



By Joel Leininger, LS

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Uncalled-for Monuments

Not long ago a reader requested that I address the topic of analyzing uncalled-for monuments in a boundary retracement. These monuments present puzzles to the surveyor because of their close resemblance to called-for monuments, at least in the eye of the layman—which can be a good thing, and because of the potential for abuse stemming from inappropriate placement—which is almost always a bad thing. (One court, unhelpfully, decided that uncalled-for monuments should be honored “if they were in the correct place.” Well, *that* was easy!)

For those new to the discussion, called-for monuments are those objects mentioned in some surveying writing (and hopefully found on-the-ground during the field investigation). Some restrict the term to monuments mentioned in a controlling grant; others allow for the term to be used referring to monuments mentioned in *any* grant-controlling or otherwise. I use the term in perhaps its most liberal sense: called-for in any surveying document to which I have access in my role as retracement surveyor. I hasten to add that I don’t suggest that simply having a document calling for a monument entitles that monument to deference in the retracement. It merely identifies the monument as originating from or incorporated into that earlier survey. Any further deference must be based on what I know about that survey or its producer. (Which might amount to zero.)

The origin of uncalled-for monuments, in contrast, is unknown; they volunteer for consideration in the retracement analysis by virtue of their being found in the vicinity of the corner. The tantalizing aspect of serendipitous

monuments stems from our realization that their planter may have known something unknown to us about the boundaries. (“Why else would the pipe be over there?”) Retracement is a task of discovery. But like all such tasks, we are not promised success in finding the whole truth.

Uncalled-for monuments are also a component of “pin-cushion corners.” These corners, locations with two or more markers within a small area, have irked some surveyors, they believing that multiple, conflicting attempts by surveyors to mark the same corner demeans us all in the eyes of the public. No doubt there is some merit to that concern.

We surveyors know, of course, that exactness in the real world is relative, prone to varying interpretations depending on the situation, the surveyor and his equipment. But the courts have ignored these complications, and happily cling to the ancient, uncomplicated directive. Unfettered by the realities of imperfect surveyors and instruments, one can see the courts’ point: if a tolerance is to be adopted, who decides its magnitude? Would one tolerance suffice for all corners or would each corner require its own analysis? Viewed with these complexities in mind, it is no wonder that the courts have avoided this path. Exactness has its merits.

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My intent here is not to offer a definitive answer (because I do not think there is one for all situations), but to clarify the discussion, and perhaps shed some light on the competing doctrines in play.

“No Tolerance” Policy

The problem presenting itself to the retracing surveyor is that boundary doctrine does not seem to recognize “tolerances.” In other words, lacking a called-for monument at the end of the 120.25-foot line, classical boundary doctrine specifies that the corner must be *exactly* 120.2500 feet from the beginning of the line. Nothing more, nothing less.

Back to our scenario. For the first retracing surveyor, the directive presents no problem. A monument is placed 120.25 feet from the beginning of the line, and that’s that. The second retracing surveyor encounters the problem when he discovers that the earlier monument had actually been set 120.45 feet from the beginning. Now what? Adopting the monument outright risks ignoring the true location of the corner. After all, the controlling document mentioned 120.25 feet and *didn’t* mention the monument.

Additionally, courts are rightly suspicious of monuments with unknown provenance. What is to stop anyone

from placing a monument wherever he wanted to claim, and then claim based on that monument? Clearly this jeopardizes our system of land tenure. Taken to its logical conclusion, every boundary in the land would become elasticized, constrained only by the imagination of land owners. And subject to change when the neighbor next spring decides to plant pipes instead of flowers.

Rejecting the earlier monument, on the other hand, begins the pin-cushion corner process. How many pipes at the same corner are too many? 4? 10? It would be difficult to persuade uninterested third parties that 10 monuments at a corner reflected well on our profession. And yet, strict adherence to the exactness doctrine above, over time, will result in just that.

So we find ourselves pondering the dilemma, one of many resulting from the collision of mathematics and law. There is no easy solution to this problem.

One Approach

Personally I treat uncalled-for monuments in two ways. First, I try to discover writings that document or otherwise explain the monument. I believe I can defend the adoption of the monument if I can tie it to a survey which I can demonstrate is credible. Obviously the means of doing that will vary from situation to situation, depending on the writings available to me. At other times I am confronted with an unknown monument that, over the course of the analysis, *persuades* me to adopt it. How, you ask? By its character: the size, type, and apparent age of the monument; its consistency with the character of other monuments found on the same property; its relation to those monuments and my ability to correlate the positions of them with the positions specified in the controlling documents, etc. Absent either of these two scenarios, I reject the monument, and set another.

Clearly, these are judgment calls. They demand more time and attention, corner for corner, than other points to be determined in the survey. They also constitute, generally, the less defensible decision points in any retracement. But that does not mean indefensible. Our charge is to discover, evaluate and decide. Uncalled-for monuments present challenges to that charge, but do not alter it. 