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SIDE SHOTS

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Signing of SB 13-161 at the State Capitol • See page 5

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Becky Roland
Executive Director
PLSC, Inc
PO Box 460022
Denver, CO 80246

Rule of the Month

By Earl Henderson, PLS

What direction is “Northerly”? How many times have we read this in a description about property? Is it True North? State Plane Grid North? Magnetic North? Clap a 90° from sunset north? Is it parallel to the east section line? And how many degrees off of any of these definitions of north can you get before you’ve gone beyond the definition of “Northerly”? If these are the kinds of things your mind conjures up when you read the word “Northerly” or any other “...ly” word in a description, then you are most definitely heading in the wrong direction.

Here we go again. I’m going to say it again, and I may never stop saying it. We are, 99% of the time, retracement surveyors, so our duty is to find the best evidence of the location of the property line *as originally laid out*. Did you notice I didn’t say “surveyed”? There’s a very good possibility that if the word “Northerly” was used in a description that the line was NOT surveyed, at least not by a trained surveyor. But that does NOT make the original property line location any less valid. It may even have been clapped and paced. That’s okay. Don’t panic. Clapping and pacing is still a valid way of measuring today just like using a plane table is still valid, or a Gunter’s chain is still valid. We have more precise equipment available to us, and generally it’s more cost effective to use it, but it’s not a requirement. The important thing to remember is that the modern equipment is NOT more accurate, it’s only more precise. I believe that A. C. Mulford in his book *Boundaries and Landmarks* is the person first credited with the quote “...it is far more important to have a somewhat faulty measurement of the spot where the line truly exists than it is to have an extremely accurate measurement of the place where the line does not exist at all.” Mulford should have used the word precise instead of accurate, but hey, it was 1912.

I ran across another wonderful quote recently in a publication that was given to me by a colleague. It is from the case of *Johnson v. Westrick*, 200 Wis. 405 (1930). It is also still applicable today. In trying to deter-

mine a street ROW, which, by the way, is only another property line, the court stated, “It was held that the east line of the street was where the original surveyor placed it, *not where it should be* according to resurveys or subsequent surveys; that subsequent surveys are worse than useless; they only serve to confuse, unless they agree with the original survey.” (emphasis added) In the case of the “...ly” words, we must ask, who was the original surveyor? It may have been the property owners. That’s okay. They are allowed to do that. And that may be precisely why the “...ly” word was used because they didn’t know what the precise bearing was that they were measuring. But if they put monuments in the ground then those original monuments define those locations accurately, even if we measure them today as “too far off”. And remember, those monuments won’t look like yours and mine. They may be fence corners. They may be axles. They may even be a whiskey bottle. (How precise do you think those corners would be? :) But again, that’s okay. Those are all valid.

So let’s stop and think about this for a moment. If the description used a “...ly” word, then it doesn’t matter if it was surveyed by a trained land surveyor or by a father/son farmer duo for the son’s inheritance. In either case, the folks involved didn’t have a precise idea of what direction they were measuring. So how are we, as equipment savvy precise modern measurers going to ever determine that direction by using some mathematical methodology? It ain’t going to happen. And yet our duty is still to “follow in the footsteps” of whoever that was. How can we do that with a calculator/computer/data collector/total station/GPS unit that we paid \$150,000 for? Easy, lift your eyes up and away from the screen.

My suggestion is that when you first read a “...ly” word do what a friend of mine recently said to me, “Quit reading the description. Look up. Look around. And look for the property.” 90% of the time the definition of Northerly will be right in front of you.