

SUMMARY OF CRANE V. HAYES

417 S.E.2d 117, 187 W.Va. 198 (1992)

by

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Note: The principles in this case may not apply to every state.

A recent West Virginia case indicates the need for surveyors to be familiar with some aspects of title. In *Crane v. Hayes*, a landowner had a prescriptive easement over their neighbor's land. The easement had been used for farming activities such as fence repair and cultivation. The landowner decided to sell two lots and provide them access using the prescriptive easement. The West Virginia Supreme Court denied the lots the right to use the prescriptive easement for residential use. The Court affirmed "*that the burden placed upon the land during the ten-year statutory period may not be increased, and the proposed use to be made of the prescriptive easement must be of the same nature as the uses exercised during the statutory period. The character and purpose of an easement acquired by prescription are determined by the use made of it during the prescriptive period.*" (p. 119) Therefore, the landowner "*only has an easement for maintenance of the fence. He cannot use the lane for a different purpose than he made of it over the years.*" (p. 120)

The failure of the surveyor to recognize the validity and limitations of easements before preparing development plans are obvious. An injunction issued once lots are sold and home built would be disastrous and sure to bring claims for damages. Therefore, as a note of caution, surveyors should check on the validity and extent of all easements before relying upon them to provide access to residential property.