

# decided **guidance:** case examinations

## Staying Within Your Survey

**T**he Case of Erickson v. Turnquist was brought to the Supreme Court of Minnesota in 1956 as an appeal of the District Court's order denying the plaintiff's motion for a new trial. This is a classic "mano a mano" Land Surveyor cage match. As usual we will pick through the Court's bundle of evidence and gnaw on the bones in hindsight. So, without further aduix let's put on our retrospective safety goggles and begin the dissection.

In a nutshell this case looks at the common line between two 140' x 50' town lots. We have J.E Howard, the "well seasoned" County Surveyor, doing a line survey for the plaintiff, and Harold S. Hall, a PE/PS with "several years expirience", doing the same line survey for the defendant sometime thereafter. Hall set his monuments a strong foot away from Howard's thus defining a 1' x 140' Sudetenland between the individual domains of Erickson and Turnquist. Fortunately, they chose to settle thier differences in court rather than rolling out the blitzkrieg.

### What did we learn from *Dittrich v Ubl*?

We looked at *Dittrich* back in December 2016 Issue. The Court in that case said "*This is not a situation where there is an absence of other controlling calls or landmarks which can be ascertained, but on the contrary, the record shows a definite monument directly traceable to the one described on the original*

*plat itself.*" Okay, so what's the big deal with having a monument directly traceable to the original plat other than it's close and easy? Well the Supreme Court of Minnesota tells us precisely what the big deal is right here in Erickson and I quote

*"Since the location of lots, streets, and alleys within a plat is determined by their relation to the original monuments and landmarks of the plat, it must be apparent that the proper point from which to commence a survey to determine the boundary line between lots within an addition is an original or properly relocated monument or landmark within the addition itself..."*

If that's a hard pill for you to swallow then you're going to be in deep kimchi when I tell you that each recorded plat is actually a big sequential conveyance encapsulating a group of simultaneous lots. When you resort to going outside of your plat you are suggesting that every scrap of evidence from that original simultaneous conveyance (a.k.a. the plat) is LOST. If you consider each plat as a "unique event in time" then overstepping it's content or perimeter might be as foul as prorating through found monuments.

### Round One—The P.O.B.

Howard came out swinging with a P.O.B that he said was in the middle of the railroad tracks and several blocks outside of our plat of Northern Pacific Addition. He changed hands and later said that he used a point at the intersection of Jefferson and Ash Streets

within a platted site called Town of Wadena. Neither punch really connected as the Court noted that the separate plat of the Town of Wadena did not show a monument at either of Howard's points. Howard did not have persuasive evidence connecting his found monuments to either plat.

Hall dodged, wove, and countered Howard's jabs by starting within the Northern Pacific Addition and presenting strong evidence tying an original corner directly to his P.O.B. Hall lands a solid blow to Howard's chin by 1.) Recovering old reference points to the mark, 2.) Recovering a recorded pedigree of the mark, and 3.) Recovering documented public recognition of his point. Ding, ding, Round One goes to Hall.

### Round Two—Following the Footsteps

Howard wandered into the ring much the same as he wandered around measuring half of the townsite. In all fairness you can't actually retrace an event that never happened however, this collection of measurements also doesn't offer much evidence of the original survey. Hall entered the ring with a square posture and threw a testimonial left hook to Howard's jaw. Hall said that he actually compared his measurements made on the ground against the distances and calls made on the original plat and found them nearly identical. Ding, ding, ding...<Howard stumbled back to his corner and Hall bantied around the ring> Round Two- Hall.



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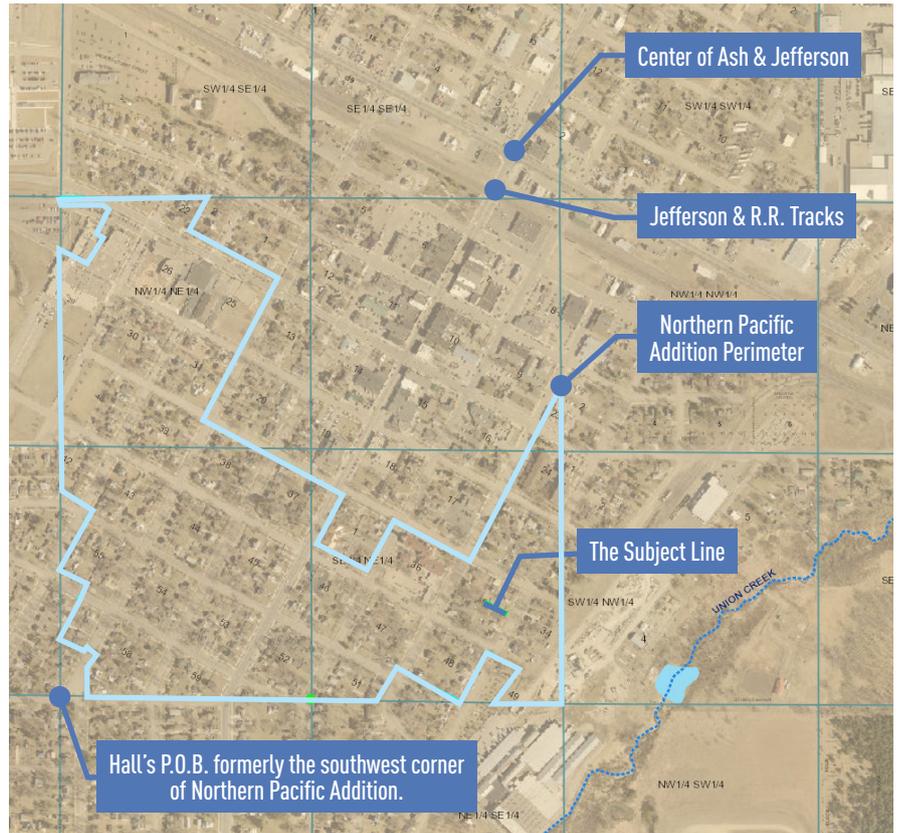
Confooseus say:  
There's no need to swim to Hawaii  
for pineapples when you are standing  
in a grocery store full of fruit.

## Round Three— The Sudetenland

Round three was decided by the judges. Howard threw the first punch by staking the line and Hall countered sometime later. What I find most fascinating about this case is the choice of words used to describe the opposing surveyor's conclusions.

Howard's effort is described as such: "From the point of commencement he ran his survey west and south into Northern Pacific Addition to block 35. He then determined what he considered to be the boundary line between lots 3 and 4 and set stakes at both ends of the line." The Court identified that Howard started in the twilight zone and crossed "into" our plat. We have already discussed why that might be an important factor to this Court. Next the Court chooses words that sound to me like they really wanted to disenfranchise Howard's effort. The Court appears to hint that Howard's conclusion is meatless by describing it as "what he considered to be the boundary line..." There's no mention or credit that his determination was founded on some actual evidence. The only thing we know is that the Court ties Howard's line to what Howard thinks. I may be jumping to conclusions on this point so take it with a grain of salt, or better yet, maybe just leave it. We also must consider that the Court is reviewing the lower conclusion, not necessarily creating a new conclusion. The Court says that right from the "git-go." "It is elementary that on review the facts are to be considered in the light most favorable to the findings [1] and that our function is to look to the evidence as a whole to determine whether it is sufficient to sustain the findings of the district court.

Hall's opinion is clearly based on evidence directly traceable to the original plat. The



Court cited the evidence recovered by Hall and recognized that he actually retraced the plat on the ground. The court also says he completed his survey which makes Howard's effort seem somewhat whimsical.

"It was from these landmarks that he commenced his survey. He compared his measurements made on the ground against the distances and calls specified on the Dartt as well as the original plat. He found them to be nearly identical. **Having completed his survey**, he set stakes at both ends of the line which he determined to be the boundary line between lots 3 and 4."

Ding, ding, ding, ding, ding...TKO by Hall in three and the bookies are crying! Put a fork in it because this fight is done! ■

**Note:** A PDF of this case can be found at <http://www.amerisurv.com/PDF/EricksonVersusTurnquist.pdf>

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## The Corny Analogy of the Month // *WARNING: this analogy contains a pirate reference*

The Erickson Court says: "The question before us is not whether Hall's survey was precisely accurate but rather whether there is evidence that reasonably supports the findings of the trial court. It is a matter of common knowledge that surveys made by different surveyors seldom, if ever, completely agree and, that more than likely, the greater the number of surveys the greater the number of differences."

Retracement surveying is more about evidence and less about measurement. Thank you Supreme Court of Minnesota for providing the guidance. Among other things, boundary monuments and occupation lines are the physical body of land boundaries. Title

is of course an abstract legal concept associated with that body. The legal description or plat dimensions are recovery instructions leading folks to the evidence of the body on the ground. Okay, so here you have your swashbuckling analogy of the month: the plat is the treasure map of a survey and the remaining ground evidence is the actual treasure. Yeah, I know that's "corny-er" than a combine in harvest but we are talking about a "buck an ear."

**Editor's note:** Mr. Foose has been advised by the magazine staff to retain his day job and refrain from any standup gigs...anywhere...ever! He has also been urged to seek professional counseling.