

**REAL PROPERTY YOUNG LAWYER'S INSTITUTE**

**UNDERSTANDING SURVEYS  
AND DECODING LEGAL DESCRIPTIONS**

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19<sup>th</sup> Annual Spring Symposium  
ABA Section of Real Property, Trust & Estate Law  
Washington, D.C.

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## **AN ATTORNEY’S CHECKLIST FOR ORDERING A SURVEY**

1. Is there an existing ALTA survey on the property? It is often less expensive and quicker to ask a surveyor who previously provided an ALTA survey to “update” his work rather than employ a new survey.
2. Gather essential information to present to the surveyor, including:
  - a. Current title commitment and all exception documents. Copies of old surveys, plats, or similar documents, if available.
  - b. Specifications for what type of survey is being ordered (boundary, topographical, ALTA/ACSM Minimum Standards). If ordering an ALTA survey, provide the surveyor with a list of which “Table A” items should be included in the survey.
  - c. Is the surveyor being asked to provide any information regarding zoning compliance? Confirm whether this information is something that the surveyor is able or willing to provide.
  - d. Any lender requirements, including a special certificate, if applicable.
  - e. The legal names of all parties who should be named to rely upon the survey, including the seller and buyer (or landlord and tenant), title company, the firms representing both parties, and any lenders.
3. Provide the surveyor with sufficient time to complete the project to allow the attorneys and the title company to review the survey prior to closing.

## AN ATTORNEY'S CHECKLIST FOR REVIEWING AN ALTA SURVEY

1. Make a clean copy of the full-size survey and title commitment, and gather highlighter pens or markers in different colors.
2. Pick a color and trace the boundary of each parcel listed on the survey. Double-check that the legal description on the survey matches the legal description in the title commitment and that the legal on the survey matches the calls on the drawing. Make sure there are no typographical errors in the calls or the legal description. Has the surveyor calculated the acreage of the parcels?
3. Look at each exception to title listed in Schedule B of the commitment and ensure that the surveyor has depicted the item on the survey, or indicated that the encumbrance is not plottable or does not affect the property. If the surveyor indicates that an encumbrance is not plottable or does not apply to the property, investigate whether a document has been erroneously included in Schedule B. Pick a different color and highlight plottable encumbrances on the survey as you go. Double-check the legal descriptions in the Schedule B documents and the calls listed on the survey.
4. Check for the following potential issues which the surveyor may have mentioned in his notes or which may simply appear on the survey:
  - a. Encroachments into an adjoining parcel (fences, buildings, roads, etc.).
  - b. Encroachments from an adjoining parcel into the property.
  - c. Encroachments into an easement or right of way.
  - d. Is the property in a flood zone?
  - e. Is there adequate access to publicly dedicated roadways? Look out for "spite strips."
  - f. Is there on-site drainage or adequate access to a public drain or off-site easement?
  - g. Check for overlaps, gaps, and gores.
  - h. Understand where all easements are located with respect to improvements in place and whether they will impact potential development, expansion, or redevelopment.
  - i. Are any utility easements "missing"? Do utility lines depicted on the survey match the easements?
  - j. Are there references to any recorded documents not listed in the title commitment?
  - k. If the survey is for an improved parcel, has the surveyor counted parking spaces?
  - l. If the surveyor has not provided zoning certification, check that parking is sufficient under current zoning.

- m. Are there any depictions on the survey that raise other concerns, such as a cemetery, wetlands, or above-ground tank?
5. Check the administrative details:
- a. If Table A items were requested, check that they were all provided on the survey and in the certificate.
  - b. Does the name of the property owner on the survey match the name on the title commitment and purchase agreement?
  - c. Does the title block reference the correct version of the title commitment?
  - d. Is the form of the content of the surveyor's certificate correct and as agreed? Does it meet lender's requirements? Does it certify to the necessary parties?

## DECODING LEGAL DESCRIPTIONS

Depending upon the geographical area of an attorney's practice, she may encounter various types of legal descriptions, each of which poses its own particular kinds of problems. The following is an inexhaustive list of different types of legal descriptions and problems that may be uncovered by a survey.

### 1. Historic Legal Descriptions

#### Legal Description:

All that certain place or parcel of land, with the buildings and improvements thereon, situated in the Town of Stratford, County of Fairfield and State of Connecticut, on HAWLEY LANE and bounded and described as follows:

NORTH: On Highway about fifty-three and one-half (53 1/2) rods;

EAST: On land of Paul and Annie Tomasko;

SOUTH: On land of S. Curtis Estate and land of D.C. Wood, about forty-eight (48) rods;

WEST: On land of Stuart Kelsey.

Excepting therefrom: A certain piece or parcel of land conveyed in a deed recorded in Volume 524 at Page 814 of the Stratford Land Records and more particularly described as follows:

NORTHEASTERLY: by land now or formerly of Leto, 385 feet, more or less;

SOUTHEASTERLY: by land now or formerly of Tomasko, 100 feet, more or less;

SOUTHWESTERLY: by land now or formerly of Tomasko, 355 feet, more or less;

NORTHWESTERLY: by Hawley Lane, 130 feet, more or less

Containing about 11 acres.

**Problem:** The pavement of Hawley's Lane was 150 feet from what a surveyor had identified as the property line a number of years ago. That historic survey had been recorded. Who owned the "bulge" between the pavement of Hawley's Lane and the historic property line? (See next page for a portion of the survey).

**Potential Solution:** Obtain a "deed without covenants" or a "quitclaim deed" (depending upon the jurisdiction) from anyone who might possibly own the gap.



## 2. A "Family Plot"

The following is the legal description of a family cemetery in upstate New York that was in the middle of a tract which was to be developed for a big box store. New York law allowed the "family plot" to be taken by eminent domain and relocated to the side of the development. The relocated family plot became part of the bus tour for the Underground Railroad.

All that tract or parcel of land, situate in the City and County of Oswego and State of New York, and described as follows: to wit, Being that part of subdivision Number two of Deodatus Clark farm, heretofore and now occupied as a private family cemetery, on Lot number 11, Hamilton's Gore, in 17<sup>th</sup> Township of Scriba's Patent in Sixth Ward of Oswego City, bounded as follows, Beginning at a cedar stake in the west boundary line of said subdivision number two at a distance of 280 feet northeasterly from the south west corner stake of said subdivision Number 2 in the center of the highway and measured along said west boundary line; thence easterly by a line perpendicular to said west line of said subdivision No. 2 18 feet to a stake; thence northeasterly by line parallel to said west line of subdivision No. 2 thirty feet to a stake; thence westerly by a line parallel to the south line 18 feet to a stake in the aforesaid west line of said subdivision No. 2 and thence south westerly along the aforesaid west boundary line 30 feet to the place of beginning, enclosing a parcel of land 28 feet wide by 30 feet long within parallel lines and right angles.

Being the same premises, described in a deed from Simon B. Wilcox and Mary C., his wife, to James J. Clark by deed dated November 7, 1888 and recorded in the Oswego County Clerk's office in Book of Deeds 200 page 203 on January 5, 1889.

(See next page for a portion of the survey).

TPN: 129.29-01-01 (PARTIAL)  
FRANK LESAGE &  
ELLA E. FRANCE TO  
GEORGE KOCHER  
(REPUTED OWNER)  
LIBER 303 - PAGE 63  
RECORDED: 4/11/91  
6.411 ACRES (279,281.53 SQUARE FEET)

TPN: 129.29-01-05  
MARY M. HARTER  
(REPUTED OWNER)  
LIBER 545 - PAGE 579  
(NOTE: EXISTING TAX RECORDS SHOW  
OWNERSHIP BEING THAT OF NAN LA TULIP, ET  
AL, HOWEVER NO RECORD OF TITLE WAS  
FOUND RECORDED SUBSEQUENT TO MARY M.  
HARTER)

240,001 SQ. FT.  
5.510 ACRES

445 STATE ROUTE 104  
TPN: 129.29-01-03  
SHARON MEANEY ZIZZI TO  
STEVEN W. THOMAS  
(REPUTED OWNER)  
LIBER 1170 - PAGE 110  
RECORDED: 12/11/91

PARCEL C  
7.031 ± ACRES  
306,283.11 sq.ft.

405 STATE ROUTE 104  
TPN: 129.29-01-04  
SHARON MEANEY ZIZZI TO  
STEVEN W. THOMAS  
(REPUTED OWNER)  
LIBER 1170 - PAGE 110  
RECORDED: 12/11/91

365 STATE  
ROUTE 104  
TPN: 129.37-01-04  
DONALD S. &  
PENNY WEE TO  
STEVEN W.  
THOMAS (REPUTED  
OWNER)  
LIBER 1232  
PAGE 246  
REC'D: 11/15/1993

PARCEL A  
INCLUDING PARCEL G:  
15.060 ± ACRES  
656,028.84 sq.ft.  
EXCLUDING PARCEL G:  
14.895 ± ACRES  
648,828.84 sq.ft.

PARCEL G  
0.165 ± ACRES  
7,200.00 sq.ft.

NOTE: 30'x18' BURIAL GROUND  
PARCEL EXCEPTED FROM  
THOMAS PARCEL AS PER LIBER  
1170, PAGE 110 WHICH DEED CITES  
THE CONVEYANCE TO JAMES J.  
CLARK, RECORDED JANUARY 5,  
1894 AT LIBER 200, PAGE 203.  
THE CURRENT TAX MAP DOES  
NOT REFLECT THIS EXCEPTION.

485 STATE ROUTE 104  
TPN: 129.29-01-02  
SHARON MEANEY ZIZZI TO  
STEVEN W. THOMAS  
(REPUTED OWNER)  
LIBER 1170 - PAGE 110  
RECORDED: 12/11/91

PARCEL B  
1.004 ± ACRES  
43,717.09 sq.ft.

POINT OF BEGINNING  
OF DESCRIPTION (PARCEL C)  
BEING SITUATE N83°56'20"W,  
650.28 FEET FROM A NAIL SET  
AT THE INTERSECTION OF THE  
CENTERLINES OF N.Y.S. ROUTE 104  
AND CITY LINE ROAD.

TPN: 129.00-01-43  
META T. PRITTE TO  
GEORGE J. &  
M. SUZANNE CUPPERN  
(REPUTED OWNER)  
LIBER 673 - PAGE 14  
RECORDED: 6/22/196

28,384 SQ. FT.  
0.652 ACRES

345 STATE  
ROUTE 104  
TPN: 129.29-01-05  
NAN LA TULIP  
(REPUTED OWNER)  
LIBER 1818 -  
PAGE 036

1 STORY HOUSE  
PAVED DRIVE

1 STORY BUILDING  
(PERFORMANCE AUTO  
FOOTPRINT AREA,  
2521.49 SQUARE FEET  
HEIGHT: 14.0')

PAVED PARKING  
(NOT STRIPED)

1-FOOT NO ACCESS  
STRIP TO BE  
DONATED TO NYS  
DEPT OF  
TRANSPORTATION

PAVED DRIVE

3' WIDE CONCRETE SLUICE

POINT OF BEGINNING

3' WIDE CONCRETE SLUICE

EDGE PAVED HIGHWAY

N.Y.S. ROUTE 104

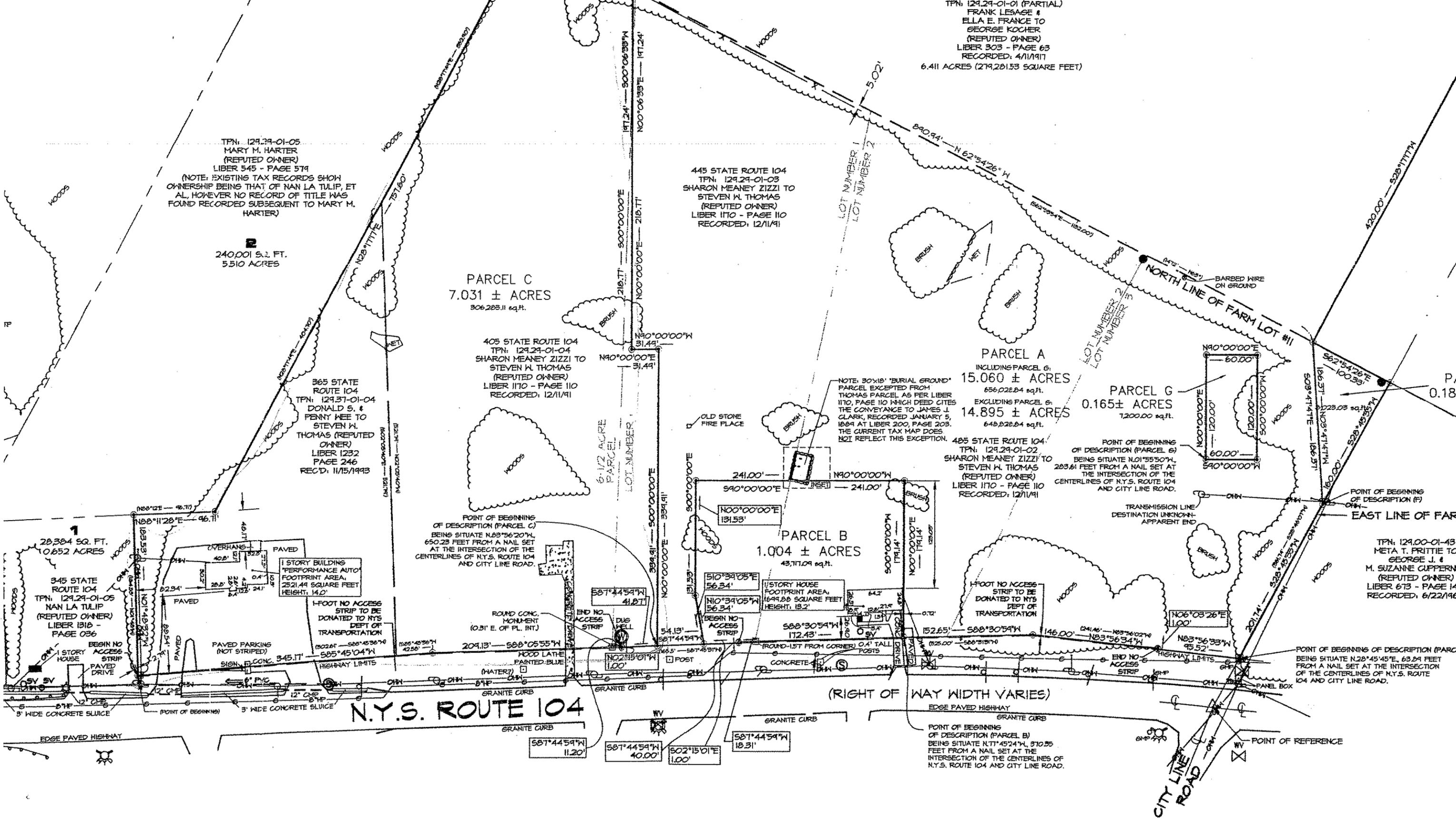
(RIGHT OF WAY WIDTH VARIES)

EDGE PAVED HIGHWAY

POINT OF BEGINNING  
OF DESCRIPTION (PARCEL B)  
BEING SITUATE N71°45'24"W, 870.55  
FEET FROM A NAIL SET AT THE  
INTERSECTION OF THE CENTERLINES OF  
N.Y.S. ROUTE 104 AND CITY LINE ROAD.

CITY LINE  
ROAD

POINT OF REFERENCE



### 3. Changing Street Names

This is the bounding description that dealt with a property long called Munroe Street that was renamed William Linskey Way and often called Linskey Way. The tax parcel was under Second Street.

Legal description:

That certain parcel of land with the buildings and improvements thereon, situated at the Northwest intersection of William Linskey Way (formerly Munroe Street) and Second Street in that part of Cambridge, Middlesex County, Massachusetts, called Cambridgeport, bounded and described as follows:

SOUTHEASTERLY on said Second Street, one hundred and 00/100 (100.00) feet;

SOUTHWESTERLY on William Linskey Way, one hundred fifty and 00/100 (150) feet;

NORTHWESTERLY on land now or formerly of Henry M. Whitney by a line parallel with Second Street, one hundred and 00/100 (100.00) feet; and

NORTHEASTERLY on land now or formerly of Henry M. Whitney by a line parallel with said William Linskey Way, one hundred fifty and 00/100 (150.00) feet.

#### 4. A Combination of Historical and Metes and Bounds Descriptions

The following legal description uses modern metes and bounds, but also refers to adjoining property owners to establish boundary lines.

A parcel of land in the City of Boston, South Boston District, County of Suffolk, southerly of Seaport Boulevard, westerly of Boston Wharf Road, northerly of land now or formerly of the McCourt-Broderick Limited Partnership and easterly of land now or formerly of the Boston Wharf Company and the MBTA, shown on a plan entitled, "55 Pittsburgh Street, Plan of Land in Boston, Massachusetts, South Boston District, Suffolk County, Scale 1"=20', 30 January 2004," prepared by Gunther Engineering, Inc., recorded with the Suffolk County Registry of Deeds in Book 33758, Page 44, which parcel is more particularly described as follows:

Beginning at the northwesterly corner of said parcel, being at a corner of the easterly line of land now or formerly of the MBTA with the southerly side of Seaport Boulevard, thence running:

- S 58-20-44 E    279.08 feet along the southerly side of Seaport Boulevard to a point of curvature; thence  
                  51.24 feet by a curve to the right having a radius of 36.28 feet with a chord bearing of S 07-52-39 E and chord length of 47.09 feet to a point of tangency at the westerly side of Boston Wharf Road; thence
- S 29-28-26 W    155.71 feet to other land now or formerly of the McCourt-Broderick Limited Partnership, the last two courses being by the westerly side of Boston Wharf Road; thence
- N 56-07-23 W    153.86 feet by land now or formerly of the McCourt-Broderick Limited Partnership and by the northerly end of Stillings Street to land now or formerly of the Boston Wharf Company; thence
- N 29-43-32 E    107.00 feet thence
- N 56-07-23 W    154.89 feet to land now or formerly of the MBTA, the last two courses being by land now or formerly of the Boston Wharf Company; thence
- N 29-24-52 E    73.06 feet to the southerly side of Seaport Boulevard and the point of beginning.

Containing 40,452 square feet, or 3,758 square meters, more or less.

## **5. Parcels in a Subdivision**

The easiest legal descriptions simply make reference to parcels that have been identified in a subdivision or plat. For example:

Parcel A and Parcel D on plan entitled, “Definitive Subdivision Plan Turnpike Industrial Park Owned by Millbury/Auburn Realty Trust”, dated May 15, 1987, Revised September 2, 1987, by Cullinan Engineering Company, recorded with said Deeds, Plan Book 647, Plan 54.

Another example:

Lot 2 in Prairie Crossing Subdivision, being a resubdivision of part of Lot 792 in Thornwood Phase 2C, being a part of the southeast quarter of section 5 and the northeast quarter of section 8, township 40 north, range 8 east of the third principal meridian, according to the plat thereof recorded December 28, 2001 as document 2001K138282, in the Village of South Elgin, Kane County, Illinois

If relying upon the definition of a parcel in a plat, be sure to thoroughly understand the plat, particularly if it is a resubdivision.

## 6. Horizontal Planes

Legal descriptions don't get much more complicated than the following example. This legal description is for two integrated office buildings located in downtown Indianapolis, in portions of lots that were platted in the mid-1800s. The buildings, which were constructed in phases from the early 1900s through the 1930s, cover portions of several lots and a vacated street. Following the development of the Circle Centre Mall in the 1990s, the lower four levels of the "North" building were incorporated into the mall under separate ownership. A modern parking garage, which is integrated into the Mall, was also constructed underneath the North building and had to be excepted from the legal description.

### Land Description

#### Tract One (the whole North Building)

Lots 1 and 2 and part of vacated Pearl Street in Square 66 of the Donation Lands of the City of Indianapolis, Indiana, described as follows: Beginning at the northeast corner of said Lot 1; thence on an assumed bearing of South 89 degrees 55 minutes 38 seconds West along the north line of said Lots 1 and 2 a distance of 134.59 feet (135 feet, plat) to the northwest corner of said Lot 2; thence South 00 degrees 00 minutes 11 seconds East along the west line of said Lot 2 a distance of 194.96 feet (195 feet, plat) to the southwest corner of said Lot 2; thence North 89 degrees 55 minutes 53 seconds East along the south line of said Lot 2 a distance of 14.89 feet to the northerly extension of the east line of the first alley west of Meridian Street; thence South 00 degrees 01 minutes 34 seconds East along said extension line a distance of 30.00 feet to the north line of Lot 10 in said Square 66; thence North 89 degrees 55 minutes 53 seconds East along the north line of said Lot 10 a distance of 120.10 feet to the northeast corner of said Lot 10; thence North 00 degrees 06 minutes 31 seconds West along the south extension of the east line of said Lot 1 and along the east line of said Lot 1 a distance of 224.97 feet to the Point of Beginning. Containing 0.686 acres, plus or minus.

**Excepting** the following horizontally divided tracts identified as Exception Tract One (floors 1, 2, and 3), Exception Tract Two (the garage), and Exception Tract Three (the West half of the fourth floor):

#### **Exception Tract 1:** (Mall Leased Premises - Levels M-1, M-2, and M-3 of Old Ayers North Building)

That part of Lots 1 and 2 and part of vacated Pearl Street in Square 66 of the Donation Lands of the City of Indianapolis, Indiana lying above a horizontal plane having an elevation of 712.9 feet (National Geodetic Vertical Datum of 1929), and lying below a horizontal plane having an elevation of 765.8 feet (NGVD 1929), described as follows:

Beginning at the northeast corner of said Lot 1; thence on an assumed bearing of South 00 degrees 06 minutes 31 seconds East along the east line of said Lot 1 and along the south extension thereof a distance of 224.97 feet (225 feet, plat) to the northeast corner of Lot 10 in said Square 66; thence South 89 degrees 55 minutes 53 seconds West along the north line of said Lot 10 a distance of 120.10 feet to the east line of the first alley west of Meridian Street; thence North 00 degrees 01 minutes 34 seconds West along the northerly extension of said east line a distance of 30.00 feet to the south line of said Lot 2; thence South 89 degrees 55 minutes 53 seconds West along the south line of said Lot 2 a distance of 14.89 feet to the southwest corner of said Lot 2; thence North 00 degrees 00 minutes 11 seconds West along the west line of said Lot 2 a distance of 194.96 feet (195 feet, plat) to the northwest corner of said Lot 2; thence North 89 degrees 55 minutes 38 seconds East along the north line of said Lots 1 and 2 a distance of 134.59 feet (135 feet, plat) to the Point of Beginning.

The above mentioned limiting horizontal planes are intended to coincide with the structural "cover" or "top" of the base of the finish floors (excluding floor coverings) of the M-1 and the M-4 levels on the existing building commonly known as the Old Ayres North Building. In other words, Exception Tract 1 is intended to describe that portion of the Old Ayres North Building from the top of the floor of the 1st level of the building through and including the top of the floor of the 4th level of the building. The elevations of said limiting planes are subject to variations in the surfaces as may exist in connection with design variations, with the building as constructed, by reason of construction variations, settling or otherwise.

**Exception Tract 2: (North Building Mall Garage Level P-1)**

That part of Lots 1 and 2 in Square 66 of the Donation Lands of the City of Indianapolis, Indiana lying below a horizontal plane having an elevation of 712.9 feet (National Geodetic Vertical Datum of 1929), described as follows:

Beginning at the northeast corner of said Lot 1; thence on an assumed bearing of South 00 degrees 06 minutes 31 seconds East along the east line of said Lot 1 a distance of 194.97 feet (195 feet, plat) to the southeast corner of Lot 1 in said Square 66; thence South 89 degrees 55 minutes 53 seconds West along the south line of said Lot 1 and Lot 2 a distance of 134.95 feet (135 feet, plat) to the southwest corner of said Lot 2; thence North 00 degrees 00 minutes 11 seconds West along the west line of said Lot 2 a distance of 194.96 feet (195 feet, plat) to the northwest corner of said Lot 2; thence North 89 degrees 55 minutes 38 seconds East along the north line of said Lots 1 and 2 a distance of 134.59 feet (135 feet, plat) to the Point of Beginning.

The above mentioned horizontal plane is intended to coincide with the structural "cover" or "top" of the base of the finish floor (excluding floor coverings) of the

M-1 level on the existing building commonly known as the Old Ayres North Building. The elevations of said limiting plane is subject to variations in the surface as may exist in connection with design variations, with the building as constructed, by reason of construction variations, settlings or otherwise."

**Exception Tract 3:** (the West half of the fourth floor of the North Building)

That part of Lot 2 and part of vacated Pearl Street in Square 66 of the Donation Lands of the City of Indianapolis, Indiana lying above a horizontal plane having an elevation of 765.8 feet and lying below a horizontal plane having an elevation of 780.2 (National Geodetic Vertical Datum of 1929), described as follows Indiana, described as follows:

Beginning at the northeast corner of said Lot 2 (the following three courses are along the north, west and south lines of said Lot 2); (1) thence South 89 degrees 55 minutes 38 seconds West (assumed bearing) a distance of 67.29 feet; (2) thence South 00 degrees 00 minutes 11 seconds East a distance of 194.96 feet; (3) thence North 89 degrees 55 minutes 53 seconds East a distance of 14.89 feet to the northerly extension of the east line of the first alley west of Meridian Street; thence South 00 degrees 01 minutes 34 seconds East along said extension line a distance of 30.00 feet to the north line of Lot 10 in said Square 66; thence North 89 degrees 55 minutes 53 seconds East along the north line of said Lot 10 a distance of 52.59 feet to the southerly extension of the east line of said Lot 2; thence North 00 degrees 03 minutes 21 seconds West along said southerly extension and along said east line a distance of 224.96 feet to the Point of Beginning.

The above mentioned limiting horizontal planes are intended to coincide with the structural "cover" or "top" of the base of the finish floors (excluding floor coverings) of the 4th and the 5th floor levels on the existing building commonly known as the Old Ayres North Building. In other words, Exception Tract 3 is intended to describe that portion of the West Half of the Old Ayres North Building from the top of the floor of the 4th level of the building through and including the top of the floor of the 5th level of the building. The elevations of said limiting planes are subject to variations in the surfaces as may exist in connection with design variations, with the building as constructed, by reason of construction variations, settling or otherwise.

**Tract Two** (the whole South Building)

Part of Lots 10, 11 and 12 in Square 66 of the Donation Lands of the City of Indianapolis, Indiana, described as follows: Beginning at the northeast corner of said Lot 10; thence on an assumed bearing of South 89 degrees 55 minutes 53 seconds West along the north line of said Lot 10 a distance of 120.10 feet (120 feet, plat) to the east line of the first alley west of Meridian Street; thence South 00 degrees 01 minutes 34 seconds East along the east line of said alley a distance

of 145.05 feet (145.5 feet, plat) to a point distant 49.50 feet north of the South line of said Lot 12; thence North 89 degrees 57 minutes 36 seconds East parallel with the south line of said Lot 12 a distance of 120.31 feet to the east line of said Lot 12; thence North 00 degrees 06 minutes 31 seconds West along the east line of said Lots 12, 11, and 10 a distance of 145.11 feet to the Point of Beginning. Containing 0.400 acres, plus or minus.

## 7. Section/Township/Range Descriptions

Outside of the original 13 colonies (including land that was in the original colonies but are now separate states, i.e. West Virginia and Maine), much of the United States is divided into Sections, Townships, and Ranges. Understanding how these function is central to decoding legal descriptions in this part of the country.

An example:

PART OF SECTION 35, TOWNSHIP 18 NORTH, RANGE 4 EAST IN HAMILTON COUNTY, INDIANA MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF THE SOUTHEAST QUARTER: THENCE SOUTH 89 DEGREES 57 MINUTES 32 SECONDS WEST (ASSUMED BEARING) ALONG THE SOUTH LINE OF SAID SOUTHEAST QUARTER SECTION 880.00 FEET TO THE BEGINNING POINT (SAID POINT ALSO BEING THE SOUTHWEST CORNER OF SUNBLEST FARMS SECTION 7, A SUBDIVISION IN HAMILTON COUNTY, INDIANA THE PLAT OF WHICH IS RECORDED IN PLAT BOOK 8, PAGES 62 AND 63 IN THE OFFICE OF THE RECORDER OF HAMILTON COUNTY, INDIANA): THENCE SOUTH 89 DEGREES 57 MINUTES 32 SECONDS WEST ALONG THE SAID SOUTH LINE 59.79 FEET; THENCE NORTH 00 DEGREES 02 MINUTES 28 SECONDS WEST 245.00 FEET; THENCE SOUTH 89 DEGREES 57 MINUTES 32 SECONDS WEST ALONG THE SAID SOUTH LINE 60.00 FEET; THENCE NORTH 00 DEGREES 02 MINUTES 28 SECONDS WEST 245.00 FEET; THENCE SOUTH 89 DEGREES 57 MINUTES 32 SECONDS WEST, PARALLEL WITH SAID SOUTH LINE 215.00 FEET; THENCE SOUTH 00 DEGREES 02 MINUTES 28 SECONDS EAST 245.00 FEET TO THE SAID SOUTH LINE; THENCE SOUTH 89 DEGREES 57 MINUTES 32 SECONDS WEST ALONG THE SAID SOUTH LINE 50.00 FEET; THENCE NORTH 00 DEGREES 02 MINUTES 28 SECONDS WEST 245.00 FEET; THENCE SOUTH 89 DEGREES 57 MINUTES 32 SECONDS WEST, PARALLEL WITH THE SAID SOUTH LINE, 80.04 FEET; THENCE NORTH 15 DEGREES 08 MINUTES 22 SECONDS EAST 654.42 FEET; THENCE SOUTH 74 DEGREES 51 MINUTES 38 SECONDS EAST 613.88 FEET TO THE WEST LINE OF SAID SUNBLEST FARMS SECTION 7; THENCE SOUTH 00 DEGREES 16 MINUTES 42 SECONDS WEST ALONG THE SAID WEST LINE 715.84 FEET TO THE BEGINNING POINT.

## COMMON LEGAL PROBLEMS ARISING FROM SURVEYS

### 1. Mismatching Legal Descriptions

- a. Problem: What if the legal description used by the surveyor is different than the legal description in the vesting deed or title commitment? In a related problem, what if the surveyor alerts you that the legal description in the vesting deed is simply inaccurate or impossible?
- b. Solution: Obtain a warranty deed with the historic legal description from the vesting deed and a quitclaim deed or deed without warranties (depending upon the jurisdiction) for the modern legal description.

### 2. Encroaching Improvements

- a. Problem: A survey shows improvements encroaching into building set back lines, easements, or the property line.
- b. Solution: It depends upon the nature of the encroachment, but this is a problem to tackle before your client becomes the owner. Due diligence will be required to see if a variance is possible (if dealing with an encroachment into a right of way or zoning-related no-build area), or if additional property can be conveyed, or if the easement can be modified to reflect the improvements.

### 3. Encroaching Improvements, Part Deux

- a. Problem: A survey shows that improvements which belong to a neighboring property owner encroach upon the subject property.
- b. Solution: Due diligence is necessary to determine whether there is an adverse possession claim, or to what extent that encroachment may hinder development plans of the subject property. Again, this is something which it is better to fully understand before your client acquires the property.

### 4. Encroaching Improvements, The Wandering Fence

- a. Problem: A fence shown on the survey roughly approximates the property line, but is not completely on one side or the other.
- b. Solution: Conduct due diligence and work it out with the adjoining property owner before closing.

### 5. Unexplained Phenomena Without Easements

- a. Problem: The survey shows evidence of utility lines, historical private roads, drainage which apparently serves adjoining land, family cemetery, or other features which are not explained by any recorded documents.
- b. Solution: This is unfortunately a common problem without a simple solution. If looking at a utility line without an easement, contact the appropriate service provider for more information. Depending upon the jurisdiction, the title company may be able to insure over some historical

features, such as a private road indicated on an old survey but not currently in existence. Evidence of human remains or archeological features are a much tougher issue and require the involvement of an attorney experience in that area.

**6. Gaps, Gores, and Spite Strips**

- a. Problem: The survey indicates that a property line does not correspond with adjoining property lines or with the right of way.
- b. Solution: Depending upon the size and severity of the issue, this may be able to be handled the same way as a mismatch between a historical legal description and a modern legal description. Obtain a quitclaim deed or deed without warranties for the gap or gore. If dealing with a mismatch with the right of way, that deed may come from the municipality. Due diligence may be required by the attorney or the surveyor to look at the legal descriptions used by adjoining property owners to understand the history and origins of the discrepancy.

## **PRACTICE POINTERS WHEN REVIEWING A SURVEY FOR A BUYER**

1. Understand what your client intends to do with the property. Have a site plan in hand as title and survey are reviewed in order to ensure that easements do not cross proposed property lines, etc.
2. Understand the limits of what the surveyor and title company can provide in the relevant jurisdiction. Some problems raised in the survey may be red herrings and are easily dismissed. Some problems can be solved by the title company granting affirmative coverage or by deleting an exception to title.
3. Order the survey in plenty of time to allow meaningful and thoughtful legal review, as well as to deal with any unexpected issues that may pop up.
4. Share the survey immediately with the client's engineers, developers, or other experts who may see practical issues as a result of their knowledge of the project.
5. Understand the impact of state regulations in the relevant jurisdiction. Must the survey be recorded?

# **An Introduction to Surveying, Surveys and Legal Descriptions**

**Second Annual Young Lawyers Institute  
Washington, D.C.**

**Gary Kent  
Schneider Corporation  
Indianapolis, Indiana**

**May 2, 2008**

## **Land Surveying is Part Science, Part Law and Part Art**

The **science** aspect is generally the science of measurement – using angle measuring devices (theodolites, total stations), distance measuring devices (electronic distance measuring instruments, steel tapes) and GPS (global positioning system which uses satellites).

The **law** aspects relate to the interpretation and resolution of legal descriptions and boundaries. There are no statutes or legislated laws that tell surveyors how to determine boundaries; the rules for that are from a body of common law derived from hundreds of years of court cases related to boundary disputes and legal descriptions. Surveyors cannot make proper boundary determinations without studying and understanding what the “weight of authority” has been in case law.

The **art** aspect has to do with judgments and decisions in the field related to where and to what extent to look for evidence. For example, having a gut feeling on where to dig to try and find a stone marker set in 1840, or how to most effectively run a survey line from one location across a ravine and river and through the trees to another location.

Surveying can also be seen as part “*doing*” and part “*thinking*.” It’s one thing to make a measurement; it’s an entirely different thing to understand where to make the measurement from, and to what.

## A Brief Introduction to the U.S. Public Land Survey System

The United States Public Land Survey System was originally conceived in 1785 and was ultimately used by the U.S. Government to define, describe and patent all of the lands west of, and not claimed by, the original colonies, except Texas and Hawaii. The map on a following page (from Restoration of Lost or Obliterated Corners and Subdivision of Sections – A Guide for Surveyors (a publication of the Bureau of Land Management) shows the public land states and the various Principal Meridians and base lines.

A Typical Survey Township (Six miles on a side)\*

|    |    |    |    |    |    |
|----|----|----|----|----|----|
| 6  | 5  | 4  | 3  | 2  | 1  |
| 7  | 8  | 9  | 10 | 11 | 12 |
| 18 | 17 | 16 | 15 | 14 | 13 |
| 19 | 20 | 21 | 22 | 23 | 24 |
| 30 | 29 | 28 | 27 | 26 | 25 |
| 31 | 32 | 33 | 34 | 35 | 36 |

The Initial Point is the intersection of a Principal Meridian with a Baseline. Some states have their own Principal Meridian and Baseline (Idaho and Montana, for example), while other states share a common Principal Meridian and Baseline (Arkansas, Missouri, Iowa, North Dakota and parts of Minnesota and South Dakota, for example).

The townships and ranges all originate and are numbered north and south, and east and west, from an “Initial Point.”

Using this numbering system, Township 37 North, Range 7 West would lie approximately 222 miles north of the baseline (37 times 6 miles) and 42 miles west of the Principal Meridian (7 times 6 miles).

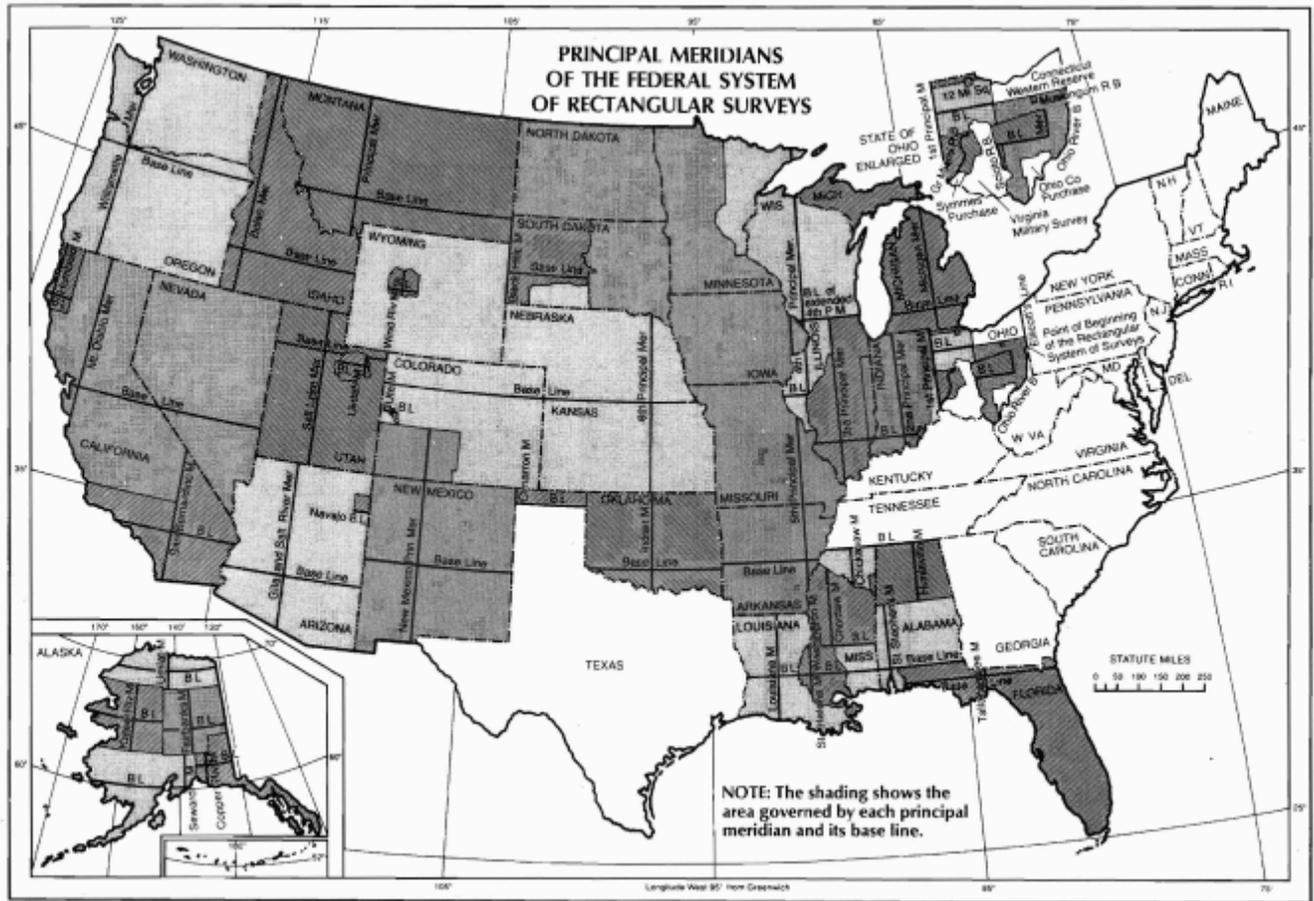
Regular townships are subdivided into 36 sections (there are situations that can occur which result in townships of irregular shapes or non-standard sizes). All of the sections of each township were to contain – as nearly as possible - 640 acres or one square mile. Although in most areas sections are fairly regular in size and shape, they will always vary, at least slightly, from a square 640 acres. This is due to curvature of the earth and inherent inaccuracies in 19th century surveying equipment and procedures.

A section of land is the smallest subdivision of the Public Land Survey in which the lines were actually run on the ground during the original survey. Smaller subdivisions of a section, such as half sections, quarter sections, half-quarter sections and quarter-quarter sections, were often surveyed by County Surveyors or private surveyors. Even when they were not surveyed, these “aliquot parts” of a section are still recognized and used in valid legal descriptions.

See maps on the following pages from Restoration of Lost or Obliterated Corners and Subdivision of Sections – A Guide for Surveyors.

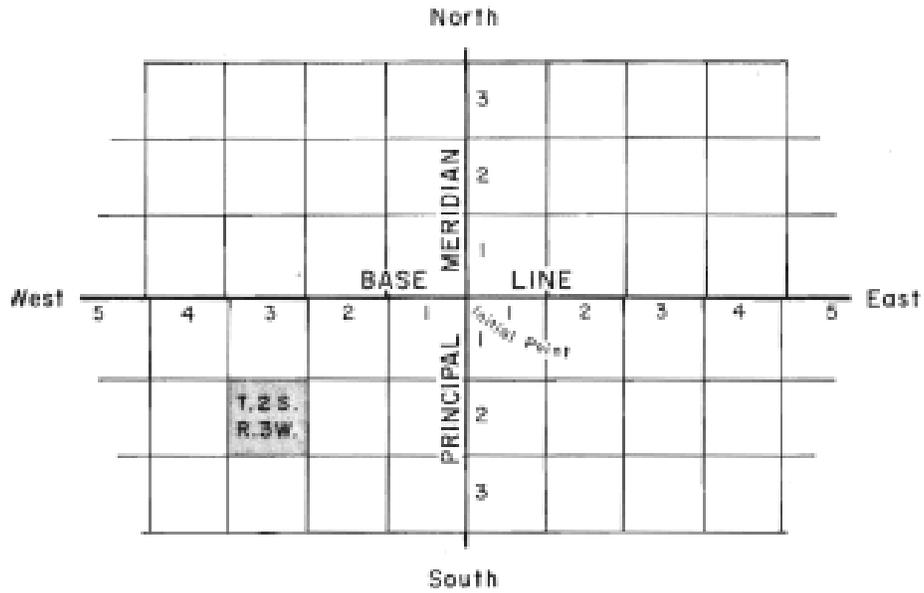
\* Survey (or “Government”) townships – which are a function of the US Public Land Survey System - differ from political (or civil) townships (which are political/jurisdictional entities). In some areas, the two types of townships may overlap geographically.

\* \* \* \* \*



# GENERALIZED DIAGRAM OF THE RECTANGULAR SYSTEM OF SURVEYS

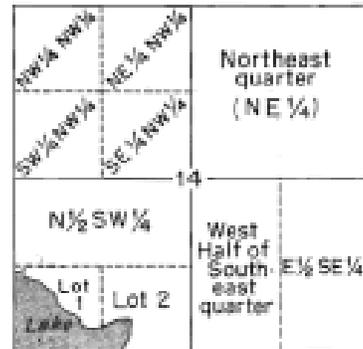
## TOWNSHIP GRID



### TOWNSHIP 2 SOUTH, RANGE 3 WEST

|    |    |    |    |            |    |
|----|----|----|----|------------|----|
| 6  | 5  | 4  | 3  | 2          | 1  |
| 7  | 8  | 9  | 10 | 11         | 12 |
| 18 | 17 | 16 | 15 | Section 14 | 13 |
| 19 | 20 | 21 | 22 | 23         | 24 |
| 30 | 29 | 28 | 27 | 26         | 25 |
| 31 | 32 | 33 | 34 | 35         | 36 |

### SECTION 14



## **Types of Surveys and Survey Standards**

The practice of Land Surveying is, in all states, regulated by a Board of Registration (referred to by different names in the various states). Some states, like Indiana, have a Board that regulates only Land Surveyors. Most states, however, have “joint” boards that regulate more than one profession. Such states typically have a joint engineering and surveying board. Some states, however, have boards that regulate multiple professions like Minnesota, whose board regulates architecture, engineering, land surveying, landscape architecture, geoscience and interior design.

The definition of surveying in all states allows the registered surveyor to rely upon the work of unlicensed subordinates working under his or her direct supervision. There are relatively few registered surveyors in the United States (perhaps 40,000).

### **Minimum Standards of Practice**

Most, but not all, states have adopted administrative rules setting certain standards of competency for surveyors. Some states actually have standards that are contained within their state’s statutes.

Such “Minimum Standards” establish requirements for the practice of Land Surveying in that state with a primary emphasis on protecting the public by setting a minimum level for the performance of different types of surveying activities. To that end, many states require that surveys, for example, must include the setting of monuments at the corners of the property and the preparation of a plat, map or record of survey. Some states require that survey plats or maps be recorded in the office of public record. Some require that the surveyor prepare a written report that discloses such things as problems encountered on the survey and particular interpretations of evidence, etc. that would be helpful to other surveyors, title companies, attorneys and owners.

Most sets of standards also establish measurement standards so that when surveys are made and monuments are set, there is an expectation of “how close” those monuments are to their reported positions. This is important because survey measurements – like all other types of measurements – are not perfect and contain inherent inaccuracies.

Surveyors are also subject to the “normal standard of care” in the region of their practice. How a competent surveyor will practice in a given area during a given timeframe will be a criteria for the performance of a survey by any surveyor in that area.

## **ALTA/ACSM Land Title Surveys**

If a real estate transaction of commercial property or property being contemplated for development involves a lender, an *ALTA/ACSM Land Title Survey* will typically be ordered. Land Title Surveys are boundary surveys which must also comply with a state's requirements, but they must also be performed in accordance with a rigorous set of standards jointly adopted by the National Society of Professional Surveyors (NSPS) and the American Land Title Association (ALTA). These standards address specific title, improvement and development concerns of interest to the title and lending industries. They were first adopted in 1962 and have been revised numerous times; the current version is dated 2005 - a copy is included in this handout.

## **Boundary Surveys**

A boundary survey is performed specifically for purposes of establishing or retracing the boundary lines of a tract of land. If the survey involves a tract that has been previously described in a document conveying an interest in real property, the survey is considered a *retracement survey*.

An *original survey* is a boundary survey performed for purposes of locating and describing real property which has not been previously described in documents conveying an interest in that property. The new parcel is normally a cut-out of a larger existing parcel, but may be created by the consolidation of several existing parcels into one.

ALTA/ACSM Land Title Surveys are also boundary surveys, albeit performed to a higher level of standard.

## **Mortgage Location Inspection, Surveyor Location Report, Mortgage Survey, et al**

If a survey involves conveyance of residential property, a *Mortgage Survey* (known by a variety of different names in the various states) is often requested. This is a special type of survey -- perhaps more properly called an inspection -- the standards of which may or may not be outlined in the respective states' administrative rules. They have a very specific purpose which is for use by a title company and lender in the securing of a mortgage loan on residential property.

In most states, property corner markers are not set on a mortgage survey and persons should not attempt to use them for any purpose other than securing the mortgage loan.

## **Topographic Survey**

A “topo” survey is performed for purposes of showing the contours, elevations and features of a tract of land. It is logically required prior to the design of any development on a property and often includes investigation of utilities.

## **Construction Layout**

Surveying services are required for the construction of virtually any building, road or other infrastructure such as bridges and utility lines. Such “construction layout” surveys typically involve staking for the horizontal alignment and setting of elevations for the correct vertical placement of the structure being constructed.

## **As-Built Surveys**

Many jurisdictions require documentation in the form of a post-construction (or “as-built”) survey to confirm that certain infrastructure was constructed in its correct horizontal and vertical position and in accordance with the approved plans. As-builts are usually required prior to jurisdictional acceptance of a dedicated street or sewer or water line, for example.

## **Other Types of Surveys**

There are many other types of surveys usually having very specific and often esoteric purposes. These include hydrographic surveys to map the beds of bodies of water, control surveys to establish highly accurate survey monuments for large-scale mapping projects, avigation surveys for purposes of defining aerial rights (as in the vicinity of airport runways), and mine surveys to define of subsurface mining rights. The average surveyor will not have expertise in every type of survey, much like the typical attorney will not have expertise in every aspect of the law.

## **Fees**

For a variety of reasons (competitive pressures, lack of survey reference markers, terrain, vegetation, destruction of old records due to courthouse fires, etc.) survey fees can vary widely, even within the same general area. In addition, problems or circumstances specific to a property may cause the fee for a survey of a specific property to be significantly higher or lower than normal.

There is no industry “fee schedule” for surveying services - and clients, real estate brokers and agents, and others often have a very poor understanding of the research and field work that may be necessary even for a survey of a small tract.

Surveyors are no different from other professions; the consumer of surveying services generally gets what she pays for, but there are many factors. In order to legally practice surveying, a surveyor must be licensed in the state in which he or she is practicing, but all licensed surveyors are not necessarily created equal. Just as with attorneys, some surveyors have certain areas of expertise that others do not have. Some have higher or lower overhead costs than others. Some have a higher caliber of employee – more educated or experienced – than others. In most areas of the United States, many surveyors do not carry errors and omissions (professional liability) insurance while others do. Caveat emptor.

## **Uncertainties in Boundary Locations**

In the process of conducting a boundary survey, a variety of conflicts between deed descriptions, plats, surveys, and even facts on the ground, will inevitably be found. A brief explanation of the causes of these discords is, in this writer's opinion, warranted, although it is not typically provided in most states. Since many disagreements between legal descriptions have their genesis in the surveys that were performed in the creation of those descriptions, a look at the sources in uncertainties in boundary determinations is necessary.

There are four potential sources of uncertainty in boundary locations. These result from (1) uncertain, indeterminate or conflicting reference monuments; (2) inconsistent, erroneous or conflicting legal descriptions, survey plats or maps; (3) lines of occupation or possession that differ from the lines of title described in the deed; and (4) the inherent inaccuracy in any measurement.

### **Reference Monumentation**

Any boundary survey must begin at or be based on at least two known "control" or "reference" points. Boundaries are not established out of thin air, they must relate in some way to other known locations, such as street rights of way, section lines, or subdivision or grant corners.

Reference monuments can take many forms other than those mentioned above since there are many points and lines referenced in any given description on which the boundary is dependent. The location of each of these dependent points or lines must be recovered, established or otherwise determined in order to retrace the boundary properly and with integrity.

The problem is that frequently the referenced point or line is not well-documented. For example, a description may call for a line to run parallel with a railroad right of way line. If that particular railroad was abandoned 30 years ago, determining exactly where the right of way line was may be problematic.

Likewise, a description may commence at the intersection of the centerlines of two old county or township roads. The surveyor may find few if any records related to that location. Upon field investigation, he or she may not find any marker at that location, in which case the location must re-established – often based on conflicting, old and incomplete records and evidence. The resulting location will not have as a high of a level of integrity or "confidence" as if the original marker had been found.

Different surveyors may interpret the records and evidence differently thereby coming up with their own differing location of the same point. Obviously, surveys

utilizing different beginning points can result in boundary corners and lines that are in conflict.

### **Record Documents**

Another source of boundary conflicts lies in the records themselves. Many boundary lines, which one would expect neighboring properties to share as “common” lines, in fact, have gaps and overlaps with their adjoiners. The exact source of these variances can sometimes be found and sometimes not. They may be result of unqualified persons writing descriptions or of descriptions that were written without benefit of a land survey.

Sometimes these problems are simply the result of mistakes that occurred in the transcription of a deed and were perpetuated through the years in a series of deed descriptions. Sometimes they are the result descriptions based on conflicting surveys (e.g. as discussed above under “Reference Monumentation”). Conflicts in the records may be the result of simple poor survey work in the first place.

In any case, in a boundary survey, it is important to recognize that conflicts will occur in the records and this is not unusual or unexpected.

### **Lines of Possession or Occupation**

It is also not unusual in the process of performing a boundary survey to find lines of occupation such as fence lines or tree rows near, but not exactly on the actual boundary line. Sometimes, these lines will differ significantly from the lines as described in the deed. This is important to recognize since great weight is often placed on lines of occupation – sometimes justifiably, sometimes not.

Often fence and tree lines, for example, are reliable evidence of where a boundary may lie. But sometimes, they differ significantly from the line described in the deed. While these differences may be evidence of the movement of lines by unwritten means such as adverse possession, finding resolution to such issues is well beyond the ability of anyone to resolve without a boundary survey, an in-depth understanding of boundary law and perhaps the assistance of an attorney and a legal action such as a quiet title suit.

### **Measurement Uncertainty**

There is no such thing as a perfect measurement. No matter what type of measuring device is used, the “true” length of anything is unknown – at least within the measurement tolerance of the device being used. Surveying is no different.

Surveyors have many highly accurate measuring devices such as electronic total stations, EDM, lasers and even GPS. But none of these are perfect and all result in some level of uncertainty in the measurement. When current technologies are applied in land surveys to retrace boundaries that were originally surveyed with a compass and chain in the mid 1800's, these measurement issues can become significant.

These issues can be the source of conflicts that occur in modern surveys and descriptions as they fit with or relate to older parcels.

### **Summary**

Interestingly, of these four sources of uncertainty in boundary location, only the last one – measurement uncertainty – is controllable by surveyor; and it cannot be eliminated, only minimized. The other sources – reference monuments, records and occupation/possession – are part of the evidence that the surveyor uses in forming an opinion about where a boundary line or corner should be placed.

# An Introduction to Interpreting Legal Descriptions

## Purpose

The primary purpose of a legal description is to describe a particular parcel of real estate in a way that uniquely describes only that subject parcel, and no other, without ambiguity.

## Sufficiency

A Legal Description is the essentially the written instructions for locating a property on the surface of the earth.

A Legal Description must be considered legally “sufficient” or the associated conveyance may be declared invalid or require reformation. “Sufficiency” means that a competent surveyor can locate the described real estate on the ground – with or without reference to extrinsic evidence. If a surveyor cannot locate the real estate, it is essentially an indeterminate tract of land. If the property cannot be identified, it is assumed that no conveyance took place.

Is the following description sufficient? An exception contained in a deed in Tippecanoe County, Indiana...

EXCEPTING also a piece of ground about 7 feet wide and 14 feet long near the Northeast corner of the West Half of the Northeast quarter of said Section, Township and Range aforesaid.

“When words, or the lack of them, or the arrangement of them, used in descriptions results in ambiguity, both the interpretation of them and the physical location of the boundary lines from them become questionable.”

Gurdon Wattles, *Writing Legal Descriptions*

“The construing of the meaning of words and phrases in an ambiguous description will be made most heavily against the scrivener.”

Gurdon Wattles, *Writing Legal Descriptions*

A Legal Description must be:

- Clear
- Concise
- Complete

## **Intent of the Parties - Interpretation of Written Instruments**

No evidence shall be used to interpret a written instrument of conveyance other than the contents of the instrument except:

- i. When a mistake or imperfection of the writings is put in issue;
- ii. When the validity of the instrument itself is at issue;
- iii. To establish illegality or fraud;
- iv. *To explain an extrinsic ambiguity*
- v. To show the circumstances under which the instrument was made for the purposes of properly construing the instrument.

(see Brown's Evidence and Procedures for Boundary Location by Curtis Brown, Walter Robillard and Donald Wilson.

## **Extrinsic Evidence**

“Evidence from outside the written document that may be sought to:

- i. Explain the meaning of words existing within a written conveyance; and
- ii. To explain conditions existing as to the date of the deed.

(see Brown's Evidence and Procedures for Boundary Location by Curtis Brown, Walter Robillard and Donald Wilson.

*“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 169 N.E.2d 196 (1960)

*“Only where the description in a deed is ‘uncertain and doubtful,’ therefore, can the court look to extrinsic evidence of location and possession to show intention.”*

Elofrson v. Lindsay, 90 Wis. 203, 205, 63 N.W. 89 (1895)

## **The Parts of a Legal Description**

- A. Caption – limits title to the area generally outlined therein
- B. Body – The actual description of the real estate
- C. Qualifying/Augmenting phrases

Note - Some descriptions may contain the entire description in the caption

## Types of Legal Descriptions

### Metes and Bounds

A metes and bounds descriptions is a legal description that describes real estate by directions and distances from a commencing and/or beginning point. It is the only type of legal description that actually circumscribes around and describes the entire perimeter of a tract of land.

#### Example

*Part of the Northeast Quarter of Section 15, Township 17 North, Range 4 East of the Second Principal Meridian in Hamilton County, Indiana being described as follows:*

***Beginning** at the Northeast corner of said Northeast Quarter; thence North 89 degrees 35 minutes 46 seconds West along the north line thereof a distance of 1201.35 feet; thence South 01 degrees 15 minutes 06 seconds West parallel with the east line of said Northeast Quarter a distance of a distance of 1167.88 feet; thence South 89 degrees 35 minutes 46 seconds East parallel with the aforesaid north line a distance of 1201.35 feet to the east line of said Northeast Quarter; thence North 01 degrees 15 minutes 06 seconds East along said east line a distance of a distance of 1167.88 feet to the **Point of Beginning**. Containing 32.21 acres, more or less.*

### Subdivision Lot

A description of a tract as a lot, or part of a lot, in a subdivision. The subdivision plat becomes part of the description by reference and the property is defined by the geometry on the record plat.

#### Example

*Lot 23 in Pebblebrook, Section 4, an Addition in Hamilton County, Indiana per plat thereof recorded as Instrument Number 91-12345 in the Office of the Hamilton County Recorder.*

### Aliquot Part

A standard portion of a U.S. Public Land Survey System section of land.

#### Example

*The West Half of the Southwest Quarter of the Northeast Quarter of Section 15, Township 17 North, Range 4 East of the Second Principal Meridian in Hamilton County, Indiana,. Containing 20 acres, more or less.*

## **Acreage**

Described by defining a specific area of land in relation to a parent tract. Acreage descriptions can be ambiguous; not in the amount of area being transferred, but in defining the dividing line.

### **Example**

*Ten acres by parallel lines off the entire north end of the Northeast Quarter of Section 15, Township 17 North, Range 4 East of the Second Principal Meridian in Hamilton County, Indiana.*

## **Bounds**

A description that defines a tract of land by that land which bounds it. A good way to eliminate the possibility of any title gaps or overlaps, but can be ambiguous if the descriptions for the adjoiners are themselves ambiguous. Often used in the metes and bounds (colonial states), but seldom in the Public Lands States.

### **Example**

*Forty acres of land in Section 15, Township 17 North, Range 4 East of the Second Principal Meridian in Hamilton County, Indiana being bounded on the north by the land of Thom England, on the East by the land of Scott Miller, on the South by the land of Dean Masters and on the West by the land of Robert Hull.*

## **Strip Descriptions**

A description typically used to describe a linear route in a more concise manner than by metes and bounds.

### **Example**

*A strip of land 20 feet in width, the centerline of which is described as follows:*

*Part of the Northeast Quarter of Section 15, Township 17 North, Range 4 East of the Second Principal Meridian in Hamilton County, Indiana being described as follows:*

**Commencing** at the Northeast corner of said Northeast Quarter; thence North 89 degrees 35 minutes 46 seconds West along the north line thereof a distance of 1201.35 feet to the **Point of Beginning**; thence South 01 degrees 15 minutes 06 seconds West parallel with the east line of said Northeast

*Quarter a distance of a distance of 1167.88 feet to the **Point of Termination***

### **Quasi - Metes and Bounds/Combination Descriptions**

Combinations of or variations on other types of descriptions.

#### **Linear (with caption)**

##### Example

*Part of the Northwest Quarter of Section 12, Township 36 North, Range 8 East in Allen County, Indiana being described as follows:*

*100 feet by parallel lines off the entire north end of the following described tract:*

*Beginning at the northwest corner of said northwest quarter; thence North 89 degrees 12 minutes 07 seconds East along the north line thereof a distance of 1200.00 feet; thence South 01 degrees 13 minutes 14 seconds East a distance of 230.00 feet; thence South 89 degrees 12 minutes 07 seconds West a distance of 1203.25 feet to the west line of said northwest quarter; thence North 00 degrees 25 minutes 07 seconds West along said west line a distance of 230.00 feet to the Point of Beginning. Containing 3.25 acres, more or less.*

#### **Linear (without caption)**

##### Example

*400 feet by parallel lines off the entire south side of Lot 25 in Pebblebrook, Section 5 as recorded in Plat Book 25, Page 13 in the Office of the Recorder of Dade County, Florida.*

#### **Proportionate Parts**

Proportionate parts descriptions are problematic in that they create parcels of equal areas (e.g. “The east half of Lot 20...” and “The West Half of Lot 20...”), but they do not create a definitive dividing line between those parts.

##### Example

*The East half of Lot 20 in Bridlewood Addition, per plat thereof recorded in Plat Book 18, Page 20 in the Office of the Recorder of Boone County, Indiana.*

## **Division Line**

Division line descriptions describe real estate as all that part of a tract of land lying in some direction of a described line.

### **Example**

*All that part of Lot 20 in Bridlewood Addition, per plat thereof recorded in Plat Book 18, Page 20 in the Office of the Recorder of Boone County, Indiana lying north of the following described line:*

*Commencing at the northeast corner of said Lot 20; thence on a plat bearing of South 00 degrees 01 minutes 35 seconds West along the east line thereof a distance of 125.00 feet to the Point of Beginning; thence North 88 degrees 37 minutes 25 seconds West a distance of 212.57 feet to the west line of Lot 20 and the Terminus.*

## **Special shape descriptions**

Aerial/Subterranean easements (see examples following). The basic description form is a planimetric (2-d) description, with complementary language limiting elevations above and or below the parcel.

### **Example**

Underground Parking Garage Parcel

*That portion of Lot 12 of Block 13 of James Blake's Addition to the City of Bowling Green, Kentucky lying below a horizontal plane having an elevation of 710.00 feet (National Geodetic Vertical Datum of 1929), except, however, that the northerly 126.58 feet by parallel lines of said part of Lot 12 is limited on its upper surface by a horizontal plane having an elevation of 699.25 feet, and also, except that the following described part of said Lot 12 (hereinafter referred to as the "709.75 tract") is limited on its upper surface by a horizontal plane having an elevation of 709.75 feet:*

*Commencing at the northwest corner of said Lot 12; then South 00 degree 00 minutes 00 seconds West (assumed bearing) along the west line thereof a distance of 126.58 feet to the point of beginning; thence North 89 degrees 59 minutes 30 seconds East parallel with the north line of said Lot 12 a distance of 137.08 feet; thence South 00 degrees 00 minutes 00 seconds West parallel with the west line of said Lot 12 a distance of 226.42 feet; thence South 89 degrees 59 minutes 30 seconds West parallel with the north line of said Lot 12 a distance of 137.08 feet to the*

*west line thereof; thence North 00 degrees 00 minutes 00 seconds East along said West line a distance of 226.42 feet to the point of beginning.*

*The above mentioned upper limiting planes are intended to coincide with the structural “cover” or “top” (hereinafter referred to and further defined as the “slab”) of the proposed underground facility. The elevations of said upper limiting planes are subject to variations in the upper surface of the slab as may exist in connection with the facility as constructed, by reason of construction variations, settling or otherwise.*

*The “slab” as used for purposes of this description refers to and includes the reinforced concrete slabs to be fastened in place to form the structural cover or top of the underground facility and does not include any waterproofing membrane, protective concrete coating or drains or other form the plaza surface or floor for any buildings or other improvements above.*

*The south line of the above described 126.58 foot strip and the north line of the above described “709.75 tract” are for purposes of this description intended to coincide with the south face of the ground level wall of a proposed skating rink building to be located within Lot 12. The location of said line is subject to variations in said south face as may exist in connection with said skating rink building as constructed within Lot 12 by reason of construction variations or otherwise.*

*The east and south lines of the above described “709.75 tract” for purposes of this description are intended to coincide with the east and south faces, respectively, of the east and south line of columns of a proposed skating rink building to be located within Lot 12. The locations of said east and south lines are subject to variations in said east and south column faces as may exist in connection with said skating rink building as constructed within Lot 12 by reason of construction variations or otherwise.*

### **Curves in Descriptions - Templates**

To be definitive in a description, a curve must be described by at least two independent elements of that curve (e.g. radius and length) together with information related to the direction of the curve. Curves can be either tangent (i.e. the radius point lies perpendicular to the end of the course from which the curve then runs), or non-tangent (when the radius point is not perpendicular to that line). A reverse curve is a compound curve; one curve leading directly into another curve with no straight segment in between, and where the first curve curves one direction (e.g. to the right) and the second curve curves the opposite direction (e.g. to the left).

Example - Tangent Curve

*...thence North 85 degrees 00 minutes 00 seconds East a distance of 950.00 feet to the point of curvature of a curve having a radius of 300.00 feet, the radius point of which bears South 05 degrees 00 minutes 00 seconds East; thence easterly and southerly along said curve an arc distance of 200.00 feet to a point bearing North 33 degrees 11 minutes 50 seconds East from the radius point; thence South 56 degrees 48 minutes 10 seconds East a distance of 450.00 feet; thence ...*

Example - Non-Tangent Curve

*...thence North 85 degrees 00 minutes 00 seconds East a distance of 950.00 feet to a non-tangent curve having a radius of 300.00 feet, the radius point of which bears South 45 degrees 00 minutes 00 seconds East; thence northeasterly and easterly along said curve an arc distance of 200.00 feet to a point bearing North 06 degrees 48 minutes 10 seconds West from the radius point; thence South 56 degrees 48 minutes 10 seconds East a distance of 450.00 feet; thence ...*

Example - Reverse Curve (all tangent)

*...thence North 85 degrees 00 minutes 00 seconds East a distance of 950.00 feet to the point of curvature of a curve having a radius of 300.00 feet, the radius point of which bears South 05 degrees 00 minutes 00 seconds East; thence easterly and southerly along said curve an arc distance of 200.00 feet to the point of reverse curvature of a curve having a radius of 500.00 feet, the radius point of which bears North 33 degrees 11 minutes 50 seconds East; thence easterly along said curve an arc distance of 75.00 feet to a point bearing South 24 degrees 36 minutes 10 seconds West from the radius point; thence South 75 degrees 23 minutes 50 seconds East a distance of 450.00 feet; thence ...*

Example - Compound Curve (all tangent)

Same template as reverse curve, only use "point of compound curvature" rather than "point of reverse curvature." Watch directions for bearings running to and from radius points!!

Example - Non-Tangent Compound and Reverse Curves

Use appropriate combinations of the above.

## Water Boundaries in Descriptions

Water boundaries are often described by use of a “meander lines.” Meander lines have as their purpose (1) providing some geometry to an otherwise irregular boundary (e.g. the low water line of a river) and (2) allowing for a reasonably accurate acreage determination. A meander line is not a boundary line, it merely approximates the location of the irregular boundary.

### Example - Meander Line

*... to the easterly low water line of the Crystal River; thence meandering said low water line the following two courses, (1) North 13 degrees 26 minutes 00 second East a distance of 257.00 feet; (2) thence North 15 degrees 25 minutes 00 seconds West a distance of 310.00 feet; thence ...*

\* \* \* \* \*

## Determining What Controls in a Legal Description

### The Order of Conflicting Title Elements

If calls in a description are in conflict, the following hierarchy will generally apply, although there are many exceptions.

(See *Brown's Boundary Control and Legal Principles* by Curtis M. Brown, Walter Robillard and Donald Wilson)

- I. Unwritten Rights
- II. Senior Rights (when there is an overlap)
- III. Written Intentions of Parties
  - a. Call for a Survey
  - b. Call for Monument
    - i. Natural
    - ii. Artificial
  - c. Adjoiners
  - d. Distance and Direction
  - e. Direction or Direction
  - f. Area (Quantity)

Clearly contrary intentions - or numerous inferior calls which taken together refute a monument, for example - can alter the hierarchy.

### What About Unwritten Rights?

"No one has the legal right nor vested authority to change any line of a recorded title without a new and proper document in the recorder's office to support it."

Gurdon Wattles, *Writing Legal Descriptions*

Unwritten rights should generally not be referenced in a legal description except perhaps by agreement unless there is a supporting record document. Unwritten rights must be taken to court in order to establish written or marketable title for that claim.

### Monuments in Descriptions

1. Natural
2. Artificial
3. Record/Legal (adjoiners)

Calling for a monument will cause it to be superior to distance and direction calls.

In general, to be controlling, a monument must be called for.  
To be valid and controlling, monuments must be

- Called for directly or by reference to a plat or survey (have a background - a history) -
- Identifiable (character -be well-defined)
- Undisturbed (recognition - be in its reported location)

If no reference is made of the survey or its monuments in the deed, the survey and its monuments will generally have no standing.

Clearly contrary intentions or numerous inferior calls which taken together refute a monument, can override a call for a monument

A call to a canal, railroad, street alley or highway is generally construed as to be to the center of that strip. However, there are cases where the ownership of the strip was in fee and there is no underlying interest by adjoining.

### **Mistakes**

Courts have held that a mistake in a description does not invalidate the entire description if the rest of the information can otherwise be verified.

### **Descriptive Courses**

Courses in a metes and bounds description are of one of two types:

- (1) A "flat call" - containing merely a direction and distance with no qualification or tie to anything at the end of the course, OR
- (2) Calls containing an assignment of a condition to either the distance, direction or both, or to the terminus.

As much as possible, controlling calls should be included as an integral part of each course around the boundary.

### **Directions**

Directions should have a basis; a statement or implication of the basis for the angular relationships given in a description or on a map. For example,

1. True
2. Magnetic/Compass
3. Assumed
4. Record

### **Distances**

Distances can be controlled by...

1. A line to which the line is running ("to the north line of Smith")
2. A specified (or record) length ("500 feet" OR "to the NW corner of Lot 15")

3. A point at a specified relationship to a control point (“to a point distant 500 feet north of an iron pin...”)

### **Quantity**

Manners of the use of quantity (area) in Legal Descriptions

1. Positively defined (“North 50 feet of Lot 12”) – Courts have considered such a description as one of quantity.
2. Dependently defined (“North 10 acres of E ½, NW ¼...” – depth will depend on width of the E ½, NW ¼)
3. Stated as supplementary information

The 1<sup>st</sup> two control in a description, the third does not.

Quantities can also be used as an exception - “except the north 50 feet...”

### **Two Descriptions in the Same Deed**

1. Metes and Bounds vs. Lot/Block  
In some states there is conflicting case law as to whether a metes and bounds description will control over a recorded block or lot description.
2. General Descriptions  
The use of a general description (usually superseding or following the primary description) may aid in ascertaining the intent of an otherwise ambiguous description. Common law has consistently established that the more specific of two conflicting descriptions will be held to control.

### **Referencing Records – Supporting information**

When making references to documents, those references should be, if at all possible, made only to recorded documents.

An unrecorded map will also be controlling if called, but finding the document and confirming that it is the same one referenced can be problematic. Also, the parties must have had common knowledge and an agreed understanding of the facts on any mutually recognized map.

Mention of a map - recorded or not – is the same as a call for a monument, however, if based on a survey, the lines surveyed and monuments set on the survey will generally override the bearings and distances shown on the map.

Public records vs. Quasi-public records

1. Office of Public Records
  - Deed Books/Libers
  - Subdivision Plats
  - Condominium Plats

- Minor Plats
- Maps/Plats attached to deeds
- Recorded Surveys

Quasi-Public records – try not to reference such documents in descriptions, although sometimes this cannot be avoided.

1. County Surveyor
2. Clerk/Court
3. City Engineer
4. City/State DOT
5. County Highway
6. etc.

### **Streets, Roads and Highways**

Many court cases have affirmed that conveyance of land adjoining a street carries the underlying fee to the center OR TO THE ORIGINAL DIVIDING LINE wherever that line was. Such a claim is subject to two conditions:

- (1) the easement and rights of the public, and
- (2) Whether or not the grantor owned that part of the street at the time of the conveyance and, if so, were there words in the conveyance indicating a definitive intent to not convey the underlying fee?

**2005 MINIMUM STANDARD DETAIL REQUIREMENTS FOR  
ALTA/ACSM LAND TITLE SURVEYS  
as adopted by  
American Land Title Association  
and  
National Society of Professional Surveyors  
(a member organization of the American Congress on Surveying and Mapping)**

It is recognized that members of the American Land Title Association (ALTA) have specific needs, peculiar to title insurance matters, which require particular information for acceptance by title insurance companies when said companies are asked to insure title to land without exception as to the many matters which might be discoverable from survey and inspection and not be evidenced by the public records. In the general interest of the public, the surveying profession, title insurers and abstracters, ALTA and the National Society of Professional Surveyors, Inc. (NSPS) jointly promulgate and set forth such details and criteria for standards. It is recognized and understood that local and state standards or standards of care, which surveyors in those respective jurisdictions are bound by, may augment, or even require variations to the standards outlined herein. Where conflicts between the standards outlined herein and any jurisdictional statutes or regulations occur, the more restrictive requirement shall apply. It is also recognized that title insurance companies are entitled to rely on the survey furnished to them to be of an appropriate professional quality, both as to completeness and as to accuracy. It is equally recognized that for the performance of a survey, the surveyor will be provided with appropriate data which can be relied upon in the preparation of the survey.

For a survey of real property and the plat or map of the survey to be acceptable to a title insurance company for purposes of insuring title to said real property free and clear of survey matters (except those matters disclosed by the survey and indicated on the plat or map), certain specific and pertinent information shall be presented for the distinct and clear understanding between the client (insured), the title insurance company (insurer), and the surveyor (the person professionally responsible for the survey). These requirements are:

1. The client shall request the survey or arrange for the survey to be requested and shall provide a written authorization to proceed with the survey from the person responsible for paying for the survey. Unless specifically authorized in writing by the insurer, the insurer shall not be responsible for any costs associated with the preparation of the survey. The request shall specify that an "**ALTA/ACSM LAND TITLE SURVEY**" is required and shall designate which of the optional items listed in Table A are to be incorporated. The request shall set forth the record description of the property to be surveyed or, in the case of an original survey, the record description of the parent parcel that contains the property to be surveyed. Complete copies of the record description of the property (or, in the case of an original survey, the parent parcel), any record easements benefiting the property; the record easements or servitudes and covenants burdening the property ("Record Documents"); documents of record referred to in the Record Documents; and any other documents containing desired appropriate information affecting the property being surveyed and to which the survey shall make reference shall be provided to the surveyor for notation on the plat or map of survey.

2. The plat or map of such survey shall bear the name, address, telephone number, and signature of the professional land surveyor who performed the survey, his or her official seal and registration number, the date the survey was completed, the dates of all of the surveyor's revisions and the caption "**ALTA/ACSM Land Title Survey**" with the certification set forth in paragraph 8.

3. An "**ALTA/ACSM LAND TITLE SURVEY**" shall be in accordance with the then-current "Accuracy Standards for Land Title Surveys" ("Accuracy Standards") as adopted, from time to time by the National Society of Professional Surveyors and the American Land Title Association and incorporated herein by reference.

4. On the plat or map of an "**ALTA/ACSM LAND TITLE SURVEY**," the survey boundary shall be drawn to a convenient scale, with that scale clearly indicated. A graphic scale, shown in feet or meters or both, shall be included. A north arrow shall be shown and when practicable, the plat or map of survey shall be oriented so that north is at the top of the drawing. Symbols or abbreviations used shall be identified on the face of the plat or map by use of a legend or other means. If necessary for clarity, supplementary or exaggerated diagrams shall be presented accurately on the plat or map. The plat or map shall be a minimum size of 8½ by 11 inches.

5. The survey shall be performed on the ground and the plat or map of an "**ALTA/ACSM LAND TITLE SURVEY**" shall contain, in addition to the required items already specified above, the following applicable information:

(a) All data necessary to indicate the mathematical dimensions and relationships of the boundary represented, with angles given directly or by bearings, and with the length and radius of each curve, together with elements necessary to mathematically define each curve. The point of beginning of the surveyor's description shall be shown as well as the remote point of beginning if different. A bearing base shall refer to some well-fixed line, so that the bearings may be easily re-established. The North arrow shall be referenced to its bearing base and should that bearing base differ from record title, that difference shall be noted.

- (b) When record bearings or angles or distances differ from measured bearings, angles or distances, both the record and measured bearings, angles, and distances shall be clearly indicated. If the record description fails to form a mathematically closed figure, the surveyor shall so indicate.
- (c) Measured and record distances from corners of parcels surveyed to the nearest right-of-way lines of streets in urban or suburban areas, together with recovered lot corners and evidence of lot corners, shall be noted. For streets and highways abutting the property surveyed, the name, the width and location of pavement relative to the nearest boundary line of the surveyed tract, and the width of existing rights of way, where available from the controlling jurisdiction, shall be shown. Observable evidence of access (or lack thereof) to such abutting streets or highways shall be indicated. Observable evidence of private roads shall be so indicated. Streets abutting the premises, which have been described in Record Documents, but not physically opened, shall be shown and so noted.
- (d) The identifying titles of all recorded plats, filed maps, right of way maps, or similar documents which the survey represents, wholly or in part, shall be shown with their appropriate recording data, filing dates and map numbers, and the lot, block, and section numbers or letters of the surveyed premises. For non-platted adjoining land, names, and recording data identifying adjoining owners as they appear of record shall be shown. For platted adjoining land, the recording data of the subdivision plat shall be shown. The survey shall indicate platted setback or building restriction lines which have been recorded in subdivision plats or which appear in Record Documents which have been delivered to the surveyor. Contiguity, gores, and overlaps along the exterior boundaries of the surveyed premises, where ascertainable from field evidence or Record Documents, or interior to those exterior boundaries, shall be clearly indicated or noted. Where only a part of a recorded lot or parcel is included in the survey, the balance of the lot or parcel shall be indicated.
- (e) All evidence of monuments shall be shown and noted to indicate which were found and which were placed. All evidence of monuments found beyond the surveyed premises on which establishment of the corners of the surveyed premises are dependent, and their application related to the survey shall be indicated.
- (f) The character of any and all evidence of possession shall be stated and the location of such evidence carefully given in relation to both the measured boundary lines and those established by the record. An absence of notation on the survey shall be presumptive of no observable evidence of possession.
- (g) The location of all buildings upon the plot or parcel shall be shown and their locations defined by measurements perpendicular to the nearest perimeter boundaries. The precision of these measurements shall be commensurate with the Relative Positional Accuracy of the survey as specified in the current Accuracy Standards for ALTA/ACSM Land Title Surveys. If there are no buildings erected on the property being surveyed, the plat or map shall bear the statement, "No buildings." Proper street numbers shall be shown where available.
- (h) All easements evidenced by Record Documents which have been delivered to the surveyor shall be shown, both those burdening and those benefiting the property surveyed, indicating recording information. If such an easement cannot be located, a note to this effect shall be included. Observable evidence of easements and/or servitudes of all kinds, such as those created by roads; rights-of-way; water courses; drains; telephone, telegraph, or electric lines; water, sewer, oil or gas pipelines on or across the surveyed property and on adjoining properties if they appear to affect the surveyed property, shall be located and noted. If the surveyor has knowledge of any such easements and/or servitudes, not observable at the time the present survey is made, such lack of observable evidence shall be noted. Surface indications, if any, of underground easements and/or servitudes shall also be shown.
- (i) The character and location of all walls, buildings, fences, and other visible improvements within five feet of each side of the boundary lines shall be noted. Without expressing a legal opinion, physical evidence of all encroaching structural appurtenances and projections, such as fire escapes, bay windows, windows and doors that open out, flue pipes, stoops, eaves, cornices, areaways, steps, trim, etc., by or on adjoining property or on abutting streets, on any easement or over setback lines shown by Record Documents shall be indicated with the extent of such encroachment or projection. If the client wishes to have additional information with regard to appurtenances such as whether or not such appurtenances are independent, division, or party walls and are plumb, the client will assume the responsibility of obtaining such permissions as are necessary for the surveyor to enter upon the properties to make such determinations.
- (j) Driveways, alleys and other ways of access on or crossing the property must be shown. Where there is evidence of use by other than the occupants of the property, the surveyor must so indicate on the plat or map. Where driveways or alleys on adjoining properties encroach, in whole or in part, on the property being surveyed, the surveyor must so indicate on the plat or map with appropriate measurements.
- (k) As accurately as the evidence permits, the location of cemeteries and burial grounds (i) disclosed in the Record Documents provided by client or (ii) observed in the process of performing the field work for the survey, shall be shown.
- (l) Ponds, lakes, springs, or rivers bordering on or running through the premises being surveyed shall be shown.

6. As a minimum requirement, the surveyor shall furnish two sets of prints of the plat or map of survey to the title insurance company or the client. If the plat or map of survey consists of more than one sheet, the sheets shall be numbered, the total number of sheets indicated and match lines be shown on each sheet. The prints shall be on durable and dimensionally stable material of a quality standard acceptable to the title insurance company. The record title description of the surveyed tract, or the description provided by the client, and any new description prepared by the surveyor must appear on the face of the plat or map or otherwise accompany the survey. When, in the opinion of the surveyor, the results of the survey differ significantly from the record, or if a fundamental decision related to the boundary resolution is not clearly reflected on the plat or map, the surveyor may explain this information with notes on the face of the plat or map or in accompanying attachments. If the relative positional accuracy of the survey exceeds that allowable, the surveyor shall explain the site conditions that resulted in that outcome with a note on the face of the map or plat.

7. Water boundaries necessarily are subject to change due to erosion or accretion by tidal action or the flow of rivers and streams. A realignment of water bodies may also occur due to many reasons such as deliberate cutting and filling of bordering lands or by avulsion. Recorded surveys of natural water boundaries are not relied upon by title insurers for location of title.

When a property to be surveyed for title insurance purposes contains a natural water boundary, the surveyor shall measure the location of the boundary according to appropriate surveying methods and note on the plat or map the date of the measurement and the caveat that the boundary is subject to change due to natural causes and that it may or may not represent the actual location of the limit of title. When the surveyor is aware of changes in such boundaries, the extent of those changes shall be identified.

8. When the surveyor has met all of the minimum standard detail requirements for an ALTA/ACSM Land Title Survey, the following certification shall be made on the plat:

**To (name of client), (name of lender, if known), (name of title insurance company, if known), (name of others as instructed by client):**

**This is to certify that this map or plat and the survey on which it is based were made in accordance with the "Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys," jointly established and adopted by ALTA and NSPS in 2005, and includes Items \_\_\_\_\_ of Table A thereof. Pursuant to the Accuracy Standards as adopted by ALTA and NSPS and in effect on the date of this certification, undersigned further certifies that in my professional opinion, as a land surveyor registered in the State of \_\_\_\_\_, the Relative Positional Accuracy of this survey does not exceed that which is specified therein.**

Date: \_\_\_\_\_ (signed) \_\_\_\_\_ (seal)  
Registration No. \_\_\_\_\_

NOTE: If, as otherwise allowed in the Accuracy Standards, the Relative Positional Accuracy exceeds that which is specified therein, the following certification shall be made on the plat:

**To (name of client), (name of lender, if known), (name of title insurance company, if known), (name of others as instructed by client):**

**This is to certify that this map or plat and the survey on which it is based were made in accordance with the "Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys," jointly established and adopted by ALTA and NSPS in 2005, and includes Items \_\_\_\_\_ of Table A thereof. Pursuant to the Accuracy Standards as adopted by ALTA and NSPS and in effect on the date of this certification, undersigned further certifies that in my professional opinion, as a land surveyor registered in the State of \_\_\_\_\_, the maximum Relative Positional Accuracy is \_\_\_\_\_ feet.**

Date: \_\_\_\_\_ (signed) \_\_\_\_\_ (seal)  
Registration No. \_\_\_\_\_

*The 2005 Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys are effective January 1, 2006. As of that date, all previous versions of the Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys are superseded by these 2005 standards.*

*Adopted by the American Land Title Association on October 11, 2005.  
Adopted by the Board of Directors, National Society of Professional Surveyors on October 24, 2005.  
American Land Title Association, 1828 L St., N.W., Suite 705, Washington, D.C. 20036.  
National Society of Professional Surveyors, Inc., 6 Montgomery Village Avenue, Suite 403, Gaithersburg, MD 20879*

## TABLE A

### OPTIONAL SURVEY RESPONSIBILITIES AND SPECIFICATIONS

**NOTE:** The items of Table A must be negotiated between the surveyor and client. It may be necessary for the surveyor to qualify or expand upon the description of these items, e.g., in reference to Item 6, there may be a need for an interpretation of a restriction. The surveyor cannot make a certification on the basis of an interpretation or opinion of another party. Items 16, 17 and 18 are only for use on projects for the U.S. Department of Housing and Urban Development (HUD).

If checked, the following optional items are to be included in the ALTA/ACSM LAND TITLE SURVEY, except as otherwise negotiated:

1. \_\_\_\_\_ Monuments placed (or a reference monument or witness to the corner) at all major corners of the boundary of the property, unless already marked or referenced by an existing monument or witness to the corner.
2. \_\_\_\_\_ Vicinity map showing the property surveyed in reference to nearby highway(s) or major street intersection(s).
3. \_\_\_\_\_ Flood zone designation (with proper annotation based on federal Flood Insurance Rate Maps or the state or local equivalent, by scaled map location and graphic plotting only.)
4. \_\_\_\_\_ Gross land area (and other areas if specified by the client).
5. \_\_\_\_\_ Contours and the datum of the elevations.
6. \_\_\_\_\_ List setback, height, and floor space area restrictions disclosed by applicable zoning or building codes (beyond those required under paragraph 5d of these standards). If none, so state. The source of such information must be disclosed. See "Note" above.
7. \_\_\_\_\_ (a) Exterior dimensions of all buildings at ground level  
\_\_\_\_\_ (b) Square footage of:  
\_\_\_\_\_ (1) exterior footprint of all buildings at ground level  
\_\_\_\_\_ (2) gross floor area of all buildings; or  
\_\_\_\_\_ (3) other areas to be defined by the client  
\_\_\_\_\_ (c) Measured height of all buildings above grade at a defined location. If no defined location is provided, the point of measurement shall be shown.
8. \_\_\_\_\_ Substantial, visible improvements (in addition to buildings) such as billboards, signs, parking structures, swimming pools, etc.
9. \_\_\_\_\_ Parking areas and, if striped, the striping and the type (e.g. handicapped, motorcycle, regular, etc.) and number of parking spaces.
10. \_\_\_\_\_ Indication of access to a public way on land such as curb cuts and driveways, and to and from waters adjoining the surveyed tract, such as boat slips, launches, piers and docks..
11. \_\_\_\_\_ Location of utilities (representative examples of which are shown below) existing on or serving the surveyed property as determined by:  
\_\_\_\_\_ (a) Observed evidence  
\_\_\_\_\_ (b) Observed evidence together with evidence from plans obtained from utility companies or provided by client, and markings by utility companies and other appropriate sources (with reference as to the source of information)
  - railroad tracks and sidings;
  - manholes, catch basins, valve vaults or other surface indications of subterranean uses;
  - wires and cables (including their function, if readily identifiable) crossing the surveyed premises, all poles on or within ten feet of the surveyed premises, and the dimensions of all crossmembers or overhangs affecting the surveyed premises; and
  - utility company installations on the surveyed premises.
12. \_\_\_\_\_ Governmental Agency survey-related requirements as specified by the client.

- 13. \_\_\_\_\_ *Names of adjoining owners of platted lands.*
- 14. \_\_\_\_\_ *The distance to the nearest intersecting street as designated by the client*
- 15. \_\_\_\_\_ *Rectified orthophotography, photogrammetric mapping, laser scanning and other similar products, tools or technologies may be utilized as the basis for the location of certain features (excluding boundaries) where ground measurements are not otherwise necessary to locate those features to an appropriate and acceptable accuracy relative to a nearby boundary. The surveyor shall (a) discuss the ramifications of such methodologies (e.g. the potential accuracy and completeness of the data gathered thereby) with the title company, lender and client prior to the performance of the survey and, (b) place a note on the face of the survey explaining the source, date, relative accuracy and other relevant qualifications of any such data.*
- 16. \_\_\_\_\_ *Observable evidence of earth moving work, building construction or building additions within recent months.*
- 17. \_\_\_\_\_ *Any changes in street right of way lines either completed or proposed, and available from the controlling jurisdiction. Observable evidence of recent street or sidewalk construction or repairs.*
- 18. \_\_\_\_\_ *Observable evidence of site use as a solid waste dump, sump or sanitary landfill.*
- 19. \_\_\_\_\_

# Accuracy Standards for ALTA/ACSM Land Title Surveys

## Introduction

These Accuracy Standards address Relative Positional Accuracies for measurements that control land boundaries on ALTA/ACSM Land Title Surveys.

In order to meet these standards, the surveyor must assure and certify that the Relative Positional Accuracies resulting from the measurements made on the survey do not exceed that which is allowable.

If the size or configuration of the property to be surveyed, or the relief, vegetation or improvements on the property will result in survey measurements for which the allowable Relative Positional Accuracies will be exceeded, the surveyor must alternatively certify as to the Relative Positional Accuracy that was otherwise achieved on the survey.

## Definition:

“Relative Positional Accuracy” means the value expressed in feet or meters that represents the uncertainty due to random errors in measurements in the location of any point on a survey relative to any other point on the same survey at the 95 percent confidence level.

## Background

The lines and corners on any property survey have uncertainty in location which is the result of (1) availability and condition of reference monuments, (2) occupation or possession lines as they may differ from record lines, (3) clarity or

ambiguity of the record descriptions or plats of the surveyed tracts and its adjoiners and (4) Relative Positional Accuracy.

The first three sources of uncertainty must be weighed as evidence in the determination of where, in the professional surveyor’s opinion, the boundary lines and corners should be placed. Relative Positional Accuracy is related to how accurately the surveyor is able to monument or report those positions.

Of these four sources of uncertainty, only Relative Positional Accuracy is controllable, although due to the inherent error in any measurement, it cannot be eliminated. The first three can be estimated based on evidence; Relative Positional Accuracy can be estimated using statistical means.

The surveyor shall, to the extent necessary to achieve the standard contained herein, (1) compensate or correct for systematic errors, including those associated with instrument calibration, (2) select the appropriate equipment and methods, and use trained personnel and (3) use appropriate error propagation and other measurement design theory to select the proper instruments, field procedures, geometric layouts and computational procedures to control random errors.

If radial survey methods, GPS or other acceptable technologies or procedures are used to locate or establish points on the survey, the surveyor shall apply appropriate procedures in order to assure

that the allowable Relative Positional Accuracy of such points is not exceeded.

### **Computation of Relative Positional Accuracy**

Relative Positional Accuracy may be tested by:

- (1) comparing the relative location of points in a survey as measured by an independent survey of higher accuracy or
- (2) the results of a minimally constrained, correctly weighted least square adjustment of the survey.

### **Allowable Relative Positional Accuracy for Measurements Controlling Land Boundaries on ALTA/ACSM Land Title Surveys**

|                               |
|-------------------------------|
| 0.07 feet (or 20 mm) + 50 ppm |
|-------------------------------|

## Checklist for 2005 ALTA/ACSM Land Title Survey

### Paragraph 2

- Surveyor name, address, telephone number
- Surveyor seal and signature
- Caption "ALTA/ACSM Land Title Survey"
- Date of survey completion
- Date of any revisions
- Certification per paragraph 8

### Paragraph 4

- Scale
- Graphic scale
- North orientation
- Legend
- Minimum size 8½" by 11"

### Paragraph 5a

- Mathematical dimensions and directions
- Curve data
- Point of Beginning
- Well-fixed basis of bearings (note if survey basis differs from title basis)
- North arrow referenced to basis of bearings

### Paragraph 5b

- Record and measured angles/bearings and distances
- Statement if record description does not close mathematically

### Paragraph 5c

- Measured and record distances to nearest street R/W lines
- Evidence of lot corners
- Names and widths of streets and highways
- Note any use contrary to the above
- Access (or lack thereof) to abutting streets and highways
- Private roads to be so indicated
- Streets defined, but not opened to be identified

### Paragraph 5d

- Referenced record plats or maps, filing date, map numbers, etc.
- Lot, block, etc. of surveyed premises
- Names of unplatted adjoiners with recorded lot or parcel numbers & recording info
- Platted setback or building restriction lines recorded on subdivision plat or on a record document which has been provided

- Interior parcel lines with gores and overlaps, if any
- Balance of parcel shown if whole parcel not surveyed

Paragraph 5e

- Evidence of monuments found or placed and noted accordingly
- Monuments beyond the limits of surveyed premises used for establishing corners

Paragraph 5f

- Location and character of possession in relation to measured and record boundary

Paragraph 5g

- Buildings on premises with measurements perpendicular to boundaries
- “No Buildings” statement if there are no buildings
- Building addresses

Paragraph 5h

- Evidence of easements or servitudes referenced in record documents, on or crossing premises, including adjoining premises if they appear to affect premises
- Easements and servitudes per record; note if no observable evidence
- Observable evidence of easements and servitudes which appear to affect the premises
- Surface evidence of underground easements or servitudes

Paragraph 5i

- Character and location of walls, fences, etc. within 5 feet of boundaries – either side
- Evidence of encroaching structures, either way, across boundaries, easement lines or setback lines with extent of encroachment

Paragraph 5j

- Driveways or alleys and other means of access
- Evidence of adverse use – either way – with appropriate measurements
- Encroaching driveways or alleys on adjoining properties

Paragraph 5k

- Cemeteries of burial grounds as observed or per the records

Paragraph 5l

- Ponds, lakes, springs, rivers bordering on or running through

Paragraph 6

- Prints on durably stable material
- Sheet number and total number of sheets
- Match lines if more than one sheet
- Two copies of survey plat and legal description
- If description is not on plat – identify surveyor’s file number, political subdivision, etc.
- Notes at the surveyor’s option

Paragraph 7

- Caveat if natural water boundary
- Natural water boundary located appropriately with date of measurement

Accuracy Standards

- In conformance with the allowable Relative Positional Accuracy