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# SIDE SHOTS

Professional Land Surveyors of Colorado

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# Rule of the Month

By Earl Henderson, PLS

**6.5.5.1 Plats to be Deposited.** All plats required to be prepared pursuant to Section 38-51-107, C.R.S., shall be deposited with the county in which said survey was performed and a copy of the plat shall be delivered to the client. *In addition to the requirements set forth in Section 38-51-107, C.R.S., a plat must also be prepared and deposited for any monument found substantially at variance (according to Rule 6.5.6), with dimensions shown on deposited or filed plats or if the monument results in conflicting boundary evidence which has not previously been shown on a plat deposited or filed in accordance with Section 38-51-107(1), C.R.S.* Said plat shall comply with all applicable provisions of Sections 38-51-107 and 38-50-101 C.R.S. (*emphasis added*)

I'm going to go out on a limb here and guess that most of the Professional Land Surveyors (PLS's) in Colorado know that they have to prepare and deposit plats in their county as described in the first sentence of this rule. Like other situations I've written about however, it concerns me that many PLS's may not read beyond the first sentence of the rule. There's a whole lot of meat after that first sentence.

I'm going to go out on another limb and guess that most PLS's are aware of the "20 year rule", which is actually Statute 38-51-107(2), C.R.S. "No plat shall be required to be prepared or deposited if the monuments accepted or set are within a platted subdivision that was filed in the clerk and recorder's office within the previous twenty years." This statute replaced an older version a few years ago that we all remember and that stated "No Plat shall be required to be prepared if the monuments accepted or set are within a platted subdivision which was filed after July 1, 1975." Personally, I think it's a good idea to have the rolling 20 year rule rather than the fixed date. Otherwise, 50 years from now there might not be any plats being deposited at all. That would of course be wrong, but that's a topic for another discussion.

Like I said, most of us know the 20 year rule and rely on it too, but the 20 year rule is an option of course. You can deposit a plat anytime you choose even though 38-51-107(2) allows you to opt out in some, but not all, cases. But remember that extra meat in Rule 6.5.5.1 I

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mentioned before? Those are some additional requirements that remove that option from the 20 year rule. In other words, just because you're working in a platted subdivision that was filed within the past 20 years doesn't automatically mean that you don't have to file a plat. Rule 6.5.5.1 gives us two situations in which we are required to deposit a plat, even if we're working in a very recent subdivision and states so directly regardless of the "20 year rule", Statute 38-51-107(2).

The first situation is *"for any monument found substantially at variance (according to Rule 6.5.6)." Rule 6.5.6 allows us to use our "professional expertise and judgment" in determining if a monument is substantially at variance but also requires us to "meet or exceed the minimum standard of care". The first aspect of this situation that bears some scrutiny is that we fall under this requirement if ANY MONUMENT FOUND is substantially at variance, not just the monuments defining the lot we are surveying. Assuming we're surveying just one lot in one block in a recently platted subdivision, we are likely, and I would go further to say hopefully, going to locate a substantial number of monuments outside of our lot in that block and perhaps even some beyond the limitations of the block. So if any one of those is substantially at variance, we must deposit a plat.*

The second aspect of this situation that bears some scrutiny is the definition of "substantially at variance", which is not specifically defined by Statute or Board Rule. We can argue and discuss error ellipses, precision, significant digits, and other mathematical defini-

tions of variance, but to me there's one easy way to see it without question. If you locate a monument that you choose not to accept for any reason, then that monument would likely be considered "substantially at variance". There may be additional situations in which a monument can be termed "substantially at variance", but if you choose not to accept it, then in my opinion it must be "substantially at variance", otherwise you'd have obviously accepted it. Conversely, if you do accept a monument in its current location, then obviously in your "professional expertise and judgment" it is not "substantially at variance". Some other PLS might argue differently, but by accepting it you are obviously arguing in favor of that monument being accurate.

The second situation in which we are required to deposit a plat even in a recent subdivision is underlined for emphasis above and deals with *"conflicting boundary evidence."* Again, imagine yourself surveying that lot. If you choose not to accept a monument, that would, IMHO, mean that the unaccepted monument is conflicting boundary evidence. If you find a pincushion at any location, then you obviously have conflicting boundary evidence because they can't all be correct. If you set a pincushion in any location...well, there have been books written about that. Let's leave that one alone. There's already steam venting from my ears just thinking about it. But don't forget that conflicting boundary evidence can be many more things than monumentation found or set. Fences and other improvements can represent conflicting boundary evidence for example. A statement by the property owner or adjoiner (Parol Evidence) may represent conflicting boundary evidence. One of the reasons we're considered professionals is because we make these kinds of judgments. So if you set a monument in a recent subdivision thinking that you don't have to deposit a plat, before you walk away, look around. If the fence lines don't agree with your location, or if there's other evidence that doesn't comply with your location, you must deposit a plat unless, as is stated, that evidence is already shown on a previously deposited plat.

The list of possibilities that represent conflicting boundary evidence is, of course, infinite. But the overall idea remains the same. Don't blindly assume that just because you're working in a subdivision that was platted less than 20 years ago, that you automatically don't have to deposit a plat. I would feel awfully embarrassed to find myself in court, because of a monument with my LS# on it, for which I did not deposit a plat, but which either caused, or contributed to a lawsuit between neighbors, perhaps because it didn't agree with their fences, and which showed up on two other surveyors' plats working for those two parties in the law suit. How are you going to explain that to the judge?

## Calibration Baselines

NGS in conjunction with CDOT and the PLSC is planning various CBL activities in June 2013. Currently we are looking at holding a "Users" workshop along with re-measuring the Durango CBL the week of June 10th and a "Users" Workshop along with re-measuring the Highline CBL the week of June 17th. A team was formed (Shawn Clarke, Roger Kelley, Scott Kimminau, Kevin Kucharczyk, David Kuxhausen, Chris Raml, JJ Rihanek, Jack Sparks, Dave Stewart) and they are exploring a site for another CBL in the Denver Metro area. If that all comes together we will look to install the new CBL June 20-21.

Please contact Pam Fromhertz, Pamela.fromhertz@noaa.gov, 303-202-4580, or the PLSC website for more details, plsc.net.