

HOW A PROPERTY SURVEY CAN PREVENT COSTLY ERRORS

A Case Study

INTRODUCTION

Often, property surveys are not performed when property is purchased. For lots within newer and/or well-developed subdivisions the risks of foregoing a property survey may be minimal. However, the consequences of not knowing precisely where property boundaries are located can be considerable.

The following is a summary of the circumstances that led to Gosling Czubak's completion of a property boundary survey and its findings. This summary shows the importance of performing a property survey before purchasing property or building on it.

BACKGROUND

The property is in a subdivision that was created in 1950. The subdivision had many long, narrow, heavily wooded lots on a lake. The subdivision's south boundary line was common to township owned property. Because the lots are narrow, many owners own more than one lot.

The owner purchased property that contained most of the subdivision's south lot and portions of the adjacent lot to the north. A home was located on these parcels. A fence line, assumed to be on the property line, was about 15 feet south of the house.

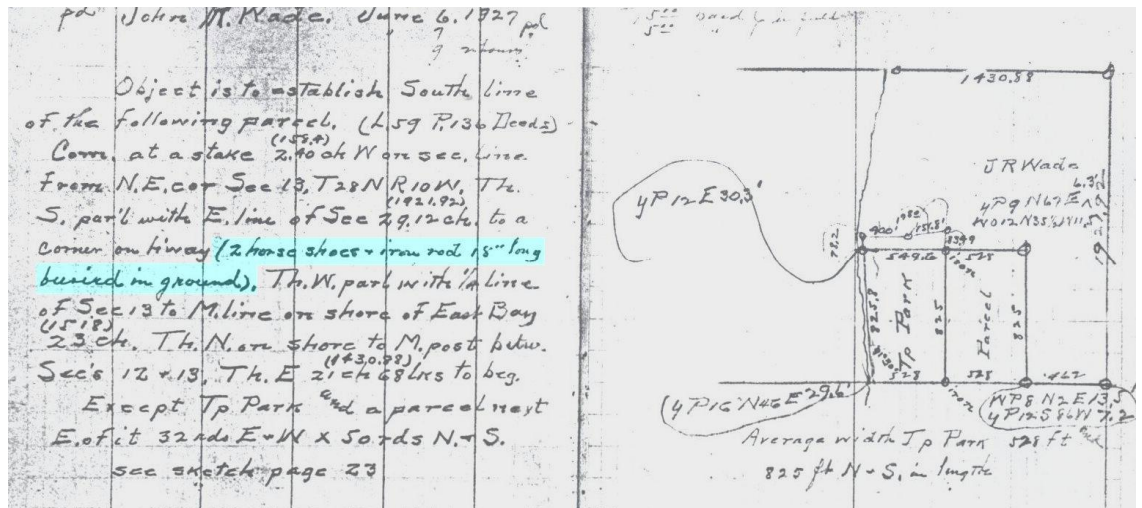
A mortgage survey discovered that the house was built over the south line of the

the south property line of the parcel and the south line of the subdivision.

Understandably, this discovery resulted in several years of discussions between the property owner and Township officials. The Township proposed an agreement allowing the current homeowners to continue occupying the land, but the owners could not sell the property or pass it to their heirs unless the home was moved or removed and rebuilt according with the ordinances at that time. Because of the potential consequences of any agreement, the property owner and the Township asked Gosling Czubak to complete a full boundary survey to accurately identify the encroachment and the common boundary line between the Township and the homeowner's land.

RESEARCH AND FIELD PROCEDURES

To determine the correct position of the property line, Gosling Czubak retraced the subdivision boundary and the township property boundary, reviewed property title information for the township property and researched the County Surveyor Records. This research indicated that the township property was originally surveyed in the late 1800's. The survey notes gave definite information about how the survey was completed and how the corners were marked.



1927 Survey Field Notes – note property corner marker of "2 horse shoes & iron rod"

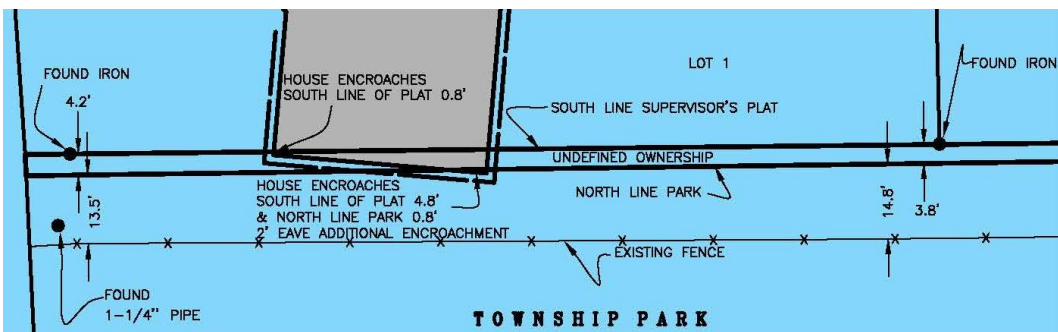
We also reviewed previous private surveys, Road Commission surveys and the recorded subdivision map and notes.

The research and field survey revealed that in the 100 years since the completion of the township property survey, many changes had occurred. Unfortunately, the field evidence of the original survey had been destroyed. Our survey crews did recover and locate monumentation marking the 1950s subdivision corners and adjacent property corners. Section corners in the area and the fence line were also located.

FINDINGS AND ANALYSIS

Comparison of the field data with the plat records showed that the subdivision monuments that were recovered fit very well with the data on the subdivision map and the house was, in fact, constructed over the south line of the subdivision.

Documents from the Road Commission indicated that the road along the south side of the township property was not centered in the right-of-way. Our survey confirmed this. The location of the fences indicated that they were probably placed by measuring from the road centerline instead of from the road right-of-way prior to the establishment of the subdivision limits.



Because the legal description for the subdivision did not reference the north line of the Township property, we concluded that the subdivision's legal description did not include the property between the south line of the subdivision and the north line of the Township's property. Furthermore, the legal description the township property deed closely agreed with the described position of the southeast corner of the subdivision. Therefore, we concluded that the subdivision property line monuments were in the correct position. The area between the south line of the subdivision and the north line of the Township was about 4 feet wide on the west end and converged about 1000 feet to the east created a long pie shaped wedge of undefined ownership. The error that resulted in building the home over the property line was probably the result of measuring from a road centerline to place the fence or the home.

LEGAL PROCEEDINGS

As a result of the survey's findings, the property owner asked the Township to sell a portion of their property to the homeowner so the house would no longer encroach onto the Township's property. The Township refused to sell a portion of their property and offered to let the property owner continue to use the home. However, if the home was sold or when the property owner died, the Township would require that house be moved off the Township's property. To our knowledge, no final agreement has been negotiated.

For more information about property surveys, contact Dave Gillette, P.S., at Gosling Czubak Engineering Sciences, 1-800-968-1062. © 2009 GCES.



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