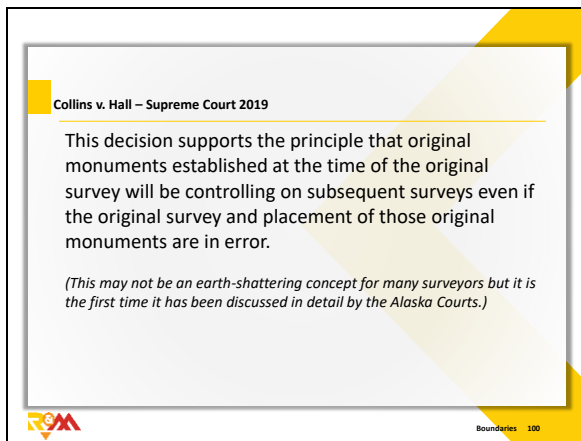
The court held that this was a case of deed interpretation and that the deeds for Lots 14 & 15 were unambiguous.

As Plat 75-11 set no permanent monuments of its own and specifically refers to USS 1755, the factual question to be answered is which rock was the WCMC1 established by USS 1755.

Boundaries 99

It was even suggested that the fully scribed WCMC1 was possibly a ruse and marked long after the original USS 1755 survey.

Slide
100



Collins v. Hall – Supreme Court 2019

This decision supports the principle that original monuments established at the time of the original survey will be controlling on subsequent surveys even if the original survey and placement of those original monuments are in error.

(This may not be an earth-shattering concept for many surveyors but it is the first time it has been discussed in detail by the Alaska Courts.)

Boundaries 100

Except I have heard stories of surveyors (engineers...) who adjusted BLM original monuments to more closely fit the record dimensions.

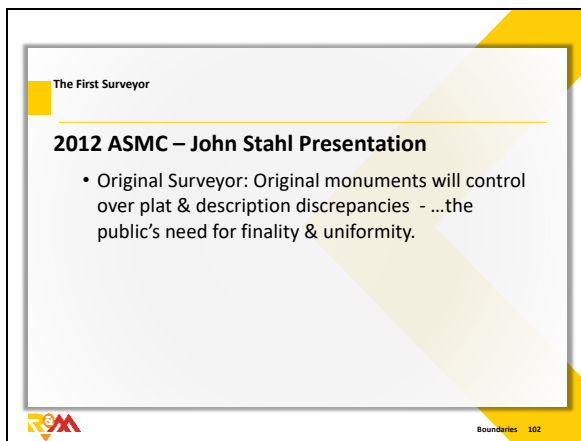
Slide
101



The First Surveyor

Boundaries 101

Slide
102



The First Surveyor

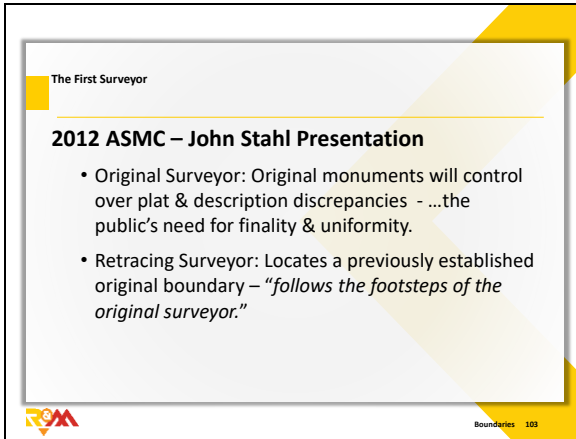
2012 ASMC – John Stahl Presentation

- Original Surveyor: Original monuments will control over plat & description discrepancies - ...the public's need for finality & uniformity.

Boundaries 102

What the property owners sees on the ground upon inspection of the property is paramount to conflicts in deed or plat.

Slide
103



The First Surveyor

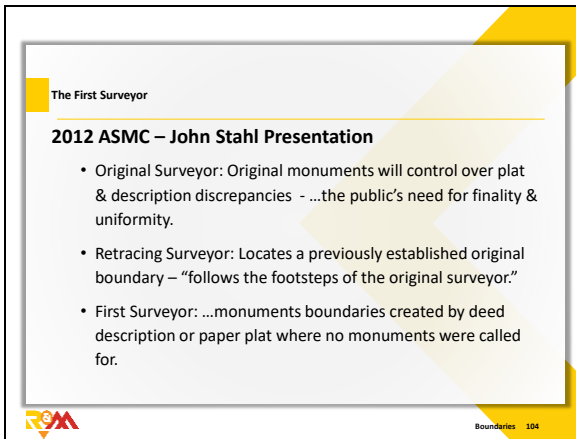
2012 ASMC – John Stahl Presentation

- Original Surveyor: Original monuments will control over plat & description discrepancies - ...the public's need for finality & uniformity.
- Retracing Surveyor: Locates a previously established original boundary – *"follows the footsteps of the original surveyor."*

Boundaries 103

Story of Dan Eagan and spliced 200' tape. 198, 199, splice ...189, 190, 191, - 200'. No surveyor could ever follow in our footsteps.

Slide
104



The First Surveyor

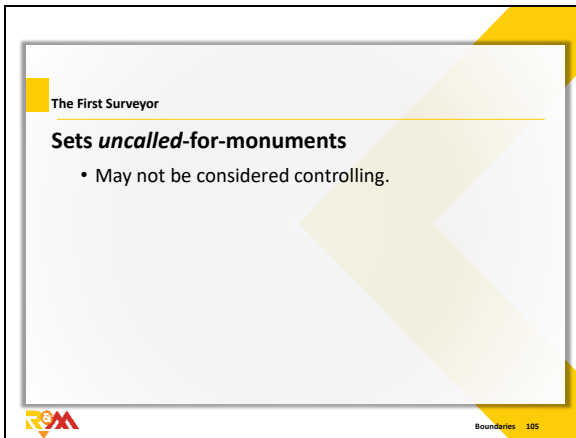
2012 ASMC – John Stahl Presentation

- Original Surveyor: Original monuments will control over plat & description discrepancies - ...the public's need for finality & uniformity.
- Retracing Surveyor: Locates a previously established original boundary – *"follows the footsteps of the original surveyor."*
- First Surveyor: ...monuments boundaries created by deed description or paper plat where no monuments were called for.

Boundaries 104

The First surveyor fills the void when no original survey was run on the ground and no original monuments were set to represent the boundary location. !! A surveyor who monument the Colt Island lots correctly according to the plat – should those monuments be given any weight?

Slide
105



The First Surveyor

Sets *uncalled-for-monuments*

- May not be considered controlling.

Boundaries 105

Not in the sense of original monuments set by the original surveyor.

Slide
106

The First Surveyor

Sets *uncalled-for-monuments*

- May not be considered controlling.
- i.e. ROS sets monuments as per deed.

Boundaries 106

Deed does not call for monuments.
A surveyor may replace an original monument and file a Monument Record. This may provide best evidence of original location.

Slide
107

The First Surveyor

Sets *uncalled-for-monuments*

- May not be considered controlling.
- i.e. ROS sets monuments as per deed.
- May provide evidence of unwritten rights.

Boundaries 107

As in Lee v. Konrad – Acquiescence to monumented boundary; Adverse possession with regard to monumented boundary.

Slide
108

The First Surveyor

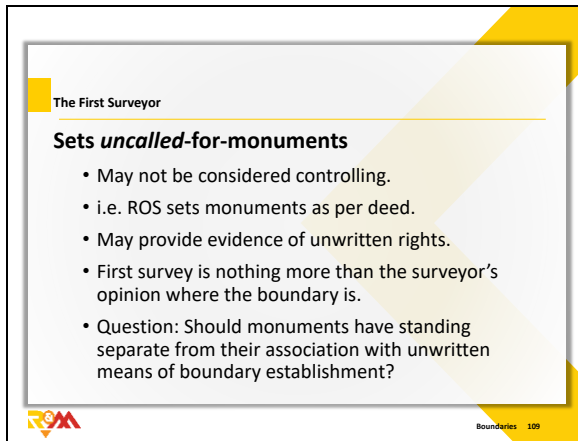
Sets *uncalled-for-monuments*

- May not be considered controlling.
- i.e. ROS sets monuments as per deed.
- May provide evidence of unwritten rights.
- First survey is nothing more than the surveyor's opinion where the boundary is.

Boundaries 108

Two surveyors are given a deed with M&B description to monument – differing procedures, specifications, evidence and ultimately differing positions – which one controls?

Slide
109



The First Surveyor

Sets *uncalled-for-monuments*

- May not be considered controlling.
- i.e. ROS sets monuments as per deed.
- May provide evidence of unwritten rights.
- First survey is nothing more than the surveyor's opinion where the boundary is.
- Question: Should monuments have standing separate from their association with unwritten means of boundary establishment?

Boundaries 109

Should the monuments set by the first surveyor be given weight compared to subsequent surveyors even when a boundary by unwritten means is inapplicable.

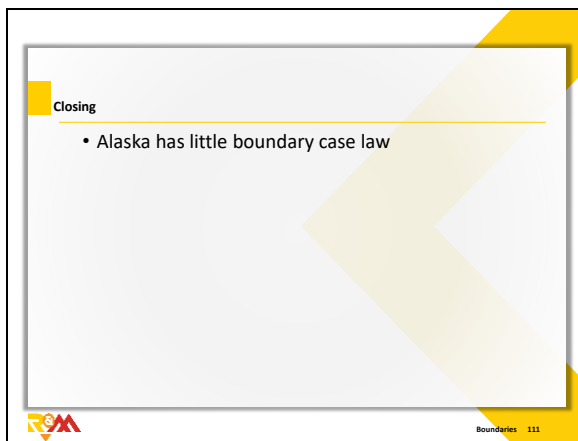
Slide
110



Closing

Boundaries 110

Slide
111



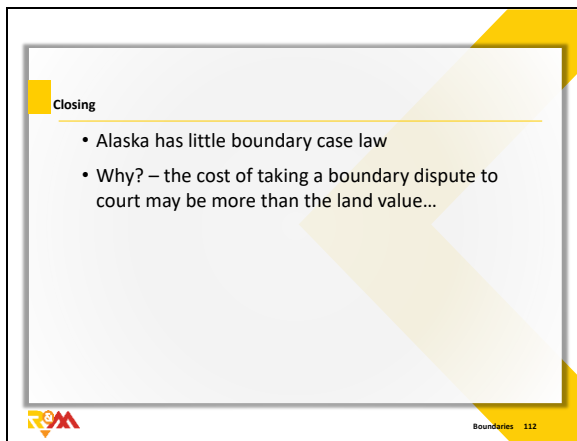
Closing

- Alaska has little boundary case law

Boundaries 111

And thus the title of the presentation – No Boundaries.

Slide
112



Slide 112 content:

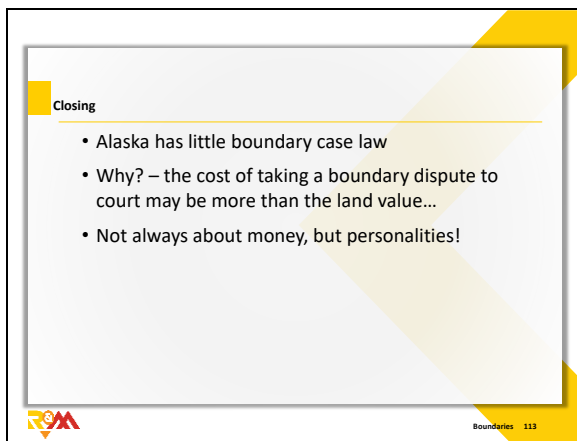
Closing

- Alaska has little boundary case law
- Why? – the cost of taking a boundary dispute to court may be more than the land value...

ROM logo and "Boundaries 112" are visible at the bottom.

Note the size of the two lots in the subject cases and guess the cost of litigation. Joke about urban building lot with one concrete building 1" over the boundary.

Slide
113



Slide 113 content:

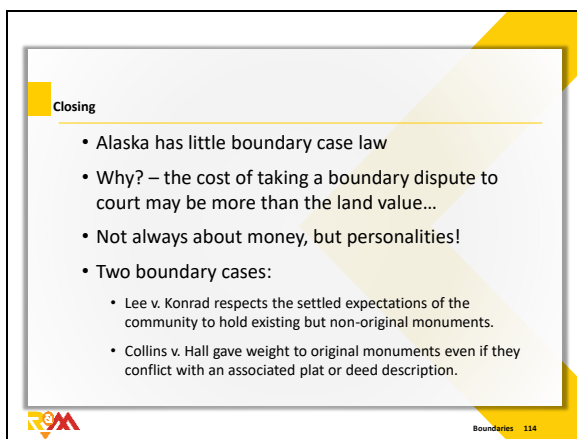
Closing

- Alaska has little boundary case law
- Why? – the cost of taking a boundary dispute to court may be more than the land value...
- Not always about money, but personalities!

ROM logo and "Boundaries 113" are visible at the bottom.

Money is often not the issue. No one is willing to compromise.

Slide
114



Slide 114 content:

Closing

- Alaska has little boundary case law
- Why? – the cost of taking a boundary dispute to court may be more than the land value...
- Not always about money, but personalities!
- Two boundary cases:
 - Lee v. Konrad respects the settled expectations of the community to hold existing but non-original monuments.
 - Collins v. Hall gave weight to original monuments even if they conflict with an associated plat or deed description.

ROM logo and "Boundaries 114" are visible at the bottom.


Using the newly defined doctrine of acquiescence.

Slide
115

Closing

One notable item for Alaskan Surveyors, both new and old:

Lee v. Konrad and Collins v. Hall are the first Alaska cases to cite the writings of Justice Thomas Cooley. His 1876 essay The Judicial Functions of Surveyors is recommended reading and can be found on the Alaska Society of Professional Surveyors website in the Standards of Practice section.

 Boundaries 115

Even though there was only one monument...the POB.

Slide
116

