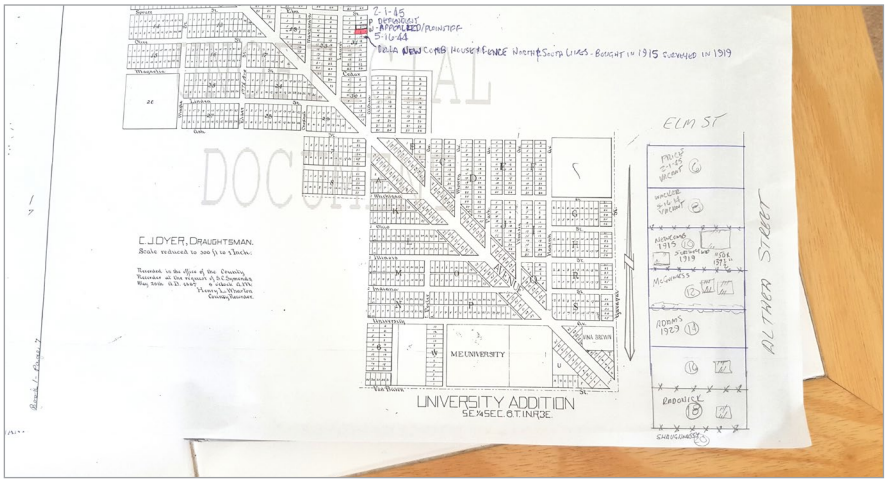
JASON E. FOOSE, PS

decided guidance: case examinations

Wacker vs. Price—Irony in Sevenfold



A shot of the plat copy with my case sketch to the right. The case text cited enough evidence for me to draw something resembling a survey map.

This month's case takes us to Phoenix, Arizona in 1950. The Arizona Supreme Court went all guns-a-blazin' in *Wacker vs. Price* (216 P.2d 707 (Ariz. 1950)). Maybe it's just me, but I'm sensing plenty of irony and have taken license to point it out along the way. I like what the Court did with this case because it protects the individual property rights and offers a solution to a problem. That's truly the individual spirit of the Copper State.

Unlike some of the other cases featured in Decided Guidance I feel like the Supreme Court may have surveyed the boundaries in question. Obviously the Justices weren't out digging up pipes in Grand Avenue, or chaining through the Gila River bottom but rather and perhaps out of necessity they applied professional judgement to fix the boundaries to the ground. We've seen Supreme Courts in other cases evaluate the decision of a lower Court against law. We've also observed a few Supreme Courts examine the definition of half. We've also looked at cases where the Supreme Court chose the better of two surveys, but I don't think we've actually seen a Court do any surveying until now. It seems like this Court defined the legal description of the property by applying an arbitrary lot width and fixing the platted line to an occupation line. This may differ from our previous cases because the Court recognized there was not an original survey to retrace. There was strong dissent from the several Justices which we'll delve into that later, but first let's call out some irony.

Irony #1: The Courts have historically knocked our noggins about Surveyors rarely agreeing but when it's the Justices turn to dangle the bob things get all hairy and dissenting.

I started into this case as usual by reading, sketching, and jotting things down on scratch paper (see photo). This time the reduced size plat copy was handy but too small to work with so I started a sketch on the side. I ran out of room on the sheet because the Court kept adding lots and evidence. Then I thought "yeah, if I only had a dime for every time I ran off the page in field notes..." that's when it hit me; the Court was methodically identifying the evidence beginning at our lot and working their way out to the block corners, and beyond. Just like we do in our chaining reconnaissance. Sure enough the Court went right down the street identifying all sorts of goodies! This is the foundation of retracement work and is what separates it from the mechanical bread slicer that Johnny Deedstaker used to run down at the land development factory.

Irony# 2: The Court followed in the footsteps of the original surveyor(s) which in this case was an engineer after the fact and the local residents.

Guess what the Court did next. They talked to the previous surveyor. Yeppers, and in Arizona since April 12, 2001, we have called this Minimum Boundary Survey Standard No.7 "*In the event of a disagreement with the measurements and/or monumented corner positions of another registrant, the land surveyor must make and document all reasonable efforts to contact the other registrant in an attempt to resolve the disagreement. The other registrant(s) shall make all information relevant to the disagreement available, to explain objections, and afford an opportunity for discussions, explanation and corrections necessary.*" https://btr.az.gov/laws-standards/standards/land-surveyors. The Court called both the plaintiff's (Holmquist) and defendant's surveyors (Jones) as witness. Holmquist testified that he'd been an engineer for 40 years and had surveyed the local blocks in that time and according to the plat. Jones said that he did not look for the monuments that Holmquist "erroneously (relied on) for years". It was stated that there was no apparent occupation or use on the subject lots as well. Jones was asked if he knew about and considered the evidence of occupation/use on the adjoining lots. Jones response was "*I wasn't requested to make*

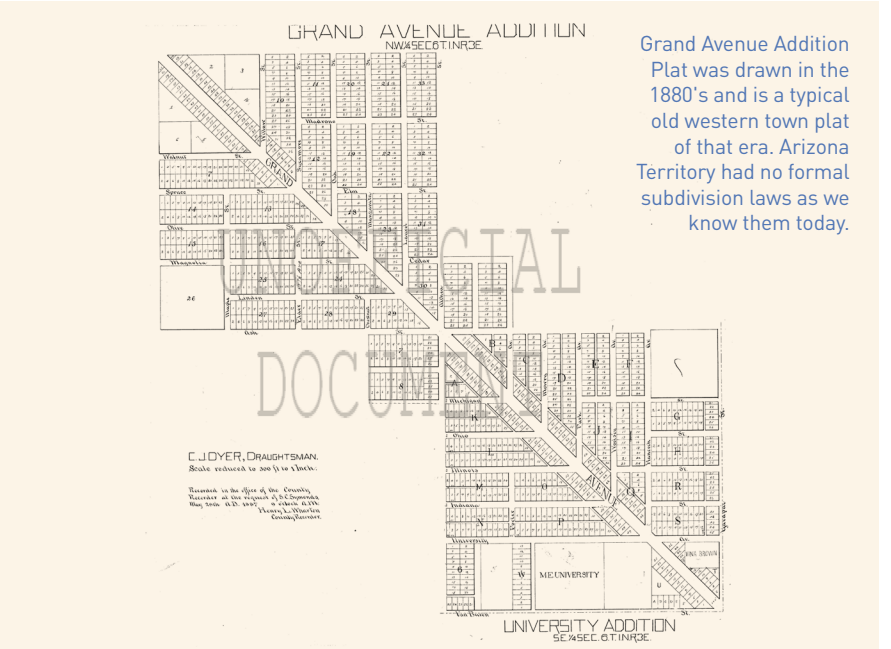
a survey of property rights, just Lot 6, Block 31, which I did. Since there were no adverse claims or nothing that would indicate an adverse possession of that particular lot, we weren't interested any further" Bravo...and spoken like a true deedstaker.

Irony #3: A boundary survey is in fact a survey of the physical limits of property rights!!!

The Grand Avenue Addition was recorded in 1887. This document stands in perpetuity and is still in full force today some 130 years later. This map is our set of instructions for retracing the subdivision. More importantly the owner made a public declaration that he is fracturing his title according to this nifty plan and unique land descriptions are being created by the plat. This is a conveyance of title, albeit the person doesn't change, the legal description does and the recorded plat is the mechanism to show that in a chain of title. Think of it as a gallon jug of 100% spring water. When we pour the contents into smaller bottles we end up with 16 bottles of 100% spring water that we can sell separately. Additionally, public dedication is another immediate feature of a plat and is also a transfer of title. Plats have many moving parts beyond geometry. Surveying is merely a component of the whole plat. The legal force of conveyancing seems to wield more power than the authority of a surveyor. Wacker v. Price is a great case in point. Grand Avenue Addition was apparently not laid out with the plat in 1887. Regardless, title transferred, lots were bought and sold, homes build and land was enjoyed.

Irony #4: The lot corners were not established (surveyed/set) on the ground with the plat and there are no dimensions shown on the plat.

The Court observed "*The testimony in this case clearly shows that the lots involved in this litigation were conveyed with respect to and in accordance with the map and plat of the original Grand Avenue subdivision recorded in the office of the County Recorder September 13, 1888. It further appears from the evidence that the monuments from which the original survey was made cannot be accurately located. The evidence does show definitely, however, that* ***parties who purchased lots*** *in this subdivision erected homes,* ***established boundary lines between lots*** *in Block 31 where property involved here is located* ***by building fences and planting trees*** *which have been in existence and recognized by all the property owners and their predecessors in interest ranging from 20 to 35 years."*



Grand Avenue Addition Plat was drawn in the 1880's and is a typical old western town plat of that era. Arizona Territory had no formal subdivision laws as we know them today.

Irony #5: Landowners are boundary surveyors in their own right.

The Court continues on with some familiar citations from *Diehl v. Zanger*, Chief Justice Cooley, *Stewart v. Carlton*, *Whitman v. Haywood*, *Griffith v. Sauls*, *Beaubien v. Kellogg*, *Veve y Diaz v. Sanchez*, and *Trotter v. Stayton*. In a nutshell the Court reiterated common law guidance we know and continue to practice: Retracements are to show where evidence actually landed versus where it "should have" been, ancient fences are strong evidence of original surveys, and testimony of longstanding belief in evidence marking lines should not be upset. The Court observed that Lots 6 and 8 were conveyed according to the plat. As such these lots were controlled on the ground by the longstanding recognized lines of the others within the block according to the same plat. The south line of Lot 8 was fixed by the Court to the north line of Lot 10 and recognized as being a fence and hedgerow that fit every other recognized 50 foot lot line continuing to the south through the block. The line of Lot 8 and Lot 6 was then placed at the same "50 feet" north of the recognized fence/hedgerow line. Remember, there are no platted dimensions or original monuments to compare here. Holmquist and the landowners were left to their own devices for 60 years and accepted something that worked.

Irony #6: I think the Court just pulled off the world's greatest proration of a simultaneous conveyance without a single platted or measured distance or original monument positions.

So the Court's final decision was that Wacker (Plaintiff, Appellant) owned a 50 foot wide lot adjoining the hedgerow fence and Price was in fact encroaching on Wacker. The Court tied this thing down pretty good in my opinion. The Court also equitably offered Price the opportunity to 1.) Simply buy whatever land was needed from Wacker to enjoy their improvements, or 2.) Buy all of Wacker's Lot, or if Price declined either action the Court would quiet title to Lot 8. I presume this meant Wacker could basically bulldoze Price's house off at the line.

Irony #7: Although this is the end of this month's installment, this is not the end of Wacker v. Price. We have a special concurring opinion to read through and the dissenting opinion to pick apart. We will also examine the final outcome of Price and Wacker's chosen remedy. More to come from the Valley of the Sun... ■

Note: A copy of this case is available at www.amerisurv.com/PDF/WackerVPrice.pdf.

Jason Foose is the County Surveyor of Mohave County Arizona. He originally hails from the Connecticut Western Reserve Township 3, range XIV West of Ellicott's Line Surveyed in 1785 but now resides in Township 21 North, Range 17 West of the Gila & Salt River Base Line and Meridian.