

Boundary Line Agreements and Adjustments --Unraveling the Tangle

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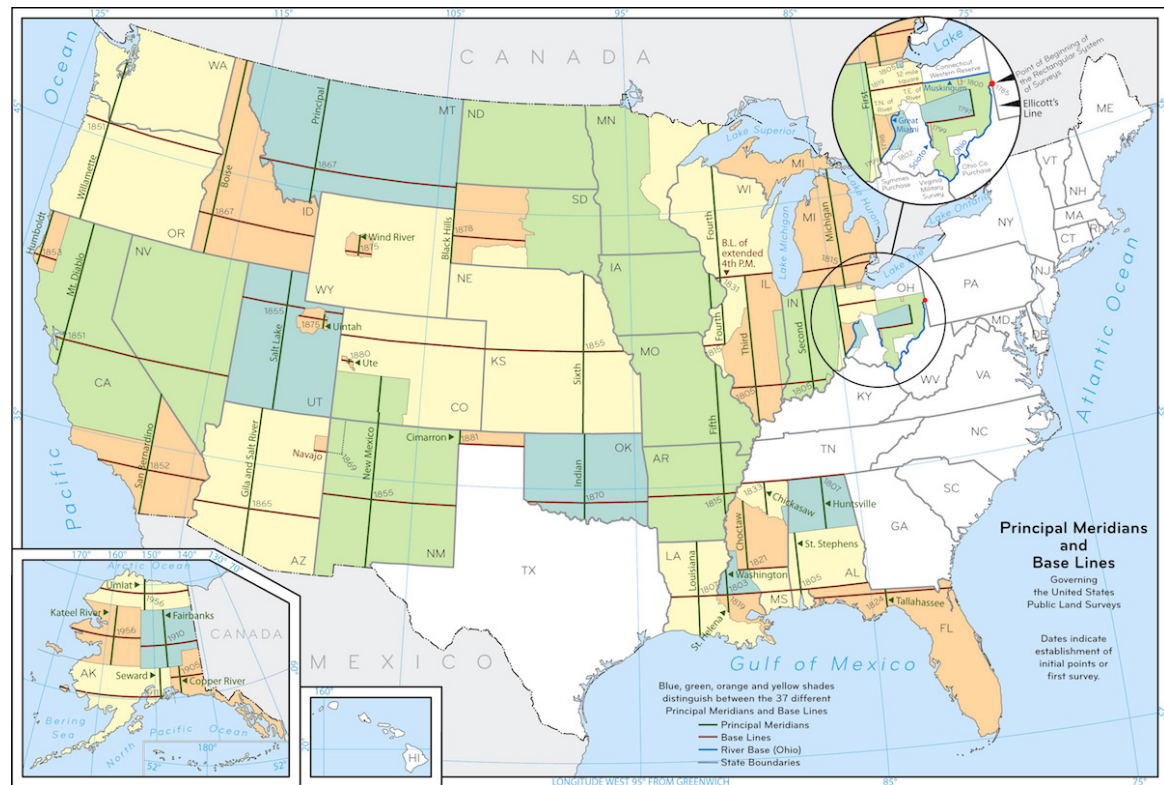
www.boundarydispute.com

Where do you survey?

- States of the Western Federation of Professional Surveyors:

- 1. Alaska.
- 2. Arizona.
- 3. California.
- 4. Colorado.
- 5. Hawaii.
- 6. Idaho.
- 7. Montana.
- 8. Nevada.
- 9. New Mexico.
- 10. Oregon.
- 11. Utah.
- 12. Washington.
- 13. Wyoming.

- Other States.



I am not your attorney

This presentation is not intended to provide legal advice.

Seek legal advice from an attorney familiar with the facts of your particular case, and licensed in your state.



Road Map

1

What Does a
Boundary Agreement
Look Like?

2

When need
Approval of
Land Use Authority?

3

What Assistance
can Land Surveyor
Provide?

1

What Does a
Boundary Agreement
Look Like?

Terminology

- **Boundary Line Agreement.**
 - Utah Code sec. 57-1-45.
 - 10-9a-524.
 - 17-27a-523.
- **Parcel Boundary Adjustment.**
 - 10-9a-103(39) & (57)(c)(vi). 10-9a-523.
 - 17-27a-103(40) & (60)(c)(vii). 17-27a-522.
- **Lot Line Adjustment.**
 - 10-9a-103(33).
 - 17-27a-103(35).

Utah Statutes

- **Municipal** Land Use, Development, and Management Act (M-LUDMA).
 - **Title 10** Chapter 9a.
- **County** Land Use, Development, and Management Act (C-LUDMA)
 - **Title 17** Chapter 27a.

Boundary Line Agreement.

12697475
1/12/2018 3:47:00 PM \$12.00
Book - 10638 Pg - 4128-4129
ADAM GARDINER
Recorder, Salt Lake County, UT
INTEGRATED TITLE INS SERVICES
BY: eCASH, DEPUTY - EF 2 P.

BOUNDARY LINE AGREEMENT

This Agreement is made and entered into this 8th day of January, 2018 by and between HOMEPOINT REALTY, INC. dba PHILLIPS HOMES, hereinafter referred to as "HOMEPOINT", and DAVID G. WEST, hereinafter referred to as "WEST".

WHEREAS "HOMEPOINT" and "WEST" are Owners in fee title to certain properties located in Salt Lake County, State of Utah, and

WHEREAS, there is **some question** as to the exact location of the boundary line separating said tracts, and

WHEREAS, there exists a common Fence line between the "HOMEPOINT" and "WEST" properties, and

WHEREAS, the parties hereto are **desirous to settle** any and all such questions and to establish a definite boundary line between their properties, a **Survey has been done** to establish the boundary line and create the common physical boundary between the properties, said boundary line is more particularly described as follows:

Beginning at a point which is South 10°30'30" West 251.10 feet and South 00°18'57" West 33.00 feet and North 89°53'35" West 51.76 feet and South 01°00'00" East 156.01 feet from the East Quarter corner of Section 4, Township 2 South, Range 1 East, Salt Lake Base and Meridian, and **running thence West 56.65 feet**, and thence South 07°19'00" **East 6.50 feet**, more or less to a point of terminus.

Parcel Identification No's 22-04-431-020; 22-04-431-003 and 22-04-431-022

NOW THEREFORE, for the considerations of mutual agreement and mutual benefit of both parties, the receipt of which is hereby acknowledged, "HOMEPOINT" and "WEST" do hereby covenant and agree that the above described boundary line description shall stand and be known as the common record boundary line between their respective properties and said properties shall be modified to reflect the same.

FURTHER, "HOMEPOINT" does hereby Quit-Claim all right, title and interest to "WEST" in and to all property lying immediately NORTH and WEST of the above described boundary line description and "WEST" does hereby Quit-Claim all right, title and interest to "HOMEPOINT" in and to all property lying immediately SOUTH and EAST of the above described boundary line description.

HOMEPOINT REALTY, INC.
dba PHILLIPS HOMES
By: John C. Phillips
Its, President

DAVID G. WEST
DAVID G. WEST

Ent 12697475 BK 10638 PG 4128

Notice of Approval of Lot Line Adjustment, then Quit Claim Deed.

When recorded please send to:
Paula Helger
City Recorder
2277 E. Bengal Blvd.
Cottonwood Heights, UT 84121

RE: Project #LLA-17-001

Affected Parcel Numbers:
22-34-253-010
22-34-253-012

12646729
10/27/2017 02:54 PM \$0.00
Book - 10613 Pg - 7522-7525
ADAM GARDINER
RECORDER, SALT LAKE COUNTY, UTAH
COTTONWOOD HEIGHTS
2277 E. BEHGAL BLVD
COTTONWOOD HEIGHTS UT 84121
BY: CEP, DEPUTY - WI 3 P.

NOTICE OF ROUTINE AND UNCONTESTED LOT LINE ADJUSTMENT

I, Andy Hulka, being duly sworn, do say that I am the **Associate Planner for Cottonwood Heights City**, and that on this 10th day of October, 2017, acting under authority granted by the Cottonwood Heights Municipal code and as the designee of the community development director, and acting under provision of U.C.A. 17-27a-605 (Exemptions from plat requirement) and 17-27a-608 (vacating and changing a subdivision plat), have approved the routine and uncontested lot line adjustment, located on parcel nos. 22-34-253-010 and 22-34-253-012. The application satisfies the standards by meeting all applicable zoning requirements, not affecting street rights of way, and not creating any additional lots.

The new legal description of the affected lot(s) AFTER THE LOT LINE ADJUSTMENT:
See Attachments

The lot(s) modified by this routine and uncontested lot line adjustment are approved as described by the metes and bounds descriptions listed above. The metes and bounds description of the lot(s) within this lot line adjustment may not be modified or changed without prior approval from the Cottonwood Heights Community and Economic Development Department.

This action authorizes the recording of the Quit Claim Deed of the described property in the attachments. No subdivision plat or amended plat will be required to be recorded with the County Recorder.

Andy Hulka
Associate Planner

State of Utah)

County of Salt Lake)

On this 20 day of October in the year 2017, before me Heather Sundquist notary public, personally appeared Andy Hulka proved on the basis of satisfactory evidence to be the person(s) whose name(s) is subscribed to this instrument, and acknowledged that he executed the same. Witness my hand and official seal



Heather Sundquist
Notary Public

Ent 12646729 BK 10613 PG 7523

Comparing Statutes

Boundary Line Agreement.

Utah Code section 57-1-45(1):

If properly executed and acknowledged as required under this chapter, an agreement between property owners designating the boundary line between their properties, when recorded in the office of the recorder of the county in which the property is located, shall act as a quitclaim deed and convey all of each party's right, title, interest, and estate in property outside the agreed boundary line that had been the subject of the boundary dispute that led to the boundary line agreement.

Lot Line Adjustment.

Utah Code section 10-9a-103(33):

“Lot line adjustment” means the relocation of line in a subdivision.

Requirements for Boundary Line Agreement

- Dispute.
- Sufficient description.
- Words of conveyance?
- Parties: competent & all the owners
- Executed, acknowledged & recorded.

Legal Descriptions

Boundary Line Agreements

- single line.
- objects on ground

Lot Line Adjustments

- OLD: Lot in subdivision.
- NEW: Metes & Bounds

What does Boundary Line Agreement Look Like?
Can Be Oral (verbal, parol). Elements:

- (1) **agreement** [explicit]
- (2) **settling boundary which uncertain or in dispute** [subjective]
- (3) **injury would occur** if the boundary not upheld [spend money to assert ownership, build fence]
- (4) to bind **successors, demarcation of a boundary line** so reasonable person would be on notice [what left on ground].

Bahr v. Imus, Utah Supreme Court (2011), par. 41.

If oral **agreement**, then all finished?

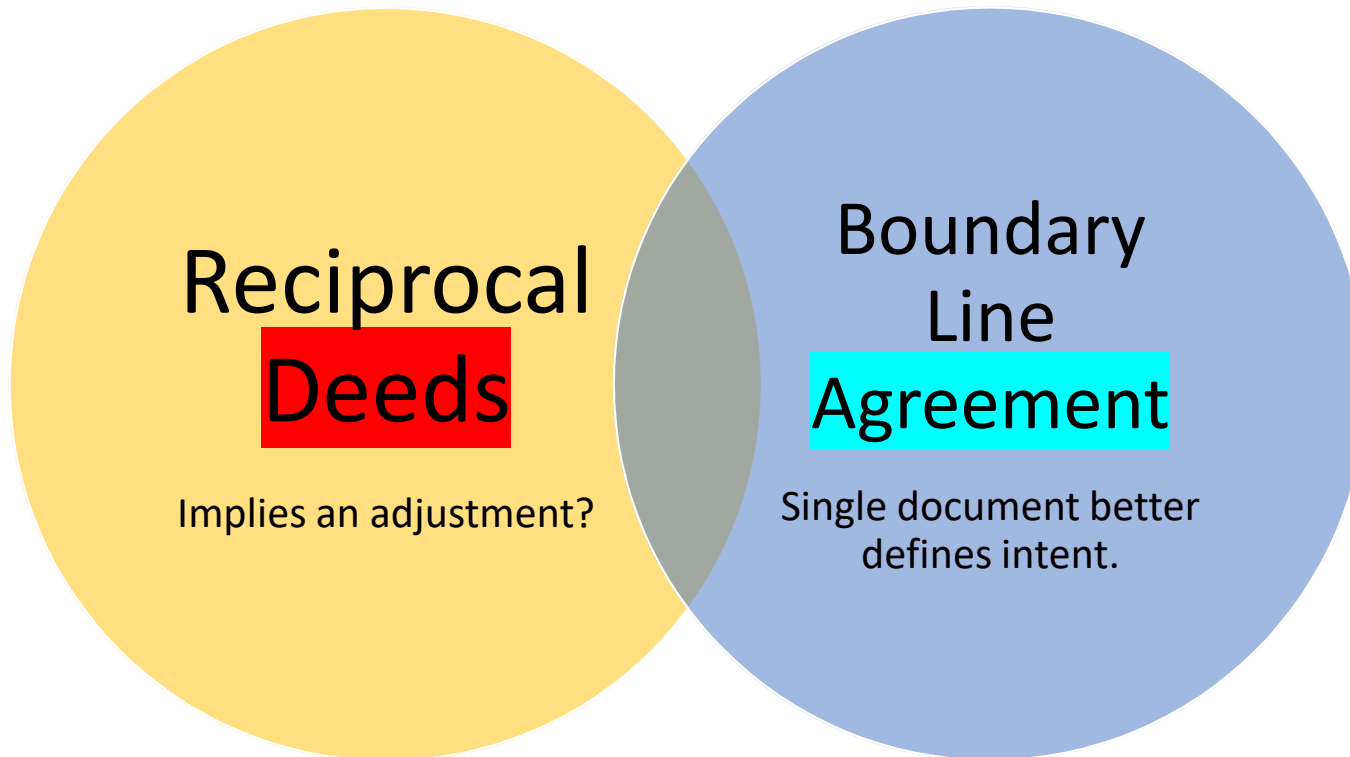
- Seek to **memorialize** (& place in record) the prior oral **agreement**.

Be clear that the oral agreement already exists.

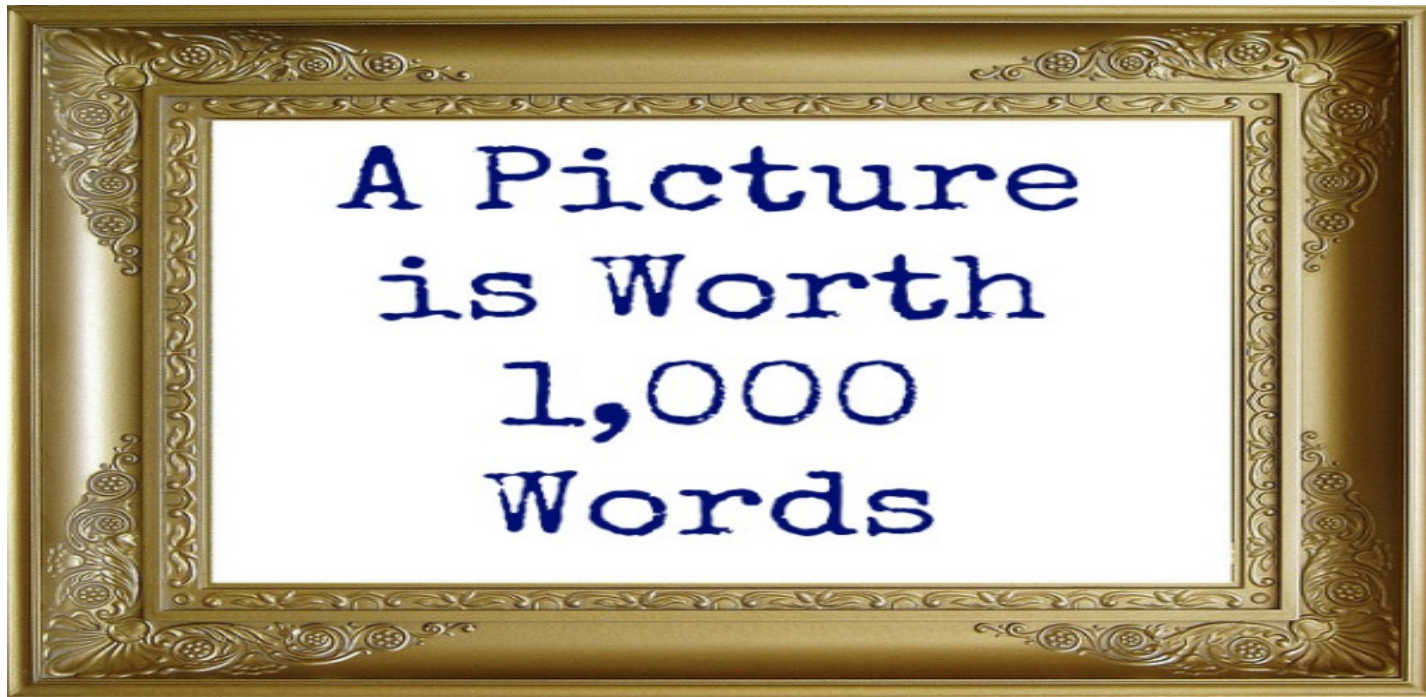
- What if landowners won't sign?

Surveyor can document oral **agreement** in **narrative** of survey.

Just Exchange Deeds?



When prepare a Plat?



2

When need
Approval of
Land Use Authority?

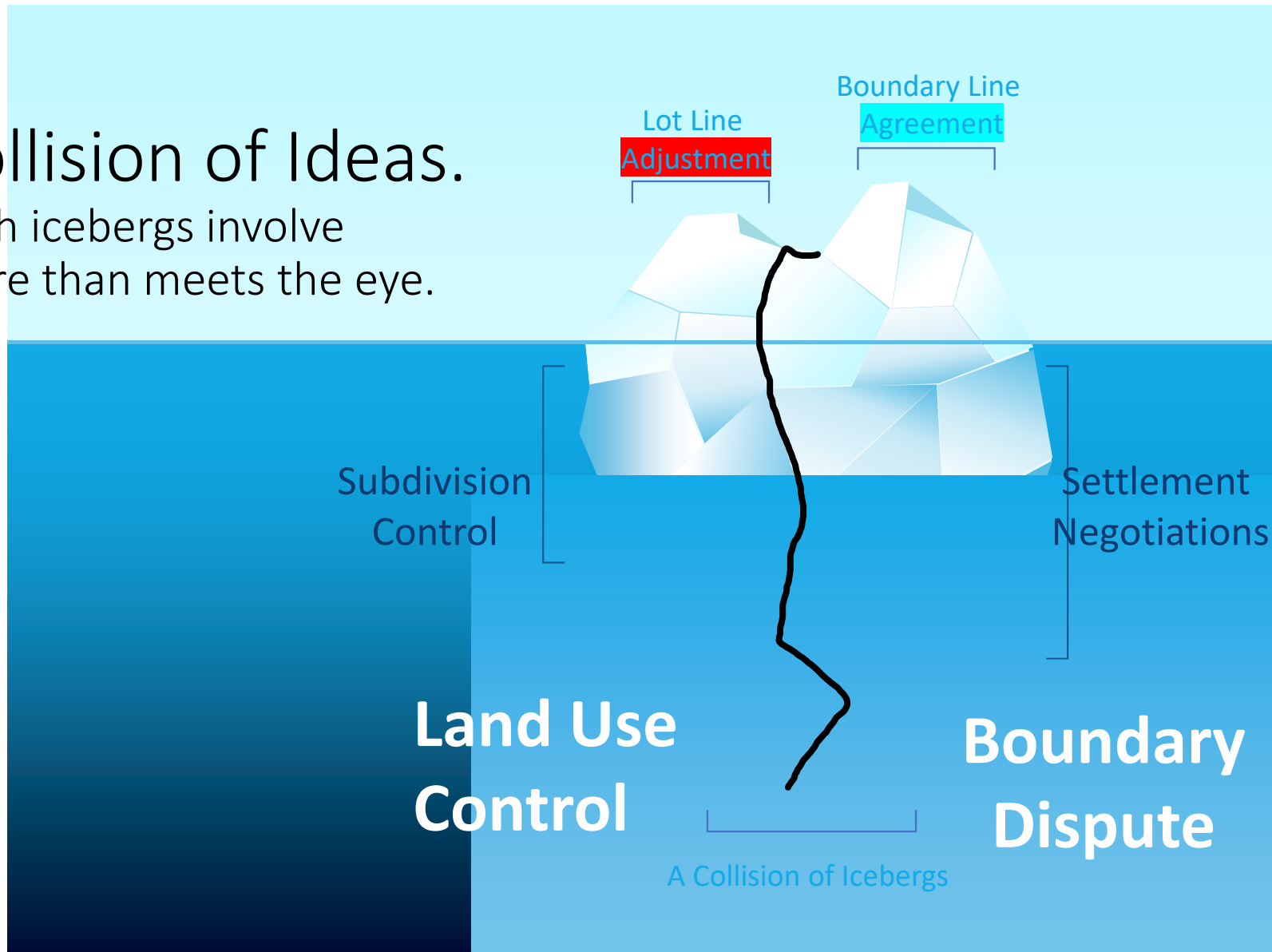
Need to
resolve dispute.

But roadblock of
planning approval.



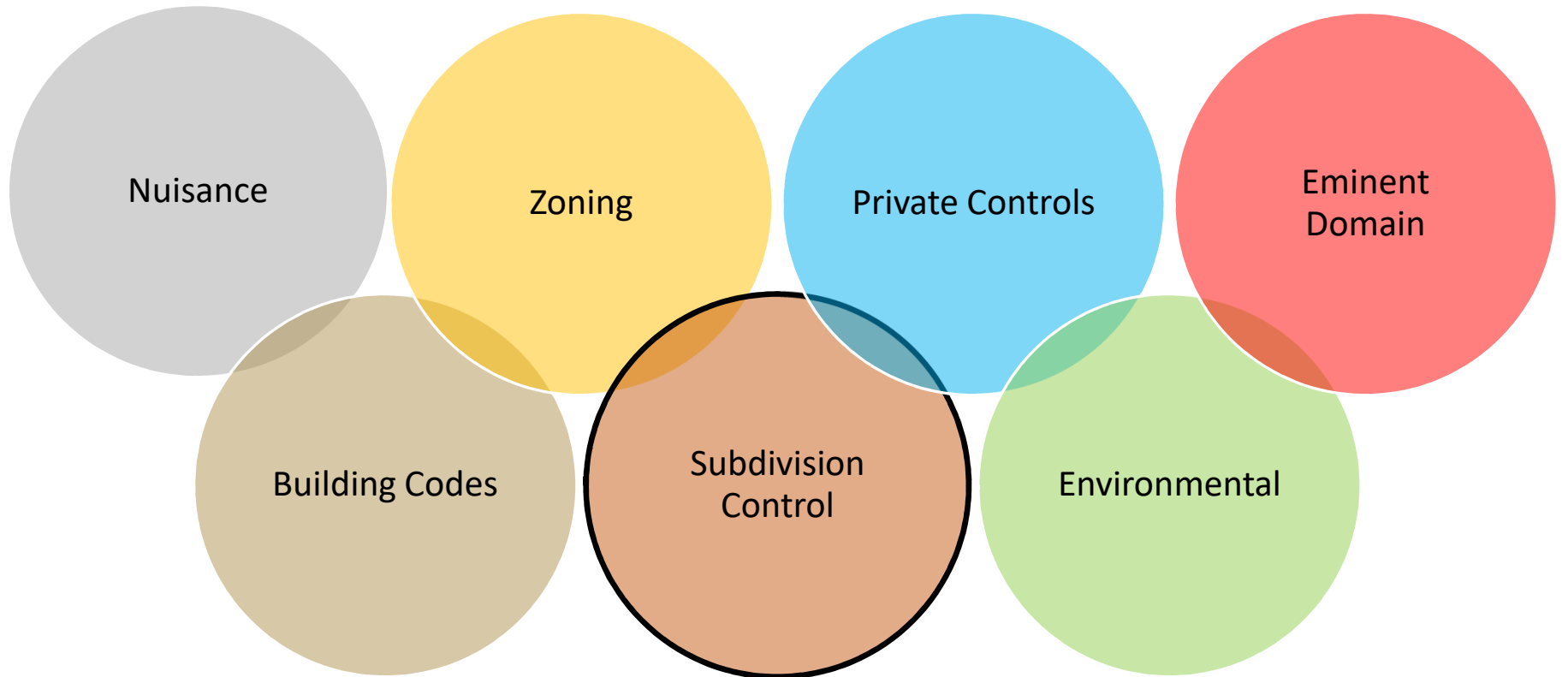
Collision of Ideas.

Both icebergs involve more than meets the eye.



Land Use Controls

A world of their own



Planning interferes with settling disputes?

When seeking **agreement**:
You are already going that direction,
so take out my trash on your way.



Plan ahead now,
so enhance value later



Planners: Ruin foundation or Create foundation?

Settlement already precarious,
then external pressure.



Avoid a poor foundation
for your most important asset



If boundary uncertain AND inside subdivision,
then use BLA or LLA?

- 10-9a-103(33): “Lot line adjustment” means the relocation of line in a subdivision.
- 10-9a-608(5)(a): The owners of parcels described by a plat may exchange title to portions if the exchange of title is approved by the land use authority.
 - If approved, then per (5)(c): (i) a notice of approval shall be recorded, signed by each other and by land use authority, and which describes the original parcels and the new parcels. (ii) a document of conveyance shall be recorded.

PBA: Different from BLA?

Salt Lake County Recorder has document types for Boundary Line Agreement, and Lot Line Adjustment, but not Parcel Boundary Adjustment

Boundary Line Agreement,

Utah Code section 57-1-45(1)

- If properly executed and acknowledged as required under this chapter, an agreement between property owners designating the boundary line between their properties, when recorded in the office of the recorder of the county in which the property is located, shall act as a quitclaim deed and convey all of each party's right, title, interest, and estate in property outside the agreed boundary line that had been the subject of the boundary dispute that led to the boundary line agreement.

Parcel Boundary Adjustment,

Utah Code section 10-9a-103(39)

- “Parcel boundary adjustment” means a recorded agreement between owners of adjoining properties adjusting their mutual boundary if: (a) no additional parcel is created; and (b) each property identified in the agreement is unsubdivided land, including a remainder of subdivided land.
- 10-9a-523: A property owner may execute a parcel boundary adjustment by boundary line agreement.

How choose which?

	When line is uncertain or disputed (Ascertaining location).	When line is not uncertain and not disputed (Moving location).
When outside of subdivision.	Boundary Line Agreement. 57-1-45(1).	Parcel Boundary Adjustment. 10-9a-103(39).
When inside of subdivision.	Boundary Line Agreement?	Lot Line Adjustment. 10-9a-103(33).

Compare LLA & PBA: City still Boss?

	Lot Line Adjustment	Parcel Boundary Adjustment
	Owners in subdivision may exchange title to portions if approved by land use authority	
Avoid permission now?	Notice of approval is not required in order to record a document conveying title . 10-9a-608(5).	Legislative history: Committee chair says you can do PBA, and city can't stop you.
Must still comply later?	But you still need to comply with land use, before permitted to build.	But chair says there may be consequences later.

Example: Lindon City ordinance as to Parcel Boundary Adjustment (PBA)

17.34.020 When these regulations apply.

A PBA does not require Land Use Authority approval, but a [parcel](#) that may be modified or altered by a PBA must comply with the provisions of this Title. Lindon City may require a property owner to bring [parcels](#) into compliance with this Title and Chapter through a zoning enforcement action, including denial of permits or licenses, the issuance of stop work orders, or red tagging the [lot](#). **Amendments** to property lines that are part of a platted [subdivision lot](#) may not be completed through a PBA, but instead shall follow the requirements set forth in LCC 17.33.

17.34.030 Review of Resulting Parcels.

Upon learning that a [lot](#) has been **modified** or altered by a PBA and **fails to comply** with requirements for [parcel](#) size and acreage, [street frontage](#), water shares regulations, and [parcel improvements](#) as set forth in this Title, the City may require the property owner to bring the [parcel](#) into compliance with this Title and other zoning and development standards

3

What Assistance
can Land Surveyor
Provide?

What is the practice of law?

- **Preparing legal documents** and **giving advice** which requires the **application of law**. Phillips v. Davis, Cal App. (2010 unpublished), citing Birbrower v. Superior Court, 17 Cal.4th 119, 127-128 (1998).
- Attorney can't tell them where boundary is, and can't prep subdiv. plat, yet these require knowledge of law.
- Can surveyor prepare a boundary line **agreement**, and then work with parties to get it signed and recorded?

Definition of practicing Law v. Surveying:

Which best includes Boundary Line Agreements?

Utah Definition of Practicing Law,

Utah Code of Judicial Admin., Rule 14-802

- (b)(1) The “practice of law” is the representation of the interests of another person by informing, counseling, advising, assisting, advocating for or drafting documents for that person through application of the law and associated legal principles to that person’s facts and circumstances.
- (c) ... the following activity by a non-lawyer ... is permitted:
 - (12) (B) ... title insurance agent ... may ... prepare deeds

Utah Definition of Practicing Surveying,

Utah Code section 58-22-101(11)

"Professional land surveying" or "the practice of land surveying" means a service or work, the adequate performance of which requires the application of special knowledge of the principles of mathematics, the related physical and applied sciences, and the relevant requirements of law for adequate evidence to the act of measuring and locating lines, angles, elevations, natural and man-made features in the air, on the surface of the earth, within underground workings, and on the beds of bodies of water for the purpose of determining areas and volumes, for the monumenting or locating of property boundaries or points controlling boundaries, and for the platting and layout of lands and subdivisions of lands, including the topography, alignment and grades of streets, and for the preparation and perpetuation of maps, record plats, field notes records, and property descriptions that represent these surveys and other duties as sound surveying practices could direct.

Can land surveyor prepare a deed? (Or BLA?)

Natural tendency to expand one's territory: must be an L.S. to do GIS, or chain crew which measures whether is a first down.

- The selection and completion of form legal documents, or the drafting of such documents, including deeds, ... constitutes the practice of law. Washington Bar v. Great Western Federal, 586 P.2d 870 (Wa. 1978).
 - The practice of law in this state is defined as: ... (2) Conveyancing; Georgia Code section 15-19-50.
 - It constitutes the unlicensed practice of law for a nonlawyer to prepare a warranty deed, or quitclaim deed. Florida Bar v. Irizarry, 268 So. 2d 377 (Fla. 1972).
 - In most (if not all) jurisdictions, the preparation deeds is the practice of law. Jeff Lucas, slide 79, Boundary Dispute Resolution, copyright 2010.
-
- The Department of Justice sued and obtained a judgment against a bar association that had restrained title insurance companies from competing in the business of certifying title. Comments on Potential Unlicensed Practice of Law, Opinion regarding real estate closing activities. Dept. of Justice & Federal Trade Commission, 3/20/2006 at 6, citing U.S. v. Allen County Indiana Bar Association (1980).

Arguably:

- Surveyor can do boundary **agreement**, because not a conveyance.
- Surveyor can do lot line **adjustment**, because is traditional to work with land use authority.

Hippocratic oath: First, do no Harm.

- Unnecessary Surgery: Is old fence already referenced up the chain?
- What you did will be looked at under microscope if result is poor.
- Even if within scope of surveying, must be within scope of your skill.
 - Diversity of those in surveying profession.
- Only surveyors can prepare descriptions.
- Keep growing. Associate with others.
- Great need for surveyors who can put **boundary problems to rest.**

(The End)

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