

THE VALUE OF A MONUMENT

Throughout history society has placed a high value on land boundary monuments (landmarks). The Egyptians invented surveying so they could replace their landmarks each year after the Nile River flooded.

Destruction of landmarks has been regarded as an evil deed as shown by the following statement from the Old Testament (Deuteronomy 27:17):

".....cursed be he that removeth his neighbor's landmark and all the people shall say amen....."

The ancient values of landmarks may be taken for granted in today's time. It seems that in recent years monuments are not of major concern. Surveyors have not diligently perpetuated monuments and during the course of modern day development it appears to be common practice to ignore monuments, as they are a nuisance to work around. This is indeed sad. Monuments would probably be better appreciated if we practiced some ancient philosophies and enforced current laws and had stiffer penalties.

It is hard to understand this recent neglect of perpetuating land boundaries. Land is the one tangible thing man has quested, fought and died for over the centuries and it certainly seems folly to not mark our hard fought for lands with stable markers. Even uncivilized animals have enough sense to mark their territories. In absence of earth settlement and lateral movement, nothing is more conclusive than a properly constructed monument fixing the location of a corner or boundary line. A boundary monument when found and identified in place simply is there, its position is not in error.

It would be easy to say that many monuments could be constructed better, or surveyors should perpetuate better. But even the best of monuments and accessories fall prey to bulldozers. The blame cannot be placed on any one group of individuals. Everyone is to blame.

The solution is education of the importance to perpetuate monuments and accessing full penalties of law for destroying them. Surveyors can do their part by filing corner ties and records of surveys and constructing better monuments. Developers need to be advised of the importance of the monuments so that construction crews will be more attentive. And legal authorities can do their part. Most states have laws concerning the destruction of landmarks. These statutes must be enforced. It is everyone's responsibility to report both violators of perpetuation laws and people who knowingly destroy monuments. Often times however the penalties are not stiff enough to encourage compliance.

PENALTIES FOR VIOLATIONS

Violation of perpetuation laws, that is the corner recoration and record of survey laws is a petty offense and also if the violator is a registrant they are also subject to punishment by the State Board of Technical Registration.

Destruction of monuments carry slightly higher penalties.

"Section 57 of the Criminal Code of 1909, as slightly modified in 18 U.S.C. 1858, provides a penalty for the unauthorized alteration or removal of any Government survey monument or marked trees:

Whoever willfully destroys, defaces, changes, or removes to another place any section corner, quarter-section corner, or meander post, on any Government line of survey, or willfully cuts down any witness tree or any tree blazed to mark the line of a Government survey, or willfully defaces, changes or removes any monument or bench mark of any Government survey, shall be fined not more than \$250 or imprisoned not more than six months, or both." Manual of Surveying Instructions 1973, Chapter IV, section 4-2, page 105.

In addition to the Federal penalty just shown, Arizona has statutes addressing destruction of monuments. A.R.S. 33-103 subsections D and E address destruction of monuments. The statute is shown in its entirety next:

§ 33-103. Monuments at section and quarter section corners; reestablishment of corners; monument requirements; destruction of monuments; classification

A. Landmarks or monuments established under the provisions of this article shall be set at the section corners and quarter section corners established by the United States survey. If there is a clerical error or omission in the government field notes or bearings, trees, mounds, fences or other locating evidences specified therein, or if they are destroyed or lost and there is no evidence by which the corners established by the United States survey can be identified, the land surveyor shall reestablish the corners under rules adopted by the United States for the survey of public lands.

B. Landmarks or monuments established pursuant to this section shall be presumptively at the section and quarter section corners as originally established by the United States survey.

C. The monument shall:

1. Be not less than two and one-half feet in length and constructed of durable material, preferably of metal rod or pipe.
2. Identify on the top of the monument the point of survey by punch mark or scribed cross.
3. Identify on the top of a monument set at section corners the proper numbering of the sections for which the monument forms a landmark.
4. Identify the quarter section for those monuments set at quarter section corners.
5. Bear the Arizona registration number of the land surveyor.
6. Be magnetically detectable.
7. Be placed firmly in the ground, leaving the top flush with the surface or recessed in a hand hole when placed on a public highway, or when not on a public highway set to the best judgment of the land surveyor to perpetuate the corner.

D. A person who knowingly or by gross negligence destroys, disfigures, removes or disturbs monuments described in subsection C or other permanent monuments set by the land surveyor which have the land surveyor's or public agency's cap or tag affixed to the monument is guilty of a class 2 misdemeanor.

E. A person acting independently or a person in responsible charge of another person who destroys, disfigures or disturbs monuments described in subsection C or other permanent monuments set by the land surveyor which have the land surveyor's or public agency's cap or tag affixed to the monument shall be civilly liable to the state, political subdivision or any other person for all costs associated with restoration or replacement of any monument destroyed, disfigured, removed or disturbed. The remedies under this subsection are in addition to any penalty which can be imposed under subsection D.

It is apparent according to subsections D and E that if a "person" or "person in responsible charge of another person", "knowingly or by gross negligence" destroys monuments they violate the law. It is clearly stated that the monument must bear the "land surveyor's or public agency's cap or tag". A key to the operation of this statute is satisfying the "knowingly" or "gross negligence" criteria. A way to set up fulfillment of this is to notify the contractor, developer, engineer, or public agency by writing of the existence of monuments prior to construction. Nobody can then say they did not know they were there. Gross negligence can be satisfied by proving that during the course of ones job they should have known the monuments were there and failed to look for them. This would most likely apply where a surveyor or engineer in charge stood idly by throughout construction of a project where it was common to have monuments. An example might be a road construction project along a section line.

It is possible that criminal law may apply to destruction of monuments and landmarks. The following statutes discuss criminal damage to property and class of violations.

§ 13-1601. Definitions

In this chapter, unless the context otherwise requires:

1. "Damaging" means "damage" as defined in § 13-1701.
2. "Defacing" means any unnecessary act of substantially marring any surface or place, by any means, or any act of putting up, affixing, fastening, printing, or painting any notice upon any structure, without permission from the owner.
3. "Litter" includes any rubbish, refuse, waste material, office paper, glass, cans, bottles, organic or inorganic trash, debris, filthy or odoriferous¹ objects, dead animals, or any foreign substance of whatever kind or description, including junked or abandoned vehicles, whether or not any of these items are of value.
4. "Tamper" means any act of interference.
5. "Utility" means any enterprise, public or private, which provides gas, electric, steam, water, sewer or communications services, as well as any common carrier on land, rail, sea or air.

Added Laws 1977, Ch. 142, § 70, eff. Oct. 1, 1978. As amended Laws 1978, Ch. 201, § 140, eff. Oct. 1, 1978.

¹ So in original. Probably should be "odoriferous".

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 13-1602, Arizona Revised Statutes, is amended to read:

13-1602. Criminal damage; classification

A. A person commits criminal damage by recklessly:

1. Defacing or damaging property of another person; or
2. Tampering with property of another person so as substantially to impair its function or value; or
3. Tampering with the property of a utility.
4. Parking any vehicle in such a manner as to deprive livestock of access to the only reasonably available water.

B. Criminal damage is punished as follows:

1. Criminal damage is a class 4 felony if the person recklessly damages property of another in an amount of ten thousand dollars or more, or if the person recklessly causes impairment of the functioning of any utility.
2. Criminal damage is a class 5 felony if the person recklessly damages property of another in an amount of one TWO thousand five hundred dollars or more but less than ten thousand dollars.
3. Criminal damage is a class 6 felony if the person recklessly damages property of another in an amount of more than one TWO hundred FIFTY dollars but less than one TWO thousand five hundred dollars.
4. In all other cases criminal damage is a class 2 misdemeanor.

§ 13-1701. Definitions

In this chapter, unless the context otherwise requires:

1. "Damage" means any physical or visual impairment of any surface.

It appears that if a monument can be shown to be "property" then criminal law may apply.

The fines for misdemeanors and petty offense are shown next.

13-802. Fines for misdemeanors

A. A sentence to pay a fine for a class 1 misdemeanor shall be a sentence to pay an amount, fixed by the court, not more than ~~one thousand~~ TWO THOUSAND FIVE HUNDRED dollars.

B. A sentence to pay a fine for a class 2 misdemeanor shall be a sentence to pay an amount, fixed by the court, not more than seven hundred fifty dollars.

C. A sentence to pay a fine for a class 3 misdemeanor shall be a sentence to pay an amount, fixed by the court, not more than five hundred dollars.

D. A sentence to pay a fine for a petty offense shall be a sentence to pay an amount, fixed by the court, of not more than three hundred dollars.

E. A judgment that the defendant shall pay a fine, with or without the alternative of imprisonment, shall constitute a lien in like manner as a judgment for money rendered in a civil action.

F. This section does not apply to an enterprise.

All in all, the fines imposed by law for destruction of monuments is not an effective deterrent. So again we emphasize the need for more public education and the best effort by surveyors to perpetuate our boundaries.