

# The Mystery of Surveying

## [ PART 3 ]

BY DAVID S. THALER, P.E., L.S., F., ASCE, F., NSPE,  
D.S. THALER & ASSOCIATES, INC.

Once, not long ago, one of the area's most prominent real estate lawyers called and asked if he could see me about a large shopping center in Harford County. He represented the lender who had foreclosed. I said, of course, and we agreed to meet the next day at my office.

When I arrived, I found that he had preceded me and that our rather large conference room table was covered nearly six inches deep in legal documents. I asked what the problem was and he responded, "We think the shopping center is built on somebody else's property." Indeed it was—by seven feet! Although nearly every conceivable legal document and certification had been required and executed, no one had thought to ask for a "wall check" or foundation survey. Oops! That became a very expensive seven feet.

In the construction business there are generally three types of surveys that are frequently encountered. The first are the ubiquitous Location Drawings. Formerly known as Location Surveys, Location Drawings accompany nearly every residential settlement and are simply drawings of the property boundaries with the house and any structures shown. These drawings serve a very important function but they are not a survey. They accompany the lending package when mortgages are bundled and sold in the secondary market. It is important that the ultimate buyers of the mortgages know that somebody has been out to the site and has reasonably determined that their mortgage properly underlies the improvements. But they are not surveys at all and have caused a great deal of confusion in the past. The Code of Maryland Regulations (COMAR) provides that a surveyor may not accept compensation for preparation of location drawings unless the surveyor has received an executed approval form from the consumer that contains the following disclaimer:

A location drawing is not a boundary survey and cannot be relied upon by anyone to show where the property boundaries are. The only purpose of the location drawing is to provide some assurance that the improvements are located on the property. This assurance is for use of a lender or an insurer only.



**Accuracy is how close a measurement or series of measurements are to the true value. Precision is how close a series of measurements are to each other.**

A second type of survey frequently encountered is a boundary survey, the purpose of which is to establish, reestablish or describe the physical location and extent of property boundaries. Boundary surveys are for locating boundaries and do not necessarily show houses or other improvements on a property nor easements, rights-of-way or other title elements.

It is not uncommon, of course, for there to be conflicts with title or zoning conditions and so in recent years almost all commercial closings have come to require what is now known as ALTA/NSPS Land Title Surveys, or "ALTA surveys" for short.

An ALTA survey is a special type of boundary survey prepared according to a set of standards jointly adopted by the American Land Title Association and the National Society of Professional Surveyors. Additionally, an ALTA survey shows improvements, easements, rights-of-way and other elements that affect the ownership of land. The ALTA/NSPS Land Title Survey is specifically designed to meet the special needs of the title insurance industry and enables title insurance companies to insure the title to land without taking exception as to survey matters. The ALTA/NSPS specifications require that the surveyor indicate all buildings on the land, the distances from the property lines as well as any encroachments. It also shows any evidence of easements that are visible and plots the location of all easements and rights-of-way that are capable of being plotted from the title report.

The specifications that the surveyor performing the survey must follow are entitled: "The Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys." These were formerly known as ALTA/ACSM surveys, ACSM standing for the American Congress of Surveying and Mapping, but the ACSM was absorbed into NSPS and the title has changed. After much work and debate, new minimum standard details were adopted, effective February 23, 2016. Together with the earlier 2011 version, there were substantial changes. In 2011 there were a number of important changes. First, a "Relative Positional Precision" standard was adopted in lieu of "Relative Positional Accuracy." Accuracy is how close a measurement or series of measurements are to the true value. Precision is how close a series of measurements are to each other. Surveying is quite precise but is not necessarily accurate, for the true value of any measurement can never be known due to inherent inaccuracies in the measuring devices and the randomness of measurements themselves. The 2016 standard now requires a "Relative Positional Precision" of a survey point to a 95 percent confidence level.

In addition, in 2011 the required certification was changed. Very frequently title companies would have surveyors certify all sorts of things far beyond the surveyor's knowledge. For example, that the property did not have any zoning violations, that there were no wetlands, that it wasn't within a floodplain, etc. As a result, an ALTA/NSPS survey is now required to have a standard certification that cannot be altered, which in

relevant part states, "This is to certify that this map or plat and the survey on which it was based were made in accordance with the 2016 Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys ...."

There have been a number of other changes to the 2016 specifications which include more clarity as to the surveyor's responsibility with regard to research and...

- Making it mandatory that observed utility features are shown;
- Surveyors are discouraged from changing the legal description but if a new description must be created, there must be a note explaining why and how the land in the new description relates to the previously described land in the record description;
- Providing for a zoning letter from a qualified attorney to the surveyor before zoning issues can be addressed;
- If there has been a field delineation of wetlands conducted by qualified specialist hired by the client, the surveyor will locate any delineation markers observed and if no markers were observed, the surveyor will so state.

It is been our recent experience that title searchers are going further back, at least 100 years, and seem to be picking up more issues of title. The ALTA survey locates these encumbrances to the extent that they can be plotted. Needless to say, restrictions of title can severely affect the value and development potential of any property. There is a rather famous case recently in Florida of a one million dollar house that was built entirely on the wrong property. Much more common are proposed developments that conflict with some element of title, which could be an easement, covenant, setback or other restriction. Needless to say, it is highly recommended that anyone considering purchasing property obtain both a survey and title report. Anyone failing to do so takes a great risk. ■



*David S. Thaler, PE, LS, F., ASCE, F., NSPE is the President of D.S. Thaler & Associates, Inc., a civil and environmental engineering and surveying firm in Baltimore, Maryland, which has designed hundreds of communities. Repeatedly honored, he is a Fellow of both the American Society of Civil Engineers and the National Society of Professional Engineers, and is Guest Scholar at the University of Baltimore School of Law,*

*where he lectures on land use. He has published more than 200 articles and five books, and has won numerous life time achievement awards including Icon of the Industry. He also holds both the highest professional engineering award in Maryland, now known as the Thaler Prize, and the Maryland Distinguished Service Cross, Maryland's highest military honor.*

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