

## Educational Corner “Stones” Systematic Review

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*“At least once each year, the member or members appointed by the Council shall inspect at least one plan prepared by each firm.” [Sec. 40(4), Reg. 1026]*

The Systematic Review process is used by the department to meet the legislative requirements set forth under Section 40, (4) of Regulation 1026 of the Surveyors Act. Typically, this review is only applied to plans recently deposited or registered within the registration system.

At times, recent SRPRs are sought from the firm to equip the Department with the necessary review materials. In either case, this review is conducted only upon “firms” not identified to receive the more intensive Comprehensive Review in the given calendar period.

Over the past ten years, there has been a noticeable improvement in plan presentation. Most plans are capable of standing on their own, giving full presentation to all consequential matters considered and resolved during the performance of the survey. However, some significant problems continue to appear over and over again, on a frequent enough basis to warrant further comment. This article focuses upon the most common deficiencies determined through this type of review, giving reference to the new Performance Regulations and Interpretive Guide, where appropriate, providing an example along with typical questions. However, while considering our comments, please recognize that a Systematic Review is conducted on plans without benefit of or reference to the associated supporting documentation. These reviews are utilized to prove compliance with all applicable regulations and the like, and to determine whether the selected plans can stand on their own without reference to other documentation.

### METHOD OF SURVEY

[0. Reg. 42/96, s. 19; Interpretive Guide, s. 14]

The most common element addressed within the Systematic Review process will question full expression of the method of survey utilized to re-establish the pre-

existing limits/comers of the survey. The plan must illustrate the procedure used to re-establish all existing boundaries/comers forming part of a survey or on which a survey is dependent - be it lot limits or related deed structure. The source of the information accepted in this procedure must be stated for any direction or distance being set. Each reference to previous plans, deeds, survey records/plans, making use of “proportioning,” or accepting physical elements should be clearly identified for each application.

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### EVIDENCE ON EITHER SIDE PRINCIPLE

[Interpretive Guide, s. 31]

A monument placed on an existing boundary shall be established from evidence of the boundary on both sides of the monument, if so intended. We recognize that it is not always possible to derive evidence of any given limit on both sides of the planted point due to the configuration of the boundary or parcel shape or simply due to a lack of local evidence. However, we should not lose sight of the requirements set forth under this survey standard. Without full compliance to the “evidence on either side principle,” there is no validation that the newly planted monument occupies the retraced limit as intended. Frequently, we consider surveys with pieces of evidence of “unknown origin” produced without check measurements to re-establish a limit. Is it not possible that

the evidence of unknown origin may also be witness points? This variance is always questioned, unless the boundary configuration problem is self-evident or physical elements support the survey methodology.

This survey standard must also be applied to the re-survey of the rear limit of a survey. Consideration needs to be given to the depth of the lots on both sides of the common rear limit before it can be positioned. Where evidence is not available to define the rear limit of a tier of lots and, in your opinion, plan depth is the only remaining option, this method often results in the limit being re-established in conflict with existing fences, walls, structures, and the like. The depth of the adjacent tier of lots should be checked before the limit is finally positioned. Is it not possible that the abutting owners consider the existing physical evidence to mark the extent of their respective ownerships?

Often, Comprehensive Reviews reveal additional field procedures checking abutting lot depths but this information is not shown on the plan. By illustrating these additional field checks on the plan, many questions are answered and compliance with the standard has been achieved. This added presentation usually results in fewer questions from SRD even though the status of the conflicting element may still remain.

### BEST EVIDENCE

[0. Reg. 42/96, s. 3(b), (c)]

It is extremely difficult to address within a Systematic Review all potential questions concerning this element as the department does not have sufficient information to pose a specific comment. Most often, these issues would be considered within the context of a Comprehensive Review and dealt with either in writing or within the context of the office visit discussions. However, a few concerns do arise on a frequent enough basis to warrant comment.

1. Plans frequently exhibit found monuments in close proximity to property corners re-established by plan or deed measurement only. The plan does not indicate



why the found evidence has been rejected; such as the found monument being disturbed or bent, or so on. The plan presentation indicates only that existing survey evidence has been rejected for a theoretically re-established property corner reset by evidence of questionable weight with regards to the found evidence. Why was the found evidence rejected? Is it possible that the found evidence constitutes better evidence of the property corner?

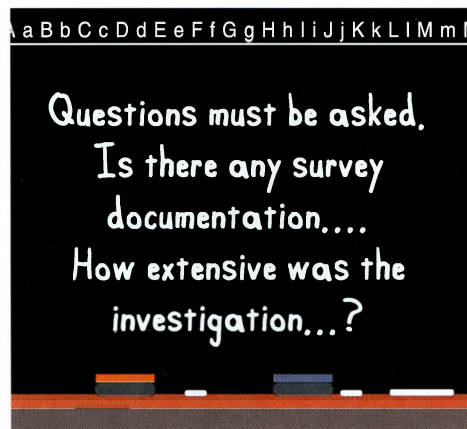
If a bent monument has been replaced, then the method used to reset the point needs to be specified. In both cases, questions are often posed by the Department with regard to the specifics of each issue as well as improving the plan presentation. If “ties” from structures are used to reset the corner or the base of a bent monument is held, then specify the decision on the plan.

2. Another presentation concern involves the retracement of “deed” limits where more than one qualifier to the same deed line is shown and the second qualifier is related to other nearby limits that have not been re-established during the current survey. An example of this scenario would be set out as follows:

- i) the parcel being surveyed is rectangular in shape and lies in an east/west configuration with its west boundary fronting onto the abutting street;
- ii) the survey exhibits solid survey evidence of all limits excluding the southerly boundary;
- iii) The southerly limit is re-established by setting out the parcel width by accepting the underlying deed width. The limit as re-established exists in conflict with an existing fence and runs through an entrance enclosure that exists on the side of the structure that exists on the property to the south of the survey;
- iv) the recorded encroachment for the side enclosure is a few inches; and,
- v) the survey also displays the southerly limit of the survey to be a specific distance north of the south limit of the lot as the “underlying deed” and set. No evidence or method of survey is shown to indicate that the lot structure was re-established. Likely, this information should not be shown and does not support the survey method.

This scenario is quite common. Obviously, the conflicting location of the deed line versus the fence limit and the entrance enclosure raises concern. A further concern involves the second deed reference being made to the lot structure and stated as “deed & set” as a check. This

deed reference was not surveyed/ measured nor was the lot line retraced. It has simply been adopted/ compiled from the deed record. Is it possible that the second deed reference has priority over the deed width? If the second reference has priority and was appropriately adopted, then would the physical conflicts remain? In this case, we ask whether the primary deed value has been used in the retracement? Has the significance of the conflicting physical evidence been adequately investigated and considered before accepting the deed width of the property? We point out that extraneous deed references should not be illustrated on the plan unless they can be compared against measurements taken to the geo- graphic structure to which they are referred.



3. Of greater concern are plans exhibiting “slivers/triangles” defining possible claims of “adverse possession” between theoretical lot/deed lines and apparent settled occupation to resolve perceived title irregularities. The limits re-established in conflict with the settled possession are reset based solely upon adoption of plan/deed values without supporting survey information or indication that the limits ever existed in the position now presented. At times, these limits are re- established in a position where they “run” through existing long-standing structures.

Questions must be asked. Is there any survey documentation indicating that these limits were ever staked in the same location depicted by the adopted deed/plan values? How extensive was the investigation conducted for applicable survey information? Is it possible that the physical evidence may represent the best evidence? Has the status of the physical evidence been adequately investigated and considered? It is not suggested that fences, occupation, and the like., is the answer at all times, but ample consideration of the occupation is usually suggested. Discussions usually follow whether “misdescription” is

a more appropriate approach, keeping in mind that each survey has unto itself unique factors which influence how one need proceed.

## PHYSICAL FEATURES

**[0. Reg. 42/96, S. 21(1)a,b; Interpretive Guide S. 16]**

The new regulation is more specific in comparison to the “survey standard” it replaces. All topographic information that may affect the final location of a boundary/corner being re-established must be shown and related to the limit/corner as reset. Relating all relevant features to the limit/corner with tie dimensions or stating it to be “on line” where appropriate is clearly required.

Similar regulatory application must be applied regarding physical elements that may represent a potential interest in the title to the parcel being surveyed. Elements, such as overhead wires, paths, driveways, need be identified, located and shown on the plan with sufficient detail to define its relative position to the survey limits.

## EASEMENTS

**[0. Reg. 42/96, S. 13(1)a; 0. Reg. 43/96, S.20(1)b]**

It remains the responsibility of the signing surveyor to fully illustrate every right-of-way and easement described in a registered instrument or as shown on a registered or deposited plan. Previously, the department may have suggested that additional part(s) were needed to define that “part of a part shown to be subject to an easement” on your plan. The new regulations state that underlying easements be defined as parts. This provision allows for a clearer illustration of the interest’s extent, the plan stands on its own without reference to other documentation and it reduces confusion for subsequent users.

## MONUMENTATION

**[0. Reg. 525/91]**

This regulation has not been altered during the latest round of revisions to create the Performance Regulations. However, it is an issue addressed frequently during Systematic Reviews. The concern faced by the department remains: “What is reasonable compliance?” We recognize that strict compliance with the requirements set out under this regulation cannot be met at all times, but apparent significant variances are discussed. Monumentation variances are handled easier and more explicitly during a Comprehensive Review as the field notes are available for consideration and the firm’s policies can be discussed in detail.

## **TITLE INFORMATION**

### **[0. Reg. 42/96 S.17]**

On occasion, our plan review will involve lands affected by a Registrar's Compiled Plan. Many of the plans will reflect the underlying geographic elements as being that re-designated by the recent Registrar's Compiled Plan as well as the geographic entities which pre-existed the said Compiled Plan.

A Registrar's Compiled Plan is used to clean and simplify the existing abstract. It has a similar effect not unlike a Registered Plan regarding the creation of new geographic units but does not repair the existing legal description. That step remains to be dealt with through a reference plan and the like. As quoted from the Registrar's Compiled Plan procedural guide of MCCR: "... upon the registration of the Registrar's Compiled Plan, the proper and acceptable description for any property illustrated on the plan is by reference to the lot number and the Compiled Plan number only; thus a proper description would be of the form of Lot 18, Registrar's Compiled Plan 47." The descriptions typically seen stating both geographic elements do so in error. Similarly, plans to be deposited/registered should only reflect as

underlying title and within the title block that the plans involve lots on the Registrar's Compiled Plan alone and not the pre-existing geographic entities, unless the title/plan information is being abstracted in two abstracts.

## **OVERVIEW**

Through this review process, the Department provides a relatively detailed assessment of the selected plan relative to the applicable regulations, and so on. This process is similar to an audit where only the completeness and clarity of the information illustrated is considered. We consider the overall plan presentation thoroughly before making comment upon important issues identified like sufficient evidence, method of survey or other areas similar to those outlined previously. We avoid being too explorative in our comments. Where non-compliances are clearly evident, they are identified and addressed in our correspondence. Unfortunately, we do not have in our possession all the related support information to make a fully-informed comment. Time, staff and monetary restrictions preclude our availability to this data. When errors in judgement occur, comments are retracted.

The majority of the plans considered have virtually no or few problems. Every review requires written comment, be it to recognize superior product, provide educational support or to initiate further dialogue on plans that appear to have significant shortcomings. We treat plans exhibiting problems equally with those that appear to comply with the applicable Regulations and Standards. In some instances, the Department seeks a written response from the firm regarding more serious matters. This dialogue should be seen only as an educational opportunity for both of us and not an adversarial or confrontational experience. Typically, one of the aforementioned elements on its own will not cause the Department to request a written reply from the firm.

As recently stated by the SRD Committee, this review should be "like a check-up at the dentist, a quick look and a clean and you're okay until next year;" whereby the profession's annual statutory obligation is achieved. Yes, most reviews lead to this result. However, 15% of firms still continue to require the more intrusive scrutiny through reciprocal correspondence to resolve a multiplicity of issues. As a closing comment... "How will your check-up be in 97!"

