How Do You Know When You Are Done??

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It is a question that reminds some of us with a more bizarre sense of humour of the old joke; two ol' boys are discussing foods they don't necessarily like. Precisely, they are talking cuts of meats. The one says he can barely stand eating tongue - and besides, how do you know when you are done? Research for a particular survey is a lot like that. How do we know when we are done? Perhaps, inherent to the wise practice of surveying there exists no real guidelines, let alone an astringent set of rules for research. Our experiences tend to be the guide, gut instincts of what ought to be done. But with rising liability, surveyors might want to consider a "side shot" to the old joke. When eating tongue - what do we do if it starts eating back?

The liability of not doing our homework on a particular survey has serious impact for clients, adjoiners and ourselves. It can bite us back. Perhaps one surveyor's guide is that research has its parameters based within the deed furnished by the client. In contrast, if that deed is faulty, ambiguous with a description that stretches the very definition of a legal description, there had better be research into adjoiner descriptions. There had better be a search for intrinsic evidence with good old fashioned detective work. Perhaps there is some logic to blind adherence to the client's description - but what if the next client is the adjoiner, with his superior description?! By rights, the survey done earlier has to be refuted, giving the clear observation that the surveyor is arguing with himself! Bottom line -we may not serve the client interest by blind adherence to his furnished deed. Good advice exists from Brown's "Evidence and Procedures for Boundary Location" to research the adjoiner descriptions.

Another surveyor might claim - we can handle all this with disclaimers.... Disclaimers supposedly limit our liability. Put another way, we should not worry about tongue "eating back." I would park these folks in the same category as those who would argue with themselves. It is just not all that appealing. It does not produce a guideline for a crucial task to any survey project. Research is crucial. It is our guide into the mechanics of the survey. It is directive of what should appear in the notes, a report of survey and upon the drawing itself. It should NOT be the directive of weasel words, and surrealistic disclaimers.

We have to be as open-minded about research as we are about evidence. Moreover, the two are closely linked. Common sense approaches that evoke deed supported documents, listening to people, and discovering the "why" of things while organizing our findings will go long ways towards guiding the research effort.

So how do we guide our guide into the mechanics of the survey? There is the surveyor that would argue (perhaps, when he is not arguing with himself) that NONE of this is the with concern of the surveyor. One just grabs the client's deed and loyally and blindly lays it out - consequences be damned. Any peripheral concerns of faulty description are strictly the concern of the attorney. Aside from title issues, how does the attorney address facts of location without all the puzzle pieces? Sounds like these two professionals ought to be consulting each other - rather than occasionally insulting each other. One needs to fully address ALL the location issues and the other needs to assess the impact of meaning upon those location issues. If the facts of location present an unpretty picture of "tortured lines," bizarre evidence, missing pieces, does all that mean we throw up our hands and dump missing puzzle parts onto the attorney?

We tend to be predictable animals. Given our math solution mentality, we tend to like rules, finding comfort in them. We extend that rule dominance to evidence of location as well. Lost corners. Oblit corners. Rules for original survey. Rules for retracement. We know the rule list well. We cherish this propensity for rules in all areas - especially evidentiary rules -EXCEPT in the acquisition of that evidence, namely the big "R" (research). There it is preferable to play Russian roulette in regard to our liability. Is THERE ample irony here or WHAT? It is as if we say, let's do our minimum daily requirement of the big "R" because anything more may impinge upon another profession, do an injustice to our client, or cause us to have to write some ungainly report of survey, or just appear to be weird, and that would be UNCOOL. Plus, we can always go back for more big "R" if warranted - say if we get shot at by the neighbour (something about being on his land and us having questionable heritage ...); we get a nasty letter from an attorney representing an adjoiner; OR nothing fits; OR we threshold to the twilight zone and everything fits. Then we see that there is the quarter corner up ahead NOT located at the miserable untraversable dip in the road, but is really on the hillcrest (sure).... In other words, when the little red flags trip and we are not ice fishing. Then we get more research done - not because it should have been the right thing to do - but because we might have to have some "UNCOOLA" to drink with our humble pie. Just as long as we do not consume any tongue....

Should a surveyor have a particular policy of research for surveys? Absolutely NOT! Should a surveyor have a policy of research for a particular survey? That is more to the point. This is not the same as reinventing the wheel, but in the circle of things we do, it could easily be confused

as such. It must be keyed to the scope of the project in much the same way that the fee had better be commiserate with the task, the reconnaissance useful to productivity, the client interest served with reasonable standard of care. Our clear early on "picture" of a particular survey is crucial to what needs to be done whether the topic is linework with a CAD drawing, interpreting the description, or doing the big "R."

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Another guide is to imagine, if you will, the survey becomes "exhibit A" in a courtroom. Would it provide the assistance in arriving at an equitable decision if not all the evidentiary pieces were represented? Would it stand the reasonable care standard? A shortage there can be disastrous. However, I know of no penalty for exceeding the standard of care.... Courtrooms tend to play hard ball, not Russian roulette.

Because some would question the concern over the extent of research, it might be fitting to ask ourselves a series of questions that would guide us into project orientation. Is this survey simple or complex? What is the extent of the liability? Is any litigation pending on adjoiners? Do junior and senior rights come into serious play? Do words take on special meaning for deed interpretation in the context of when the words were originally authored? Of course, by the time some of these questions are answered, the surveyor is deep into research country. However, it should point to the need of sizing the project up early on. Early sizing, of course, is not limited to the topic at hand. It is at the crux of estimating the job properly, planning the tasks, and assessing the liability. If a surveyor has not worked in a particular locale, it may be prudent to invest some research time before even deciding to take the job. It is wiser to "lose" a couple hundred dollars than a couple thousand.

For example, a peek at an equalization map overlay, which our profession is adverse to using, might disclose pencilled notes on the margin such as "occupied lines do not agree with descriptions." I saw this note and was glad to know about it FIRST! There are a few other guidelines which would take on dominance as per particular jobs:

1) Pay close attention to the red flags that pop up. This is important to tip-up fishing as well as surveying. It may lead to a return trip to the courthouse.
2) Encourage the client to furnish an abstract of title, attorney's opinion of title or title insurance policy that would support his furnished deed. Review that document closely.
3) Encourage clients to elaborate upon any events that have led them to a decision for a survey. Even though the client is not facing litigation, are any peripheral areas being disputed? Do adjoiners or even the client have an axe to grind? Find out if the natives are friendly, in other words.
4) Listen closely to the people you encounter doing the field work. Do not brush it off as counter-productive. Sometimes old Zeke, during a lucid moment, may disclose extremely valuable information about the task at hand. Just remember lay people do not understand our technical jargon, but still could offer valuable survey info. This is frequently the case in unrecorded stuff.
5) Make every attempt to find out WHY things don't fit in the field. This could be a subtle red flag popping up.
6) Organize your findings as they relate to research. Discover if "holes" exist that may extend liability or cause a less than quality job for the client. Notes, outlines, sketches, etc. may also provide the framework for a report of survey on the certificate. If it is done on a word processor, the outline can slickly be integrated into report form.

Occasionally, additional trips to Register of Deeds Offices are warranted. Perhaps, we need to contact other surveyors for corner clarification. Maybe we are plagued with unrecorded documents which shed true light on the evidence of location. These tasks can quite often upset our logistics and require sheer detective work. Occasionally, one arrives at more questions than answers. All this would point to the fact an astringent set of research rules will not cut it. We have to be as open-minded about research as we are about evidence. Moreover, the two are closely linked. Common sense approaches that evoke deed supported documents, listening to people, and discovering the "why" of things while organizing our findings will go long ways towards guiding the research effort. It is a mix of proactive and reactive. It is a steady diet of the right stuff without, hopefully too much tongue thrown in.