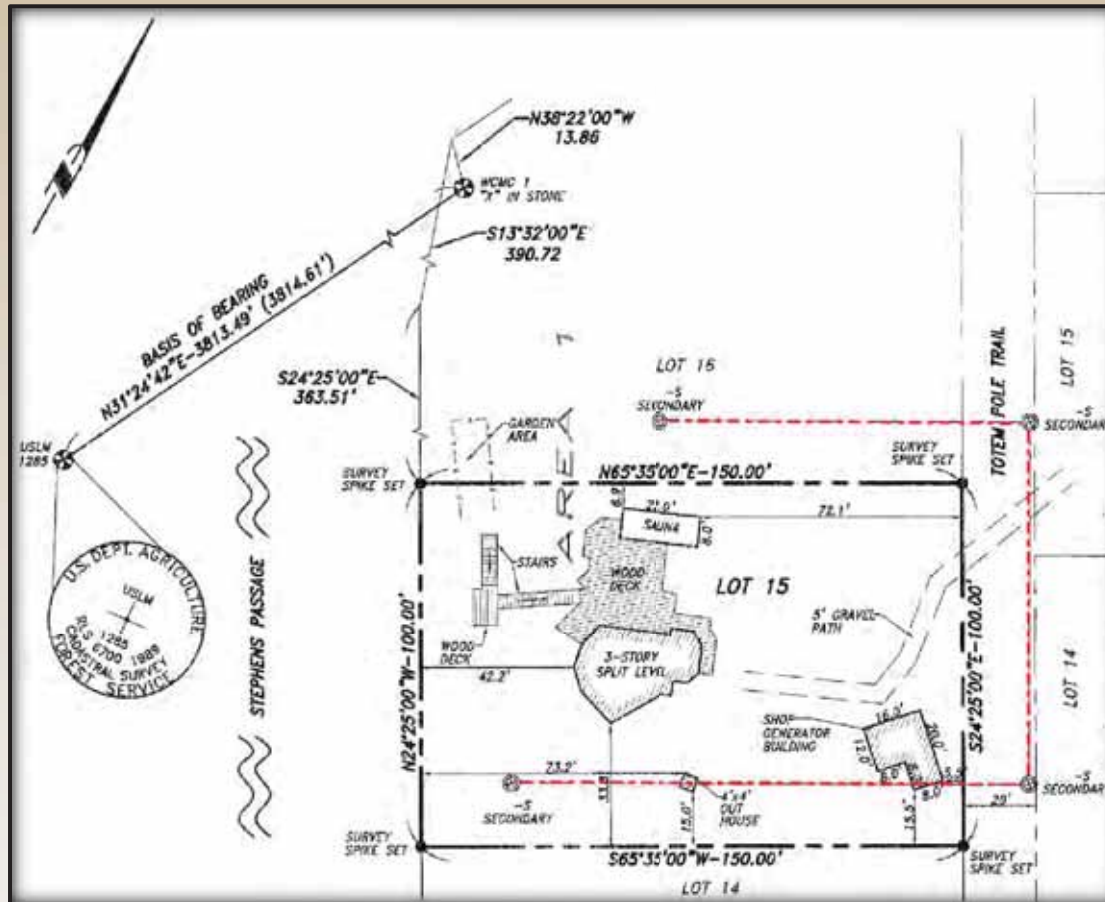


No Boundaries

A Brief Discussion of Alaska Boundary Law



Alaska Surveying & Mapping Conference 2020



No Boundaries

Introduction

- Land Surveying: Elements of Art & Science
 - Art: History, Law – Evidence & Interpretation
 - Science: Math & Scientific Methods
 - Presentation Focus: Legal guidelines available to the Alaskan Surveyor (or lack thereof) to re-establish boundaries

No Boundaries

A Surveyor's Foundation in Boundary Law

- Brown's Boundary Control; Clark on Surveying & Boundaries;
- Guidelines Based on National Case Law
- Case of First Impression
 - Legal issues not previously addressed
 - Brown, Clark & other Treatises may be cited in support of the adoption of a boundary law principle in such a case.

No Boundaries

Brown's Principle No. 6

- *“The original surveyor creates boundaries.”*
- *“A parcel of raw land has no boundaries. But once the surveyor runs...these lines, the boundaries are created and can never be altered by any subsequent surveyor.”*
- This principle emphasizes the requirement to *“...follow in the footsteps of the original surveyor.”*

No Boundaries

Boundary Case Law in Alaska

- The 49th State has little boundary case law

No Boundaries

Boundary Case Law in Alaska

- Most cases address boundaries by unwritten means or less than fee land interests:
 - Adverse Possession
 - Estoppel
 - Acquiescence
 - Riparian Boundaries
 - Easements
 - Dedication
 - Rights-of-Way
 - Deed Interpretation
 - Title Issues

No Boundaries

Boundary Case Law in Alaska

- Alaska Case Law Service Search:
 - *“right of way AND highway AND title” – 94*
 - *“real property AND adverse possession” - 61*
 - *“boundaries AND monument AND surveyor” – 5 cases (These were primarily adverse possession, platting & deed ambiguity.)*

No Boundaries

Boundary Case Law in Alaska

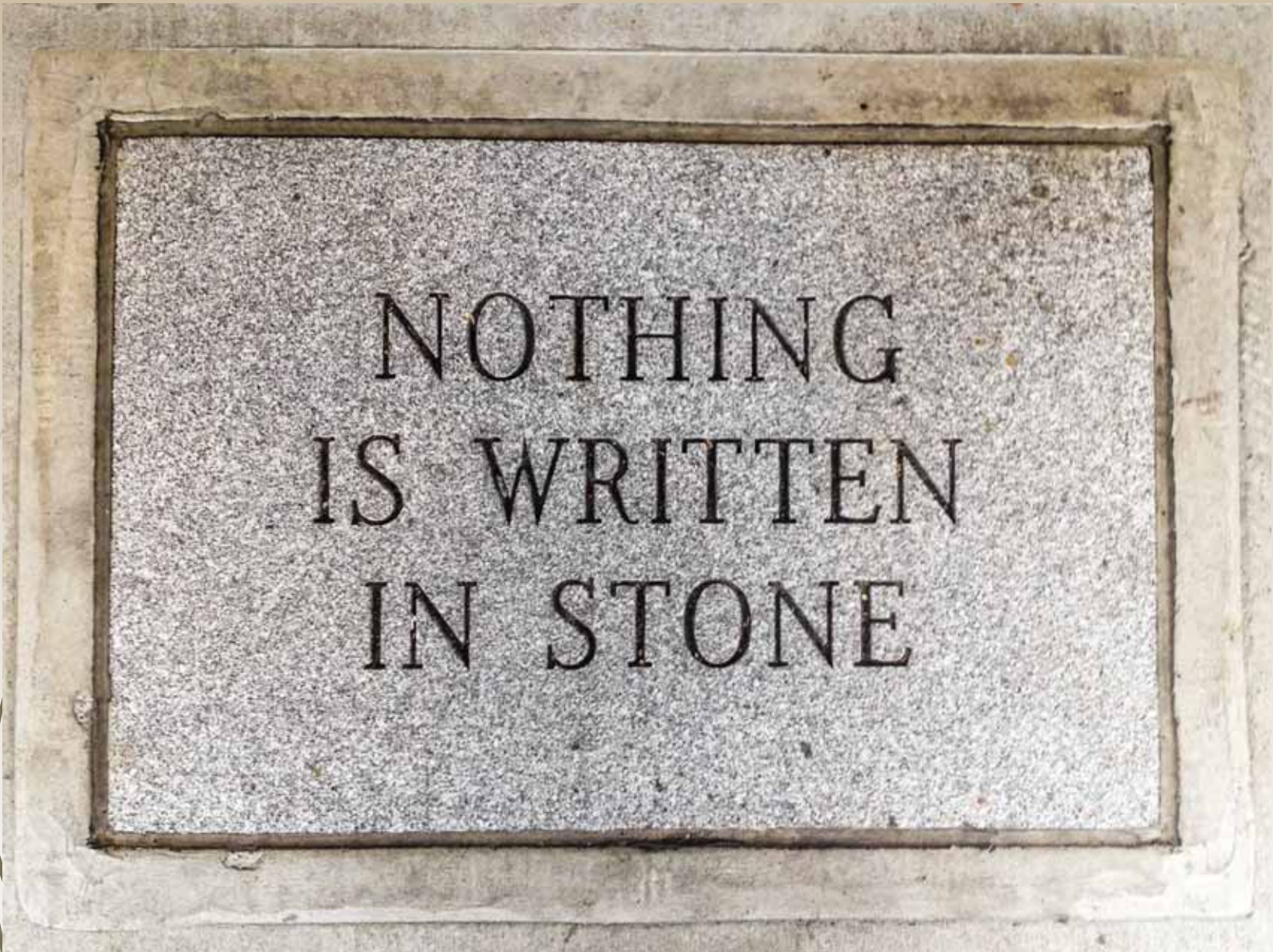
- Alaska Reporter Subject Index
 - *Boundaries* – 11 Cases
 - Lee v. Konrad – most cited – 7 References
 - Hawkins v. Alaska Freight – 5 References
 - Municipality of Anchorage v. Suzuki
 - “A ‘boundary’ is a separation that marks the limits of property.”

No Boundaries

The Surveyor as an Expert Witness

- Surveyors are not lawyers. We are experts in measurement.
- Brown: *The creating and retracing boundary surveyor should not give legal opinions, either in writing or orally to clients.*”
- Lawyers can present the law but it is up to the judge to decide what the law is.

No Boundaries

A rectangular stone plaque with a rough, weathered texture. The text is carved in a serif font. The plaque is set within a recessed rectangular border on a larger, lighter-colored stone surface.

NOTHING
IS WRITTEN
IN STONE

No Boundaries

The Surveyor as an Expert Witness

- Distinction becomes hazy with expert reports and boundary retracement.
- Does the surveyor practice law every time they apply their experience and judgment to determine the location of a boundary?
- *“Practice of Land Surveying” – AS 8.48.341: “Special knowledge of ...the relevant requirements of law...locating land.”*

No Boundaries

The Surveyor as an Expert Witness

- With little case law to guide us, we try to apply general rules from boundary texts.
- Every retracement survey will include some ambiguity and varying facts.
- It is not practical to obtain an attorney's opinion with regard to every boundary survey.

No Boundaries

The Surveyor as an Expert Witness

True or False: A Surveyors expert report should contain nothing more than : recovered evidence (monuments, fences, roads...) and their relative positions and dimensions?

How will the client/court understand the basis for the surveyor's decisions?

State your understanding of the law – The court is not relying upon your legal opinion...

No Boundaries

The Surveyor as an Expert Witness

- Justice Thomas Cooley (Mich. Late 1800's)
 - Writings on boundaries & original surveys
- Adopted into 1994 ASPLS SOP Manual
- Referenced in 2014 Lee v. Konrad & 2019 Collins v. Hall

No Boundaries

The Surveyor as an Expert Witness

Cooley: *Quasi-Judicial Capacity of Surveyors*

“Surveyors are not and cannot be judicial officers, but in a great many cases they act in a quasi-judicial capacity with the acquiescence of parties concerned; and it is important for them to know by what rules they are to be guided in the discharge of their judicial functions.”

No Boundaries

The Surveyor as an Expert Witness

Ira Tillotson, PE, RLS – ACSM 1968

“When determining property lines the surveyor places his stakes and presents a plat showing where he believes that the property lines should be, his belief being founded upon what he thinks the court will uphold in the event of litigation involving his survey. He is constantly interpreting what the statutes say and what the courts have determined to be right and wrong, but such interpretation is correct only to the extent to which the courts will uphold it. He is in the unfortunate position of being the middleman who must determine for a client what he thinks the court will accept.”

No Boundaries

The Surveyor as an Expert Witness

Why Use a Disclaimer? Murphy's Law:

Q: *"Have you heard of Murphy's law?"*

A: *"Yeah."*

Q: *"What is it?"*

A: *"If something can go wrong, it will go wrong."*

Q: *"Right. Have you heard of Cole's Law?"*

A & Q: *"No, what is it?"*

No Boundaries

The Surveyor as an Expert Witness

Murphy's Law - Why Use a Disclaimer:

A: "Thinly sliced cabbage."

No Boundaries

The Surveyor as an Expert Witness

Sample Disclaimer:

“R&M Consultants, Inc. is not a law firm, does not offer legal services and this paper is not presented as legal advice. It is offered solely to provide a discussion of the subject and present the views of the author. Should you require legal advice on the issues outlined in this paper, we recommend that you obtain the services of an attorney.”

No Boundaries

Lee v. Konrad – Supreme Court - 2014

THE SUPREME COURT OF THE STATE OF ALASKA

CODY LEE and STACEY DEAN,)	
)	Supreme Court Nos. S-14503/14524
Appellants and)	
Cross-Appellees,)	Superior Court No. 3AN-08-09772 CI
)	
v.)	<u>OPINION</u>
)	
BARBARA KONRAD,)	No. 6948 – August 29, 2014
)	
Appellee and)	
Cross-Appellant.)	

_____)
I. INTRODUCTION

Cody Lee and Stacey Dean (collectively referred to as “Lee”) and Barbara Konrad dispute the boundary between their lots in an Anchorage subdivision.

No Boundaries

Lee v. Konrad

Location: Shelikof Subdivision – NE4 Sec 5, T12N, R2W, SM – West of Lake Otis and South of Dowling Road.

Parties: Lee owned Lot 13 of Block 3 & Konrad owned Lot 14.

General: Small lots approximately 8,600 SF to the West of Ivan Drive.

No Boundaries


Lee v. Konrad – Lots 13 & 14 Shelikof Subd.

MAY 18, 1979, REVISED TWO BEARINGS IN BLOCK 7 AND ASKELAND II DISTANCE *J.P. Haines*

PLAT OF

SHELIKOF SUBDIVISION

LOCATED WITHIN
NE 1/4 SEC. 5, T 12 N., R. 3 W., S.M., ALASKA
CONTAINING 29.919 ACRES

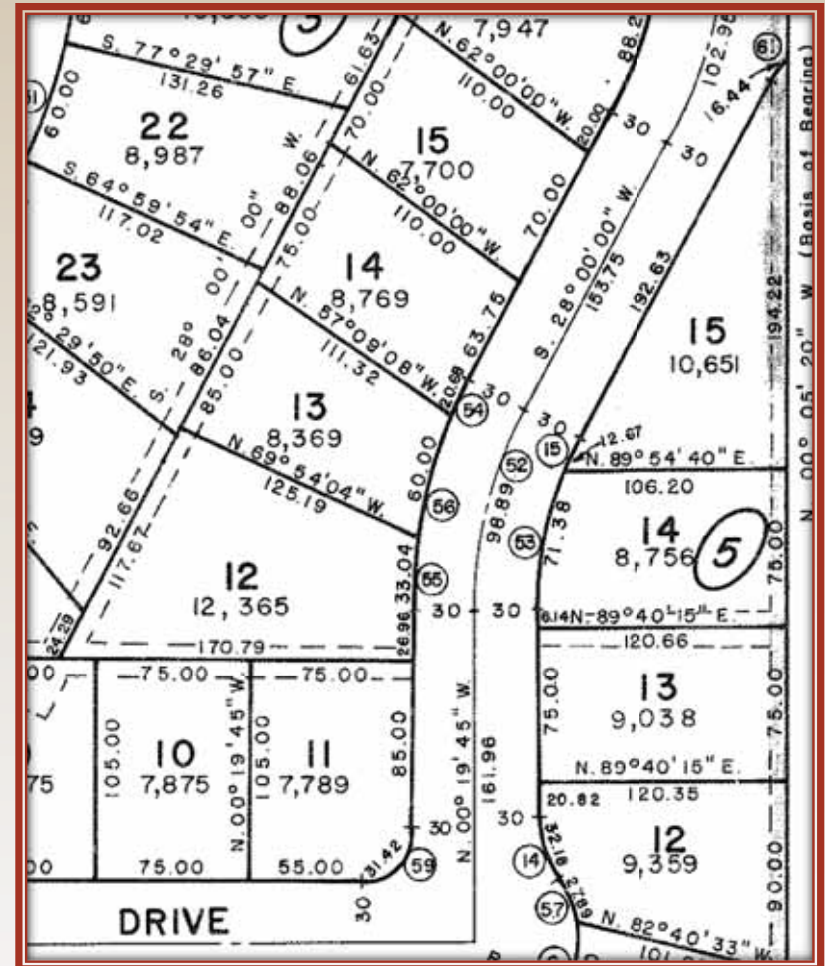
 **DICKINSON-OSWALD & PARTNERS**
ENGINEERS-SURVEYORS
800 CORDOVA ST ANCHORAGE, ALASKA

DRAWN	J.P.	SCALE	1" = 100'	GRID	W.O.	FILE NO.
CHECKED	M.P.O.	DATE	3-29-72	2033	4639	50-100

F.B. 268

1972-546) 1979-401

79-58



This is boundary dispute
in which evidence &
methodology is key.

No Boundaries

Lee v. Konrad

Chronology:

- 1989 Lee purchases Lot 13.
- 1992 Southernns have Lot 14 surveyed (A).
- 1999 Lee erects partial fence between lots.
- 2006 Lee digs crawl space & places fill. next to fence encroaching into L14 by 2-3'. (No objection by owner of Lot 14)
- 2007 Lee completes fence between lots.
- 2008 Konrad buys L14 & hires surveyor B who finds & accepts 3/4 corners set by A, then sets missing corner between Lots.

No Boundaries

Lee v. Konrad



No Boundaries

Lee v. Konrad

Chronology:

- 2008 Lee pulls new corner – Konrad sends challenge letter to Lee. Lee offers to split cost of new survey *as long as it complied with his specifications and methodology (!!)*
- 2008 Lee hires Surveyor C with the requirement that only monuments at the exterior of the subdivision be used.
- 2008 Lee files suit in Superior Court.

No Boundaries

Lee v. Konrad – Superior Court

Konrad's Surveyor B "...relied upon the localized monumentation over outside boundary monumentation for control at least in part out of concern for upsetting expectations of the owners."

Surveyor B gave weight to 3 recovered corners set by Surveyor A along with corners for Hannah Subdivision across from Ivan Drive from Lot 14. He did not want to introduce errors into what was being accepted as property lines.

No Boundaries

Lee v. Konrad – Superior Court

Lee's Surveyor C believed local monuments were not original, were in error and so relied upon exterior subdivision control to the exclusion of existing monuments and improvements such as fence lines.

Using the exterior control Surveyor C recovered corners to the north of Lot 14 that were determined to be 3-4' south and 1-2' east of record positions.

No Boundaries

Lee v. Konrad – Superior Court

Konrad then hires Surveyor D to evaluate and provide expert testimony as to the work of Surveyors B (Konrad) & C (Lee).

A judgement was issued in favor of the boundary determined by Surveyor B. *“When infirmities exist in the original survey and plat or it is difficult to determine the validity of found monuments, a community’s settled expectations of on-the-ground location of boundary lines may prevail.”*

No Boundaries

Lee v. Konrad – Supreme Court

Lee appeals to Supreme Ct. September of 2012

Issues Briefed:

- Correct methods to re-establish lot boundary.
- Follow the footsteps of the original surveyor?
- Error should not be spread to other lots.
- Use of exterior original boundary monuments.
- Use of non-original local monuments.
- Control based on use or settled expectations.
- Boundary by practical location: agreement, acquiescence or estoppel.

No Boundaries

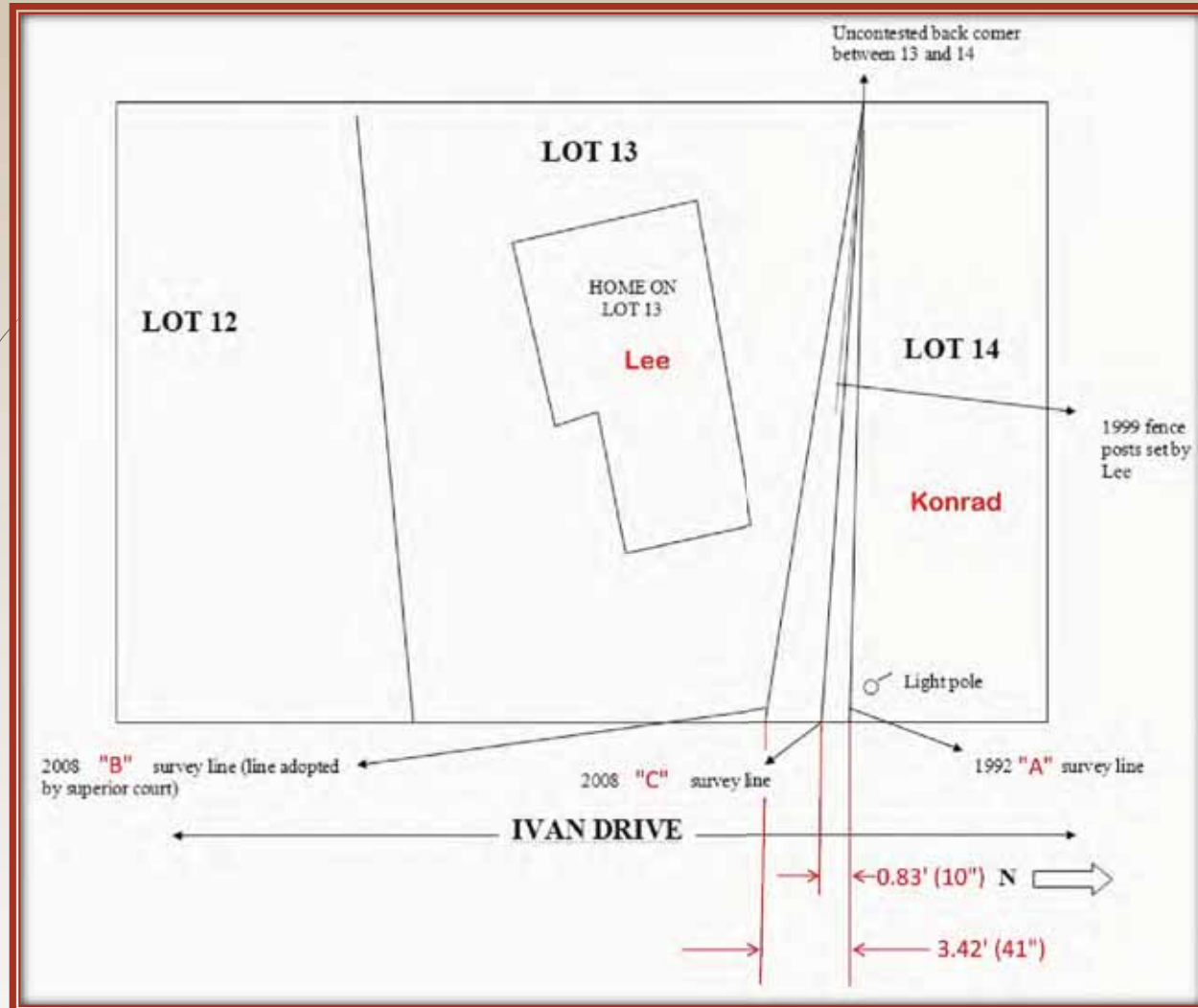
Lee v. Konrad – Supreme Court

Lee's initial brief suggested a case that would focus on the methodology of boundary re-establishment:

“Published Alaska cases afford little guidance in boundary law disputes not involving waterways. The evidence shows that Alaska surveyors follow widely disparate methods, some of which in this case conflict with boundary law principles which, we submit, were misconstrued, misapplied or disregarded by the court below.”

No Boundaries

Lee v. Konrad – Supreme Court - 2014



No Boundaries

Lee v. Konrad – Supreme Court

The Court determined that this was not a case of survey methodology or weight of evidence, but a case of “*Boundary by acquiescence... an equitable gap-filling doctrine that may be available where estoppel and adverse possession are unavailable.*”

For the first time, citing Justice Thomas Cooley:
“*The long practical acquiescence of the parties concerned, in supposed boundary lines, should be regarded as such an agreement upon them as to be conclusive even if originally located erroneously.*”

No Boundaries

Lee v. Konrad – Supreme Court

The Court discussed the varying approaches to acquiescence held by other states and then defined the doctrine of acquiescence for Alaska:

“Accordingly, we hold that a boundary line is established by acquiescence where adjoining landowners (1) whose property is separated by some reasonably marked boundary line (2) mutually recognize and accept that boundary line (3) for seven years or more.”

No Boundaries

Lee v. Konrad – Supreme Court

Applying the Doctrine of Acquiescence to the Lee v. Konrad boundary, the Supreme Court held that:

“The basic requirements for boundary by acquiescence are established by undisputed evidence in this case: the boundary line between Lots 13 and 14 was definitely marked by rebar survey markers placed by [Surveyor A - 1992], fence posts and later a fence, and the owners of the adjacent lots mutually recognized and accepted that boundary line for more than seven years.”

No Boundaries

Collins v. Hall – Supreme Court - 2019

THE SUPREME COURT OF THE STATE OF ALASKA

RAY M. COLLINS and CAROL J.)	
COLLINS,)	Supreme Court No. S-16795
)	
Appellants,)	Superior Court No. 1JU-14-00771 CI
)	
v.)	<u>OPINION</u>
)	
DAVID W. HALL and MARGARET R.)	No. 7410 – September 27, 2019
HALL, as Trustees of the D&M Hall)	
Community Property Trust, dated)	
March 14, 2005,)	
)	
Appellees.)	
_____)	

I. INTRODUCTION

This case concerns a boundary dispute between the Collinses and the Halls, who are adjoining property owners in a recreational subdivision on an island near Juneau.

No Boundaries

Collins v. Hall

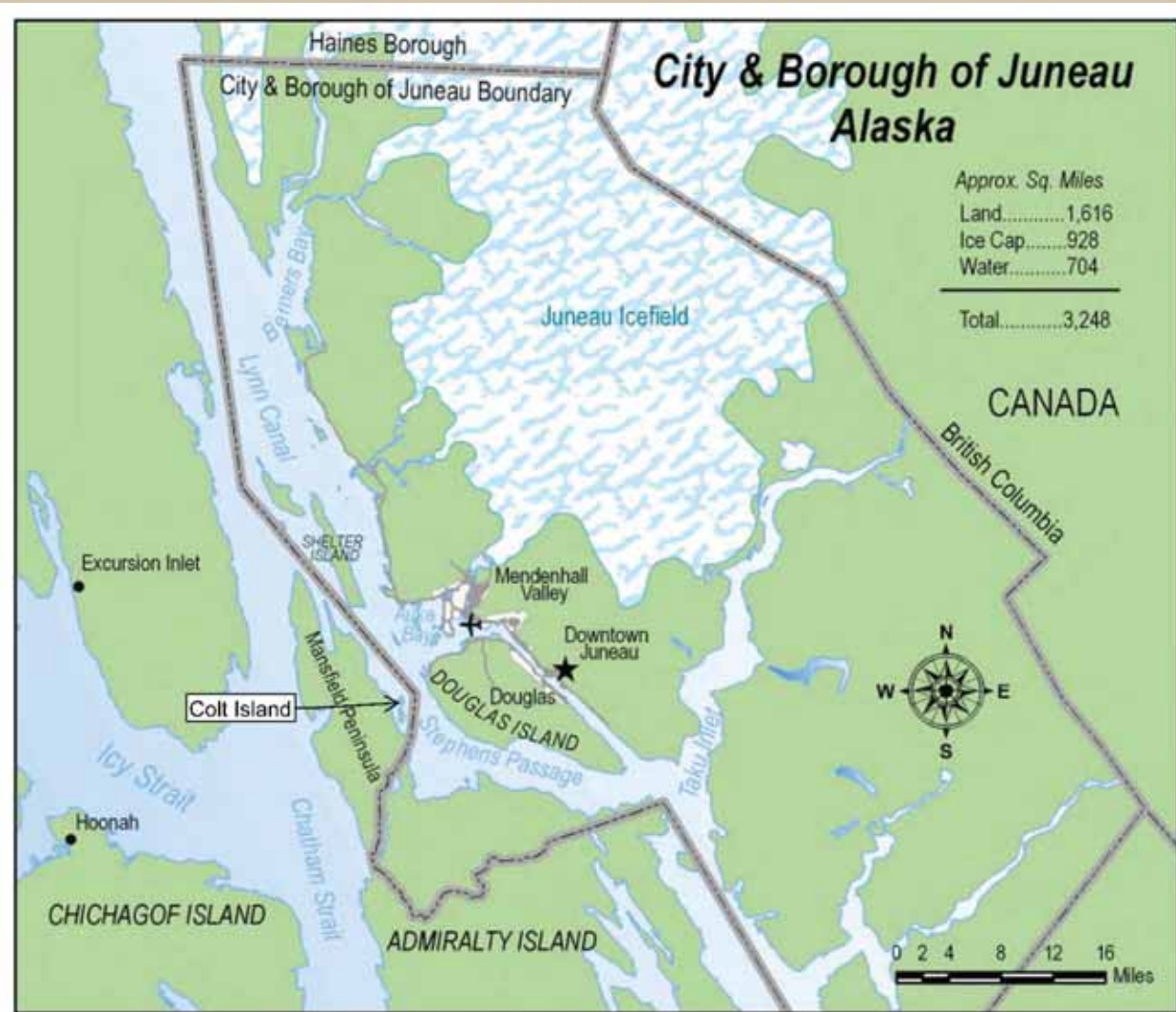
Location: Colt Island Recreational Development
– USS 1755 – S35, T41S, R65E, CRM along
Stephens Passage 10.5 air miles SW of Juneau

Parties: Collins owns Lot 16 and Hall owns Lot
15, both in Area 1.

General: 100' x 150' small lots adjoining
westerly mean high tide line of Colt Island.

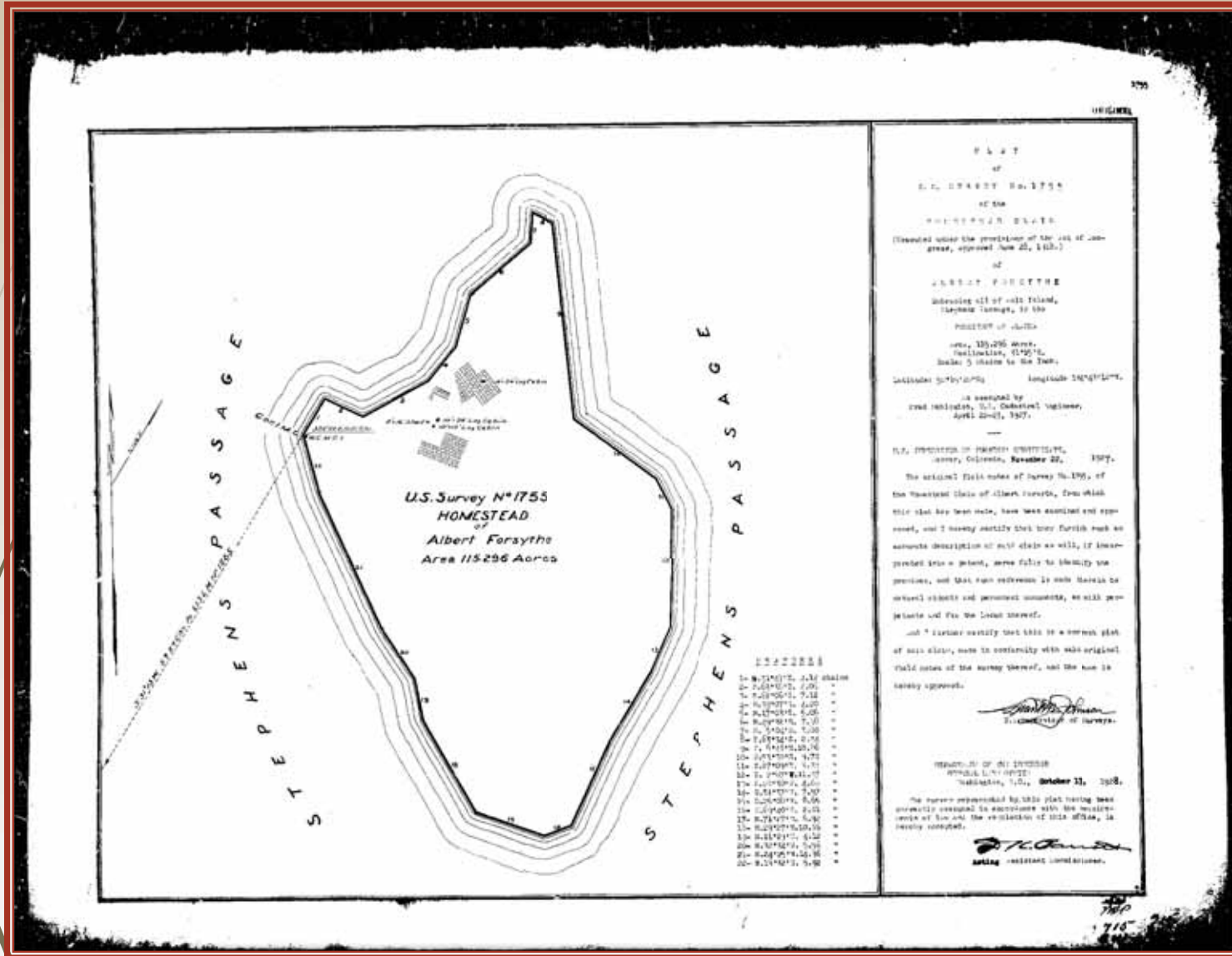
No Boundaries

Collins v. Hall – Colt Island - Juneau

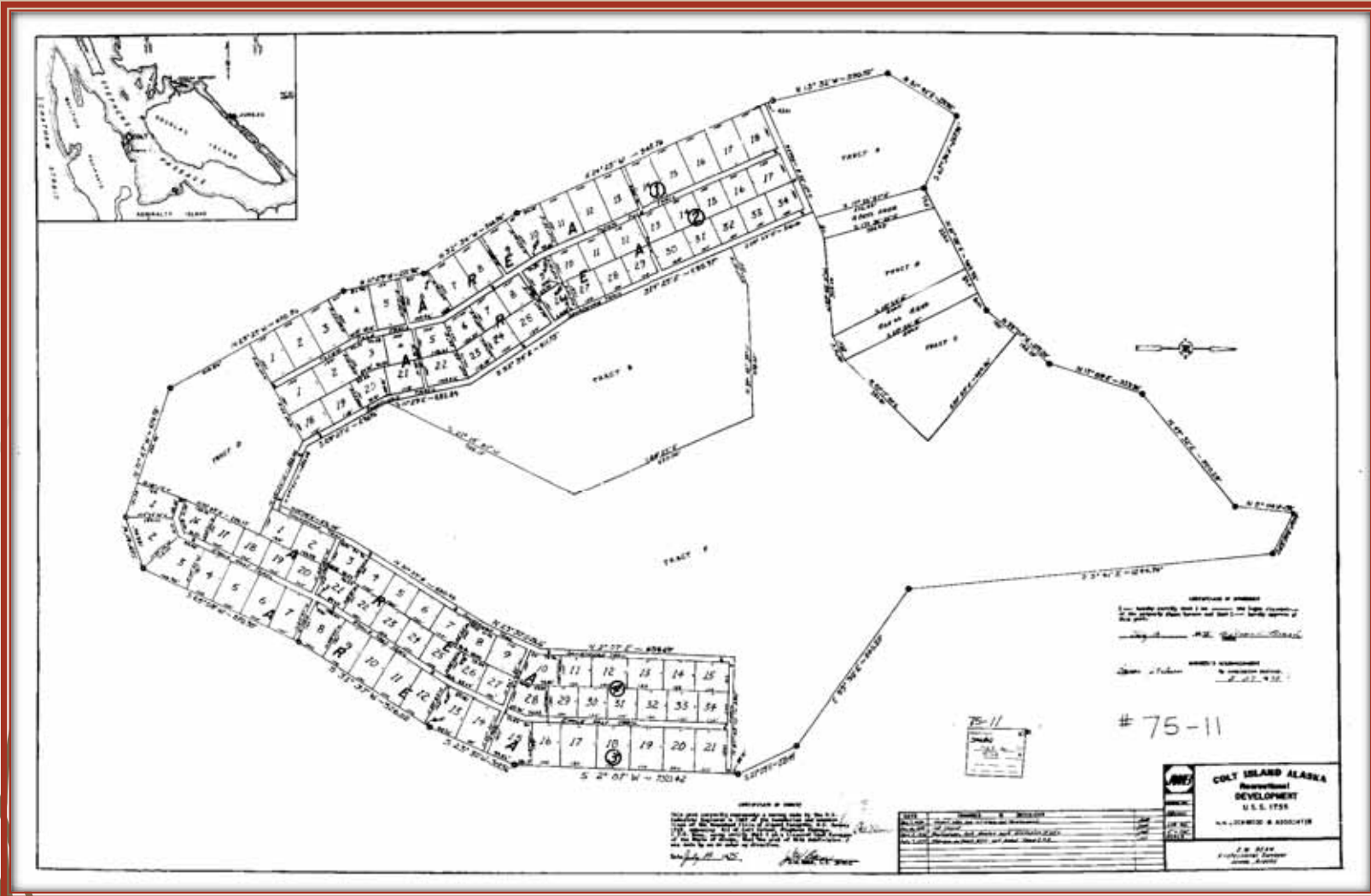


No Boundaries

Collins v. Hall – USS No. 1755 - 1928



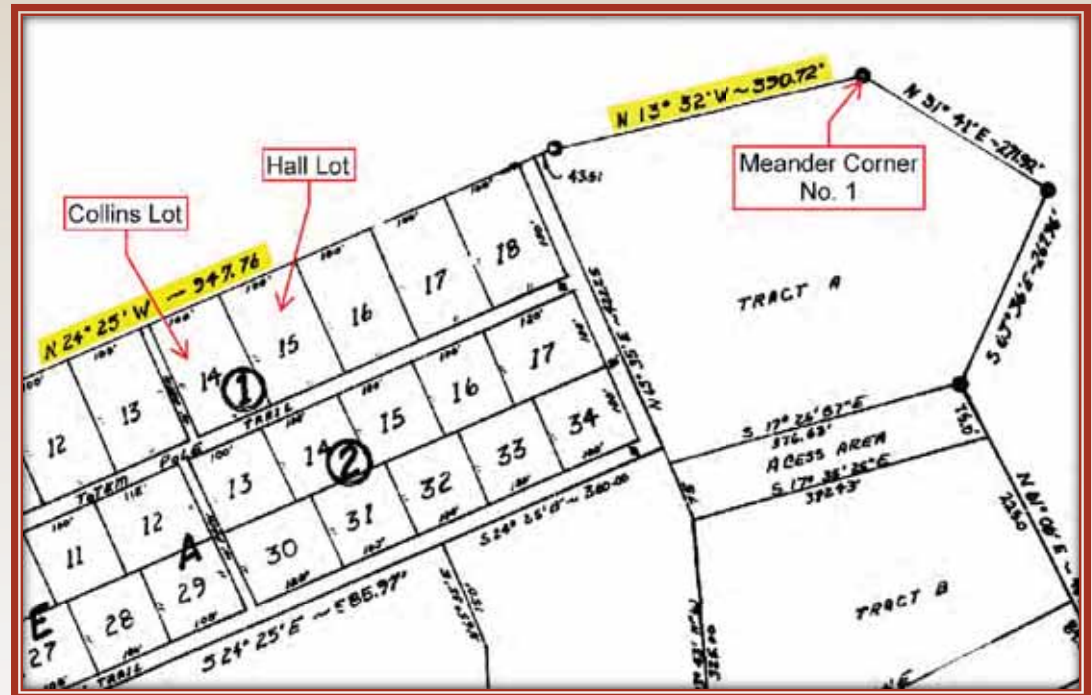
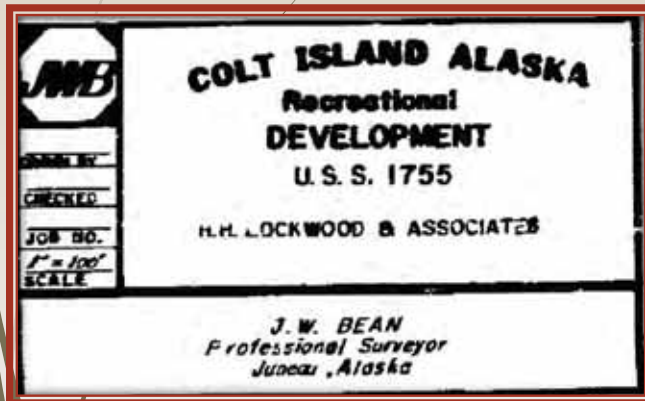
No Boundaries Collins v. Hall – 1975 Colt Island RD



No Boundaries

Collins v. Hall – Lots 14 & 15, Area A

This is boundary dispute in which the original surveyor, original survey and monuments are key. (Plat 75-11)



No Boundaries

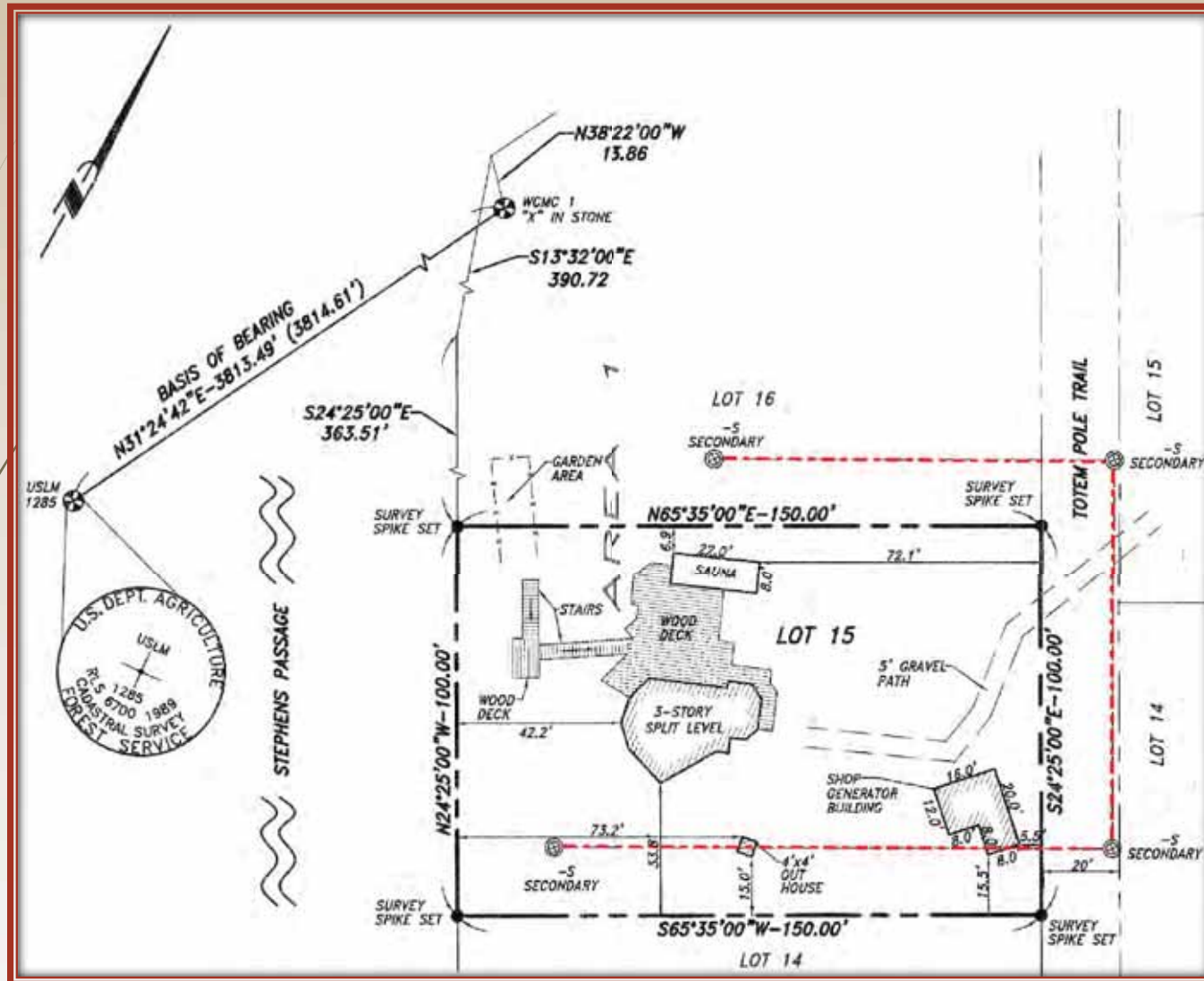
Collins v. Hall

Chronology:

- 1928 USS No. 1755 Approved.
- 1975 Colt Island Recreational Development – Paper Plat Subdivision
- 2012 *Hall* ROS 15-20' Shift in P/L
- 2014 *Collins* ROS Hall's Encroachments
- 2016 Superior Court Trial
- 2017 Appeal to Supreme Court
- 2019 Supreme Court Decision

No Boundaries

Collins v. Hall Plat 2012-32 for Hall by R&M Eng.



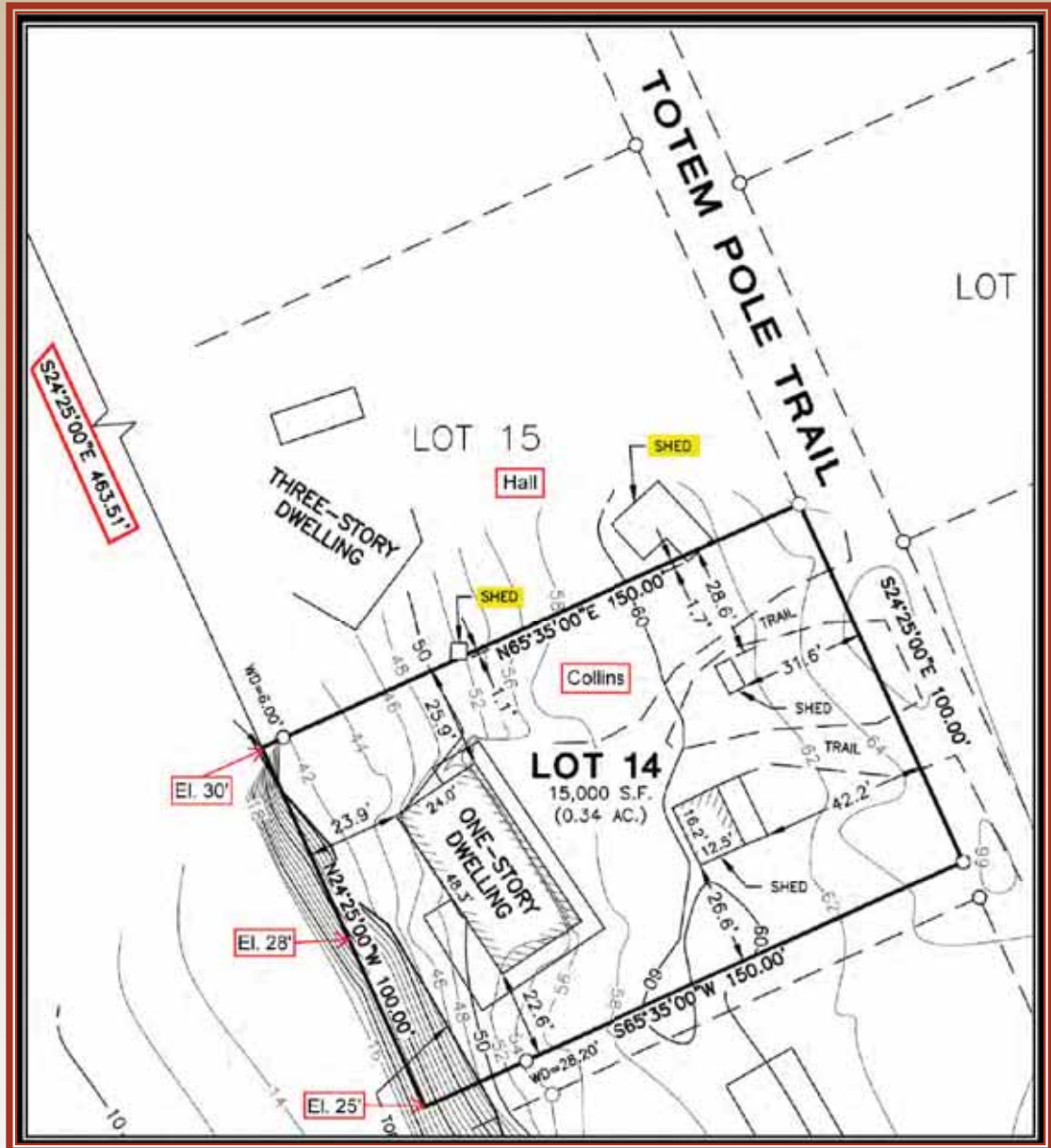
No Boundaries

Collins v. Hall

Plat 2014-46
For Collins by
J.W. Bean

Note shed
locations...

Also note lot
bluff line
location...



No Boundaries

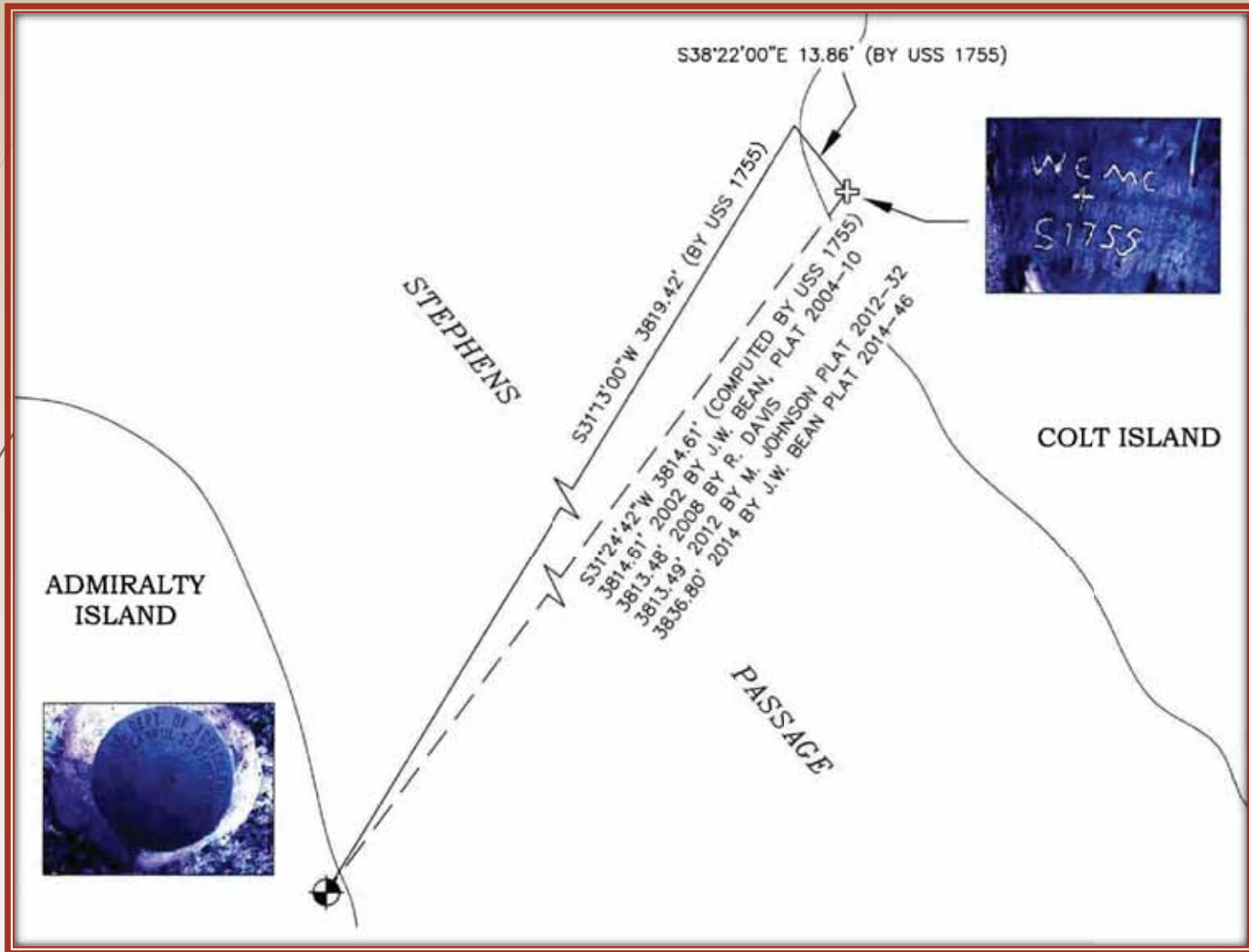
Collins v. Hall

Lot 14 Bluff Line:

USS 1755 Field Notes: *“Thence from the true meander corner point. With meanders of Colt Island. Along line of mean high tide, over stony, sandy, and rocky beach.”* – The Lot 14 Bluff Line should be the line of mean high tide...on the beach. Why did this line shift from the beach to the bluff? What was the POB for ROS 2014-46 (Collins/Bean)?

No Boundaries

Collins v. Hall - R. Davis Review – BOB Check



No Boundaries

Collins v. Hall

Point of Beginning/Basis of Bearing:

Davis Review Sketch suggests that ROS 2014-46 (Bean) used a different POB than other surveys including the initial USS 1755. BOB distance is off by 22'.

2012 Davis Survey and 2012 Hall Survey both used WCMC1 marked according to USS 1755 Field Notes.

No Boundaries

Collins v. Hall – R. Davis Review – WCMC1



No Boundaries

Collins v. Hall – Superior Court – 2017

Findings – Halls entitled to quiet title:

- The Correct POB is WCMC-1 of USS 1755.
- The *Hall* ROS used WCMC-1 of USS 1755 which was also the POB for Plat 75-11.
- The *Collins* ROS & subsequently established Plat 75-11 lot corners were based on an incorrect POB and do not control.
- Lot 14/15 boundary could have been fixed by Adverse Possession, Estoppel or Acquiescence but none applied in this case.

No Boundaries

Collins v. Hall – Supreme Court - 2019

Superior Ct. ruling is affirmed:

- Collins contends that Bean is the *original surveyor* and while no monuments were set for Plat 75-11, Bean's later surveys did.
- Collins further argues that the Plat 75-11 POB was not the same as WCMC-1 for USS 1755 and that "*long established surveying principles*" would give priority to boundaries established by the *original surveyor* and that according to Cooley, Bean was the *original surveyor*.

No Boundaries

Collins v. Hall – Supreme Court - 2019

The court held that this was a case of deed interpretation and that the deeds for Lots 14 & 15 were unambiguous.

As Plat 75-11 set no permanent monuments of its own and specifically refers to USS 1755, the factual question to be answered is which rock was the WCMC1 established by USS 1755.

No Boundaries

Collins v. Hall – Supreme Court - 2019

This decision supports the principle that original monuments established at the time of the original survey will be controlling on subsequent surveys even if the original survey and placement of those original monuments are in error.

(This may not be an earth shattering concept for many surveyors but it is the first time it has been discussed in detail by the Alaska Courts.)

No Boundaries

The First Surveyor

2012 ASMC – John Stahl Presentation

- *Original Surveyor: Original* monuments will control over plat & description discrepancies - ...the public's need for finality & uniformity.
- *Retracing Surveyor:* Locates a previously established original boundary – “*follows the footsteps of the original surveyor.*”
- *First Surveyor:* ...monuments boundaries created by deed description or paper plat where no monuments were called for.

No Boundaries

The First Surveyor

Sets *uncalled-for* monuments:

- May not be considered controlling.
- i.e. ROS sets monuments as per deed.
- May provide evidence of unwritten rights.
- First survey is nothing more than the surveyor's opinion where the boundary is.
- Question: Should monuments have standing separate from their association with unwritten means of boundary establishment?

No Boundaries

Closing

- Alaska has little boundary case law
- Why? – the cost of taking a boundary dispute to court may be more than the land value...
- Not always about money, but personalities!
- Two boundary cases:
 - Lee v. Konrad respects the settled expectations of the community to hold existing but non-original monuments.
 - Collins v. Hall gave weight to original monuments even if they conflict with an associated plat or deed description.

No Boundaries

Closing

One notable item for Alaskan Surveyors, both new and old:

Lee v. Konrad and Collins v. Hall are the first Alaska cases to cite the writings of Justice Thomas Cooley. His 1876 essay The Judicial Functions of Surveyors is recommended reading and can be found on the Alaska Society of Professional Surveyors website in the Standards of Practice section.



The End