THE CARE AND FEEDING OF ATTORNEYS:
WHAT LAWYERS WANT FROM SURVEYORS.
MINNESOTA SOCIETY OF PROFESSIONAL SURVEYORS
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This presentation will briefly discuss the profession of surveying from a legal perspective; it is intended to provide information helpful in both working with attorneys on a day-to-day basis, and in presenting evidence for use in litigation.

I. COMMUNICATION.

A. Frequency, Timing Issues.

When working with attorneys, the surveyor should always keep in mind that attorneys are often working under deadlines over which they have little or no control. For example, an attorney representing a buyer of real estate is often working under a "due diligence" contingency deadline set in a purchase agreement in which the attorney has a set amount of time to investigate the property before closing and, if problems are discovered that cannot be cured, the buyer can terminate the purchase agreement without losing its earnest money deposit. This due diligence period will often include a survey so that the buyer can determine if there are problems with the property such as encroachments or problematic easements. The buyer's attorney will need sufficient time to review the survey before the deadline passes. Similarly, in litigation, attorneys are subject to the court's scheduling order which contains deadlines for discovery, disclosure of expert witnesses, production of trial exhibits, and of course the trial date itself.

The organized attorney will be well aware of these deadlines and will communicate his or her expectations regarding the completion of the survey work to the surveyor. By acknowledging the expected completion date and providing frequent, detailed updates (remember, most attorneys are detail freaks), a surveyor will keep the attorney happy and confident that the project will be done on time—and they're more likely to be hired again.

B. Confidentiality.

Depending on the specific situation, communications between an attorney and a surveyor on behalf of the attorney's client can be deemed privileged or protected attorney work product. In other words, the opposing side in litigation is not entitled to see a copy of letters and emails between the attorney and the surveyor as part of the discovery process of the lawsuit. Even so, a surveyor should always assume that anything he or she writes might one day be seen by an opposing party and even used in court. The old maxim "discretion is the better part of valor" certainly applies. Accordingly, avoid giving opinions in writing unless the attorney specifically requests you do so and stick to the facts.

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II. WINNING SURVEY BATTLES.

A. The Nature of Survey Disputes.

The Minnesota Supreme Court stated in 1956 that "[i]t is a matter of common knowledge that surveys made by different surveyors seldom, if ever, completely agree." *Erickson v. Turnquist*, 77 N.W.2d 740, 743 (Minn. 1956). Earlier, that Court had noted that "the greater number of surveys, the greater [the] number of differences and disagreements [that] will occur." *Dittrich v. Ubl*, 13 N.W.2d 384, 390 (Minn. 1944). This is not an indictment of surveyors; lawyers, for example, are hardly more likely to agree on contested matters.

Accordingly, the courts of Minnesota have noted that surveying is an art, not a science:

> [S]urveying is the art of measurement and not an exact science. Changes in nature generally as well as human nature preclude exact duplication of original measurements . . . Comment, *Retracement and Apportionment as Surveying Methods for Re-establishing Property Corners*, 43 MARQ.L.REV. 484, 503 (1960)

Wojahn v. Johnson, 297 N.W.2d 298, 303 (Minn. 1980). The Minnesota Court of Appeals has called such cases, which turn on differing interpretation of legal descriptions, "survey disputes":

> Respondents could have counterclaimed for a reformation of the description on appellants' certificate of title on the quit claim deed they gave Farrell prior to registration. They did not. Respondents obviously thought they could win on the strength of their expert surveyor. *The case was tried as a survey dispute and not as a reformation action*, which presumably would have been tried differently by appellants.

In Re Petition of Geis, 576 N.W.2d 747, 751-52 (Minn. Ct. App. 1998).

Survey disputes come down to which surveyor the district court finds to be more credible.[2] "[W]hen two competent surveyors disagree as to where a boundary line should be, the

[2] Procedurally speaking, parties can bring actions to have boundary lines determined pursuant to Minn. Stat. § 559.23, which reads: "An action may be brought by any person owning land or any interest therein against the owner, or persons interested in adjoining land, to have the boundary lines established; and when the boundary lines of two or more tracts depend upon any common point, line, or landmark, an action may be brought by the owner or any person interested in any of such tracts, against the owners or persons interested in the other tracts, to have all the boundary lines established. The court shall determine any adverse claims in respect to any portion of the land involved which it may be necessary to determine for a complete settlement of the boundary lines, and shall make such order respecting costs and disbursements as it shall deem just. The decree of the court shall be filed with the court administrator, and a certified copy thereof shall be recorded in the office of the county recorder or in the office of

trial court's determination as to which surveyor is correct *depends mainly on each surveyor's credibility* and will not be reversed if there is reasonable support in the evidence for such a determination." *Wojahn v. Johnson*, 297 N.W.2d 298, 303 (Minn. 1980) (emphasis added). The objective of this process is to discern the intent of the parties who originally had the legal description created:

> In the last analysis, the call adopted as the superior and controlling one should be that which is most consistent with the apparent intent of the grantor. . . *The cardinal rule is to ascertain and give effect to the intention of the parties.* In case of doubt, courts should consider the facts and circumstances attending the execution of a deed, the practical construction of it by the parties and their grantees, and the preliminary negotiations. . . . A building or fence constructed according to stakes set by a surveyor at a time when these were still in their original locations may become a monument after such stakes have been removed or disappear, and, next to stakes, they may be the next best evidence of the true line. *City of Racine v. Emerson*, 85 Wis. 80, 55 N.W. 177, 39 Am.St.Rep. 819, supra.

Dittrich v. Ubl, 13 N.W.2d 384, 390 (Minn. 1944) (emphasis added).

The key to the credibility battle is convincing the court that best professional practices were used:

> Among other considerations, a surveyor's credibility is determined by the degree of adherence to government rules, standards, and precedent; the quality and accuracy of his or her factual reports about the land; and his or her capacity to fill in the gaps left by applicable rules with good judgment and sound discretion. *Cf., Erickson v. Turnquist*, 247 Minn. 529, 533–34, 77 N.W.2d 740, 743 (1956) (affirming district court's reliance on one survey over another because latter survey was "vague, indefinite, and unsatisfactory" and was "not traceable to any of the monuments or landmarks of the original survey").

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registrar of titles or both, if necessary; provided that such decree shall not be accepted for such recording or filing until it shall be presented to the county auditor who shall enter the same in the transfer record and note upon the instrument over the auditor's official signature the words "ENTERED IN THE TRANSFER RECORD." A party can also bring a declaratory judgment action under the Uniform Declaratory Judgments Act, Minn. Stat. § 555.01 et seq., to determine the parties' respective rights to property. Additionally, a party can request that boundary lines be established as part of an action to initially register property as Torrens. See, e.g., Minn. Stat. § 508.06 subd. 11 (stating "if it is desired to fix and establish the boundary lines of the land, the full names and addresses of all owners of adjoining lands which are in any manner affected by it shall be fully stated" in the petition for registration.) Finally, one may seek the registration of boundary lines of property previously registered as Torrens property pursuant to Minn. Stat. § 508.671. Britney v. Swan Lake Cabin Corp., 795 N.W.2d 867, 870 -71 (Minn. Ct. App., 2011).

Ruikkie v. Nall, 798 N.W.2d 806, 810 (Minn. Ct. App. 2011). Success at the district court level is particularly important because it is so difficult to appeal survey disputes, as they turn on factual issues: "[W]hen two competent surveyors disagree as to where a boundary line should be, the trial court's determination as to which surveyor is correct depends mainly on each surveyor's credibility and will not be reversed if there is reasonable support in the evidence for such a determination." *Wojahn v. Johnson*, 297 N.W.2d 298, 303 (Minn. 1980). In another case, the Minnesota Supreme Court declined to discuss the differing survey opinions in detail for this very reason:

> It would serve no useful purpose to explain in detail the method of survey used by the two surveyors. The difference in the line which they established obviously occurred as a result of the manner in which they proceeded to do their work. The court's determination of the crucial fact as to which survey was the correct one rests almost exclusively upon the credibility attached to the testimony of these two witnesses. . . . . Reading the testimony of the two surveyors, it is obvious that either could have been accepted by the trial court. Under these circumstances, we cannot say that the findings of the trial court are not supported by the evidence.

Donaldson v. Kohner, 118 N.W.2d 446, 448-49 (Minn. 1962) citing to *Erickson v. Turnquist*, 77 N.W.2d 740, 742 (Minn., 1956) [emphasis added]. There is one exception to this general rule: Where the matter is merely a construction of the actual legal description in a deed, and the issue does not depend on the expert testimony of surveyors, the issue is one of law, not fact. "Where * * * the intent of the parties is totally ascertainable from the writing, construction is for the court." *Mollico v. Mollico*, 628 N.W.2d 637, 641 (Minn. Ct. App. 2001), quoting *Hunt v. IBM Mid Am. Employees Fed. Credit Union*, 384 N.W.2d 853, 856 (Minn.1986) (citation omitted).

B. Case Study 1: *Wojahn v. Johnson.*

In *Wojahn*, Plaintiffs had "brought suit for a determination of the boundary line between their property and defendants', and for a determination that a driveway running close to the boundary line had been dedicated as a public street through public maintenance and use. The Washington County District Court established the boundary line in a location favorable to defendants. . ." *Wojahn et al. v. Johnson et al*., 297 N.W.2d 298, 301 (Minn. 1980). Specifically, the battle was over Plaintiff's access to a driveway, the ownership of which had come into dispute when "The [County Surveyor] completed a remonumentation and survey of Section 8 in late summer 1976. This survey placed the north boundary of defendants' property somewhat to the north of a driveway leading from the western edge of 165th Street in May Township to both defendants' and plaintiffs' homes, thus locating the driveway entirely on defendants' property. At trial, the plaintiffs claimed that the correct boundary should be adjudged further south to extend from about the middle of the disputed driveway westward." *Id*. at 302.

Plaintiffs hired a private surveyor to dispute the County Surveyor's findings, based on three grounds. "The plaintiffs first challenge the validity of the survey by the [County Surveyor], of Sections 7 and 8 in the relevant township, requested by defendants. . . . [P]laintiffs attack the methodology of the [County Surveyor] on essentially three grounds, contending that the survey illegally deviated from the original government survey in angles and distances

between corners, that the county surveyor did not adequately investigate before determining that certain corners were "lost," and that the surveyor inappropriately used double proportionment. *Id*.

This description was given of the particulars of the work done by the County Surveyor:

> [The County Surveyor] testified that his aim in resurveying Sections 7 and 8 was to reestablish the corners of the original government survey, and from those corners to plat the correct boundary lines between sections and quarter-sections. To this end he followed closely the original government field notes and drawings and relied on past records of county surveyors. He was able to find physical evidence of three of the corners of Section 8, the southeast, the south quarter, and the northeast. He was unable to find physical evidence of the other five corners of Section 8 after a preliminary study of those areas in which he felt the corners should be by field measurements and distances and a subsequent search of those areas. He admitted, however, that he did not talk to the residents of the area in attempting to find evidence of the missing corners and that the boundary line established by the reestablished corners does not correspond with existing and previous fence lines. [The County Surveyor] then reestablished the five "lost" corners of Section 8 by reference to the three known corners of Section 8, and by reference to known corners of abutting sections. To this end he used the federal method of double proportionment for establishing a lost section corner. In doing so, [The County Surveyor] found that the northwest and north quarter corners of Section 8, set a few years earlier by the previous county surveyor, were in error. Plaintiff called as an expert [Plaintiff's Surveyor], who testified that in locating lost corner monuments it is important to talk to older people, and that "ancient fences which have been there many years" are "helpful" in locating such lost monuments.

Id. at 302-03.

The Court of Appeals examined these factors separately. It found the County Surveyor could be held credible in saying that the deviation from the original survey distances and angles was not an attempt to modify the government survey, but instead was explained by differences in measurement technology:

> When a resurvey is made of sections, quarter-sections, etc., originally established by United States Government Survey, *the aim of the resurvey must be to retrace and relocate the lines and corners of the original survey*. Even when an original section corner is erroneously placed by an original government surveyor, it cannot be corrected by the courts or a subsequent surveyor. . . . The [County Surveyor] in fact testified that this was his aim-to reestablish the lines of the original survey. The plaintiffs, however, argue that certain discrepancies between the original government field notes and the [County Surveyor's] survey in distances between corners, and in the angles used to establish those corners, prove that the [County Surveyor's] resurvey differed from the original survey. However, [the County

> Surveyor] explained this as being a difference in the accuracy of measuring devices, not as a difference in location of monuments, stating, "We * * * seldom match a dimension between known monuments of what is recorded on the original plat." The trial court should be allowed to credit this testimony, and determine that the discrepancies were due to differences in measurement accuracy and not in the actual size of the section.

Id. at 303 [emphasis added]. The *Wojahn* Court quickly dismissed Defendant's claim that double proportionate measurement should not be used, instead finding it to be consistent with precedent and professional standards:

> The plaintiffs also argue that the system of double proportionate measurement used by Johnson was invalid in the present case, citing no authority. This federal method, however, seems to have been explicitly used and sanctioned by this court in *Grandt v. Town of Pokegama*, 163 Minn. 368, 204 N.W. 317 (1925). Double proportional measurement also appears to be standard surveying procedure when corners marking section boundaries are lost. See Jesse E. Fant, Report on Public Land Survey in Minnesota 45-48 (February 1970) (*publication of the Department of Civil Engineering, University of Minnesota*).

Id. (emphasis added).

The *Wojahn* Court spent the most time discussing Defendant's third line of attack against the County Surveyor's survey: The alleged disregard of collateral evidence. Ultimately, though, it found that due consideration of collateral evidence was given, and the collateral evidence in question was not so conclusive after all.

> More troubling is plaintiffs' argument that the surveyor did not make sufficient inquiry before locating lost corner monuments and did not take existing fence lines sufficiently into account. It is proper surveying techniques not to use the proportional measurement system until all efforts at finding the location of an obliterated monument by collateral evidence have failed. See *United States v. Doyle*, 468 F.2d 633 (10th Cir. 1972); Marquette Comment, supra at 492. In this respect a surveyor cannot totally disregard a long established and maintained boundary fence. See Wilson v. Stork, 171 Wis. 561, 177 N.W. 878 (1920). The facts of *United States v. Doyle*, cited by plaintiffs, however, actually support defendants' position. In that case the Tenth Circuit affirmed a trial court determination that a section corner was lost and that proportional measurement was proper in reestablishing it. That method was proper despite the fact that there was "little contact with owners" by the resurveyor; that the resurveyed line was inconsistent with a blazed tree line; and that a former owner of the property gave positive testimony about markers and monuments that had been staked out along the blazed tree line. The surveyor in Doyle, in attempting to find the corners, only searched the area thoroughly and made inquiries of past surveyors who could supply no helpful information. 468 F.2d at 637-38.

> Likewise in the instant case, the surveyor made a thorough search of the area and relied heavily on the notes of prior surveys. In addition, *evidence of when and where any "boundary" fence existed along the southern border of plaintiffs' property was very equivocal*. At any rate, it would be anomalous to state that such a fence should be conclusive upon a surveyor in locating a survey boundary in the absence of any other evidence that it represents the true original government boundary. The evidence shows that [the County Surveyor] was aware of the fence line, but simply did not consider it conclusive in locating lost monuments. We therefore conclude that the finding by the trial court that five corner monuments of Section 8 were lost and that [County Surveyor] used proper surveying techniques in reestablishing them is not clearly erroneous and should be affirmed.

Id. at 303-04 (emphasis added).

C. Case Study 2: *Sommer v. Meyer.*

This case, considered by the Minnesota Supreme Court in 1912, was brought "to determine a disputed boundary;" specifically, it involved a dispute over the location of a section line, when the original section corner monument had been lost:

> The dispute is as to the location of the section line between sections 9 and 10. The original post set by the government surveyor at the north section corner, between sections 9 and 10, is lost.

Sommer v. Meyer, 146 N.W. 1106, 1106 (Minn. 1914). The County Surveyor had determined the location of the marker, and the district court found that determination to be correct. "In 1907 the county surveyor of Goodhue county located this corner, and with it the section line. The trial court found this location to be correct." *Id*. The *Sommer* Court noted that the County Surveyor had taken the prior location of the marker and eyewitness testimony into account.

> The original government survey was made in 1857. In 1862 a surveyor named Hart located part of this section line, and a highway was established thereon. In 1865 Hart again located this section line and the now disputed corner for one Busch, plaintiffs' predecessor in title, and Busch built a fence on the line. Two witnesses testified that they then saw the original section corner post in place. The county surveyor's corner and line agree substantially with those located by Hart and with the location of the original corner post as testified to by these eyewitnesses. Defendant was present when the government survey was made and saw the corner located. He acquiesced in the Hart survey and the Busch fence line for many years, and there is evidence that in 1907 he admitted that the corner as located by the county surveyor was about correct.

Id. The Defendant's surveyors noted that the call lines for the original government survey were incorrect; they used trees to determine a different location for the lost monument.

> Defendant employed two surveyors. . . They undertook to locate the disputed corner by two government witness bearing trees, which still remain. But the 'calls'

> of the original field notes, to which resort must be had to locate the corner, are admittedly erroneous. The courses and distances called for, and which should converge at a common point, the section corner, do not meet at all. Defendant's surveyors insist that these calls should be transposed and otherwise changed. By changing the field notes applicable to one tree from 'N. 20° W.' to 'N. 18° 06' E.,' and the field notes applicable to the other from 'N. 42°> E.' to 'N. 51° W.,' the lines produced do meet at a common point, which these surveyors insist must be taken as the section corner.

Id. at 1106-07**.** The *Sommer* Court acknowleged that field notes often controlled the outcome of a survey dispute, but determined that the field notes in question were not conclusive because the modification urged by the Defendant's surveyors was more than would be consistent with a transposition, or other typographical error:

> A section corner is where the government surveyors placed it. Where the corner monument is lost, and the markings on witness bearing trees and the calls of the original field notes are clear and consistent, these will usually prevail. Even then they are not conclusive, and other evidence as to the actual location of the original corner may be so clear and convincing that it will prevail over them. . . If the field notes are conflicting and contradictory, their use or rejection becomes a practical question. There is no universal rule applicable to such cases . . . The court must make its decision, as in any other case, by considering all the evidence that will aid it in arriving at the facts, such as the testimony of eyewitnesses as to the location of lost monuments, the testimony of surveyors based on surveys from other established locations, as well as the calls of witness trees and field notes. The direction of lines called for by the field notes may be reversed or varied, if by so doing all the known calls of the survey are harmonized; otherwise the calls are to be taken as they are written. *When they must be warped and changed, as in this case, in order to bring any result at all, most of their value as evidence is gone*. These rules are in substantial accord with the rules of the General Land Office applicable to such cases. See Rule 27, Gen. Land Office Revision of June 1, 1909, Restoration of Lost or Obliterated Corners, etc. . . . The witness trees and field notes in this case do not conclusively locate the disputed corner

Id. at 1107 (emphasis added, citations omitted). In determining whether there was sufficient evidence to justify the District Court's verdict, the *Sommer* Court did note that the County Surveyor appeared to have made some errors in his paperwork:

> Defendant's surveyors verified their location of this line by measurement from other established monuments. The county surveyor located his line in a similar manner. They arrived at different results. Defendant contends that the county surveyor's measurements were palpably wrong, in that he, in fact, in reducing chains and links to feet and inches, used a 10-inch foot. It does appear that in the notations, on his maps, of measurements from witness bearing trees, he made precisely this mistake in two instances, once at the section line a mile to the south, and again at the quarter corner a mile to the west, of the disputed corner. We think

> it does not conclusively appear that he made this mistake in his measurements on the ground. His location of the south section corner in fact agrees with that of defendant's surveyors. His location of the quarter corner differs from that of defendant's surveyors, but the discrepancy is not even approximately the difference that would result from the use of a 10-inch foot. The same may be said of all other discrepancies in their surveys.

Id. In affirming the District Court's ruling favoring the County Surveyor's line, the *Sommer* Court noted that the line was affirmed by other evidence, consistent with proportionate measurement principles, and avoided the inconvenience to the parties of a property line that varied from the one the parties had relied on:

> We are not obliged to determine the extent to which the county surveyor's errors would impeach his whole survey if his testimony stood alone, for plaintiffs do not depend wholly upon the testimony of the county surveyor. His location of this corner is sustained by the Hart survey, by the oral testimony of eyewitnesses as to the actual location of the original corner post, and by the acquiescence of all parties for many years. *It also has the merit of maintaining a proper proportion of the distance* between established monuments; that is, it makes the north line of the N. E. 1/4 of section 9 substantially half as long as the north line of section 10. *This result is always desirable, and is sometimes commanded.* See rule 56, Gen. Land Office Revision of June 1, 1909, Restoration of Lost or Obliterated Corners, etc. Defendant's surveys have none of these merits. *They repudiate the line and the corner established in the Hart survey. They change a line long acquiesced in by these parties. They arrive at an unequal apportionment of the distance between established monuments*, and give to the north line of section 10, 5262 feet, and the north line of the N. E. 1/4 of section 9, 2,665.6 feet.

Id. (emphasis added).

D. Case Study 3: *Dittrich v. Ubl.*

In this case, considered by the Minnesota Supreme Court in 1944, neighbors disputed the location of a lot line because a barn either was, or wasn't, encroaching across it, depending on the location of a line.

> Plaintiff claims that defendant is guilty of trespass upon his property in that defendant's barn, most of which is located on lot 12, protrudes over the property line about 2.5 feet, and to that extent is actually located on plaintiff's lot 13. Defendant denies the charge of trespass and contends that the barn, which was built about 1899, is located entirely upon lot 12. Plaintiff bases his claim upon a private survey of his lot made in 1941, the results of which made such encroachment appear. Defendant relies upon the actual location of lot 13 upon the ground as determined 'according to the plat' of the city of New Ulm provided for in plaintiff's deed.

Dittrich v. Ubl, 13 N.W.2d 384, 386 (Minn. 1944). A key monument in the original plat had been lost and replaced:

> The original plat of the city of New Ulm appears to have been lost, but a certified copy thereof, offered as an exhibit, indicates that one of the monuments used in the original survey was set in the center of Broadway and Center streets. Broadway runs parallel to Minnesota street one block to the west thereof and likewise intersects Center street. F. D. Minium, city engineer for New Ulm from 1912 to 1933 with the exception of 1924 and 1925, testified that this original monument has been replaced by a granite marker.

Id. at 387. Plaintiff's surveyor used two different monuments, ones that had been commonly used in making local surveys. This caused the property line in question to shift:

> [E]ngineers and surveyors for the city on several occasions used as a point of beginning one certain landmark in the form of an iron pipe located in the northwest corner of Minnesota street and Seventh South street, which is hereinafter referred to as the Behnke corner. . . the landmark has been there for about 40 years. An-other monument frequently used for street improvements was a concrete marker located in the southwest corner of Minnesota street and Eighth South street. It appears that this monument has been located there for a shorter period of time . . . The results of plaintiff's private survey of 1941 were reached by using as a point of beginning the iron pipe at the Behnke corner and the concrete monument located in the southwest corner of the intersection of Minnesota and Eighth South streets. . . .There is no dispute in the testimony that, in using the Behnke corner as a point of beginning, the most southerly boundary of lot 13 would extend approximately 2.5 feet farther south.

Id. That two and a half feet, of course, was the amount of the encroachment at issue. Defendant countered that Plaintiff's survey was improper because it did not rely on any monument shown in the original plat:

> Defendant asserts that no trespass has been shown; that plaintiff has failed to use as a point of beginning a monument which is specifically referred to on the plat and the original position of which can be definitely located on the ground at the center of Broadway and Center streets; and that the monuments adopted by plaintiff cannot be traced back to the original monuments as located on the ground when the first survey was made.

Id. The district court ruled in favor of the plaintiff. *Id*. at 388.

The Court of Appeals reversed the District Court. In doing so, it first noted that the original monument shown on the plat could be "definitely and accurately" located by extrinsic or parol (i.e., unwritten) evidence:

> Plaintiff asserts that this is not an original monument. That must be conceded. It is a replacement monument, but it is located in the exact place mentioned on the plat. Extrinsic aids to show actual location of original monuments may be used. It is competent to prove by parol [evidence] the location thereof and, if lost or destroyed, the places where they were set. Two buildings, the post office and the Methodist Church, were properly identified [by the City Surveyor] as having been located with this monument as a starting point. Since the replacement granite marker at Center street is now under the pavement and cannot be used as the starting point, that point would have to be determined by the corners where said buildings are now located. [The City Surveyor] states that this can definitely and accurately be done. Such a monument becomes conclusive in determining the starting point of a survey.

Id. It would therefore be inappropriate to rely on a landmark not shown on the plat as a starting point, even if it was local custom to use them:

> Plaintiff relies strongly upon the fact that the Behnke monument has been used in laying out improvements by the city and that the streets themselves may serve as monuments for starting points. In support thereof he quotes 4 R. C. L., Boundaries, p. 102, § 37, reading: 'A street may be a monument, and in the absence of other controlling calls or landmarks which can be ascertained, the location and occupancy of a street as indicated by * * * its use for many years, may be taken as practical evidence of the true location of the street, and the lines of the street may then determine the location of the boundaries of abutting lands.' (Italics supplied.) We have no quarrel with this rule, but plaintiff does not bring himself within it under the facts in the case at bar. This is not a situation where there is an 'absence of other controlling calls or landmarks which can be ascertained,' but, on the contrary, the record shows a definite monument directly traceable to the one described on the original plat itself.

Id. at 389. And critically, the Benhnke corner relied on by Plaintiffs could not be traced to the original plat:

> Despite its use for many years, its origin is not shown. It is not traceable to the original plat. It does not appear to be a replacement of an original monument designated on the plat. Neither is the concrete marker at Eighth South and Minnesota streets traceable to the monument designated on the plat.

Id. Likewise, some inaccuracies contained in the plat itself would not be sufficient make a resurvey appropriate; the setting of stakes, and subsequent reliance on them, would control.

> It is stated in 8 Am.Jur., Boundaries, p. 787, § 59: 'Purchasers of town lots generally have the right to locate their lot lines according to the stakes as actually set by the platter of the lots, and no subsequent survey can unsettle such lines. In the event of a subsequent controversy the question becomes not whether the stakes were located with absolute accuracy, but whether they were planted by

> authority, and whether the lots were purchased and taken possession of in reliance upon them. If such was the case, the rule appears to be well established that they must govern notwithstanding any errors in locating them.'

Id. This was so despite the fact that it could cause problems for others who had acted in reliance on the Behnke marker; as the *Dittrich* court noted, those issues were not before it.

> [Plaintiff's claim that] a determination in defendant's favor will upset the boundaries of numerous lots in the city of New Ulm which have been determined from surveys made in reliance upon the Behnke monument and upon the established streets and highways and other improvements made by the city. Our answer to this is that our only concern here is whether defendant has committed a trespass by the encroachment of his barn 2.5 feet upon plaintiff's lot.

One final factor in Defendant's favor was the fact that the barn in question had been located in the same place for so long. This provided evidence of the respective parties' intentions:

> Further fortifying defendant's position that no trespass had been committed are the facts that the barn had been located in the same position since about 1899; that the fence separating lots 11 and 12 has been in the same position since 1897; and that a fence stood between lots 13 and 14 from 1906 until removed by plaintiff in 1937, *indicating that the intention of the parties was governed by the location of the lots on the ground as designated on the plat and that the parties placed a practical construction upon the location of the lots in accordance with the measurements of the plat. In the last analysis, the call adopted as the superior and controlling one should be that which is most consistent with the apparent intent of the grantor*. 129 A.S.R. 991, annotation, subd. II. The cardinal rule is to ascertain and give effect to the intention of the parties. In case of doubt, courts should consider the facts and circumstances attending the execution of a deed, the practical construction of it by the parties and their grantees, and the preliminary negotiations. Fagan v. Simms, Minn., 12 N.W.2d 783, filed December 31, 1943; Sandretto v. Wahlsten, 124 Minn. 331, 144 N.W. 1089.

Id. It was also significant that the barn was constructed when the original monuments shown on the plat were still in place:

> *A building or fence constructed according to stakes set by a surveyor at a time when these were still in their original locations may become a monument after such stakes have been removed or disappear, and, next to stakes, they may be the next best evidence of the true line.* City of Racine v. Emerson, 85 Wis. 80, 55 N.W. 177, 39 Am.St.Rep. 819, supra. Defendant's survey used as a starting point the fence in question; and, in accordance with such survey, defendant's lot is actually located on the ground where it should be in accordance with the plat and if the monument at Broadway and Center streets had been used as a starting point. The record conclusively shows that defendant's barn does not encroach upon plaintiff's lot, and there is no trespass by defendant.

Id. It is worth noting that a very similar result was reached in a case considered by the Minnesota Supreme Court in 1956: *Erickson v. Turnquist*, 77 N.W.2d 740, 740-46 (Minn. 1956) (holding in a case where an "addition was originally platted in 1883 and the plat describe[d] and show[ed] a stone monument located at its southwest corner . .. [which] monument [was] no longer in existence," that "it must be apparent that the proper point from which to commence a survey to determine the boundary line between lots within an addition is an original or properly relocated monument or landmark within the addition itself, or from a point directly and accurately traceable to such a monument or landmark.")

E. Case Study 4: *United States v. Doyle.*

In this federal case which has been cited by the Minnesota courts, the United States government sought to eject a trespasser from federal land: "This is an action brought by the Government alleging occupancy trespass by defendants of a portion of the Pike National Forest and seeking injunctive relief against trespass and for removal of improvements from the property in dispute." *United States v. Doyle*, 468 F.2d 633, 634 (10th Cir. 1972). At issue was a boundary running on a section line:

> The Government owns land in the Pike National Forest including the SW 1/4 SE 1/4 , Section 1, Township 8 South, Range 71 West of the 6th Principal Meridian in Jefferson County, Colorado. The defendants are the owners of the north 250 feet of the east 700 feet of the NW 1/4 NE 1/4 , Section 12, adjoining to the south. The dispute here concerns the north boundary line of the defendants' property which is formed by the section line between the described portions of Sections 1 and 12 as it runs along the north of their property. According to the Government the correct section line lies south of the property line claimed by the defendants. The defendants say that that the true line is about 124 feet north on one end and 147 feet north on the other end of the section line that the Government claims to be correct.

Id. The case became a survey dispute, centering on whether a monument was lost, and whether a subsequent resurvey performed by the Government was correct:

> [A] stone marker which was described in the original 1872 survey performed by a Mr. Oakes is lost and that the loss of this marker makes the quarter corner at the northwest corner of the NE 1/4 of Section 12 a lost corner. Therefore the Government maintains that the resurvey made between the northeast and northwest corners of Section 12, and establishing a straight line between them, was the proper basis for locating the true section line and the quarter corner which was located at the midpoint of that line. The defendants, on the other hand, essentially argue that collateral evidence consisting of Forest Service signs, tree blazes and testimony sufficiently established as correct the boundary relied on by them. They say that a determination that a corner is lost is disfavored and that the trial court applied the incorrect criteria and burden of proof in making its

> determination that the corner was lost and erred in accepting the boundary established by the 1965 resurvey.

Id. In examining both issues, the *Doyle* court first noted that Federal law provides that inacurracies in the survey of section lines will not be changed by resurvey if doing so will negatively impact on the ownership rights of property owners:

> 43 U.S.C.A. § 772 [states that t]he Secretary of the Interior may, as of March 3, 1909, in his discretion cause to be made, as he may deem wise under the rectangular system on that date provided by law, such resurveys or retracements of the surveys of public lands as, after full investigation, he may deem essential to properly mark the boundaries of the public lands remaining undisposed of: Provided, *That no such resurvey or retracement shall be so executed as to impair the bona fide rights or claims of any claimant, entryman, or owner of lands affected by such resurvey or retracement* . .”The original survey as it was actually run on the ground controls. It does not matter that the boundary was incorrect as originally established. A precisely accurate resurvey cannot defeat ownership rights flowing from the original grant and the boundaries originally marked off.. The conclusiveness of an inaccurate original survey is not affected by the fact that it will set awry the shapes of sections and subdivisions.

Id. at 636 (citations omitted; emphasis added). The *Doyle* Court next noted that the standard for establishing a boundary marker is lost is difficult to meet, and engaged in extensive discussion about the relevant text in a Bureau of Land Management survey manual:

> The procedures for restoration of lost or obliterated corners are well established. They are stated by the cases cited below and by the supplemental manual on Restoration of Lost or Obliterated Corners and Subdivisions of Sections of the Bureau of Land Management (1963 ed.). FN4 The supplemental manual sets forth practices and contains ex-planatory and advisory comments. [FN4. This manual is a supplement to the Manual of Survey Instructions (1947) of the Bureau. The courts have recognized the manual as a proper statement of surveying principles. See *Reel v. Walter,* 131 Mont. 382, 309 P.2d 1027.]
>
> Practice 1 of the supplemental manual recognizes that an existent corner is one whose position can be identified by verifying evidence of the monument, the accessories, by reference to the field notes, or “where the point can be located by an acceptable supplemental survey record, some physical evidence, or testimony.” Practice 2 recognizes that an obliterated corner is one at whose point there are no remaining traces of the monument, or its accessories, but whose location has been perpetuated, or the point for which may be recovered beyond a reasonable doubt, by the acts and testimony of the interested land owners, competent surveyors, or other qualified local authorities, or witnesses, or by some acceptable record evidence. Practice 3 states that a lost corner is one whose position cannot be determined, beyond reasonable doubt, either from traces of the original marks or from acceptable evidence or testimony bearing on the original position, and

> whose location can be restored only by reference to one or more interdependent corners.
>
> The authorities recognize that for corners to be lost "[t]hey must be so completely lost that they cannot be replaced by reference to any existing data or other sources of information." *Mason v. Braught*, supra, 146 N.W. at 689, 690. Before courses and distances can determine the boundary, all means for ascertaining the location of the lost monuments must first be exhausted. Buckley v. Laird. 493 P.2d 1070, 1075 (Mont.); Clark, Surveying and Boundaries § 335, at 365 (Grimes ed. 1959); see advisory comments of the supplemental manual, supra at 10.
>
> The means to be used include collateral evidence such as boundary fences that have been maintained, and they should not be disregarded by the surveyor. Wilson v. Stork, 171 Wis. 561, 177 N.W. 878, 880. Artificial monuments such as roads, poles, fences and improvements may not be ignored. Buckley v. Laird, supra, 493 P.2d at 1073; Dittrich v. Ubl, 216 Minn. 396, 13 N.W.2d 384, 390. And the surveyor should consider information from owners and former residents of property in the area.

Id. at 636-37.

Despite all that, the *Doyle* Court found the trial court properly ruled that the monument had been lost. Though there was evidence to support both positions at the court below, the finding was justified by the evidence, because a sufficiently thorough search was made:

> The sufficiency of the resurvey investigation *is not free from doubt* since the record shows little contact with owners, who are one proper source of relevant collateral evidence. However, the record shows that the surveyors searched the records of the Bureau of Land Management before the . . survey. The Government surveyor approving the resurvey. . . said that prior surveys were also sought, but none were located, by requests to the county clerk, recorder and surveyor for plats filed as surveys of record. The special instructions for this resurvey recite that inquiry was made of incumbent and past surveyors and Rangers and that no factual data was discovered that would assist in recovery of the missing quarter section corner. And the original quarter corner marker placed during the 1872 survey was not located. The trial court found that this monument was not located, after a thorough search of the area by the surveyor and his crew, and the record supports this finding

Id. at 637-38 (emphasis added).

F. Conclusion.

There are many different forms of litigation over legal descriptions, including claims of ownership based on possession, claims for reformation of documents, and survey disputes. The Minnesota courts resolve survey disputes based on their evaluation as to which surveyor used

better professional practices. This necessitates consideration of those practices, and of applicable precedent. The surveyor who is better able to justify, and explain, his or her conclusion based on those practices is likely to prevail.

III. AERIAL IMAGERY.

In addition to the variety of services provided by surveyors, surveyors have the opportunity to provide the added service to their clients, whether attorneys or not, to point them to resources that may be valuable, depending on the client's objectives in obtaining a survey. There are a variety of resources available that a client may deem useful when reviewed in conjunction with the survey you have provided. For example, when an attorney is investigating a particular property that is the subject of a lawsuit, there may be a critical need for the attorney to obtain aerial images of the property, historical or otherwise. If that is the case, the attorney or the property owner could be directed to the county surveyor; a local University's Archives (e.g. John R. Borchert Map Library); or a variety of companies that specialize in aerial photography.

In addition to the variety of local resources, a property owner or his/her attorney will look to digital satellite images from "the Google machine," for example, as part of their research and investigation into a particular property. While a Google image may be relied on as key source of obtaining information about locations and details, the questions is whether those images are a reliable source of geographical facts and distances.

The following is a snapshot (*no pun intended*) of cases on the topic of using Google images as evidence at trial:

- *Pahls v. Thomas*, 718 F.3d 1210, 1238 (10th Cir. 2013): *Pahls v. Thomas* involved an action brought after law enforcement officials forced Plaintiff demonstrators to move to an unfavorable location to engage in protest activities during a Presidential visit, but allowed a group espousing the opposite viewpoint to remain in place.

  While the parties didn't produce a map, the Court found that based on the undisputed location of the President's visit, it could take judicial notice of a Google map and satellite image as a 'source[ ] whose accuracy cannot reasonably be questioned'" for purposes of that case. *United States v. Perea–Rey*, 680 F.3d 1179, 1182 n. 1 (9th Cir. 2012) (quoting Fed. R. Evid. 201(b)); *see Citizens for Peace in Space v. City of Colo. Springs*, 477 F.3d 1212, 1218 n. 2 (10th Cir. 2007) (taking judicial notice of an online distance calculation that relied on Google Maps data); *United States v. Piggie*, 622 F.2d 486, 488 (10th Cir.1980) ("Geography has long been peculiarly susceptible to judicial notice for the obvious reason that geographic locations are facts which are not generally controversial...."); *see also* David J. Dansky, *The Google Knows Many Things: Judicial Notice in the Internet Era,* 39 Colo. Law. 19, 24 (2010) ("Most courts are willing to take judicial notice of geographical facts and distances from private commercial websites such as MapQuest, Google Maps, and Google Earth.").

  The Court in *Pahls* took judicial notice only to determine the "general location" of relevant events. "We have taken judicial notice of—and drawn our distance estimates from—images available on Google Maps, "a source whose accuracy cannot reasonably

be questioned, at least for the purpose of determining" general distances." *Cloe v. City of Indianapolis*, 712 F.3d 1171, 1177 (7th Cir. 2013) (citing *United States v. Perea–Rey*, 680 F.3d 1179, 1182 n. 1 (9th Cir. 2012).

- Dillon v. Reid, 717 S.E.2d 542, 312 Ga. App. 34 (Ga. 2011): *Dillon* involved a dispute between adjacent lakeshore lot owners where the Reids sued the Dillons claiming that they were in breach of an agreement made for the express and direct benefit of Reid to place their floating dock 132 feet away from the existing dock. The Dillons argued that the trial court erred in admitting evidence for lack of foundation four photographs showing an aerial view of the docks and the portions of the surrounding area.

  In this case, there was not a date stamp on the photographs contemporaneous with the time that they were made, but only stamps indicating a 2010 copyright. Relying on another Georgia Court of Appeals decision, the Court of Appeals confirmed that where a video or photograph lacks accurate date and time stamps, its admission may nonetheless be proper upon additional corroboration. In *Dillon*, Reid testified:

  - that he obtained two of the photographs from the "MapQuest" website and two of the photographs from the "Google" website;
  - that the photographs were taken "around 2006/2007" and the other two "later in 2007 and 2008";
  - that he was familiar with the dates based on the change in lake levels;
  - that the photographs truly and accurately depicted the locations of the docks at issue as of those time periods,
  - that he had personally observed the docks.

  Notwithstanding that he did not have the exact same aerial view as the tendered photographs, Reid explained the basis for his testimony as to the date of the photographs, and he testified that the photographs accurately depicted those locations as of those time periods.

  The Georgia Court of Appeals found that it was within the broad discretion of the trial court to allow the photographs to be introduced to show the locations of the docks during the timeframes testified to by Reid.[3]

[3] Isaacs v. State, 259 Ga. 717, 732(26), 386 S.E.2d 316 (1989) ("Any witness who is familiar with the scene depicted can authenticate the photograph; it is not necessary that the witness be the photographer or even that the witness have been present when the photograph was taken."); Tyler, supra, 275 Ga.App. at 116(2), 619 S.E.2d "A photograph is authenticated by showing it is a *43 fair and accurate representation of the scene depicted.") (punctuation and footnote omitted). "[T]he absence of a [contemporaneous] date and time on the [photographs themselves] would go to the weight, not the admissibility, of the evidence." Holloway, supra, 287 Ga.App. at 658(2), 653 S.E.2d 95. In sum, we affirm the trial court's grant of the motion for interlocutory injunction. "The trial judge has a wide discretion in balancing the equities in a case such as this. There being evidence to support [her], no reversal will be granted thereon." (Citation omitted.) Pittman, supra, 300 Ga.App. at 534(3), 685 S.E.2d 753.

- State ex. Rel. J.B., 2010 WL 3836755, N.J. Super (September 27, 2010): On appeal, a juvenile argued that the trial judge erred in admitting Google Earth maps to prove the juvenile's whereabouts at the time of the subject burglary. The juvenile's attorney objected, asserting there was no "foundation in terms of how accurate Google Earth is. The Judge sustained the object and barred the use of the Google Earth photograph as substantive proof of the distances between the two locations.

  The prosecutor called a detective to testify regarding "the predicate information" required to assess the value of his Google Earth photographs. The detective testified that how he personally visited the properties. The prosecutor offered the detective's testimony as evidence of the reliability of Google Earth.

  In order to illuminate the significance and accuracy of the detective's testimony, the prosecutor showed an atlas map and two Google Earth photographs. Defense counsel objected. The Court overruled the objection:

  > The [c]ourt finds that other than very recently what would have happened is ... that the State would have brought in an atlas map and ask[ed] somebody familiar with the area to point on the map where different locations are and how you would get there. And this is just an updated manner of getting the same information. If the [d]efense wants to show that the information is incorrect, they can certainly do it by either cross examination or they can do exactly what I just suggested and bring in an atlas map and show where the exhibit that the State is offering is incorrect.

  State ex rel. J.B., No. A-2228-08T4, 2010 WL 3836755, at *5 (N.J. Super. Ct. App. Div. Sept. 27, 2010). On appeal, the juvenile argued "there was no testimony that the Google Earth images were accurate reproductions of what they purported to represent at the time of the incident in question, or that the purported representations had not changed between the time of the incident and the taking of the images.

  The New Jersey Court cited the Google Earth photograph and described Google Earth as "an internet-based program that provides a virtual globe through a compilation of, among other things, satellite imagery, maps, terrain, buildings, and other structures. In short, it is a virtual repository of countless overhead photographs of the entire globe."

  Whether a demonstrative aid will be admitted ordinarily turns on whether it sufficiently replicates whatever it is designed to illustrate. *Persley v. N.J. Transit Bus Operations*, 813 A.2d 1219 (App.Div.), certif. denied, 177 N.J. 490, 828 A.2d 918 (2003); *Balian v. Gen. Motors*, 296 A.2d 317 (App.Div.1972), certif. denied, 62 N.J. 195, 299 A.2d 729 (1973). Demonstrative evidence must be properly authenticated before it can be admitted, which, such as in the case of a photograph, "requires testimony establishing that: (1) the photograph is an accurate reproduction of what it purports to represent; and (2) the reproduction is of the scene at the time of the incident in question, or in the alternative the scene has not changed between the time of the incident in question and the time of the taking of the photographs."

In applying these standards, the Court of Appeals in New Jersey concluded the trial judge did not abuse his discretion in allowing the prosecutor to use the two Google Earth photographs in order to illuminate Detective Duffy's testimony about the distances between the cell towers and locations in question.

- Access 4 All, Inc. v. Boardwalk Regency Corp., 2010 WL 4860565 (U.S. Dist Ct., D. New Jersey, Nov. 23, 2010): *Access 4 All, Inc.* involved a claim against Ceasar's Atlantic and Bally's Park Place under the Americans with Disabilities Act. The Court took judicial notice of the fact, obtained from Google Maps, that all three beach towns are located over one hour from Atlantic City. Citing *Hartford Life Inc. Co. v. Rosenfeld,* No. 05-cv5542, 2007 WL 2226014 at *8 n. 5 (D.N .J Aug. 1, 2007 ("This Court takes judicial notice of this fact, which was obtained from Google Maps (http://www.google.com/maps). Cf.Saco v. Tug Tucana Corp., 483 F.Supp.2d 88 n. 4 (D. Mass 2007) (taking judicial notice that "the distance between Manchester and Peabody is 13.34 miles" as reflected on www.mapquest.com)).

- Johnson v. State, 2011 WL 3241858 (Minn. Ct. App. Aug. 1, 2011): Johnson v. State, a unpublished Minnesota Court of Appeals opinion, involved a criminal conviction of David Johnson and a postconviction petition appealing the conviction based, in part, on newly-discovered Google map showing that he couldn't have traveled from Grand Forks to Minneapolis in time to participate in the subject kidnapping. The Court of Appeals agreed with the district court that Johnson could have consulted a number of sources to ascertain the information.

  A defendant is entitled to a new trial based on newly-discovered evidence upon a showing that (1) at the time of trial, the evidence was not known to the defendant or counsel; (2) the evidence could not have been discovered before trial through due diligence; (3) the evidence is not doubtful, cumulative, or impeaching; and (4) the evidence would probably produce an acquittal or more favorable result for the defendant. Rainer v. State, 566 N.W.2d 692, 695 (Minn.1997). The Google map was not allowed because it did not meet the requirements for newly discovered evidence.

While satellite imagery provides great potential for investigating and researching a particular property, case law shows that the reliability and admissibility of such information can be problematic. Nevertheless, aerial images together with a recent survey of the property can be a good combined resource for attorneys and clients investigating a property's history.

IV. ALTA/ACSM SURVEY: REGISTRATION OF TORRENS BOUNDARY.

Minnesota Statute section 508.01 provides that real estate may be registered under the provisions of Chapter 508. A decree of registration contains information including the name and other information about the owner, along with information regarding any estates, mortgages, easements, liens, attachments or other encumbrances against the title. Minn. Stat. § 508.23 subd. 1. Separate from the general authority granted under the statute to register real estate, Minnesota

Statute section 508.671 authorizes an owner of land to petition the court to have all or some of the common boundary lines judicially determined.

The procedure for judicially determining the boundary line of Torrens land in a proceeding following registration is set forth in Minnesota Statute section 508.671: "Section 508.671 shall apply in a proceedings subsequent to establish a boundary…for registered land." Minn. Stat. § 508.02. A proceeding under Minnesota Statute section 508.671 must follow several steps, including:

1. applying by a verified petition to have the district court determine the boundary lines in question;
2. filing the petition with the county recorder;
3. filing a certified copy of the petition with the registrar of titles if any adjoining lands are registered;
4. surveying the premises by a licensed surveyor;
5. filing the resulting survey that shows the correct location of the boundary lines;
6. referring the petition to the examiner of titles for examination and report to the district court;
7. providing notice to all interested parties;
8. fixing the boundaries and establishing judicial landmarks by court order; and
9. filing a copy of the final order with the registrar of titles by the court administrator.

Minn. Stat. § 508.671.

As provided under Minn. Stat. 508.671, the owner of property seeking to have a boundary judicially established must "have the premises surveyed by a licensed land surveyor and shall file in the proceedings a plat of the survey showing the correct location of the boundary line or lines to be determined."

Based on the survey requirement in the statute, you may be or may have been contacted by a client or a client's attorney requesting a survey in connection with a Torrens boundary registration proceeding. An ALTA/ACSM may be required by the Examiner of Titles. Below is an excerpt from the Hennepin County Examiner's Office detailing the requirements, including a certification by a licensed surveyor:

6. If the Applicant has requested that boundary lines be marked by the placement of judicial landmarks, also submit for filing a survey of the land.

The survey should locate the boundary lines by reference to "well-known permanent landmarks." Minn. Stat. §559.25. Typically, the landmarks will be section corners maintained by the Hennepin County Surveyor pursuant to Minn. Stat. §381.12. In the City of Minneapolis, the landmarks may be "Minneapolis City Control Monuments." The Applicant's surveyor may contact the Hennepin County Surveyor or the Examiner of Titles for guidance in the selection of appropriate landmarks.

The survey should contain the land description as stated in the approved Application and a certification by a licensed surveyor similar to the following (based on the 2011 Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys):

To (name of insured, if known), (name of lender, if known), (name of insurer, if known), (names of others as negotiated with the client):

This is to certify that this map or plat and the survey on which it is based were made in accordance with 2011 Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys, jointly established and adopted by ALTA and NSPS, and includes items 1, 8, and 11(a) of Table A thereof. The field work was completed on _____.

Date of Plat or Map: _____ (Surveyor's signature, printed name and seal with Registration/License Number)

Source: http://www.hennepin.us/business/property/examiner-titles

The ALTA/ACSM survey would include the minimum standard requirements as well as three specific items: 1, 8, and 11(a) of Table A.

TABLE A

OPTIONAL SURVEY RESPONSIBILITIES AND SPECIFICATIONS

NOTE: The items of Table A must be negotiated between the surveyor and client. It may be necessary for the surveyor to qualify or expand upon the description of these items (e.g., in reference to Item 6(b), there may be a need for an interpretation of a restriction). The surveyor cannot make a certification on the basis of an interpretation or opinion of another party. Notwithstanding Table A Items 5 and 11(b), if an engineering design survey is desired as part of an ALTA/ACSM Land Title Survey, such services should be negotiated under Table A, item 22.

If checked, the following optional items are to be included in the ALTA/ACSM LAND TITLE SURVEY, except as otherwise qualified (see note above):

1. _____ *Monuments placed (or a reference monument or witness to the corner) at all major corners of the boundary of the property, unless already marked or referenced by existing monuments or witnesses.*

* * *

8. _____ *Substantial features observed in the process of conducting the survey (in addition to the improvements and features required under Section 5 above) such as parking lots, billboards, signs, swimming pools, landscaped areas, etc.*

* * *

11. *Location of utilities (representative examples of which are listed below) existing on or serving the surveyed property as determined by:*

_____ *(a) Observed evidence.*

* * *

Adopted by the Board of Governors, American Land Title Association, on October 13, 2010. American Land Title Association, 1828 L St., N.W., Suite 705, Washington, D.C. 20036.

Adopted by the Board of Directors, National Society of Professional Surveyors, on November 15, 2010.
National Society of Professional Surveyors, Inc., a member organization of the American Congress on Surveying and Mapping, 6 Montgomery Village Avenue, Suite 403, Gaithersburg, MD 20879

V. CONCLUSION.

If you have questions regarding the specifics of this presentation, please feel free to contact the authors. Thank you very much.

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