

By Michael J. Pallamary, PS

Michael Pallamary, PS, is the author of several books and numerous articles. He is a frequent lecturer at conferences and seminars and he teaches real property to attorneys and other members of the legal profession. He has been in the surveying profession since 1971.

San Diego Grand Jury Issues Report on City Survey Practices

On May 1, 2013, following a one year investigation, the San Diego County Grand Jury issued a comprehensive 15-page report into activities of the city of San Diego related to land surveying practices and adherence, or lack thereof, with state laws. The work of the Grand Jury is governed by the Penal Code of California which contains four specific provisions: I.—Of Crimes and Punishments; II.—Of Criminal Procedure; III.—Of the State Prison and County Jails; and IV.—Of Prevention of Crimes and Apprehension of Criminals.

According to the Grand Jury's official website, their goal is to serve as a sentinel comprised of impartial citizens that can review the methods and operations of the County of San Diego and its 18 incorporated areas and to determine whether they can be made more efficient, effective and responsive to the needs of the community. Indeed the decision to undertake an investigation such as this is not a casual endeavor particularly when it results in the issuance of a comprehensive 15-page report.

As part of their investigation, members of the Grand Jury interviewed experts in land survey policy and practice along with employees of the city and county land survey, field engineering and records offices in addition to private-practice licensed land surveyors working in the county and in cities within the county. Members also attended two industry-focused meetings hosted by the City Development Services Department

(DSD). In explaining the importance of their efforts, the Grand Jury noted:

Land surveying is important for the citizens of the County. Survey monuments are the physical reference points for precise location of land divisions that secure ownership boundaries of lots, parcels, subdivisions, tracts, roads, streets, highways and

rights of way. Preservation of existing survey monuments is important because these monuments serve as the basis of reference for subsequent new surveys and legal challenges to existing property lines. Records documenting the physical monuments are important because they provide information about:

- Location of boundaries
- How they were established
- How they have been modified over the years.

IMPROVED ACCESS TO LAND SURVEY RECORDS AND MONUMENTS

WHY IS THIS IMPORTANT?

SUMMARY

The 2012-2013 San Diego County Grand Jury (Grand Jury) received land survey policy and practice in San Diego County (County) and the City of San Diego (City). One goal of the Grand Jury was to determine whether land survey records in the City and County were available to the public as the law requires. The Grand Jury found that although survey monuments are preserved in a continuing fashion, it has improved in some areas. In addition, the Grand Jury found that the County through its on-line Land Survey Office's state-of-the-art Automated Survey Records System, does a better job of making survey records available to the public than does the City. The County's system permits private individuals and government employees to access land survey records on-line.

In contrast, there is a lack of clarity among the City offices regarding responsibility for serving the public seeking survey records. The City does not have an online document store as it is disposed to maintain and search survey records. Since 2007, staff retirement, consolidation and reorganization of the City Development Services Department resulted in both budget and staff reductions. Resource limitations have hindered technological modernization of search maintenance and electronic search capability. Limited resources devoted to modernizing the records systems contribute to a decentralized approach.

The Grand Jury found the public would be better served if a cooperative approach among City agencies were implemented where documents and records might be centrally stored. The existing decentralized model of information and record keeping is inefficient and more costly over the long term. Moreover, we found the existing process frustrating for public users trying to access information. We recommend the City create sufficient funds necessary to implement a state-of-the-art electronic searchable database for City records that would eventually reduce the cost of serving the public.

INTRODUCTION

The Grand Jury received a complaint alleging violation of the California Public Records Act, City Records and Professions Code and California Land Survey Act by the City. Specifically, the City Land Survey Division and Public Records Office allegedly:

- Violated provisions of the Business and Professions Code by failure to stamp and seal land surveying documents.
- Violated the California Land Survey Act by failure to file land surveying maps and documents.

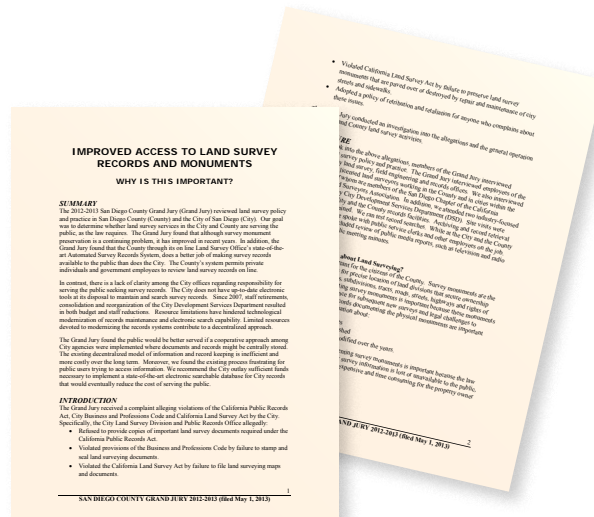
SAN DIEGO COUNTY GRAND JURY 2012-2013 (May 1, 2013)

“Survey monuments belong to the public”

Public access to records documenting survey monuments is important because the law requires it. Furthermore, if prior survey information is lost or unavailable to the public, doing a boundary retracement is expensive and time consuming for the property owner and the surveyor.

The report also noted:

The Grand Jury found a lot of finger pointing among City groups, each blaming the other for gaps in the available records



and that some records are available in one place but not the other.

The Grand Jury found that there may still be a few City employees who are reluctant to serve some members of the private-sector professional community. Pockets of resistance to change remain in both the City offices and the private sector users of city records. These individuals are remnants of the prior culture of decentralization and office independence.

The Grand Jury never received a satisfactory answer as to why the City retains two separate depositories of survey records.

There is a lack of clarity among the City offices regarding responsibility for serving the public seeking survey records.

Surveyors in private practice would benefit from access to land survey information as early in the process as possible.

Locating physical records through the City Records Office is time consuming and frustrating to professional surveyors.

In some cases, documents known to exist have been misplaced or lost. Moreover, documents known to exist were reported as unavailable because an undertrained clerk did not recognize the identifiers cited in the request.

DSD is responsible for distributing records. However, some records are retained at the Field Engineering Office on Aero Drive.

The public would be better served if a cooperative approach among City agencies were implemented where documents and records might be centrally stored.

The City does not have up-to-date electronic tools at its disposal to maintain and search survey records.

Leaders in the Development Services Department acknowledge that it is the responsibility of the City to recover and raise to the surface the lids of these buried M10 monuments. [Standard well type monuments]. However, so many monuments were covered over by prior street maintenance projects that it will take years to fully remedy the situation...

Enforcement of existing law requiring that disturbance of survey monuments be properly documented with the County Surveyor was not diligently pursued in the past.

Survey monuments belong to the public.

On-going City development and capital improvement projects disrupt existing survey monuments. The City has a responsibility to make sure survey monuments are being preserved properly.

The City currently utilizes an antiquated records retrieval system.

Physical storage of maps and microfiche files at both Aero Drive and the 2nd Floor [in the City Operations Building] is chaotic to the casual observer. The filing system tends to depend on the memory of the clerks and relies on 1950's technology and library practice.

Many of the issues covered by the Grand Jury have been discussed in the pages of The American Surveyor Magazine in articles that have generated considerable interest across the country. (<http://www.amerisurv.com/content/view/10357/> and <http://www.amerisurv.com/content/view/11167/>)

One of the more challenging problems found at the city is the parochial and antiquated culture that exists within the field division and, at the city records department. As local surveyors know, the records staff have no training in land surveying records, and researchers are left to their own resources to locate needed records and more often than not, important records are typically overlooked. To those involved in litigation, the consequences can be catastrophic. In numerous instances, the city has been served with a subpoena to produce planning, building, surveying, and engineering records and those produced were not the correct records sought or, the court was informed they did not exist. In one case, a frustrated property owner spent tens of thousands of dollars only to lose his driveway access to a neighbor after the city had stated that the driveway had not been properly permitted and there were no records of its construction. After the fact, when the rework was conducted, it was determined that the proper permits had in fact been issued; the city simply failed to provide them when they were subpoenaed. By then it was too late as the damage had been done.

In other instances, when a property dispute arises and when important records are sought, they suddenly become unavailable because someone at the city is "looking" at them during a period of neighborhood curiosity and inquisition. Despite repeated requests, emails, phone calls and personal visits, these records are never made available to the public or their consultants for reasons that are never explained. As a result and by necessity, decisions are made and permits are issued, forcing

property owners and neighbors into litigation - litigation which could have been avoided if the city had made the records available. Unfortunately, conduct such as this is common place in the city of San Diego. In addition to the obvious problems for the affected property owner, the professional Land Surveyor and other licensed individuals are placed in a precarious position when incidents like this occur and later, when the sought after documents suddenly reappear, the professional is placed in an awkward position of defending his/her efforts, exposing him/her to liability as his/her competency is called into question.

As has been historically true with the city survey's field section, part of the established culture is predicated upon the presumed belief that survey records, maintained in an isolated department, are in essence the possession of that department and/or individuals who control that department. Part of this fallacy exists because historically, no one has instructed them differently and sadly, no one cared. Moreover, many of these individuals believe that by maintaining this culture of secrecy, they are preserving their jobs. In other instances where city employees are moonlighting, this concept of private "ownership" of public records takes on more ominous and serious overtones. Complaints such as these go unanswered.

In another more recent situation involving a city employee who retired from a related department, under this system of ostensible "private ownership" of public records, this individual is now returning to the city as a "special consultant," a step necessitated because he adhered to the ingrained policy of maintaining public records by making sure that no one else knows where the records are kept. He is able to write his own ticket, all at the expense of weary taxpayers.

Under the applicable laws related to Grand Jury reports, the mayor and city council are required to respond no later than July 30, 2013. In the next issue, I will discuss some positive changes that are underway as a result of the report and the exposure the city has been subjected to. Change is coming. The report can be found at: http://www.sdcounty.ca.gov/grandjury/reports/2012-2013/Improved_Access_Land_Survey_Monuments.pdf 