

November 2014

SIDE SHOTS

Professional Land Surveyors of Colorado

Volume 45, Issue 4



A LONGSTANDING PROFESSION

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Rule of the Month, 38-51-104(3)(a)

By Earl Henderson, PLS

We're going to talk about this statute, but first let's start elsewhere. I want to remind everyone reading about Board Rule 6.12 because I believe that it's in relation to ALTA surveys that this issue arises quite often. Board Rule 6.12 states, "It is the Board's interpretation that the Minimum Standard Detail requirements for ALTA/ACSM Land Title Surveys cannot be met without all monuments being found or set, even if Item 1 of Table A Optional Survey Responsibilities and Specifications is not requested. The ALTA/ACSM Land Title Survey is considered by the Board to be a monumented land survey and a land survey plat shall be deposited if required by Section 38-51-107, C.R.S." So simply stated, an ALTA survey requires a Land Survey Plat (LSP) which must meet all the requirements of a LSP. Hopefully we've all come to grips with this, but there are some PLS's out there that have yet to do so. And of course one of those requirements is that all monumentation for LSPs, including ALTAs, must be set according to 38-51-104. Now there are quite a few requirements for the monumentation of LSPs, and 38-51-104(3)(a) is just one, but let's now concentrate on that one.

38-51-104(3)(a) states, "If the monuments or markers required by subsection (1) of this section cannot practicably be set because of steep terrain, water, marsh, or existing structures, *or if they would be lost as a result of proposed street, road, or other construction*, one or more reference monuments shall be set." (emphasis added)

If you're doing ALTA surveys you likely run into the situation quite often where your survey immediately precedes the total obliteration of the site for reconstruction into a gas station, bank, or Super Store of some generic kind. And of course when I say total obliteration that includes the monuments you just set. And like all of us you hate to set monuments that you know are going to get annihilated by scrapers before you can even leave the site. And to top off all that, we all want to provide the best service to our clients for their money, so setting monumentation that we know in advance will be destroyed goes against our grain and seems unnecessarily costly to the client, who will be charged for re-setting those monuments that we knew were going to be destroyed in the first place. No

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client likes to pay for duplicate services. Unfortunately, my response to all that has to be..."I'm sorry, but the statutes are clear." The monuments have to be set. Did you notice the underlined word "shall"? So what's the solution?

I see two possibilities to solve this dilemma, but then again, my sight is sometimes limited so there may be additional possibilities. First, inform the client of the statutory requirements that you must practice within and let them know ahead of time that your cost includes the setting of the monumentation at the time of platting and the re-setting of the monuments after construction. The re-setting is a highly valuable commodity for them since it will continue to outline their property lines for a long period of time following the completion of their project. Not only that but it will prevent them from being charged with a Class 2 Misdemeanor based on C.R.S. 18-4-508 for destroying the first set of monuments. And referencing monuments that are scheduled for destruction as a result of construction and then re-setting them is an acceptable practice. Just make sure you also document that effort after re-setting them with a deposited plat, monument record, exhibit map, or some other means. But since you already have a plat drafted and deposited, it's a simple matter to draft a revision to the plat indicating that the monuments were destroyed during construction and reset on Thanksgiving Day.

But within 38-51-104(3)(a) there also lies another option that is italicized above. If you know that your monuments are going to be lost as a result of anticipated construction activities, then simply set reference monuments in a better location and document that on your ALTA survey plat. To my way of thinking, why would you do it any other way? If you know the monuments in their accurate locations are definitely going to be destroyed, then setting reference monuments allows for the possibility that the reference monuments won't be destroyed. If they are destroyed then you and your client are back to the first situation and nothing is lost, whereas if the reference monuments are not destroyed your client saves money and you've provided a valuable service that they will hopefully come back for again and again. And now that you've read this, you can anticipate the situation during a meeting with the client and describe to them how much more knowledgeable you are and how much more valuable your services are than your competitor's, who are also reading this and telling their clients.....

Be safe out there. Those scrapers are right behind you.

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