

Physical Features As Evidence Of Boundaries

PREPARED BY THE PRACTICE ADVISORY COMMITTEE

Frequently, surveyors are faced with the evaluation of man-made features, i.e. fences, curbs and walls, hedges and tree lines, as evidence of boundaries. The following is a synopsis of some evaluation questions to be considered.

A. The feature as evidence of a survey line.

- a) Is there a written record of the survey - notes, plans, reports, descriptions, historical records?
- b) Is there physical evidence of a survey - monuments in the vicinity, blazes, reference marks such as nails, cut crosses, cut arrows, bearing trees, stone mounds, etc.?
- c) Do the features mathematically fit with survey monuments nearby or with the expected mathematical position of the boundary?
- d) Does the feature date to a time when original monuments likely were in place or does it replace an older feature? *Diehl v. Zanger* - "that a long established fence is better evidence of actual boundaries settled by practical location than any survey made after the monuments of the original survey have disappeared."

B. The feature as evidence of the first running of the line without benefit of survey.

- a) Does the age of the feature indicate its creation in the period that the Written description was created?
- b) Is there historical evidence as to the construction of the feature? Were the parties to the construction also parties to the first severance?
- c) Does the continued occupancy to these old features indicate the presumption that they were the boundaries despite a written description at variance with the actual locations?

Kingston v. Highland - "However erroneous may have been the original survey, or even if there were no survey at all, technically speaking, the monuments that were set, the trees that were marked and blazed, must, nevertheless, govern."

C. The feature as evidence of a conventional boundary.

- a) Are there ambiguities in the description of adjoining properties or was the boundary in dispute?

- b) Has there been an agreement by adjoining owners to establish the boundary? Have the owners lived up to this boundary?
- c) Has the boundary always existed in this location?
- d) Can a conventional boundary exist where the true line is simply unknown but determinable under operation of some statute?

(*Bea v. Robinson*)

D. The feature as evidence of a possessory limit. While adverse possession is a matter of title, it relates to a claim of possession beyond the true boundary which must first be proven.

- a) Do survey monuments or other features exist to indicate the location of the true boundary line?
- b) Have adjoining owners occupied to the feature over the requisite period of time?

The illustration of boundary evidence often causes concern to practitioners since the STANDARDS require that our plans show:

- a) the position and form of all survey evidence found, conflicting or otherwise.
- b) the procedure used in re-establishing all existing boundaries forming part of a survey or on which a survey is dependent.

In general, editorial notations should not be placed on plans since these often raise more questions than provide answers. If it is necessary to explain evidence used, it should be included in a memo to file or a report to the client. A simple illustration of "fence on line" on the plan is usually sufficient.

In those rare instances when an agreed upon boundary is not marked by a physical feature, the line on the plan should be noted as "boundary by agreement of adjoining owners" and your file should contain an affidavit or other documentation of the agreement.