

By Gary Kent, LS

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## Retracement Surveys and Undocumented Corners (Part 1 of 2)

**R**ecently I was dismayed by a discussion thread on one of the surveying bulletin boards that related to the perpetuation of a section corner and an undocumented monument that appeared to be marking that corner. The thread started with a posting that referred to a “monument” (a nail) that was found ostensibly marking a public land corner. Without going back to review the exact content of the posting, I recall that a good number of surveys and plats had been made using this nail and the suggestion was made that it was unnecessary to dig for a stone because, by virtue of all of the work done from the nail, any stone would be irrelevant. The premise was that the nail had essentially become the corner by use.

As disappointed as I was by this, I was infinitely more disturbed—perhaps ‘appalled’ more closely expresses the feeling—by the fact that many, if not most, of the responses agreed with this position. It seems like this line of thinking should be explored.

The following can be stated categorically: A monument that can be positively proved to be incorrect, even though it has been accepted by numerous surveyors as being correct, cannot be held as the true corner.

Such a monument *may* represent the basis for current lines of ownership, but that does not make it the record corner. Resolving the conflict between a record corner that differs from a monument that defines property lines (sometimes called a “title corner”) as part of conducting a retracement survey is an exercise



**A stone found and documented in the old books as having been set by the County Surveyor in the mid 1800's at the location of the original GLO wood post. Some would apparently disregard this stone in favor of a PK nail of unknown origin — simply because the nail had been used by everyone.**

that is highly dependent on the specific facts and evidence of the situation—there is no single rule that can guide the surveyor in all cases.

In any case, however, a strong argument can be made that the most significant rule in all of surveying, in fact the entire crux of the U.S. Public Land Survey System, and the one least likely to be disregarded by the courts (and, hopefully, by surveyors), is that an

original, called-for, identifiable, undisturbed monument has no error.

### **Called For/Documented**

Generally, monuments must be called-for in a document of record in order to be controlling, although there are exceptions.

Whether a U.S. Public Land System corner or a deed/property corner (I am not discerning between the terms deed corner and property corner for purposes



A stone set by the County Surveyor in the mid-1800's at the location of the original wood post. It was just below the surface of the roadway, but there was no indication that anyone had dug for it for years, and no current references for it in the County Surveyor's Office.

of this column), it is highly desirable that a monument have some sort of documented history before it is considered as being held for a corner. A monument with a documented history at least has some level of credibility—subject to the evidence provided by that history and whether or not the monument has been disturbed. An *undocumented* monument, however, raises all kinds of questions like: Who set it? For what purpose was it set? Where was it intended to be set? When was it set? How was it set?

Holding a *documented* corner becomes a matter of the credibility of the evidence supporting its position—what its history is and whether or not it has been disturbed. However, holding an *undocumented* monument as a corner is inappropriate except when there is no better evidence; and there are several scenarios in which an undocumented monument might be the best evidence.

An undocumented corner might be held by *common report* (also called *reputation*). This is most common in the case of original U.S. Public Land Survey corners, aliquot corners of the USPLSS and subdivision corners. It could also apply to certain property corners that are referenced by, or common to, numerous record descriptions. Paraphrasing from the Fifth Edition of *Brown's Boundary Control and Legal Principles* (Robillard, Wilson and Brown), a monument by

common report is one that has been commonly accepted by numerous surveyors as being correct, but whose history is lost in antiquity, and the integrity of whose position can neither be proved nor disproved.

Holding a monument by common report is not something that is done lightly, these criteria are formidable. The definition lends itself to a critical evaluation of the evidence—or lack thereof—before deciding to accept an undocumented, un-called for monument as a corner.

**...Some would apparently disregard stone[s] in favor of a PK nail of unknown origin – simply because the nail had been used by everyone...**

Undocumented monuments ostensibly marking property corners will often *not* meet the requirements of a corner by common report. This is because such monuments are often relatively local and obscure and would not have lent themselves to having *any* sort of reputation. They are often not of a nature that resulted in numerous surveyors relying

upon them as correct. However, this does not prevent such a monument from being held as a deed/property corner when there simply is no better evidence. Particularly in the metes and bounds states, descriptions often are so old and poorly written that evidence provided by otherwise undocumented fences, walls, monuments and other features may very well be the best evidence there is.

### **Undisturbed**

When a documented monument is found, the first question that should be asked is: *Is it in its original position?* Or, *Has it been disturbed?* Determining whether a monument has been disturbed, or not, can obviously be a somewhat subjective exercise, but it should not be completely devoid of objectivity.

The accuracy of an original survey conducted in the past can reasonably be expected to be less than that of a contemporary survey. The contemporary surveyor must try to determine when the earlier survey was performed, and to compare what has been found with what constituted an acceptable level of accuracy during that time period. This step should not occur in a vacuum, however, because it is also important to try and find out *who* did the survey. Some surveyors did work that was, accuracy-wise, either better or worse than their contemporaries and this needs to be taken into account. The fact that someone conducted a poor or inaccurate survey compared to normal standards does not necessarily invalidate the results of an *original*

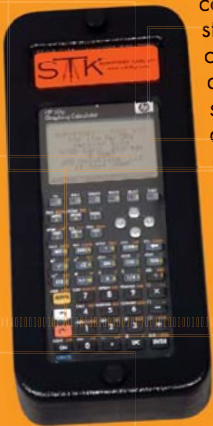
survey. (Inaccurate *retracement* surveys constitute an entirely separate issue that we will touch on later in this column).

Assessing the monuments from an older survey vis-à-vis what was acceptable or expected given the specific period and surveyor should not be difficult for someone who has been surveying in an area for any reasonable

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A stone set in the mid-1800's by the county surveyor, documented in the old books, and found without much difficulty in a field. Note the rebar set by another surveyor as the corner - 18 inches away.

length of time. If the contemporary surveyor does not already know this information, it is incumbent that he or she learn and become intimately familiar with it. Otherwise, one cannot assess old evidence with the requisite level of confidence.

An example of this can be found in certain areas of my state of Indiana. In some counties there were excellent surveyors in the past who, for whatever reason, measured very poorly. Their overall work is well known by local surveyors to be of a high level of integrity. When they said that they found or set certain monuments, it is well-documented that, in fact, they did. But putting faith in the quality of their measurements is a bad mistake. As a result, finding their monuments in unexpected locations is... well... expected. Knowing that simple fact allows the contemporary surveyor to accept a greater margin of error in 'found vs. reported' locations of monuments without determining that those monuments have been disturbed.

So, the contemporary surveyor should be able to assess a monument's location (*i.e.*, has it been disturbed) in light of the time period it was set,

the region (county, city or town, for example) and, if known, the surveyor who set it. Whether or not it meets the accuracy expectations of the circumstances under which it was set is one piece of information that should be assessed in the eventual decision of whether to accept it or not.

### Identifiable

The integrity of a monument is also directly tied to the ability of the surveyor to identify it as being that same monument referenced, for example, in a deed, on a plat or map, or in a corner record. Except where local history provides some context (*i.e.*, Surveyor X always used half-inch rebars or Surveyor Y always set cotton gin spindles), nondescript or poorly described monuments are a major hindrance. Survey plats or maps that show "I.P." are maddening. Surveyors have seen I.P.s that varied from half-inch rebars, to vertical railroad rails, to copper pipe, to one-inch iron bars, to steel fence posts, to T-bars, to buggy axles, and everything in between.

The credibility of a certain monument is certainly raised up when it matches its description in the record. When it does not, its integrity is nearly fatally flawed. *A*