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Legal Description Conundrums



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What is the purpose of a legal description?

- How was the description created?
- How is the description used in a survey?

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Purposes of a land description

- Identify the property
- Enable transfer of property
- Compare the original description to the current description
- As 'evidence of title' vs. as 'guarantee of title'

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Rule of Construction:

The cardinal rule of construing a legal description is to ascertain and give effect to the intention of the parties.

Dittrich v. Ubl, 216 Minn. 396, 13 N.W.2d 384 (1944)

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Two reasons for a survey

- Original survey creates the boundary
- Resurvey original boundary

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Basis of Bearings

Surveyor's jargon: "...the determination for the orientation of angular relationships in a description or on a map". Wattles, "Writing Legal Descriptions"

Lawyer speak: 'basis of bearing' means the bearing in degrees, minutes and seconds, or equivalent, of a line between two (2) stated or implied monuments or corners which serves as the reference bearing for all other lines on the survey

Example: For the purposes of this description, the east line of the Northeast Quarter of Section 23 is assumed to bear-

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- "South" or "S 0 degrees 00 minutes 00 seconds East"
- "South 0 degrees 25 minutes 15 seconds East" per the Sherburne County Coordinate system, NAD 83, 1986.





1st Principal:

- Boundary determined at time of creation

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2nd Principal:

- Resurvey must follow in the footsteps of creator of the parcel

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Retracement Survey

Legal description provides the means to retrace original survey

or

Legal description defines boundary of the parcel

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The reason for the resurvey

- To apply the deed to the land, or the land to the deed?
- To identify the “property”, and then retrace the description back to the point of commencement?
- To have a land surveyor, a “fact-finder”, determine any ambiguities (latent or patent), gaps/overlaps with adjoiners, and document same?



Monuments set at time of original survey are inconsistent with distance and bearings in legal description –

Which control?

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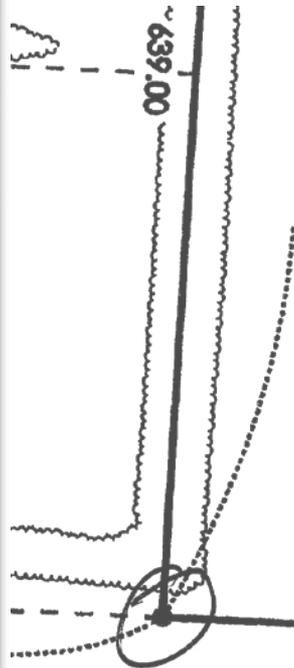
Monuments are best evidence of the lines and corners actually made by a survey, and, when ascertained, are satisfactory and conclusive evidence of the location of the lines as run.

**Dittrich v. UBL, 216 MINN 396,
13 NW2d 384 (1944)**



Artificial objects prevail over courses and distances only when included in a legal description in a deed.

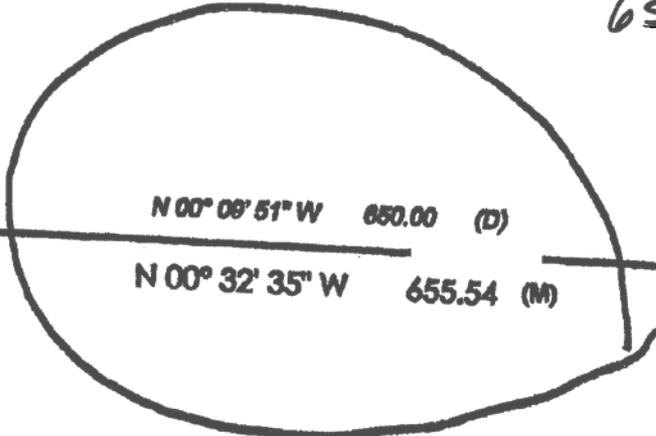
**In re Sand, No. A14-0735
(MN. CRT. ARP. March 16, 2015)
-Unpublished**



SET AT ORIGINAL SURVEY

NO. 30

DEED = N 00° 09' 51" W
650.00



N 00° 08' 51" W 650.00 (D)

N 00° 32' 35" W 655.54 (M)

MEASURE = N. 00° 32' 35" W
655.54

OF THE SOUTH HALF
THWEST QUARTER OF
1, 35, RANG. 30

SET AT ORIGINAL SURVEY

the SW 1/4



Legal description is ambiguous- but a surveyor can locate it on the ground. Is it a good legal description?

Mattson Ridge, LLC v. Clear Rock Title, LLP, 824 NW 2D 622 (MINN. 2012)

“The North 1/2 of the Northwest 1/4 of Section 25, Township 34, Range 21, Chisago County, Minnesota, excepting however, two acres, more or less, in the Northwest corner of the Northwest 1/4 of Northwest 1/4 of said Section 25, described as follows: Commencing at the Northwest corner of said Section 25; thence South 30 rods to the intersection of road leading from the county road at or near Charles Magnuson's place in Sunrise City; thence along the center of the road to where said road crosses the section line; thence along the North line of said Section, 24 rods to the Northwest corner of said Northwest 1/4 of Northwest 1/4 or to the place of beginning.”



Retracement and Government Land Office (GLO) monuments

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8 corners set by original government surveyors

Corners marked by the original government surveyor and found on the ground control over field notes and plats.

Lawler v. Rice, 147 MINN. 234,
180 N.W. 37 (1920)



If the legal description references a GLO monument - and the monument is later reestablished to correct its location, do the property boundaries move?

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GPS and MetaData

- Coordinate systems must be identified in the description as the basis of bearings and should include the assignment of a specific bearing to a specific line
- Possible systems one might encounter

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Classic Peanuts

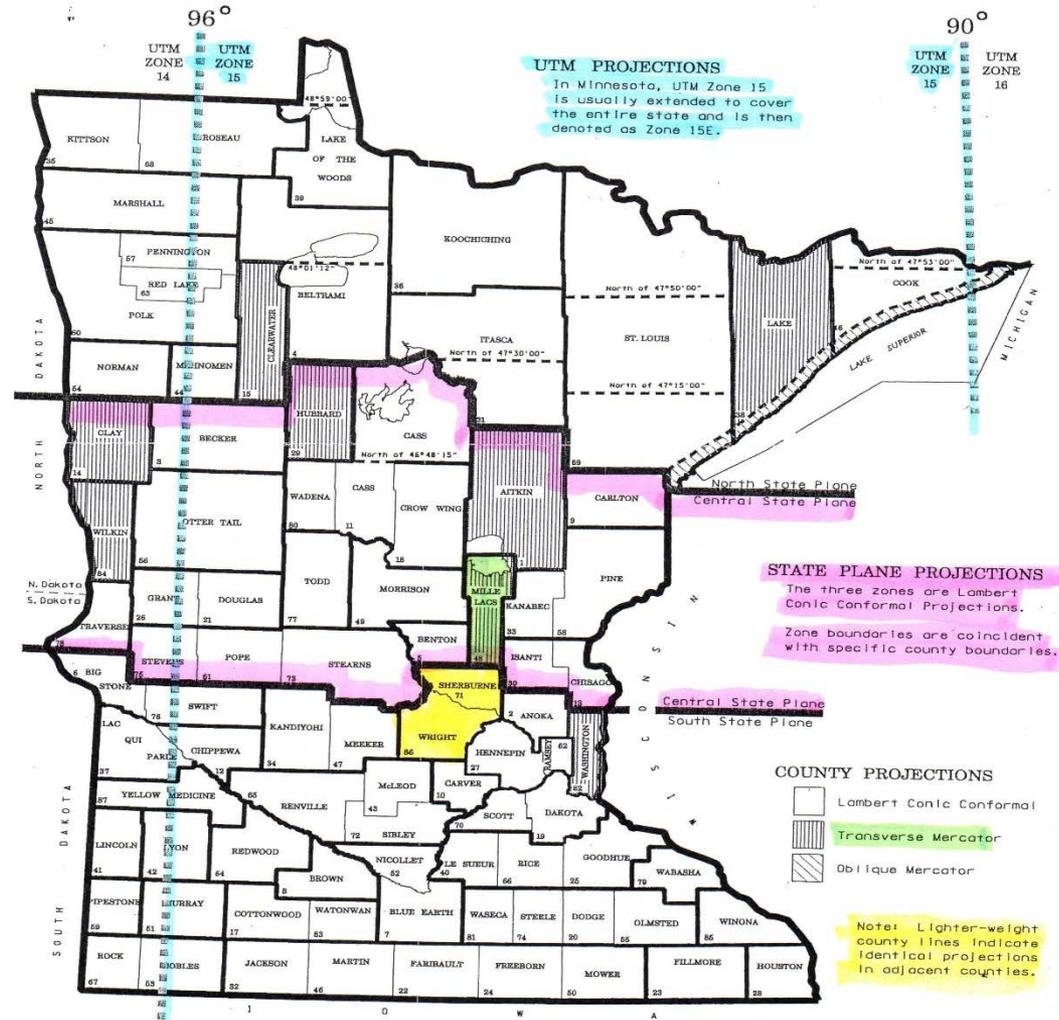


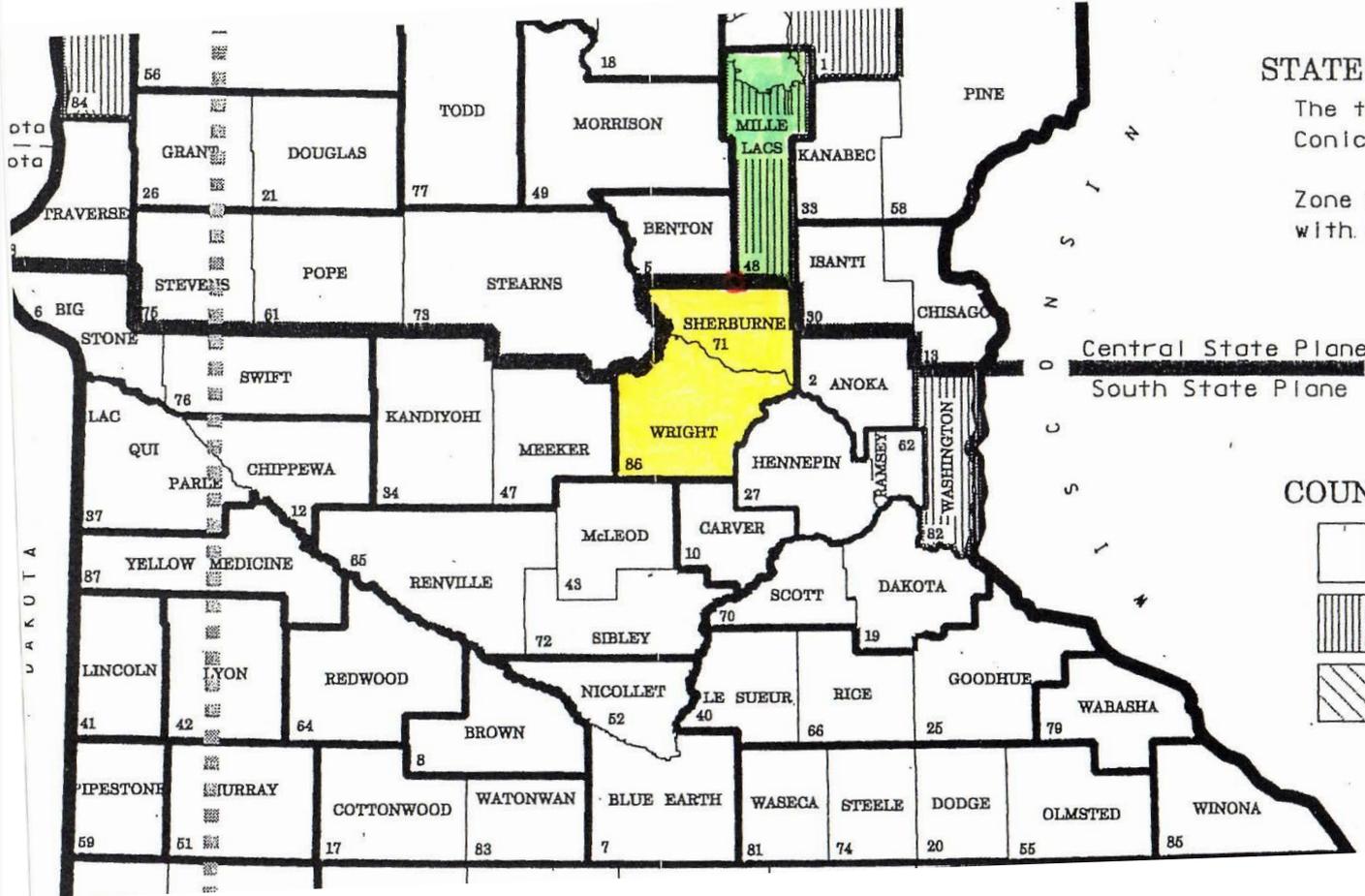
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MINNESOTA DEPARTMENT OF TRANSPORTATION

Universal Transverse Mercator (UTM) Zones, Minnesota State Plane Zones, and Minnesota County Coordinate Projections





STATE PL
The three
Conic Cor

Zone boun
with spec

Central State Plane
South State Plane

COUNTY

- Lon
- ▨ Tra
- ▧ Ob



GPS- surveyors good GPS can measure to 1/100 of a foot

- MN County Coordinate systems
 - NAD 1983 , adjustment 1986 or 1996 or 1999, etc.
- State Plane, south, central or north zones
 - 1927 (obsolete)
 - 1983
- UTM (Universal Transverse Mercator), Zone 15



Latitude/Longitude

- Not a coordinate system!
- The angular relationship of vectors from the center of the earth
- Precision of coordinates based on the number of decimal places
 - Often expressed as decimal degrees
 - Or, degrees and decimal minutes
 - Or degrees, minutes and decimal seconds
- One second of latitude is about 101 feet everywhere.
- One second of longitude is about 70 feet at Minnesota latitude



Mixing and changing legal descriptions

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Quarter/Quarter Section = 1320'



- Original Descriptions:
 - A) North $\frac{3}{4}$ of quarter/quarter
 - B) South $\frac{1}{4}$ of quarter/quarter
- Legal Descriptions changed:
 - A) North 990 feet (60 rods) of quarter/quarter
 - B) South 330 feet of quarter/quarter
- Resurvey of section shows quarter/quarter has 1332.75 feet

County Resurvey

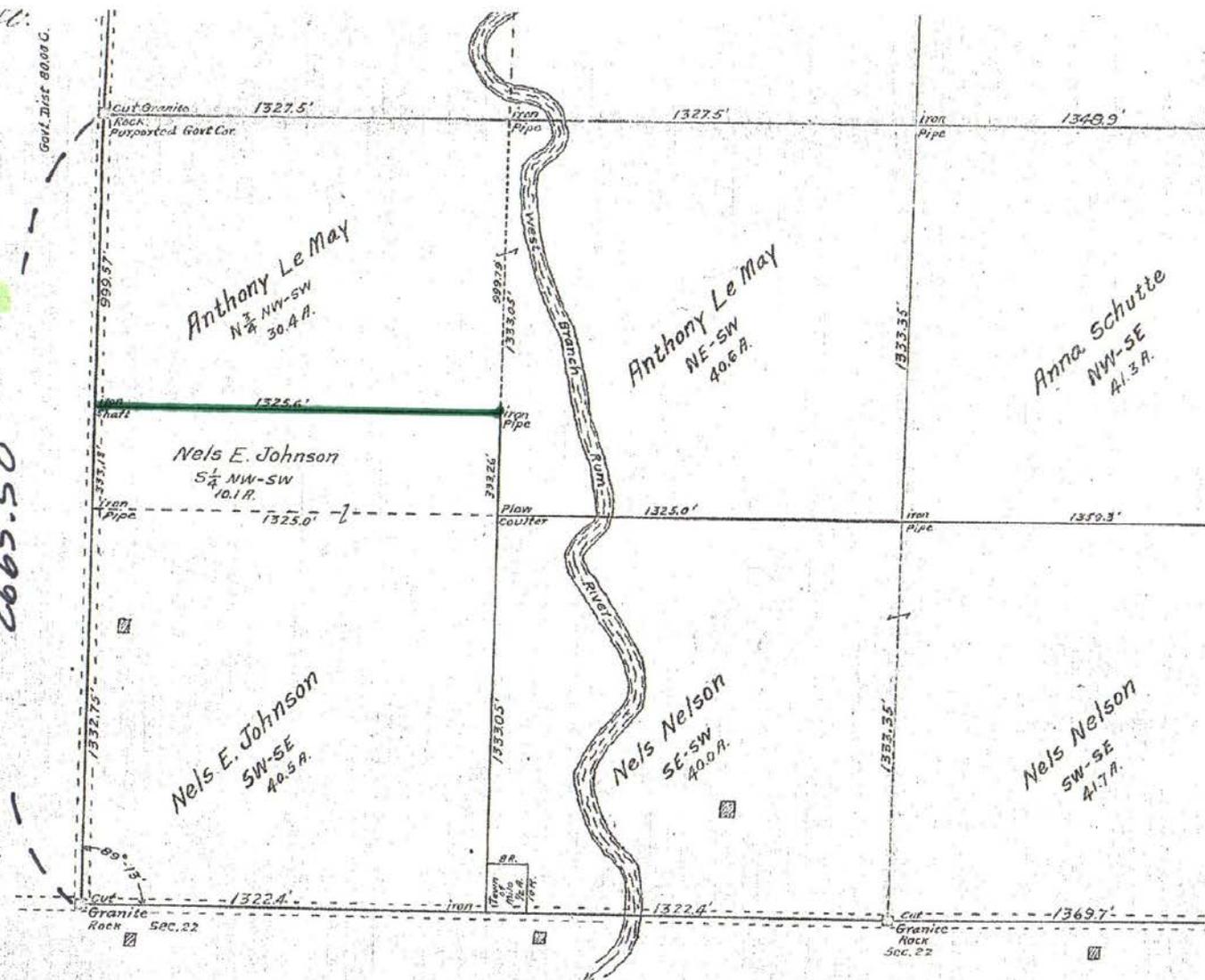
County Auditor
Chairman of the Board.
 Govt. Dist. 80,900 C.

State of Minnesota }
 County of Mille Lacs } ss. Office of Register of Deeds

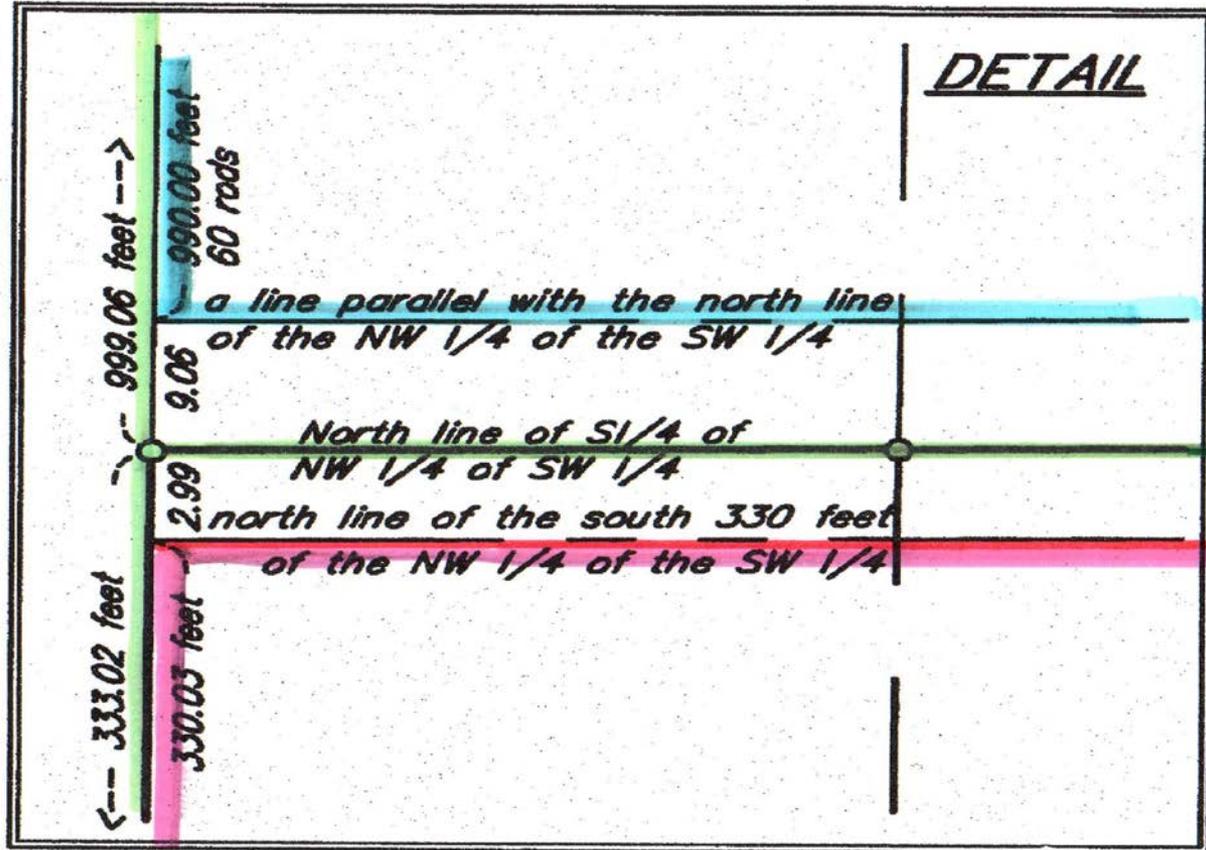
I hereby certify that the annexed Plat of the Re-survey of Section 15, Town 31 Range 27 Mille Lacs Co. Minn. together with the field notes of the re-survey of said Section were filed in my office on the 17th day of November A.D. 1915.

Register of Deeds
 Mille Lacs Co. Minn.

2665.50



Detail at northwest corner



Ambiguity

- **Significant figures and orders of precision**
 - 60 rods may be interpreted as “plus or minus one half of a rod” since it is NOT written as 60.0 or 60.00 rods
 - 330 feet may be interpreted as “plus or minus one half foot” since it is NOT written as 330.0 or 330.00 feet”
 - It is incorrect form to add significant figures unless it is the intent to ‘change the deed’. Read also “modernize” or “reform” or “fix”.





What was the reaction to the survey

- The attorney for the client said they wanted to stay with the 'current deed', being the "South 330 feet of the NS-SW, together with the North 420 feet of the SW-SW" in order to not have issues.
- LS said "What about the 3.3 foot gap with your own north line???"
- Attorney said "Don't care"
- LS refused to stake parcel and delivered Certificate of Survey as shown.

Options???

- Could using “deed/measured” and not showing said gaps have been allowable, ethical, or appropriate??
Fact-finder role!
 - 60 rods (990 feet) deed, 999.06 measured?
 - The call should go “to the northwest corner of the south $\frac{1}{4}$ of said nw-sw”
 - The distance along the west line of said south $\frac{1}{4}$ could be labeled – 330 deed, 333.02 measured





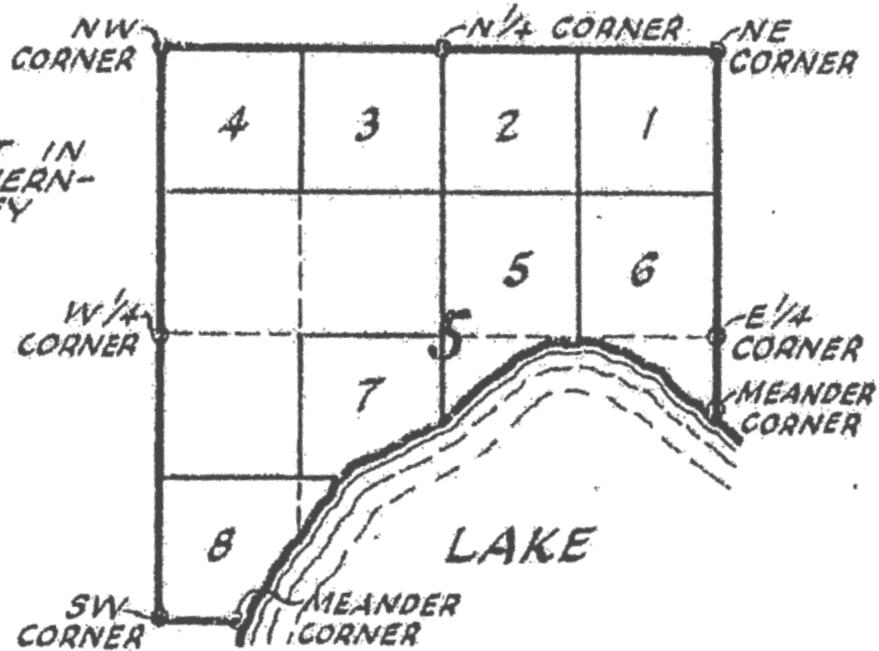
Government Lots

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GOVERNMENT LOTS

NOTE:-
CORNERS SET IN
ORIGINAL GOVERN-
MENT SURVEY



GOVERNMENT LOTS 1, 2, 3 & 4 USUALLY
OCCUR IN SECTION 5.

GOVERNMENT LOTS 5, 6, 7 & 8 ARE
FORMED, IN THIS CASE, BY THE LAKE.



- Land sold by quantity (acres) by Federal Government
- Seldom surveyed – calculated boundaries
- Boundary depends upon accurate break down of section and correct GLO corners
- Often a re-survey is an interpretation
- Few virgin government lots in private ownership



Does Marketable Title Act (541.023) apply to legal descriptions?

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Minneapolis & St. Louis Ry. Co., et. al.
V. Ellsworth, et. al. 237 Minn. 439, 445,
54 NW 2d 800, 804 (1952)

“He has shown no source of title
whatever to land south of the north line
“of SW 1/4 of SE 1/4 of section 24. It is
therefore unnecessary to consider any
additional reasons advanced as to why
s 541.023, subd. 1, is inapplicable.”



Actions to clear a boundary problem

- Minn. Stat. § 559.01- action to determine adverse claims (quiet title) – clears title, but does not establish a boundary
- Minn. Stat. § 559.23- action to determine boundary
Note: decree of court must be presented to the auditor, who must sign and state: **Entered in the transfer record**
- Minn. Stat. § 559.25- judicial land marks



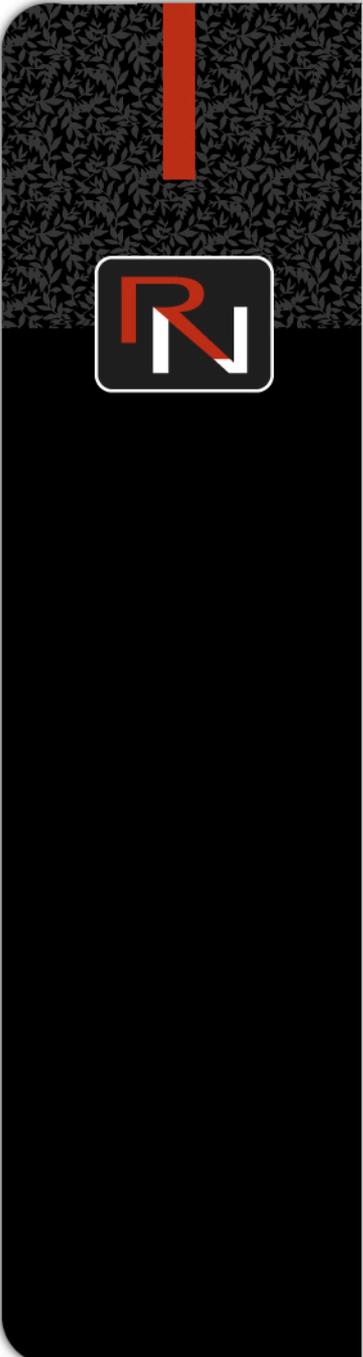
Removing inconsistent survey markers

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Minnesota Statutes § 505.31 Entry upon land; notice

It is lawful for any surveyor to enter upon any land for the purpose of locating existing survey or reference monuments or landmarks, provided, however, such surveyor shall be responsible to the landowner for any and all damages as a result of such entry, and no surveyor may enter upon any land unless first notifying the owner or occupant of the intended entry for such purpose.



505.32 SURVEYOR'S NUMBER ON NEW EVIDENCE; OLD EVIDENCE TO BE LEFT.

Any monuments or permanent evidence of the survey shall have inscribed thereon the registration number of the land surveyor making the survey and no previously existing survey or reference monuments or landmarks evidencing property lines or corner posts shall be removed or destroyed by the surveyor of such new survey.



505.33 VIOLATIONS; PENALTY.

Any person who intentionally removes, destroys, or defaces a monument lawfully erected is guilty of a misdemeanor.

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Minnesota Statutes § 609.605 Trespass

Subd. 1. Misdemeanor.

(b) A person is guilty of a misdemeanor if the person intentionally:

(2) interferes unlawfully with a monument, sign, or pointer erected or marked to designate a point of a boundary, line or a political subdivision, or of a tract of land.

Minnesota Statutes § 299J.14 Line markers; vandalism penalty

Subd. 2. Vandalism prohibited; misdemeanor. A person may not deface, mar, damage, remove, injure, displace, destroy, or tamper with any sign or line marker marking the location of a pipeline. A person violating this subdivision is guilty of a misdemeanor.

Minnesota Statutes § 103E.081 Crimes related to drainage systems; penalties

Subd. 3. Altering engineer's marking of stakes. A person may not willfully change the location or alter markings of stakes set by the engineer in a drainage project or system.

Subd. 4. Penalty. Violation of this section is a misdemeanor.

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**REMEMBER – YOUR LOCAL
PROFESSIONAL LAND SURVEYOR IS
YOUR BEST RESOURCE**

**USE THIS PROFESSIONAL RESOURCE
WISELY AND TREAT HIM OR HER WITH
THE SAME RESPECT AS YOU WOULD
WITH ANYONE ELSE IN THIS ROOM**

**THE RESOURCE (IF PRIVATE) DESERVES
PROFESSIONAL COMPENSATION**

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