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SIDE SHOTS

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Rule of the Month: Rule 6.5.1 - Find and Flag

By Earl Henderson, PLS

Rule 6.5.1 is an interesting Rule to review and ponder. It outlines some, but not all actions which will be considered by the Board to fall within the definition of a Land Survey. I'm not going to try to review all the aspects and ramifications in this article of 6.5.1(a)-(f) & 6.5.1.1. I may come back to some others in future articles, but suffice it to say that this is part of what the Board uses to decide if actions by a licensed land surveyor constitute the practice of land surveying and subsequently then if the PLS should be reviewed for possible disciplinary action.

But for the purposes of this article I want to focus on 6.5.1(a) & 6.5.1(c) especially as they relate to the practice commonly referred to in our industry as a "Find and Flag" operation (F&F). In the remote case that you don't understand what is meant by F&F, consider yourself fortunate. I recommend you don't even consider doing it, and you might even be better off to stop reading this article right here. But at the risk of informing those PLS's who would take advantage of their position and the public, F&F is when a PLS, or PLS's representative, visits a property, *finds* apparent property corner monumentation, *flags* that apparent property corner monument for the property owner, and then ceases further activity and departs the site. The property owner likely feels they've received a legitimate land surveying service in that they couldn't find their own property corner monumentation by themselves, but they can now rely on those found monuments to complete whatever it is they intend, i.e. build a fence or determine a setback for a shed, etc. The PLS may feel as though a legitimate service has been provided, yet they've avoided the requirements to complete any measurements or draft and deposit a plat, while saving the property owner significant charges and possibly even outsmarting their competition.

But those PLS's who feel that way should think again. There are so many pitfalls for a F&F on a property it's almost impossible to outline them all. The most obvious is, what if you've just indicated to the property owner that a particular monument marks their corner location, when even a quick measurement would show you that it's not the right location? How are you going to explain that to your insurance company, or worse a judge? And let's face it, there's really no doubt in anyone's mind, the PLS or the property owner, that the property owner is going to interpret the found monumentation to represent their property corners, agreed?

But the Board isn't concerned about your insurance policy or what a judge might think. Board Rule 6.5.1(a) reads, "The establishment of boundaries or the restoration or rehabilitation of any monument marking a corner that controls the location of real property." Think about this in relation to the F&F. During a F&F a PLS is not establishing boundaries. That's the purview of an original surveyor. But it's not too difficult to see that a F&F can be interpreted as "restoration or rehabilitation of any monument marking a corner". If it didn't mark a corner, why was it shown to the property owner and flagging tied on it?

Board Rule 6.5.1(c) reads, "The determination of the position of any monument, reference point, or any other mark, when such monument or mark controls the location of boundaries or rights of ownership in or use of real property." How much more clear can it be stated? A F&F is exactly this. Now some may be thinking that "determination of the position" should be interpreted to mean measurements were taken, but that's not the case because measurements are clearly considered in 6.5.1(e). Others may be thinking that the phrase "controls the location of boundaries..." can be sidestepped by telling the property owner that the PLS is not taking the responsibility that any of the monuments found are correctly marking a corner. But the whole point of a F&F is so the property owner will know their property boundaries and likely use the found monuments to accomplish some task on their property. The property owner is certainly going to use those found monuments to "control the location of boundaries or rights of ownership" for their property. And the F&F PLS just pointed the monuments out to the property owner, thereby taking on that responsibility and liability.

Clearly then, F&F falls within the definition of a Land Survey. A Land Survey is defined under 38-51-102(11). A Monumented Land Survey under 38-51-102(13) is defined as a Land Survey with monuments "either found or set". And 38-51-107 requires a plat to be prepared and deposited when performing a Monumented Land Survey. So a F&F does not prevent the PLS from having to prepare and deposit a plat. Seems like clear logic to me.

But I've found that common sense is often better than logic. First, as Professional Land Surveyors, it is our responsibility to protect and serve the public. That includes protecting your client from themselves sometimes but also protecting all their surrounding neighbors. How can a F&F possibly protect, or in any way serve any of these property owners? Second, let's hypothetically suppose you happen to know a PLS that performs F&F operations as a routine part of their business. It's my opinion that it's likely that at some point during this "fictional" PLS's career there will be a monument found and flagged that does not represent the correct corner location for a particular property. But the property owner relies on that location because it was found by a "professional" (although I hate using that word in this case). Later it turns out their neighbor gets a Monumented Land Survey and determines that the F&F property owner has encroached upon their property with some improvement, or worse yet, possibly one party or the other has established a fence and now has an adverse possession case worthy of merit. Once the truth comes out, who do you think is going to be in front of the judge, and then the Board, trying to explain the merits of a the F&F "service" they provided? And how much insurance do you think that particular PLS carries? Or a better question may be, what is that PLS's house worth?

Be safe out there. And please also be responsible. ♦