

# ETHICS FOR LAND SURVEYORS

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# ETHICS FOR LAND SURVEYORS & ENGINEERS

Jeffery N. Lucas  
Professional Land Surveyor/Attorney at Law  
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## Signup For THE LUCAS LETTER

The only legal newsletter  
specifically for the Land  
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## INTRODUCTION AND DISCLAIMERS

### **I Am Not Your Attorney.**

This seminar is not intended to provide you with legal advice. Seek legal advice from an attorney who is familiar with your particular situation and the facts in your particular case.

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## Sources of Ethical Behavior

- What are the sources of ethical behavior?

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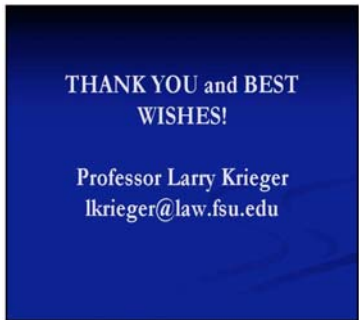
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## Ethical Behavior



Professor Larry Krieger, Florida State University, "Ethics, Professionalism and Career Satisfaction." Reprinted with permission.

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THE SOURCES OF ETHICAL  
BEHAVIOR ARE THE SOURCES OF  
MENTAL HEALTH AND  
PERSONAL SATISFACTION

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## ESTABLISHED SOURCES OF THRIVING

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### UNIVERSAL NEEDS

(Produce thriving, vitality, well-being)

- Autonomy / Authenticity (can make preferred choices, choices based on true values/interests, express true self; . . . Integrity!)
- Relatedness (feel well connected to others generally, closeness, intimacy with important others)
- Competence (feel very capable, mastering hard challenges, successful at difficult tasks)
- Self-Esteem (sense of self-respect, have positive qualities, satisfied with one's self)

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### THRIVING: MOTIVATION AND VALUES

- Internal Motivation
  - Action itself is satisfying or enjoyable
  - Action supports personal value/goal
- Intrinsic Values/Goals
  - Self-Understanding & Growth
  - Intimacy
  - Helping others
  - Community

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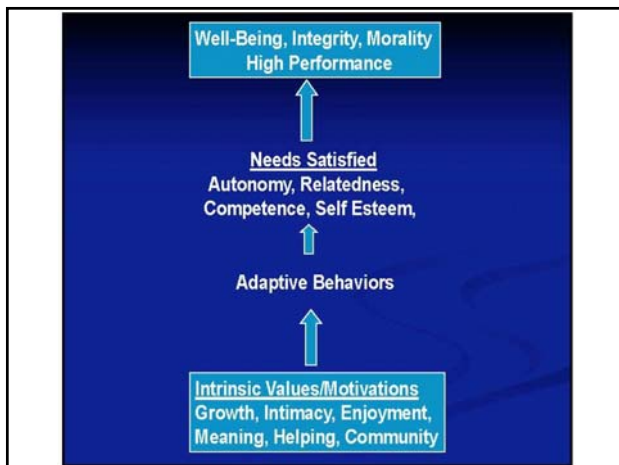
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1. Do sources of thriving apply to your own life and work? Others that you know? (Think of an ethical, thriving person and an unprofessional, struggling person you know of, and consider the list of needs, values, motivations.)

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**DISTRACTIONS**

(Decrease Thriving and Promote Unethical Practice)

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## Extrinsic Motivation, Values, Goals

- Money/luxuries
- Popularity/influence
- Competitive/external outcomes  
(Grades, Ranking, Rewards . . .)
- Pleasing or impressing others
- Relieving anxiety or guilt

★ When PRIMARY ⇒ distress)

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Poor Ethics and Performance  
Distress, Addictions

Needs Not Satisfied

Distracting Behaviors

Extrinsic Values/Motivations  
Money, Power, Status,  
Rewards, Outcomes

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## FOCUS ON THRIVING! (70-30)



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2. Review the sources of thriving, and write 2 ways you can exercise or promote them in the coming weeks. Note how they would promote ethical and constructive, healthy behavior.

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**NATIONAL SOCIETY OF PROFESSIONAL LAND SURVEYORS  
SURVEYOR'S CREED AND CANONS**

As a Professional Surveyor, I dedicate my professional knowledge and skills to the advancement and betterment of human welfare.

**I Pledge:** To give the utmost of performance;  
To participate in none but honest enterprise;  
To live and work according to the laws of humankind and the highest standards of professional conduct;  
To place service before profit, honor and standing of the profession before personal advantage, and the public welfare above all other considerations;  
In humility and with need for Divine Guidance, I make this pledge.

**Canon 1:** A Professional Surveyor should refrain from conduct that is detrimental to the public.

**Canon 2:** A Professional Surveyor should abide by the rules and regulations pertaining to the practice of surveying within the licensing jurisdiction.

**Canon 3:** A Professional Surveyor should accept assignments only in one's area of professional competence and expertise.

**Canon 4:** A Professional Surveyor should develop and communicate a professional analysis and opinion without bias or personal interest.

**Canon 5:** A Professional Surveyor should maintain the confidential nature of the surveyor-client relationship.

**Canon 6:** A Professional Surveyor should use care to avoid advertising or solicitation that is misleading or otherwise contrary to the public interest.

**Canon 7:** A Professional Surveyor should maintain professional integrity when dealing with members of other professions.

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**National Society of  
Professional Land Surveyors**

*As a Professional Surveyor, I dedicate my professional knowledge and skills to the advancement and betterment of human welfare. [Emphasis added.]*

Preamble to the Surveyor's Creed and Canons

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### Professionals or Technicians?

- Are we professionals or technicians?
  - What's the difference?

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### Professionals or Technicians?

"To be a successful professional surveyor, one must have more than a narrow technical education. Technical education has to do with things. Employees at a lower professional scale deal with things; professionals deal with people, situations, and ideas."

Robillard, Walter G., Donald Wilson and Curtis Brown, *Evidence and Procedures for Boundary Location*, Fifth Edition at 484.

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### Technician v. Professional

#### Technicians Deal with:

- Things
- Monuments
- Measurements
- Equipment
- Facts
- Etc.

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## Technician v. Professional

### Professionals Deal with:

- Things such as Facts
- People
- Situations
- Ideas

### ADD:

- A special relationship with client. A Trust.

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## Professionals or Technicians?

Patient-Doctor Relationship

v.

Client-Surveyor Relationship

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## Human Welfare

- How can a land surveyor's professional knowledge and skills be applied to the advancement and betterment of "human welfare"?

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### Human Welfare

"We the people of the United States, in order to form a more perfect Union, establish justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America."

Preamble to the United States Constitution.

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### Human Welfare

- What are the "Blessing of Liberty" that we, as land surveyors, might be involved in promoting and securing?

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### National Society of Professional Land Surveyors Surveyor's Creed and Canons

#### ***I pledge:***

- *To give the utmost of performance;*
- *To participate in none but honest enterprise;*
- *To live and work according to the laws of humankind and the highest standards of professional conduct;*

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### None But Honest Enterprise

- Trespass – Criminal and Civil
- Fraud – Criminal and Civil
- Conspiracy – Criminal and Civil
- Negligence – Criminal and Civil
- Slander of Title
- Truth in Advertising

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### Truth in Advertising

Deed Staker  
v.  
Boundary Surveyor

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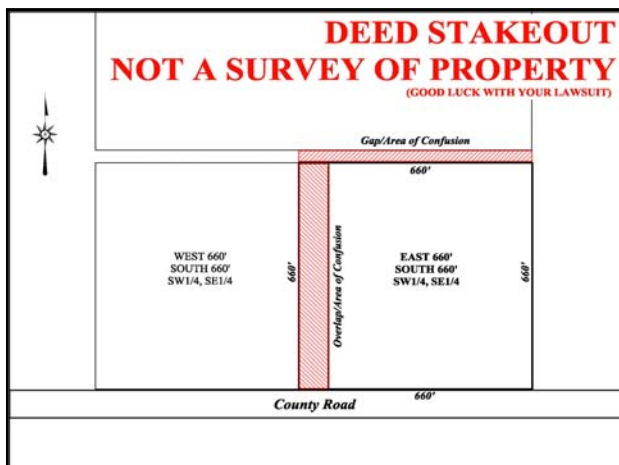
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### Highest Standards

"The surveyor, having made an evaluation of the evidence, forms an opinion as to where he believes the lines would be located if fully adjudicated in a court of law. The typical modern day surveyor sees himself as an expert evaluator of evidence. He strives to arrive at the same opinion of boundary location regardless of whether he was hired by his client or his client's next door neighbor."

Williams & Onsrud, "What Every Lawyer Should Know about Title Surveys, Reprinted in "Land Surveys, A Guide for Lawyers," Real Property and Trust Law Section American Bar Association, 1986.

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### Highest Standards

"**Sec. 3. D. Boundary Resolution** - The boundary lines and corners of any property being surveyed as part of an ALTA/ACSM Land Title Survey shall be established and/or retraced in accordance with appropriate boundary law principles governed by the set of facts and evidence found in the course of performing the research and survey."

2011 MINIMUM STANDARD DETAIL REQUIREMENTS FOR ALTA/ACSM LAND TITLE SURVEYS, Section 3. Surveying Standards and Standards of Care. Effective Date of Feb. 23, 2011.

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### Watts v. Shannon and Leggins

Tennessee Court of Appeals  
2005 Tenn.App. LEXIS 403  
July 11, 2005

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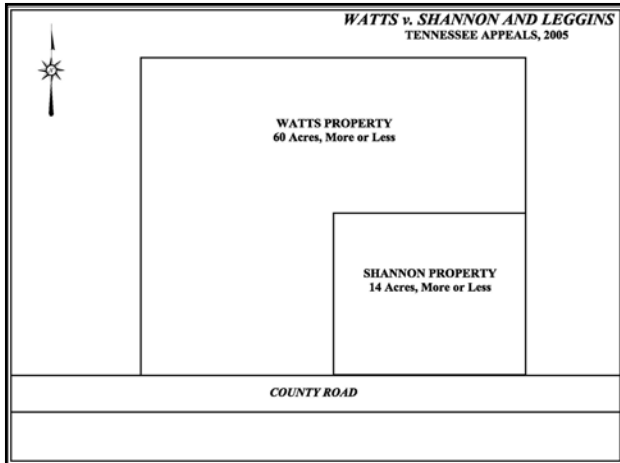
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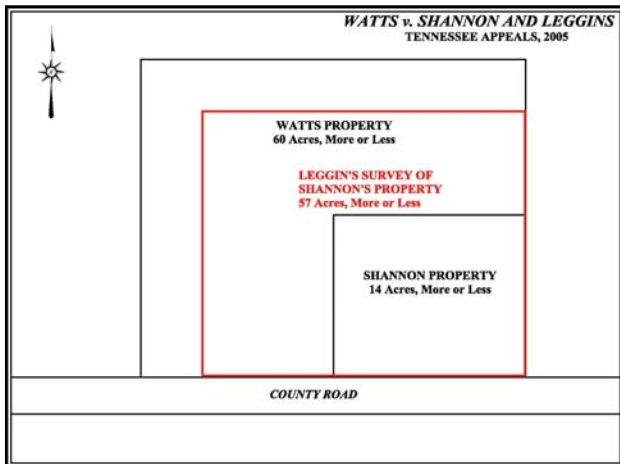
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**Zen Buddhist v. Nelidov**

California Court of Appeals  
2006 Cal.App.Unpub. LEXIS 2766  
April 4, 2006

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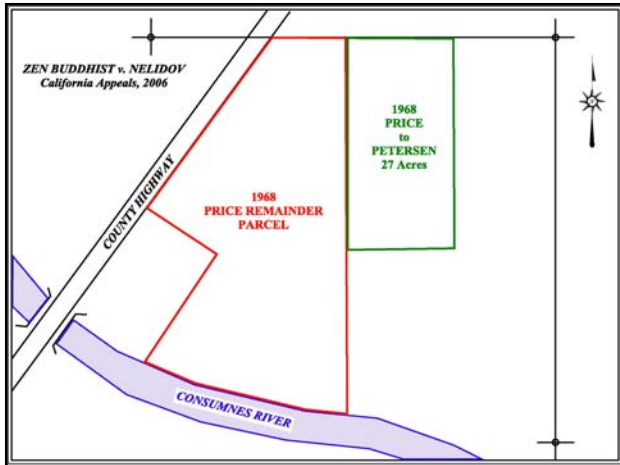
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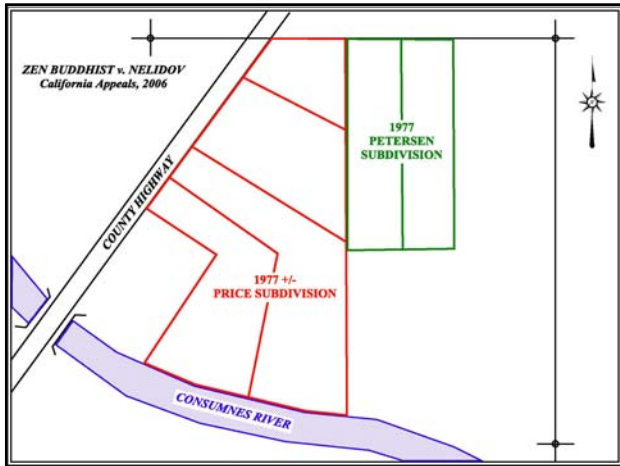
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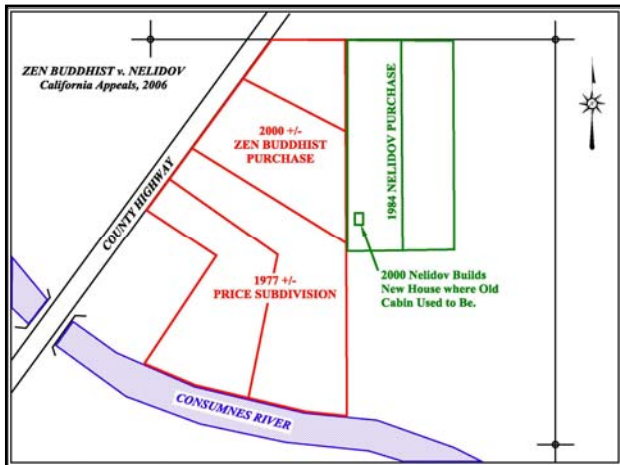
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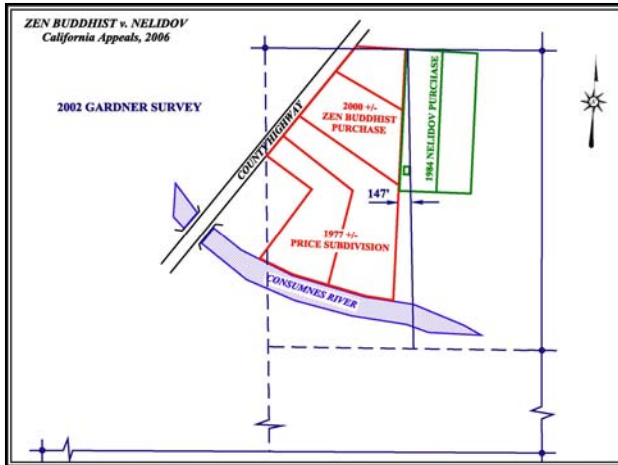
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### The Laws of Humankind

- What are the “laws of humankind”?

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### The Laws of Humankind

- Do the laws of humankind have anything to do with property?

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## The Laws of Humankind

"In order to safeguard the life, health, property and welfare of the public and the state of Ohio, to maintain integrity and high standards of skills and practice in the professions of engineering and surveying, the following rules of professional conduct, promulgated in accordance with Chapter 4733. of the Revised Code, shall be binding upon every person holding a certificate of registration as a professional engineer or as a surveyor."

Ohio Admin. Code, Sec. 4733-35-01. Preamble.

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## The Laws of Humankind

"Gross negligence in the practice of architecture, landscape architecture, professional engineering, designing or land surveying, means the performance of professional services by an architect, landscape architect, professional engineer, designer or land surveyor which does not comply with an acceptable standard of practice that has a significant relationship to the protection of health, safety or public welfare and is performed in a manner indicating that the professional knew or should have known, but acted with indifference to or disregard of; the accepted standard of practice.

Wisconsin Admin. Code, A-E 803.03 (1)

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## Standard of Care

- What is the standard of care when providing professional services?

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**National Society of  
Professional Land Surveyors**  
Surveyor's Creed and Canons

***I pledge:***

- *To place service before profit, honor and standing of the profession before personal advantage, and the public welfare above all other considerations;*
- *In humility and with need for Divine Guidance, I make this pledge.*

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## Kendall v. Lowther

Supreme Court of Iowa  
356 N.W.2d 181  
September 19, 1984

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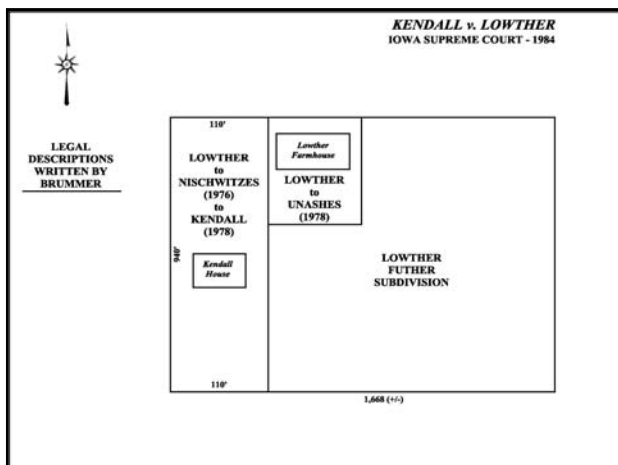
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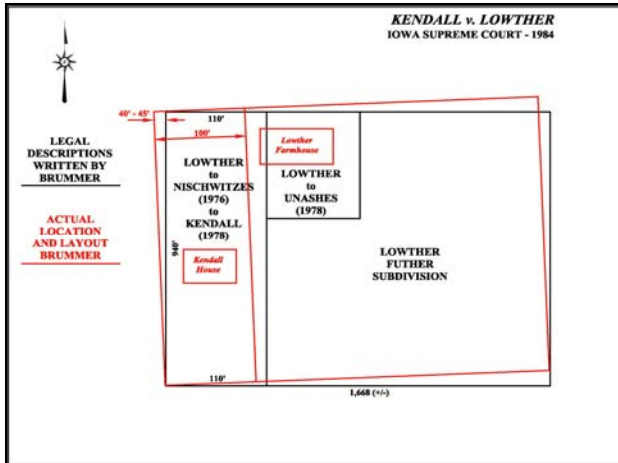
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**Services Before Profit  
The Profession Before Advantage  
Public Welfare Above All**

- What is this really saying?
- Love thy neighbor as thy self?

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**Divine Guidance**

- Where does this come from?

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### A Sacred Trust?

- Every profession has a sacred trust. Do land surveyors have a sacred trust?

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### National Society of Professional Land Surveyors Surveyor's Creed and Canons

#### **Canon 1.**

*A Professional Surveyor should refrain from conduct that is detrimental to the public.*

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### What's Detrimental to the Public?

How About:

- Not Notifying the Board of your Change of Address?
- Committing a crime?
- Committing a tort?
- Not providing competent professional services?

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## What's Detrimental to the Public?

How About:

- Making a boundary determination based a legal description handed to you by your client and a tax map?

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**National Society of  
Professional Land Surveyors**  
Surveyor's Creed and Canons

### **Canon 2.**

*A Professional Surveyor should abide by the rules and regulations pertaining to the practice of surveying within the licensing jurisdiction.*

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## **Rules and Regulations Pertaining to Land Surveying**

- What are the rules and regulations pertaining to the practice of land surveying?

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**Rules and Regulations  
Pertaining to Land Surveying**

Statutory Law:

- Statutes and Code Sections
- Legislatively Enacted
- Interpreted by the Courts
- Can't Violate Constitutional Provisions
- Can't Violate Treaties of the United States

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**Rules and Regulations  
Pertaining to Land Surveying**

Common Law (Case Law):

- Interpretation of the Constitution and Treaties
- Interpretation of Statutory and Administrative Law
- Court Made Law
- 230 Years of Precedence in this Country
- Another 1,000 Years of English Common Law

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**Rules and Regulations  
Pertaining to Land Surveying**

Administrative Law:

- Executive Branch of Government
- Enforcement Law
- Regulated Professions
- Boards of Regulation:
  - Board Rules
  - Technical Standards
  - Rules of Ethics or Codes of Conduct

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## **ADAMS v. BOARD OF ENGINEERS & SURVEYORS**

North Carolina Court of Appeals

501 S.E.2d 660

April 21, 1998

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### **Adams v. Board**

#### **Charges:**

- Representing Surveys as his own without actually doing a survey (copied the work of others);
- Affixed seal to surveys not done by him;
- Certified plats that did not comply with the law;
- Failed to conform to Standards;
- Gross Negligence;
- Incompetence; and
- Wanton Misconduct

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### **Adams v. Board**

#### **Actions:**

- License Revoked.
- Adams filed petition for Judicial review.
- Board decision affirmed by Superior Court.
- Adams appeals to Court of Appeals.

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### Adams v. Board

#### Issues on Appeal:

- Board has no “judicial authority” and/or no “adequate guiding standards” for the exercise thereof.
- Board’s actions “arbitrary and capricious.”
- Board’s “Notice” of hearing was vague and insufficient.
- No evidence and an “actual survey” was not done.
- No rule prohibiting “reliance on the work of previous surveys.”

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### Adams v. Board

#### Judicial Authority and Guiding Standards:

“Board here contends that in light of the expertise of the Board in this area, it is sufficient that the legislature authorized revocation for gross negligence and misconduct. The Board maintains that the General Assembly was not required to set forth by legislative enactment every conceivable situation constituting gross negligence and misconduct. ... The Board’s arguments are persuasive and petitioner’s assignment of error is overruled.”

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### Adams v. Board

#### Judicial Authority and Guiding Standards:

“We recognize the need for expertise in regulating land surveyors. In light of the Board’s expertise, ‘gross negligence and misconduct’ is a sufficiently specific standard to provide the Board with the ‘adequate guiding standards’ necessary to support the General Assembly’s delegation of authority.”

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**Adams v. Board**

**Ruling was Arbitrary and Capricious:**

"The Board ... argues that petitioner's contention that the Board was arbitrary and capricious in denying his request to supplement the record is without merit because petitioner did not bring the notes to the hearing and never requested at the hearing that he be allowed to supplement the record. ... Finally, the Board contends that petitioner made an informed decision to proceed without counsel."

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**Adams v. Board**

**Ruling was Arbitrary and Capricious:**

"The 'arbitrary or capricious' standard is a difficult one to meet. Administrative agency decisions may be reversed as arbitrary or capricious if they are 'patently in bad faith,' or 'whimsical' in the sense that they indicate a lack of fair and careful consideration or fail to indicate any course of reasoning and the exercise of judgment."

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**Adams v. Board**

**Ruling was Arbitrary and Capricious:**

"The arbitrary or capricious standard is a difficult one to meet. Administrative agency decisions may be reversed as arbitrary or capricious if they are patently in bad faith, or whimsical in the sense that they indicate a lack of fair and careful consideration or fail to indicate any course of reasoning and the exercise of judgment."

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**Adams v. Board**

**Ruling was Arbitrary and Capricious:**

"It is proper to presume that an administrative agency has properly performed its official duties. ... Petitioner has failed to show that the decision was "whimsical" or in "bad faith." Accordingly, the assignment of error is overruled."

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**Adams v. Board**

**Notice was Vague and Insufficient:**

"The Board contends that petitioner waived any objection to notice because he participated in the hearing and made no objection to the allegedly improper notice at the hearing. At the hearing, Petitioner did fully participate and made no objection to the allegedly deficient notice. Accordingly, any objection based on lack of notice is deemed waived because petitioner may not assert alleged error below for the first time on appeal."

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**Adams v. Board**

**No Evidence Actual Survey Not Done:**

"The Board argues that the record plainly shows that petitioner has manifested a reckless indifference to the rights of others. In none of the surveys did petitioner do enough research or field work for him to claim it was his work product. He repeatedly violated the rules governing land surveying and adopted a "short-cut mentality," disregarding the property rights of those for whom he was conducting the survey as well as the rights of adjoining property owners."

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**Adams v. Board**

**No Evidence Actual Survey Not Done:**

“The record reveals evidence that petitioner copied the work of others and put his name and seal on it. In fact, petitioner admitted he “borrowed” from others. The record also reveals evidence of improper surveys.”

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**Adams v. Board**

**No Evidence Actual Survey Not Done:**

“In one survey petitioner relied on a non-surveyor to provide survey information on an individual property line rather than going to the Register of Deeds and researching the necessary background information. Petitioner rationalized that since the providers of the information were “professional real estate brokers or lawyers,” the information would be accurate.”

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**Adams v. Board**

**No Evidence Actual Survey Not Done:**

“Finally, there was also evidence of surveying errors. On one survey, petitioner inserted a line call from a 1902 deed description rather than rely on survey information provided by a crew of surveyors. This resulted in a difference of 1 degree 44 minutes in the property line call and the survey failed to close because of the erroneous call. Taken altogether, the evidence is sufficient to support the Board’s decision.”

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## CAITO v. BOARD OF ENGINEERS

Superior Court of Rhode Island

1998 R.I.Super. LEXIS 11

July 21, 1998

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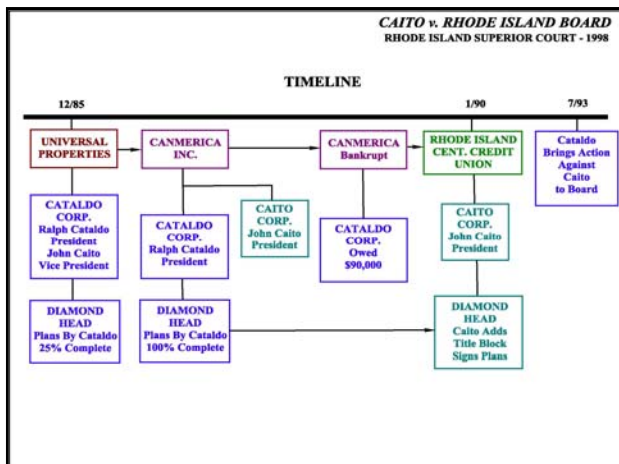
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### Caito v. Board

#### Charges:

- Caito's acts and omissions are violations of *G.L. § 5-8-14 (c)*.

#### Actions:

- One-year suspension of Caito's license.
- Caito appeals order of the Board to the Superior Court of Rhode Island.

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### Caito v. Board

"Each registrant hereunder may upon registration obtain a seal of the design authorized by the board, bearing the registrant's name, serial number and the legend, 'Registered professional engineer.' Final engineering drawings, specifications, plats, and reports prepared by a registrant shall, when issued, be signed, dated and stamped with his or her seal or facsimile thereof. It shall be unlawful for an engineer to affix, or permit his or her seal or facsimile thereof to be affixed, to any work of which the engineer has not been responsibly charged to any engineering drawings, specifications, plats or reports after expiration of a certificate or for the purpose of aiding or abetting any other person to evade or attempt to evade any provision of this chapter."

G.L. § 5-8-14(c).

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### Caito v. Board

#### Issues on Appeal:

- The Board erred in its interpretation of G.L. § 5-8-14 (c).
- The act is only applicable in two circumstances: "after the expiration of a certificate or for the purpose of aiding or abetting any other person to evade or attempt to evade any provision of this chapter."
- The Board failed to find either violation.

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### Caito v. Board

#### Issues on Appeal:

- "Caito asserts that he worked with Cataldo's plans only after receiving assurances from the developer at the time, RICCU, that he was free to do so."
- "Finally, Caito asserts that there is absolutely no prohibition against revising the plan of another engineer with whom an engineer has worked on a project, if it is expressly disclosed as to which engineer is responsible for that work."

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### Caito v. Board

#### The Decision:

"The review of a decision of the Board is controlled by *R.I.G.L. § 42-35-15 (g)*, which provides for review of a contested agency decision. ... This section precludes a reviewing court from substituting its judgment for that of the agency in regard to the credibility of witnesses or the weight of evidence concerning questions of fact."

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### Caito v. Board

#### The Decision:

"However, questions of law are not binding upon a reviewing court and may be freely reviewed to determine what the law is and its applicability to the facts. The Superior Court is required to uphold the agency's findings and conclusions if they are supported by competent evidence."

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### Caito v. Board

#### The Decision:

"Caito asserts that his "primary contention" on appeal is that the Board erred in its statutory interpretation of *G.L. § 5-8-14 (c)*. ... The Board did find that Caito's acts and omissions violated the provisions of R.I. Gen. Laws, Title 5, Chapter 8, Paragraph 14(c) in that the respondent affixed his professional engineer's stamp to work that he was not in responsible charge of and over which he did not exercise direct control and supervision."

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### Caito v. Board

#### The Decision:

"Caito states that while under Cataldo Corp's employ, the Diamond Head Project was under his responsible charge. ... The Board reviewed testimony that Caito was in fact in responsible charge of the Project while at Cataldo Corp. However, 75% of the work ultimately completed by Cataldo Corp. on the Project occurred after his departure from the Company's employ and under the responsible charge of another registered engineer. These final plans were ultimately submitted by DEM bearing the stamp of both Cataldo and Caito."

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### Caito v. Board

#### The Decision:

"Finally, Caito asserts that there is absolutely no prohibition against revising the plan of another engineer with whom an engineer has worked on a project, if it is expressly disclosed as to which engineer is responsible for that work. The natural progression and conclusion of this argument is that Caito could lawfully work on Cataldo's stamped plans as long as Caito so stamped his work on the same plans. The Board rejected this argument."

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### Caito v. Board

#### The Decision:

"The Board observing that it is painfully apparent that (Caito) assimilated most if not all of the work of (Cataldo Corp.) and then submitted it to State regulatory agencies for approval. This conclusion of the Board, itself a panel of engineers with expertise in the field, is entitled to substantial deference by this Court."

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**National Society of  
Professional Land Surveyors**  
Surveyor's Creed and Canons

**Canon 3.**

*A Professional Surveyor should accept  
assignments only in one's area of professional  
competence and expertise.*

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**FARRELL V. GARDNER**

Superior Court of Maine  
2003 Me.Super. LEXIS 250  
December 3, 2003

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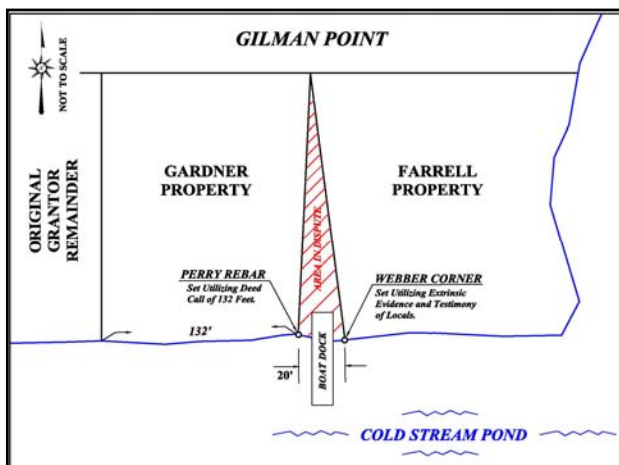
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**National Society of  
Professional Land Surveyors**

Surveyor's Creed and Canons

**Canon 4.**

*A Professional Surveyor should develop and communicate a professional analysis and opinion without bias or personal interest.*

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**Bias and Personal Interest**

- Can you ethically survey your own property?

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**Bias and Personal Interest**

- Can you be an advocate for your client?

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### Bias and Personal Interest

**EXAMPLE:** Big Oil Company is willing to hire you to survey an aliquot parts description of land (based on the PLSS). They tell you money is no object. They want you to run out the township if you have to in order to determine the boundary between their property and Ma Kettle's property. The location of an oil well is at stake. Do you accept the assignment?

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### Bias and Personal Interest

**QUESTION:**

- Would you run out the Township?
- Is that what you would normally do if the situation were Farmer Brown and Ma Kettle and there were no "lawyers-guns and money" involved and no oil well?

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### Bias and Personal Interest

**QUESTION:**

- If not, did you have a bias or personal interest interfering with your decisions?

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**National Society of  
Professional Land Surveyors**  
Surveyor's Creed and Canons

**Canon 5.**

*A Professional Surveyor should maintain the confidential nature of the surveyor-client relationship.*

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**Client-Surveyor Relationship**

**EXAMPLE:** Big Oil Company told you that they want to “screw Ma Kettle out of her oil well.” You’re called to testify in the case. As you’re walking into the courthouse, Big Oil Co. attorney tells you, “You can’t testify as to what we told you about screwing Me Kettle. You’ve got to maintain your client-surveyor confidential relationship.”

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**Client-Surveyor Relationship**

**QUESTION:**

- What’s your ethical obligation?
- What’s your legal obligation?
- What’s your moral obligation?
- Are there any differences in the above?

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**National Society of  
Professional Land Surveyors**

Surveyor's Creed and Canons

**Canon 6.**

*A Professional Surveyor should use care to avoid advertising or solicitation that is misleading or otherwise contrary to the public interest.*

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**Advertising**

**EXAMPLE:** Surveyor Sam is new in business and wants to drum up business. He comes up with a slogan. "You don't want pretty surveys, you want them cheap. Come to Surveyor Sam for the cheapest surveys in town."

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**Advertising**

**QUESTION:**

- Anything unethical about that advertisement campaign?
- Anything illegal?

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**National Society of  
Professional Land Surveyors**

Surveyor's Creed and Canons

**Canon 7.**

*A Professional Surveyor should maintain professional integrity when dealing with members of other professions.*

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**Professional Integrity**

**Example:** Surveyor Wright sends Surveyor Sam an e-mail after he sees Sam's advertisement, calling Sam, "a lowballing, scum sucking, dirt-bag, son-of-a-rubber-scaling-architect, who doesn't deserve to have a bullet wasted on him."

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**Professional Integrity**

**QUESTION:**

- Anything unethical with Surveyor Wright's actions?
- Anything illegal?

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# Lovetere v. Cole

Superior Court of Connecticut  
2008 Conn.Super. LEXIS 2097  
August 15, 2008

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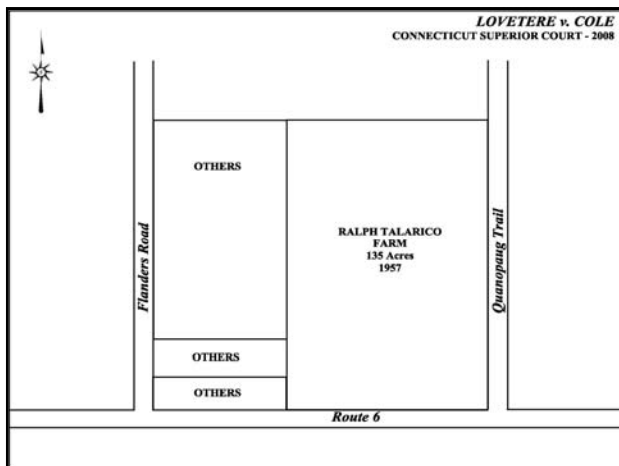
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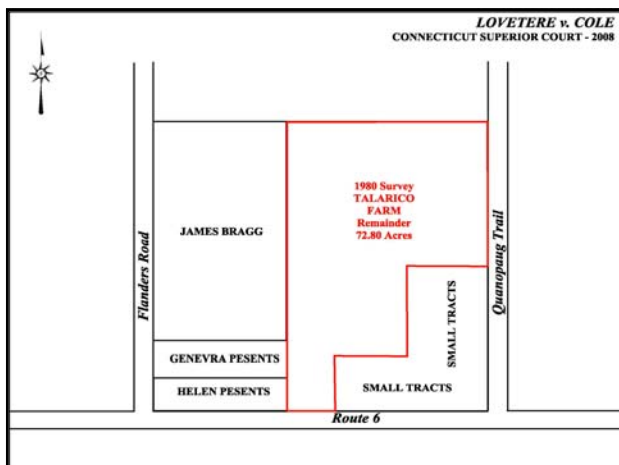
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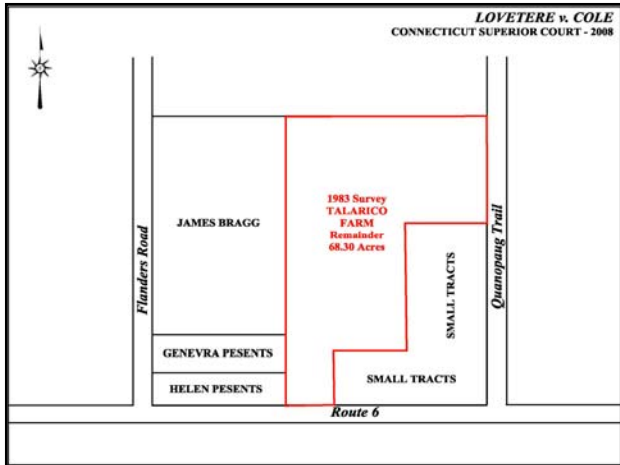
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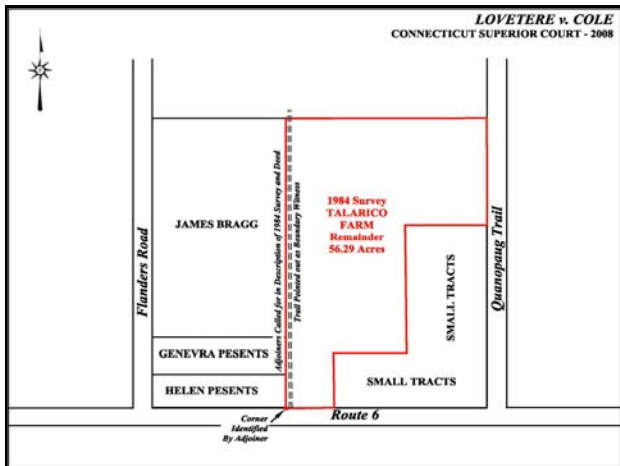
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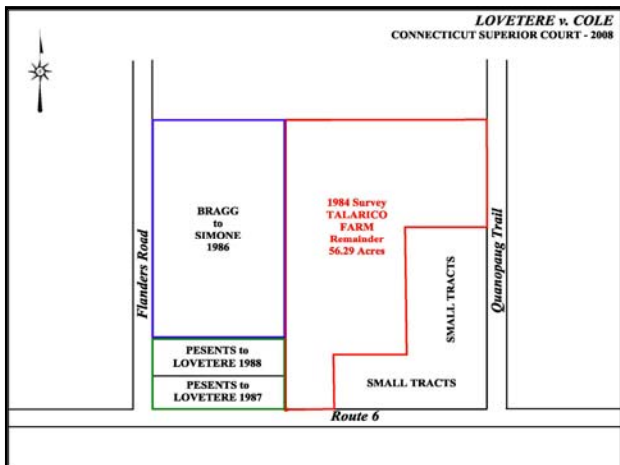
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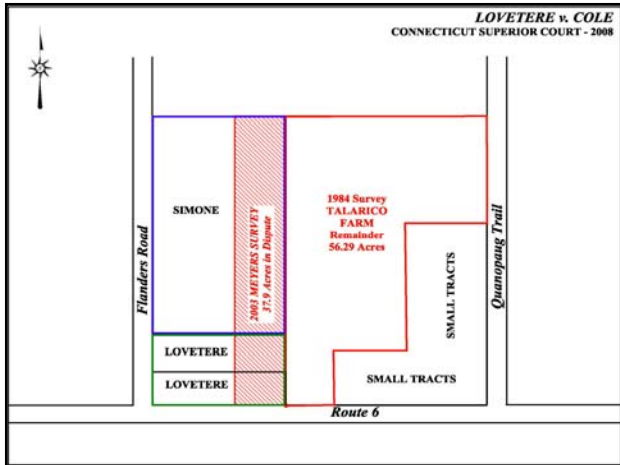
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