

Boundary Issues

Northwest Chapter WSLs
Continuing Education Workshop
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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)

Retracements and description interpretation controlled by *common law*

- rules and principles derived from:
 - long usage & customs (tradition)
 - judgments and decrees of judicial tribunals

Collection and evaluation of:

- Original boundary evidence
- Subsequent evidence which exists because of the boundary

Evidence includes:

- Description (written intent)
- Physical evidence
- Competent testimony

II. Rules of Construction (RoC)

Evaluation framework: Rules of Construction (RoC)
aka *Order of Importance of Conflicting Elements*.

In order of highest to lowest element they are:

↑ Increasing weight

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

↑ Particular circumstances

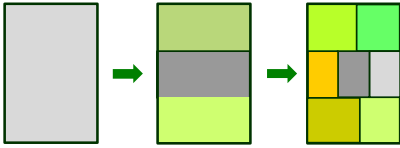
↓ Written Record

Presumed order; can be modified if shown otherwise by credible evidence

III. Senior-Junior Rights

Boundary Creation

- Establishes boundary once and forever.
- Creates adjoiner relationship
- Location is "without error."
- Creates evidence framework for later re-establishment.



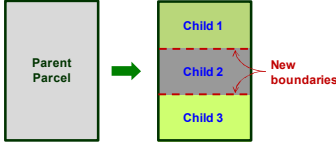
The diagram illustrates the process of boundary creation in three stages: 1. A single grey rectangular parcel. 2. The parcel is divided into three horizontal sections of different colors (green, grey, light green). 3. The parcel is further subdivided into several smaller, irregularly shaped parcels of various colors (green, orange, grey, light green, yellow).

III. Senior-Junior Rights

Boundary Creation

New parcels are created from old

- Parent – "old" parcel
- Child – new parcel created from old



The diagram shows a grey rectangular 'Parent Parcel' on the left. An arrow points to a larger green rectangular area on the right, which is divided into three horizontal sections labeled 'Child 1', 'Child 2', and 'Child 3'. A red dashed line outlines the boundary between 'Child 2' and 'Child 3', with a red arrow pointing to it and the text 'New boundaries'.

Family analogy
Child inherits characteristics from parent
Parent must provide for child

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.

III. Senior-Junior Rights

A senior-junior relationship is a *boundary* attribute, not an *owner* attribute.

Once boundary is created, Sr-Jr relationship is established and doesn't change unless boundary is legally removed.

A child inherits the parent's Sr-Jr standing along shared boundaries.

III. Senior-Junior Rights

Boundaries created simultaneously by same legal instrument have equal standing - no Sr-Jr relationships.

III. Senior-Junior Rights

Sr-Jr boundaries

- Senior claim has precedence over Junior in event of conflict.
- Overlap - Jr claim yields to Sr
- Gap - depends on description wording (written intent)

Simultaneously created boundaries

Gaps and overlaps are prorated among parcels affected.

IV. Controlling and Informative terms

Narrative descriptions

Describe boundaries with phrases instead of maps

Metes and Bounds (M&B)

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Narrative descriptions

Describe boundaries with phrases instead of maps

Metes and Bounds (M&B)

Individual course description may include many terms:

"...thence N24°12' E, along the west line of Jones, 146.5 feet to a one-inch steel pin in the south line of Green Drive and being 15.3 feet southerly of a 10-inch sugar maple;"

More terms means potentially more conflicts between them.

Re-survey requires some way to resolve conflicts.

IV. Controlling and Informative terms

Narrative descriptions
Controlling Term: defines end point and/or path a course.
 All other terms in same course description are *Informative*
 Help identify controlling element from similar elements.

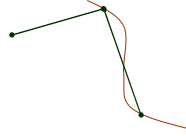
Words indicating a controlling term include:
 to along with
 parallel perpendicular
 being continuing

These indicate some condition that was originally intended

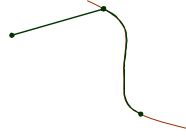
IV. Controlling and Informative terms

Narrative descriptions

"...thence southerly to a half-inch iron pin..."



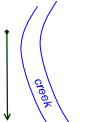
"...thence southerly along the ridge to a half-inch iron pin..."



V. Ambiguities

When something can be *reasonably* interpreted in more than one way.
 Causes a dilemma, uncertainty about original intent.
 In a description, can cause corner location confusion

Two kinds of ambiguities:
 Latent - hidden; not apparent until applied.
 Example: "continue to the north side of the creek;"
 Field investigation shows the creek runs north-south.



May need *extrinsic evidence* to resolve.
 Evidence outside the writing.
 Did stream change direction?
 Clarify terms, not change them.

V. Ambiguities

When something can be *reasonably* interpreted in more than one way.
 Causes a dilemma, uncertainty about original intent.
 In a description, can cause corner location confusion

Two kinds of ambiguities:
 Patent - obvious, readily apparent
 A mistake in the description
 Example: "thence North 64 (forty-six) feet;"

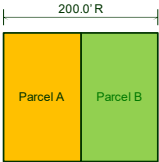
Must identify where mistake is and correct it accordingly.
 Can you change the description once the mistake is found?
 Wis Stat 847.07 Correction of description in conveyance

V. Ambiguities

How about...
Color of Title
 Defect in title preventing its full realization.

Parent: Lot 7
 Children: Parcels A & B

Parcel A (Sr): "West 100.0 ft..."
 Parcel B (Jr): "East 100.0 ft..."



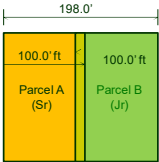
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Ambiguity type?




V. Ambiguities

How about...
 "...to a point;"

"... thence N40°10' E 224.5 ft to a point;..."
 controlling term: point
 point not a physical feature

Ambiguity type?

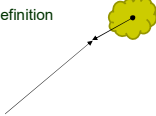


V. Ambiguities

How about...
 "...to a point;"

"...thence N40°10'E 224.5 ft to a point that is S61°20'W 15.6 ft from a 12 inch red oak;..."
 controlling term: point
 accessory call - is part of corner definition

Ambiguity type?



V. Ambiguities

How about...

Area in multiple units
 "...said parcel contains 17,525 square feet or 0.4 acres..."
 Incompatible accuracy
 Ambiguity type?

"...more or less"
 May be redundant
 "...containing 3.45 acres more or less..."

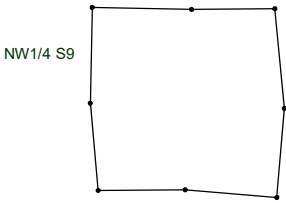
Informative
 "...to a meander corner located 25 ft more or less southeasterly of Moon Lake;..."

Or ambiguous
 "...thence northerly 165.5 ft to a point;..."

V. Ambiguities

How about...

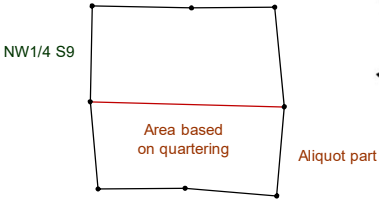
Type of description
 "South 80 acres of the northwest quarter of Section 9..."
 "South half of the northwest quarter of Section 9..."
 to the layperson may seem the same thing.



V. Ambiguities

How about...

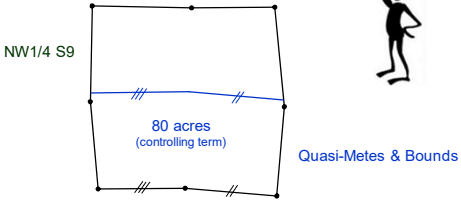
Type of description
 "South half of the northwest quarter of Section 9..."
 "A conveyance of "the south half" of a certain quarter section in this state would ordinarily be presumed to refer to the half quarter section whose corners were fixed by the government survey"
Prentiss v. Brewer, 17 Wis 635 (1864)



V. Ambiguities

How about...

Type of description
 "South 80 acres of the northwest quarter of Section 9..."
 "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)



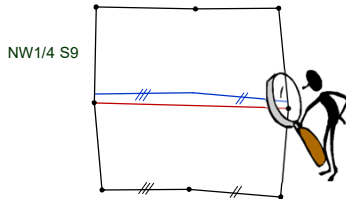
V. Ambiguities

How about...

Type of description

"South 80 acres of the northwest quarter of Section 9..." Quasi-M&B

"South half of the northwest quarter of Section 9..." Aliquot
to the layperson may seem the same thing.



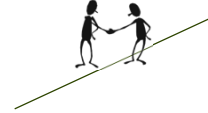
VI. Oral Agreement

Statute of Frauds requires property conveyance be in writing - Deed

Oral agreement can be used to resolve uncertain boundart
Common law - *not* a transfer, but an attempt to make certain

Requirements for valid oral agreement

1. Boundary location must be unknown to both parties
2. Must be an agreement between parties to fix the line
3. Both parties must act with respect to the agreed upon line



VI. Oral Agreement

What constitutes an "unknown location"?

"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)

In Wis, if a surveyor is able to re-establish boundary,
then it is **not** unknown.

