CHICAGO TITLE
INSURANCE COMPANY
NATIONAL COMMERCIAL SERVICES | CHICAGO

CTtalk: Advanced Survey Analysis

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GAPS AND OVERLAPS

An Introduction to the Gap/Overlap Problem

On occasion a surveyor may note on his or her survey a "gap" or "overlap" along the exterior boundary of the surveyed property. (Section 6.B.vii. of the 2016 ALTA/NSPS land title survey standards requires the surveyor to show these inconsistencies.) What are gaps and overlaps? How do they arise? Can they be underwritten by the title insurance company? The following sections will attempt to answer these questions.

Note: When describing gaps and overlaps along the boundaries of land, title companies will sometimes refer to "gaps, gores, and hiatuses." A "gore" is an irregularly shaped tract of land, generally triangular, that is left between two adjoining surveyed parcels because of inaccuracies and inconsistencies in the boundary surveys of the two tracts. A "hiatus" is defined as "an area between two surveys of record, which by the record are described as having one or more common boundary lines with no omission."

The Creation of Gaps and Overlaps

Generally speaking, when dividing tracts of land, the surveyor should avoid utilizing legal descriptions that measure or start from two different directions.

For example, assume that lot 1 is a square with platted dimensions of 100 feet by 100 feet. If the west 50 feet of lot 1 is to be conveyed, the remainder of the lot should be described as "lot 1, except the west 50 feet thereof." The remaining portion of the lot should *not* be described as "the east 50 feet." If the measured lot is not exactly 100 feet wide, a description of "the east 50 feet" would produce a gap or overlap between the two parcels.

If lot 1 was actually 99 feet wide, there would be a 1 foot overlap between the two portions of lot 1. If the lot was 101 feet wide, there would be a 1 foot gap between the parcels.

The division of a tract of land by the use of metes and bounds descriptions whereby the descriptions start from two different directions should also be avoided. Consider, for example, these two metes and bounds divisions of lot 1; again, if lot 1 was either more than or less than 100 feet wide, the two descriptions would produce respectively a gap or overlap:

> Description One: Beginning at the northwest corner of lot 1; then east along the north line thereof 50 feet; thence south parallel to the west line of said lot 1 a distance of 100 feet to the south line thereof; thence west along said south line 50 feet to the west line of said lot; thence north along said west line 100 feet to the place of beginning.
>
> Description Two: Beginning at the northeast corner of lot 1; then west along the north line thereof 50 feet;

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thence south parallel to the east line of said lot 1 a distance of 100 feet to the south line thereof; thence east along said south line 50 feet to the east line of said lot; thence north along said east line 100 feet to the place of beginning.

(See Exhibit 01)

An exception to this general rule is if the common line between the two parcels can be described identically in both metes and bounds descriptions. Consider this revision of the second description; the italicized words describe the common line. (See Exhibit 02)

Amended Description Two: Beginning at the northeast corner of lot 1; then west along the north line thereof *to a point 50 feet east of the northwest corner of said lot 1; thence south parallel to the west line of said lot 1 a distance of 100 feet to the south line thereof*; thence east along said south line to the east line of said lot; thence north along said east line 100 feet to the place of beginning.

Gaps and overlaps can arise in other ways besides platted lot divisions. Gaps and overlaps between two different subdivisions can be several feet wide. Gaps and overlaps between sectionalized land divisions in rural areas can be even greater, sometimes fifty feet or more.

Example: A surveyor divides the northwest quarter of a section of land into two parcels, the north 80 acres of the northwest quarter and the south 80 acres of the northwest quarter. If the quarter section is not exactly 160 acres in area, there could be a gap or overlap—a problem that could be avoided if the surveyor had merely described the parcels as the "north half" and the "south half" of the quarter section. (Some surveyors may argue that dividing lots and sectionalized parcels by "north half" and "south half" is incorrect. They maintain that if the north half of, e.g., a quarter section, is first conveyed, the remainder should be described as the quarter section, excepting therefrom the north half. Despite these concerns, lot and sectionalized land descriptions of "north half" and "south half" are probably acceptable to all title insurance companies.)

The Overlap

Example: Smith owns lot 1, which has a record width of 100 feet. He first conveys the west 50 feet to Adam and later deeds the east 50 feet to Baker. But when a surveyor surveys lot 1, he discovers that the lot is only 99 feet wide, which means that there is a one foot overlap.

Adam's deed was first in time; as his deed is "senior," he owns the one foot overlap. Baker's deed was second in time. Although Smith conveyed the east 50 feet to Baker, one cannot convey what one does not own, and so Baker does not take title to the overlap parcel. This is called *the doctrine of paramount title*. See *Weihe v. Lorenz*, 254 Ill. 195, 98 N.E. 268 (1912).

Example: In 1990 X buys lot 1; it has a record width of 100 feet. In 1995 X deeds the west 50 feet to A. In 2000 X deeds the east 50 feet to B. In 2005 A deeds the west 50 feet to C. In 2010 B deeds the east 50 feet to D.

The surveyor who surveys lot 1 in 2015 discovers that the lot is actually only 99 feet wide, which means there is a one foot overlap. Who owns the overlap?

One must go back in the chain of title of both parcels to that point when one person or entity owned both tracts. Working forward, he or she must then examine all the deeds for both properties, paying particular attention to the chain of title of the land conveyed in the first deed from X, that common grantor, to A, the first grantee. By following the chain of title for this parcel (the west 50 feet), one sees that C is the current owner of the overlap.

But is it really that simple? What if the deeds were executed simultaneously? What if the adjoining property owner is adversely occupying the overlap parcel? In evaluating a deed, the prime concern is to ascertain and give effect to the intention of the parties. See *Urbaitis v. Commonwealth Edison*, 143 Ill. 2d 458, 575 N.E.2d 548, 159 Ill. Dec. 50 (1991). Is it reasonable to conclude that X intended to create an overlap when he first divided the parcel? And is it reasonable to conclude that X would have intended that only one adjoining property owner receive the entire overlap? After all, had X known of the overlap when he first divided the property, perhaps X would have intended that both parties share the overlap parcel.

Title Insurance and the Overlap

If these parcels had been previously insured by a title company, and if that title policy had included "extended coverage" over the general exceptions, it is possible that the lot owners may have a claim with their title company.

But what if the policies were subject to the general exceptions? What if these parcels had never before been insured by a title insurance company? Can the land falling in the overlap ever be insured?

Some title companies feel that the overlap can be insured only if deeds are exchanged between the adjoining property owners. Other title companies feel that the overlap can be prorated, that is, the width of the overlap can be subtracted from the adjoining property owners in direct proportion to the size of the two adjoining properties.

Prorating the Overlap

> Example: Lot 1 in a subdivision has a record measurement of 80 feet in width, and lot 12 in the subdivision to the south has a record measurement of 115 feet in width. (See Exhibit 03) If one were to look at a county tax map of these two lots, it would appear that the two subdivisions (and the two lots) were contiguous to each other. However, a surveyor discovers that there is actually a 6.23 feet overlap between the two lots. The overlap is a result of the two subdivisions being incorrectly carved out of a larger tract of land.

Perhaps the subdivision to the north was originally described as the north twenty acres of a quarter-quarter section, and the subdivision to the south was originally described as the south twenty acres of a quarter-quarter section. The "perfect" quarter-quarter section is forty acres in area, but this particular quarter-quarter section contains less land than forty acres, resulting in an overlap between the two subdivisions. (Exhibit 04)

> To prorate the first step is to add the record widths of the two lots:
>
> 80 feet + 115 feet = 195 feet
>
> Next, divide the width of the gap by this total record footage. The result is the constant:
>
> 6.23 ÷ 195 = 0.03195
>
> Now multiply the constant by the record widths of each lot. This result will be that portion of the overlap that will be subtracted from the record width of each lot.
>
> 0.03195 x 80 = 2.56. Lot 1 will have an adjusted width of 77.44 feet.
> 0.03195 x 115 = 3.67. Lot 12 will have an adjusted width of 111.33 feet.
> (Note that 2.56 feet + 3.67 feet= 6.23 feet, the width of the overlap)

But prorating the overlap does have its drawbacks. What if one or both of the lot owners do not agree with the

prorations? What if the "senior" lot owner feels that he or she owns all of the overlap pursuant to the doctrine of paramount title? Or what if one lot owner is adversely possessing a portion of the overlap parcel? For these reasons it is possible that a title company will not insure an overlap unless one or more deeds are executed, conveying record title to the overlap in one (or both) of the lot owners. It may want the owners to sign and record a boundary agreement so that the issues are clearly explained and memorialized. A title company will also want a land title survey prepared in order to make sure there are no adverse possession issues.

The Gap

> Example: Joan owns lot 2, which has a record width of 100 feet. She first conveys the west 50 feet to Alice and later deeds the east 50 feet to Betty. But when a surveyor surveys lot 2, the surveyor discovers that the lot is actually 101 feet wide, which means that there is a one foot gap between the two parcels. Who owns the gap?

A rule of deed construction provides that when there is doubt as to the meaning of a conveyance, it should be construed in favor of the grantee and against the grantor. One might argue that the second deed is ambiguous. Did Joan intend to retain or convey the gap parcel? Accordingly, one might argue that the gap vests in Betty, the second grantee, to the detriment of Joan. See *Williams v. Swango*, 365 Ill. 549, 7 N.E.2d 306 (1937); *Brenneman v. Dillon*, 296 Ill. 140, 129 N.E. 564 (1920).

But the issue is not that simple. As noted earlier, determining the intent of the parties is a primary concern in deed construction. In this example it is clear that Joan intended to convey fifty-foot parcels to Alice and Betty. But did she also intend to convey the gap solely to one of the grantees, or did she intend to keep a one foot section for herself?

The problems of the gap are identical to the problems of the overlap. One might argue that Joan did not intend to retain any land, especially if the gap were created several years ago and she owned no other land nearby. Accordingly, one might conclude that the gap vests in Betty.

But what if the deeds were signed simultaneously? Would it be reasonable to conclude that Joan intended to convey the entire gap to only Betty, the second grantee? And what if the deeds were executed fairly recently? If Joan knew of the problem originally, it seems possible that she never would have created the gap; rather she would have divided it between Alice and Betty and not favor one grantee over the other.

Title Insurance and the Gap: Insuring the Gap for Both Owners

Unlike an overlap, the discovery of a gap adjacent to insured property should not result in a title insurance claim. Instead, a title company will usually first become aware of a gap when the company is asked to insure it. If requested to split the gap between the adjoining owners, a title company may offer to insure it by prorating the width, but the dangers of prorating a gap are the same as prorating an overlap—what if one or both (or possibly more, depending on the circumstances) of the owners do not agree with the allotted proration? For this reason a company will probably insist on an exchange of deeds, possibly coupled with a boundary agreement. And of course, it will want a land title survey to make sure that no owner is adversely occupying another owner's share of the gap.

Title Insurance and the Gap: Insuring the Gap for One Owner

Any request to insure the entire gap in favor of just one adjoining land owner will probably be one of four fact situations.

Insuring the Gap for One Owner: Fact Situation Number One

One owner has adversely occupied the entire width of the gap for the statutory period of twenty years. See 735 ILCS 5/13-101 *et seq.* (For example, perhaps the owner has fenced in the gap; see Exhibit 05.) In this event, perhaps a title company will insure the gap on a risk basis for an additional premium.

Insuring the Gap for One Owner: Fact Situation Number Two

The gap is between an existing subdivision and un-subdivided land, and the un-subdivided land is in the process of being subdivided. (Exhibit 06) In this instance, a title company may be able to insure that the developer of the new subdivision owns the entire gap, but in order to do so, it should obtain a land title survey of the gap parcel. The title company must be sure that the adjoining lot owners in the existing subdivision did not buy their lots with the expectation that they would own any portion of the gap parcel. In order to determine this, the title company should have the surveyor confirm that the iron pipes or other monuments that were set at the lot corners for the already subdivided lots do not extend into the gap parcel. The location of these iron pipes (or possibly rectangular stones) should be noted on the survey. If these lot corner monuments are set into the gap parcel, the title company will probably be unwilling to insure the gap unless it obtains a deed from the adjoining landowner(s). (Exhibit 07)

The title company should also examine the survey for any encroachments (e.g., sheds, fences) by the lot owners into the gap parcel. If the survey discloses any encroachments, then again, the title company will probably not insure the gap unless it is furnished one or more deeds. And even if the developer of the new subdivision obtains these deeds, the developer's victory is probably a Pyrrhic one, as any title policy issued will be subject to the encroaching improvements until a subsequent survey indicates that all the encroachments have been removed.

But if the survey of the gap reveals no encroachments and that all lot monumentation is at the lot corners and not inside the gap, this would indicate that the lot owners are possessing only up to their respective lot lines and that they are not asserting any interest in the gap. The survey, therefore, would suggest that when these lot owners purchased their lots, they got what they bargained for, no less, but no more, either. Consequently, in this situation, the title company may be able to insure that the owner of the un-subdivided land owns the gap. After all, once the new subdivision is platted and recorded, the "old" lot owners on the other side of the gap will never even know that the gap existed. As the new lots are sold off, the new lot owners will not know of the gap, either.

If the title company does agree to insure the gap, the proposed insured should expect to pay a sizeable additional premium. This extra cost should not deter the proposed insured or his attorney. After all, the purchaser is essentially acquiring land without suffering the time and expense of a quiet title suit.

Insuring the Gap for One Owner: Fact Situation Number Three

The gap is between two existing subdivisions. For example, a title company is asked to insure lot 3 in Blackacre Subdivision, and the lot directly in back of this lot is lot 12 in Whiteacre Subdivision. The surveyor discovers that there is a one foot gap between these two subdivisions. The attorney for the purchaser of lot 3 asks the title company to insure lot 3 and also the entire width of the gap. (Exhibit 08)

The title company will probably not insure that the purchaser of lot 3 owns the gap unless it obtains and records a deed from the owner of lot 12. Otherwise, it risks the tender of a claim in the event the owner of lot 12 discovers his neighbor's windfall and attempts to assert his rights to his proportionate share of the gap.

There is a marked difference between this fact situation and the one described immediately above in fact situation number 2. In the previous fact situation, the lot owners of both subdivisions will never know of the

existence of the gap. But in this third example, the insured owner will know of the gap and that he obtained a windfall. It will be only a matter of time until the adjoining lot owner will know it as well.

Insuring the Gap for One Owner: Fact Situation Number Four

The gap is between two un-subdivided parcels of land. For example, Carl owns the north twenty acres of half a quarter section, and David owns the south sixty acres of the same half a quarter section. Zeke is the proposed purchaser of the north twenty acres. The surveyor discovers that there is a five-acre gap between these two parcels. Zeke's attorney asks a title company to insure it. (Exhibit 09)

For the reasons outlined immediately above, the title company will probably be unwilling to insure the gap unless it obtains a deed from David. Indeed, in this example, the gap is very large, and so the risks of a claim and potential loss are also great.

If the title company agrees to insure the gap, the surveyor should write a legal description for the gap parcel. This land could then be added to Schedule A of the title commitment and policy as an additional insured property.

Insuring the Gap: Possible Tax Issues

If the title company agrees to insure the gap, the surveyor should write a legal description for the gap parcel. This land could then be added to Schedule A of the title commitment and policy as an additional insured property.

A title company may raise a "back tax" or "omitted tax" exception on the revised title insurance commitment and policy. See 35 ILCS 200/9-260 *et seq.* This statute provides for the assessment of real estate tax arrearages against property which had, in previous years, been omitted from the tax rolls.

This exception could be waived once the title insurance company is furnished evidence that no such taxes will be assessed.

MISCELLANEOUS LEGAL DESCRIPTION ISSUES

The general rule in Illinois is that a legal description is sufficient if a competent surveyor can locate the land with reasonable certainty. See *Smiley v. Fries*, 104 Ill. 416 (1882); *Village of Auburn v. Goodwin*, 128 Ill. 57, 21 N.E. 212 (1889).

See also *Brunotte v. DeWitt*, 360 Ill. 518 (1935), where the court wrote:

> *The purpose of a description of land in a deed of conveyance being to identify the subject-matter of the grant, a deed will not be declared void for uncertainty if it is possible, by any reasonable rules of construction, to ascertain from the description, aided by extrinsic evidence, what property it is intended to convey.*

See also *City of Virginia v. Mitchell*, 2013 Ill. App. (4th) 120629, 991 N.E.2d 936 (2013).

Legal Descriptions in Illinois

A complete discussion of legal descriptions is obviously beyond the scope of these materials. For information

regarding this subject, though, see the following: Fitch, pp. 2- 42; E. D. Grigsby, "Descriptions and Plats," 39 *Illinois Bar Journal* 439 (1951); Lyle W. Maley and William A. Thuma, "The Fundamentals of Legal Descriptions," 42 *Illinois Bar Journal* 672 (1954); Lyle W. Maley and William A. Thuma, "Practical Observations on Problems in Legal Descriptions," 431 *Illinois Bar Journal* 34 (1954).

Key Phrases in Legal Descriptions

Legal descriptions contain key phrases, and these phrases often contain subtle differences that can impact the meaning of a legal description. Consider, for example, the words "to" and "to a point" as used in the following examples:

> *From the point of beginning, thence North 30 degrees East 723.32 feet to a point on the easternmost boundary of the Jones estate, that same point being monumented by a one-inch diameter iron pipe.*

In this example, the words "the Jones estate," which is an adjoining property, control the distance of this course. By using this phrase, the writer is stating that if for some reason the one-inch diameter iron pipe was either less than or more than 723.32 feet from the point of beginning, the course would continue on to (or stop at) the easternmost boundary of the Jones estate.

> *From the point of beginning, thence North 30 degrees East 723.32 feet to a point monumented by a one-inch diameter iron pipe.*

In this example, the words "723.32 feet to a point" monumented by the pipe indicate that the parties intended to set the length of a line at a specific distance (723.32 feet), and if the pipe were later to be found to be short of or in excess of that distance, the distance will prevail (in the absence of possession or other convincing and contradictory evidence.) The reason for this is that in this example, the pipe is just a marker and has not achieved the status of being an artificial monument.

> *From the point of beginning, thence North 30 degrees East 723.32 feet to a one-inch diameter iron pipe.*

In this example, the words "723.32 feet to...a pipe" indicate that the pipe is an artificial monument and that the pipe, and not the distance, is the controlling factor.

Note the subtle distinction between the second and third examples. In the second example, the course is 723.32 feet to a point. Thus, the distance controls over the pipe, unless there is evidence to a contrary intent. In the third example, the course is 723.32 feet to a pipe. Here, the pipe is now a monument that controls over the distance.

Statutory Concerns

One should be aware of the 1987 and 1988 amendments to the Conveyancing Act, which are codified as 765 ILCS 5/35c. The original intent of this legislation was to prohibit the recording of deeds whose legal descriptions reference the legal descriptions contained in other documents. For example: "...thence East along said section line to the Southwest corner of that property described in document R88-11151; thence northerly along the westerly line of said property..."

Most Illinois recorders are ignoring this legislation. However, in those counties whose recorders are enforcing these amendments, one might not be able to record a deed that contains a legal description that includes a course similar to the one above.

This legislation presents at least one additional problem. These amendments affect only deeds to be recorded; a

mortgage could contain a legal description course like the one above and still be entitled to be placed of record. What happens, however, if the mortgage is foreclosed? It seems possible that a recorder might refuse to record the resulting sheriff's deed.

This legislation only pertains to metes and bounds legal descriptions. Thus, a simple legal description such as "the Northwest quarter of Section 18, Township 38 North, Range 8, East of the Third Principal Meridian, excepting therefrom that property conveyed in document R88-0708" is perfectly valid. It appears, though, that this legal description is contrary to the intent of this legislation, and so it might not be accepted by a Recorder that enforces these two amendments.

Legal Description Conflicts

Legal descriptions may contain elements that conflict with each other. Illinois case law has devised a hierarchy whereby some elements are given more weight than others. This hierarchy is (from highest weight to lowest weight) as follows: natural monuments, artificial monuments, courses, distances, and quantity. See *Cottingham v. Parr*, 93 Ill. 233 (1879); *Hadie v. Erlandson*, 41 Ill.App.2d 328, 190 N.E.2d 848 (2nd Dist. 1963); *Forest Preserve Dist. of Cook County v. Lehmann Estate*, 388 Ill. 416, 58 N.E.2d 538 (1944); *Branstetter v. Dahncke*, 394 Ill. 40, 67 N.E.2d 212 (1946); *Dorsey v. Ryan*, 110 Ill.App.3d 577, 442 N.E.2d 689, 66 Ill.Dec. 263 (4th Dist. 1982); *Texas Co. v. Hawthorne*, 371 Ill. 468, 21 N.E.2d 565 (1939); *Peoria Gas & Electric Co. v. Dunbar*, 234 Ill. 502, 85 N.E. 229 (1908); Fitch, pp. 25-29; 5 I.L.P., Boundaries sec. 4.

> Example: A metes and bounds legal description reads as follows:
> Beginning at the intersection of the east side of Oak Street and the north side of Maple Street; thence north along the east side of Oak Street 55 feet to the southwest corner of lot 1; thence east along the south line of lot 1..."
>
> The distance from the point of beginning to the southwest corner of lot 1 is actually 54 feet, not 55 feet. Because "monuments control over distance," (i.e., in the event of an inconsistency, a monument takes precedence over a conflicting distance), the corner of the parcel being described is at the southwest corner of lot 1 and not at a point one foot south of this corner. (Exhibit 10)

This hierarchy of description elements is a presumption that can be overcome by contrary evidence of the intent of the parties creating the legal description. See *Branstetter v. Dahncke*, 394 Ill. 40, 67 N.E.2d 212 (1946).

"Record" v. "Measured" Distances of Land Boundaries

Plats of surveys will sometimes show "record" and "measured" distances. That is, a lot line might have a platted, or "record" dimension of a certain number of feet. When the surveyor goes out into the field and actually measures this lot line, the surveyor discovers a "measured" distance that may be more or less than the record distance. This difference between record and measured distances is sometimes due to the greater accuracy of new technology.

But one should question large variations of "record" and "measured" distances.

For example: A surveyor is hired to survey a lot in a five lot commercial subdivision. The record dimension of each lot is fifty feet in width, for a total of 250 feet. The surveyor goes to the property and locates iron pipes set near each corner of the lot in question. The surveyor then measures the distance between the two pipes and determines the width of the lot to be 49.5 feet. The surveyor indicates on the plat of survey that the width of the lot is "50 feet record, 49.5 feet measured." But it is possible that if the surveyor had measured the entire width of the subdivision, the surveyor would have found original lot corners indicating that the subdivision was indeed

250 feet in length and that the lots were all fifty feet in width. Such a finding would suggest that at least one of the iron pipes the surveyor measured from was in the wrong location.

Experienced surveyors know that a pipe in the ground is not sacrosanct. Lot corners are often moved; common culprits are utility companies, cable companies, and fence installers. Also, subsequent surveyors (usually called retracement surveyors) may not find an original lot corner monument in the ground when performing their fieldwork. Rather than perform the necessary fieldwork to properly restore the lost corner, they may instead place a new pipe in the ground at what they feel is the lot corner. Indeed, surveyors often tell of instances where two or more pipes can be found at a lot corner. A measurement taken from the wrong pipe can obviously produce a difference between record and measured distances.

So how much of a difference between record and actual measurements is questionable? Even three/tenths of a foot in a one hundred foot length might be considered a substantial deviation in some cases. Although a marked difference between record and measured distances does not automatically mean that the survey is defective, one may want to ask the surveyor to explain, if possible, the reason for the difference between the two distances.

But one should realize that the issue of record and measured distances is extremely subjective. For example, sometimes the age of the subdivision is a factor. That is, there might be a rather large (but still legitimate) difference between record and measured distances in a very old subdivision. Unfortunately, there is no “table of tolerable deviation” to which the examiner can refer. Every situation is different.

Furthermore, note that in the City of Chicago there are unique reasons for differences between record and measured distances. The first one stems from the plethora of subdivisions in Chicago, with re-subdivisions and re-subdivisions of the same property literally piled on top of each other. Some of these subdivisions are merely “paper” subdivisions, that is, subdivisions in name only that were never laid out in the field. Also, some surveyors in the past, fearing the rigidity of the “Torrens” system of land registration, were reluctant to change the legal descriptions on their surveys and plats of re-subdivision to reflect more accurate legal descriptions that resulted from advances in surveying technology. Now that “Torrens” is obsolete, surveyors are more willing to disclose these differences between record and measured distances on their plats.

When land surveying was in its infancy, the Gunter’s chain and compass were used to measure distances and bearings. Surveyors today have electronic wonders like GPS and EDMs at their disposal. Is it any wonder that there are differences between record and measured distances and bearings? But should these differences be memorialized in the public record? That is, should legal descriptions be amended to reflect both the record and measured distances and bearings?

For example: Consider this record description:

> *thence North 30 degrees 46 minutes 18 seconds East 246.00 feet to the east line of the northwest quarter of Section 6; thence...*

After the surveyor surveys the land and discovers a difference between the record distance and the measured distance, the surveyor revises the description to disclose both these record and measured distances:

> *thence North 30 degrees 46 minutes 18 seconds East 246.00 feet record (246.59 feet measured) to the east line of the northwest quarter of Section 6; thence...*

This issue of amending legal descriptions to reflect differences between record and measured distances is an extremely controversial one, especially among land surveyors. Some feel that the record description is virtually

sacred and that any revised description should contain the original record distances and bearings. On the other hand, many feel that if the legal description contains references to artificial, natural, or legal monuments, the legal description can be amended without including the old record distance or bearing, as these monuments take precedence over any conflicting distance or bearing.

Thus, in the example, the description may be revised to delete the references to the original distance:

> *thence North 30 degrees 46 minutes 18 seconds East 246.59 feet to the east line of the northwest quarter of Section 6; thence...*

On the other hand, because section lines and other monuments control over a conflicting distance, many surveyors would argue that there is no need at all to change the distance in the original legal description.

But assume that there are no such monuments. In that event, should a record distance be changed in a legal description to reflect a measured distance?

No, the distance should not be changed. Legal descriptions do not exist independently of each other. The changing of a record distance might create a gap or overlap in the adjoining parcel of land. Rather, the correct procedure is for the surveyor to show the record legal description on his plat of survey and to note the "record" and "measured" distance adjacent to the appropriate depicted boundary line. The text of the legal description written on the plat of survey, however, should generally remain unchanged.

The 2016 ALTA/NSPS land title survey standards, however do reference the changing of a legal description. Section 6.B.ii. of these standards states:

> [A plat or map of an ALTA/NSPS Land Title Survey shall show the following information.]
>
> Any new description of the surveyed property that was prepared in conjunction with the survey, including a statement explaining why the new description was prepared. Except in the case of an original survey, preparation of a new description should be avoided unless deemed necessary or appropriate by the surveyor and insurer. Preparation of a new description should also generally be avoided when the record description is a lot or block in a platted, recorded subdivision. Except in the case of an original survey, if a new description is prepared, a note shall be provided stating (a) that the new description describes the same real estate as the record description or, if it does not, (b) how the new description differs from the record description.

The Apportionment Rule, also known as the Proportional Measurement Rule

One possible explanation for differences between record and measured lot distances may be due to record and measured differences between subdivision corners or block corners. When a surveyor uncovers original subdivision monuments or is able to reconstruct original monumentation and thereby discovers legitimate differences between record and measured distances that are between subdivision corners or between block corners, the surveyor will use the Apportionment Rule to apportion these differences among the various lots. That is, the excess or deficiency that the surveyor discovers is added or subtracted to each lot in direct proportion to the size of each lot.

Thus, if lot 1 is one hundred feet wide and lot 2 is two hundred feet wide, lot 1 gets one-third of any excess or deficiency within the subdivision and lot 2 gets two-thirds of any excess or deficiency within the subdivision. This only makes sense; since lot 2 is twice as big as lot 1, lot 2 gets twice as much excess or deficiency as lot 1. Rarely, however, are excess and deficiency problems as easy to solve as this. As noted in the following cases, the Apportionment Rule is recognized in Illinois; because the surveyor uses this rule to *identify* lot boundaries

and not *change* lot boundaries, the surveyor can unilaterally apply the rule without first requiring deeds from the lot owners. See *Francois v. Maloney*, 56 Ill. 399 (1870); *Clayton v. Feig*, 179 Ill. 534, 54 N.E. 149 (1899); *Nilson Bros. v. Kahn*, 314 Ill. 275, 145 N.E. 340 (1924); *Reynolds v. Heerey*, 88 Ill.App.3d 101, 410 N.E.2d 334, 43 Ill. Dec. 334 (1st Dist. 1980); *May v. Nyman*, 3 Ill.App.3d 580, 278 N.E.2d 97 (3rd Dist 1972); *Balzer v. Pyles*, 350 Ill. 344, 183 N.E. 215 (1932); *Evers v. Watkins*, 72 Ill.App.3d 113, 390 N.E.2d 612, 28 Ill.Dec. 445 (5th Dist. 1979); *Dobrinsky v. Waddell*, 223 Ill.App.3d 443, 599 N.E.2d 188, 174 Ill.Dec. 642 (4th Dist 1992); 5 Illinois *Law and Practice* Boundaries sec. 2.

The Apportionment Rule is the proper means of addressing differences between record and measured distances when the lots are created simultaneously, resulting in no junior or senior rights between parcels.

> Example: There is a four-lot platted industrial park. The subdivision is rectangular in shape. The lots have record widths of 50 feet, 100 feet, 100 feet, and 350 feet. Thus, there is a record distance of 600 feet. However, the surveyor locates the four original subdivision corners and determines that the measured length of the subdivision is actually 603 feet. There is 3 feet of excess within the subdivision. This 3 feet of excess length must now be apportioned between all four lots. The procedure is as follows:

First, take the excess (or deficiency, as the case may be), which in this example is 3 feet, and divide it by the record subdivision distance (or block distance, if one is apportioning the distance within a block):

3 ÷ 600 = 0.005; this figure is called the *constant*.

Now multiply the constant (0.005) by the record width of each lot. This is the proration that is added to each lot. The record distance plus this proration is the measured distance:

0.005 x 50 = 0.25; therefore, the 50 foot lot has a measured distance of 50.25 feet.

0.005 x 100 = 0.5; therefore, the 100 foot lot has a measured distance of 100.5 feet.

0.005 x 100 = 0.5; therefore, the 100 foot lot has a measured distance of 100.5 feet.

0.005 x 350 = 1.75; therefore, the 350 foot lot has a measured distance of 351.75 feet.

Note that if these measured distances are added together, the total is 603 feet, which is the measured distance of the length of the subdivision:

50.25 + 100.5 + 100.5 + 351.75 = 603

However, if there is a street or alley within the block or subdivision, one does not prorate the width of the right-of-way. The surveyor's rule (which dates back to old English common law) is: streets and alleys get their full measure; the "sovereign" cannot be dispossessed of its land.

> Example: A block in a subdivision has four lots; each lot is fifty feet wide. A sixteen foot alley runs through the middle of the block. The surveyor finds the original block corners and determines that although the record distance of the block is 216 feet; the measured distance is actually 214 feet. That is, there is a two-foot deficiency within the block.

But because "streets and alleys get their full measure," the deficiency is apportioned only to the four lots and not to the sixteen foot alley. The width of the alley remains the same. Therefore, in order to compute the constant,

the surveyor must first deduct the width of the alley before dividing the deficiency by the (adjusted) record block distance:

	216 (record block distance)
less	16 (width of alley)
equals	200 (adjusted block distance)

Again, divide the deficiency by the (adjusted) record block distance:

2 ÷ 200 = 0.01

Now multiply the constant by the record width of each lot:

0.01 X 50 = 0.5

Now deduct 0.5 from the width of each lot:

50 - 0.5 = 49.5 feet.

The measured distance of the block is 214 feet. Each lot in the subdivision has a measured distance of 49.5 feet. The width of the 16 foot alley is not adjusted; it remains the same. Therefore:

49.5 + 49.5 + 49.5 + 49.5 + 16 = 214

Measured Distances from Improvements to Property Lines

When reviewing a survey, one should be concerned if there are no "ties," or measured distances, from any building on the property to the boundary line of the land. This could be an indication that the surveyor did not perform all the necessary field work. Similarly, one should question a plat of survey that depicts a fence along a property line but does not disclose either that the fence is "on line" or the distance from the fence to the property line.

Section 6.B.ix. of the ALTA/NSPS 2016 land title survey standards requires the surveyor to show "the location of all buildings on the surveyed property...dimensioned perpendicular to those perimeter boundary lines that the surveyor deems appropriate..."

If the surveyor has not shown this information, it is possible that the surveyor's client requested that this information not be disclosed, perhaps due to either time or cost considerations. If this is the case, however, the surveyor will probably qualify the survey certification accordingly.

"Exception" Legal Descriptions

"Exception" legal descriptions can be especially confusing. The general rule is:

Describe the entire tract of land (sometimes called the "caption") first, and then describe any and all exceptions. If the drafter of the description places the exception in the caption, it can be confusing. For example:

- The West 400 feet of Lot 2, excepting from said tract the west 100 feet, or,
- The West 400 feet of Lot 2, excepting from said west 400 feet the west 100 feet, or,

- The West 400 feet of Lot 2 in Blackacre Subdivision, being a subdivision of the Southwest quarter of Section 26, Township 38 North, Range 11, East of the Third Principal Meridian, according to the plat of said subdivision recorded October 8, 1971, as document R71-12345, in DuPage County, Illinois, excepting from the above described property the west 100 feet.

In all of these three examples, the entire tract of land is described first—in this case, the west 400 feet of lot 2—and then the exception parcel is described. By writing the legal description in this manner, one can first identify the west 400 feet of lot 2 and then easily eliminate the exception parcel (the west 100 feet of the west 400 feet). (Exhibit 11)

Compare these three examples with the following:

- The West 400 feet except the West 100 feet of Lot 2

This description is ambiguous. Is the west 400 feet taken out of "lot 2" or should it be carved out of "lot 2, except the west 100 feet?" It appears that the west 100 feet is to be excepted out of lot 2 first (unlike the previous examples), and then the west 400 feet is to be taken out of the remainder of lot 2. This may not have been the intent of the drafter of the description, however, and it creates a tract of land (Exhibit 12) that is markedly different from the above 3 descriptions (Exhibit 11).

Because exception legal descriptions can be confusing, some surveyors might describe "the west 400 feet of Lot 2, excepting from said tract the west 100 feet" in this manner:

> That portion of the West 400 feet of Lot 2 lying east of the following described line: Beginning at a point on the north line of lot 2, a distance of 100 feet east of the northwest corner of said lot, thence south parallel to the west line of lot 2 to the southerly line thereof.

The use of the word "thereof" in "exception" legal descriptions can sometimes lead to confusion:

> Lot 2 in Blackacre Resubdivision, being a Resubdivision of the North half of Lot 17 (except the north 33 feet thereof) in Sunnyside Hills Acres Estates, being a Subdivision of the Southeast quarter of Section 15, Township 38 North, Range 11, East of the Third Principal Meridian, according to the plat of said Resubdivision recorded on November 18, 1977, as document R77-56789, in DuPage County, Illinois.

What does the phrase, "except the north 33 feet *thereof*" refer to? The north 33 feet of lot 2 or the north 33 feet of the north half of lot 17?

Even very simple legal descriptions can be ambiguous when the word "thereof" is used:

> Lot 40 and lot 41, except the south twenty feet thereof.

Does the exception, "except the south twenty feet thereof," refer to both lots 40 and 41 or only lot 41? This legal description can be clarified in several ways:

- Lot 41 (except the south twenty feet thereof) and lot 40, or
- Lot 40 and lot 41, except the south twenty feet of lot 41, or
- Lot 40 and lot 41, except the south twenty feet of said lots

The ambiguity in these descriptions was created by the careless use of the word “thereof.” Drafters of legal descriptions should use this word sparingly and instead clearly indicate what an exception refers to.

Irregularly Shaped Lots

It is a simple matter to carve out the “west fifteen feet” of a lot when the lot is a square or rectangle. But what if the lot in question is irregular in shape—for example, a parallelogram, with the east and west sides straight up and down, but the north and south sides angling from the northwest to the southeast? (See Exhibit 13) The general rule of construction is that unless otherwise qualified, a deed conveying the west 15 feet should be construed as if the west 15 feet of the lot were measured by a line drawn at right angles to the west line of said lot.

But one should not have to resort to a rule of construction in order to understand a legal description. The drafter of the legal description should make it clear as to how the west fifteen feet is measured. There are two choices here:

- The west fifteen feet of the lot, as measured by a line drawn at right angles to the west line thereof, or
- The west fifteen feet, as measured along the northerly line and parallel to the west line.

Exhibit 13 illustrates how “the west fifteen feet” of a lot can change in size, depending on how it is measured.

Lot 127 is shown at Exhibit 14. A title company was asked to insure this portion of the lot: “Lot 127 (except the east 256.81 feet of the north 8 feet thereof and except the east 8 feet thereof.)”

Because the lot is irregularly shaped with lot lines that are either angular (northerly and easterly lines) or curved (westerly and southerly lines), this description contains several ambiguities:

- Is the east 256.81 feet measured along the north line of the lot or by a line perpendicular to the east line of the lot?
- Is the north 8 feet measured perpendicular to the north line, along the west line, or along the east line of the lot?
- Is the east 8 feet measured along the north line of the lot or by a line drawn perpendicular to the east line of the lot?

The lot shown at Exhibit 15 is commonly called a “stair step parcel.” What is the east 20 feet of this lot? While one might assume that it is the southern parcel, one might also assume that the drafter of this legal description intended “the east 20 feet” to apply to both parcels of land. “The east 20 feet” is ambiguous; these parcels are better described as follows:

- (North parcel) The east 20 feet of the north 50 feet of lot 1
- (South parcel) The most easterly 20 feet of lot 1

Parts of Lots

Consider this legal description: “The east 15 feet of lot 9, lot 10, and the west half of lot 11.”

Does this description describe only the east 15 feet of lot 9 or does it describe the east 15 feet of lot 9 and also the east 15 feet of lot 10?

If the drafter intended for "the east 15 feet" to affect only lot 9, the drafter could have clarified the description in at least two ways:

- Lot 10, the east 15 feet of lot 9, and the west half of lot 11, or
- The east 15 feet of lot 9, all of lot 10, and the west half of lot 11.

Curves in Metes and Bounds Legal Descriptions

The general rule in Illinois is that a legal description is sufficient if a competent surveyor can locate the land with reasonable certainty.

This rule is particularly applicable when reviewing a survey of a metes and bounds legal description that includes curves. For example, a non-tangent curve should contain sufficient information so that the curve can be reproduced without having to refer to the actual drawing of the land. If only the radius and general direction of the non-tangent curve is furnished, another surveyor would not be able to draw out the legal description without first examining the plat of survey or the original surveyor's field notes.

Example: The following description of a non-tangent curve includes only the radius and direction of the curve; this is not enough information to draw the curve:

> *Beginning at the northwest corner of the northwest quarter of said Section 6; thence north 25 degrees east 210 feet to the beginning of a non-tangent curve; thence northeasterly 155 feet along a curve to the right, having a radius of 150 feet...*

On the other hand, this description contains enough information to draw the curve:

> *Beginning at the northwest corner of the northwest quarter of said Section 6; thence north 25 degrees east 210 feet to the beginning of a non-tangent curve; thence northeasterly along a curve to the right, said curve having a radius of 150 feet and the chord of said curve having a bearing of north 78 degrees east and a chord length of 180 feet...*

The Basis of the Bearing Problem

Issue: An attorney receives a survey of metes and bounds property from a surveyor. The legal description on the survey, however, contains different bearings than the legal description in the title commitment. The surveyor maintains, though, that the two legal descriptions describe the same property and that the survey is correct. How can this be?

This might be termed the "basis of the bearing" problem.

Historically, legal descriptions were prepared with the use of a compass, which read magnetic north. But more and more surveyors are now using Global Positioning Systems, or GPS. GPS can automatically compute the longitude and latitude and thus determine "grid" North, or true North. True North is a few degrees different from magnetic north.

Most surveyors who use GPS understand this basis of the bearing problem. They will take the time to change their instruments to allow for this difference (called "declination") between grid North and magnetic North.

But a few surveyors, probably in the interest of efficiency, may not take the time to make this change to their

instruments. This results in a legal description on a survey that will be different from the legal description on the title commitment.

If one is furnished a survey that contains a legal description with bearings that are different from the ones in a title commitment, one should contact the surveyor and determine if the difference is due to this "basis of the bearing" issue. If so, one should accept the survey.

Rectangular Coordinates

On occasion a "Coordinate Table" will be shown on a plat of survey or plat of subdivision. This table will include numbers at various "northing" and "easting" points of reference. For example: "Point 1: Northing 35052.187; Easting 17401.211."

In the alternative, this information may be shown at the lot corners of the building or buildings on the land. For example: "N 9618.6184; E 11172.4589."

This listing is merely a local assumed coordinates system (as compared to the State Planes Coordinate System found at 765 ILCS 225/1 *et seq.*) The table sets forth the coordinates of the lot corners or building corners so that a surveyor can, if necessary, reestablish the location of the corners. This information is useful only to surveyors.

Surveys of Agricultural Property

It seems that commercial developers are purchasing agricultural property at an ever increasing rate. Because the sale of farms has a few unique survey issues, a discussion of surveys of agricultural property is in order.

"Gross" and "Net" Area: Terms of Art

One should know the difference between "gross" and "net" area. Gross area includes the entire area of the tract, including the area of land, if any, that falls within a road. Net area is the area of the tract less the area of that property, if any, that falls within the road. See *Brooks v. Halane*, 116 Ill.App. 383 (3rd Dist. 1904); *Hagenbuch v. Chapin*, 149 Ill.App.3d 572, 500 N.E.2d 987, 102 Ill.Dec. 886 (3rd Dist. 1986); *Binder v. Hejhal*, 347 Ill. 11, 178 N.E. 901 (1931).

Farmers and Fences

The statement that "farmers tend to fence their farms" is not only alliterative, it seems to be factual as well. But these fences can also enclose a serious title problem.

For example, the owner of the west farm has fenced the farm in, but the fence is substantially inside the line dividing two farms. Is the farmer to the east now tilling up to the fence line? If so, could the farmer to the east obtain title by adverse possession to that portion of the neighbor's farmland that lies between the fence and the boundary line? A title company reviewing a survey disclosing such a fence might raise an exception as to the possible claims of the neighboring farmer:

> *Right, title and interest of the owner of the property adjoining to the (North, South, East, or West) in and to that portion of the land lying between the (North, South, East, or West) line of the land and the fence located on the land and along said line, as disclosed by a survey.*

Both purchaser and lender would take title subject to this exception, but if the fence is not inset too much, perhaps the exception could be raised but also endorsed over on the loan policy with a "diminution" endorsement. This endorsement would insure the lender against any loss that the lender may sustain as a result of a decrease in value of the property in question as a result of any "taking" caused by the possible adverse rights of the neighboring farmer:

When reviewing a survey for possible boundary fence encroachments, when attempting to determine "whose fence is it," one may look at the survey and at how the horizontal fence boards are depicted in relation to the vertical fence posts. One may feel that if the vertical fence posts are inside the horizontal fence boards, so that the fence boards are enclosing the insured owner's property, the fence is quite likely the owner's fence, and thus not an encroachment.

Unfortunately, such thinking is erroneous. Many surveyors merely use a "boards and posts" drawing as a universal symbol for the depiction of a boundary fence. The symbol is used, regardless of how the boards and posts actually appear. Thus, one cannot rely on how a fence is depicted on a survey in attempting to determine the ownership of the fence. Furthermore, surveyors will usually not determine fence ownership; their job is to simply depict the location of the fence on the plat of survey.

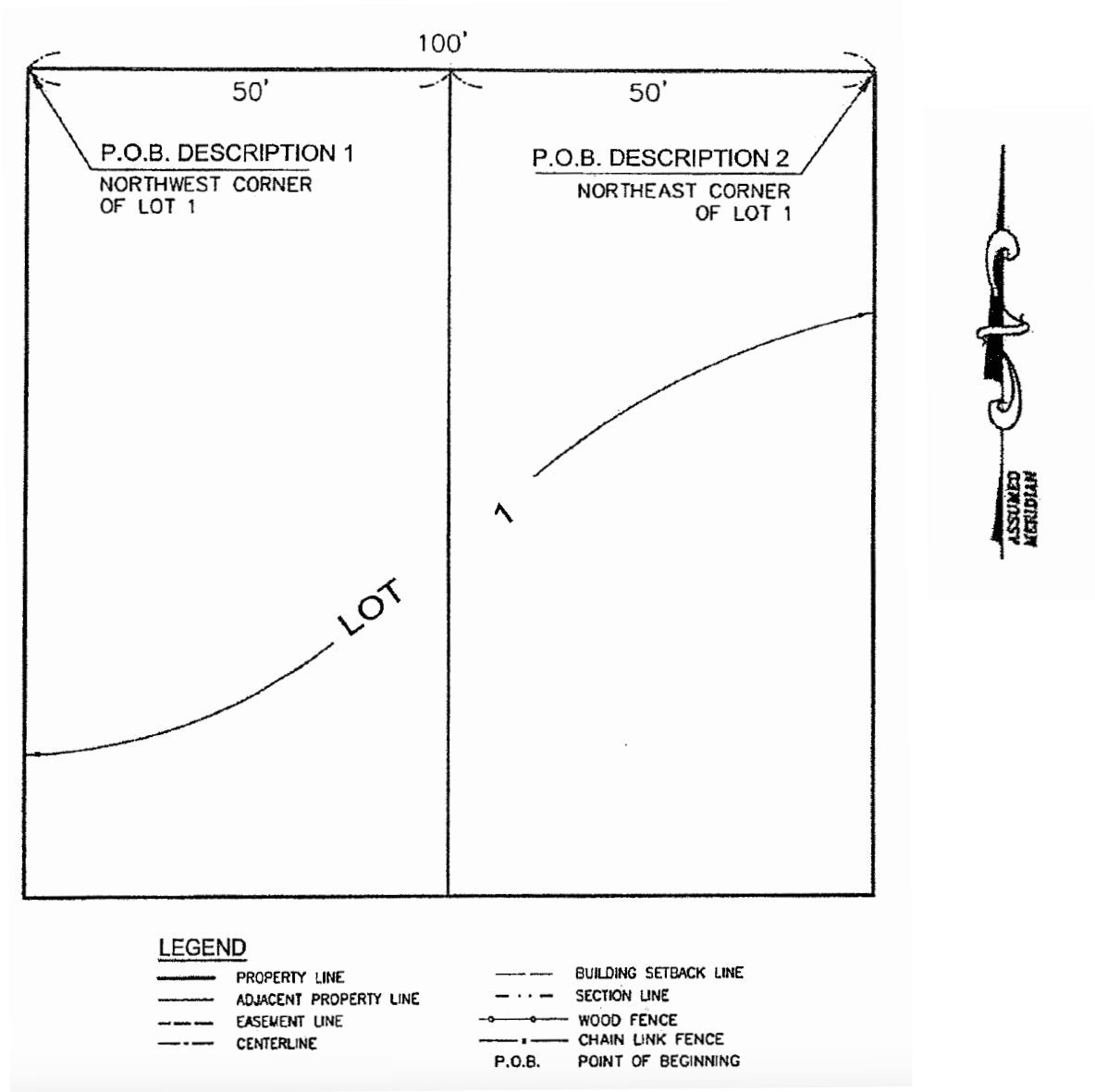
In addition, farmers often put the horizontal fence boards on the *inside* of the fence posts, so that when their livestock rub up against the fence, the animals will not push the boards off the posts. (Traditionally, though, farmers will place the boards on the outside of the posts when fencing in their front yards, in order to give the outer side of the fence a uniform appearance. This is often the case in urban areas as well, with many municipal building codes requiring this same type of front yard fence construction.)

How, then, can one determine boundary fence ownership? The best way is to look at the survey and see if the fence follows the perimeter of the property. If it does, the fence is most likely appurtenant to the land in question. If the fence veers away from the land and onto adjoining property, it is most likely appurtenant to that property. As a last resort, one should talk with the property owner.

Sometimes the fence encroachment results from the terrain of the land. For example, the farmer or fence installer may bend a boundary fence around a tree, creating a fence encroachment onto the adjoining land.

The original article "Advanced Survey Analysis" was written by Richard F. Bales, dated October 2015, edited and updated by Tyson Kouros, August 2019, and incorporates Chicago Title Insurance Company underwriting guidebooks and manuals.

EXHIBIT 01

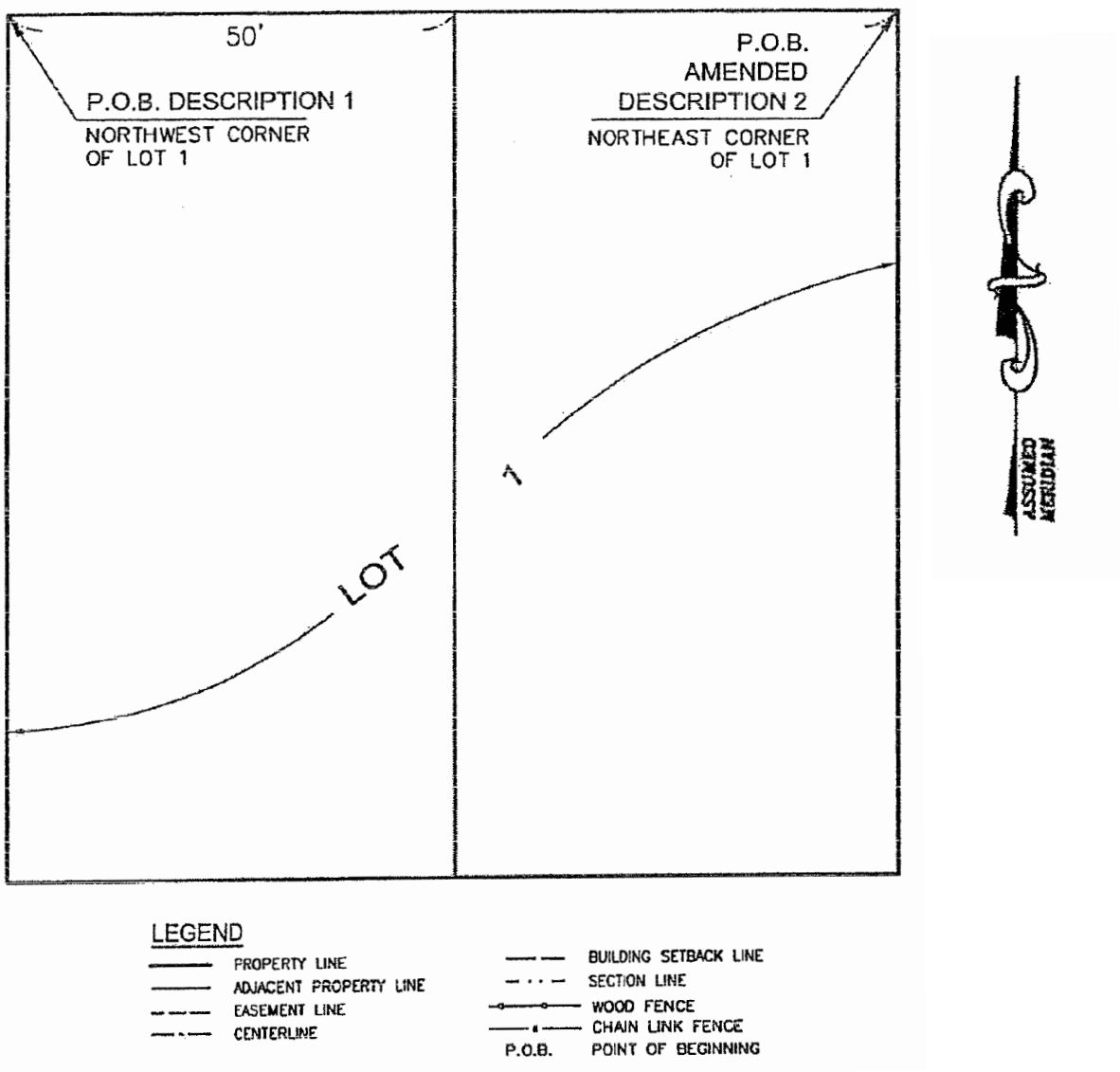


Description One: Beginning at the northwest corner of lot 1; then east along the north line thereof 50 feet; thence south parallel to the west line of said lot 1 a distance of 100 feet to the south line thereof; thence west along said south line 50 feet to the west line of said lot; thence north along said west line 100 feet to the place of beginning.

Description Two: Beginning at the northeast corner of lot 1; then west along the north line thereof 50 feet; thence south parallel to the east line of said lot 1 a distance of 100 feet to the south line thereof; thence east along said south line 50 feet to the east line of said lot; thence north along said east line 100 feet to the place of beginning.

These two descriptions begin at opposite corners of lot 1. This lot has a platted width of one hundred feet. But if lot 1 had an actual width of less than one hundred feet, there would be an overlap between the two descriptions. If lot 1 were more than one hundred feet in width, there would be a gap between the two descriptions.

EXHIBIT 02

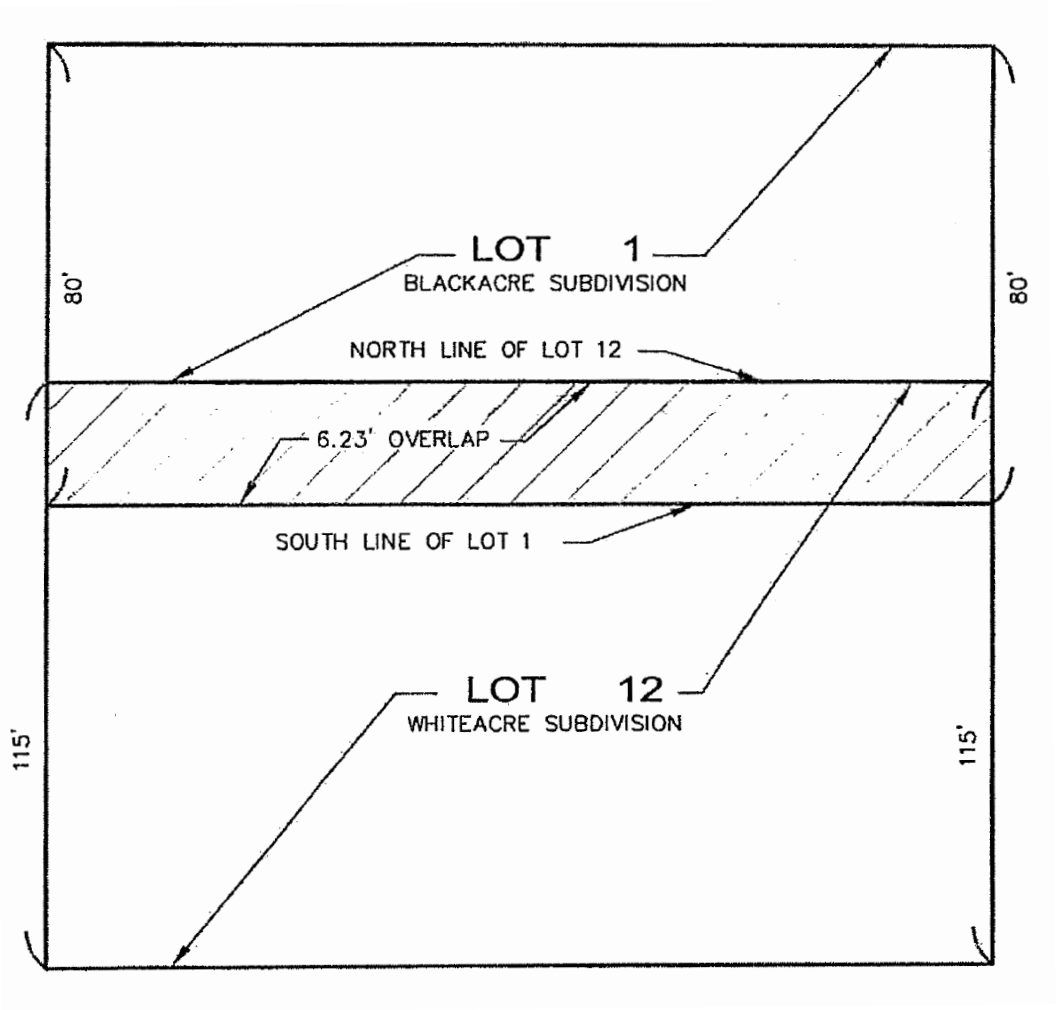


Description One: Beginning at the northwest corner of lot 1; then east along the north line thereof 50 feet; thence south parallel to the west line of said lot 1 a distance of 100 feet to the south line thereof; thence west along said south line 50 feet to the west line of said lot; thence north along said west line 100 feet to the place of beginning.

Amended Description Two: Beginning at the northeast corner of lot 1; then west along the north line thereof *to a point 50 feet east of the northwest corner of said lot 1; thence south parallel to the west line of said lot 1 a distance of 100 feet to the south line thereof*; thence east along said south line to the east line of said lot; thence north along said east line 100 feet to the place of beginning.

Note how these two descriptions establish a common line between the two parcels, thereby eliminating the possibility of a gap or overlap between description one and amended description two.

EXHIBIT 03

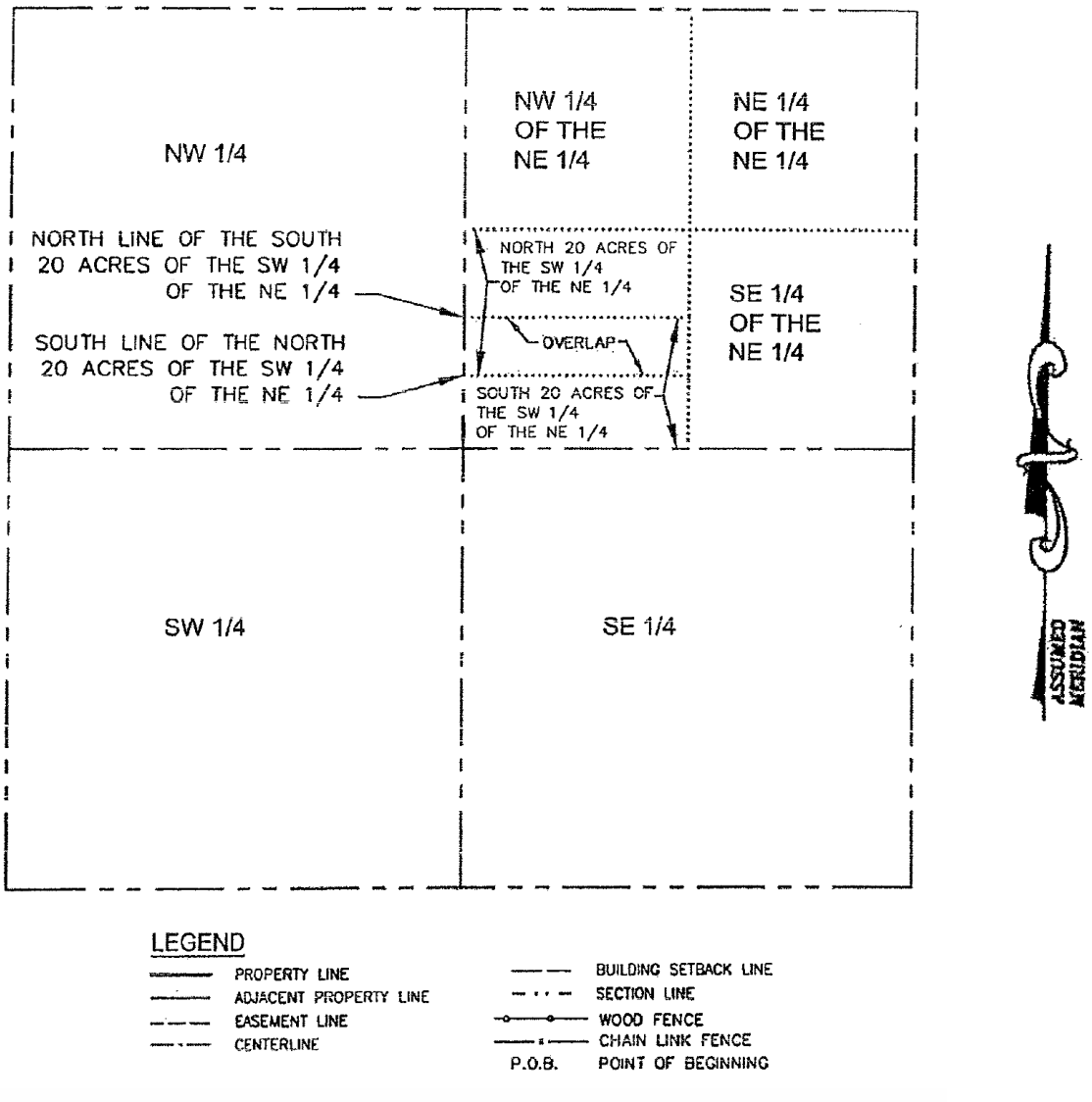


LEGEND

———	PROPERTY LINE
———	ADJACENT PROPERTY LINE
— — —	EASEMENT LINE
—·—	CENTERLINE
—— ——	BUILDING SETBACK LINE
— · · —	SECTION LINE
—o—o—	WOOD FENCE
—x—x—	CHAIN LINK FENCE
P.O.B.	POINT OF BEGINNING

Lot 1 in Blackacre Subdivision has a record measurement of 80 feet in width, and lot 12 in Whiteacre Subdivision has a record measurement of 115 feet in width. If one were to look at a county tax map of these two lots, it would appear that the two subdivisions (and the two lots) were contiguous to each other. However, there is actually a 6.23 feet overlap between the two lots. The overlap is a result of the two subdivisions being incorrectly carved out of a larger tract of land.

EXHIBIT 04



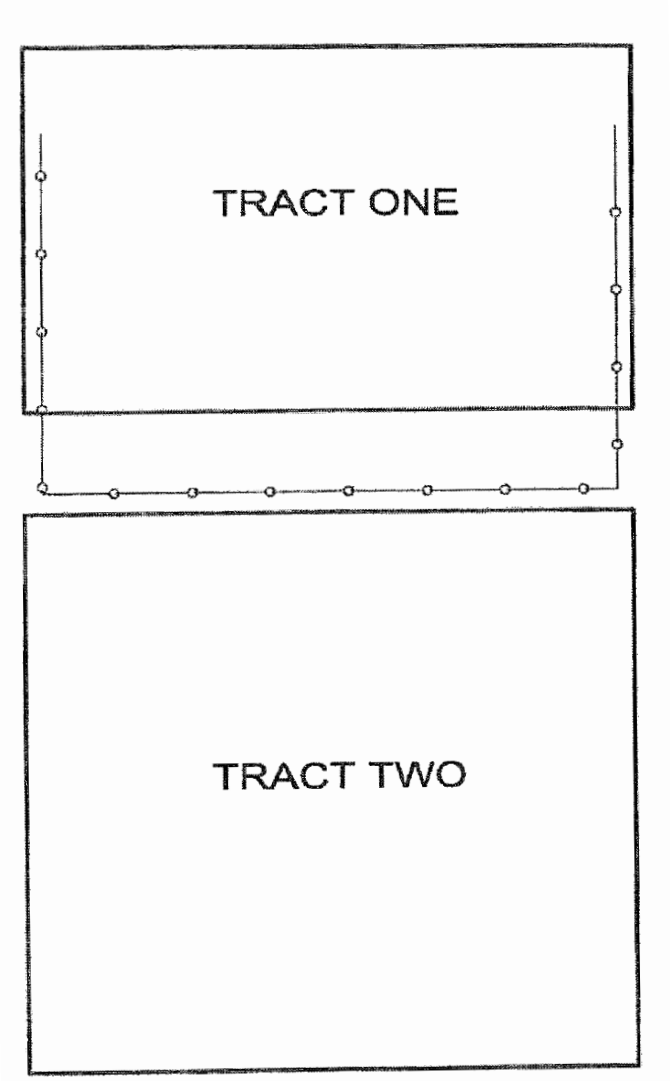
The southwest quarter of the northeast quarter of this section was divided into two tracts of land:

1. the north twenty acres of the southwest quarter of the northeast quarter

2. the south twenty acres of the southwest quarter of the northeast quarter.

However, the southwest quarter of the northeast quarter of this section is a quarter quarter that contains less than forty acres. Therefore, there is an overiap between the north twenty acres and the south twenty acres of this quarter quarter.

EXHIBIT 05

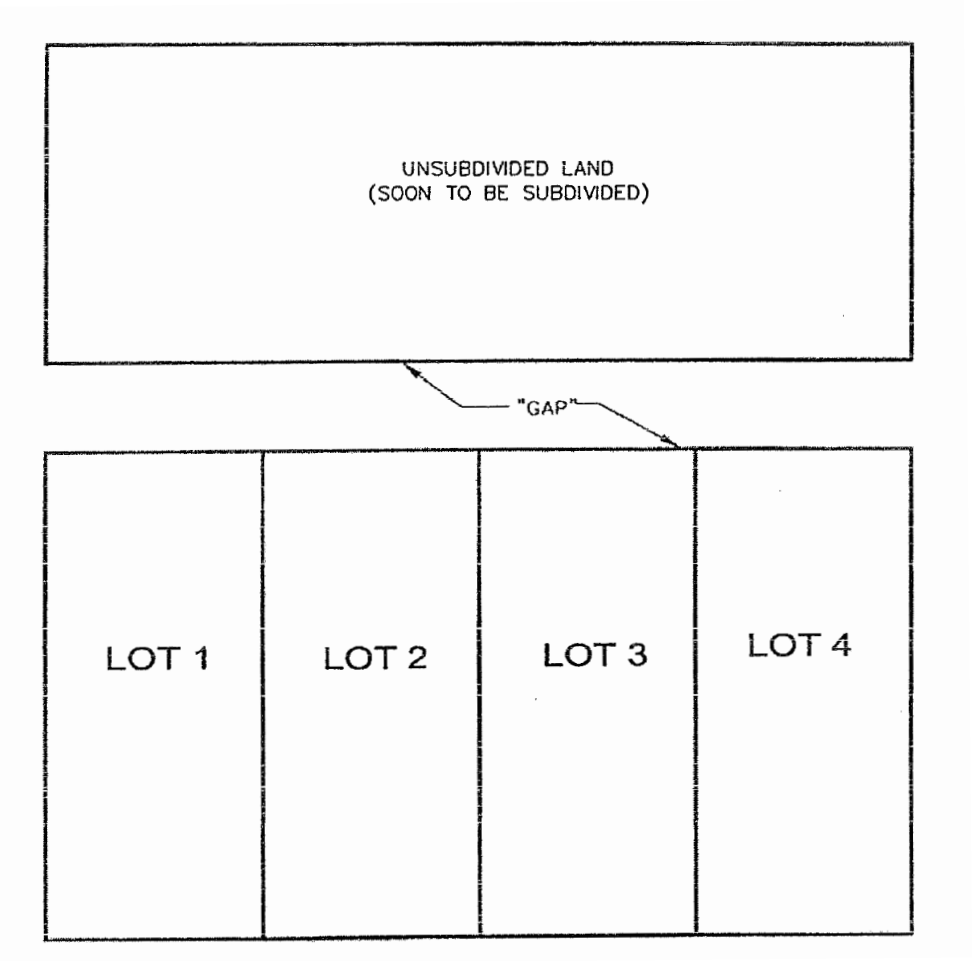


LEGEND

	PROPERTY LINE
	ADJACENT PROPERTY LINE
	EASEMENT LINE
	CENTERLINE
	BUILDING SETBACK LINE
	SECTION LINE
	WOOD FENCE
	CHAIN LINK FENCE
P.O.B.	POINT OF BEGINNING

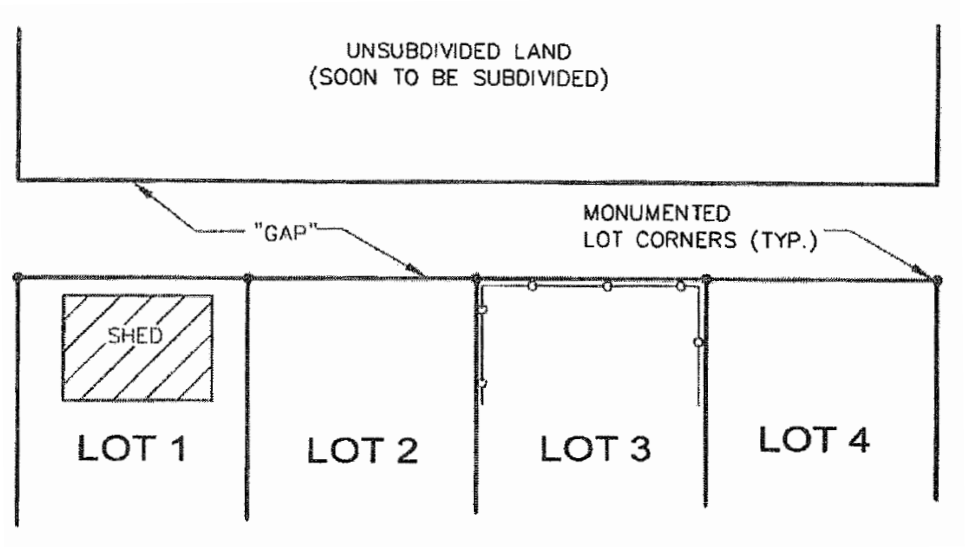
The owner of Tract One has erected a fence that completely encloses the gap parcel that is between Tract One and Tract Two.

EXHIBIT 06

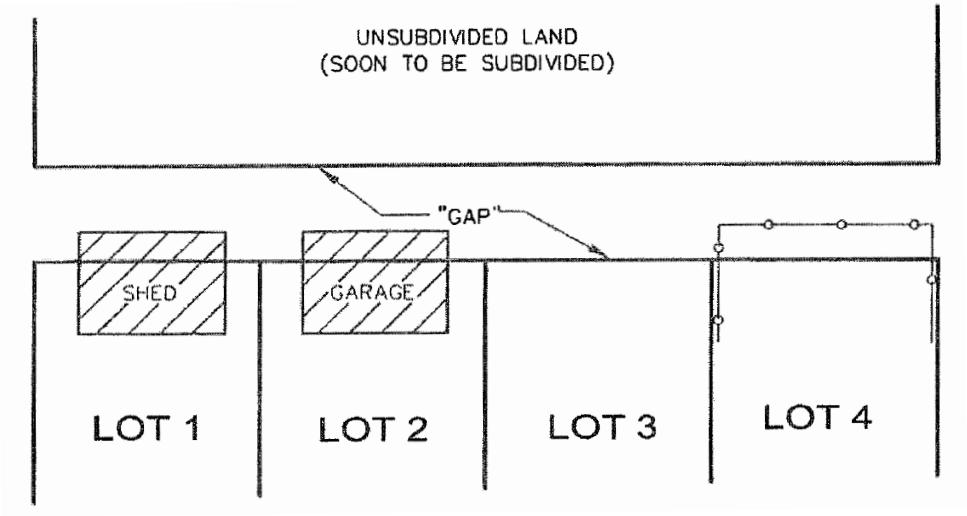


There is a gap between an existing subdivision and unsubdivided land; this unsubdivided land, however, will soon be subdivided.

EXHIBIT 07



In this example the iron pipes that monument the lot corners do not fall within the gap parcel. All improvements (a shed on one lot, a fence on another lot) are also set back within the lot lines; there have been no improvements constructed on the gap parcel. It seems clear that the lot owners purchased their lots with no expectation of having any interest in the gap. A title insurance company might be willing to insure that the developer of the unsubdivided land owns the entire gap parcel.



But in this example the shed, garage, and fence have all been constructed within the gap parcel. Even if the iron pipes that mark the lot corners are set back away from the gap, it is doubtful that a title insurance company would insure that the developer of the unsubdivided land owns the gap parcel unless the developer acquires deeds from all of the adjoining lot owners.

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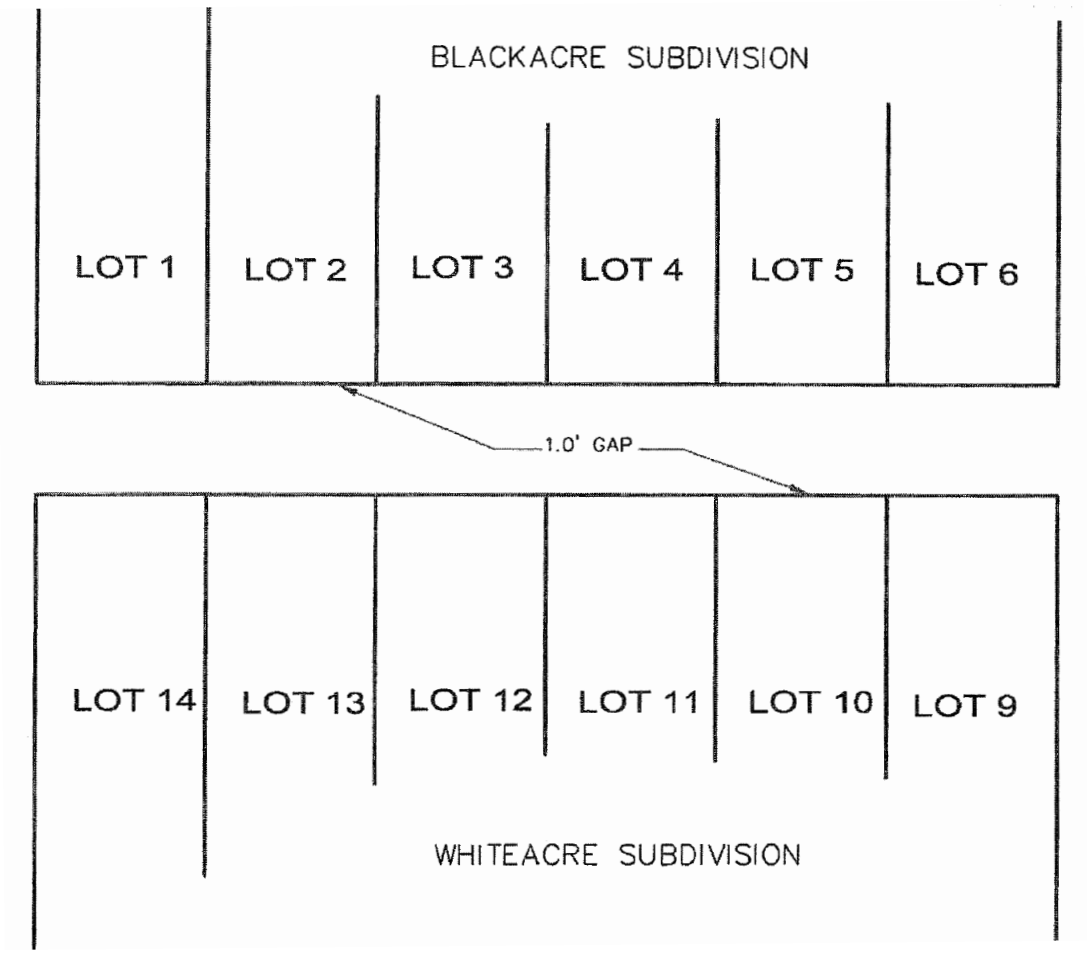
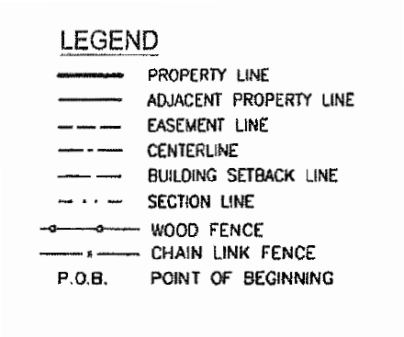
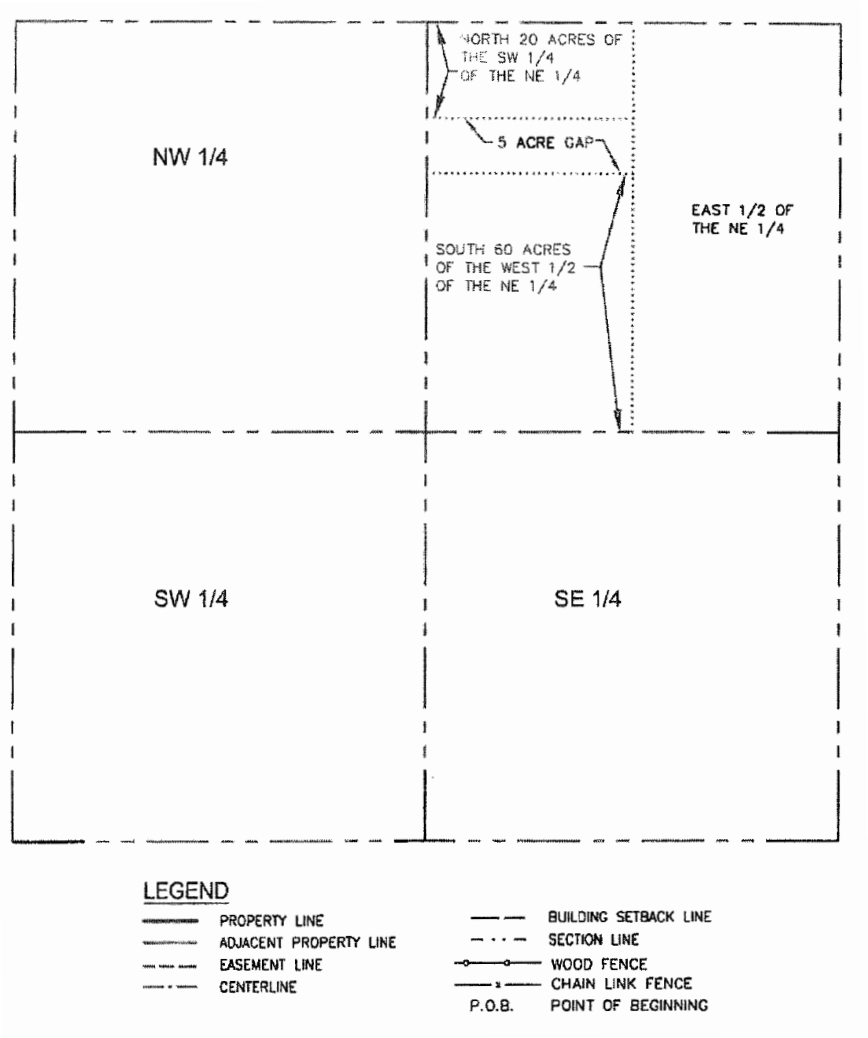
EXHIBIT 08





The county tax maps of this property indicate that these two subdivisions are contiguous to each other. Actually, there is a one foot gap between the two subdivisions.

EXHIBIT 09



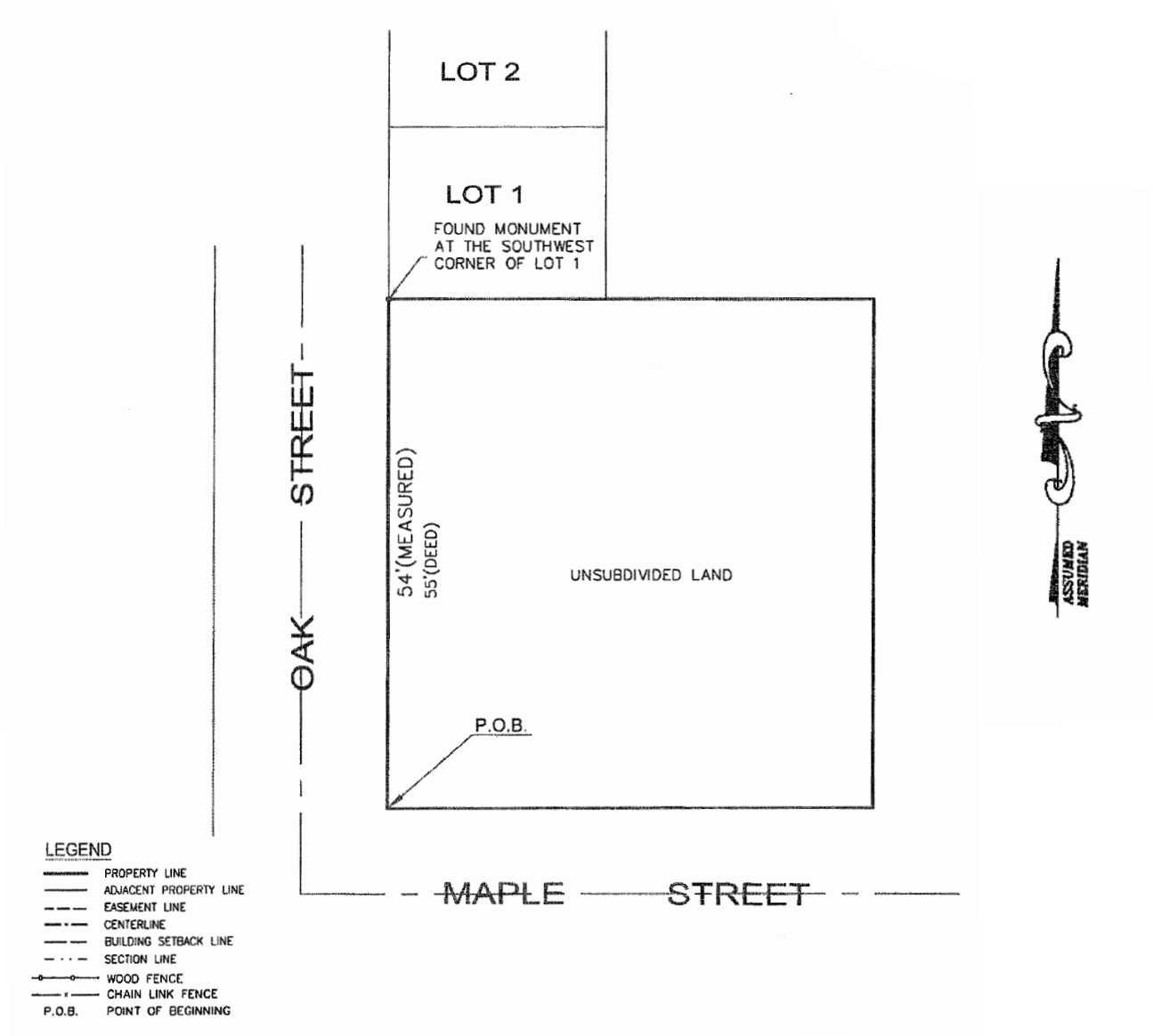
Land in Illinois was originally surveyed pursuant to both the Rectangular Survey System of land measurement that was devised by Thomas Jefferson and later adopted by the Continental Congress in 1785 and Tiffin's instructions of 1815.

The theoretically perfect quarter section of land contains 160 acres. A half quarter section would therefore consist of 80 acres. In this example, the north 20 acres of the west half of the northeast quarter was first conveyed and then the south 60 acres of the west half of the northeast quarter was conveyed.

This quarter section of land, however, contained more than 80 acres. This incorrect division of the half quarter section (north 20 acres, south 60 acres) resulted in a 5 acre gap between the two tracts of land.

To eliminate the possibility of a gap or overlap, the second tract of land should have been conveyed as: "the west half of the northeast quarter (except the north 20 acres thereof.)"

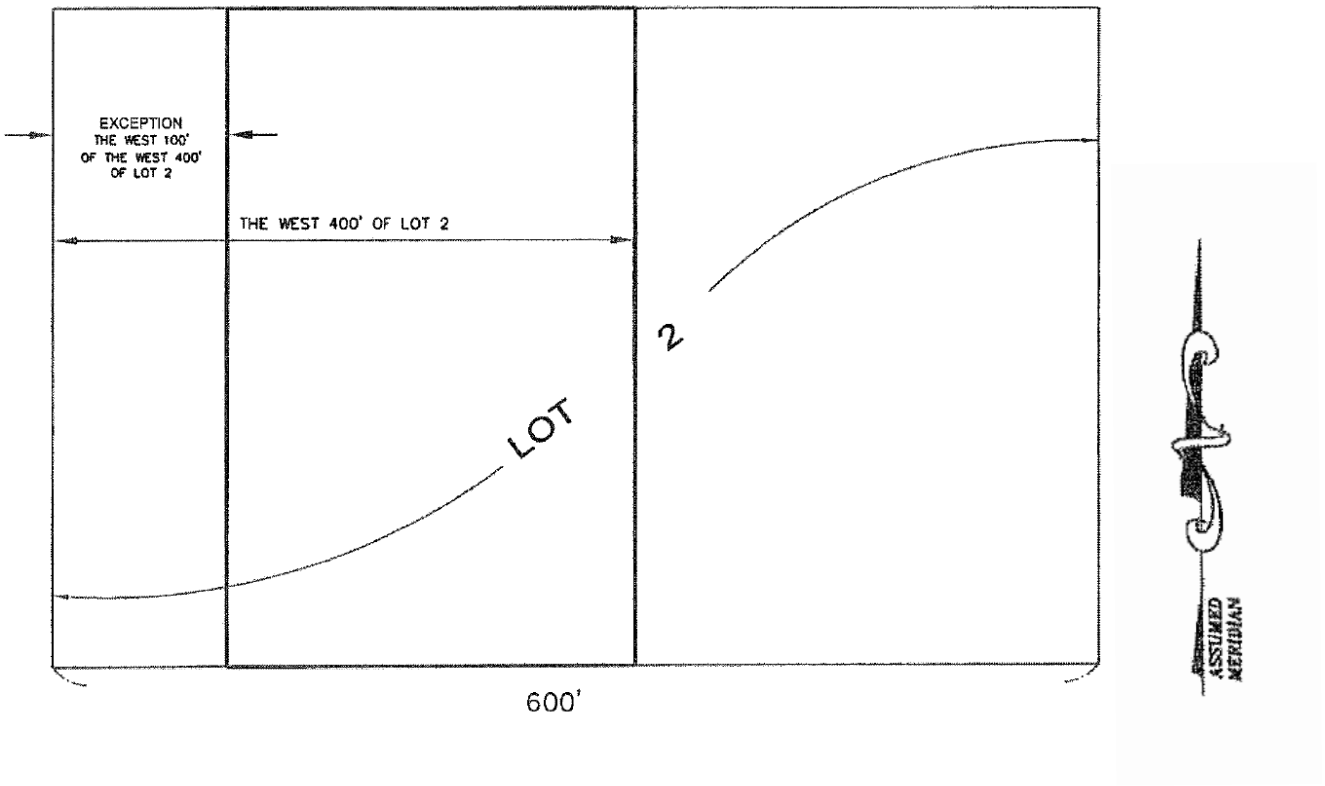
EXHIBIT 10



The legal description for this tract of unsubdivided land has traditionally read as follows: Beginning at the intersection of the east side of Oak Street and the north side of Maple Street; thence north along the east side of Oak Street 55 feet to the southwest corner of lot 1; thence east along the south line of lot 1...

The distance from the point of beginning to the southwest corner of lot 1 is actually 54 feet, not 55 feet. Because monuments control over distance, the northwest corner of this tract of unsubdivided land is at the southwest corner of lot 1 and not at a point one foot north of this southwest corner.

EXHIBIT 11



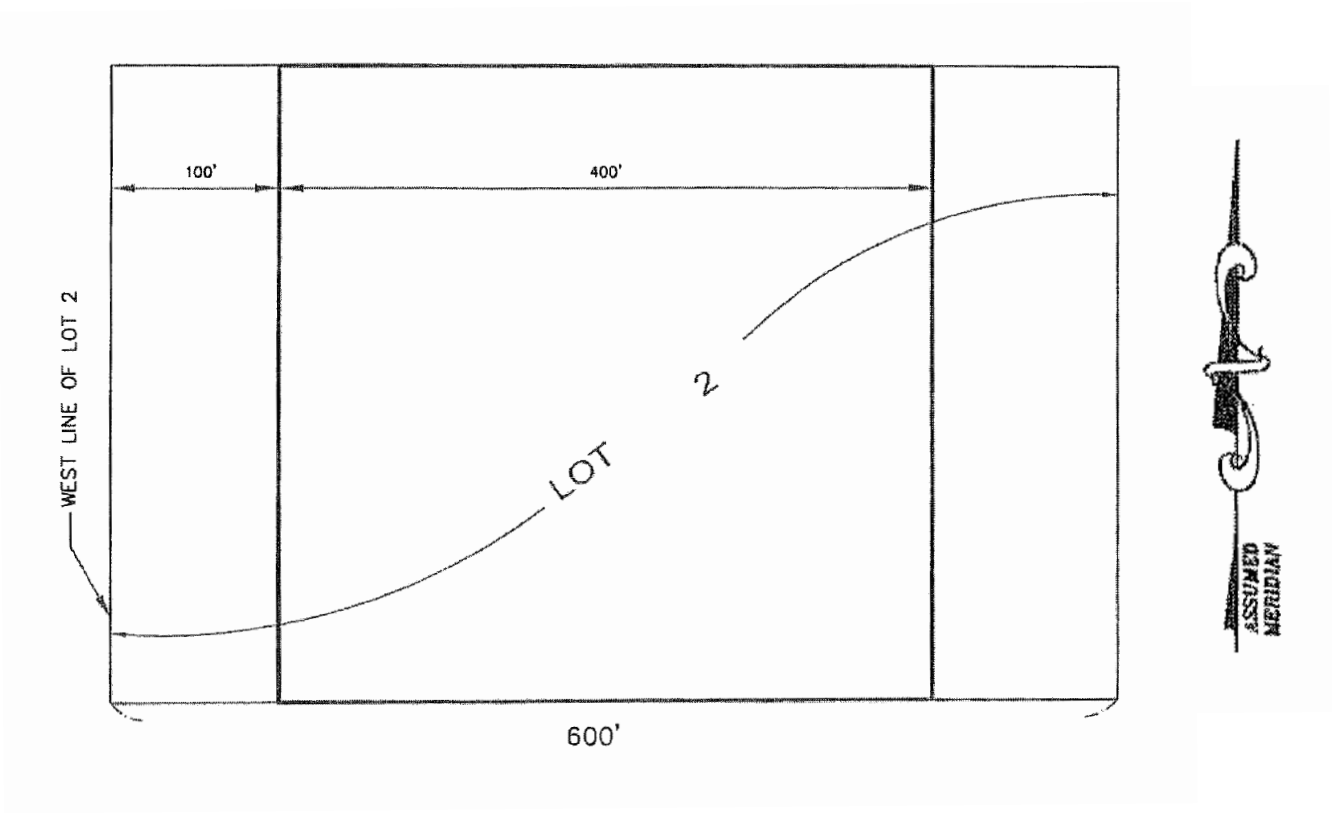
LEGEND

	PROPERTY LINE
	ADJACENT PROPERTY LINE
	EASEMENT LINE
	CENTERLINE
	BUILDING SETBACK LINE
	SECTION LINE
	WOOD FENCE
	CHAIN LINK FENCE
P.O.B.	POINT OF BEGINNING

The West 400 feet of Lot 2, excepting from said tract the west 100 feet

In writing an "exception" legal description, the entire tract of land should be described first—in this case, the west 400 feet of lot 2—and then the exception parcel should be described. By writing the legal description in this manner, one can first identify the west 400 feet of lot 2 and then easily eliminate the exception parcel (the west 100 feet of the west 400 feet of lot 2).

EXHIBIT 12



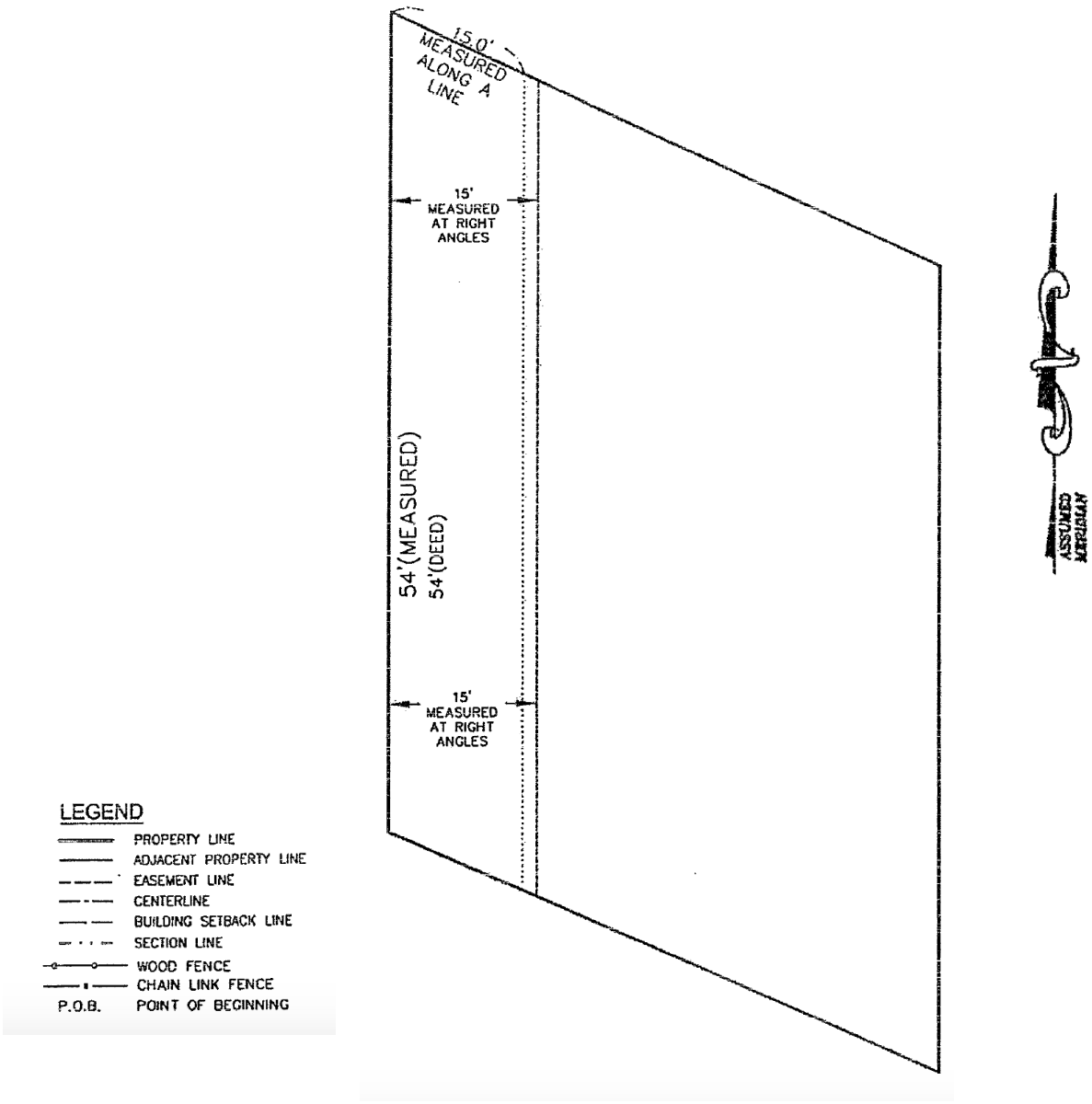
LEGEND

	PROPERTY LINE
	ADJACENT PROPERTY LINE
	EASEMENT LINE
	CENTERLINE
	BUILDING SETBACK LINE
	SECTION LINE
	WOOD FENCE
	CHAIN LINK FENCE
P.O.B.	POINT OF BEGINNING

The West 400 feet except the West 100 feet of Lot 2

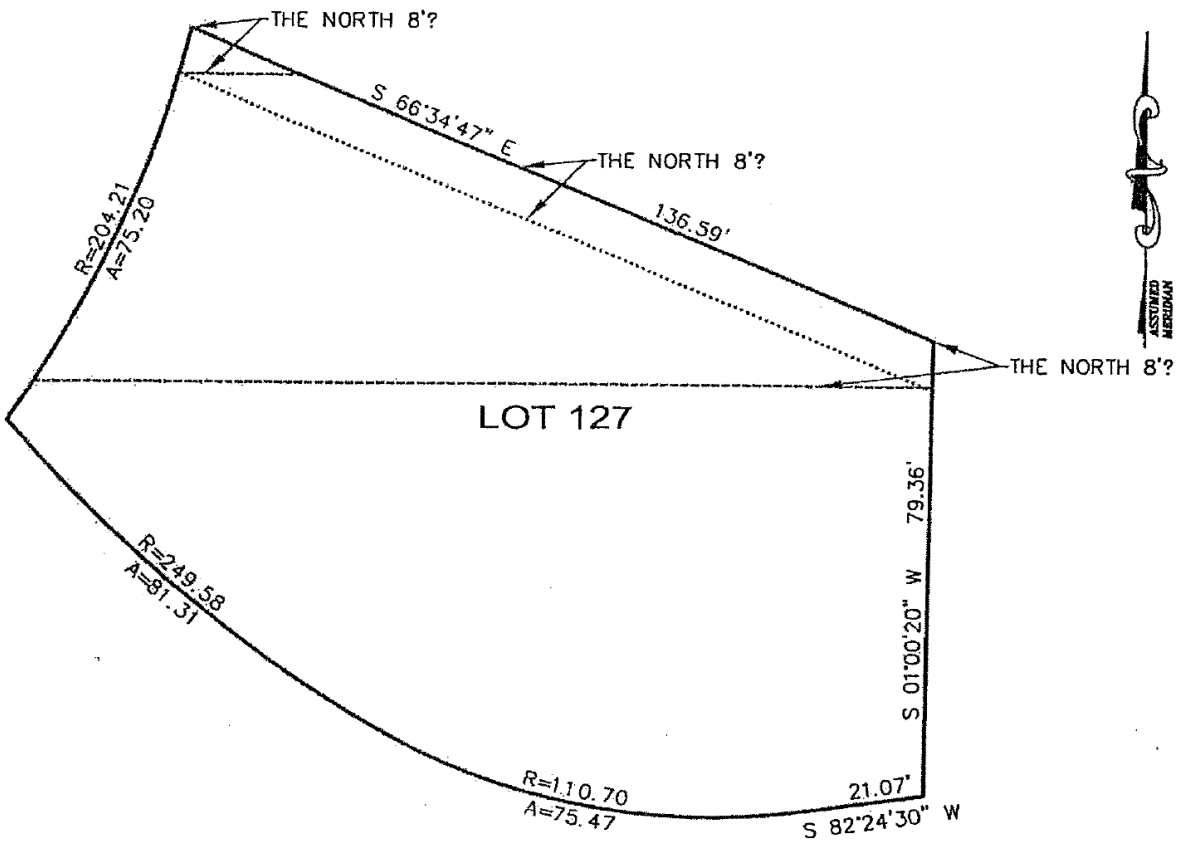
This description is ambiguous. Is the west 400 feet to be excepted out of “lot 2” or should it be carved out of “lot 2, except the west 100 feet?” It appears that the west 100 feet is to be excepted out of lot 2 first (unlike the legal description on the previous page) and then the West 400 feet is to be taken out of the remainder of lot 2. This may not have been the intent of the drafter of the description, however, and it creates a tract of land that is very different from the parcel described and depicted on the previous page.

EXHIBIT 13



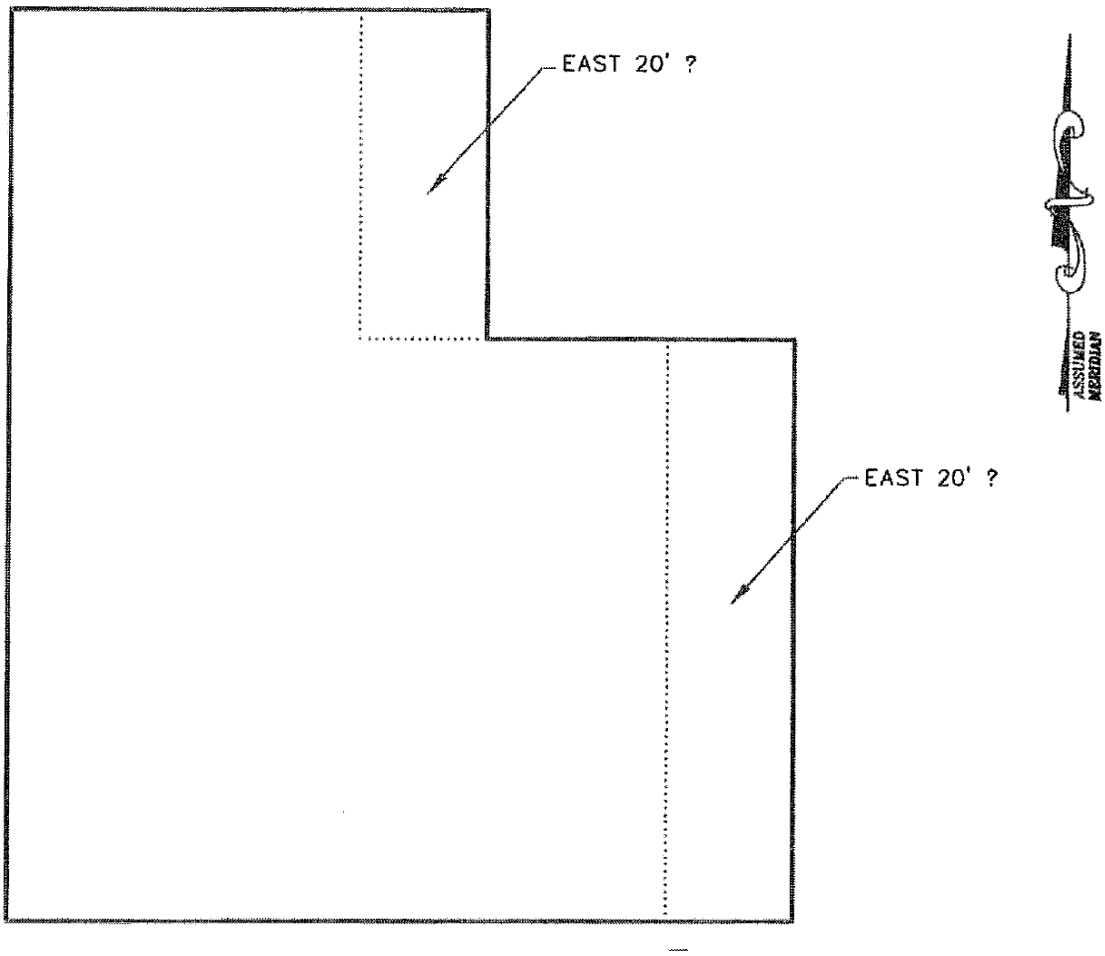
How does one measure the “west fifteen feet” of an irregularly shaped lot? This example illustrates how the east line of the west fifteen feet of a lot shifts to the east by several feet when measured at right angles to the west line of the !ot and not measured along the northerly line of the lot.

EXHIBIT 14



Even a description as simple as “the north 8 feet” of a lot is ambiguous when the lot in question is as irregularly shaped as this lot is.

EXHIBIT 15



LEGEND

	PROPERTY LINE
	ADJACENT PROPERTY LINE
	EASEMENT LINE
	CENTERLINE
	BUILDING SETBACK LINE
	SECTION LINE
	WOOD FENCE
	CHAIN LINK FENCE
P.O.B.	POINT OF BEGINNING

What is the east 20 feet of this lot?