



The Old Survey

By Frank S. Ferrantello

Over the centuries, surveys have been prepared for many reasons. The oldest types of surveys in recorded history are boundary surveys – these are essential to one's holdings – personal or investments.

Stake your claim like the Gold Rush days. A new survey should be completed at the time you purchase your property before disputes arise. In this fast paced, ever changing modern world we live in, real estate is the biggest investment in anyone's life. When you purchase property it would be in your best interest to obtain a new survey to see legally what you are buying, not just what you physically see. Over the years, property values fluctuate and a home that was once worth \$24,000 in the 1950s may currently be valued in the range of \$500,000 to \$900,000.

The importance of a new accurate survey has increased just as technology has progressed. An old survey is only as good as the last date it was done. Many old surveys might have random blunders or errors that may not have been recognized as easily without today's modern technology. Even in this modern era, the land survey is only as good as the reputation of the land surveyor who prepares it. Anyone can make an error or omission, but when it comes to high stake real estate transactions, it is essential that a reputable surveyor is retained. Choose a surveyor who not only analyzes a deed that may be subject to mathematical errors, but one who seeks out the truth and collects all the evidence. Any new additions or changes to the property (fences, retaining walls, pools, decks, patios, etc.) will not be reflected on the old survey.

You may not be aware if there are any encroachments or possible out of possession, or adverse possession (a fence shown on an old survey may not reflect what is on the property – wood stockade, chain link or the current height). If you are planning any renovations to your property, the various municipalities require a recent updated survey (some areas require a survey dated not older than six months) showing all the pertinent information based on the town's or village's latest requirements – measurements – elevations, trees, average setback of the block, etc. prior to issuing a permit to do any work. Conditions that are unknown put clients at risk after closing.

When a title company does a certificate of oc-

cupancy (c/o) search, it may show open permits for structures that are not shown on the old survey. Any illegal or non-conforming structures cannot be recognized without a new survey for both title and c/o purposes. In order to close out or satisfy these open permits, the towns or villages require a recent survey for the building department with all the new applicable requirements that they have implemented. Builders in some municipalities back in the 1940s and 1950s were not required to submit surveys to obtain c/o's. Towns and villages have progressed as well as their requirements and restrictions for building. Title companies and banks insuring the properties have also updated their guidelines.

Relying on an old survey is one of the most detrimental decisions that can be made during a purchase transaction. Purchasing real estate is a substantial undertaking best carried out with the support of reliable information. Attorneys should make sure their client reviews an updated survey before making a decision.

Case in point on learning the hard way: a client retains my firm to survey land he had already purchased. The client's goal was to develop a site plan package for a new mansion. After many weeks of work and research, I informed him he could not build anything different then the existing one-story house.

He and his attorney used a beautiful, clear, readable but old survey. The old survey showed that he owned the private right of way (ROW) in front of his property. He did not own the ROW currently. Consequently, he could not cut down trees that he thought were his to obtain a clear water view. However, this multimillion-dollar, five-acre estate had bigger problems. The higher upland adjoining owner had a covenant and restriction implementing a vista and sky plane restrictive easement. So, without the ability to create a water view or build a house above one story or use four acres of unusable wooded steeply sloped land, this client saw the error of working from an old survey.

So to make a long story short, do not short your client or yourself by using an old survey. It is not good legal practice and doesn't lead to a good economic decision in the long run.

Remember, stake your claim and obtain a new survey prior to purchase and before disputes arise.

Frank Ferrantello is president of The Ferrantello Group and retains ownership of The Expert Map Company. A professional licensed land surveyor and civil engineer, Mr. Ferrantello has designed, presented and obtained approvals for a multitude of site plans, subdivisions and condominiums, as well as surveyed high-rise buildings in Manhattan and throughout New York City. For over 15 years, his firm has performed Alta-title, air rights, architectural and topographical surveys and expert surveys in all sectors from Montauk to Manhattan. For more information, visit www.nylandsurveying.com.

