

# **DOCTRINE OF MONUMENTS**

## **BUD SALYER**

### **1. DOCTRINE OF MONUMENTS**

#### **A. HOW IT DEVELOPED**

1. Surveyors in Virginia were at work for 50 years before the legislature developed rules for surveying.
2. How surveys were performed .
3. Charts for dimensions contained in log books

B. Preparing certificate/description was simply evidence and assurance that the surveyor actually marked the boundary. The survey was the marking.

#### **C. WHAT IS A SURVEY VS. RETRACEMENT?**

1. Setting/selecting the monuments was the survey.
2. Locating the original monuments was a retracement.

#### **D. WHEN THE ORIGINAL MONUMENTS ARE FOUND, THE LINE IS ESTABLISHED.**

1. The issue is whether one is looking at the original monument.
2. The beginning monument is of no more importance than any other monument.
3. A boundary line of a named adjoining landowner is a fixed, natural object.
4. Where proof shows two or more natural objects, either of which might meet the description in a deed, the one which appears to carry out the intention of the parties and which most closely conforms to the courses, distances and quantity to be conveyed, will prevail.

E. Substitute/replacement corners are acceptable if you have credible evidence that they are replacements. The mere fact that it agrees with the calls is a HINT but not proof.

#### **F. SUBDIVISION—PIN CUSHION CORNERS (WHY THEY ARE WRONG). HOW THEY OCCUR**

1. In the past, the surveyor determined the monument and then drew his plat.
2. Today, the surveyor draws his plat and then drives the pins.
3. Can go back and correct the location if done before the first lot is sold.

4. Original surveys are NEVER WRONG. Once a pin is driven in the “wrong” place, the plat becomes incorrect.
5. Surveyor finds a monument, measures and finds it does not agree with the plat, decides he can measure better than the original surveyor and proceeds to place a pin where HE thinks is correct.
6. The plat needs to be corrected, not the monument.
7. Accept the monument unless there is a certainty that the monument has been moved. The mere fact that it disagrees with the plat is NOT evidence that it might have been moved.
8. You need testimony to prove it has been moved.
9. One surveyor with a zoning board demands that new plats show the same bearings and distances as original plats.  
WHY IS THIS WRONG?

## 2. BOUNDARIES AND TITLES

### 1. SENIOR TITLES VS. JUNIOR TITLES

- a. With some exceptions, identifying the senior titled is an absolute requirement.
- b. First recorded deed out of a common source controls the boundary.
- c. Common source and common grantor are not the same.

### 2. WHEN SEARCH IS NOT NEEDED

- a. bounded deeds
- b. Boundary established by court order.
- c. Deeds with identical calls.
- d. Simultaneous conveyances.

## 3. LINEAR MONUMENTS

### A. MARKED LINES: the original linear monument

### B. STREAMS

1. There are no navigable streams in Kentucky
2. Presumption is that it goes to the center of the stream.
3. To place the line anywhere else, the language must be indisputable that the center was not intended.
4. See “Guidelines” below.

### B. ROADS

Use the same rules as streams.

### C. RAILROADS

1. Have to apply language of the acquisition of the easement.

**See “Railroad Anomalies” below**

**A. WITNESS TESTIMONY**

1. Anyone who saw the monument when it existed is qualified to testify. The accuracy or truthfulness is subject to cross examination.

**B. AERIAL PHOTOS**

1. It is astounding how many sources of aerial photos are available. Department of agriculture. Google earth.

**C. OTHER SURVEYS**

1. A retracement prepared by or for a government is usually considered reliable if it shows a monument on the plat.
2. Any other plat that shows that the surveyor actually saw the monument can be used.

**D. SHOOTING THE CALLS**

1. For a couple of centuries, it was the least acceptable method.
2. It is time for a change.
3. Original surveys performed according to the minimum standards has eliminated the objections to this rule but the courts have not addressed this.

## **IN THE ABSENCE OF MONUMENTS**

So far, the surveyor’s task has been to locate the boundary by locating the monuments that created the boundaries. When that is impossible using those methods discussed above, a boundary can be established by one of the methods discussed below. This requires the intervention of an attorney, with the surveyor assisting in a supporting role.

**A. BOUNDARY AGREEMENTS—the attorney’s job with surveyor’s assistance**

Line must be uncertain—(1) it cannot be found on the ground or seniority cannot be established; (2) the parties agree on a location; (3) they clearly mark the line; (4) the parties accept it for a long time; (5) the markings have to be maintained, such as refreshing blazes on trees or keeping a fence in place. After 15 years, refreshing need not continue, but is advised.

**B. ACQUIESCENCE—the attorney’s job with surveyor’s assistance**

1. Apparent boundary and recognition for a long time
2. Could be a fence, ditch, line of trees.

3. Must be some kind of physical object.
- C. ADVERSE POSSESSION—the attorney's job with surveyor's assistance
1. Possession must be hostile and under a claim of right.
  2. Must be actual possession
  3. Must be exclusive possession
  4. It must be continuous.
  5. Possession must be open and notorious
- D. CHAMPERTY—the attorney's job with surveyor's assistance.
1. If a deed describes a boundary and part of that boundary is under adverse possession, at the time of the conveyance (*even for a day*) the deed conveys only that part that is NOT under adverse possession.

## GUIDELINES FOR RETRACING LINEAR MONUMENTS

Although the following guidelines were developed as they relate to streams, they will generally apply to any other linear monument. You will recognize the need when you see it.

1. Guiding rules: *Center of stream is presumed:*
  - (a) If the corners of a survey are located on a stream, and a plat represents the river as the boundary, the line will run with the meanders, even if in conflict with the calls;
  - (b) If a deed calls for the meanders of a stream, the stream must be followed;
  - (c) If a deed calls for a line to run up the creek, down the creek and so on, with no bearings and distances, and there is only a beginning monument and ending monument, then the line will in fact follow the stream, etc.
  - (d) If the description calls for "up the creek" and there are no bearings and distances, the line will follow the meanders with the center of the stream;
  - (e) If the description calls for "up the creek" and there are bearings and distances, but no monuments, the line will follow the meanders with the center of the stream;
  - (f) If the description calls for "up the creek" and has bearings and distances between permanent objects, then the

- lines(s) will run in straight lines between the objects;
- (g) If a stream is the boundary, the line runs with the center of the stream unless the language makes it clear that the line is elsewhere;
  - (h) Where a stream changes courses by natural occurrence over a long period of time, the boundary changes with it;
  - (i) If a stream changes suddenly, such as by earthquake, bulldozers or a torrential eroding flood, the boundary does not move.

## RAILROAD ANOMALIES

- a. "...sixty feet wide as now laid out through the farm..."
- b. "...sixty feet wide as now partly constructed...twenty five feet being on the easterly side of the centerline and thirty five feet on the westerly side..."
- c. "...a roadway for their said railroad one hundred feet wide...fifty feet on each side as now partially constructed..."
- d. "...a width of sixty six feet, being forty feet on the north side and twenty-six feet on the south of the center line..."
- e. "...one hundred feet wide as now constructed, thirty feet north of the center line and seventy feet south...in fee simple with covenant of seisin and general warranty..."
- f. "...sixty feet wide, twenty five feet on the south and thirty five on the north as now staked out..."
- g. "...one hundred feet wide as the road is now partly graded, sixty feet on the north and forty feet on the southerly side of the center line as now staked out..."
- h. "...sixty feet wide through the farm... [no mention of a center line or prior construction].