LITIGATION REGARDING LEGAL DESCRIPTIONS IN MINNESOTA[1]

Introduction

This presentation is an examination of how disputes concerning legal descriptions are resolved by the Minnesota courts. Such disputes sometimes center on whether the legal description of property should be modified because the ownership of said property is affected by possession, under the doctrines of adverse possession and boundary by practical location. Sometimes, the dispute concerns whether the legal description is inconsistent with the intention of the parties, such that reforming a deed or other instrument is appropriate. Other times, "survey disputes" arise – cases involving the interpretation of legal descriptions, and the application of them to property through the survey process. In such situations, the Courts analyze, compare, and/or evaluate the work of surveyors. This presentation will briefly discuss the generalities of boundary by practical location, adverse possession, and reformation of instruments, then use a case study approach to examine in detail how the courts resolve survey disputes.

Boundary by Practical Location.

Where the owners of adjacent property make an informal agreement to modify their boundary lines through words, or make an implicit agreement through their conduct, the new line can become enforceable under the doctrine of boundary by practical location ("BPL") if certain requirements are met:

> Ordinarily, in order to establish a practical location of a boundary line it must appear (1) the location relied on was acquiesced in for the full period of the statute of limitations; or (2) the line was expressly agreed upon by the parties and afterwards acquiesced in; or (3) the party barred acquiesced in the encroachment by the other, who subjected himself to expense which he would not have done if there had been a dispute as to the line."

Romanchuk v. Plotkin, 9 N.W.2d 421, 427 (Minn. 1943), *see also Fishman v. Nielsen*, 53 N.W.2d 553, 556 (Minn. 1952). The statute of limitations required under the first type of BPL – the acquiescence theory - is fifteen years, pursuant to Minn.Stat. § 541.02: However, if neighboring landowners expressly

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agree on a boundary, they do not need to demonstrate acquiescence for the full 15 years to establish a claim. *See Nadeau v. Johnson*, 147 N.W. 241, 242 (Minn. 1914) (finding existence of boundary line by practical location based on express agreement, when landowners measured, located, and staked boundary line, expressly agreed on dividing line between lots, and treated line as boundary for 10 years). *See also Ampe v. Lutgen*, 2007 WL 2034381, 2 (Minn. Ct. App. 2007); *and Amato v. Haraden*, 159 N.W.2d 907, 910 (Minn. 1968). BPL can also be sought against Torrens property; in 2008, the Torrens Act was modified to expressly provide for it:

> No title to registered land in derogation of that of the registered owner shall be acquired by prescription or by adverse possession, *but the common law doctrine of practical location of boundaries applies to registered land whenever registered*. Section 508.671 shall apply in a proceeding subsequent to establish a boundary by practical location for registered land.

Minn. Stat. § 508.02 [emphasis added].

Adverse Possession.

Boundaries established by BPL or adverse possession will supersede the outcome of an indisputably correct survey. *Wojahn v. Johnson*, 297 N.W.2d 298, 304 (Minn. 1980) (quoting *Phillips v. Blowers*, 161 N.W.2d 524, 529 ((Minn., 1968)) for the proposition that "(a) boundary clearly and convincingly established by practical location may still prevail over the contrary result of survey.") Simply stated, adverse possession means that if you are in possession of land for fifteen years, you will become the owner of it.

In practice, of course, the doctrine is more complex, and there are five showings a claimant must make to establish ownership in court: Actual, exclusive, open, continuous and hostile possession of the real property in question for a period greater than 15 years. *Ehle v. Prosser*, 197 N.W.2d 458, 462 (Minn. 1972); *Ganje v. Schuler*, 659 N.W.2d 261, 266 (Minn. Ct. App. 2003). Adverse possession of Torrens property is strictly prohibited by statute. Minn. Stat. § 508.02 (stating, "No title to registered land in derogation of that of the registered owner shall be acquired by prescription or by adverse possession.")

Reformation.

At times a document – such as a deed – will be executed by parties to a transaction, and it will be learned that that the document failed to express the intent of the parties. If the failure is due to mistake on the part of both parties, or if one party is mistaken and the other has acted inequitably, a court may correct, or *reform,* the document if certain requirements are met:

> To reform a deed, a claimant must show (1) that a valid agreement existed between the parties that expressed their real intentions, (2) that the written instrument failed to express the parties' real intentions, and (3) that this failure resulted from the parties' mutual mistake, or a unilateral mistake accompanied by the other parties' fraud or inequitable conduct. Reforming a deed generally involves "the original parties to an instrument and those in privity with the original parties."

Slindee v. Fritch Investments, LLC, 760 N.W.2d 903, 911 (Minn. Ct. App. 2009) [citations omitted]. *See also Nichols v. Shelard Nat'l Bank*, 294 N.W.2d 730, 734 (Minn. 1980).

> However, reformation may not be granted if to do so would harm the interests of third persons.
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> But, reformation may not be granted when such a change might prejudice bona fide purchasers or other innocent third parties. *Proulx v. Hirsch Bros, Inc.*, 279 Minn. 157, 164, 155 N.W.2d 907, 912 (1968). A bona fide purchaser is one who does not have "actual, implied, or constructive notice of inconsistent outstanding rights of others." *Anderson v. Graham Inv. Co.*, 263 N.W.2d 382, 384 (Minn.1978) (citation omitted).

Deming v. Scherma 2001 WL 741427, 3 (Minn. Ct. App. 2001)

In 1988, the Minnesota Court of Appeals confirmed that reformation is available for Torrens property:

> The next question we must answer is whether reformation of the 1969 deed was proper. . . .The trial court found that the three necessary requirements in reforming a document were met, and reformed the legal description of the pedestrian ingress and egress easement so that it ran along the southerly ten feet of the Aldrich property as it existed in 1969 and as the Stuebners' property exists today. We believe that from the testimony given at trial, there was clear evidence that the parties intended to place the easement on the southerly ten feet of Parcel A, which is now owned by the Stuebners. There was no evidence that the Nolans intended to eliminate, destroy, interrupt or abandon the easement. Even though the Nolans did not regularly use the pedestrian easement or the dock easement, such nonuse without intent of abandonment does not constitute abandonment. . . . *The trial court correctly reformed both parties' certificates of title* to show the placement of the easement as was intended by the Aldriches and the Nolans. In our view, such reformation is not contrary to the provisions, or the purpose, of the Torrens Act, since the Stuebners' certificate of title contained the easement and because they had knowledge that an easement, though ambiguously described, existed.

Nolan v. Stuebner, 429 N.W.2d 918, 923 -924 (Minn. Ct. App. 1988) [citation omitted, emphasis added].

Survey Disputes.

Sometimes disputes concerning legal descriptions arise because surveyors interpret them differently. As the Minnesota Supreme Court noted in 1956, "[i]t is a matter of common knowledge that surveys made by different surveyors seldom, if ever, completely agree." *Erickson v. Turnquist*, 77 N.W.2d 740, 743 (Minn., 1956). Earlier, it had noted that "the greater number of surveys, the greater [the] number of differences and disagreements [that] will occur." *Dittrich v. Ubl*, 13 N.W.2d 384, 390 (Minn., 1944).

This reflects a view cited by the Courts that surveying (like the law) is an art, not a science; meaning, there is more than one way to do it properly.

> [S]urveying is the art of measurement and not an exact science. Changes in nature generally as well as human nature preclude exact duplication of original measurements . . . Comment, *Retracement and Apportionment as Surveying Methods for Re-establishing Property Corners*, 43 MARQ.L.REV. 484, 503 (1960)

Wojahn v. Johnson, 297 N.W.2d 298, 303 (Minn., 1980). The Minnesota Court of Appeals has called such cases "survey disputes:"

> Respondents could have counterclaimed for a reformation of the description on appellants' certificate of title on the quit claim deed they gave Farrell prior to registration. They did not. Respondents obviously thought they could win on the strength of their expert surveyor. *The case was tried as a survey dispute and not as a reformation action*, which presumably would have been tried differently by appellants.

In Re Petition of Geis, 576 N.W.2d 747, 751-52 (Minn Ct. App. 1998).

Procedurally speaking, parties can bring actions to have boundary lines determined pursuant to Minn. Stat. § 559.23, which reads: "

> An action may be brought by any person owning land or any interest therein against the owner, or persons interested in adjoining land, to have the boundary lines established; and when the boundary lines of two or more tracts depend upon any common point, line, or landmark, an action may be brought by the owner or any person interested in any of such tracts, against the owners or persons interested in the other tracts, to have all the boundary lines established. The court shall determine any adverse claims in respect to any portion of the land involved which it may be necessary to determine for a complete settlement of the boundary lines, and shall make such order respecting costs and disbursements as it shall deem just. The decree of the court shall be filed with the court administrator, and a certified copy thereof shall be recorded in the office of the county recorder or in the office of registrar of titles or both, if necessary; provided that such decree shall not be accepted for such recording or filing until it shall be presented to the county

> auditor who shall enter the same in the transfer record and note upon the instrument over the auditor's official signature the words "ENTERED IN THE TRANSFER RECORD."

A party can also bring a declaratory judgment action under the Uniform Declaratory Judgments Act, Minn. Stat. § 555.01 *et seq*. A party can request that boundary lines be established as part of an action to initially register property as Torrens. *See, e.g*., Minn. Stat. § 508.06 subd. 11 (stating "if it is desired to fix and establish the boundary lines of the land, the full names and addresses of all owners of adjoining lands which are in any manner affected by it shall be fully stated" in the petition for registration.) One may seek the registration of boundary lines of property previously registered as Torrens property pursuant to Minn. Stat. § 508.671. *Britney v. Swan Lake Cabin Corp*., 795 N.W.2d 867, 870 -71 (Minn. Ct. App., 2011).

Substantively speaking, survey disputes come down to which surveyor the district court finds to be more credible. "[W]hen two competent surveyors disagree as to where a boundary line should be, the trial court's determination as to which surveyor is correct depends mainly on each surveyor's credibility and will not be reversed if there is reasonable support in the evidence for such a determination." *Wojahn v. Johnson*, 297 N.W.2d 298, 303 (Minn., 1980). This objective of this process is to discern the intent of the parties who originally had the legal description created:

> In the last analysis, the call adopted as the superior and controlling one should be that which is most consistent with the apparent intent of the grantor. . . *The cardinal rule is to ascertain and give effect to the intention of the parties.* In case of doubt, courts should consider the facts and circumstances attending the execution of a deed, the practical construction of it by the parties and their grantees, and the preliminary negotiations. . . . A building or fence constructed according to stakes set by a surveyor at a time when these were still in their original locations may become a monument after such stakes have been removed or disappear, and, next to stakes, they may be the next best evidence of the true line. City of Racine v. Emerson, 85 Wis. 80, 55 N.W. 177, 39 Am.St.Rep. 819, supra*."*

Dittrich v. Ubl, 13 N.W.2d 384, 390 (Minn. 1944) [emphasis added]. The key to establishing credibility is convincing the court that best professional practices were used:

> Among other considerations, a surveyor's credibility is determined by the degree of adherence to government rules, standards, and precedent; the quality and accuracy of his or her factual reports about the land; and his or her capacity to fill in the gaps left by applicable rules with good judgment and sound discretion. *Cf., Erickson v. Turnquist*, 247 Minn. 529, 533–34, 77 N.W.2d 740, 743 (1956) (affirming district court's reliance on one survey over another because latter survey was "vague, indefinite, and unsatisfactory" and was "not traceable to any of the

monuments or landmarks of the original survey").

Ruikkie v. Nall, 798 N.W.2d 806, 810 (Minn. Ct. App. 2011).

How the Minnesota Appellate Courts Review Trial Court Decisions.

Before we look at examples of how courts have resolved survey disputes, it makes sense to discuss the standard of review; that is, how the appellate level courts evaluate District Court decisions. Whatever the District Court's determination, it will be difficult to overturn because decisions about boundary lines are based on facts. Appellate courts can evaluate legal issues as well as trial courts, but are at a disadvantage concerning the facts because part of the evidence they see is second hand. For example, they do not get to watch the courtroom testimony of witnesses and evaluate their credibility. So, their "scope of review of the district court's placement of the boundary is [limited to] whether the district court's factual findings are clearly erroneous and whether the district court erred in its legal conclusions. A district court's decision on a purely legal issue is not entitled to deference and will not bind this court on review." *Ruikkie v. Nall*, 798 N.W.2d 806, 814-15(Minn. Ct. App., 2011), *citing In re Geis*, 576 N.W.2d 747, 749 (Minn. Ct. App., 1998), *and Frost–Benco Elec. Ass'n v. Minn. Pub. Utils. Comm'n*, 358 N.W.2d 639, 642 (Minn., 1984).

Where two different surveyors testify to reaching different conclusions, it is particularly difficult to overturn the trial court's ruling. "Thus, for instance, when two competent surveyors disagree as to where a boundary line should be, the trial court's determination as to which surveyor is correct depends mainly on each surveyor's credibility and will not be reversed if there is reasonable support in the evidence for such a determination." *Wojahn v. Johnson*, 297 N.W.2d 298, 303 (Minn., 1980). In 1962, the Minnesota declined to discuss the differing survey opinions in detail for this very reason:

> It would serve no useful purpose to explain in detail the method of survey used by the two surveyors. The difference in the line which they established obviously occurred as a result of the manner in which they proceeded to do their work. The court's determination of the crucial fact as to which survey was the correct one rests almost exclusively upon the credibility attached to the testimony of these two witnesses. . . . . Reading the testimony of the two surveyors, it is obvious that either could have been accepted by the trial court. Under these circumstances, we cannot say that the findings of the trial court are not supported by the evidence.

Donaldson v. Kohner, 118 N.W.2d 446, 448-49 (Minn., 1962) citing to *Erickson v. Turnquist*, 77 N.W.2d 740, 742 (Minn., 1956) [emphasis added].

There is one exception to this general rule: Where the matter is merely a construction of the actual legal description in a deed, and the issue does not depend on the expert testimony of surveyors, the issue is one of law, not fact. In such situations, he Court of Appeals does not have to give any deference to the trial court: "Where * * * the intent of the parties is totally ascertainable from the writing, construction is for the court." *Mollico v. Mollico*, 628 N.W.2d 637, 641 (Minn. Ct. App. 2001), quoting *Hunt v. IBM Mid Am. Employees Fed. Credit Union*, 384 N.W.2d 853, 856 (Minn.1986) (citation omitted).

Case Study 1: **Wojahn v. Johnson.**

In *Wojahn*, Plaintiffs had "brought suit for a determination of the boundary line between their property and defendants', and for a determination that a driveway running close to the boundary line had been dedicated as a public street through public maintenance and use. The Washington County District Court established the boundary line in a location favorable to defendants. . ." *Wojahn et al. v. Johnson et al*., 297 N.W.2d 298, 301 (Minn., 1980). Specifically, the battle was over Plaintiff's access to a driveway, the ownership of which had come into dispute when "The [County Surveyor] completed a remonumentation and survey of Section 8 in late summer 1976. This survey placed the north boundary of defendants' property somewhat to the north of a driveway leading from the western edge of 165th Street in May Township to both defendants' and plaintiffs' homes, thus locating the driveway entirely on defendants' property. At trial, the plaintiffs claimed that the correct boundary should be adjudged further south to extend from about the middle of the disputed driveway westward." *Id*., at 302.

Plaintiffs hired a private surveyor to dispute the County Surveyor's findings, based on three grounds. "The plaintiffs first challenge the validity of the survey by the [County Surveyor], of Sections 7 and 8 in the relevant township, requested by defendants. . . . [P]laintiffs attack the methodology of the [County Surveyor] on essentially three grounds, contending that the survey illegally deviated from the original government survey in angles and distances between corners, that the county surveyor did not

adequately investigate before determining that certain corners were "lost," and that the surveyor inappropriately used double proportionment. *Id.*

This description was given of the particulars of the work done by the County Surveyor:

> [The County Surveyor] testified that his aim in resurveying Sections 7 and 8 was to reestablish the corners of the original government survey, and from those corners to plat the correct boundary lines between sections and quarter-sections. To this end he followed closely the original government field notes and drawings and relied on past records of county surveyors. He was able to find physical evidence of three of the corners of Section 8, the southeast, the south quarter, and the northeast. He was unable to find physical evidence of the other five corners of Section 8 after a preliminary study of those areas in which he felt the corners should be by field measurements and distances and a subsequent search of those areas. He admitted, however, that he did not talk to the residents of the area in attempting to find evidence of the missing corners and that the boundary line established by the reestablished corners does not correspond with existing and previous fence lines. [The County Surveyor] then reestablished the five "lost" corners of Section 8 by reference to the three known corners of Section 8, and by reference to known corners of abutting sections. To this end he used the federal method of double proportionment for establishing a lost section corner. In doing so, [The County Surveyor] found that the northwest and north quarter corners of Section 8, set a few years earlier by the previous county surveyor, were in error. Plaintiff called as an expert [Plaintiff's Surveyor], who testified that in locating lost corner monuments it is important to talk to older people, and that "ancient fences which have been there many years" are "helpful" in locating such lost monuments.

Id., at 302-03.

The Court of Appeals examined these factors separately. It found the County Surveyor could be held credible in saying that the deviation from the original survey distances and angles was not an attempt to modify the government survey, but instead was explained by differences in measurement technology:

> When a resurvey is made of sections, quarter-sections, etc., originally established by United States Government Survey, *the aim of the resurvey must be to retrace and relocate the lines and corners of the original survey*. Even when an original section corner is erroneously placed by an original government surveyor, it cannot be corrected by the courts or a subsequent surveyor. . . . The [County Surveyor] in fact testified that this was his aim-to reestablish the lines of the original survey. The plaintiffs, however, argue that certain discrepancies between the original government field notes and the [County Surveyor's] survey in distances between corners, and in the angles used to establish those corners, prove that the [County Surveyor's] resurvey differed from the original survey. However, [the County Surveyor] explained this as being a difference in the accuracy of measuring devices, not as a difference in location of monuments, stating, "We * * * seldom match a dimension between known monuments of what is recorded on the original plat." The trial court should be allowed to credit this testimony, and determine that the discrepancies were due to differences in measurement accuracy and not in the actual size of the section.

Id., at 303 [emphasis added]. The *Wojahn* Court quickly dismissed Defendant's claim that double proportionate measurement should not be used, instead finding it to be consistent with precedent and

professional standards:

> The plaintiffs also argue that the system of double proportionate measurement used by Johnson was invalid in the present case, citing no authority. This federal method, however, seems to have been explicitly used and sanctioned by this court in *Grandt v. Town of Pokegama*, 163 Minn. 368, 204 N.W. 317 (1925). Double proportional measurement also appears to be standard surveying procedure when corners marking section boundaries are lost. See Jesse E. Fant, Report on Public Land Survey in Minnesota 45-48 (February 1970) (*publication of the Department of Civil Engineering, University of Minnesota*).

Id. [emphasis added]

The *Wojahn* Court spent the most time discussing Defendant's third line of attack against the County Surveyor's survey: The alleged disregard of collateral evidence. Ultimately, though, it found that due consideration of collateral evidence was given, and the collateral evidence in question was not so conclusive after all.

> More troubling is plaintiffs' argument that the surveyor did not make sufficient inquiry before locating lost corner monuments and did not take existing fence lines sufficiently into account. It is proper surveying techniques not to use the proportional measurement system until all efforts at finding the location of an obliterated monument by collateral evidence have failed. See *United States v. Doyle*, 468 F.2d 633 (10th Cir. 1972); Marquette Comment, supra at 492. In this respect a surveyor cannot totally disregard a long established and maintained boundary fence. See Wilson v. Stork, 171 Wis. 561, 177 N.W. 878 (1920). The facts of *United States v. Doyle*, cited by plaintiffs, however, actually support defendants' position. In that case the Tenth Circuit affirmed a trial court determination that a section corner was lost and that proportional measurement was proper in reestablishing it. That method was proper despite the fact that there was "little contact with owners" by the resurveyor; that the resurveyed line was inconsistent with a blazed tree line; and that a former owner of the property gave positive testimony about markers and monuments that had been staked out along the blazed tree line. The surveyor in Doyle, in attempting to find the corners, only searched the area thoroughly and made inquiries of past surveyors who could supply no helpful information. 468 F.2d at 637-38.
>
> Likewise in the instant case, the surveyor made a thorough search of the area and relied heavily on the notes of prior surveys. In addition, *evidence of when and where any "boundary" fence existed along the southern border of plaintiffs' property was very equivocal*. At any rate, it would be anomalous to state that such a fence should be conclusive upon a surveyor in locating a survey boundary in the absence of any other evidence that it represents the true original government boundary. The evidence shows that [the County Surveyor] was aware of the fence line, but simply did not consider it conclusive in locating lost monuments. We therefore conclude that the finding by the trial court that five corner monuments of Section 8 were lost and that [County Surveyor] used proper surveying techniques in reestablishing them is not clearly erroneous and should be affirmed.

Id., 303-04 [emphasis added].

Case Study 2: **Sommer v. Meyer**

This case, considered by the Minnesota Supreme Court in 1912, was brought "to determine a disputed boundary;" specifically, it involved a dispute over the location of a section line, when the original section corner monument had been lost.

> The dispute is as to the location of the section line between sections 9 and 10. The original post set by the government surveyor at the north section corner, between sections 9 and 10, is lost.

Sommer v. Meyer, 146 N.W. 1106, 1106 (Minn. 1914). The County Surveyor had determined the location of the marker, and the District Court found that determination to be correct. "In 1907 the county surveyor of Goodhue county located this corner, and with it the section line. The trial court found this location to be correct." *Id*. The *Sommer* Court noted that the County Surveyor had taken the prior location of the marker and eyewitness testimony into account.

> The original government survey was made in 1857. In 1862 a surveyor named Hart located part of this section line, and a highway was established thereon. In 1865 Hart again located this section line and the now disputed corner for one Busch, plaintiffs' predecessor in title, and Busch built a fence on the line. Two witnesses testified that they then saw the original section corner post in place. The county surveyor's corner and line agree substantially with those located by Hart and with the location of the original corner post as testified to by these eyewitnesses. Defendant was present when the government survey was made and saw the corner located. He acquiesced in the Hart survey and the Busch fence line for many years, and there is evidence that in 1907 he admitted that the corner as located by the county surveyor was about correct.

Id. The Defendant's surveyors noted that the call lines for the original government survey were incorrect; the used witness bearing trees to determine a different location for the lost monument.

> Defendant employed two surveyors. . . They undertook to locate the disputed corner by two government witness bearing trees, which still remain. But the 'calls' of the original field notes, to which resort must be had to locate the corner, are admittedly erroneous. The courses and distances called for, and which should converge at a common point, the section corner, do not meet at all. Defendant's surveyors insist that these calls should be transposed and otherwise changed. By changing the field notes applicable to one tree from 'N. 20° W.' to 'N. 18° 06' E.,' and the field notes applicable to the other from 'N. 42°> E.' to 'N. 51° W.,' the lines produced do meet at a common point, which these surveyors insist must be taken as the section corner.

Id., at 1106-07**.** The *Sommer* Court acknowleged that field notes often controlled the outcome of a survey dispute, but determined that the field notes in question were not conclusive because the modification urged by the Defendant's surveyors was more than would be consistent with a transposition, or other typographical error:

> A section corner is where the government surveyors placed it. Where the corner monument is lost, and the markings on witness bearing trees and the calls of the original field notes are clear and consistent, these will usually prevail. Even then they are not conclusive, and other evidence as to the actual location of the original corner may be so clear and convincing that it will prevail over them. . . If the field notes are conflicting and contradictory, their use or rejection becomes a practical question. There is no universal rule applicable to such cases . . . The court must make its decision, as in any other case, by considering all the evidence that will aid it in arriving at the facts, such as the testimony of eyewitnesses as to the location of lost monuments, the testimony of surveyors based on surveys from other established locations, as well as the calls of witness trees and field notes. The direction of lines called for by the field notes may be reversed or varied, if by so doing all the known calls of the survey are harmonized; otherwise the calls are to be taken as they are written. *When they must be warped and changed, as in this case, in order to bring any result at all, most of their value as evidence is gone*. These rules are in substantial accord with the rules of the General Land Office applicable to such cases. See Rule 27, Gen. Land Office Revision of June 1, 1909, Restoration of Lost or Obliterated Corners, etc. . . . The witness trees and field notes in this case do not conclusively locate the disputed corner

Id., at 1107 [emphasis added, citations omitted]. In determining whether there was sufficient evidence to justify the District Court's verdict, the *Sommer* Court did note that the County Surveyor appeared to have made some errors in his paperwork:

> Defendant's surveyors verified their location of this line by measurement from other established monuments. The county surveyor located his line in a similar manner. They arrived at different results. Defendant contends that the county surveyor's measurements were palpably wrong, in that he, in fact, in reducing chains and links to feet and inches, used a 10-inch foot. It does appear that in the notations, on his maps, of measurements from witness bearing trees, he made precisely this mistake in two instances, once at the section line a mile to the south, and again at the quarter corner a mile to the west, of the disputed corner. We think it does not conclusively appear that he made this mistake in his measurements on the ground. His location of the south section corner in fact agrees with that of defendant's surveyors. His location of the quarter corner differs from that of defendant's surveyors, but the discrepancy is not even approximately the difference that would result from the use of a 10-inch foot. The same may be said of all other discrepancies in their surveys.

Id. In affirming the District Court's ruling favoring the County Surveyor's line, the *Sommer* Court noted that the line was affirmed by other evidence, consistent with proportionate measurement principles, and avoided the inconvenience to the parties of a property line that varied from the one the parties had relied on:

> We are not obliged to determine the extent to which the county surveyor's errors would impeach his whole survey if his testimony stood alone, for plaintiffs do not depend wholly upon the testimony of the county surveyor. His location of this corner is sustained by the Hart survey, by the oral testimony of eyewitnesses as to the actual location of the original corner post, and by the acquiescence of all parties for many years. *It also has the merit of maintaining a proper proportion of the distance* between established monuments; that is, it makes the north line of the N. E. 1/4 of section 9 substantially half as long as the north line of section 10. *This result is*

> *always desirable, and is sometimes commanded.* See rule 56, Gen. Land Office Revision of June 1, 1909, Restoration of Lost or Obliterated Corners, etc. Defendant's surveys have none of these merits. *They repudiate the line and the corner established in the Hart survey. They change a line long acquiesced in by these parties. They arrive at an unequal apportionment of the distance between established monuments*, and give to the north line of section 10, 5262 feet, and the north line of the N. E. 1/4 of section 9, 2,665.6 feet.

Id. [emphasis added].

***Case Study 3*: Dittrich v. Ubl**.

In this case, considered by the Minnesota Supreme Court in 1944, neighbors disputed the location of a lot line because a barn either was, or wasn't, encroaching across it, depending on the location of a line.

> Plaintiff claims that defendant is guilty of trespass upon his property in that defendant's barn, most of which is located on lot 12, protrudes over the property line about 2.5 feet, and to that extent is actually located on plaintiff's lot 13. Defendant denies the charge of trespass and contends that the barn, which was built about 1899, is located entirely upon lot 12. Plaintiff bases his claim upon a private survey of his lot made in 1941, the results of which made such encroachment appear. Defendant relies upon the actual location of lot 13 upon the ground as determined 'according to the plat' of the city of New Ulm provided for in plaintiff's deed.

Dittrich v. Ubl, 13 N.W.2d 384, 386 (Minn., 1944). A key monument in the original plat had been lost and replaced:

> The original plat of the city of New Ulm appears to have been lost, but a certified copy thereof, offered as an exhibit, indicates that one of the monuments used in the original survey was set in the center of Broadway and Center streets. Broadway runs parallel to Minnesota street one block to the west thereof and likewise intersects Center street. F. D. Minium, city engineer for New Ulm from 1912 to 1933 with the exception of 1924 and 1925, testified that this original monument has been replaced by a granite marker.

Id., at 387. Plaintiff's surveyor used two different monuments, ones that had been commonly used in making local surveys. This caused the property line in question to shift:

> [E]ngineers and surveyors for the city on several occasions used as a point of beginning one certain landmark in the form of an iron pipe located in the northwest corner of Minnesota street and Seventh South street, which is hereinafter referred to as the Behnke corner. . . the landmark has been there for about 40 years. An-other monument frequently used for street improvements was a concrete marker located in the southwest corner of Minnesota street and Eighth South street. It appears that this monument has been located there for a shorter period of time . . . The results of plaintiff's private survey of 1941 were reached by using as a point of beginning the iron pipe at the Behnke corner and the concrete monument located in the southwest corner of the intersection of Minnesota and Eighth South streets. . . .There is no dispute in the testimony that, in using the Behnke corner as a point of beginning, the most southerly boundary of lot 13 would extend approximately 2.5 feet farther south.

Id. That two and a half feet, of course, was the amount of the encroachment at issue. Defendant countered that Plaintiff's survey was improper because it did not rely on any monument shown in the original plat:

> Defendant asserts that no trespass has been shown; that plaintiff has failed to use as a point of beginning a monument which is specifically referred to on the plat and the original position of which can be definitely located on the ground at the center of Broadway and Center streets; and that the monuments adopted by plaintiff cannot be traced back to the original monuments as located on the ground when the first survey was made.

Id. The district court ruled in favor of the plaintiff. *Id*., at 388.

The Court of Appeals reversed the District Court. In doing so, it first noted that the original monument shown on the plat could be "definitely and accurately" located by extrinsic or parol (i.e., unwritten) evidence:

> Plaintiff asserts that this is not an original monument. That must be conceded. It is a replacement monument, but it is located in the exact place mentioned on the plat. Extrinsic aids to show actual location of original monuments may be used. It is competent to prove by parol [evidence] the location thereof and, if lost or destroyed, the places where they were set. Two buildings, the post office and the Methodist Church, were properly identified [by the City Surveyor] as having been located with this monument as a starting point. Since the replacement granite marker at Center street is now under the pavement and cannot be used as the starting point, that point would have to be determined by the corners where said buildings are now located. [The City Surveyor] states that this can definitely and accurately be done. Such a monument becomes conclusive in determining the starting point of a survey.

Id. It would therefore be inappropriate to rely on a landmark not shown on the plat as a starting point, even if it was local custom to use them:

> Plaintiff relies strongly upon the fact that the Behnke monument has been used in laying out improvements by the city and that the streets themselves may serve as monuments for starting points. In support thereof he quotes 4 R. C. L., Boundaries, p. 102, § 37, reading: 'A street may be a monument, and in the absence of other controlling calls or landmarks which can be ascertained, the location and occupancy of a street as indicated by * * * its use for many years, may be taken as practical evidence of the true location of the street, and the lines of the street may then determine the location of the boundaries of abutting lands.' (Italics supplied.) We have no quarrel with this rule, but plaintiff does not bring himself within it under the facts in the case at bar. This is not a situation where there is an 'absence of other controlling calls or landmarks which can be ascertained,' but, on the contrary, the record shows a definite monument directly traceable to the one described on the original plat itself.

Id., at 389. And critically, the Benhnke corner relied on by Plaintiffs could not be traced to the original plat:

> Despite its use for many years, its origin is not shown. It is not traceable to the original plat. It does not appear to be a replacement of an original monument designated on the plat. Neither is the concrete marker at Eighth South and Minnesota streets traceable to the monument designated on the plat.

Id. Likewise, some inaccuracies contained in the plat itself would not be sufficient make a resurvey appropriate; the setting of stakes, and subsequent reliance on them, would control.

> It is stated in 8 Am.Jur., Boundaries, p. 787, § 59: 'Purchasers of town lots generally have the right to locate their lot lines according to the stakes as actually set by the platter of the lots, and no subsequent survey can unsettle such lines. In the event of a subsequent controversy the question becomes not whether the stakes were located with absolute accuracy, but whether they were planted by authority, and whether the lots were purchased and taken possession of in reliance upon them. If such was the case, the rule appears to be well established that they must govern notwithstanding any errors in locating them.'

Id. This was so despite the fact that it could cause problems for others who had acted in reliance on the Behnke marker; as the *Dittrich* court noted, those issues were not before it.

> [Plaintiff's claim that] a determination in defendant's favor will upset the boundaries of numerous lots in the city of New Ulm which have been determined from surveys made in reliance upon the Behnke monument and upon the established streets and highways and other improvements made by the city. Our answer to this is that our only concern here is whether defendant has committed a trespass by the encroachment of his barn 2.5 feet upon plaintiff's lot.

One final factor in Defendant's favor was the fact that the barn in question had been located in the same place for so long. This provided evidence of the respective parties' intentions:

> Further fortifying defendant's position that no trespass had been committed are the facts that the barn had been located in the same position since about 1899; that the fence separating lots 11 and 12 has been in the same position since 1897; and that a fence stood between lots 13 and 14 from 1906 until removed by plaintiff in 1937, *indicating that the intention of the parties was governed by the location of the lots on the ground as designated on the plat and that the parties placed a practical construction upon the location of the lots in accordance with the measurements of the plat. In the last analysis, the call adopted as the superior and controlling one should be that which is most consistent with the apparent intent of the grantor*. 129 A.S.R. 991, annotation, subd. II. The cardinal rule is to ascertain and give effect to the intention of the parties. In case of doubt, courts should consider the facts and circumstances attending the execution of a deed, the practical construction of it by the parties and their grantees, and the preliminary negotiations. Fagan v. Simms, Minn., 12 N.W.2d 783, filed December 31, 1943; Sandretto v. Wahlsten, 124 Minn. 331, 144 N.W. 1089.

Id. It was also significant that the barn was constructed when the original monuments shown on the plat were still in place:

> *A building or fence constructed according to stakes set by a surveyor at a time when these were still in their original locations may become a monument after such stakes have been removed or*

> *disappear, and, next to stakes, they may be the next best evidence of the true line.* City of Racine v. Emerson, 85 Wis. 80, 55 N.W. 177, 39 Am.St.Rep. 819, supra. Defendant's survey used as a starting point the fence in question; and, in accordance with such survey, defendant's lot is actually located on the ground where it should be in accordance with the plat and if the monument at Broadway and Center streets had been used as a starting point. The record conclusively shows that defendant's barn does not encroach upon plaintiff's lot, and there is no trespass by defendant.

Id. It is worth noting that a very similar result was reached in a case considered by the Minnesota Supreme Court in 1956: *Erickson v. Turnquist*, 77 N.W.2d 740, 740-46 (Minn. 1956) (holding in a case where an "addition was originally platted in 1883 and the plat describe[d] and show[ed] a stone monument located at its southwest corner . .. [which] monument [was] no longer in existence," that "it must be apparent that the proper point from which to commence a survey to determine the boundary line between lots within an addition is an original or properly relocated monument or landmark within the addition itself, or from a point directly and accurately traceable to such a monument or landmark.")

Case Study 4: **United States v. Doyle**

In this federal case which has been cited by the Minnesota courts, the United States government sought to eject a trespasser from federal land: "This is an action brought by the Government alleging occupancy trespass by defendants of a portion of the Pike National Forest and seeking injunctive relief against trespass and for removal of improvements from the property in dispute." *United States v. Doyle*, 468 F.2d 633, 634 (10th Cir. 1972). At issue was a boundary running on a section line.

> The Government owns land in the Pike National Forest including the SW 1/4 SE 1/4 , Section 1, Township 8 South, Range 71 West of the 6th Principal Meridian in Jefferson County, Colorado. The defendants are the owners of the north 250 feet of the east 700 feet of the NW 1/4 NE 1/4 , Section 12, adjoining to the south. The dispute here concerns the north boundary line of the defendants' property which is formed by the section line between the described portions of Sections 1 and 12 as it runs along the north of their property. According to the Government the correct section line lies south of the property line claimed by the defendants. The defendants say that that the true line is about 124 feet north on one end and 147 feet north on the other end of the section line that the Government claims to be correct.

Id. The case became a survey dispute, centering on whether a monument was lost, and whether a subsequent resurvey performed by the Government was correct.

> [A] stone marker which was described in the original 1872 survey performed by a Mr. Oakes is lost and that the loss of this marker makes the quarter corner at the northwest corner of the NE 1/4 of Section 12 a lost corner. Therefore the Government maintains that the resurvey made

> between the northeast and northwest corners of Section 12, and establishing a straight line between them, was the proper basis for locating the true section line and the quarter corner which was located at the midpoint of that line. The defendants, on the other hand, essentially argue that collateral evidence consisting of Forest Service signs, tree blazes and testimony sufficiently established as correct the boundary relied on by them. They say that a determination that a corner is lost is disfavored and that the trial court applied the incorrect criteria and burden of proof in making its determination that the corner was lost and erred in accepting the boundary established by the 1965 resurvey.

Id. In examining both issues, the *Doyle* court first noted that Federal law provides that inacurracies in the survey of section lines will not be changed by resurvey if doing so will negatively impact on the ownership rights of property owners:

> 43 U.S.C.A. § 772 [states that t]he Secretary of the Interior may, as of March 3, 1909, in his discretion cause to be made, as he may deem wise under the rectangular system on that date provided by law, such resurveys or retracements of the surveys of public lands as, after full investigation, he may deem essential to properly mark the boundaries of the public lands remaining undisposed of: Provided, *That no such resurvey or retracement shall be so executed as to impair the bona fide rights or claims of any claimant, entryman, or owner of lands affected by such resurvey or retracement* . .”The original survey as it was actually run on the ground controls. It does not matter that the boundary was incorrect as originally established. A precisely accurate resurvey cannot defeat ownership rights flowing from the original grant and the boundaries originally marked off.. The conclusiveness of an inaccurate original survey is not affected by the fact that it will set awry the shapes of sections and subdivisions.

Id., at 636 [citations omitted; emphasis added]. The *Doyle* Court next noted that the standard for establishing a boundary marker is lost is difficult to meet, and engaged in extensive discussion about the relevant text in a Bureau of Land Management survey manual:

> The procedures for restoration of lost or obliterated corners are well established. They are stated by the cases cited below and by the supplemental manual on Restoration of Lost or Obliterated Corners and Subdivisions of Sections of the Bureau of Land Management (1963 ed.). FN4 The supplemental manual sets forth practices and contains ex-planatory and advisory comments. [FN4. This manual is a supplement to the Manual of Survey Instructions (1947) of the Bureau. The courts have recognized the manual as a proper statement of surveying principles. See *Reel v. Walter*, 131 Mont. 382, 309 P.2d 1027.]
>
> Practice 1 of the supplemental manual recognizes that an existent corner is one whose position can be identified by verifying evidence of the monument, the accessories, by reference to the field notes, or “where the point can be located by an acceptable supplemental survey record, some physical evidence, or testimony.” Practice 2 recognizes that an obliterated corner is one at whose point there are no remaining traces of the monument, or its accessories, but whose location has been perpetuated, or the point for which may be recovered beyond a reasonable doubt, by the acts and testimony of the interested land owners, competent surveyors, or other qualified local authorities, or witnesses, or by some acceptable record evidence. Practice 3 states that a lost corner is one whose position cannot be determined, beyond reasonable doubt, either from traces

> of the original marks or from acceptable evidence or testimony bearing on the original position, and whose location can be restored only by reference to one or more interdependent corners.
>
> The authorities recognize that for corners to be lost "[t]hey must be so completely lost that they cannot be replaced by reference to any existing data or other sources of information." *Mason v. Braught*, supra, 146 N.W. at 689, 690. Before courses and distances can determine the boundary, all means for ascertaining the location of the lost monuments must first be exhausted. Buckley v. Laird. 493 P.2d 1070, 1075 (Mont.); Clark, Surveying and Boundaries § 335, at 365 (Grimes ed. 1959); see advisory comments of the supplemental manual, supra at 10.
>
> The means to be used include collateral evidence such as boundary fences that have been maintained, and they should not be disregarded by the surveyor. Wilson v. Stork, 171 Wis. 561, 177 N.W. 878, 880. Artificial monuments such as roads, poles, fences and improvements may not be ignored. Buckley v. Laird, supra, 493 P.2d at 1073; Dittrich v. Ubl, 216 Minn. 396, 13 N.W.2d 384, 390. And the surveyor should consider information from owners and former residents of property in the area.

Id., at 636-37.

Despite all that, the *Doyle* Court found the trial court properly ruled that the monument had been lost. Though there was evidence to support both positions at the court below, the finding was justified by the evidence, because a sufficiently thorough search was made:

> The sufficiency of the resurvey investigation *is not free from doubt* since the record shows little contact with owners, who are one proper source of relevant collateral evidence. However, the record shows that the surveyors searched the records of the Bureau of Land Management before the . . survey. The Government surveyor approving the resurvey. . . said that prior surveys were also sought, but none were located, by requests to the county clerk, recorder and surveyor for plats filed as surveys of record. The special instructions for this resurvey recite that inquiry was made of incumbent and past surveyors and Rangers and that no factual data was discovered that would assist in recovery of the missing quarter section corner. And the original quarter corner marker placed during the 1872 survey was not located. The trial court found that this monument was not located, after a thorough search of the area by the surveyor and his crew, and the record supports this finding

Id., at 637-38 [emphasis added].

***Case Study 5*: Jung v.Linnell**.

In this unpublished decision from 2008, the Minnesota Court of Appeals considered a situation where a legal description was drafted based on an oral description of property to be sold, instead of field work:

> The primary issue at trial centered on the legal description of the [Plaintiffs'] property. Although [Defendant] had accompanied [Plaintiff's predecessor in title] to view the parcel he had selected, they did not have the property surveyed immediately. Instead, after discussing the parcel's "general area" in a surveyor's office, [Plaintiff's predecessor in title] had the surveyor draft a

legal description of the property. The resulting deed describes the property in two different ways:

> [1] A part of the West Half (W1/2) of the Southeast Quarter (SE1/4), Section 4, Township 113, Range 16, Welch Township, Goodhue County described as follows: A piece of land containing 5.7 acres more or less, starting point 400 feet from the Northwest (NW) Corner of Section 4, running South 550 feet along Township road; thence East 585 feet; thence North 550 feet; thence West 585 feet to point of beginning ... [.]
>
> [2][M]ore specifically described as: Part of W1/2 of SE1/4, Section 4, Township 113, Range 16, Goodhue County, Commencing at NW Corner of SE 1/4; Thence E. to Center of Township Road; Thence South 400 Ft for beginning; Thence East 585 Ft; Thence South 550 Ft, Thence West to Township Road North along Road to Beginning, containing 5.7 acres.

Jung v. Linnell, 2008 WL 5334852, 1 (Minn. Ct. App., 2008).

When the descriptions were surveyed, they "became problematic" when Plaintiff's predecessor in title "began to build a house." That is, there were "defects" in the first description:

> Although the first description relates the starting point to "the Northwest (NW) Corner of Section 4," [Plaintiff's predecessor's surveyor] testified that this was "a physical impossibility" because *that starting point would be "at least a half a mile from where this property was physically located*." [Plaintiff's predecessor's surveyor] also testified that he was "fairly certain" that the starting point intended by the parties is "the northwest corner *of the southeast quarter* " of section 4, as set forth in the second "more specific" description. But even if the parties had intended this to be the starting point in the first description, the first description is still ambiguous because whether the starting point is stated as "400 feet from the Northwest (NW) Corner" or as "400 feet from the Northwest (NW) Corner of the Southeast Quarter (SE1/4)" of section 4, *there is no stated direction in which to proceed from the starting point to find the point of beginning*.

Id. [emphasis added] The second legal description also had problems:

> The second description is not free of defects either, leaving a short gap in the parcel's northern boundary line. Nevertheless, [Plaintiff's Surveyor] concluded that the second description, which at least specifies a feasible starting point, *better represents the parties' intent*. To close the gap, [Plaintiff's predecessor's surveyor] assumed that the starting point is located where the township road's center intersects the quarter-section line, based on the parties' apparent intent to make the road the property's western border. Apart from this assumption, [Plaintiff's predecessor's surveyor's] survey followed the second description, and he subsequently prepared a new legal description correcting the second description's deficiencies.

Id. [emphasis added] For the trial, Defendants had their own survey made, which yielded a smaller parcel to Plaintiff and left Defendants with more property:

> The [Defendants] however, also had [Plaintiffs'] property surveyed and urged the district court to find that the first description is correct. The [Defendants] focused on the "5.7 acres" language contained in both descriptions, arguing that the 6.35-acre parcel produced by their surveyor based on the first description more accurately represents the parties' intent than the 8.06-acre parcel produced by [Plaintiff's predecessor in titles'] survey.

Id, at 2. The District Court ruled for the Plaintiff, adopting the description argued by Plaintiff's Surveyor, based on the second legal description in the set of two. *Id*.

In evaluating the District Court's decision, the *Jung* Court first noted that the District Court had resolved the matter by construing the legal in the deed, not through the doctrine of practical location: "Although the district court made findings that could conceivably support a determination by practical location, the district court actually determined the boundary line by construing the deed's ambiguous descriptions of the Jungs' parcel." *Id*., at 3. It then noted that the objective in making such a construction is to determine the parties intent:

> When construing a deed, a court's primary objective is to ascertain and give effect to the parties' intent. Thus, the question becomes whether the district court clearly erred by finding that [Defendant] and [Plaintiff's predecessor in title] intended to describe the boundaries eventually established by [Plaintiff's Surveyor's] survey."

Id.

In reviewing whether the District Court erred in ascertaining that intent, the *Jung* Court first noted that the first description in the set of two contained the errors referenced in the District Court's decision:

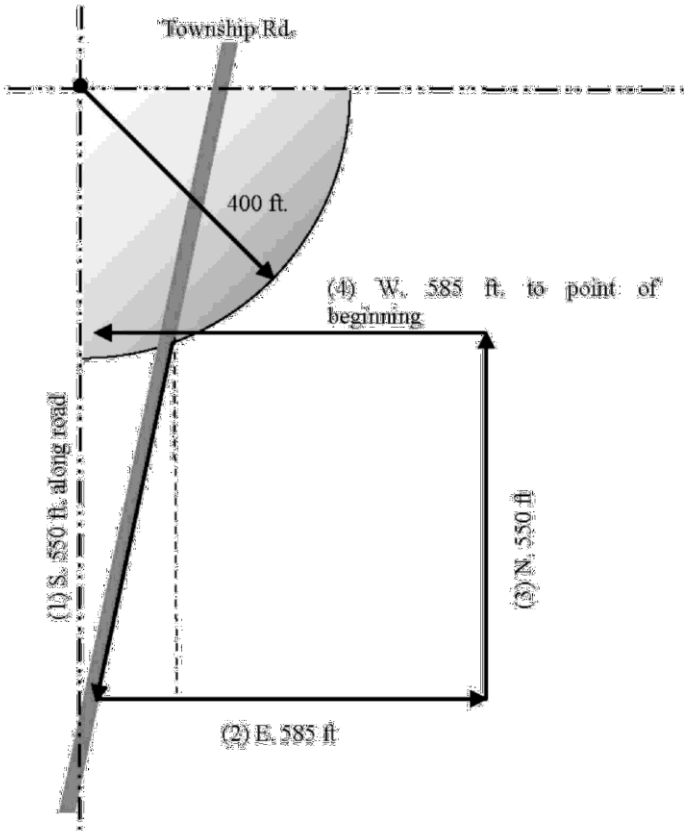
> As [Plaintiff's Surveyor] and the district court noted, the first description is highly problematic. The first boundary it defines "run[s] South 550 feet along Township road," starting from a point "400 feet from the Northwest (NW) Corner of Section 4." But as [Plaintiff's Surveyor] testified and [Defendant's] surveyor acknowledged, this is a "physical impossibility" because the township road is "at least a half a mile" from the northwest corner of section 4. Further, even if that defect were remedied, the first description does not provide the direction in which to proceed 400 feet to establish the point of beginning. Thus, the point of beginning could be anywhere along the circumference of a 400-foot radius circle.

Id. at 4. The *Jung* Court then noted an additional error:

> But even if that further defect also were remedied and a definite starting point and point of beginning were determined, the description *cannot* close because it defines a geometrical impossibility - a trapezoid with opposite sides of equal length (see below). According to the first description, both the eastern and western boundaries are 550 feet, and both the northern and southern boundaries are 585 feet. The western boundary, however, is defined as "running South 550 feet along Township road," and the township road runs at a distinct angle with respect to the northern and southern boundaries.
>
> * * * *
>
> Viewed together with a 550 foot vertical side (depicted above by the broken line) and that part of the parcel's the southern boundary line west of the starting point, the called-for segment of the

township road would be the 550-foot hypotenuse of a right triangle with a 550-foot leg. It is a mathematical impossibility for the length of a leg of a right triangle to equal the length of the hypotenuse of that right triangle. Therefore, the district court had ample reason to disfavor the first description

Id. The Court provided a graphic depiction of this problem:



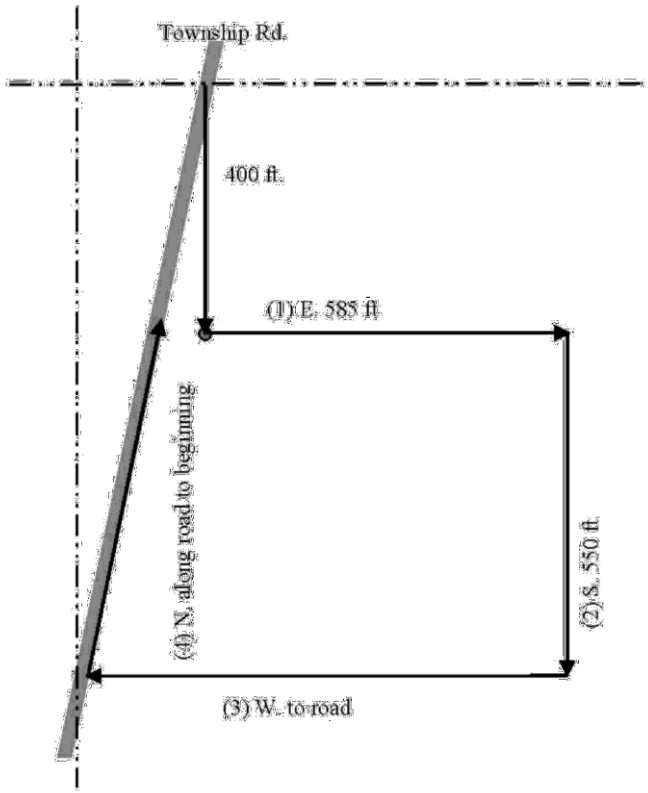
Id.

The second legal description was also flawed, but less flawed; it contained only one gap.

The second description, on the other hand, provides a definitely ascertainable starting point and point of beginning. There is one obvious defect in the resulting description, however, in that the point of beginning (400 feet south of where the township road's center intersects the quarter-section line) is short distance east of the township road, leaving a gap in the parcel's northern boundary line, as depicted below

Id..

The Jung court also supplied a graphic to illustrate this issue:



Id.

> Solving this problem required the relatively minor change of extending a single line:
>
> Because the description fails to close the northern boundary line to the parcel's west boundary (described as running "North along [Township] Road to Beginning"), [Plaintiff's Surveyor] concluded that the parties "obviously ... intended to have the west boundary of this parcel be the centerline of the road." And to effectuate the parties' intent, [Plaintiff's Surveyor] closed the gap by extending the northern boundary line the necessary distance westerly, reasonably assuming that the parties intended the starting point to be the center of the township road. Adopting Johnson's sole assumption and favoring the second description, as the district court did, is not clearly erroneous.

Id.

The *Jung* Court noted that [Defendants'] rule of construction opposing this interpretation was the number of acres stated, i.e., 5.7; but noted that Defendants could cite "cite no authority requiring an erroneous description of acreage to prevail over an erroneous metes-and-bounds description." *Id.* The *Jung* Court also noted that it should interpret an ambiguous deed in favor of the receiving party, the grantee: "Moreover, this resolution is consistent with the rule requiring the ambiguities in the deed to be construed in favor of the grantee." The Court summed up its reasoning as follows:

> In sum, [Plaintiff's Surveyor's] interpretation of the deed based on the second description produces a physically accurate and geometrically plausible parcel *by relying on a single reasonable assumption*, and is more favorable to the grantee. By contrast, [Defendant's] preferred interpretation of the deed based on the first description requires several assumptions and produces a result that does not conform to the laws of mathematics. Supported by clear and comprehensive findings and conclusions, the district court did not clearly err in its determination to adopt the former interpretation and reject the latter.

Id., at 5.

Case Study 6: **Ruikkie v. Nall**.

The key issue in *Ruikkie v. Nall*, a case the Minnesota Court of Appeals considered in 2011, was whether the subject lot had frontage on a lake. 798 N.W.2d 806, 810 (Minn. Ct. App. 2011). The issue was created by an erroneous survey which depicted a bay of a lake in the wrong place:

> The genesis of this conflict is the 1885 United States government survey of the area. The original government survey depicts a bay in the southeast portion of Mitchell Lake that covers a substantial area in what is Gov't Lots 1, 5, and 6. Testimony in this case revealed that this bay did not exist in 1885 and does not exist today. The bay did not gradually disappear over time as a result of ecological succession; the bay has simply never been there. The original government survey is therefore erroneous.

Id., at 811.

The Ruikkie's surveyor had the Lot Lines for Lots 1, 5 and 6 bend towards the lake to preserve the waterfront access:

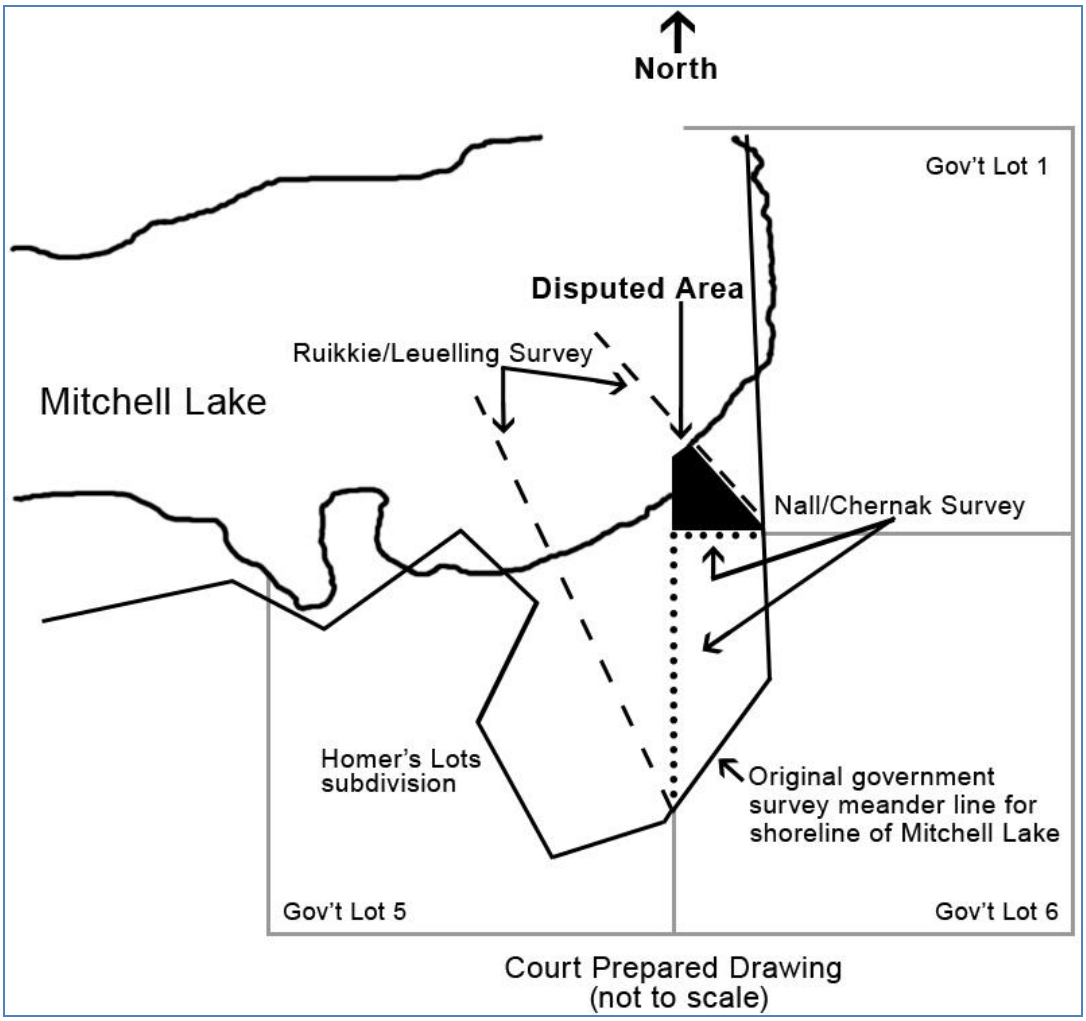
> In the summer of 2005, the Ruikkies sought advice from [Ruikkie's Surveyor] about Gov't Lot 6's boundaries. [Ruikkie's Surveyor] showed the Ruikkies a copy of the original government survey, pointed out that it clearly shows Gov't Lot 6 abutting the lake, and explained that surveying principles required the preservation of Gov't Lot 6's access to the "shrinking lake." [Ruikkie's Surveyor] created a diagram of Gov't Lot 6, using an aerial photo of the property, and superimposed angled lot lines that would, in his opinion, comply with the government survey. These angled lines start at the points at which the boundaries of Gov't Lot 6, as set by the United States government survey, reached the meander line for the bay on Mitchell Lake and then run northwesterly toward the lake's center line. This results in Gov't Lot 6 having lake frontage.

Id., at 812. In contrast, Nalls' surveyor ran the government lot lines straight over the place that the original government survey had incorrectly depicted the bay.

> [In the drawing above t]he dotted lines represent the disputed portion of [Nall's surveyor's] proposed boundaries while the dashed lines represent the disputed portions of [Ruikkie Surveyor's] proposed boundaries.

Id.

Here is a graphic depiction of the property, the original survey, and the later surveys:



Source: http://www.lawlibrary.state.mn.us/archive/ctappub/1105/opa101339-0509.pdf

Because this was registered Torrens property, "the Ruikkies filed a petition to initiate a proceeding subsequent to the initial title registration in St. Louis County District Court, requesting a judicial determination of the boundary lines of Gov't Lot 6 in accordance with the Leuelling survey." *Id.*, at 813.

In reaching its decision, the *Ruikkie* Court first noted that the U S Government Survey controls, even when it is inaccurate:

> The United States government survey subdivides real estate in Minnesota and establishes the framework for its identification. The boundaries established by the original government survey controls the judicial determination of boundaries. . . . County surveyors must make surveys "in strict conformity to the original survey made by the United States." Minn.Stat. § 389.04 (2010). When a survey is made of property that was subject to a United States government survey, "the aim of the resurvey must be to retrace and relocate the lines and corners of the original survey." . .

.

> The original government survey is the governing frame of reference even when it is inaccurate. Neither the courts nor a subsequent surveyor may correct an erroneous government survey by simply setting new section or subdivision lines. . . *Anderson v. Johanesen*, 155 Minn. 485, 486, 193 N.W. 730, 730 (1923) ("A government corner is where the government surveyors correctly *or mistakenly* place it...." (emphasis added)). For the subsequent survey "to be of any use in determining" the true boundary lines, the survey "must agree with the old survey and plat." . . .

Id., at 815 [some citations omitted].

The *Ruikkie* Court then noted that the District Court had resolved the boundary line issue based on boundary by practical location. Specifically, the District Court had modified the lot lines on the US Government Survey pursuant to this doctrine, and therefore the question before the *Ruikke* Court was "whether the practical-location doctrine may be used to resolve the error in the original government survey." *Id*., at 816.

The *Ruikke* Court found this was was improper, unless the boundary line was hopelessly ambiguous, and no other federal or state surveying standard applied:

> The practical-location boundary does not alter or shift *the location of the original government subdivision or a plat*. . . . Only if a government survey, plat, or metes-and-bounds description is so flawed that there is a hopeless ambiguity in locating a boundary and if there is not a federal or state standard, caselaw principle, or surveyor's analysis available to resolve the ambiguity, a practical location of the ownership line between neighboring landowners may be a basis for resolving the problem.. . . Parties cannot, by their conduct or stipulation, override the location of the boundary set by the original survey any more than they can stipulate that a statute is unconstitutional.

Id., at 816-17 [emphasis added]. The *Ruikke* Court found the District Court erred because it implemented boundary by practical location to adjust the US Government Survey lot lines before undertaking this analysis:

> Here, the district court did not determine that there is no federal or state rule or caselaw principle. . . . [I]t was error to resort to the doctrine of boundary by practical location to set the boundary between Gov't Lots 1 and 6 before considering federal and state standards or judicial precedents.

Id. That said, the *Ruikkie* Court went on to analyze the case under boundary by practical location principles to determine whether it could adjust the boundary line between the parties' properties, as a separate matter from the government lot line "The next issue is whether the doctrine of boundary by practical location may be used to establish a boundary between the Ruikkies and the Nalls, regardless of

the location of the boundary between Gov't Lots 1 and 6 in the original government survey." Id., at 817. That analysis, of course, is separate from a survey dispute."

Conclusion.

There are many different forms of litigation over legal descriptions, including claims of ownership based on possession, claims for reformation of documents, and survey disputes. The Minnesota courts resolve survey disputes based on their evaluation of the respective credibility of the testifying surveyors. In reaching a conclusion, a Court must decide which surveyor used better professional practices. This necessitates consideration of those practices, and of applicable precedent. The surveyor who is better able to justify, and explain, his or her conclusion based on those practices is likely to prevail.