

North Carolina/South Carolina Boundary Clarification

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Background

- 1735: Original boundary between the two British provinces agreed upon then approved by Crown
 - From specific point on Atlantic Coast, NW 45° to 35° North latitude
 - Surveyors stopped 12 miles too far south, quit (pay, booze, terrain)
- 1764: Picked up survey at same erroneous stake
 - Realized south of Catawba reservation they weren't on 35 N latitude (64 miles into Westward pivot)
 - Cut off 422,000 acres that were supposed to be in SC
 - Decided to compensate from that point by going overly north of 35 N latitude
- 1990s: Duke Energy offered to sell lands to each state
 - Neither wanted to pay for lands that would later be disputed or found to be in the "other" Carolina
 - SC's experience with litigating state boundary had been very expensive (\$10mm/26 yrs)
 - Both agreed to formation of a joint commission

“The Struggle is Real”

- <https://www.nytimes.com/2014/08/24/opinion/sunday/how-the-carolinas-fixed-their-blurred-lines.html>



Slide 3

JB1

Jason Branham, 3/7/2018

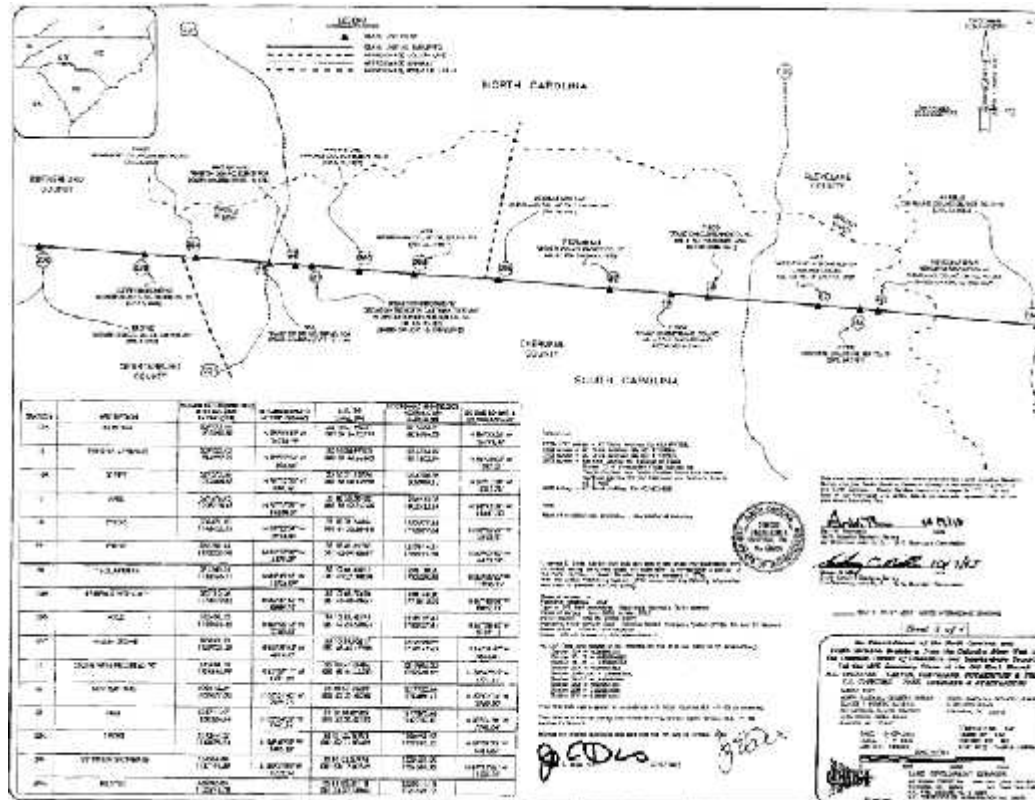
Choose Your Words Wisely

- Clarification
- Re-establishment
- NOT “new” boundary
- Legal position is: It never moved...many were just confused at times and places (“perception”)

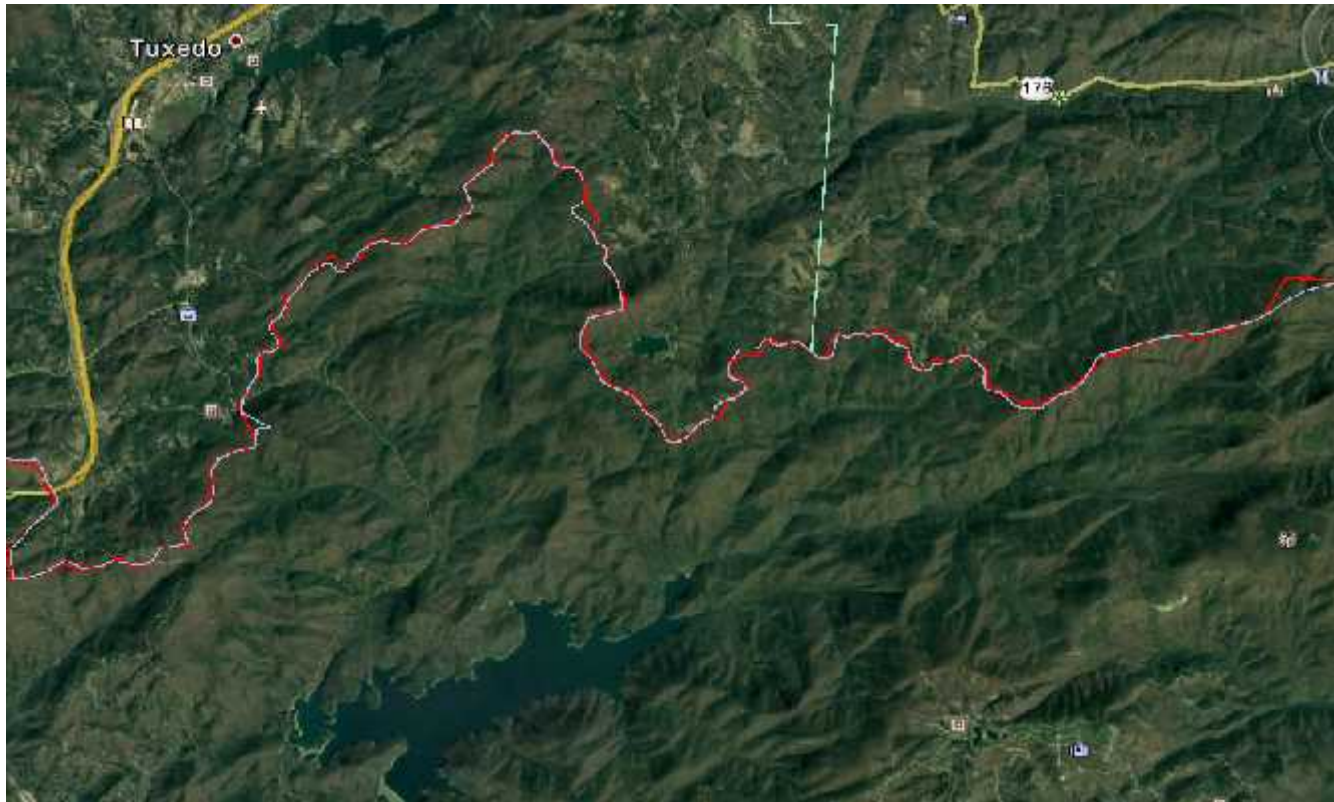
The Survey

- Overseen by The North Carolina-South Carolina Joint Boundary Commission
- Boundary is 334 miles long
- Survey completed May 2013
- GPS technology used: precise, theoretically never has to be done again
- New plats recorded in each county along NC boundary

Sample Plat (Cherokee County)



GPS (Google Earth file from SC Office of Geodetic Survey)



The Ripple Effect

- 1,640 parcels were impacted
- At different points along the re-surveyed boundary:
 - No change
 - Parcel was thought entirely in one state, but now split
 - Parcel was thought to be split but now entirely in one state
 - Parcel switched states completely
- Variation never more than several hundred feet
- Each state enacted laws to formally adopt the re-survey & to address anticipated issues

- <https://www.nytimes.com/2014/08/24/opinion/sunday/how-the-carolinas-fixed-their-blurred-lines.html>

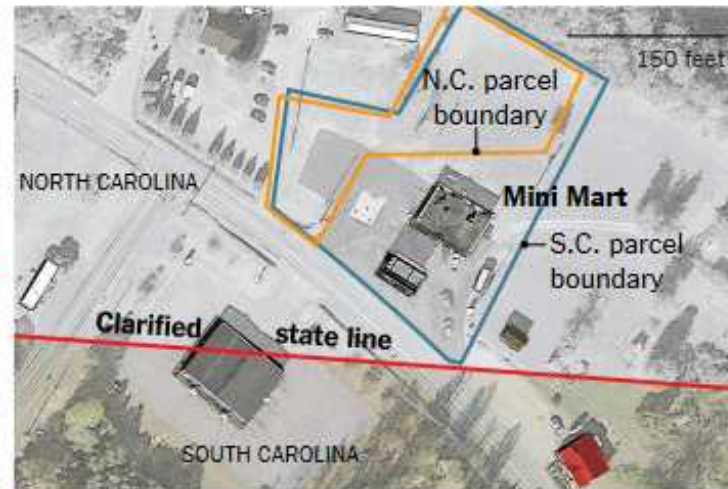
1 A House Divided

Dr. Frederick G. Berlinger built a house in what he thought was Polk County, N.C. The clarified line puts most of the house in South Carolina. Some of it, apparently, was always there.



2 Welcome to the Tar Heel State

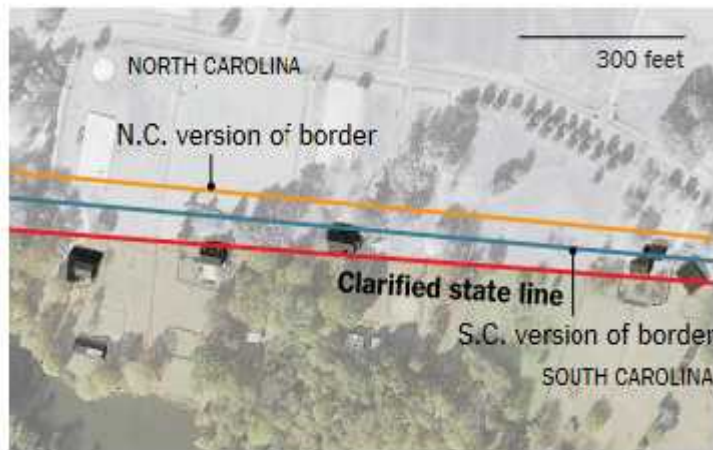
Parcel boundaries, used for taxation, overlap and sometimes spill over presumed state lines. The Lake Wylie Mini Mart would find itself in North Carolina if the border shifts; now the property is split in two.



- <https://www.nytimes.com/2014/08/24/opinion/sunday/how-the-carolinas-fixed-their-blurred-lines.html>

3 Moving, Without Really Moving

Some houses along the border, like these in Gaston and York Counties, would switch states or straddle the new line. In this area, there already is a roughly 50-foot discrepancy between the counties' surveys.



4 Whew. Catastrophe Averted.

South of the Border, a tourist landmark, will remain true to its name: that portion of the state line was deemed accurate. (A section adjoining the complex's Silver Arcade was, and will remain, north of the border.)



Northern Boundary County Land Records Custodians:

- Must record & index for each affected land a Notice of State Boundary Clarification (“NOSBC”)
- Must be completed by January 1, 2017
- Affected land: “real property of an owner whose perceived location has been clarified pursuant to the boundary clarification legislation”
 - any parcel that is now, in whole or in part, in a state different from what was previously perceived as evidenced by county records, and
 - any parcel that either has the boundary crossing over it or forming part of the parcel’s boundary
- Content & format of the NOSBC are specified within the code section
- SC Code of Laws §30-5-270

Sample NOSBC

REGISTRATION NO. 4024
2016077818 IN 16131 344

2016072803
FILED FOR REGISTRATION
BY: COUNCIL OF
DAVID HAMILTON, CLERK OF COURTS
12-27-2016 AT 08:23 PM.
NOTICE NO. 03
BY: E.L. JAMES Form 314 - 2016

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)
)
) Notice of
) South Carolina - North Carolina
) State Boundary Clarification

The undersigned Register of Deeds/Clerk of Court of the County and State set forth above, does hereby certify, under the penalty of perjury, the following:

(1) The following described tracts or parcels constitute affected lands as defined in Section 30-5-270(B)(4), which may be affected by the boundary clarification legislation effective January 1, 2017:
725-00-00-004

(2) The parties set forth below are an Owner, as defined in Section 30-5-270(B)(1):
864 Riverside LLC
3615 Centre Cir Dr
York, MI, SC 29715

(3) The monuments of title, as defined in Section 30-5-270(B)(3), providing the basis for this claim of ownership, recorded in the public records of the affected County and State, are as follows:
See Exhibit A

(4) Monuments of title of those claiming an interest in this land who may be recorded in the public land records of an affected jurisdiction, as defined in Section 30-5-270(B)(2).

Date: July 26, 2016
David Hamilton
Signature of Register of Deeds/Clerk of Court
David H. Hamilton

Lien Foreclosures Upon Affected Lands (one thing leads to another)

- In a lien foreclosure case involving an affected land, the attorney for the foreclosing lien holder must:
 - File a copy of the NOSBC within the court case
 - File & serve an Attorney's Certification that: (1) a title search was performed & (2) all parties having a record interest in the property have been served w/notices
- Cases pending as of January 1, 2017:
 - Must serve NOSBC & pleadings
 - Must notify interest holder of 30 days from mailing to Answer if they so desire to
- Cases commenced on/after January 1, 2017:
 - Must serve NOSBC up-front in the case with the pleadings (Summons & Complaint)
- All proceedings are stayed until Attorney's Certification is filed

- SC Code of Laws §29-3-800

Sample Attorney's Certificate

STATE OF SOUTH CAROLINA
COUNTY OF CHEROKEE

IN THE COURT OF COMMON PLEAS
C/A NO. 2016 CP 11 00698

Flagstar Bank, FSB,
Plaintiff,

ATTORNEY'S CERTIFICATE REGARDING
S.C. CODE OF LAWS (1976)
SECTION 29-3-800
(NC/SC BOUNDARY CLARIFICATION)

vs.
Thomas E. Neal; Sheri Neal; Mortgage Electronic
Registration Systems, Inc.; Wilmington Finance,
Inc.

Defendant(s)

The undersigned Plaintiff's attorney does hereby certify as follows:

- 1) That this is an action for mortgage foreclosure.
- 2) That title to the subject real property has been searched in the affected counties and the affected jurisdiction, and that all parties having an interest in the subject real property pursuant to the instruments of title (identified in said search and during the applicable search period) have been served with notice of this proceeding.

Attorney for Plaintiff
Brock & Scott, P.L.L.C.
3800 Fernandina Road, Suite 110
Columbia, SC 29210
Phone 803-454-3540
Fax 803-454-3541
Date: _____

Columbia, South Carolina

Title Searches and Title Insurance

- Title searches are critical for determining whether real property that is the subject of a lien foreclosure or a real estate transaction (or any other legal matter) is deemed an “affected land”
- In theory, legal practitioners and the public can rely completely on presence or lack thereof of a NOSBC as an easy determiner
- Real estate title insurance agents should contact their respective underwriting counsel for conditions precedent to issuing a title policy re: affected land (e.g. two-state split search, re-recording docs)

Taxes

- Residency: individuals whose perceived residency changed from North Carolina to South Carolina or from South Carolina to North Carolina as a direct result of the border clarification were to be treated as if they had moved into or out of the state on January 1, 2017
- Any deed necessitated by the border clarification was not subject to county filing fees or deed recording fees
- Property “new” to the state had to be added to tax rolls
- Tax value: based on latest assessment of similar nearby property (no 15% cap for year 1)
- “New” taxpayers should/may apply for benefits such as special valuations, tax exemptions w/in timeframes as if new owner
- No tax liability or refund entitlement in “new” state for period up to 12/31/16 if residence/location changed
- SC DOR granted authority to compromise to avoid a taxpayer being double-taxed

Conclusion

- Here's to hoping that the NC commission and the GA litigation fully resolved our shared boundaries
- Many impacted by this: residents, businesses, government offices, lawyers
- Some stuff will work itself out pretty quickly
- Some stuff will probably take a few years
- Ideally there would be uniform treatment statewide
- If nothing else: keep in mind "there's something out there on this topic"
- Questions/Comments?

- jason.branham@brockandscott.com

