





CONTENTIOUS CREEK

An Appalachian Classroom

BY WILLIAM BUSCH, SR/WA

Experience is the professor of right of way agents. 30+ years in this classroom had taught me to never expect a project to be simple, yet I was tempted. The assignment was to secure temporary easements required for reconstructing dilapidated bridges in Appalachia. But my illusion of “simple” was quickly dashed with the first property owner.

“It is not my property!” Mrs. McFeters said emphatically.

My jaw tightened ever so slightly. I could not recall an owner ever disavowing ownership of their property. I mean, there was no doubt — the deed held in my hand identified her as owner, and the Assessor’s office records confirmed she had been paying taxes for years on the 5-acre parcel: Lot-6 of the Contentious Creek Subdivision. Yet, something whispered opposite my skeptical inclination: *remember Mr. Carlan.*

When Mr. Carlan and I first met years ago. I stood at the door with a set of plans were tucked under my arm. I could hear someone on the other side slowly approaching the door, and an impoverished-looking elderly man in farmer’s attire greeted me. Introducing myself, I offered that the purpose of my visit was to explain a road-widening project.

He spoke in a slow, southern drawl and asked if he could call me *Beel* (Bill). He quipped that he was familiar with the project, which should have been a clue. “Come awn in, Beel,” he offered as he led me to a disheveled corner of the old farmhouse that served as his office. Mr. Carlan cleared away stacks of papers on his desk to make room for my plans. His attire, demeanor and the ramshackle condition of the house projected an image of modest education and financial means.

Project construction plans can be difficult to grasp by most people. *Take it slow*, I reminded myself as I spread the plans on his desk. I turned to the page describing his property, oriented him to the cardinal directions and pointed out his property, which were highlighted in yellow.

After he stared at the plans for a couple of minutes, I was prepared to field questions of clarification from a befuddled owner. Instead, he looked up and matter-of-factly stated, “This ain’t righ’, Beel.” I was stunned! Continuing with a bit of twinkle in his eyes, he asserted, “Ah owned over 800 acres along the existing route and helped design the road that y’all are widening. There is a culvert here...” he carefully drew a line on my plan sheet and added, “There is not one here,” and he crossed out a culvert shown further east.

Sensing my doubt (actually, it was incredulous disbelief), he excused himself and exited to an adjoining room. I heard a squeaky file drawer open, out of which he whisked some papers. He returned with a set of plans, slightly yellowed with age, that he spread on top of mine. These were the original plans of the existing road! They clearly showed where the culvert was, thus also where it was not.

A field check confirmed he was right. It was more challenging to convince the project designers that there was an error requiring a change in construction plans than it was to complete the acquisition with unassuming Mr. Carlan!

Although he later confessed to inwardly chuckling at his subterfuge, the experience was, and forever will be, etched in my memory. The lesson was to be cautious with first impressions and seemingly absurd comments.

Now I faced Mrs. McFetters. Her home appeared recently renovated, and her composure projected a rational person. I correctly concluded she was a retired businesswoman — not someone you would expect to misunderstand her property boundary.

“What property do you own?” I asked. She stated that her 2.5-acre property ended a few feet west of the house. Her assertion was

contrary to the title policy that showed her ownership to be 5 acres extending further west, 100 yards to the creek. The subdivision name alone should have alerted me that this case might be a “Twilight Zone” experience.

I retreated to the county courthouse, expecting that official, normally dependable, carefully maintained county plat records might hold the key to the mystery of Lot-6’s size. My wife, who I call “M,” has an MBA and has spent years working in infrastructure real estate with me, and her tenacious research skills have helped resolve many title issues in the past.

We started checking plat books, only to find that many had loose plats haphazardly out of order — some plats were even missing! Neither I, M, nor the clerk assisting us could find the plat for Lot-6. It simply was not there. But one of the loose plats had the stamp of a local survey and engineering company. When I called, the principal owner answered. Coincidentally, he was also a retired, experienced county surveyor and chuckled at my difficulty finding information in the recorder’s office. He suggested that I look in the back of Deed Book 368 (really, I’m not making this up!).

It was becoming evident that who you knew in this county was far more important than *what* you knew, or even what you could expect to find in the county records! I retrieved Deed Book 368 and turned to the back, where I found several original plats that should have been in plat books. There it was! Lot-6 and its 5 acres, which extended from the creek and included what would become Mrs. McFetters’s house. I was astonished that: a) The plat was not filed properly in the plat records book, and b) the old surveyor knew exactly where the plat was located!

The nagging question remained as to why Mrs. McFetters thought she only owned 2.5 acres, yet was paying taxes on 5 acres. The clerk copying the plat noted the parcel’s location and suggested we talk to Mr. Sorenson, a prior city councilman and resident of Contentious Creek.





It was a hot summer day, cooler though in the hollow by the creek where Mr. Sorenson's old craftsman-style house was pleasantly situated. After a brief "get acquainted" time on the front porch, complete with a refreshing glass of sweet tea, I detailed my dilemma of the ownership of Lot-6. Mr. Sorenson did not know the specifics and suggested I contact Mr. Morley, owner of the local farm equipment store. Mr. Morley subdivided the original Contentious Creek.

Fortunately, M noted Mr. Sorenson's directions to the farm store on paper. Usually, I prefer to simply follow the GPS. But as if things weren't bizarre enough, the GPS lost signal as the route wound down through the hollows. We would have been hopelessly lost if it weren't for M's notes, a fact I get reminded of from time to time.

At the farm store, I was directed out back where Mr. Morley, an impatient, burly-looking man, asked what I needed. I detailed the Lot-6 issue; the 5 acres did not seem to align with the owner's 2.5-acre expectation. I was met with a glare. "Can't you outsiders figure out how we do things here?! What do you all want with the property anyway?!"

I cautiously explained that the State was replacing the old bridge, and I was searching for the legal owner, adding that Mr. Sorenson had recommended we seek his advice. I displayed the deed alongside the plat, showing that Mrs. McFetters owned Lot-6. He growled that we did not have the correct deed document, but his demeanor softened after hearing we had talked with the city councilman and intended to affect much-needed repairs on the bridge.

He continued, "I formally split the original 10-acre Lot-6 into two 5-acre lots: Lot-6 and a resultant Lot-7. I sold both to my son Tyler — first Lot-7, then later, Lot-6, reserving the east half (2.5 acres) for my own homesite. Tyler's 2.5 acres merged with the fee ownership of Lot-7, and Lot-6 technically became 2.5 acres. When I sold Lot-6

to Mrs. McFetters, the county obviously did not catch the change in Lot-6's size that resulted from the reservation. The property you need for the bridge is on Tyler's property, not Mrs. McFetters's. Call back tomorrow morning, and I will have the deed reference."

We returned to the recorder's office the next morning with the new reference. The assessor and recorder were beginning to resent these two seemingly clueless strangers pawing through their records, asking questions they could not answer. We found the deed that detailed the transfer of Lot-6 to Tyler, and the clause reserving Mr. Morley's 2.5-acre interest that he subsequently sold to Mrs. McFetters. Mrs. McFetters did not notice that the tax bill showed 5 acres rather than her 2.5 acres, and Tyler, if he did notice, was quite content not to pay on any of the portion that merged with Lot-7.

By tactfully explaining how the split of Lot-6 was "understandably" overlooked and having irrefutable proof, the assessor and recorder demurely made the appropriate corrections.

Books have been written on the principles of title and negotiation, yet books cannot capture all the variables and nuances of field experience. The prior experience with Mr. Carlan prompted the patience to seek clarification of the seemingly bizarre comment of Mrs. McFetters; experience cautioned the need for tact to present unwelcome news affecting necessary changes to assessor and recorder records. Listening, patience and tenacious fact-gathering skills learned over time were critical for surfacing pertinent facts. The new lesson added to my experience quiver was *be wary of any*



William (Bill) Busch, SR/WA, was employed by the U.S. Forest Service for 16 years and spent 19 years with the San Diego County Water Authority, advancing to director of the right of way department before his retirement in 2011. He is a certified CLIMB structor, a Lifetime Achievement Award winner and received the Frank C. Balfour Professional of the Year award in 2012. Currently, he works as an independent contractor in Kentucky and South Carolina.