To accept or not to accept.....

THAT is the question

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Course Goals

• Review guidance from the law on acceptance and/or rejection of corner evidence
• Gain awareness of the questions we should be asking about evidence
• Construct a useful list of guidelines for decision making on evidence acceptance
It’s **evidence**, but is it **proof**?

- **EVIDENCE** - “Writings, testimony, or material objects legally presentable at a trial, as a means to prove the existence or non-existence of a fact.”

- **PROOF** - “The effect of evidence, a mental conviction as to the truth or falsity of a proposition; the creation of a belief.”
Basic Definitions

- Corner
- Monument
- Accessory
- Memorial
- Best available evidence
- Common report
- Hierarchy of evidence (bounds vs. metes)
Hierarchy of Evidence

- Natural monument
- Artificial monument
- Record boundary
- Ties from other surveys
- Distance
- Bearing
- Area
- Coordinates

This is not an engineering decision matrix
Fixed Forever? Without error and exact?

- A legal concept
- Not a math issue
- Basis of proportioning; hold the original “intent”
- Basis of a stable society is a set of stable boundaries
- Disputes arise due to interpretation of intent or due to conflicting intent
Boundary v. Property Line

- Sometimes these terms are confused
- For our purposes;
  - Boundaries are original lines created by GLO
  - Property lines start on these
  - Property lines can move away from boundaries by actions or inactions of landowners or courts
  - Boundaries stay fixed
- So what can the courts actually do?
  - Fix the property line between the parties named

Red is original boundary
Green is occupation line

Original +100 years
Reality of Measurements

• Until very recently, measurements were not very repeatable.
• Our laws reflect this issue
• Even now, differing datums, improper use of GPS, improperly monumented or referenced points, and the basic element of human error still prevent us from having perfect measurements
• Thus we are still bound to our bounds……… Not our metes
Example Situation #1

- Evidence called for in the original deed is found, but not at the exact record dimensions
Record Data - Not Aliquot parts
Measured Data

200'
Example Situation #2

- Original deed calls for evidence, but found evidence differs significantly in character, etc.
Example Situation #3

• Original deed calls for no evidence, but evidence is found that somewhat “fits”.
What does the LAW say?

- Statutes
- Regulations
- Case Law

Our textbooks based on Case law!
What does the LAW say?

- The Court System:
- Where do we go for precedent setting cases?
- Equity vs. Precedent
- Most survey cases only heard by “Judge Judy”
- 2 plus 2
Where do we go for precedent setting case law?
State Court System

Final Reviewing Court
(Supreme Court)

Intermediate Appellate Court
(Court of Appeals)

Trial Court
(General)

Trial Court
(Special)
Compiling a Check list

• Age of monument
• Positional precision
• How often used
• Consider the methods used before
• Recognize the true gray areas: heavily deteriorated evidence?
• Occupation?
• Called for?
• Authority of who set it:
  License required?
  Federal authority?
• Landowner’s actions
• Equipment and limitations
• Intent of the parties
Duties of the Surveyor

• Gather evidence and report the facts
• Follow the footsteps of the original surveyor when retracing a boundary (not those of the last retracer)
• Provide expert opinions on evidence and use
• When authorized by statute, court, or party consent, locate new boundary lines (partition, commission, subdivision)
• Monument new boundaries when new land subdivisions are created
What rights does the landowner(s) have?

- The right to rely on your professional expertise!
- A fully researched survey
- An understandable plat, report, description
- Professional guidance to other experts
- The same rights they had before you started the survey
Best Available Evidence? Or Unwritten Rights?

- Same types of evidence, but......
- Different applications
- Often confused together
- Importance of the record
- Reality checks are useful
Whether in PLSS, Colonial, or Tasmanian lands, some things are still the same…

- Evidence is not proof!
- What is the “best available” evidence?
- A monument is not a corner
- It’s not “how far off” a monument is from the deed call that matters; it’s the original intent that counts.
- Anyone can do math, but only a licensed Professional surveyor can analyze boundary evidence.
- There can sometimes be more than one “reasonable” answer.
Don’t answer a legal question........
.......with a math answer!!
Conclusion

• Final questions or observations

• Course evaluation forms

• Overall Summary
Thank You for Your Participation

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