

decided **guidance:** case examinations

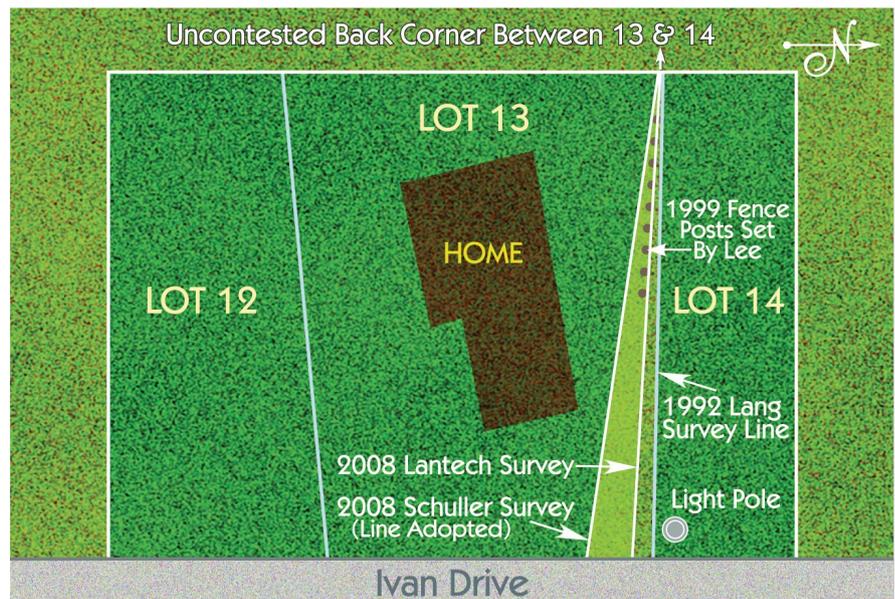
Chum, Sockeye, King, Coho, Pinky, Some Case Law, and an Old Friend from Michigan

Salmon are a pretty big deal in Alaska and the tourists are immediately schooled on the different names. There's a sort of hand jive memory aid that goes along with the ritual (see *familytravel.everything-everywhere.com/2013/02/how-to-use-your-hand-to-identify-the-five-types-of-alaska-salmon*). Well, as of August 29, 2014, the folks of Alaska can add some decided guidance to the tourist fun fact list.

Yes, despite the utopian visions of the recent DPPS proposal (see *TAS* March 2017 Thought Leader), the people of Alaska do rely on monumentation as a stabilizer of boundaries. It's no different than folks have done in the First Seven Ranges for over two centuries and in the Original Colonies a century prior to that. Our case this month takes us to a platted subdivision in the beautiful town of Anchorage where The Alaska Supreme Court entertained the case of *Lee vs. Konrad*, Nos. S-14503/14524.

This appeal case has some moving parts and questions that are far outside of the scope of *The American Surveyor Magazine*. Our focus is rope stretching and how the people of Alaska are protected by our professional conduct. We will selectively graze on the greener grasses of the case summary in hopes of turning over the stones of wisdom. Our guidance resides in the the question of the boundary line between Lots 13 and 14 of which the Supreme Court reversed the Superior Court's determination.

The Plaintiff (Lee) has owned Lot 13 since 1989. Lee basically claimed that he and the former owner of the defendant's lot (Konrad) agreed on a common line and built some fence in 1997 based on a 1992 survey. Konrad bought Lot 14 in 2008 and had a new survey done that showed the fence as



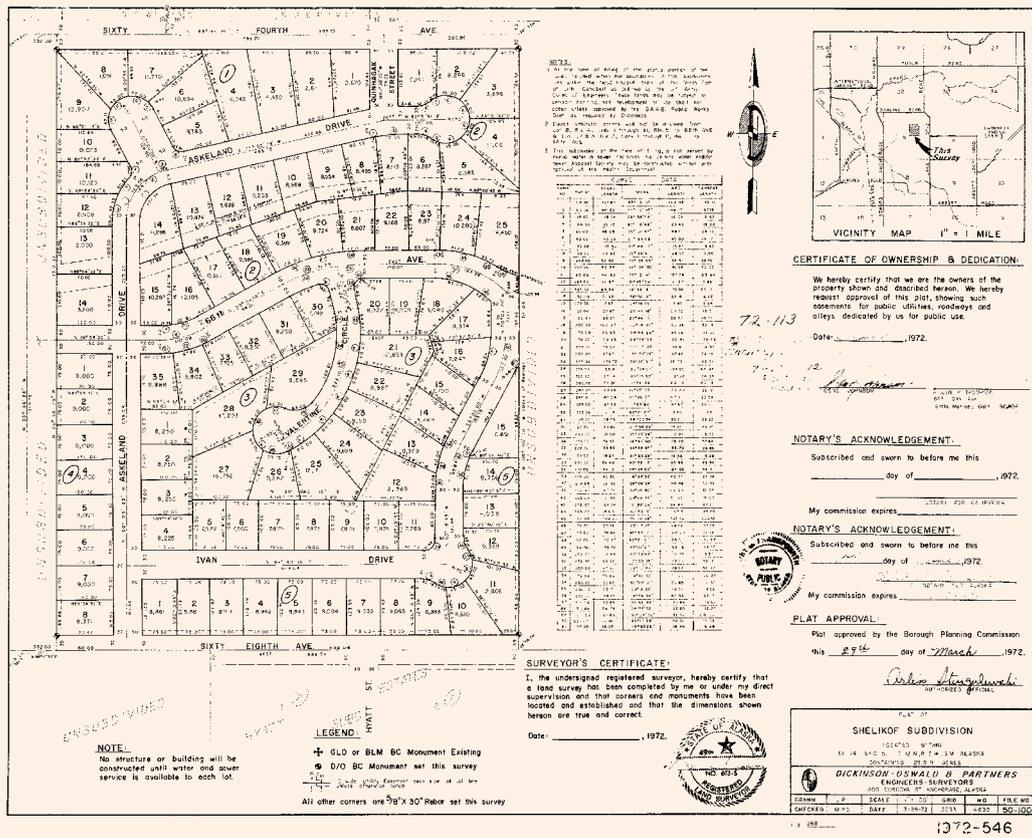
an encroachment. Lee then also had a new survey done in 2008 and it was favorable with but not quite the same as the 1992 survey and the partial fence. The Superior Court felt Lee did not have sufficient evidence for his claim and that Konrad's survey was accurate so it held that line as true.

Lee testified along with his old neighbors about agreeing to the fence and helping build it. Lee also said that he relied on the 1992 survey to locate the fence. Interestingly enough, Lee testified that he felt Konrad's recent survey was technically improper in it's methodology (...hhhhmmm, that's interesting). Lee had a recent survey performed after Konrad and that survey recovered a 1992 mark that was not found but rather calculated and reset by Konrad's 2008 survey. So suffice it to say that the Superior Court had a tough case on their hands.

The Superior Court looked this case over and arrived at two boundary conclusions.

1.) Acquiesce wasn't the issue and 2.) Lee successfully acquired the difference between the "correct" Konrad Survey and his fence through adverse possession...But, and I mean "but" with a capital "B", only at the fence length, not on a projection nor to the street. That seems like an equitable resolution to feuding neighbors, however, I wonder how the court arrived at Konrad's 2008 survey being better than Lee's 1992 and 2008 surveys which each seem to show some good continuity with the other? I have all respect for this Superior Court and their reasoning but can't help to wonder how Konrad's surveyor made a better impression on the Court? That lesson might cover a whole semester in a Surveying curriculum, and may be best taught by an attorney rather than an engineer? Regardless of my spin drift there, Lee felt the Superior Court erred and appealed the matter.

Paraphrasing The Supreme Court of Alaska this is the first time they'd ever seen or



heard tell of a case like this. Understandably, they've only been a state for six decades and I'm not sure there's much of anything in Old Anchor town predating 1970. So like the Pawn Starz the Supreme Court called in a buddy who knows all about this. Actually, I suspect that Lee's Attorney should get credit for the invitation if you pay attention to the case summary footnotes. *So without further aduix I introduce tonight's special guest all the way from Michigan. Ladies and Gentlemen of Alaska please welcome Chieeeeeef Justiiiiice Thomas Cooley <applause>*. The Supreme Court incorporated "the Cooley Doctrine" into Alaskan case law and they spent some time and energy doing it!

By the way, guess what just happened here. The Supreme Court of Alaska may have just stripped away the "proposed" benefits of the BLM's DPPS coordinate system of surveys. The minute that patents are issued and after folks take possession of DPPS lands there is little preventing two agreeable neighbors from recognizing and accepting a common line as the true boundary line. Let's face reality. Two land owners with a recreational gps could honestly, without fraud or deceit, believe that they've identified DPPS coordinates, accept a visual landmark as the common aliquot line between

each unique domain and move on with life. That really is peaches and cream until the "cookbook" surveyor subsequently attempts to place new evidence of a survey that never officially occurred with a set of rules designed for a single domain. Assuming that people are people and can sometimes agree that it's cheaper to agree than to hire a surveyor, how many section lines in Alaska will be recognized and acquiesced to being "along that part of the creek" or "over there to the top of the ridge"? I'm starting to feel like I'm back in the Virginia Military District rather than the PLSS.

Okay, 'nuff said, now back to Cooley. Acquiescence fixes the line to the ground through a sort of natural selection. The guidance in this case is that acquiescence is the geometry on the ground and it does not change legal description of record nor is any property exchanged. The product is not defective, it just doesn't look exactly like the brochure. Imagine walking back into the kitchen during a dinner rush and telling the cook that your cheeseburger doesn't match the picture on the menu and you're here to fix it. You'd get a hot greasy spatula plunged into your skull, right? The same might be said about establishing monuments contrary to occupation. The professional solution

to representing acquiescence may involve depositions, documenting thorough evidence, and most importantly the land owners' consent. The public is protected by the land surveyor if we can get them to an honestly stabilized boundary before hostility is entertained in the courtroom.

Chief Justic Cooley provided our Courts with the blueprint for stabilizing boundaries and at the same time a sort of manual of instructions for the retracement of private domains. Alaska, just like the other fifty States, will ultimately evolve from original evidence into a field of secondhand monuments, perpetuations of original evidence, and stabilized boundaries by acquiescence. Lee vs. Konrad reinforces the owners' authority to stabilize boundaries and enjoy the rights of land ownership. ■

Note: A PDF of this case is available at amerisurv.com/PDF/LeeVersusKonrad.pdf

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