

May 2012

SIDE SHOTS

Professional Land Surveyors of Colorado

Volume 43, Issue 2



Prst std
U.S. Postage
PAID
Denver, CO
Permit No. 1222

Diana Askew, PLS
PLSC, Inc.
PO Box 704
Conifer, CO 80433



The Statute of the Month: 38-51-106(f)

by Earl F. Henderson, PLS

Every land surveyor in Colorado should be familiar with Colorado State Statute 38-51-106 in its entirety. This is the famous 10 items that need to be on your Land Survey Plats (LSPs). Some of you can even spout them off by heart. I prefer a checklist, but hey, that's just me. But let's take a closer, more intimate look at 38-51-106(f) which reads:

A description of all monuments, both found and set, that mark the boundaries of the property and of all control monuments used in conducting the survey. If any such boundary monument or control monument marks the location of a lost or obliterated public land survey monument that was restored as a part of the survey on which the plat is based, the professional land surveyor shall briefly describe the evidence and the procedure used for such restoration. If any such boundary monument or control monument marks the location of a quarter section corner or sixteenth section corner that was established as a part of the survey, the professional land surveyor shall briefly describe the evidence and procedure used for such establishment, unless the corner location was established by the mathematical procedure as outlined in section 38-51-103. (Emphasis added)

There are a few aspects to this statute that we need to have analyzed and know. But just so we're all on the same page, 38-51-103 is the statute that stipulates that subdividing a section will be done by the current BLM manual methodology along with some other stuff not pertinent to this discussion.

I would be willing to bet that those of us who have the magic 10 list committed to memory only have the first sentence of this one in mind. And let's face it, describing the monuments you've found and set is easy. But the meat of this statute is in the remainder. I'm going to take the remainder in the reverse order that it was written.

So, backing up from the mention of 38-51-103, the last sentence of 38-51-106(f) states the surveyor *shall* describe both the evidence and procedure used to *establish* the corners in question unless he used the BLM manual methodology. But wait a minute. The vast majority of the surveying we do these days is retracement surveying wherein we are not *establishing* anything. We are retracing the surveys that *established* the original corners. So unless you are performing an original subdivision of an aliquot part, this sentence doesn't apply to what you're doing. If a farmer has contracted me to subdivide his land, the NE 1/4 of Section 15 for instance, into aliquot parts, then I can accomplish this task using the appropriate BLM manual methods and

not have to explain myself on the face of the plat. I can set the 1/16th corner monuments and the dimensions should easily demonstrate to any other land surveyor that I split the distances along the appropriate lines and intersected the others. I can still describe my methods if I want to, but I don't have to. But that kind of survey doesn't happen very often anymore.

More often than not, in fact the vast majority of the time, we are performing retracement surveys where the aliquot parts have already been subdivided by some previous method and the corners previously *established*. In those cases the last sentence of 38-51-106(f) doesn't apply and we are no longer exempted, no matter what our methodology, from explaining "*the evidence and the procedure used*" to restore the corner locations and set the monuments. In fact, in the previous example of the NE 1/4 of Section 15, this applies to the survey of the perimeter of the property while the last sentence of 38-51-106(f) applies to the subdivision of the 1/4 section. It may initially seem confusing but it's not really. When you're retracing anything and in the process restoring PLSS monuments, you need to explain yourself on the face of the plat. When you're performing an original subdivision of PLSS aliquot parts, you can do so by BLM methodology without re-explaining the process as the BLM has already done in the manual.

You may think that's all there is to it, but you'd be wrong. Because restoration of lost or obliterated PLSS corners shouldn't be done by the proportionate methods except as a last resort. The 2009 BLM manual states in many places that retracement surveys should rely on evidence over proportioning, not to mention the courts having made the same ruling many, many, many times. As I've said in the past, using proportionate methods is the equivalent of saying you've given up and can't find any other means of restoring the corner to its *original* location. I don't like being called a quitter so I am very selective about using proportionate methods. Therefore, if you're following the law and using the priority of evidence (1-Lines marked in the field, 2-Natural Monuments, 3-Artificial Monuments, 4-Adjoiners/Bounds, 5-Courses, 6-Distances, 7-Areas.), you must explain what that evidence is and the procedure you used to restore that corner on the face of the plat. And furthermore, you can't use proportionate methods (#5 & #6) until you've exhausted all the previous evidence possibilities.

Let's review a little.

1. The only time you can proportion a PLSS corner monument and not describe the evidence and procedure you used is when performing an original subdivision of an aliquot part of a section using BLM manual methodology.

2. If you're performing a retracement survey and restore PLSS corner monuments, you must describe the evidence and procedure you used.
3. If you restore a PLSS corner monument during a retracement survey by use of some evidence you must describe that evidence and the procedure you used from that evidence to restore the corner.
4. If you restore a PLSS corner monument during a retracement survey by proportionate methods you not only must describe the method you used but you must also state that there was absolutely no evidence available to restore that corner by some other means since proportionate methods are only of a last resort variety.

Most of the plats I see that show the restoration of a PLSS corner monument have no explanation on them at all. I would venture to guess that most surveyors in Colorado think that if they're following the methodology of the BLM manual they don't have to explain themselves, but they'd be wrong in any retracement situation. Of course I'm in the camp that believes it's pretty near impossible these days to not find any evidence whatsoever, which precludes me from using proportionate methods the vast majority of the time, but that's an argument for another issue.

But let me ask you a rhetorical question, since you can't answer me anyway. Why not explain your evidence and procedure in every case? I have found that by doing this on a regular basis it forces me to review my thought process thoroughly. In so doing I have learned a lot more than if I didn't do it and have become a much better Professional Land Surveyor (in my own eyes of course) and continue to learn more each time. After all, retracement surveying is more about the law than the measuring and dimensions and there's no end to what you can learn about the law. 38-51-106(f) applies to PLSS corner monuments only, but I have found that since I started developing what I call a Surveyor's Narrative for each boundary I survey, that I explain my boundary decisions as fully as possible regardless of if the corners are marked by PLSS corner monuments or not. The clients love the explanation. I'm a better and more thorough land surveyor. And I have had fewer "disagreements" with other surveyors related to gaps or overlaps or boundary line locations because they can see clearly what I was thinking. If they're going to disagree with me they then have to have a very good reason, to which I try to always be open. I try, anyway.

Have fun out there. ■

COMM.TECH

Increasing your bottom line

with customized drafting and design software solutions since 1994

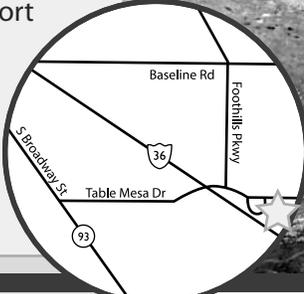


products

- AutoCAD LT
- AutoCAD
- Map 3D
- Civil 3D
- Infrastructure Design Suites
- Infrastructure Map Server
- Raster Design
- Design Review
- Subscription

services

- State of the art training facility
- Implementation & customization
- Workflow analysis consulting
- Styles & standards set-up
- License activation support
- License compliance
- Technical support
- Pilot projects
- Transition assistance
- On-site consulting
- Government Specialist



303.530.4976 | www.ctcivil.com

5398 Manhattan Circle
Boulder, CO 80303

Autodesk
Silver Partner
Architecture, Engineering & Construction
Authorized Government Partner