

GET IT SURVEYED!

Tales and Tips from the "Wild West of Land Surveying"

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The Troublesome Cottage

By Stephen Shannon, PS

When you buy a house, you get it inspected. You don't want to buy a house with hidden (and expensive) structural problems. You don't want to be cheated into buying a "lemon". What about your property boundaries? Did you get them inspected for problems? Here is a horror story about someone who did not...

Setting the Scene

On a lovely little property in Northeast Indiana, a cute little cottage overlooks one of the most beautiful lakes in the area. The cottage is well built, entirely up-to-date and is located in a very desirable location. Real estate in this area sells for top dollar. Around 2006, the owner of the cottage (we will call him Mr. Jones) decided to sell, so he put the cottage on the market and found a buyer. The buyer wisely insisted in the purchase agreement on being provided a survey of the property. Mr. Jones's realtor dutifully hired a surveying firm. Guess what they found?

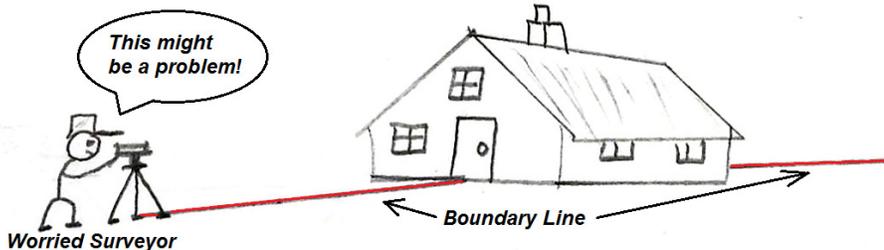
*The south boundary line
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This peaceful little property concealed a major problem! The south boundary line of the neighbor's property went *right through the middle of the cottage!* No one had known about this problem because the cottages on these properties had been in the families forever, and no one had ever really thought or cared about the property lines. Of course, the deal fell through. After all, who wants to buy a cottage that is on land that you don't really own? Suppose the neighbor decided to bulldoze their half of the cottage!

In this case, the neighbor (we will call her Mrs. Smith) was a no-nonsense and intelligent woman. She wanted to settle the problem simply and inexpensively with a boundary agreement. She and Mr. Jones came to a tentative agreement whereby she would sell him the land under the cottage for a reasonable price. The surveying company drew up a survey of the proposed, corrected boundary line between the two properties. The problem would be solved, and everyone could live happily ever after! Or not...

The Deal Falls Through

For unknown reasons (possibly health related – the people involved were elderly), Mr. Jones dropped the boundary deal with Mrs. Smith and did nothing further to solve the problem. A few years later, he found a new realtor (Ms. Wilson) and put the cottage back on the market, priced to sell. Ms. Wilson found a buyer (Mr. Brown) who loved the lake cottage and its view. He made an offer, and requested a survey. Ms. Wilson happened to put in a survey order with the same surveying firm as before.



At that time, I was one of the surveyors on staff at the surveying firm, so I got a front-row seat to what happened next. The owner of the surveying firm, a highly experienced land surveyor, called up Ms. Wilson and explained the problems with the property line between Mrs. Smith's and Mr. Jones's cottages. He also explained how Mrs. Smith had been trying to settle the problem once and for all, but Mr. Jones never followed through with it. After hearing all this, Ms. Wilson got worried that the deal to sell the cottage might fall through like the last time. She told my boss to cancel the survey order and not to do the survey.

(Continued on next page...)

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(The Troublesome Cottage, continued)

The Plot Thickens

Mr. Jones had a copy of a survey of the cottage from the 70's, done by an old surveyor who was long since deceased. This was a typical "cheap" survey from back when there were almost no regulations on the quality of surveys. Did it show any deed gaps or overlaps with the neighboring properties? Nope. Actually, it did not show any neighboring properties at all. Did it explain that the location of the property shown on the survey caused it to overlap with Mrs. Smith's property so badly that her south line ran through the cottage? Nope. The surveyor who had done that 1970's survey showed a property with no neighbors and no problems. The surveying company that I worked for was aware of this old survey and had discredited it due to the fact that it only analyzed the deed of the cottage. It is an indispensable part of every good quality survey to also analyze all the neighboring deeds to see if they overlap into the property being surveyed.

Instead of getting a new survey that would show the boundary problems, Ms. Wilson offered the buyer, Mr. Brown, a copy of the old survey. To a layman, the survey looked just fine, and so he (very unwisely) accepted it. They soon closed on the house. Up to this point, no one had told him anything about the problem with the boundary line. The first hint that he got was a letter from Mrs. Smith's lawyer.

The Hammer Falls

Mrs. Smith had been appalled and disappointed that her neighbor's property had been sold without the boundary problem fixed. She was determined to fix the problem once and for all, and since her deed contained land that the cottage was on, she was in a powerful negotiating position. Mr. Brown was, of course, very shocked and upset at the unexpected turn of events. After all, he had been provided an old survey of the cottage that didn't show any problems.

To make a long story short, Mrs. Smith and Mr. Brown finally settled on an agreement line between their properties. It was a long and difficult process for them and very expensive, with lots of lawyer and surveying fees. But they worked it out and, as the field crew chief for the surveying firm, I set the final stakes for the new line between their properties.

Lesson Learned

There is a very clear lesson from this incident. I am sure that Mr. Brown had hired a house inspector to inspect the cottage. But why didn't he insist on a current inspection (survey) of his boundary lines? Remember, this property represented a significant investment. If you were buying a house and someone offered you an inspection report from 1972 in lieu of a current one, would you accept it? If Mr. Brown had received a current survey from a reputable surveyor, he would have known about the problem. Then, he would have been in a position to insist that the boundary line problem be settled before he closed on the house. Instead, he ended up with heartache, expenses and a soured relationship with his neighbor before he could even enjoy his new cottage.

Snippets from the Past:

Thomas Lincoln, father of Abraham Lincoln, bought a farm in Hardin County, Kentucky, and when he sold it, he lost 38 acres because of overlapping boundary claims. In a second purchase he lost the down payment, plus the cost of litigation when a better title was presented. At Knob Creek he lost a third farm in a court case. This was enough; Thomas Lincoln moved to Illinois, where Abraham Lincoln, age 8 at the time of the move, was reared.

Robillard, Walter G., et al. "Evidence and Procedures for Boundary Location, 5th Edition.", John Wiley & Sons, 2006, p. 215.

Fun Photo



My brother Vahn crossing a creek while helping me survey land for a nature preserve near Auburn, IN. I think this is the moment where he decided he didn't want to be a land surveyor. Instead, he joined the Air National Guard!