

Mr. A had his property surveyed and the survey shows that Mr. A owns 19 acres that the abutting landowner, Mr. B, thinks he owns. Mr. A would like the town clerk to record that survey and Mr. B is forbidding her to do so because “that would make it official” that Mr. A owns those 19 acres. He is threatening to tell the selectboard to forbid the clerk to record it. What is the town clerk’s responsibility in this case?

First of all, “A town clerk shall record in the land records ... other instruments delivered to the town clerk for recording.” 24 V.S.A. § 1154 (a). The word “shall” indicates that the clerk is mandated to record such documents. Even if the clerk thinks there may be an error in the document, she or he shall record it. (As a favor, the clerk may point out the error and suggest that it be corrected.)

Second, the selectboard has no authority to forbid the clerk to record a document which is properly presented for recording. The clerk is an independently elected official who is not subject to orders from the selectboard.

Third, recording the survey does not in any way make the survey official or binding. It looks as if Mr. B has this survey confused with a plat for a subdivision which may be certified by the clerk. 24 V.S.A. § 4416. Such a plat has no relationship to the land survey in this case.

Finally, the problem is a disagreement between two private landowners over a boundary and it is not the clerk’s business to settle it. Of course, the listers may ultimately take an interest in the actual acreage, but that is not pertinent at this point.

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