

Effectively Communicating with the Surveying Client

The practice of surveying is regulated in North Carolina “in order to safeguard life, health, and property, and to promote the public welfare”¹ and is restricted to those persons who have met the requirements of licensure through education, experience and examination.² Chapter 89C of the North Carolina General Statutes is the statutory authority for the regulation of engineering and surveying, and it authorizes and directs the Board of Examiners to adopt and enforce rules governing the practice of engineering and surveying, which appear in Title 21, Chapter 56 of the North Carolina Administrative Code (the “Board Rules”).

The professional land surveyor has an obligation to honestly and effectively communicate with the client. The Rules of Professional Conduct state that a licensee “shall be objective and truthful in all professional reports, statements or testimony” and “shall include all relevant and pertinent information in such reports, statements or testimony.”³ The results of a survey must be reported to the client in the form of a map or report of survey, prepared in a clear and factual manner.⁴ Consistent with the surveyor’s obligation to protect the public, the term “clear and factual” requires that the information contained in the reports or statements must be presented in a way that is understandable to the client or other user of the survey: what may be obvious to a licensed professional may not be at all clear to a person without the education and experience of a PLS or a PE.

The need for effective communication with the client is illustrated in two examples commonly encountered by surveyors: (a) the depiction of overlaps and gaps on plats, and (b) the preparation of exhibits.

A. Platting Overlaps and Gaps.

In the performance of boundary surveys, the Standards of Practice set forth certain obligations of the surveyor. The surveyor is required to examine the public records not only of the property being surveyed, but also adjoining properties.⁵ In addition, the surveyor must spend the necessary time and effort to make investigations to determine if there are encroachments, gaps, lappages, or other irregularities along each line surveyed.⁶ It is not unusual for the surveyor to encounter instances in which an examination of the public record reveals apparent overlaps or

¹ N.C. Gen. Stat. § 89C-2

² N.C. Gen. Stat. § 89C-13(b).

³ 21 NCAC 56.0701(d)(1).

⁴ 21 NCAC 56.1602 (f).

⁵ 21 NCAC 15.1602(c)

⁶ 21 NCAC 56.1602(a)

gaps in the descriptions of adjoining properties. Similarly, the investigation of the physical evidence along boundary lines may reveal conflicting monumentation or other evidence of possession of adjoining properties.

In making a final report of survey, whether graphical or written, the surveyor must disclose the existence of overlaps or gaps discovered during the survey, in a manner that is clear and factual. At a minimum, this requires that the location and extent of any overlaps or gaps discovered by the surveyor must be shown on the plat in a manner that is neither deceptive nor misleading. The surveyor should prepare a plat giving due consideration to the fact that a person reviewing the plat may not have the experience or skill in interpreting maps that is generally possessed by professional land surveyors.

The use and selection of line types and line weights is an important consideration in conveying information on a plat. Every plat must contain a legend depicting nomenclature or symbols not otherwise labeled,⁷ which includes line types and line weights. The Board recognizes that it is common practice for surveyors to select one line type and line weight (often, a solid, bold line) to represent the entire boundary of the property being surveyed, and a different line type and weight to represent an adjoining deed description or line of possession.

For boundary retracement surveys, clients engage the services of a professional land surveyor to express an opinion as to the location of boundary lines, based on the surveyor's skill, knowledge and experience, after adequate investigation and the application of appropriate legal principles. The final plat is just that: an expression of a professional opinion. The surveyor, alone, cannot resolve overlaps, gaps or other boundary disputes; ultimately, such disputes can be resolved only by the written agreement of the parties or the entry of a final judgment of a court.

In the past, the Survey Committee of the Board has expressed the concern that clients may interpret the use of differing line weights to mean that there has been a final determination of the location of the true boundary line. Specifically, there was a concern that the use of a bold, solid line depicting the client's deed description and a lighter line to show an adjoining deed may create the impression that the client owns, or at least has a greater claim to, the conflicting area. Neither the client nor the public (the adjoining land owner) are protected if the result of a survey is that the client takes self-help actions (cutting timber, removing a fence) in the mistaken belief that the survey plat is a final resolution of a boundary dispute.

The current Survey Committee shares the concern that the surveyor must clearly identify the existence of overlaps and gaps and to effectively communicate with the client the importance and impact of the overlap or gap. However, the Survey Committee recognizes that information may be conveyed to clients in a variety of ways. The existence of an overlap or gap may be highlighted on a plat by shading the area and including conspicuous explanatory notes. In addition, the nature of the surveying process can be related to the client in the form of an accompanying written report or letter. In whatever form the necessary information is conveyed, it remains the surveyor's obligation to assure the plat or report is clear and factual, including the

⁷ 21 NCAC 56.1604(d)(11)(H).

fact of the existence, location and extent of overlaps or gaps. The Survey Committee does not prescribe any particular method by which this information can be communicated (including the selection of line weights), but rather leaves this decision to the sound judgment of the professional land surveyor. Consistent with this change of approach, the Board has posted a revised sample plat on its website: [www.ncbels.org/forms/Sample PLAT.pdf](http://www.ncbels.org/forms/Sample_PLAT.pdf).

B. Preparation of Exhibits

N.C. Gen. Stat. § 47-30 is one of the statutes governing the recordation of documents in the offices of the Registers of Deeds. It is a recording statute and does not regulate the practice of surveying. For a plat to be recorded, a licensed surveyor must certify that it contains certain specific information. However, this statute also provides that a map not meeting the requirements to be separately recorded may be attached as an exhibit to a deed or other instrument submitted for recording, provided that the map includes a conspicuously labeled disclaimer.⁸ Exhibits, of course, can serve very useful purposes: an example is an attachment to a written description showing the relative locations of several described easements. This raises the question: Can a professional land surveyor prepare an exhibit for a document to be recorded that does not otherwise meet the requirements for recording a plat? In other words, if a non-surveyor can prepare an exhibit to a deed, why could a surveyor not do the same?

Prior to preparing an exhibit to attach to a deed, the surveyor should consider the client's view of the services provided. Could the client believe that the exhibit is a "survey" of the property because it was prepared by a surveyor? I have had clients tell me they have a survey, and then show me a deed plot, a tax map, and even a photocopy of a surveyor's work map. If the client leaves a surveyor's office believing he has a survey but the document does not meet the Standards of Practice for Land Surveying,⁹ the surveyor probably has not effectively communicated with the client and may have violated the Rules of Professional Conduct by failing to protect the public.

A surveyor must further consider the nature of the disclaimer that must be attached to exhibits under § 47-30(n). If the exhibit is the result of an actual survey, a licensee must comply with the requirements of Chapter 89C and the Board Rules. Any map not certified for recording and all reports of survey must contain a certificate, signed and sealed by the surveyor, stating that it was prepared in accordance with the Standards of Practice.¹⁰ Furthermore, "Final drawings, specifications, plans and reports prepared by a licensee shall, when issued, be certified and

⁸ The required disclaimer is: "This map may not be a certified survey and has not been reviewed by a local government agency for compliance with any applicable land development regulations and has not been reviewed for compliance with recording requirements for plats." N.C. Gen. Stat. § 47-30(n).

⁹ 21 NCAC 56.1600, *et seq.*

¹⁰ 21 NCAC 56.1604(d)(12).

stamped with the seal or facsimile of the seal.”¹¹

A surveyor should also consider the intended use of the exhibit. If the exhibit is to be used to define property rights or for other authoritative purposes, then the preparation of the exhibit likely falls within the definition of surveying. When a surveyor is engaged to perform work requiring a surveying license, and the “exhibit” is the final drawing or report, it must be signed and sealed. A surveyor cannot avoid his or her professional obligations to the client and the public by attaching a disclaimer to the final work product and recording it as an exhibit to a deed.

Getting back to the question of whether a surveyor can prepare exhibits: the answer is yes, IF (1) the preparation of the exhibit does not involve the practice of surveying and the surveyor has effectively communicated with the client to assure the client understands that the exhibit is not a survey; or (2) the surveyor has delivered to the client a signed and sealed map or report of survey, the exhibit is part of the overall services performed, and the exhibit references the signed and sealed work product; or (3) the exhibit is based exclusively on a recorded document and the exhibit includes the recording information of the document (e.g., an unmodified deed plot).

¹¹ N.C. Gen. Stat. § 89C-16(c).