

Wisconsin Society of Land Surveyors

By: William C. Rohde, Land Surveyor RLS 841

Introduction

The legal finality of any assessor's plat is dependent upon the surveying process as provided by s.70.27 Wisconsin Statutes. This treatise outlines the provisions and procedures essential for the implementation of such statutory process and other related administrative requirements.

Authority

An assessor's plat survey may be ordered:

...in cities by the common council.

...in villages by the village board.

...in towns by the town board or county board.

...of 2 or more land parcels owned in severalty.

...of platted, unplatted or unrecorded land parcels.

...when in the judgment of the governing body having jurisdiction, 1 or more of the land parcels have inaccurate or uncertain descriptions which will hinder the purposes of assessment, taxation or tax title procedures;

...or, when gross errors exist in land measurements or locations which hinder the location of streets, public utilities or new structures.

Resolution

The resolution of the governing body, ordering an assessor's plat to be made, must clearly describe the area of land to be included by the survey. An accurate exhibit map, of the land area to be surveyed and platted, should also be appended to the resolution for further clarification.

Parcel Listing

Of equal importance, is a columnar listing or computer tabulation of all land parcels to be included in the land area described and exhibited by the resolution. Such listing should accurately compile:

...names of current owners.

...mailing addresses and phone numbers.

...volume, page and document number of related deeds.

...assessed land valuation without improvements.

...proposed plat lot or parcel number.

...tax parcel number or identifier.

...lot or parcel area by proposed plat survey.

...amount of special assessment to be levied by the governing body; if applicable.

Survey Proposal Process

An assessor's plat survey must be performed by a Land Surveyor duly registered or licensed to practice by the State. Survey proposals are normally solicited by the governing body clerk, either by a published advertisement or direct mail. For assistance, the county register of deeds or surveyor can provide the names of land surveyors practicing in the local area.

Also consult the "yellow pages" of phone directories for the local area, and/or contact the following:

Department of Regulation & Licensing

P.O. Box 8935

Madison, Wisconsin 53708-8935

Wisconsin Society of Land Surveyors

2935 Coventry Lane

Waukesha, Wisconsin 53188

The proposal process should provide land surveyors with a copy of the resolution, exhibit map, contract provisions, survey specifications, and a standard proposal submittal form. This will assure processing uniformity.

In addition to proposal cost comparison, previous assessor's plat survey experience and capability to complete the survey in a timely manner are among other qualifications, which the governing body should consider prior to proposal selection and awarding of the contract.

Contract and Specifications

Upon proposal selection, a written contract, which includes surveying specifications, should be entered into by the governing body and the Land Surveyor. A separate contract should be used for each assessor's plat survey ordered by the governing body. Legal counsel should be retained to assure due legal process of all contractual matters.

Survey Notice

Although not required by the statutes, the clerk of the governing body should mail an Assessor's Plat Survey Notice to each landowner included by the ordered plat, as a public courtesy.

Surveying Process

Surveying requirements are clearly provided by the statutes, state plat review agency, surveying standards, and boundary law practices and principles which have been preceded by the courts.

By statute, the Land Surveyor must survey and lay-out the boundaries of each parcel, street, alley, lane, roadway, or dedication to public or special use:

...according to the records of the register of deeds or a court of record;

...by whatever evidence that may be available to show the intent of the buyer or seller;

...in the chronological order of their conveyance or dedication.

The Land Surveyor must set temporary monuments for all property corners prior to the plat submittal for state review. The term temporary refers to the status of the monuments only, which are made permanent upon approval and recording of the plat. Monumentation requirements may not be waived for assessor's plats; however, the state plat review agency may approve alternative methods due to unusual conditions or circumstances. Monuments should be marked in a uniform manner to facilitate inspection by owners. Found or accepted monuments may not be removed; however, their replacement or referencing by approved witness monuments is acceptable if required for perpetuation purposes.

Adequate monumentation is absolutely essential, and should be very clearly and completely described in the assessor's plat legend. Permanency of the monumentation should also be assured by the contracted Land Surveyor until the plat is approved and recorded, and involved landowners should be encouraged to maintain and protect their parcel monuments thereafter.

Reconciliation Process

The Land Surveyor must render a highly professional degree of expertise and judgment in establishing the involved land parcel boundaries and corners, in a reconciliatory manner.

The Land Surveyor must also reconcile discrepancies revealed by the survey, so that the assessor's plat is in conformity with the records of the register of deeds, or a court of record, as nearly as is practical. Such discrepancies are normally the result of numerous and varied problems caused by erroneous or conflicting records, as well as field evidence.

All available record as well as field evidence, testimony of witnesses and several other factors must be thoroughly and diligently evaluated, so as to arrive at reconciliation's which are consistent with land surveying standards, boundary law principles and statutory provisions.

For disputed or controversial boundaries, it is normally experienced by the Land Surveyor, that the most agreeable common boundary is that which has been evidenced by acquiesced possession, such as a fence or treeline, cultivation, mowing, other property improvements or usage; and even an imaginary line pointed out by the adjoiners to the Land Surveyor on the ground, which they have mutually recognized as their common boundary.

Record descriptions or conflicting field evidence may also result in gaps, overlaps, distortions or other conflicts, thus necessitating the fixation of a common boundary by survey upon the assessor's plat.

Upon reconciliation of any common boundary, the Land Surveyor prepares a boundary agreement for the mutual approval of the adjoining. Such an agreement is provided by the statutes, and upon approval by the adjoining, establishes the agreed to common boundary as the true legal boundary, even though it may vary from the description(s) previously of public record.

Boundary agreements must be recorded as a separate document with the assessor's plat or they may be included upon the plat. This is essential, in order to provide direct reference of the agreements to the respective platted lots or parcels upon the recorded plat.

In the event that the Land Surveyor is unable to arbitrate a mutual land boundary agreement between the aggrieved landowners, the common boundary should be surveyed and platted according to the best available evidence and professional judgment, subject to the subsequent review and approval process.

Plat Review and Staking Notice

Upon completion of the survey and plat by the Land Surveyor, the governing body clerk must give written notice, by registered mail, to all landowners included in the surveyed plat. The notice is normally made by certified mail, return receipt requested, to each landowner as grantee, to assure acknowledgement of the delivery receipt, by either legal tenancy.

Such notification, provides the statutory opportunity by each landowner to review the surveyed plat at a designated public office, to examine the location of the surveyed land parcel boundaries and to render any verbal or written disagreements to the governing body; which upon receipt, the governing body clerk should promptly advise the Land Surveyor, so that resolutions can be accommodated. In the majority of circumstances, grievances are best resolved by a close, cooperative and prompt liaison between the governing body, the landowners and the surveyor; and in an unauthoritative public demeanor.

In no event, should the assessor's plat survey process be delayed by any unresolved grievances, for the involved landowners are provided further opportunity by the statutes, to file a legal suit for correction of the survey and/or plat; thus necessitating legal resolution by judicial proceedings.

Public Review Notice

Upon receipt of the certification of no objection of the assessor's plat from the state plat review agency, the clerk of the governing body must promptly publish a Class 3 public notice thereof. Following the first publication, the assessor's plat shall remain on file, at a designated public office, for a 30 day review period. During such review period, any involved landowner, the governing body, or any other party having an interest in the lands affected by the plat, may file a legal suit for correction of the survey and/or plat.

When decided or ruled upon by the court, the plat and/or survey must be corrected or revised by the Land Surveyor in accord with the judgment.

If no legal suits for correction are filed during the 30 day review period, the boundaries of the land parcels surveyed and platted will be legally established, for all future purposes, upon the approval and recording of the assessor's plat by the governing body. The plat may not be approved and recorded by the governing body until all of the filed legal suits for correction have been duly processed.

Concluding Remarks

The implementation of computerized land records at the local government level, will inevitably result in a more thorough and rapid revealment of latent land description and mapping problems; thus hopefully motivating the local governing body to seek legal resolution by assessor's plat survey.

Although a public hearing is not required, preparatory to the ordering of an assessor's plat survey, or the levy of special assessments related thereto, the local governing body is encouraged to conduct a public informational meeting, as a courtesy and to resolve public sentiment.

Upon recording of the assessor's plat, notice thereof should be mailed to each involved landowner, including a true copy of the plat. If applicable, the invoice for the survey special assessment is also normally included.

An assessor's plat is considered a survey of public record, therefore all monumentation is further protected by the landmark perpetuation provisions of s.59.635 of Wisconsin Statutes; including a fine and/or imprisonment in the event that any monument is removed, destroyed, damaged, disturbed or otherwise made inaccessible.

The statutes are also interpreted to provide that the Land Surveyor and/or assistants shall not be liable for trespass, and shall only be liable for any actual damage done to the land or property.

During the survey and platting process, it is imperative that the Land Surveyor and the governing body maintain a very close and cooperative liaison; particularly when boundary reconciliation is involved with any aggrieved land owner or the fixation of any revealed indeterminate public road right-of-ways.

Attention is directed to legal opinions rendered by the state office of Attorney General concerning any non-dedicated roadways per 69 OAG 88, and legal parcel separation per 66 OAG 2.

For assistance concerning state plat review requirements for assessor's plats, contact:

Ms Jeanne A. Storm

DOA-Plat Review

P.O. Box 952

Madison, Wisconsin 53701-0952

Phone: (608) 266-3200 Fax: (608) 264-6104

E-Mail: plat.review@doa.state.wi.us

If a local governing body has had little or no experience concerning the overall assessor's plat survey process, the procurement of professional consultation services should be considered. The Land Surveyor consultant should serve the governing body in an intermediary capacity, to assure the satisfactory completion of statutory and administrative requirements.

The assessor's plat law in Wisconsin is considered the most practical legislation in our Nation for the reconciliation of alienated lands, by land survey, upon a duly approved and publicly recorded plat. Such statutes provide for a specific, precise, timely, all-inclusive and mandated due process for the complete resolution of land parcel discrepancies and conflicts, which hinder local government procedures; including provisions for state, local government and public review; and judicial review when warranted.

An assessor's plat may not be used to create new land parcels, or any dedications for public or special use, which are not of previous public record; and must be restricted for the primary purposes of land description reconciliation expressly intended by the statutes; including unrecorded land parcels.

After an assessor's plat is recorded, all conveyancing of land, taxation, assessments and other legal procedures shall be by reference to such plat; and any previously recorded plat, or part thereof, shall be deemed vacated to the extent that it is included in or altered by the assessor's plat.

The actual and necessary costs and expenses of making an assessor's plat shall be paid out of the local government treasury, and all or any part thereof may be levied to the involved landowners as a special assessment upon the basis of assessed land valuation ratio, without improvements.

Assessor's plats may also be ordered by the local governing body, or the courts, when illegal platting, by successive divisions, is in violation of Chapter 236, Wisconsin Statutes.(Re: s.236.31 Wis Stats).

The state plat review agency, will also not certify the approval of any assessor's plat, if the ratio of error in latitude and departure closure of any parcel or part of the land survey exceeds 1/3000.

Perhaps the greatest challenge involved in the entire process, is that faced by the governing body in ordering the Assessor's Plat to be made; particularly when confronted with public controversy. Surely the intent and underlying purposes of such plats, by due statutory process, is the sole justification for the overall benefit of the public and future owners.

FOR LAND'S SAKE - USE AN ASSESSOR'S PLAT SURVEY

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920-836-9930 Phone/FAX

WRohde@centurytel.net

References:

Statutes:

- s.70.27
- s.236.03
- s.236.15
- s.236.20
- s.236.31

OAG Opinions:

- 35 OAG 437
- 44 OAG 341
- 53 OAG 103
- 58 OAG 198
- 59 OAG 262
- 61 OAG 25
- 66 OAG 2
- 69 OAG 88

Publications:

- "The Assessor's Plat Survey In Wisconsin", by William C. Rohde, RLS, is a detailed treatise of such surveying and platting process; published by the Wisconsin Society of Land Surveyors in 1989; and includes several sample forms, a typical assessor's plat, applicable statutes, OAG opinions and state plat review requirements.

Attachments:

- Assessor's Plat Survey Resolution
- Assessor's Plat Parcel Listing
- The Advantages Of An Assessor's Plat Survey
- Frequently Asked Questions

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COMMON PROBLEMS:

- ..boundary disputes.
- ..poor descriptions.
- ..undefined remnants.
- ..unplatted remnants.
- ..omitted boundary elements.
- ..junior/senior rights.
- ..encroachments.
- ..misrepresentations.
- ..multiple corner monuments.
- ..gross errors.
- ..unrecorded conveyances.
- ..conflicting surveys.

- ..unrecorded surveys.
- ..title reversions.
- ..geometric misclosures.
- ..riparian rights.
- ..adverse possession.
- ..prescriptive usage rights.
- ..non-dedicated roadways.
- ..unsurveyed divisions.
- ..illegal parcel separation.
- ..local ordinance non-compliance.
- ..partitioning by ward or personal representative.
- ..illegal conveyances.
- .."owner surveys".
- ..overlooked replatting or plat vacations.
- ..party walls.
- ..navigability determination.
- ..private access/utility easements.
- .."land-locked" parcels.
- ..conveyance exceptions or restrictions.
- ..conflicting field or record evidence.
- ..lack of county tract index system.
- ..conflicting bearing reference basis.
- ..erroneous section subdivision.
- ..record correction instruments or affidavits.
- ..unresolved lis pendens actions.
- ..public land trespass or encroachments.
- ..bulkhead/pierhead lines.
- ..pending public corridor acquisition/condemnation.
- ..GLO/BLM supplemental, extension or resurveys.
- ..prescriptive public utility easements/guying dog-legs.
- ..railroad abandonment title by grant and file.
- ..unrecorded abandoned corridor conveyances.
- ..partial section subdivision.
- ..single and double proportion applications.
- ..fractional section subdivision.
- ..the "1320 forty" description syndrome.