

## Testimony on HB 3089

March 26, 2013

### Reasons not to support BLA proposed legislation. HB 3089

This bill was introduced at the request of the OACES not the PLSO (Professional Land Surveyors of Oregon). You may here testimony the this same bill was supported by the PLSO in 2011 but that is NOT true. At the March 12, 2011 meeting of PLSO Board, after much discussion, the Board took a straw poll for support for what was then called HB 2892 (same as HB 3089). The vote was slit and PLSO president, Gary Anderson, instructed the committee to continue to follow the bill and report regularly on the proceeding events.

Last week, when an e-mail was send out that this bill was to have a hearing, there were many responses as to what this bill would do and what it does not do. I agree with the surveyors that ask why this bill is needed. It is unfortunate that one or two county clerks have decided to practice law and will not record a document that is called a boundary line agreement, but that is no reason to put county surveyors in the position of practicing law.

Here is what happens most commonly on a boundary line agreement. A private surveyor is hired to survey and tract of land. In the course of the survey it becomes evident that the deed lines for the surveyors client and the neighbor are not exactly in the same location. Maybe because the two deeds were written from different beginning points and by the current measurements, using modern instruments, the deed line overlap each other. In the end the surveyor will have to make a choice on which deed description has more weight, but what could be better than the two neighbors getting together and agreeing on a common boundary line. By the time the decision is made to agree on a line, we have talked to both neighbors and explained the problems, and they have probably hired an attorney. The neighbors have also been talking to each other. As surveyors, we can measure and describe the line, but we do not prepare the document. It is prepared by an attorney. The attorneys tell the surveyor what they need in the way of descriptions and maps, the attorneys prepare the proper documents and the neighbors record the documents with the county clerk. So here we go, we are in the final stages of an agreement. The neighbors are in agreement. Their attorneys are in agreement. Documents are prepared. Now we submit a survey drawing for recording to the county surveyor and everything stops so the county surveyor can give his approval??? What has the public gained in this new process that elevates the county surveyor as one more layer of paper work, and I am sure there will be a fee for this.

As I am writing this I understand that maybe Section 2 (5), Certification by the County Survey, has been removed. This must be to appease other surveyors. I don't know at present what the revised bill says. This is another example that county surveyors can never agree on anything. Since 1990 they still cannot agree on a standard for what kind of paper and ink combination we can use when recording a survey map.

My biggest objection to this bill is that it requires county surveyor to practice law without a license. They continually deny it but that is what the bill does. Attached is an e-mail from March 19, 2013 from Scott Freshwaters (PLSO legislative committee chair) explaining to surveyors why we need this law. There were two attachments which I have included. Both attachments refer to several court cases and law interpretations. Private and county surveyors need to leave to business of practicing law to attorneys. Our "Code of Ethics" prevents us from professional services we are not competent in.



Matt Dunckel  
Professional Surveyor  
3765 Riverside Drive  
McMinnville, Oregon

1) A Bureaucrat (County Surveyor) will make the decision if a particular boundary line agreement (BLA) is legitimate.

Scott, you acknowledge this is true and attempt to justify it by saying having the CS surveyor sign off on a BLA will keep "unscrupulous" PLS's from helping clients circumvent the planning process. Who are calling "unscrupulous"?? Would you please name them. So now the CS will be the enforcer of the planning process?? And the reason for doing this is to protect the public??

2. The CS will be charged with defining terms such as "uncertainty" and "subject to dispute."

Scott - again you acknowledge this is true but conclude is not a problem. It may not be a problem for the CS but it a huge problem for the public. As an example (and I have many more) 4 years ago a CS who is on the OSBEELS Law enforcement Committee told a land owner that the person who had a non-exclusive easement over his property could not use it for anything he wanted and that the land owner needed to find the grantor of the easement and ask him what he meant when he granted the easement. The CS that made this statement had had many years of classes but I guess it just didn't soak in. Just where did any of these county surveyors get their license to practice law? Why would you want to create a law that create more "uncertainty" than existed before the law is passed?? And the reason for doing this is to protect the public??

3. Disagreement and abuses are bound to occur. The county may have to implement an appeals procedure if a landowner's BLA is denied by the CS.

Scott – this is great. Another application for an appeal of a CS decision. Is this after or before it is approved by planning. What would the fee for an appeal be? Is this a planning issue or a surveying issue? Could a CS invalidate a planning department? Have you looked the duties given by statute to the CS. And the reason for doing this is to protect the public??

4. The BLA legislation is unnecessary since common law doctrine is already available.

a) Scott - again you acknowledge this is true but conclude someone needs to be the enforcer or "gatekeeper" doing quality control because all counties are not the same when it comes to BLA. Would this BLA legislation guarantee the same standardization that we enjoy with our partitioning laws. If it does we don't need it. Since 1990 the CS's cannot even agree on what kind of paper or ink we should be using. Every county is different. Try submitting similar partition plats in Polk County vs. Washington County and see what happens.

b) "With this proposed legislation requiring recording of the agreement the possibility of land owners spending tens of thousands of dollars in legal fees to defend a BLA could be obviated"

What are they spending the tens of thousands of dollars in legal fees on? Fighting the proposed BLA law or fighting each other. You will never stop some people from fighting with each other and this just adds another possibility for spending more money. Do you know what land use attorney's cost?

5. Confusion for the Title companies, subsequent purchasers, and real estate broker.

Scott - I agree with you. The law would not confuse anyone as a matter of land title and they are not confused now. The confusion would be - why does the CS have the right to make decisions on by property and why does the CS think I need to pay him a fee for something he should not be involved in. There will be fees charged for this and that is what the legislation is really about. And the reason for doing this is to protect the public??

6. The BLA may disadvantage some naïve owners who agree to the BLA don't realize that it may reduce the value of their property.

Scott - I don't know what this argument is supposed to prove and I agree with you this should not be an issue. Most land owners I deal with know how to resolve issues with their neighbor but they are very naïve about the gauntlet of permits and application fees imposed by the state and county that bring them no value.

Further in your answer you talk about uncertain boundaries. How can you adjust a boundary that is 'uncertain'? Why can't land owners agree to a line without interference from the CS? So now the CS gets to charge a fee for making the determination of where a boundary is so he can charge a fee for telling you how to solve your problem. And the reason for doing this is to protect the public??