

# 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 2015. In this issue, we will take an in depth look at Evidence or a lack thereof. 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.

*“What can go wrong with no survey?”*

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## Move It Or Tear It Down...

which was the ruling of the Rhode Island Supreme Court in the case of Rose Nulman Park Foundation v. Four Twenty Corp. and Robert Lamoureux. The case centers around the building of a \$1.8 million home on the lands of the Rose Nulman Park Foundation.

The Four Twenty Corp. hired Craig Richard Carrigan, a registered professional engineer to prepare a site plan. The site plan was then used to get a building permit and to construct a 2,400 sq. ft. house, septic system and driveway. Upon completion on the project, Four Twenty Corp. entered into a purchase and sale agreement for \$1.9 million. Before the closing the buyer ordered a survey of the property and it showed that the house was built on the wrong lot and was on the lands of the Rose Nulman Trust property. The buyer terminated the purchase agreement!

The Rose Nulman Trust then filed a lawsuit asserting that the structure constituted a “continuing trespass” on its property while concurrently seeking a mandatory injunction ordering Lamoureux to remove all improvements and to return the Nulman property to its original

condition. It was found that the building and improvements encroached upon 3 ± acres of the Nulman property. The case highlights a couple of things. The first thing that was the fact that a professional real estate developer, Defendant Lamoureux retained a professional engineering firm, Carrigan Engineering, to perform a survey, site design and permitting work without requiring the firm to demonstrate proof of professional liability insurance. Given Lamoureux’s “experience” as a developer, one would think that he would have been more careful in making certain that his contractors were properly insured and weren’t going to practice outside of their expertise. Although the presence of professional liability insurance would not have prevented the problem, it would have giving Lamoureux the basis to make himself financially whole.

The second thing was the type of survey that was performed for the site plan. In Rhode Island there are different classes of surveys and on the site plan it stated the boundary lines conformed to the Class III survey standards as adopted by the Rhode Island Registration of Professional Land

Surveyors. A Class III survey is defined as a “data accumulation survey,” which “measure[s] and show[s] the relative positions or locations of physical features to a stated graphical scale ... “This definition includes the caveat that “[t]o the extent that property lines are reflected on such plans, they are to be regarded as pictorial only, unless such boundaries are also certified to a Class I, Class II, or Class V standard.” Because the developer and the engineering firm cut corners on the most important part of the site plan, an actual survey, this project was doomed from the start.

The lesson learned here, is that everyone should have a survey done before the closing!

For more details on this case see the [American Surveyor](#)

The Court Rulings can be found here.

[Superior Court Sept 12, 2012](#)

[Supreme Court Opinion June 13, 2014](#)

[Superior Court Sept. 29, 2014](#)

## A Good Detective

Just the facts, ma'am! Sgt. Joe Friday in the 50's series *Dragnet*, coined this phrase, and it couldn't be more fitting today.

Land Surveyors are supposed to be "Good" Detective Friday's, impartial gatherers of facts. We listen to our clients and have to decide if they've concocted a story to fit their preconceptions, are

looking for a sympathetic ear or are really telling us the truth.

The weight of all the physical evidence should offer the proof to validate their claim or not. No land surveyor should tread into the arena of allowing an emotional client dictate the direction and extent of their investigation and findings.

A Land Surveyor should never aid a client in perpetrating a fraud, assist them in an illegal act or cause a frivolous law suit to be brought upon another.

Just the facts please!

*"Just the facts and nothing but the facts!"*

## Another look at the Statute of Limitations

On April 13, 2007 Bronx County Supreme Court Justice George D. Salerno Placed professional land surveyors in the category of licensed professionals that are protected by a three-year statute of limitations for non-medical malpractice under NY CPLR§ 214(6).

As a threshold matter, there have been no significant judicial developments since the issuance of Justice Salerno's April 13, 2007 decision. The decision remains the premiere legal precedent in New York's establishing the principle that the three-year statute of limitations instituted for licensed

professionals is applicable to land surveyors.

In New York, it is established law that the statute of limitations for direct claims by a party contracting with a licensed professional, including claims for breach of contract, negligence or professional malpractice, against design professionals, begins to accrue at either completion of the work by the design professional, the completion of the designs which were contracted for, the completion of the actual construction, or, in the case of professional land surveyors, the completion of the survey for which they were retained to draft.

In the case of the land survey it would be the last date on the plat or map that was signed and sealed by the land surveyor.

## Evidence Leads to Proof of Boundary Lines and Corners

Evidence is not proof! Evidence is the commencement of the recovery process from which one must make conclusions and from these conclusions flows the proof. In reaching conclusions from evidence, the most important need of the surveyor is the ability to recognize and know what the best evidence of that available is.

Evidence can be broken down into nine different classifications.

Indispensable evidence, Conclusive evidence, Prima facie evidence, Primary evidence, Secondary Evidence, Direct evidence, Indirect or circumstantial evidence, Partial evidence and Extrinsic evidence.

Surveyors gather and examine a variety of evidence to prove boundary-line locations. Some of the evidence examined are written documents, maps and historical facts, facts of which the court takes judicial notice, physical objects (real evidence) observed by the surveyor, such as iron pipes, pins, monuments, trees, wire fencing, witness objects, rivers, streams, berms. Parole evidence, testimony from a witness who observed the original monument, now destroyed, a witness who can explain a latent ambiguity, one which is not apparent until it is being located on the ground.

By measurements of distances, angles and bearings and by the surveyors mathematical calculations.

A preponderance of evidence is not necessarily just more than 50% of the weight of evidence, it is defined as that which inclines "an impartial mind as to one side rather than the other" and that which removes "the cause from the realm of speculation." In a survey, the surveyor should satisfy him or herself about the preponderance of the evidence, giving due weight to presumptions, prima facie evidence (proof of fact until rebutted by other evidence) and law, that the location is probably correct to the exclusion of other possible methods of monumenting the property. The surveyor investigates all possibilities, excludes the unlikely or improbable and monuments in accordance with the most certain. In this case the surveyor must have moral certainty or that degree of proof that produces conviction in an unprejudiced mind.

It has been written, that the surveyor that gathers the totality of the evidence comes to the correct conclusions, whereas the one with partial evidence makes faulty conclusions. It is the responsibility of the surveyor to obtain all the evidence available to make a correct boundary-line location in accordance with controlling writings; failure to find all the necessary evidence to make a correct location is not an excuse for an incorrect survey.

With the passage of time or during the construction of occupational improvements the original monuments may be destroyed or in the case of trees at the corner they die. The fencing left behind will be conclusive evidence of the position of the intended boundary location. The loss of direct evidence does not change the fact that the improvements were constructed in accordance with the original monuments. The retracing surveyor must look for additional evidence which will corroborate the position of the improvements. Such corroborative evidence may be found in the harmony of the improvements with those placed on other boundaries compared to the configuration of the boundaries identified on the original conveyance document. The proximity of the age of the improvements compared with the date of the original conveyance should provide sufficient evidence to substantiate the original location.

When the preponderance of the evidence recovered suggests that the improvements were erected with reliance upon the original survey monuments which best express the original intent of the parties, the original boundaries may be reestablished in accordance with the evidence. The boundary location is not one based upon any form of occupational boundary or subsequent agreement, but is based upon the recovery of the best available evidence remaining of the original intent.

For found monuments to be controlling boundary corners, they must be called for in the writings, undisturbed and uncontradicted by the remainder of the writings. When bearings and distances are used in the deed to produce the boundary corner an uncalled for monument in the vicinity of the corner cannot be used to substantiate the corners location.



**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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## Some things to think about!

In Land Surveying, just as in our daily lives, it is extremely unwise to jump to a conclusion, if you base your opinion on one piece of evidence! Rod Michael

People almost invariably arrive at their beliefs not on the basis of proof, but on the basis of what they find attractive. Blaise Pascal

Circumstantial evidence is a very tricky thing, it may seem to point very straight to one thing, but if you shift your point of view a little, you may find it pointing in an equally uncompromising manner to something entirely different. Arthur Conan Doyle

The search for truth takes you where the evidence leads you, even if at first, you don't want to go there. Bart Ehrman

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