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The Curse of (Certain) Tall Buildings

Everyone was wearing red, there was shouting in the streets, and trains headed downtown were filled to capacity on that bright Halloween morning.

While this may not sound like the start of a surveying/land use story, be patient.

Will Rogers, American humorist, social commentator, actor, and icon, once said, “Buy land. They ain’t making any more of the stuff.” The statement presently rings even truer now than when first uttered in the early twentieth century. While undeveloped land surface does exist, often there is a reason for its virgin state: it just is not suitable for supporting structures or desired human uses. Aside from floodplains and wetlands and subterranean karst caverns and unstable steep slopes, other strong deterrents include lack of potable water or impermeability of soils where septic systems must be used. So while we usually think first of building out, some places are considering building up instead. Even then restrictions do exist.

Before the advent of extendable multi-story ladders and high-pressure water sources, fire fighting was a difficult and dangerous enterprise. Tallness adversely affected ability to squelch flames, and local ordinances restricted building height for the safety of all. Thus construction materials limited allowable height, with more fireproof buildings permitted additional stories. Strength and stability limitations of various structural materials also restricted height, and the advent of metallic reinforcement led to ever taller structures—except where seismic activity added a variable to the stability formula. But both fire hazards and building materials meant that many of our older cities and towns have a low vertical profile. That profile is often the basis for modern zoning, limiting new structures

to the height of original buildings for a cohesive neighborhood appearance.

Washington, D.C., the city of monuments, was established in the swampy area between two rivers as the ten mile square federal district in 1790. Before home rule, authorized in 1973, allowed citizens of the District to elect their own Mayor and Council, Congress alone ruled it, in accordance with the exclusive legislative powers granted it by Article I, Section 8 of the U.S. Constitution.

a new Schedule of Heights Amendment Act proposed by the Mayor and Council of the District of Columbia, and approved only moderate revisions in 1999.

In some states, such as Missouri, solar access is a property right that cannot be infringed upon by neighbors or taken by eminent domain. Statutes across the country protect solar access, sometimes (again using Missouri as example) specifically defining solar easements across the servient estate (the neighboring property)

Statutes across the country protect solar access, sometimes...defining solar easements across the servient estate...as “negative easements.”

The Heights of Buildings Act of 1899 limited buildings in the District to 288 feet, the height of the Capitol building, in response to the newly erected 14-story Cairo apartment tower, then considered a monstrosity (now revered as outstandingly beautiful) towering over its Dupont Circle neighborhood. The replacement 1910 Act, now part of the current local D.C. Code, restricts building height to the width of the adjacent street plus 20 feet.

The result has been a city with streets full of natural sunlight warming pedestrians on wintry days (unlike in the canyons between Manhattan’s skyscrapers) but also a landlord’s heaven, with the limited commodity of square feet renting for premium prices. Is it time to look upwards to the next developable frontier? As recently as 1991 Congress disapproved

as “negative easements”, meaning that servient estate uses conflicting with exercise of dominant easement rights are prohibited. Such easements “cannot be acquired by prescription but must be negotiated expressly “ and require a recorded written agreement for enforceability. Other states, like Colorado, enforce land subdivision statutes enabling “county commissioners [to] provide for the protection and assurance of access to sunlight for solar energy devices by considering the use of restrictive covenants or solar easements, height restrictions, side yard and setback requirements, street orientation and width requirements, or other permissible forms of land use controls. “ Local ordinances may, as in Ashland, Oregon, “provide protection of a reasonable amount of

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sunlight from shade from structures and vegetation whenever feasible to all parcels in the City to preserve the economic value of solar radiation falling on structures, investments in solar energy systems, and the options for future uses of solar energy." Obviously, expert measurers (that would be surveyors) have a role to play in protecting access to the sun's energy, increasingly recognized as a valuable commodity.

In Philadelphia, founded 170 years before Washington, D.C., no solar access easement ordinances or formal height restrictions limited the number of stories in center city (the ordinances literally read "No Limit" for allowable height in feet or stories in certain zones), but an unwritten "gentlemen's agreement" controlled downtown development until 1987. Upon City Hall's completion in 1901 after 30 years of construction, the crowning touch was the erection of a statue of William Penn, city (and state) founder. The 37' tall bronze cast by Alexander Milne Calder sits atop a National Historic Landmark and National Historic Civil Engineering Landmark that at 547' 11-3/4" was once the world's tallest building. Until recently, the unwritten rule was that no building in center city could be taller than Penn's hat.

One Liberty Place, a 945-foot tall office tower, first broke that unwritten height barrier in 1987, giving rise to "the curse of Billy Penn" that has seemingly afflicted all four of the city's professional sports teams. In a city that loves to hate its sports teams, the cursed Philadelphia Phillies have not been champions for years. Sometimes stellar and sometimes abysmal, our baseball team did win the World Series in 1980 but was famed for snatching defeat from the jaws of victory innumerable other times.

But in June 2007, as completion of the city's new tallest structure was coming to a close, a tiny statuette of our city's founder, mere inches high, was affixed to the final beam completing the Comcast Center, 975 feet high and towering over the original curse-inducing Penn statute across the street at the intersection of Broad and Market Streets.

Curiously, October ended with the Philadelphia Phillies winning the World Series over the Tampa Bay Rays, and there was reveling in the streets. The long winless spell had been broken after 28 years. We will only know if the curse is fully spent when the Eagles and the 76ers and the Flyers bring home their trophies later this season. *✍*

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some of the highest property valuations anywhere. Swatting arguments down like this is almost too easy.

Enough picking on that poor attorney's argument. At least she proffered an idea, flawed as it was. Rarely does anyone even go that far.

Task Analysis

NCEES has expended some effort in trying to identify the tasks confronting newly licensed surveyors through its periodic task analyses. Basically, the idea is to poll newly licensed surveyors about the kinds of tasks they are facing, and then structure the NCEES test accordingly. Am I the only one who sees the circular logic in this? Are we to assume that because newly licensed surveyors are engaging in certain tasks that those tasks are the ones in which newly licensed surveyors are *supposed* to be engaged? This is a wild stab at the minimum competence issue. Wild stabs at something are okay when nothing else is available, and as long as everyone involved remembers the attempt is, in fact, a wild stab. The danger comes when everyone forgets the tenuous nature of the underlying theory. A former boss of mine used to talk of a SWAG (Scientific Wild-A** Guess). That seems to fit here.

Deep Roots and Long Tails

We would be foolish to assume that all newly licensed people are as competent as they will ever be. Experience is an effective teacher, and even old hands can be surprised. (I was shocked recently by a title doctrine that is both pervasive and well argued by jurists across the country, but unknown to me despite 30 years of practice. I haven't decided yet whether I know enough about its effects across the country to write about it or not. Stay tuned.) Ours is a complex playground with deep roots and long tails. Although every state recognizes that experience is essential prior to licensure, clearly the presumption is that the surveyor will continue to grow subsequent to getting his green light. Thus, we presume varying levels of competence among the licensed ranks.

But what is the minimum? I honestly cannot say. And I'm fairly sure no one else can articulate it convincingly either.

Thanks in advance for never using the term with me. *✍*