
Summary: Boundary Interpretation Principles

I. Quasi-judicial Capacity of Surveyors

I have thus indicated a few of the questions with which surveyors may now and then have occasion to deal, and to which they should bring good sense and sound judgment. Surveyors are not and cannot be judicial officers, but in a great many cases they act in a quasi-judicial capacity with the acquiescence of parties concerned; and it is important for them to know by what rules they are to be guided in the discharge of their judicial function. What I have said cannot contribute much to their enlightenment, but I trust will not be wholly without value.

From the speech *The Judicial Functions of Surveyors* given by Justice M. Cooley, Supreme Court of Michigan, at the second meeting of the Michigan Association of Surveyors and Civil Engineers, Lansing, MI, Jan 11-13, 1881

II. Rules of Construction (RoC)

aka, Order of importance of conflicting title elements

Surveyors walk a fine line when re-establishing boundaries. The surveyor must try to resolve conflicts between written intent and evidence arising from that intent along with surrounding adjoining intent. Resurveys, along with their dependence on description interpretation, are controlled by common law - rules and principles derived from long continued usage and customs (tradition), or judgments and decrees of judicial tribunals. It is based on collection and evaluation of evidence of original boundary location and subsequent evidence which exists because of the boundary. That evidence includes the description (written intent) as well as physical evidence and competent testimony.

This general framework is known as the Rules of Construction (RoC) also referred to as the Order of Importance of Conflicting Elements. In order of highest to lowest element they are:

- Right of possession (unwritten rights)
- Senior right (in case of overlap)
- Written intentions of the parties (description)
 - Call for survey
 - Call for monuments; adjoiner
 - Direction/distance
 - Area/Coordinates

These are guidelines, not hard and fast rules. Their order of importance may change depending on original intent, physical evidence, or parole evidence. For example, area is one of the lower elements meaning it would yield if in conflict with other elements. But if the grantor deeds the "East 1.0 acres" to the grantee, area becomes the driving or controlling element - the intent was to convey a specific amount of land.

Subsequent evidence, which owes its existence to, and is dependent on, original evidence, can modify or reinforce the RoC. For example, in the event a called for monument is lost, the next elements, direction and distance, would define the corner location. If, however, we can show that an improvement was referenced to the original monument and we can locate that improvement today, then direction and distance would yield to the reconstructed corner location if in conflict. This is a common situation with replacement monuments particularly for PLS corners. A stone monument set to replace a decaying wooden Section corner post has the same authority (control) as the original post. It's essential that a replacement monument be documented so later surveyors understand its authority.

III. Senior-Junior Rights

A senior-junior relationship is based on chronological order of boundary creation. Earlier created boundaries have precedence over later created ones. Because it is chronological, boundaries must be created sequentially over time, Figure 1 & 2

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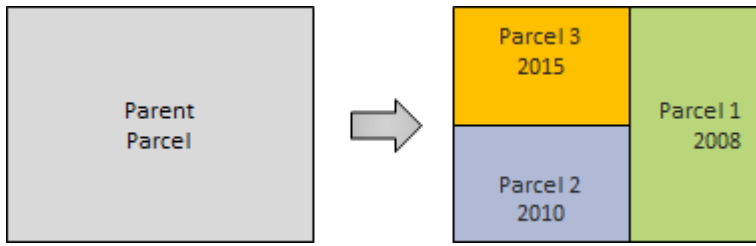


Figure 1

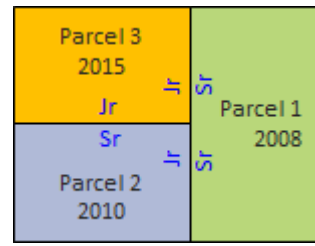


Figure 2

The senior-junior relationship is a *boundary* attribute, not an *owner* attribute. Once created the relationship does not change unless the boundary is removed by formal legal action. Property transfer does not alter it, nor does further subdivision of the adjacent properties.

A child parcel inherits its parent's senior-junior relationship along a shared boundary, Figure 3.

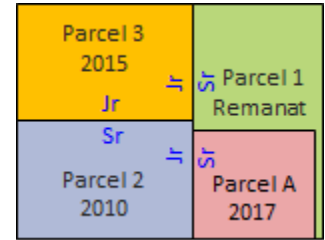


Figure 3

Boundaries created simultaneously at the same time by the same legal instrument have equal standing with respect to each other. The lots (and street) in the subdivision in Figure 4 do not have senior-junior relationships between each other.

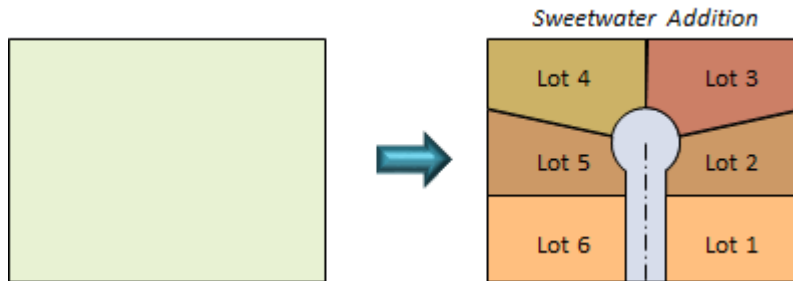


Figure 4

PLS aliquot parts are also simultaneously created, Figure 5, so have equal standing with respect to each other.

Along boundaries where senior-junior rights exist, the senior claim is given precedence over the junior.

In event of an overlap, the junior parcel yields to the senior.

In the event of a gap, title to the gap created depends on how the parcel descriptions are written (intent).

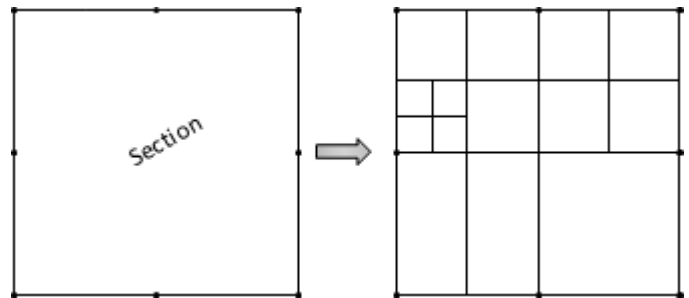


Figure 5

With simultaneously created parcels, gaps and overlaps are proportioned among the parcels affected.

IV. Controlling and Informative terms

In order for a traditional metes and bounds description to be truly valid and its corners able to be located, the description of each individual line or course should have some controlling term or element. This term defines the ending point and/or path for each property line. All other terms in the same line description are informative, helping to identify the controlling element from similar elements. If there is no control with a course description, then how can its deed location be determined?

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How do we determine what the controlling term is? Look for words like "to" or "along." The original intent was to go "to" something, and then continue:

Example: "...thence southerly **to** a half-inch iron pin..."

The course must end at the pin (**to**);

Since the direction call is general, the pin also controls the course direction.

Example: "...thence southerly **along** the ridge **to** a half-inch iron pin..."

The course must still end at the pin (**to**);

But now the course is a curvilinear path following the ridge (**along**) - the general direction yields to the topographic feature.

Other words indicating controlling terms include (but are not limited to):

parallel

perpendicular

continuing

being

These all indicate some condition that was originally intended. When any of those words appear in a description, that puts us on notice that the RoC order may have to be modified.

V. Ambiguities

An ambiguity exists when a term can be *reasonably* interpreted in more than one way. There are two kinds of ambiguities: latent and patent.

A. Latent Ambiguity

Hidden; on the face of it the terms are clear but ambiguity arises upon application of the terms. It's not readily apparent from the wording.

example: "...thence easterly to a chicken coop;"

In the field there is no chicken coop nor physical evidence of it. May have to resort to *extrinsic evidence* (see below) to determine where the chicken coop was. This clarifies the terms but does not change them.

B. Patent Ambiguity

Obvious; visible on the face of it. Realize there is an ambiguity by inspection. Apparent from the words in the description that here is a problem.

ex: "...thence North 64 (forty-six) feet;"

Cannot resolve by extrinsic evidence since there is a mistake in the original contract. If possible, must determine what the mistake is and apply a correction when re-establishing the boundary.

Can we change the description itself to eliminate the patent ambiguity? Refer to Wis Stat 847.07 Correction of description in conveyance.

C. Extrinsic evidence

Extrinsic means "outside", so *extrinsic evidence* is evidence outside the written description. This can include physical evidence not referenced by the description but which exists because of the description (eg, fences, tree lines, etc) as well as competent oral testimony (direct or indirect). These cannot be used to change the terms of the description, which would violate the Statute of Frauds, but can only be used to help explain them.

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D. How about...

Unfortunately, it is easy to introduce ambiguities particularly if the description writer does not understand the Rules of Construction, controlling/informative terms, the role of physical evidence, etc. What might make sense to the writer later may be difficult to establish if terms used are unclear or have multiple interpretations. This can be exacerbated if the description was not based on a survey.

Color of title

Color of title means the title (description) looks good but there is a defect in it when applied. The full title cannot be realized because of the defect such as overlapping a senior claim, a distance call which falls short of the actual distance between found monuments, etc. Color of title is generally a latent ambiguity because on the face of it, title appears good.

Example: 2011 "East 100 feet of Lot 7..."
2012 "West 100 feet of Lot 7..."
2017 Resurvey; Parent parcel Lot 7 is only 199.0 feet wide.

"...to a point;"

Sometimes a metes and bounds course description will be written similar to: "... thence N40°10' E 224.5 ft to a point;...". The controlling term is "point" which is not a physical feature so it cannot control. Here "to a point" is merely filler and does not make the description any more clear or definitive. If anything, "to a point" used this way is a patent ambiguity.

However, in "...thence N40°10'E 224.5 ft to a point that is S61°20'W 15.6 ft from a 12 inch red oak;..." while "point" is still a non-physical feature, its position is defined by an accessory call. An accessory is part of the original corner (see *Existent Corner* definition in Section VII). If the red oak can be identified (potential latent ambiguity) then the "point" position is defined making it a controlling term.

Area given in two units

Ever see a description that ends with a statement like: "...said parcel contains 17,525 square feet or 0.4 acres..."? These are conflicting incompatible area accuracy levels. This is a patent ambiguity.

"...more or less"

"more or less" (or "approximately") is typically used in the area summation call to indicate the area is approximate and informative not controlling. In such cases it is redundant since area is the lowest element in the RoC and yields to other elements.

It can, however, be used as an informative term to help clarify controlling elements. Because water boundaries can move over time, meander corners are used to locate the water at time of survey. On a map the approximate distance between a meander corner and the water boundary is typically shown with a \pm suffix ("25 ft \pm "). It equivalent in a description would be "...to a meander corner located 25 ft more or less southeasterly of Moon Lake;..."

Used without a controlling term, "more or less" and "approximately" are patent ambiguities:
"...thence northerly 165.5 ft to a point;..."

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Type of description

The type of description reflects original intent. This is often hardest to interpret in metes and bounds or quasi-metes and bounds descriptions particularly those written by non-surveyors.

Consider: “South 80 acres of the northwest quarter of Section 9...” vs “South half of the northwest quarter of Section 9...” which to the layperson may mean the same thing.

“A conveyance of a specified quantity of land described as lying on the boundary line of another tract, will be construed as conveying a strip parallel to such boundary line and of sufficient uniform width to make the exact quantity called for in the grant.” *Hartung v. Witte*, 18 N.W. 175, 59 Wis 285 (1884)

“A conveyance of “the south half” of a certain quarter section in this state would ordinarily be presumed to refer to the half quarter section whose corners were fixed by the government survey” *Prentiss v. Brewer*, 17 Wis 635 (1864)

“South 80 acres of the northwest quarter of Section 9...” is a quasi-metes and bound description where 80 acres is the controlling term.

“South half of the northwest quarter of Section 9...” is an aliquot part which is defined by connecting opposite quarter-quarter corners. Its *nominal* area is 80 acres although its actual area will be a result of the quarter Section division.

Did the writer of the former description intend the latter?

VI. Oral agreement

The Statute of Frauds requires that any contractual relationship between parties be in writing. This includes transfer of real property. Under common law an oral agreement can be used to resolve an uncertain boundary location if it does not result in property transfer. For a boundary oral agreement between two parties to be valid, it must meet three conditions:

1. The true boundary location must be unknown to both parties
2. There must be an agreement between the parties to fix the line
3. Both parties must act with respect to the agreed upon line

What constitutes an “unknown location” varies between jurisdictions. In Wisconsin, if a surveyor is able to re-establish the boundary, then it is not unknown.

“An estoppel by oral agreement or acquiescence in a wrong boundary can arise only when there is an uncertainty as to the true line, and some question, dispute, or controversy about it which can be settled by such agreement or acquiescence. When the true line can be ascertained by a correct survey, it is considered certain” *Hartug v. Witte*, 18 N.W. 175, 59 Wis 285 (1884)