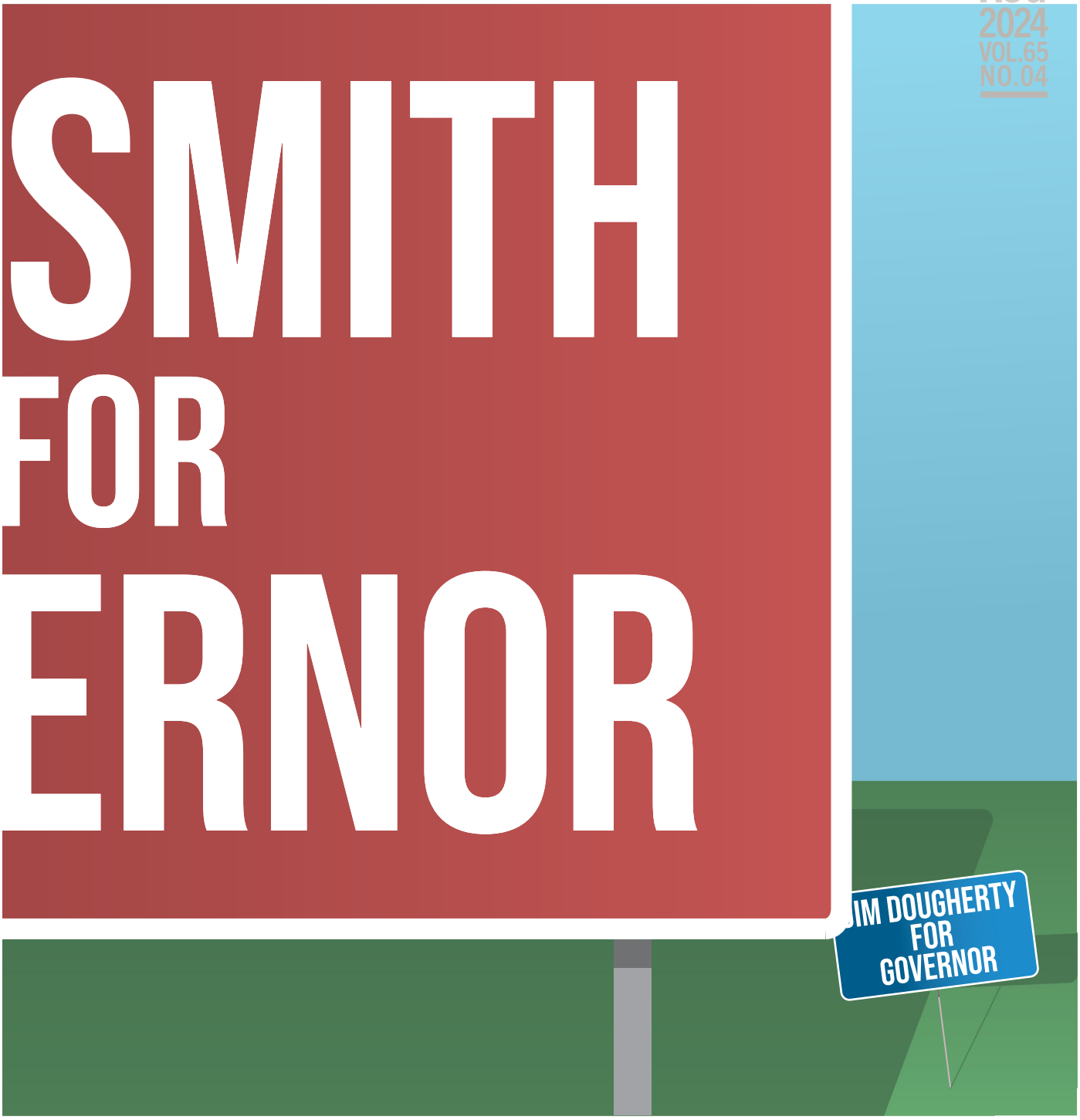
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By: Eric Shytle, General Counsel, Municipal Association of South Carolina, Columbia, South Carolina and Sean Scoopmire, Planning and Law Associate, White & Smith LLC, Greenville, South Carolina

The parameters of First Amendment barriers to content-based sign ordinances continue to evolve in the wake of *Reed*. As our national electoral season approaches, a review of the permissible limits on political signage is in order. Our authors assess the current state of sign law and propose a content-neutral taxonomy.

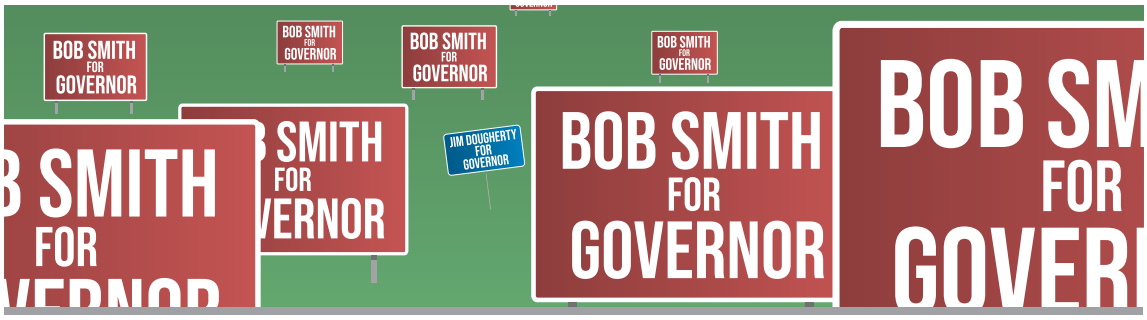
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By: Michelle White, Employment Law Associate Attorney, Lloyd Gosselink, Austin, Texas

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EXECUTIVE EDITOR
Amanda Karras

EDITOR
Erich R. Eiselt

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PRACTICE TIPS

By: MARIANNE LANDERS BANKS, *Attorney at Law, Bojorquez Law Firm, Austin, Texas*

What to Expect from a Land Survey

INTRODUCTION

There are a variety of opportunities for municipal attorneys to be exposed to a land survey. Certainly if you are involved in purchasing or selling any City-owned property, development projects, capital improvement projects, or even in dealing with code enforcement matters, a land survey may be a tool that would be necessary to your legal work. This article is intended to bring to your attention a trend that my colleagues and I have seen developing over the last few years concerning the background title work that is used by surveyors in preparing their survey documents.

History-and a troubling trend.
Clearly it is important to know what the boundaries of a parcel of land are, and this need has existed dating back to Egyptian times. It was the Romans who first recognized the profession of "gromatici," so named after their primary surveying tool, the "groma." The work was considered half mathematical and half legal, and the gromatici actually were the ones to assist in resolving disputes over legal boundaries.

That history explains a bit of how today's surveying professionals became expected to use land title documents to support their work. Most states require land surveyors to review recorded land title documents in preparation for performing on the ground survey work. Interestingly, at least one state prohibits surveyors from researching the title documents themselves and requires them to purchase the title history from the state.

Historically, modern surveyors used abstracts of title and other original land records to provide the evidence of boundary information and monumentation, before performing work on site to locate the corner pins and other markers for the property. Today very few true abstract companies exist, but certainly original real property records are maintained in county or regional government offices. Many surveyors have come to depend on a title history document prepared by a title company to serve as the foundation of their land title research. This is where a trend has arisen that raises some concern for municipal practitioners.

The need to dig deeper.
When reviewing a land survey, it is not just the boundary of the parcel that may be needed. With so much infrastructure underground, from water and wastewater utilities, to natural gas and electric, as well as potentially multiple fiber and telecommunication lines, it is important to know the extent of existing easements impacting the property, as well as any rights of way for dedicated streets and alleys, and any other unique encumbrances or specific use limitations. These may be found in subdivision plats and restrictive covenants, rather than simply in the deeds making up the chain of title ownership.

One big red flag is if the land survey you receive shows no utility easements. This is very unlikely since so many sites are crossed by major utility lines, pipelines, and so on, as utility services are available to many properties, particularly those within the developed area of the city. A call to your utility locating company or observation on site of any evidence of existing utility infrastructure – electric poles, telephone boxes, manholes, etc. – are cause to contact your surveyor

to be sure they checked closely for easements.

Also inquire of your surveyor how many years back the title history is being run. Some of these quick "title run sheets" that various of our surveyors have received are only going back ten years, which is wholly inadequate. Again, many times the surveyors that I spoke with did not realize they were being shorted years of information. One document I read from an international right of way organization was that a minimum of sixty years should be checked. Again, there may be documents older than that, but sixty is certainly better than ten.

One thing I have found missing that is older than sixty years are "blanket" electric, water and pipeline easements. These are easements that have been placed on a parent tract of property, burdening the entire parcel with an easement, usually with the promise that the company will come back and reduce the easement area once they determine where the line will be placed … but rarely is any release or narrowing of the easement area recorded. And many times it is hard to locate the successor in interest of the company that owns the easement.

With the advent of access to land title records through electronic means, services have become available that purport to provide easy access to title history. Unfortunately, some of the companies offering this service provide a more limited scope of records. Some title companies seem to be depending on these services more than performing their own specialized title research. While title attorneys may spend more focused time reviewing the title documents before closing, and raise questions over certain documents that may not have had adequate review, unfortunately this can create difficulties with the land survey and re-work to be done by the surveyor to produce an adequate survey for the closing on the transaction. And this can create time delays, which may be problematic for your clients.

On a number of occasions over the last few years, we have found that the detail we are receiving with a title commitment before closing was not the same as what our surveyor was provided at the time they were preparing to perform their site work. Many times no easements for utilities have been identified at all. In discussing this trend with both surveyors and real estate attorneys in our area and in some other states, many have been experiencing the same issues.

Avoiding unnecessary delay.
Discovering easements or utilities in unexpected locations late in acquisition has caused delays for project construction. In order to avoid re-work on the survey at the end near closing, we have begun ordering title work at the beginning for our benefit, and providing that documentation to the surveyor in addition to whatever title information they have secured. This has significantly reduced the amount of survey revisions needed before closing on purchases. If we are confident in our client needing the property, which is normally the case, we will order a title commitment at the outset.

It has been a challenge to help title companies understand why we are wanting to order the title commitment so early, before we even have a survey, but the surveyors have really appreciated the detail we are able to provide, as the forms they historically had received from some title companies simply have not had the necessary detail that they used to get. It provides us with the detail needed for any curative measures and much better documentation than had been received from the title run that the surveyors had requested.

Final thoughts.
Some title companies are still providing good and detailed title information for surveyors, particularly with established companies that you or your surveyor may have many years of experience. Where we have seen this trend has been with more of the new companies that seem to be popping up. Surveyors may search for a title company that can get them a quicker response, and then simply not realize that they are receiving incomplete title history. This is certainly not the case for all title companies, but just a trend to monitor and discuss with the surveyors who will be performing your work. Compare notes, share what title work you have early on, specifically request easements be located, and that teamwork may save your clients time (and frustration) in the long run. ML



Marianne Landers Banks – Marianne has practiced municipal law in Texas since 1987, first with the City of College Station, then as City Attorney for Georgetown for eleven years before entering private practice in 2001. She expanded her practice in 2002, working for the City of Springfield, Missouri over the next fourteen years and serving on the Board for the Missouri Municipal Attorneys Association until 2017. She maintains a solo practice in Lampasas, Texas, and is Of Counsel to the Bojorquez Law Firm in Austin. She was previously City Attorney for Big Spring and Lorena, Texas, and now serves as City Attorney for Fairfield, Texas, and as special counsel for a number of other Texas cities. Marianne is an IMLA Local Government Fellow, a past recipient of IMLA's Distinguished Public Service Award, and an Amicus Award winner. She previously served on the IMLA Board of Directors and is a Past Chair of IMLA's Land Development, Planning and Zoning Section and Past Texas State Chair. She has presented on topics on land use, code enforcement, law office management, and currently serves on the Fellows and Membership Committees. Marianne holds a BA in mathematics from The University of Texas at Austin and a J.D, from St. Mary's University in San Antonio. She enjoys spending time with her three grown daughters, two sons-in-law, and four grandchildren.