

The Art of Retracement

Wisconsin Society of Land Surveyors

A Virtual Program

January 28, 2021

Presented by Gary R. Kent, PS



Schneider

Retracement Boundary Survey

[A] survey of real property that has been previously described in documents conveying an interest in the real property.

865 IAC 1-12-2



Original Boundary Survey

[A] survey that is executed for the purpose of locating and describing real property that has not been previously described in documents conveying an interest in the real property.

865 IAC 1-12-2



Original Boundary Survey

A cadastral survey which creates land boundaries and marks them for the first time.

Cadastral Survey Training Staff, Glossary of BLM Surveying and Mapping Terms, U.S. Department of the Interior, Bureau of Land Management, 1980

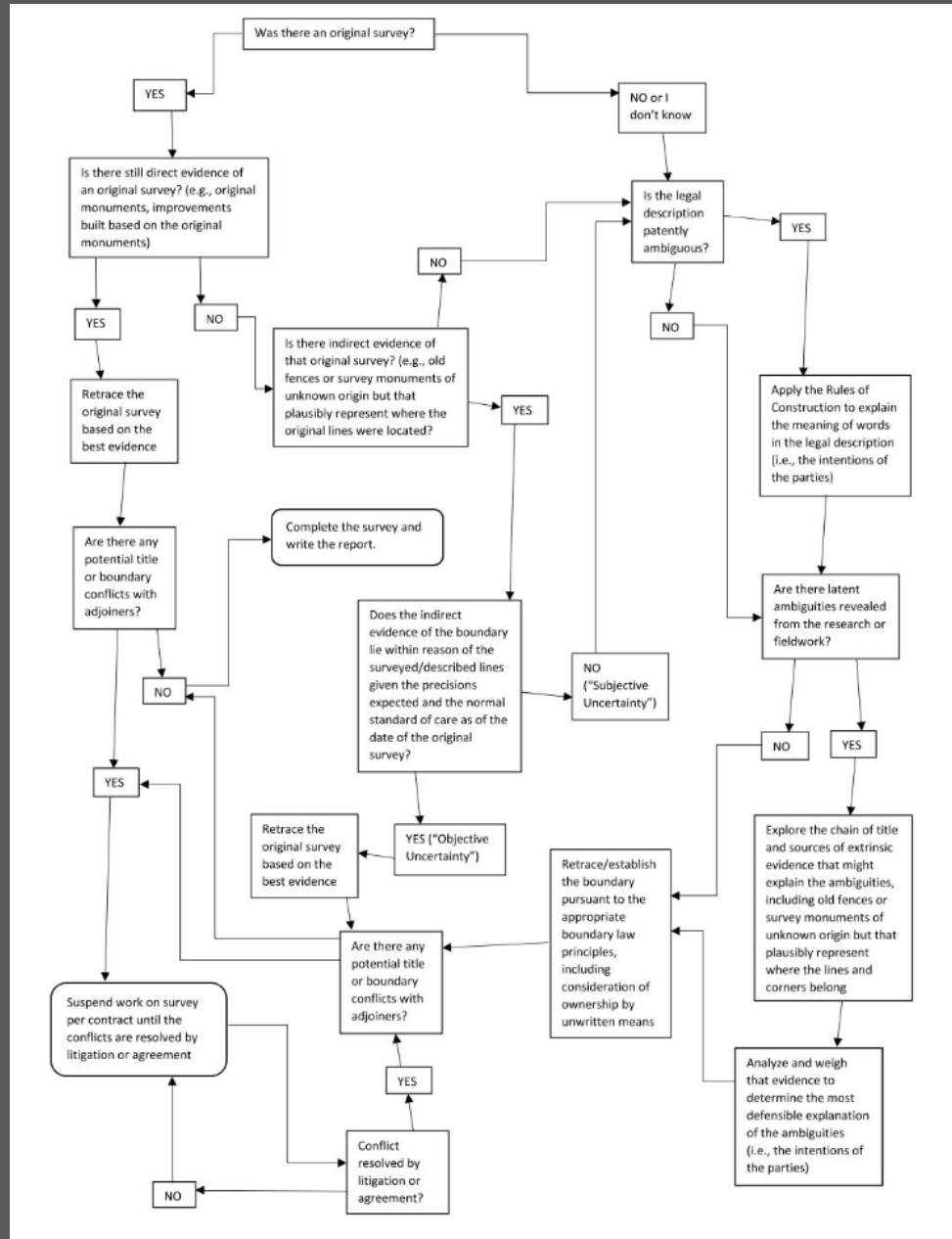


Flowchart

A work in progress



Flowchart



Intent

The grantor's intention controls, and the question for the court is not what the parties meant to say, but what they meant by what they did say.

Pointer v. Lucas 131 Ind.App. 10, 169 N.E.2nd 196 (1960)



Intent

The unambiguous intentions of the parties as expressed in the deed - and considering the surrounding circumstances - will override any unexpressed intentions



Intent

According to the courts, even when the legal description is unambiguous, what most clearly represents the intentions?

“It depends”



Intent

If there was no original survey, the unambiguous description as written stands as the best evidence of the boundaries.

BUT...



Intent

“Considering the surrounding circumstances” invokes the need for the surveyor to find not only the legal description, but to search for and identify the origin of the description.



Intent

- Where there was an original survey

Or

- When the legal description is ambiguous

Or

- Where evidence on the ground raises other questions

Do not simply rely on the exacting dimensions in the legal



Random thoughts on original surveys

- Was there one?
- By whom?
- When?
- Indiana – County Surveyor Legal Surveys
- Finding direct evidence may be problematic
- May need to rely on indirect evidence of an original survey



The special status of the original survey

First, the surveyor can, in the first instance, lay out or establish boundary lines within an original division of a tract of land which has theretofore existed as one unit or parcel.

...



The special status of the original survey

In performing this function, he is known as the `original surveyor' and *when his survey results in a property description used by the owner to transfer title to property* that survey has a certain special authority in that the monuments set by the original surveyor on the ground control over discrepancies within the total parcel description and ...



The special status of the original survey

... and, more importantly, control over all subsequent surveys attempting to locate the same line.

Rivers v. Lozeau, 539 So.2d 1147, 1150-51 (Fla. Dist. Ct. App. 1989) cited in *Sullivan v. Kanable*, 41 NE 3d 264 - III: Appellate Court, 2nd Dist. 2015 (Emphasis in original.)



The special status of the original survey

Under California law, the location of a disputed boundary line is proven by retracing, as nearly as possible based upon existing evidence, the footsteps of the original surveyor whose survey fixed the boundaries. "The survey as made in the field and the lines actually run on the surface of the earth . . . must control."

BERTOLLI PROPERTIES, LLC v. HEADWATERS RANCH, INC., Cal: Court of Appeal, 1st Appellate Dist., 3rd Div. 2018 (Not for Publication; internal citations intentionally omitted)



The special status of the original survey

`[T]he question presented to the court in a boundary dispute is not that of making a resurvey but one of determining as a question of fact from the preponderance of expert and nonexpert evidence (as in all other civil cases) the actual location of the monuments, corners or lines as actually laid out on the ground by the official surveyor.'

Bloxham v. Saldinger (2014) 228 Cal.App.4th 729, 736-737



The special status of the original survey

"[t]he highest and best proof of [the intention of the grantor as expressed in the instrument of conveyance], ordinarily, lies not in the words of expression of the deed, but rather, in the work upon the ground itself, where the survey was made prior to the conveyance."

Robert J. Griffin, Comment, *Retracement and Apportionment as Surveying Methods for Re-establishing Property Corners*



The special status of the original survey

In a boundary dispute, the actual boundary as fixed by the original survey must control unless another boundary has been established by practical location.

Benz v. City of St. Paul, 89 Minn. 31, 36, 93 N.W. 1038, 1039 (1903)



The surveyor's responsibility

Follow in the Footsteps

[W]hat the original surveyor actually did by way of monumenting his survey on the ground takes precedence over what he intended to do as shown by his written plat of survey.

Tyson v. Edwards, 433 So.2d 549, 552-53 (Fla. 5th Dist.App.1983)



The surveyor's responsibility

Follow in the Footsteps

Each party received a deed which refers to a recorded plat or survey and there is no question but that the measurements, courses, and monuments shown on the recorded plat are incorporated in each deed by reference.

...



The surveyor's responsibility

Follow in the Footsteps

The descriptions therefore embody, just as would a metes and bounds description, the monuments, courses and distances set forth in the plat to describe the actual land owned by each party.



The surveyor's responsibility

Follow in the Footsteps

However, this description and this plat is a symbolic representation of something which has been physically marked out on the surface of the earth.



The surveyor's responsibility

Follow in the Footsteps

The actual physical markings and location by monument or otherwise is the primary thing. It locates the land.

The map or plat is secondary to this purporting to symbolically represent that which has been physically located.

Sellman v. Schaaf, 26 Ohio App. 2d 35 - Ohio: Court of Appeals 1971



The surveyor's responsibility

Follow in the Footsteps

In resurveying a tract of land according to a former plat or survey, the surveyor's only function or right is to relocate, upon the best evidence obtainable, the corners and lines *at the same places where originally located by the first surveyor on the ground.*

Gilbert v. Geiger, 747 NW 2d 188 - Wis: Court of Appeals 2008



The surveyor's responsibility

Follow in the Footsteps

The object of a resurvey is to furnish proof of the location of the original survey's lost lines or monuments, not to dispute the correctness of it. 12 AM.JUR.2D Boundaries § 57. If the original corners can be found, the places where they were originally established are conclusive without regard to whether they were in fact correctly located.

Gilbert v. Geiger, 747 NW 2d 188 - Wis: Court of Appeals 2008



The surveyor's challenges

The best evidence of intent

In determining the location of a boundary line, it is not where the surveyor intended to run a boundary or should have run it, but where the boundary was actually run that controls.

Wilson, Donald A., *Boundary Retracement, Processes and Procedures*, CRC Press, 2017. p. 64



The surveyor's challenges

The best evidence of intent

It is a fundamental principle of law that boundaries are to be located on a resurvey where the original surveyor ran the lines and called for them to be located in his fieldnotes.

Wilson, Donald A., *Boundary Retracement, Processes and Procedures*, CRC Press, 2017. p. 64



Direct evidence of an original survey?

- Subdivision plat
 - ✓ “Surveyed”
 - ✓ “Laid out”
- Smaller parcels
 - ✓ “Surveyed by...” on a map
- Mandatory recordation of surveys
- Mention the survey in the description



IC 25-21.5-9-9

Sec. 9. (a) This section does not apply to descriptions of lots in new subdivisions.

(b) Any new or modified real property description prepared by a professional surveyor as a product of an original survey or a retracement survey must include a caption that identifies:

(1) the name and professional surveyor registration number of the professional surveyor who prepared the description; and



IC 25-21.5-9-9

(2) the plat of survey produced as a part of the original survey or retracement survey, including the following information:

- (A) The date of the surveyor's certification.
- (B) The date of the last revision, if any, to the survey.
- (C) Any associated project or job number.
- (D) The name of the survey company, if any.



A description identifying the original survey

Part of the East Half of the Northwest Quarter of Section 12, Township 23 North, Range 8 East of the Second Principal Meridian in Grant County, Indiana, being that 27.76 acre tract of land shown on the plat of an original boundary survey of said tract certified by Gary R. Kent, PS #LS80040389 on April 17, 2018 (last revised May 29, 2018) as The Schneider Corporation's project number 11066.001 (all references to monuments and courses herein are as shown on said plat of survey) described as follows:



Yes, there was an original survey

- Follow in the footsteps - of...
- The **original** survey, not some subsequent survey
- (even though we need to know about any subsequent surveys)



The surveyor's challenges

The best evidence of the original survey

- Direct evidence
- Indirect evidence
 - What is an acceptable precision?



The surveyor's challenges

The best evidence of the original survey

Direct evidence

[T]hat means of proof which tends to show the existence of a fact in question without the intervention of the proof of any other fact.

Wilson, Donald A., *Forensic Procedures for Boundary and Title Investigation*, Wiley, 2008



The surveyor's challenges

The best evidence of the original survey

Direct evidence

- Lines run and marked on the original survey
- Monuments found corresponding to original plat
- Monuments found corresponding to original field notes
- Improvements built based on and soon after the original survey*



The surveyor's challenges

The best evidence of the original survey

But, blindly relying on old fences as the best evidence can be a snare and a delusion.



The surveyor's challenges

The best evidence of the original survey

If:

- Legal description is patently ambiguous or
- There are latent ambiguities relating to the boundary ...

Old fences that have been long-acquiesced in may aid in solving those ambiguities by providing satisfactory proof of where the original lines were run



The surveyor's challenges

The best evidence of the original survey

Indirect evidence

- What about unidentified monuments at or near the apparent corners?
- Are they from the original survey?



The surveyor's challenges

Indirect evidence

Questions to consider...

1. Is there a plat indicating an original survey?



The surveyor's challenges

Indirect evidence

Questions to consider...

2. Monuments found do not match what original plat shows or plat does not indicate monuments, but are they of type and condition that could plausibly represent monuments set on original survey?



The surveyor's challenges

Indirect evidence

Questions to consider...

3. Are the locations of those monuments with respect to themselves and other boundaries and improvements within a precision that would have been acceptable as of the date the parcel was first conveyed out of its parent?



The surveyor's challenges

Indirect evidence

“Yes” to all 3 questions?

- May be defensible to opine that they were set on an original survey



The surveyor's challenges

Indirect evidence

“Yes” to only questions 2 and 3?

- Opinion that monuments were set on original survey is not as strong and will be more difficult (but certainly not impossible) to defend in court
- (the measure of credibility that the surveyor must ultimately consider)



The surveyor's challenges

Indirect evidence

A physical monument not recited in the description, but identified as set prior thereto, and on which the description is based, and which is substantially conformable with the dimensions in the description and known to be in the original position, will hold as physical evidence of title conveyed by the description, as preferable to the recited record monument in the description.

Wattles, William, *Land Survey Descriptions*



The surveyor's challenges

Indirect evidence

Unidentified monuments found

- that could date to the original survey
- that have been relied upon by the owners (and, perhaps, surveyors) for a long period of time
- that are consistent with improvements that relate to the boundary



The surveyor's challenges

Indirect evidence

Improvements found relating in some manner to the boundary

- that could plausibly date to the original survey
- that have been relied upon by the owners (and, perhaps, surveyors) for a long period of time



The surveyor's challenges

Indirect evidence

Disregarding direct – or even indirect – evidence of an original survey simply because it does not match the geometry of the legal description can have serious consequences.

But...



The surveyor's challenges

Indirect evidence

The challenge for the surveyor is to sift through the disparate evidence that was not called for in the conveyance and determine which, if any, is acceptable.



The surveyor's challenges

Indirect evidence

A primary consideration in weighing the applicability of indirect evidence ... or assessing the plausibility of ostensibly direct evidence...

Does the evidence accurately emulate the boundary location based on the courses and corners of the original legal description *given the date of the original survey?*



The surveyor's challenges

Indirect evidence

Cast your net far and wide for all possible evidence of original survey



The surveyor's challenges

Indirect evidence

The position of old fences may be considered in ascertaining disputed boundaries. As between the old boundary fences and any survey made for the monuments after dispute, the fences are far better evidence of what the lines of the lot actually were.

Mulford, A.C., *Boundaries and Landmarks*



The surveyor's challenges

Indirect evidence

If a record map shows no bearings, and insufficient distances to determine direction or position of lot lines, the occupation of long standing will have control preference in spite of possible apparent differences from record.

Wattles, William, *Land Survey Descriptions*



The surveyor's challenges

Indirect evidence

As noted, the original survey of a given parcel "control[s] over all subsequent surveys attempting to locate the same line."

We acknowledge that an occupation line might be of value in setting the boundary between the properties on either side of that line.



The surveyor's challenges

Indirect evidence

Occupation lines might also correspond to improvements on property.

"The evidentiary value of improvements depends upon the probability that their builders had, at the time of construction[,] a better means of knowing where the original lines were located than is now available."

Sullivan v. Kanable, 41 NE 3d 264 - Ill: Appellate Court, 2nd Dist. 2015



The surveyor's challenges

Indirect evidence

A more accurate statement of law would be:
(1) where original stakes which mark boundaries of old plats have disappeared, surveys should try and determine where the original stakes were placed.



The surveyor's challenges

Indirect evidence

(2) In determining where the original stakes were located, various types of evidence are admissible including new stakes or monuments which replace old stakes, reference points correlated to other established points, and occupational lines established by long usage.



The surveyor's challenges

Indirect evidence

All of these may be considered by the fact finder, but no one factor, such as occupational lines, dominates the others as a matter of law.

FN 6 , *Kahn-Reiss, Inc. v. Detroit & Northern Savings & Loan Ass'n*, 228 NW 2d 816 - Mich: Court of Appeals 1975



The surveyor's challenges

Indirect evidence

Parol evidence is admissible to prove the former existence, identity and location of ancient monuments since removed, such as marked trees and stones, indicative of the location of lines and corners;

...



The surveyor's challenges

Indirect evidence

and we see no reason why the acts of the interested parties, contemporaneous with the alleged existence of the monuments, as tending to prove their existence, should not be also admissible in evidence.

Garrett v. Spear, 998 NE 2d 297 - Ind: Court of Appeals 2013



The surveyor's challenges

Indirect evidence

Appellants maintain the old boundary fence and a stone located near the entrance of their driveway, which appellees removed, is the best evidence and the trial court should have used it in determining the boundaries.



The surveyor's challenges

Indirect evidence

The trial court specifically found that appellants did not submit a boundary-line survey of their property lines and therefore, the trial court was unable to make any findings regarding the property lines of appellants from their deeds.



The surveyor's challenges

Indirect evidence

Without a survey to support their argument regarding the location of the old boundary fence, the only evidence the trial court had to rely upon was the survey submitted by appellees.

Therefore, the trial court properly relied upon appellees' survey.

Robinson v. Armstrong, 2004 Ohio 1463 - Ohio: Court of Appeals, 5th Appellate Dist. 2004



The surveyor's challenges

Indirect evidence

The question is not how an entirely accurate survey would locate these lots, but how the original stakes located them.

No rule in real estate law is more inflexible than that monuments control course and distance,—a rule that we have frequent occasion to apply in the case of public surveys, where its propriety, justice and necessity are never questioned. .



The surveyor's challenges

Indirect evidence

The city surveyor should, therefore, have directed his attention to the ascertainment of the actual location of the original landmarks . . . and if those were discovered they must govern.



The surveyor's challenges

Indirect evidence

If they are no longer discoverable, the question is where they were located; and upon that question the best possible evidence is usually to be found in the practical location of the lines, made at a time when the original monuments were presumably in existence and probably well known. . . .



The surveyor's challenges

Indirect evidence

As between old boundary fences, and any survey made after the monuments have disappeared, the fences are by far the better evidence of what the lines of a lot actually are, and it would have been surprising if the jury in this case, if left to their own judgment, had not so regarded them.

[Diehl v Zanger, 39 Mich 601, 605-606 (1878) (COOLEY, J., concurring) (internal citation omitted), quoted with approval in Jonkers, 278 Mich App at 267-268.]. DEAVEN v. Paulson, Mich: Court of Appeals 2011.



The surveyor's challenges

Intent, direct & indirect evidence summarized

[T]he rules of construction with regard to boundaries "[are] not ... imperative or exclusive" but are aids in construction "to ascertain, or to aid in determining, the intention of the parties" that must yield to a contrary showing. Thus, these rules do not apply "where the monument claimed is so manifestly wrong as to lead to an absurd result."

...



The surveyor's challenges

Intent, direct & indirect evidence summarized

Monuments not mentioned in a deed may be utilized if "said monuments are afterward erected by the parties with intent to conform to the deed."

Nevertheless, if "the monuments are doubtful, a resort will be had to the courses, distances, and quantity."



The surveyor's challenges

Intent, direct & indirect evidence summarized

"Before a physical monument is accepted as a boundary line, there must be evidence other than its mere existence that the monument was intended for that purpose" which may be shown if it is mentioned in deeds related to the chain of title or there is "evidence that any past parties erected it as a monument to mark the boundary."

Long Run Timber Company v. Dept. of Conservation & Natural Resources, 145 A.3d 1217 (Pennsylvania) (2016)



No original survey
(or no conclusive evidence of one)

Study legal description for intent

Is it patently ambiguous?

Uncover, weigh and analyze evidence to
determine the most defensible explanation of
the meaning of the words



Intent

A basic rule of construction requires that we determine the intent of the parties to the deed by the words they chose to use. * * *

Resolution of the issue requires that we construe the warranty deeds to determine the parties' intent.

The primary source for determining intent is what is written within the four corners of the deed.

Gilbert v. Geiger, 747 NW 2d 188 - Wis: Court of Appeals 2008



Ambiguities

According to Black's Law Dictionary, a patent ambiguity is one that appears on the face of a document and arises from the language itself. A latent ambiguity does not readily appear in the language of a document, but instead arises from a collateral matter when the document's terms are applied or executed.

L&L Painting Co., Inc. v. CONTRACT DISPUTE RESOLUTION BOARD OF THE CITY OF NEW YORK 68 AD 3d 594, 892 NYS 2d 55 - NY: Appellate Div., 1st Dept., 2009



Patent Ambiguities

[An ambiguity] is patent when the language itself is doubtful or susceptible to more than one meaning.

Stoffel v. Stoffel, 41 NW 2d 16 - Iowa: Supreme Court 1950



Solving Patent Ambiguities

It should always be kept in mind that while the order of conflicting elements may serve to resolve differences between calls, for a variety of reasons, strictly speaking the order of conflicting elements applies to the resolution of ambiguities within a written description. This set of rules is not intended to resolve all conflicts, or conflicts between written evidence and physical evidence.

Brown, Curtis, Robillard, Walter and Wilson, Donald, *Brown's Boundary Control and Legal Principles, 6th Edition*, Wiley 2009, p. 324



Solving Patent Ambiguities

The priority of calls is, first, the natural monuments to which it refers; second, the artificial monuments the surveyor places to mark the boundaries; and, third, the courses and distances marked on the plat or survey.

Gilbert v. Geiger, 747 NW 2d 188 - Wis: Court of Appeals 2008



Solving Patent Ambiguities – Parol Evidence

There is also a patent ambiguity existing on the face of testator's will. He expressed a wish that appellant receive nothing from his estate; he then expressed a means by which she could obtain some portion of his estate. This inconsistency on the face of the will raises a patent ambiguity.

Thus, it was proper for the county court to consider extrinsic evidence, as it did, to construe the ambiguities in the will.

Estate of Jankewicz, 29 Wis. 2d 713 - Wis: Supreme Court 1966



Solving Patent Ambiguities – Parol Evidence

Even if ambiguity exists, extrinsic evidence is only admissible to explain the instrument and not contradict it.

Poznic v. Porter County Development Corp., 779 NE 2d 1185 - Ind: Court of Appeals 2002 (quoting *Lippeatt*, 419 N.E.2d at 1335)



Latent Ambiguities

"[A]n uncertainty which does not appear on the face of the instrument, but which is shown to exist for the first time by matter outside the writing when an attempt is made to apply the language to the ground" is known as a "latent ambiguity."

Gilbert v. Geiger, 747 NW 2d 188 - Wis: Court of Appeals 200



Latent Ambiguities

A latent ambiguity occurs where a writing appears on its face clear and unambiguous, but which, in fact, is shown by extrinsic evidence to be uncertain in meaning; or where a description apparently plain and unambiguous is shown to fit different pieces of property...

Allendorf v. Daily, 129 NE 2d 673 - Ill: Supreme Court 1955 [internal citations intentionally omitted]



Solving Ambiguities

We find in 20 Am.Jur., Evidence, § 1155 the statement: "Originally, ambiguities were classified as `latent' and `patent,' and this classification still exists in many jurisdictions. However, the distinction is gradually disappearing, and parol evidence is held admissible to explain an ambiguity whether latent or patent."

Stoffel v. Stoffel, 41 NW 2d 16 - Iowa: Supreme Court 1950 [also the case in IN and IL]



Subjective Uncertainty

The evidence of the boundaries found (e.g., survey markers, fences) is too remote from the expected locations to represent what would have been a faithful attempt to establish those boundaries on an earlier survey.

The evidence should not be relied upon, but may represent unwritten rights...

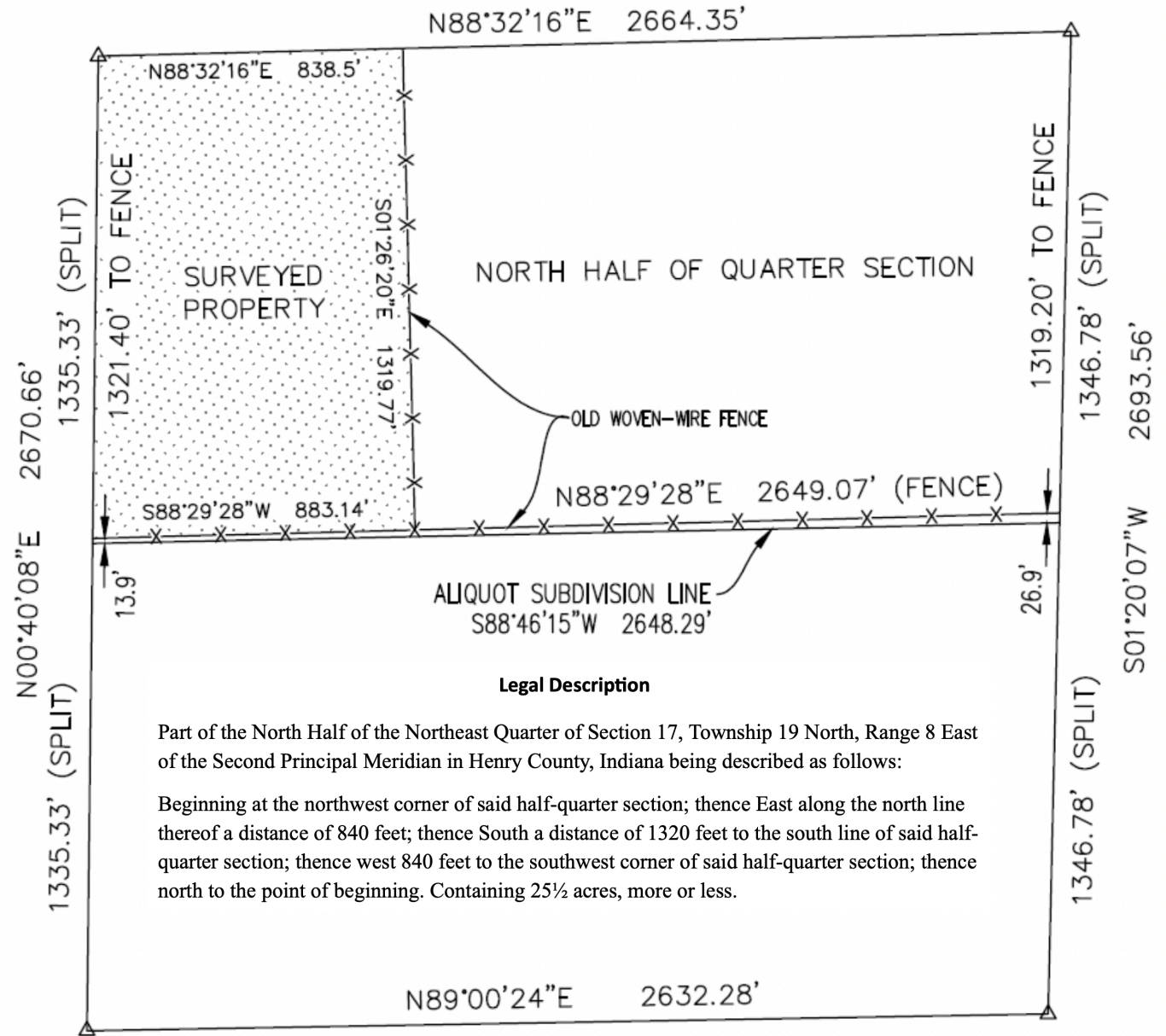


Objective Uncertainty

The evidence of the boundaries found (e.g., survey markers, fences) is within the realm of where one might expect the boundaries to be found based on the geometry in the description, but giving due regard to the date of the old survey, and considering the instrument, conditions, and normal standard of care at that time.



Subjective & Objective Uncertainty



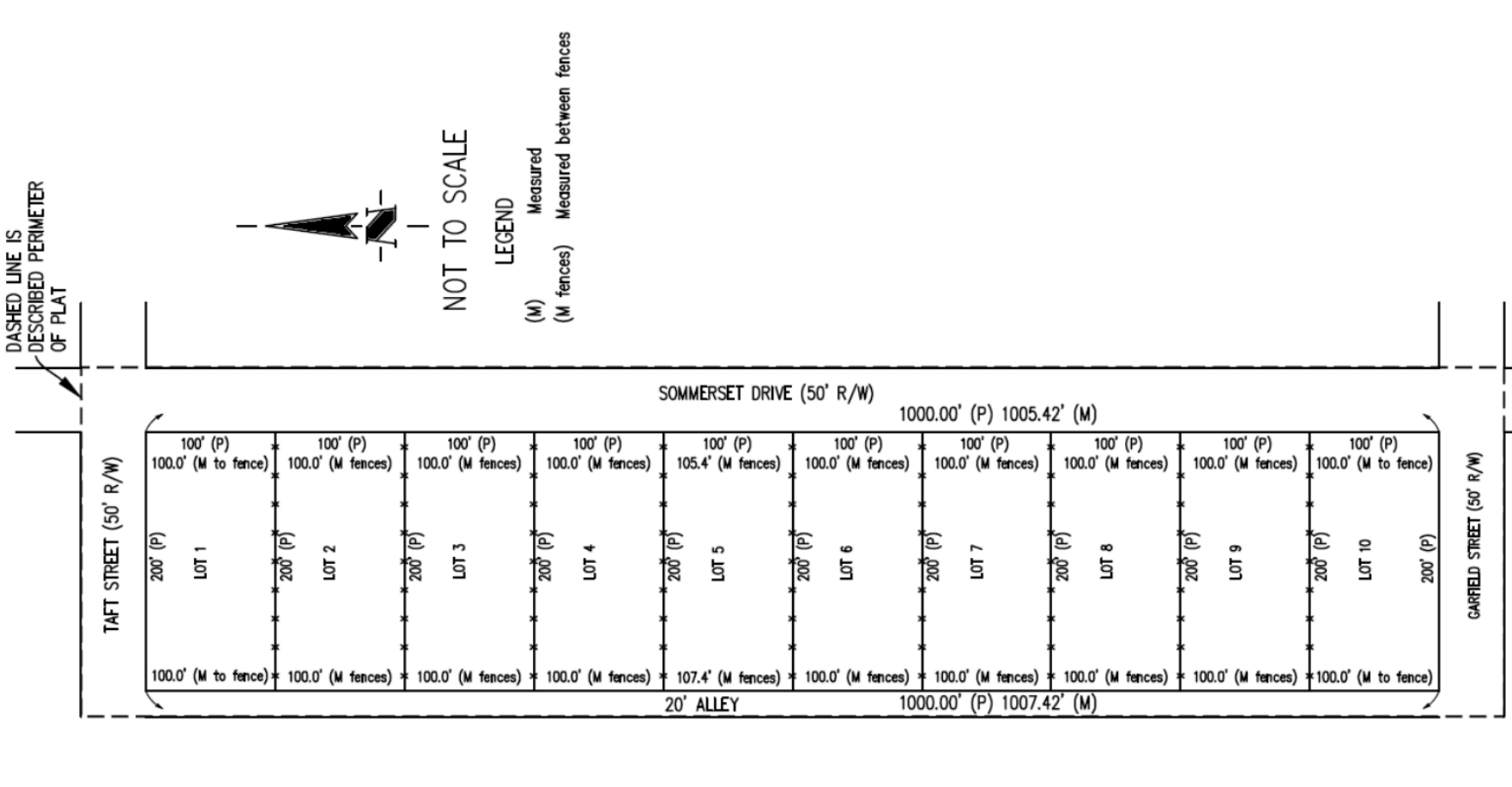
Legal Description

Part of the North Half of the Northeast Quarter of Section 17, Township 19 North, Range 8 East of the Second Principal Meridian in Henry County, Indiana being described as follows:

Beginning at the northwest corner of said half-quarter section; thence East along the north line thereof a distance of 840 feet; thence South a distance of 1320 feet to the south line of said half-quarter section; thence west 840 feet to the southwest corner of said half-quarter section; thence north to the point of beginning. Containing 25½ acres, more or less.



Subjective & Objective Uncertainty



Analyzing the evidence and applying the appropriate boundary law principles

It is not the intent of this program and paper to reexamine boundary law other than as support for the premise - which is as a practical guide to retracement.



Analyzing the evidence and applying the appropriate boundary law principles

[T]he court noted that land surveying is not always an exact science and that qualified and experienced surveyors can and sometimes do arrive at different conclusions in interpreting legal descriptions in deeds and reconciling those descriptions with monuments observed on the property.

Turner v. Albert, 2015 Ohio 809 - Ohio: Court of Appeals, 11th Appellate Dist. 2015



Boundary or title conflicts independent of the resolved boundary

If a potential title conflict is discovered, or, once the surveyor has formed an opinion as to the location of the boundary lines and corners, he or she finds possession or occupation evidence substantively to the contrary, it is strongly advised that the surveyor proceed carefully **lest he or she create a dispute where none existed before.**

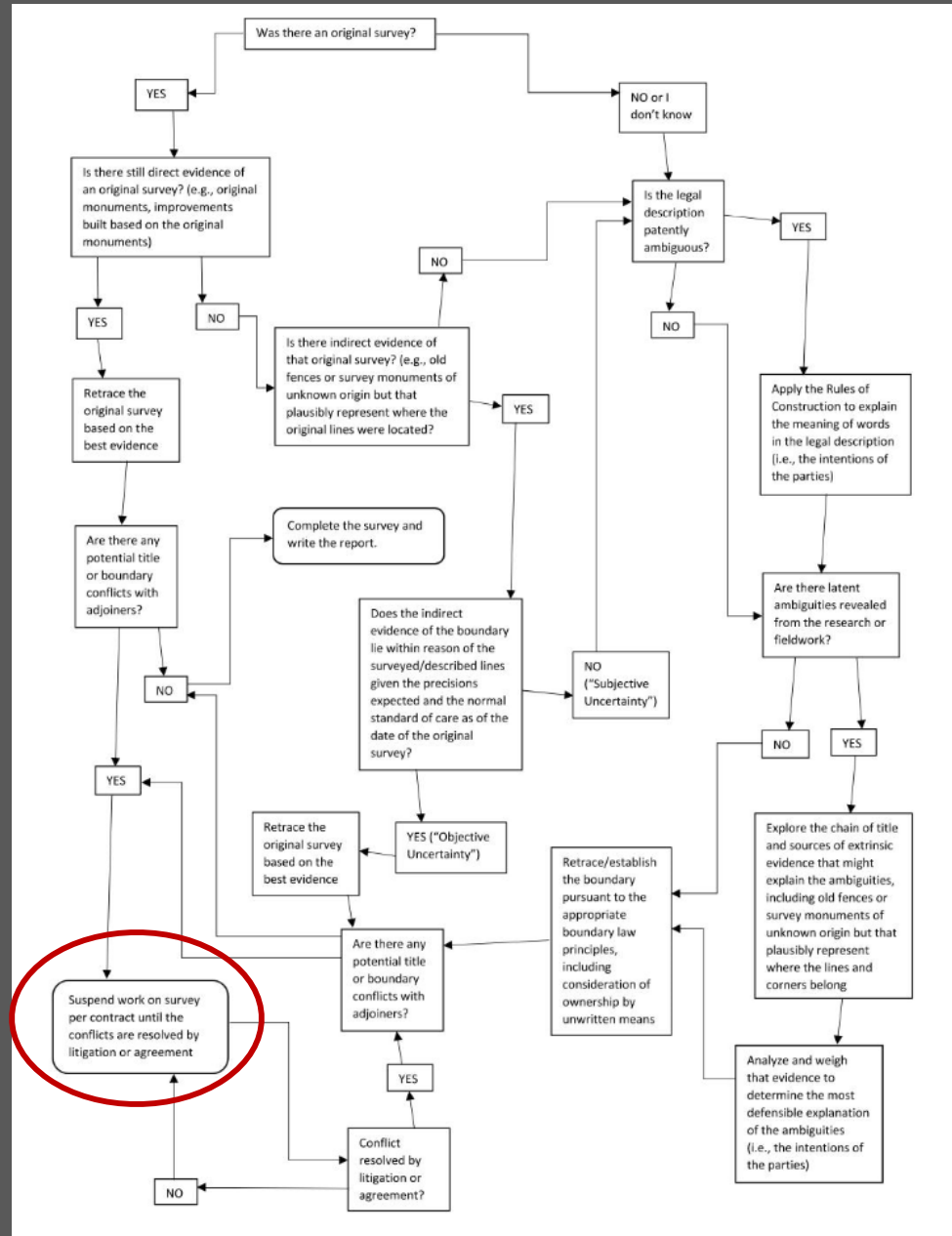


How do disputes/conflicts originate?

- Poorly written legal descriptions or drawn subdivision plats (patent ambiguities)
- Conflicts between the legal description or plat and evidence on the ground (latent ambiguities)
- Lack of remaining evidence of the original survey
- Anything that calls for surveyors to make judgments relating to underlying intent
- Not taking steps to mitigate or prevent them



Flowchart



Schneider

Flowchart

Suspend work on survey per contract until the conflicts are resolved by litigation or agreement



Boundary or title conflicts independent of the resolved boundary

Stopping work is not as drastic as it may seem because title and boundary conflicts can only be resolved by whom?

The affected parties; surveyors have no authority to solve them on their own.



Boundary or title conflicts independent of the resolved boundary

The concept of suspending work must be supported by a written contract that allows the surveyor to take such an action.



Boundary Survey Scope of Services

Prepare a boundary survey pursuant to Indiana Administrative Code requirements in 865 IAC 1-12.

This includes monuments set or found at (or a witness to) each boundary corner, a signed, certified plat of survey and accompanying Surveyors Report.



Boundary Survey Scope of Services

It should be noted, however, that boundary determinations often disclose unseen or unknown conflicts between record documents and/or between record documents and the location of physical improvements.



Boundary Survey Scope of Services

Thus, if in the process of conducting the research, fieldwork or analysis, the surveyor identifies a possible boundary or title conflict, a sketch showing the revealed conditions will be prepared and a meeting with the client – and the affected neighbor(s), if desired – will be scheduled.



Boundary Survey Scope of Services

During that meeting, the problem will be explained, alternatives for possible resolution will be presented and any additional survey work that would be required to achieve resolution will be outlined.



Boundary Survey Scope of Services

Following that meeting, if the client wishes to engage the surveyor to assist in pursuing resolution of the problem as a consultant, expert and/or formal or informal mediator, the contract will be modified accordingly.



Boundary Survey Scope of Services

Otherwise the client will be invoiced only for the time expended to that point, and work on the survey will be suspended until or unless the client is able to resolve the issue by agreement or litigation, at which time a subsequent contract may be executed to complete the survey pursuant to that agreement or litigation.



Boundary conflict experience

- Resolved after 5 years and \$250,000
- Four months ago (and 5 years later) the client said...



Completing the survey

Plat and report ... regardless

Why?

Provide footsteps for others to follow!

Place plat and report into the public record



Provocateur

- Ownership and Unwritten rights
 - ✓ Broadus
 - ✓ McEntyre and Dean
 - ✓ Brown



Jerry R. Broadus

It is usually during the measurement process that [surveyors discover] field evidence suggesting one of [the] practical location doctrines might apply, in which case [they] now [have] conflicting evidence of the boundaries of [their] client's property.

What [surveyors do] next defines [their] professional and contractual approach to [their] client[s].



Jerry R. Broadus

I recommend against a policy of always staking a line based on one class of evidence and then ... simply telling the client to seek the advice of an attorney to evaluate the other evidence.



Jerry R. Broadus

Tell your client in advance what services you can provide and how you can help resolve conflicting evidence, and that in some cases an attorney should be consulted before the survey is finalized.

Washington State Common Law of Surveys and Property Boundaries, 2009



John G. McEntyre and Darrell Dean

[T]here is support for the land surveyor to take an affirmative and responsible position with respect to identifying and making recommendations concerning boundary lines established by unwritten means.

Establishment of Boundaries by Unwritten Methods and the Land Surveyor, ca. 1976



Curtis Brown - 1979

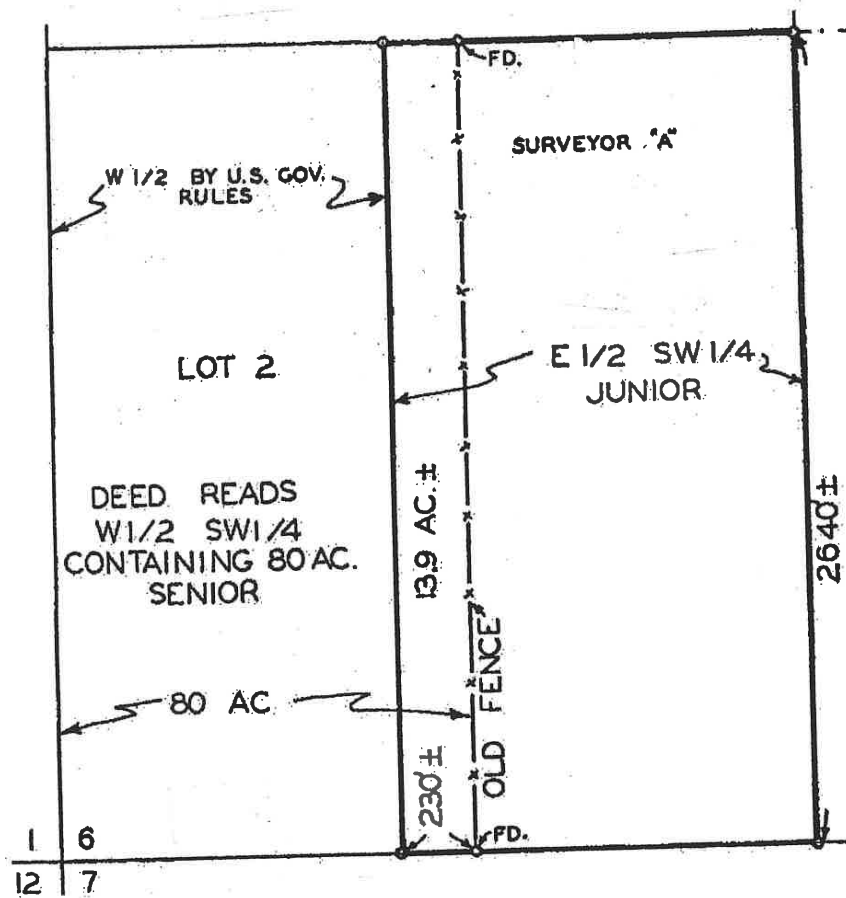
In my early writings, I generally advocated that surveyors should locate land boundaries in accordance with a written deed; all conveyances based upon unwritten rights should be referred to attorneys for resolution.



Curtis Brown - 1979

Within recent years there have been cases, and one in particular, wherein surveyors have been liable for failure to react to a change in ownership created by prolonged possession.





Schneider

Curtis Brown - 1979

From my experience with clients, very few know that there is a difference between [ownership and the written deed]; most clients want to know what they own.



Curtis Brown - 1979

As a summary of the discussion presented, the following is offered:

1. The surveyor in finding an encroachment on his client's land, must fully inform the client of its significance; further the information must be presented in such a manner that third parties also understand the significance of any encroachment.



Curtis Brown - 1979

2. Nothing in the law prevents the surveyor from deciding who has ownership to encroachments, and he may monument ownership lines rather than written title lines;



Curtis Brown - 1979

3. In some circumstances the surveyor may be justified in monumenting the line that he believes to represent [the] true ownership line.



Curtis Brown - 1979

In my experience, this occurs when

- (1) the client has color of title,
- (2) the client has paid taxes on the land described with color of title, and
- (3) the client has possession by an enclosure for a time more than the statute of limitations.



Curtis Brown - 1979

In cases involving adverse relationships (adverse possession), estoppel, or recognition and acquiescence, the surveyor is probably foolish to try to establish ownership.



Curtis Brown - 1979

4. Since, to avoid liability, the surveyor must fully disclose the significance of encroachments; surveyors must have knowledge of how and when unwritten conveyances occur.

It is my recommendation that all surveyors should be required to understand the subject.



Iowa Rules of Evidence

Rule 5.704 - Opinion on an ultimate issue

An opinion is not objectionable just because it embraces an ultimate issue.



What are they arguing over?

It is well established that whenever adjoining landowners tacitly accept a fence line or other monument as the visible evidence of their dividing line for a long period of time and thus apparently consent to that line, the line becomes the boundary by acquiescence.



What are they arguing over?

The property owners and their grantees are then precluded from claiming that the boundary line thus recognized and acquiesced in is not the true one, **although it may not be on the survey line.**

Summers v. Dietsch, 849 SW 2d 3 - Ark: Court of Appeals, 2nd Div. 1993



Questions?

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