

CORNER TO CORNER

The Greeting

Welcome to **Corner To Corner**. With this publication, RDM Surveying is bringing our clients, friends, & fellow professionals thought-provoking topics of interest and concern. This issue is the first issue of 2010. In this issue, we will look back at 2009, with some thoughts on the conveyancing of property. We hope you will find reading **Corner To Corner** helpful and informative, and we always welcome your comments. Please pass this publication on to a colleague, and if you would like additional copies of an issue, just call us. As always, feel free to contact us if you have any comments or questions.

“Providing Solutions to Unique Problems”

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Looking Back At 2009

The year 2009 was a year of challenges. The economy proved to test everyone's metal. It was one of those years that come along every decade, testing your ability to examine those facets of our business that have grown out of sync or that just need some fine-tuning. It makes you focus on what got you here in the first place. Quality is the word that comes to mind, as well as getting back to basics, and keeping it simple should be everyone's NEW mantra. For those of us who fancy ourselves happier self-employed, we sometimes get all too caught up in the day-to-day tasks of keeping our businesses running. I like to think of 2009 as being a year of re-focusing.

Quality and quality control go hand in hand. Our clients demand it, and we should demand it of ourselves. Nothing is more rewarding than solving someone's problem, bringing a work product in on time and on budget. It takes a competent staff, up to date



technology/equipment, and good project management. Any business that has weathered the test of time has done it with the Quality ingredient!

For us, 2009 saw other challenges. Our involvement at RPI saw the East Campus Athletic Village come to a successful conclusion. We oversaw project control, and, to our credit, found a serious layout problem by others that would have cost the college hundreds of thousands of dollars.

The Underground Utility Location Services that we now provide has proven to be a good fit and a value added service for our clients.

Our Building layout and control services that we provided at RPI/EMPAC has brought us a new project for 2010. We earned the reputation as the firm to call when you have a Project with high-density control requirements.

We look forward to these new challenges!



Looking Back At 2009

RDM Surveying continued to work on single family housing Projects in the City of Albany as well as realty subdivisions in the Capital District.

We also worked on many boundary surveys that dealt with adverse possession. We also provided Expert testimony in many court cases involving boundary disputes and questions

about easements. We enjoy a good fight, but more importantly, pride ourselves in getting the facts and assisting the legal profession so they can win the case. After all, no one likes to lose.

We have a gained a broad range of experiences over the years and look forward to serving our client's with Quality service.

I'm sure that 2010

will continue to try our resourcefulness. I for one embrace the challenge!

If you have a project or a survey need, please contact us to see what we can do for you.



The Transfer of Property Now and Then

By Rod Michael

Written conveyances of real property may have been executed at the beginning of civilization, but much of the land was conveyed by a ritual known as the livery of seisin (delivery of possession). The parties to the transfer would meet on or in sight of the land and, through a series of solemn acts, such as the handing over of a twig, a handful of soil, or a signet ring, would memorialize the contract. Other demonstrations, such as throwing stones, driving stakes into the ground, and shouting such words as "I give," were witnessed to bind the conveyance. If the ritual was performed on the

land, it was termed a livery deed or, if within sight of the land, a livery in law. The grantor was required to practice abjuration, that is, to vacate the land within 6 months. Written contracts may have accompanied the ritual, but these were only evidence of the conveyance, not the conveying instrument. Although livery of seisin is replaced by delivery of a written conveyance today, certain parts of the ritual still remain in parts of the country, and the ritual was practiced in England until 1845.

An example of the livery of seisin is found in a document dated July 1824 to Robert Milicam from the Mexican Government:

"We put the said Robert Milicam in possession of said tract of land, taking him by the hand and causing him to walk around it and telling him in loud and audible words, that, by virtue of the commission and powers vested in name of the Government of the Mexican nation, we put him in possession of said tract of land with all uses, customs, rights and services thereof. Unto him, his heirs and assigns, and the said Robert Milicam, in evidence of being real and personal possessions of said tract of land, without any contradiction, cried out, pulled twigs, threw stones, drove stakes and performed the other necessary solemn acts."

The throwing of stones, driving of stakes into the ground and shouting such words as "I give", were witnessed to bind the conveyance.

I Bought What? It can't go There, Does it?

By Rod Michael

Who would ever want to find out that the parcel of land they purchased was not as large as they had thought, the boundary line passed through a portion of their home, or perhaps had a large area being adversely possessed by their neighbor? Can it happen? The answer all too sadly is yes it can. I remember a case some twenty years ago where the purchaser called our office two days after having moved in. They were frantic about the neighbors claim to a part of the addition on their new house being over the boundary line. No fresh baked pie or "Welcome to the neighborhood!" Sadly the bank's attorney didn't suggest that a land survey be performed prior to closing and, of course, the Title Insurance Policy they purchased had the usual exception "Subject to any statement of facts an accurate or up to date survey may disclose". Basically these folks were left hiring our firm to try to disprove the allegation and had to retain a real estate attorney versed in litigation. The Land survey that we performed, did in fact, substantiate the neighbor's claim to the addition being an encroachment of around 10.0'! That is right 10 (ten) feet. These cases can play out in many ways, from a costly trial to perhaps the parties involved keeping their cool and working out a new boundary line. That's what happened here. Is an ounce of prevention worth a pound of cure? Most definitely. When it comes to purchasing the single largest investment of your life, take your time. I know those words might not be welcomed by some ears, but protect yourself with a Land Survey and a Fee Title Insurance Policy.

I'm commonly asked the question "How often do you find serious problems?" and I usually reply "About 15 to 20% of the time." Recently we performed a survey in the city of Albany within a stone's throw of the Albany County Courthouse. There had been prior surveys of both our parcel and the adjoiner in the rear. No problems were disclosed by either survey. We proceeded with our survey, and, much to our surprise, and the owner's, we found a 13.5' overlap in the descriptions. Realize that we as surveyors work to a Code of Practice in New York State: overlaps ARE to be shown. Why weren't they shown on the other surveys? I can only offer conjecture. The surveyors didn't know what to do with the problem, the client wished for them to

bury it, or, it was just bad decision making. Land Surveys are a physical examination of the property. We MUST locate the adjoiner description, too, and this is where trouble can lie. If the parcel is sick, we've got to disclose it so that your attorney can figure out what they can do. In this particular case, the lender decided that they could still execute a loan based upon a new legal description for the lesser amount of land not affected by the overlap. Great fix and happy client!

Sometimes old war stories are the ones best told. Probably the best or perhaps the worst involved a client that came into the office and said "I think someone has built a house on my building lot." My reaction had some expletives, so we'll delete those and get back to the story. We conducted our usual research at the County Clerk's Office for deeds and maps. We then assembled the data and went to the field. It was one of those jobs that required some extensive measures up and down the road to be able to reproduce the rather old lot lines that had been created many years before. We located the house, driveway, septic system, and well and returned to the office to start our computations. Well, the rest of the story now goes down in history! The house and everything else constructed was on our client's lot. I don't know who was more nervous, me or the client. It was me! That was sure a big tummy ache! The client realized that he was in the driver's seat. Suffice it to say there were no legal questions about who owned what. Just a case of a neighbor acting without a survey and barging ahead into a nightmare that took the better part of his funds and sanity. Once again, a cool-headed attorney negotiated a good deal for our client, both in monies and other lots that the neighbor owned.

Sometimes things are really bad! Take the case of a commercial piece of property encumbered by a prescriptive right of way. Let's talk about prescription. Prescription is an unwritten physical use of another's property for the gain of the user, in this case, access over a driveway 20' wide by 250' deep. The parcel was auctioned off at public auction, with no mention of the easement, and an offer was made and accepted. The high bidder decided to have a survey done. Low and behold, up pops the prescriptive easement and with a commercial property it rendered the title unmarketable! You ask what happened? Litigation for the seller, and the neighbor wound up with the parcel! Talk about messy!



Corner To Corner is a publication of RDM Surveying Consultants. It is intended to inform our clients and friends of items of interest in the surveying profession.

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www.RDMSurveying.net

How careful can you be? The answer is, never careful enough! I probably will write a book when I retire. There are a lot more stories to be told !.

For now, I can't stress enough that you need to have a land survey done **BEFORE** moving in. You need to have the facts! Most problems can be solved, and some do go to litigation only because people won't use common sense or give their fellow man a fair shake.

Sometimes the stakes are high because of the value of the properties, the size of the egos, or the pocketbooks involved. And sometimes the facts are such that it takes a judge and jury to decide a case for future generations to heed.

Knowledge is truth.

To quote myself, "The truth is in the writing, the measurements, and the facts".

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