

Definitions

a. Statute of Frauds

Law that states for a contract to be valid and binding it must be in writing.

b. Informative term

An expression or element in a course description that helps identify or distinguish elements which control course direction and/or termination.

For example, in "... S34°20'E, 325 ft to a 1-inch iron pin;..." the pin is the controlling element (*to*); distance, direction, size, and material are informative helping to identify *which* pin.

c. Corner accessory

An existing or a set artificial mark. It's relationship to the original monument is measured at the time the monument is set; it becomes part of the monument.

d. Extrinsic evidence

Extrinsic is outside so it is evidence that is outside the instant document. Evidence may be written, physical, or parol.

e. Latent ambiguity

An ambiguity is an uncertainty, a term that can be interpreted multiple ways. Latent means hidden. A latent ambiguity is a dilemma that doesn't appear until the deed terms are applied.

True/False

- T** **R** 1. An exterior lot inherits the subdivision boundary's junior-senior relationship with the adjoining property. **A child inherits the parent's sr-jr relationship along a shared boundary.**
- X** **F** 2. A gap between a senior and junior parcel is always assigned to the senior parcel. **A court may adjudicate it that way, but the surveyor may only locate what the description defines.**
- T** **R** 3. An ambiguity exists when a deed term can be reasonably interpreted more than one way. **Yup, the definition of an ambiguity. The key word is *reasonably*.**
- X** **F** 4. By virtue of his "quasi-judicial capacity," a surveyor is able to render a binding decision on adverse possession. **An unwritten right can only be determined by a court, surveyor has no power to do so. The surveyor is limited to indicating deed and possession lines.**
- X** **F** 5. Physical evidence can be used to override the written terms in a description. **Nope, that violates the statute of frauds. Physical evidence can only be used to resolve latent ambiguities.**
- T** **R** 6. A USPLS closing corner is an example of a monument that controls line direction but not necessarily its termination. **A closing corner was intended to fall on the township line. If short or long, the corner controls the quarter line direction and the township line its termination.**
- X** **F** 7. A call for another property as an adjoiner in a description means that property is senior to the instant parcel. **A child parcel sharing the parent's senior boundary inherits the seniority even if the junior adjoiner is called.**
- T** **R** 8. A monument cannot control a corner location if it, or the survey establishing it, is not called for in the description. **If neither is identified in the description, then they do not reflect intent.**
- T** **R** 9. A USPLS Township plat is a simultaneous boundary creation. **Yup. All the Sections in the Township were created at the same time when the Township Plat was accepted.**

- T** **R** 10. Once legally created, a boundary exists forever unless removed by another legal action. **Yup. A boundary exists in perpetuity. Even unwritten rights do not change the original boundary location, they only affect ownership unless court orders descriptions to be rewritten.**

Questions

Question (1)

Arrange these potentially conflicting title elements in order of greatest to least importance:

Monument, Area, Senior right, Direction, Right of possession

1. Right of possession
2. Senior right
3. Monument
4. Direction
5. Area

Question (2)

A corner at which there are no remaining traces of the original monument but whose accessories are intact is

a(n) _____ corner.

- (a) found
- (b) obliterated
- (c) lost
- (d) constructive

accessories are part of the original monument

Question (3)

What condition(s) must be met in order for a monument to control corner location?

1. Called for
2. Identifiable
3. Undisturbed

Question (4)

What condition(s) must be met in order to accept a corner location by *common report*?

1. Reasonable/plausible location
2. Accepted by all concerned as correct
3. Location cannot be disproved

Question (5)

A parcel describe by metes and bounds was *probably* created by a _____ process.

- a. Combination
- b. Condemnation
- c. Sequential
- d. Simultaneous

Question (6)

What is the difference, if any, between the following descriptions?

Northeast quarter of Section 15...

Northeast 160 acres of Section 15...

The first is an aliquot part description which may or may not contain 80 acres. It is also simultaneously created at the same time as the other three quarters so there are no sr-jr relationships.

The second is a quasi-metes and bounds description of a sequential division of a simultaneously created Section. It will have senior standing over the parent remainder and any other parcels later created off the parent. It contains 80 acres (controlling term).

Question (7)

The description of a property is:

"...Beginning at a 1-inch diameter iron bar in the north line of the Pohl property; thence $N10^{\circ}20'E$ 241 ft to a 1/2-inch iron pin; thence $N85^{\circ}35'E$ 267 ft to a 1/2-inch iron pin; thence $S18^{\circ}45'W$ 283 ft; thence back to the point of beginning"

The surveyor performing the property resurvey finds the first two courses with no issues. However, the third course presents a dilemma. The magnified diagram below shows the situation with the third course.

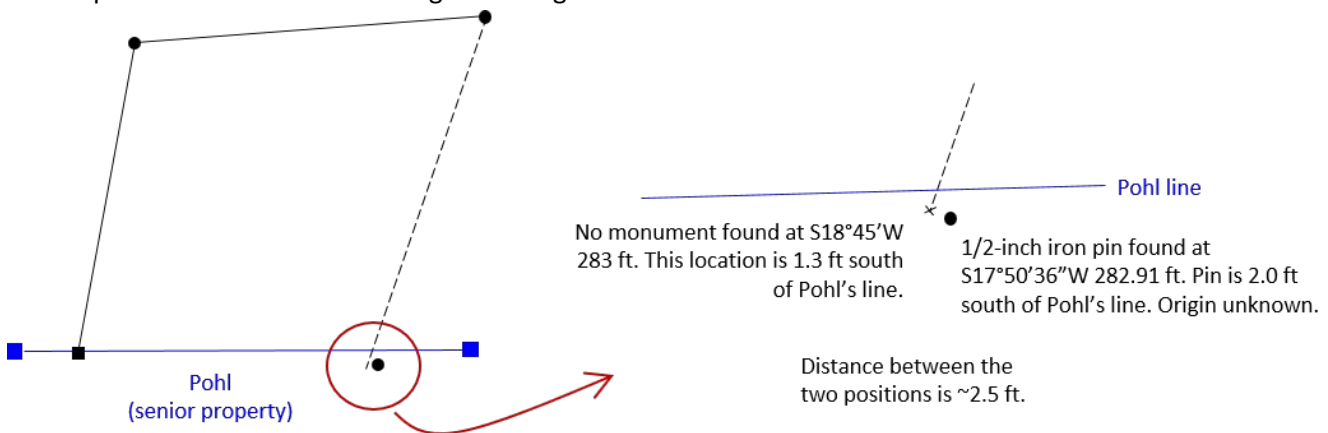


Figure 1

Assuming no other evidence is available and using only the description, how should the surveyor locate the last two courses?

Short answer: Proceed at $S18^{\circ}45'W$, ~ 281.7 ft, to Pohl's line and stop. Monument not called for, so it can't control. Neither can the 283 ft distance since that would violate Pohl's senior right.

Longer answer: Although we are looking for the termination of the third course, we can check the next course to see if it provides any additional informative terms, such as a distance back to the POB. In this case it doesn't but if it did that *might* help.

Regardless, we know the third course must stop at Pohl's senior line.

Does the monument have a controlling role? Why is it there? Accept because it's like the others? Accept by Common Report?

Are $S17^{\circ}50'36''W$ and 292.91 ft within the uncertainty of the record $S18^{\circ}45'W$ and 283 ft? The bearing might not be, but the distance is. Does that mean because distance fits that the bearing yields and the monument controls direction?

Without a monument call, that's a tough sell.

The monument might represent a potential unwritten rights *ownership* corner and line, but that's not for the surveyor to decide.

There may be a reason the monument exists, but nothing in the description gives it authority.

What sources of extrinsic evidence should be investigated?

Always identify plausible alternatives and explain why they aren't acceptable.