Challenges in Identification and Retracement of Utility Easements
Course #8953

Presented on Behalf of
Florida Surveying and Mapping Society

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Disclaimer

This presentation was prepared by a Florida licensed Professional Surveyor and Mapper without the benefit of review by legal counsel, and as such is not intended in any context as legal advice, but merely as the experiential opinion of a Florida PSM.

Attendees are strongly encouraged to seek legal guidance as needed to resolve uncertainties in interpreting pertinent laws.
Overview of Course Topics

• Disparities in Utility Easement Descriptions
• Impact of Marketable Record Title Act (MRTA) on Research and Easements
• Locating Visible Evidence of Utility Easements
• Peculiarities of Electric Transmission Easements
• Ownership Rights vs. Easement Rights
• Case Study
• Research Sources for Utility Easement Records
Disparities in Utility Easement Descriptions

Some easements are shown on the face of the plat, and are defined obviously.
Disparities in Utility Easement Descriptions

Some easements are well written, and are easy to follow.

State of Florida

County of Walton

WILLIAM C. SHAFFER and wife Florence M. Shaffer

for and in consideration of the sum of Seven Thousand Five Hundred Dollars ($7,500.00) to be paid by Gulf Power Company, a corporation, the receipt whereof is acknowledged, do hereby grant to said Gulf Power Company, its successors and assigns, the right to construct, operate and maintain electric transmission lines and all telegraph lines and telephone lines, towers, poles and appliances necessary or convenient in connection therewith from time to time upon, and all counter-pole wires or other counter-pole conductors under, a strip of land one hundred feet in width, as said strip is now located by a final location survey hereof made by said Gulf Power Company, over and across the lands of which it is hereinafter described as being a part, and survey to determine the boundaries of said strip together with all rights and privileges necessary or convenient for the full enjoyment or use thereof for the purpose above described, including the right of ingress and egress to and from said strip and the right to cut and keep clear all trees and undergrowth, and other obstruction on said strip and danger trees adjacent thereto which now or may hereafter injure or endanger any of the works on said strip, and the right to install, maintain and use anchors and guy wires on land adjacent to said strip.

 Said strip is a part of a tract of land situated in Walton County, Florida, described as follows: Lot twelve (12) of a subdivision of section twenty-five (25), township two (2) south, range twenty-one (21) west, Walton County, Florida; according to map of Santa Rosa Plantation Company recorded in Plat Book 2 at Page 4 of the Public Records of said county.

Said strip is approximately described as follows: Fifty feet (50') on each side of a center line and a continuation thereof, said center line to begin at a point on the east boundary line of the above described property determined as follows: From the northeast corner of section twenty-five (25), township two (2) south, range twenty-one (21) west, run north along the east boundary line of said section twenty-five (25) a distance of thirty-seven hundred eighty-nine feet (3,789') to point of beginning of said center line; thence run north 88 degrees 21 minutes west a distance of thirteen hundred thirty-three feet (1,333'), more or less, to a point on the west boundary line of the above described property.
Disparities in Utility Easement Descriptions

Some easements are poorly written and difficult to follow.
Disparities in Utility Easement Descriptions

The limits of blanket easements can be impossible to locate definitively, and may have to be determined by the courts.
Florida’s Marketable Record Title Act (MRTA)

Passed in 1963, the legislative intent of F.S. Ch. 712 was to simplify the establishment of clear title by setting a time limit on old claims and defects.

A period of 30 years is defined in MRTA as the amount of time necessary for an estate of record to extinguish earlier title claims.

This 30 year claim period need not be under a single owner. As long as the estate claim continues to exist without a dispute of record, ownership time under a claim aggregates.
Florida’s Marketable Record Title Act (MRTA)

How does MRTA affect research generally?

MRTA had a well known unintended consequence, allowing the extinguishing of the restrictive covenants of HOA’s after 30 years. Some statutory remedies exist to resolve this issue.

A less recognized unintended consequence of MRTA is a tendency for a shortened title search to miss encumbrances of record, resulting often in frustration and litigation for holders of land and land rights.
Florida’s Marketable Record Title Act (MRTA)

How does MRTA impact easements in particular?
MRTA has a specific exception for easement rights:

Recorded or unrecorded easements or rights, interest or servitude in the nature of easements, rights-of-way and terminal facilities, including those of a public utility or of a governmental agency, so long as the same are used and the use of any part thereof shall except from the operation hereof the right to the entire use thereof.
Florida’s Marketable Record Title Act (MRTA)

How does MRTA impact easements in particular?

MRTA also has a clause clearly stating the legislative intent of the act:

F.S. 712.10: This law shall be liberally construed to effect the legislative purpose of simplifying and facilitating land title transactions by allowing persons to rely on a record title as described in s. 712.02 subject only to such limitations as appear in s. 712.03.
Florida’s Marketable Record Title Act (MRTA)

What are the end consequences of MRTA for surveyors?

Shortened research period often misses easements in title search.

The incidence of missed easement grants is common when parent tracts are later divided, and MRTA exacerbates that situation.

The surveyor often is simply not privy to the documented existence of utility easements, and can only identify the possible presence of a utility easement by documenting visible evidence of apparent use.
Locating Visible Evidence of Utility Easements

Locating Unambiguous Evidence of Easements

• Marker Posts
• Drainage Structures
• Valves and Meters
• Utility Poles
• Overhead Wires
Locating Visible Evidence of Utility Easements

Locating Weaker Evidence

- Marking Paint
- Wire Flags
- Evidence on adjoiners suggesting linear continuity through the subject parcel
Peculiarities of Electric Transmission Easements

Why is the line positioned this way in the easement?
Peculiarities of Electric Transmission Easements

Federal regulations governing high voltage easements:

For electric transmission lines operating at 200kV or above, utility companies are subject to 6 figure fines for allowing vegetation near the line to cause an outage.

In practice, this means that easements for very high voltage lines are generally cleared to the full width of the easement, and that many sorts of encroachments within the easement are forcibly removed once discovered.
Peculiarities of Electric Transmission Easements
Apparent use of easement vs. full easement rights: Why would only part of the easement be cleared?
Peculiarities of Electric Transmission Easements

How does partial use of an easement impact the protection of that easement under MRTA?

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Peculiarities of Electric Transmission Easements
Facility rights beyond the easement boundaries:

for and in consideration of the sum of Seventy-five and no/100 - - - - - - - - - - - - - Dollarss
($75.00 - - - ) to us in hand paid by Gulf Power Company, a corporation, the receipt whereof is acknowledged, do hereby grant to said Gulf Power Company, its successors and assigns, the right to construct, operate and maintain electric transmission lines and all telegraph and telephone lines, towers, poles and appliances necessary or convenient in connection therewith from time to time upon, and all counter-poise wires or other counter-poise conductors under, a strip of land one hundred feet in width, as said strip is now located by the final location survey thereof heretofore made by said Gulf Power Company, over and across the lands of which it is hereinafter described as being a part, said survey to determine the boundaries of said strip together with all rights and privileges necessary or convenient for the full enjoyment or use thereof for the purpose above described, including the right of ingress and egress to and from said strip and the right to cut and keep clear all trees and undergrowth and other obstruction on said strip and danger trees adjacent thereto which now or may hereafter injure or endanger any of the works on said strip, and the right to install, maintain and use anchors and guy wires on land adjacent to said strip.
Ownership Rights vs. Easement Rights

Dominant vs. servient estate

Although the easement holder has the dominant estate, the rights of the easement holder upon the encumbered land only extend as far as the declarations in the easement grant.
Ownership Rights vs. Easement Rights

Old platted easements – what are the consequences of murky ownership?
Case Study

Electric Transmission Route from Alabama State Line to Crestview
Case Study

History of the Alabama State Line to Crestview Transmission Line:

This transmission line was built in 1930, spanning roughly 20 miles.

The original property survey was done by Allied Engineers, Inc., an Alabama based firm.

The route descriptions that were written for this line were retraceable, but were needlessly cumbersome.
Case Study

STATE OF FLORIDA,
County of Florida

For and in consideration of the sum of Sixty-Five Thousand Dollars ($65,000) to be paid by Gulf Power Company, a corporation, the receipt whereof is acknowledged, do hereby grant to said Gulf Power Company, its successors and assigns, the right to construct, operate and maintain electric transmission lines and all telephone lines, towers, poles and appliances necessary or convenient for connection therewith from time to time upon a strip of land one hundred feet in width, as said strip is now located by the final location survey thereof heretofore made for said Gulf Power Company, over and across the lands of which it is hereinafter described as being a part, said survey to determine the boundaries of said strip, together with all rights and privileges necessary or convenient for the full enjoyment or use thereof for the purposes above described, including the right of ingress and egress to and from said strip and the right to cut and keep clear all trees and undergrowth and other obstruction on said strip and danger trees adjacent thereto which may or may hereafter injure or endanger any of the works on said strip, and the right to install, maintain and use anchors and guy wires on land adjacent to said strip.

Said strip is a part of a tract of land situated in the

County of Florida described as follows:

Lot 30, Block 30, Tract 22 West

 Said strip is approximately described as follows: The location of the median line of said strip on above described tract of land is fixed as follows: Begin at a point in said median line which is located at the angle in said median line in the NW quarter of the NE quarter, Section 9, Township 5 N, Range 22 W, said point being the vertex of said angle and designated and marked by an iron pipe; thence run approximately 527.27 degrees 19 minutes 44 seconds for a distance of 2174.6 feet to an iron pipe.
Case Study

The Alabama State Line to Crestview transmission line was originally built with the center of construction 20’ from the eastern edge of the corridor.

This positioning would allow for a second line to be built within the corridor later while maintaining adequate clearances.

The full width of the easement was not originally cleared because it was not immediately necessary for construction and would have taken additional time and added cost.
Case Study

The first major mislocation of the easement corridor occurred in 1956, when the surveyor doing a resubdivision of Block 18 of Oakdale Miniature Farms assumed that the transmission line was constructed in the center of the easement.
Case Study
Case Study
Case Study

The same sort of mislocation error which occurred in 1956 happened again in 1979 when the unrecorded plat of Grandview Heights was surveyed with the assumption that the pole line was located in the center of the easement.
Case Study
Case Study

In addition to the 30’ problem of mislocation, another area of uncertainty arose when it was found that the original surveyors of the transmission easement identified a pine post as a section corner which appears to have been positioned ±8’ south and ±9’ west of the true corner as supported by multiple pieces of evidence.
Case Study

In 1983, the mislocation of Grandview Heights was resolved by an agreement to shift the location of the easement through the subdivision to match the plat. This resolution acquiesced to the position of the section corner which refuted the pine post.
Case Study

This acquiescence occurred despite the phrase in the original easement stating: “…as said strip is now located by the final location survey thereof…” which implies deference to the as-built position of the easement as a governing bound.

Acquiescence improved the conformity of the boundary fit with adjoining lands while having no noteworthy negative effect on the function of the easement.
Case Study

In 1996, a developer building a new subdivision in the block south of Block 18 of Oakdale Miniature Farms requested a shift in the position of the easement to facilitate placement of more lots in the parent tract. Since the requested shift had no negative operational impact, and making more meters spin is desirable for an electric company, the request was granted for the developers of the Valley Creek Subdivision.
Case Study
Case Study

In 2013, as part of a vegetation management project, the mislocation of Block 18 of Oakdale Miniature Farms was discovered.
Case Study
Case Study

A decision was made by the power company to acquiesce to the platted location of the easement. Acquiescence was the simplest and most equitable solution for all parties involved.
Case Study
Research Sources for Utility Easement Records

Why research utility easements?

If your survey has limited or no scope for a design purpose, pursuing easement records beyond those provided to you by a client may not make sense. However, the mandates of F.A.C. 5J-17.052(2)(d) still must be met.
Research Sources for Utility Easement Records

5J-17.052(2)(d) Rights-of-Way, Easements, and Other Real Property Concerns:

1. All recorded public and private rights-of-way shown on applicable recorded plats adjoining or across the land being surveyed shall be located and shown upon the map.

2. Easements shown on applicable record plats or open and notorious evidence of easements or rights-of-way on or across the land being surveyed shall be located and shown upon the map.

3. When streets or street rights-of-way abutting the land surveyed are physically closed to travel, a note to this effect shall be shown upon the map.

4. When location of easements or rights-of-way of record, other than those on record plats, is required, this information must be furnished to the surveyor and mapper.
Research Sources for Utility Easement Records

Why research utility easements?

If your survey has design/build implications which warrant an effort beyond the administrative requirements to identify recorded easements, various sources of information are available for PSM’s.
Research Sources for Utility Easement Records

Benefits and flaws of electronic public records:

Online access to public records has greatly simplified the research process, making it much more practical and economical to acquire land record information.

However, limited date ranges and incomplete indexing of documents are important considerations in reliance upon a research approach which is exclusively made online through a county clerk’s website.
Research Sources for Utility Easement Records

Benefits and flaws of onsite search of public records:
Performing research in a records room does mitigate the limited date range for records review, but this research can be time consuming and still may miss important documents due to deficiencies in indexing.
Research Sources for Utility Easement Records

Direct contact with utility companies:

With the rise of GIS-based inventories, many utilities are able to provide easement data fairly quickly upon request. Records availability does vary widely between agencies, but developing a friendly relationship with the pertinent representatives of the utility agencies in your area can be quite mutually beneficial.
Questions?

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