

SEP 26 2008

STATE OF MINNESOTA
BOARD OF ARCHITECTURE, ENGINEERING,
LAND SURVEYING, LANDSCAPE ARCHITECTURE, GEOSCIENCE
AND INTERIOR DESIGN

In the Matter of
The Locating Company, Unlicensed

SETTLEMENT AGREEMENT
AND
CEASE AND DESIST ORDER
Board File No.'s 2008-0023,
2008-0011, 2008-0053, 2008-0086

TO: The Locating Company
PO Box 465
Oronoco, Minnesota 55960

The Minnesota Board of Architecture, Engineering, Land Surveying, Landscape Architecture, Geoscience and Interior Design ("Board") is authorized pursuant to Minnesota Statutes section 214.10 (2006) and Minnesota Statutes section 326.111 (2006) to review complaints concerning the use of a professional title in connection with a person's name or the assumption, use or advertisement of any title or description tending to convey the impression that the person is an architect, professional engineer, land surveyor, landscape architect, professional geoscientist or certified interior designer, unless that person is qualified by licensure or certification under Minnesota Statutes sections 326.02 to 326.15, and to take action pursuant to those statutes whenever appropriate.

The Board received complaints concerning The Locating Company ("Respondent"). The Board's Complaint Committee ("Committee") reviewed the

information. The parties have agreed that the matter may now be resolved by this Settlement Agreement and Cease and Desist Order.

SETTLEMENT AGREEMENT

IT IS HEREBY AGREED by and between Respondent and the Committee as follows:

1. Jurisdiction. Pursuant to Minnesota Statutes section 326.111, subdivision 3 (2006), the Board is authorized to issue an order requiring an unlicensed person to cease and desist from holding out or otherwise tending to convey the impression that the person is a land surveyor or is able to perform land surveying in the State of Minnesota, and from violating Minnesota Statutes section 326.02 (2006). Respondent is subject to the jurisdiction of the Board with respect to the matters referred to in this Settlement Agreement and Cease and Desist Order.

2. Facts. This Settlement Agreement is based upon the following facts:

a. Respondent is a Minnesota corporation sited in Rochester, Minnesota.

b. Respondent does not currently employ or contract with, and has never employed or contracted with, a land surveyor licensed in Minnesota able to perform or take responsible charge of land surveying services on behalf of Respondent.

c. Respondent's website offers several services typically provided only by Minnesota licensed land surveyors. On its website, Respondent describes such services as identifying and marking boundaries, including property lines and corners, selling and locating property markers, locating and marking survey markers and selling uncertified "Site Plan Drawings." Respondent's offer to provide these services to others

tends to convey the impression that Respondent is a land surveyor or is able to perform land surveying in Minnesota. A true and correct copy of Respondent's website, downloaded on June 27, 2007, is attached as Exhibit 1.

d. At the top of Respondent's website home page is Respondent's name with a subtitle, "Identifying Boundaries." Licensed land surveyors routinely identify boundaries. By combining its name with this subtitle on its website, Respondent tends to convey the impression that Respondent is a land surveyor or is able to perform land surveying in Minnesota. See Exhibit 1 at pages 1 and 2.

e. Respondent describes itself on its website with the following statement: "T.L.C. is a regionally based company that specializes in property marker and property line location, identification, and marking. Unlike a surveyor, that establishes New Land Boundaries, The Locating Company locates existing survey markers that define your property as recorded by the legal description. This is the only service T.L. C. performs so our clients are assured that every locating job is performed by trained and qualified Field Locators. Don't pay for a survey when all you need is a locate." Respondent's statement is not accurate because land surveyors establish new and existing boundaries and thereby routinely locate, find, mark and monument all boundaries, including property lines and property corners, and identify and set existing and new survey markers or monuments. Respondent's description of such services on its website tends to convey the impression that Respondent is a land surveyor or is able to perform land surveying in Minnesota. See, Exhibit 1 at page 1.

f. Respondent's website defines "locating" as follows: "Using the publicly

recorded legal description, The Locating Company will make every attempt to use any and all available and existing markers in the vicinity in order to assist in locating the client's property. However, in certain cases where no legal markers exist, the legal description will be used to determine an approximate location and the area will be flagged as such." This description of "locating" constitutes land surveying, which routinely relies on the use of publicly recorded legal descriptions, available and existing markers, and the flagging of property. Respondent's offer of services tends to convey the impression that Respondent is a land surveyor or is able to perform land surveying in Minnesota. See, Exhibit 1 at page 4.

g. Respondent's website offered to sell and place property markers. Respondent's property markers look like monuments typically used by land surveyors. Respondent's offer to sell and place property markers is an offer to provide land surveying services for others and tends to convey the impression that Respondent is a land surveyor or is able to perform land surveying in Minnesota. A true and correct copy of photographs of Respondent's markers placed in the ground is attached as Exhibit 2. See, Exhibit 1 at page 2 and Exhibit 2, pages 1 and 2.

h. On its website, Respondent offers to prepare and perpetuate detailed and uncertified site plans of property for others. Land surveyors routinely prepare such drawings, which require the use and application of the principles of mathematics, physical and applied sciences to measure and locate lines, angles and elevations, all of which are generally recognized as essential to the practice of land surveying. As land surveyors routinely prepare site plans of property, Respondent's solicitation of work

preparing site plans is a solicitation to perform land surveying services and tends to convey the impression Respondent is a land surveyor or is able to perform land surveying in Minnesota. A true and correct copy of information from Respondent's website, downloaded on August 13, 2007, is attached as Exhibit 3. See, Exhibit 1 at page 5, and Exhibit 3, at pages 1 and 2.

i. Respondent's website contains an example of a Site Plan Drawing with a labeled property line. Land surveyors routinely make maps with labeled property lines. Respondent's drawing conveys the impression that Respondent is a land surveyor or is able to perform land surveying in Minnesota. See, Exhibit 3 at page 2.

j. On its website, Respondent states its intention to use monuments and survey pins and make calculated assumptions when locating property lines as follows: "The Locating Company will make every attempt to use any and all available and existing monuments and survey pins in the vicinity in order to assist in locating the property owner's boundary line. However, in certain cases where no such monument(s) or pin(s) exist, calculated assumptions will be made in determining an appropriate point of beginning in locating a boundary line." Respondent's description of its use of monuments, surveys, and calculations is a description of land surveying and tends to convey the impression Respondent is a land surveyor or is able to perform land surveying in Minnesota. See, Exhibit 1 at page 3.

k. Respondent published a brochure describing itself as a company specializing in locating property area as defined by the property's legal description. The brochure describes "a locate" and includes a sample of a site plan drawing, all

representations similar to those contained in Respondent's website, described above. Respondent's brochure offers land surveying services and tends to convey the impression Respondent is a land surveyor or is able to perform land surveying in Minnesota. A true and correct copy of Respondent's brochure is attached as Exhibit 4, at pages 1 and 2.

1. Respondent's advertisement found in the Goodhue County Cooperative Newsletter offers consumers "Property Line & Corner Marker Locating & Mapping" and "Site Plan Drawings." This solicitation of work by Respondent offers services provided only by licensed land surveyors and tends to convey the impression that Respondent is a land surveyor or is able to perform land surveying in Minnesota. A true and correct copy of the newsletter advertisement is attached as Exhibit 5.

m. Another method by which Respondent held out as being able to perform and offered to perform services provided by land surveyors was its solicitation of work in a radio advertisement. The advertisement says or implies that Respondent's services can be used to avoid property disputes and legal liability. Only licensed land surveyors are qualified under Minnesota law to provide the kind of land surveying services that would be recognized as authoritative in Minnesota courts. Respondent's radio advertisement says in part: "...serious consequences if you unknowingly make any type of modification or improvement that encroaches on another person's property. The Locating Company identifies and marks your property corners and property lines, eliminating the guesswork. Having to remove and relocate fencing, retaining walls, landscaping or other structures is an unnecessary, preventable expense that can involve

litigation. If you make the mistake of guessing the location of our property lines it could cost you more than money. It may destroy a friendship with your neighbors and create a lifetime of problems. Don't pay for a survey when all you need is a locate. Please call 1-877-FIND-TLC, that's 1-877-FIND-TLC, or visit the [Locating Company.com](http://LocatingCompany.com) for detailed pricing and service information. It's your land. You should know where it starts and ends." A true and correct tape of audible portions of the radio advertisement is available in the Board office.

n. When Respondent decided to advertise its phone number, it was informed that no listing was available under the category "Locating Service;" however, Respondent was advised to advertise under an alternative listing, "Surveyors-Land" with a promise that it would be able to advertise under a new listing created for its use within two years. Respondent advertised on page 143 in the 2007 edition of the DEX Official Directory for Rochester and Surrounding Area under the category entitled "Surveyors-Land." With the exception of Respondent, all businesses advertising under this category offer the services of licensed land surveyors. Respondent's advertisement in this category tends to convey the impression that Respondent is a land surveyor or is able to perform land surveying in Minnesota. A true and correct copy of the advertisement is attached as Exhibit 6 at pages 1 and 2.

o. Respondent is listed in the DEX Yellow Pages on line under a listing that includes licensed land surveyors. When one searches using the criteria "land surveyors" and "Rochester" a directory of land surveyors that includes Respondent appears. Respondent's listing tends to convey the impression that Respondent is a

land surveyor or is able to perform land surveying in Minnesota. A true and correct copy of the online search results are attached as Exhibit 7 at pages 1 to 3.

p. Issuance of the Cease and Desist Order below is in the public interest. Respondent's description of its services and solicitation of work, as described above, potentially harm the public health, safety and welfare because Respondent is not qualified by licensure to provide land surveying services in this State.

3. Violations. Respondent admits that the facts specified above indicate that Respondent advertised and offered to perform land surveying services for others in Minnesota, solicited work within the terms of Minnesota Statutes sections 326.02 to 326.15, and described its services in a manner tending to convey the impression that Respondent is a land surveyor or is able to perform land surveying in Minnesota, in violation of Minnesota Statutes section 326.02, subdivisions 1 and 4 (2006), and that these are sufficient grounds for the action specified below.

4. Enforcement Action. Respondent and the Committee agree that the Board may issue an Order in accordance with the following terms:

a. Cease and Desist Order. Respondent shall cease and desist from holding out as a land surveyor or as being able to perform land surveying for others in Minnesota, from describing its services in any manner tending to convey the impression that Respondent is a land surveyor or is able to perform land surveying in Minnesota, from soliciting work within the terms of Minnesota Statutes sections 326.02 to 326.15 (2006), and from further violations of Minnesota Statutes sections 326.02 through 326.15 (2006) until such time as Respondent becomes licensed as a land surveyor in the State of

Minnesota or Respondent employs or contracts with a land surveyor licensed in Minnesota able to perform or take responsible charge of land surveying services on behalf of Respondent. In addition, until such time as Respondent becomes licensed as a land surveyor in the State of Minnesota or Respondent employs or contracts with a land surveyor licensed in Minnesota able to perform or take responsible charge of land surveying services on behalf of Respondent, Respondent shall not knowingly submit an advertisement for its services under categories of "Land Surveying" or "Land Surveyors" in any print or online phone directory, or in any print or electronic media that may be accessed by Minnesota residents.

b. Civil Penalty. Respondent shall pay a civil penalty of Two Thousand Five Hundred Dollars (\$2,500.00) to the Board. Respondent shall make four (4) quarterly payments to the Board, as follows: A payment of Six Hundred Twenty-Five Dollars (\$625.00) shall be due to the Board on or before each of the following dates: November 10, 2008; February 10, 2009; May 10, 2009; and August 10, 2009.

5. Judicial Relief. If the Respondent violates paragraph 4 above, a district court of this state may, upon application of the Committee, enter an Order enjoining Respondent from such unauthorized practices, ordering Respondent to show cause why the required civil penalty has not been paid, and granting the Board its costs, reasonable attorney fees, and other appropriate relief.

6. Waiver of Respondent's Rights. For the purpose of this Settlement Agreement, Respondent waives all procedures and proceedings before the Board to which Respondent may be entitled under the Minnesota and United States

constitutions, statutes, or the rules of the Board, including the right to dispute the allegations against Respondent and to dispute the appropriateness of discipline in a contested case proceeding pursuant to Minnesota Statutes Chapter 14 (2006). Respondent agrees that upon the application of the Committee without notice to or an appearance by Respondent, the Board may issue an Order requiring the action specified in paragraph 4 herein. Respondent waives the right to any judicial review of this Settlement Agreement and Cease and Desist Order or the attached Board Order by appeal, writ or certiorari, or otherwise.

7. Collection. In accordance with Minnesota Statutes section 16D.17 (2006), in the event this order becomes final and Respondent does not comply with the condition in paragraph 4(b) above, Respondent agrees that the Board may file and enforce the unpaid portion of the civil penalty as a judgment without further notice or additional proceedings.

8. Board Rejection of Settlement Agreement and Cease and Desist Order. In the event the Board in its discretion does not approve this Settlement Agreement and Cease and Desist Order, this Settlement Agreement shall be null and void and shall not be used for any purpose by either party hereto. If this Settlement Agreement is not approved and a contested case proceeding is initiated pursuant to Minnesota Statutes Chapter 14 (2006), Respondent agrees not to object to the Board's initiation of the proceeding and hearing the case on the basis that the Board has become disqualified due to its review and consideration of this Settlement Agreement and the record.

9. Record. The Settlement Agreement, related investigative reports and

other documents shall constitute the entire record of the proceedings herein upon which the Order is based. The investigative reports, other documents, or summaries thereof may be filed with the Board with this Settlement Agreement.

10. Data Classification. Under the Minnesota Government Data Practices Act, this Settlement Agreement and Cease and Desist Order is classified as public data upon its issuance by the Board, Minnesota Statutes section 13.41, subdivision 5 (2006). All documents in the record shall maintain the data classification to which they are entitled under the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13 (2006). They shall not, to the extent they are not already public documents, become public merely because they are referenced herein. A summary of this Settlement Agreement and Cease and Desist Order will appear in the Board's newsletter.

11. Unrelated Violations. This settlement shall not in any way or manner limit or affect the authority of the Board to proceed against Respondent by initiating a contested case hearing or by other appropriate means on the basis of any act, conduct, or admission of Respondent justifying enforcement action which occurred before or after the date of this Settlement Agreement and which involves other incidents or instances of conduct not known to the Board at the time this Settlement Agreement was approved by the Board.

12. Entire Agreement. An authorized representative of Respondent has read, understood, and agrees to this Settlement Agreement and Cease and Desist Order and is freely and voluntarily signing it on behalf of Respondent. The Settlement Agreement and Cease and Desist Order contains the entire agreement between the parties.

Respondent is not relying on any other agreement or representations of any kind, verbal or otherwise.

13. Counsel. The authorized representative of Respondent signing this Settlement Agreement acknowledges that he/she is aware that Respondent may choose to be represented by legal counsel in this matter. Such authorized representative of Respondent knowingly waived legal representation.

14. Service. If approved by the Board, a copy of this Settlement Agreement and Cease and Desist Order shall be served personally or by first class mail on Respondent. The Settlement Agreement shall be effective and deemed issued when it is signed by the Chair of the Board.

RESPONDENT

COMPLAINT COMMITTEE


Name, Title
The Locating Company

BY: Billie Lawton
Billie Lawton, Public Member
Complaint Committee Chair

Dated: 9-24-, 2008

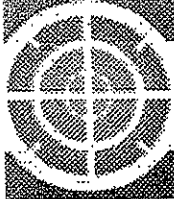
Dated: October 10, 2008

Board Approval

Upon consideration of the foregoing Settlement Agreement and based upon all the files, records and proceedings herein, all terms of the Settlement Agreement are approved and hereby issued as an Order of this Board on this the 10th day of October, 2008.

MINNESOTA BOARD OF
ARCHITECTURE, ENGINEERING,
LAND SURVEYING, LANDSCAPE
ARCHITECTURE, GEOSCIENCE AND
INTERIOR DESIGN

By: Duane A. Blanck
Duane Blanck, PE
Board Chair



**THE LOCATING
COMPANY**



Do you know where your property starts and ends?

Surprisingly most property owners don't, which can lead to serious consequences if you unknowingly make any type of modification or improvement that encroaches on another person's property.

By having The Locating Company locate your property, you eliminate the guesswork. Having to remove and relocate fencing, landscaping, or other structures is an unnecessary preventable expense that can involve litigation.

Who is The Locating Company?

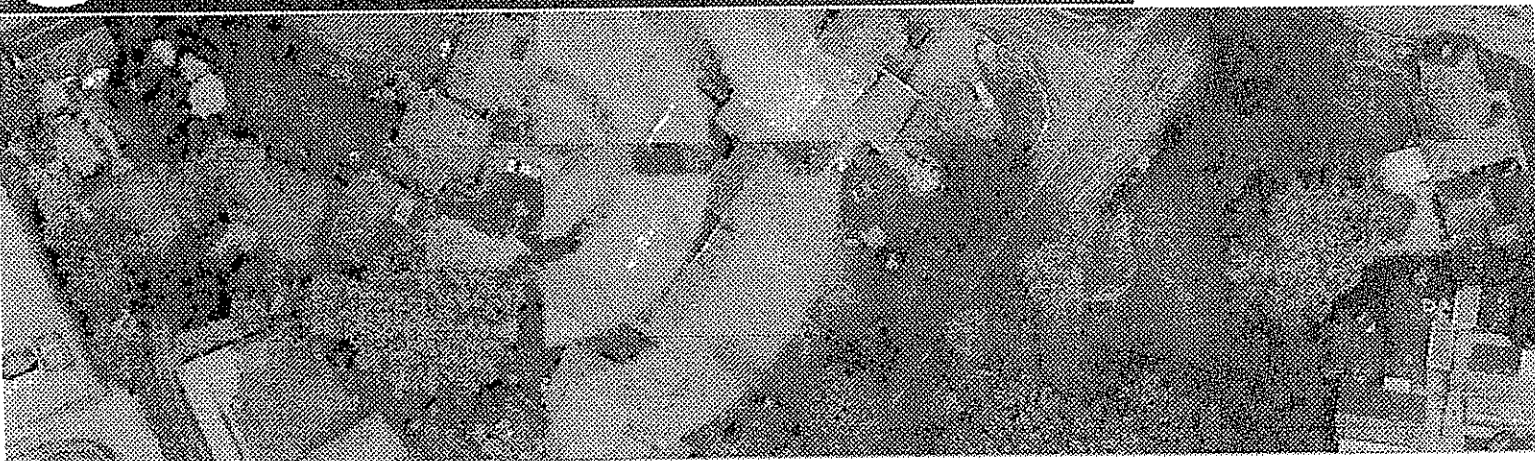
The Locating Company is not a surveying firm and does not perform any surveying services. T.L.C. is based in Minnesota and locates only within the state of Minnesota. We specialize in locating your property area as defined by the property's publicly recorded legal description.

What is a Property Marker?

A property marker can be any kind of object that you or a previous owner may have used to determine your property. The Locating Company cannot make a marker determination. In other words, The Locating Company cannot tell you that any particular monument, marker, or pipe found is a survey marker or is representative of such. It may not be a marker at all, it may be an object placed indiscriminately by a previous owner or neighbor.



**THE LOCATING
COMPANY**



Products

Currently there are no products available from The Locating Company.

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**THE LOCATING
COMPANY**



Links

For information on Surveying or to locate a licensed Surveyor in your area check these web sites.

Minnesota Society of Professional Surveyors

<http://www.mnsurveyor.com/index.cfm>

Original Public Land Survey Plat Maps

of Minnesota

<http://www.gis.state.mn.us/GLO/Index.htm>

U.S. Geological Survey

<http://www.usgs.gov/>

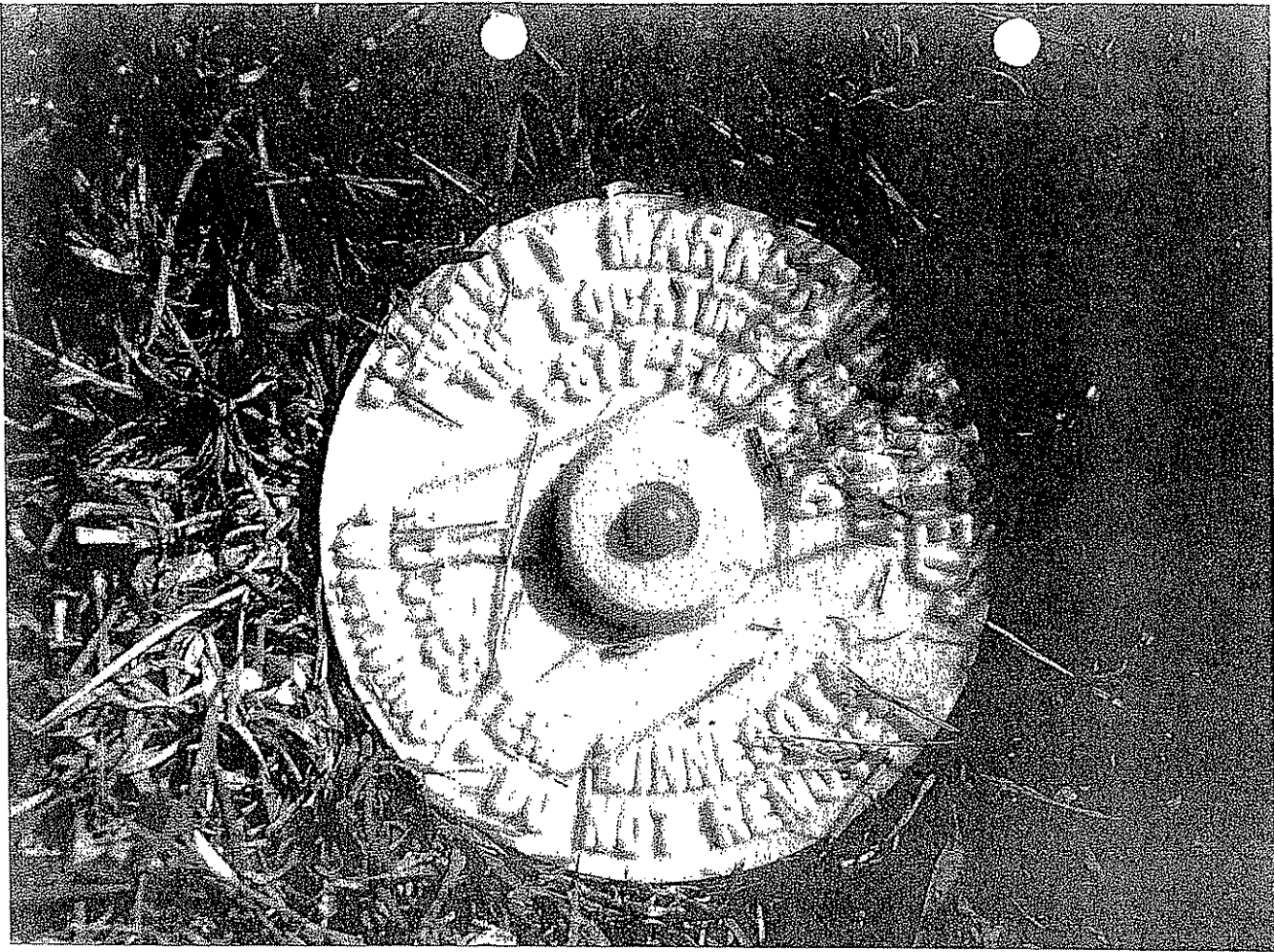
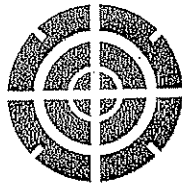


EXHIBIT 2, pg. 1



THE LOCATING COMPANY

Why recommend The Locating Company to your customers?

When a consumer contracts with your company to perform services such as; **Fencing, Landscaping, Additions, Remodels, Outbuildings, Sheds, Septic System Installation, Well Drilling, Concrete, Asphalt,** or any other property related service, they make an assumption that you'll be performing your services on the correct property. And who is going to get blamed if work is preformed outside of the owner's property? Most likely your company, even if the Property Owner gave you instructions on where to perform your services.

Who pays for mistakes?

The majority of the time it's the party who's erroneous, but not always, sometime you can end up paying for someone else's mistake. Either way it will reflect negatively on your business and services.

What's involved with a locate?

An irregularly shaped property may contain numerous changes throughout the property. Working from the legal description, The Locating Company will find all the markers that are consistent with the legal description and place a temporary flag in the area. If no marker is found, the area will be marked using the information obtained from the legal description, however, it will ultimately be the property owners' decision whether to agree with the findings.

Who is T.L.C.?

T.L.C. is based in Minnesota and locates only within the state of Minnesota. We specialize in locating your property area as defined by the property's publicly recorded legal description.

What is a Property Marker?

A property marker can be any kind of object that the current or a previous owner may have used to determine the property area. The Locating Company cannot make a marker determination. In other words, The Locating Company cannot state that any particular monument, marker, or pipe found is a survey marker or is representative of such. It may not be a marker at all and may have be an object placed indiscriminately by a previous owner or neighbor. The Locating Company can tell you if the area located is consistent with the legal description, but it is ultimately the property owners' decision whether to agree with the findings.

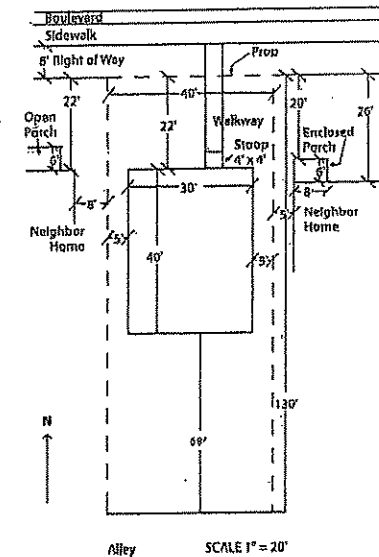
What can't T.L.C do?

The Locating Company cannot create certified drawings, maps or documents that may be required by certain governmental agencies for the purpose of recording or permitting. **(Always check with the local building and safety department for set back and permitting requirements)** The Locating Company cannot relocate boundaries, make a boundary line determination, retrace boundary lines, create new boundaries, erect monuments, make marker determinations, or make changes to your existing boundaries; all of the aforementioned are services that must be performed by a licensed surveyor.

Additional Products

Often required by Planning and Zoning when making improvements or additions to property. For a minimal cost, T.L.C. will create an uncertified detailed site plan of the property during the locate. Valuable information that could be costly if done by itself.

Site Plan Drawings.



Locating prices start at just \$250.00 which includes most lots under 1/2 an acre.

Don't make the mistake of guessing the location of a property. We can help you get on site faster, confidently, and without worrying about liability. Please call today, or visit our web site for detailed pricing and service information.

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www.TheLocatingCompany.com

EXHIBIT A, P 91

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Brand & Massey Surveying Snt Chris 932-3895

Brand Roger W & Associates
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Fangman Land Surveying
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LAND CONSULTANTS 1408 1 Ave NE 288-8855

Locating Company The 877 346-3852

M JAMES ASSOCIATES 1418 1st Ave NE 281-1281

M James Associates 282-2333

MCGHIE & BETTS INC 1648 3rd AVE SE 289-3919

QED Engineering 6301 Banded Rd NW 292-8743

QED Engineering Inc.
2000 W Main Rd Wng 651 388-2443

WHKS & Co 2905 Broadway S 288-3923

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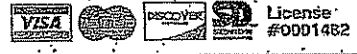
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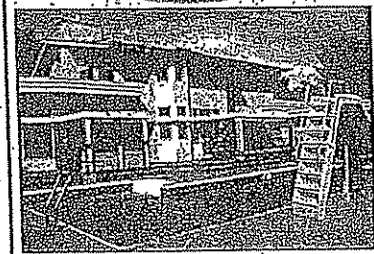
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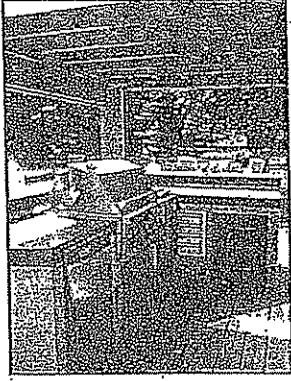
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EXHIBIT 6, pg. 2

