

By Gary Kent, LS

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Rewriting Legal Descriptions

When presenting programs to persons in the title industry, the question is frequently asked about the tendency of some surveyors in some areas to write new descriptions for virtually any property they are surveying. The questions posed are often along the lines of “Why do they do this?” and “Which description is correct—the old one or the new one?” The answer is often the same as for almost every other question posed related to boundary surveying: “It depends.”

In this discussion, it is important to acknowledge that there are differences in practices between the colonial “metes and bounds” states, the public land states and other states such as Texas and Hawaii. But most of the issues related to this topic and discussed in this column transcend even those differences.

The most egregious example of description rewriting is the preparation of a metes and bounds description for a property that is a lot in a platted subdivision of record.

On an ALTA/ACSM Land Title Survey, lenders often ask that the surveyor prepare a metes and bounds description when the record description is a platted lot. One common reason that this request shows up in the lender’s comments is very simple: someone at the lender is looking at a checklist that states the courses shown on the survey must match the courses in the description—and they have a description with no courses! So, in order to check off the item, they need a metes and bounds description.

Such a request shows a lack of understanding of title, and simply represents

Part of the South one-half (1/2) of Section 19, Township 14 North, Range 3 East, in Marion County, Indiana, which lies within the tract described as follows:

Beginning at a point 936 feet East of the West line and 690 feet South of the North line of the South east quarter of Section 19, Township 14 North Range 3 East; thence West 39 degrees 30 minutes South 360 feet; thence West 33 degrees, 15 minutes South 202 feet; thence West 7 degrees South 156 feet; thence West 46 degrees 15 minutes North, 217 feet; thence West 12 degrees 30 minutes North 188 feet; thence West 46 degrees 30 minutes North 125 feet; thence North 34 degrees 30 minutes West 273 feet; thence North 35 degrees 30 minutes West 263 feet; thence West 11 degrees 20 minutes South, 149 feet; thence West 26 degrees 30 minutes South, 106 feet; thence South 31 degrees 30 minutes West, 133 feet; thence South 5 degrees 10 minutes West 140 feet; thence South 2 degrees West, 199 feet; thence South 32 degrees 15 minutes East 314 feet; thence South 24 degrees 45 minutes East, 201 feet; thence South 35 degrees 30 minutes East, 249 feet; thence South 29 degrees 30 minutes East 223 feet; thence South 37 degrees East, 314 feet; thence South 9 degrees 30 minutes East, 175 feet; thence South 27 degrees 30

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A good example of a description that should be rewritten (after determining what real estate it is actually supposed to describe).

a waste of time and effort. Even if the survey reflects differences between platted and measured dimensions, the proper description is *still* the platted lot.

In some areas of the country, some surveyors even seem to write descriptions of platted lots without any such request from the client, lender or title company. And the new description prepared often inexplicably does not even make any reference to the platted lot!

In either case, the end result is a parcel with a disjointed title history and, potentially, deeds that contain descriptions that do not represent the true chain of title or that are in conflict. There would seem to be no rational reason or excuse to write a metes and bounds description for a plat-

ted subdivision lot, and surveyors should educate their clients while refusing to do so. If nothing else, surveyors should certainly not be writing such descriptions of their own volition.

It is not too difficult to find court cases dealing at least in part with conflicting descriptions in deeds. Oftentimes, the problem is with a metes and bounds description that attempts to describe a platted lot (or a part of a platted lot) or an aliquot subdivision of a section, but doesn’t get the job done properly.

The weight of authority where there are conflicting descriptions is generally something like the decision in the 1866 case of *Gano, et al v. Aldridge, et al* (27 Ind. 294). In *Gano*, the question revolved

around the sufficiency and interpretation of conflicting terms in two deed descriptions. One of them read as follows:

"[A] certain tract of land situated in the county of Posey and the State of Indiana, lying on the Wabash river, with the numbers as follows: a part of fractional section number 19, being the half of the west half of the north-west quarter of section number 29, in township number 7 south, of range 14 west, containing 40 acres, and also a small fraction of land, for quantity, beginning at the north-west corner of the aforesaid 40 acres, thence running with the west line sixteen poles, thence running to the river, a north corner, supposed to contain 4 acres."

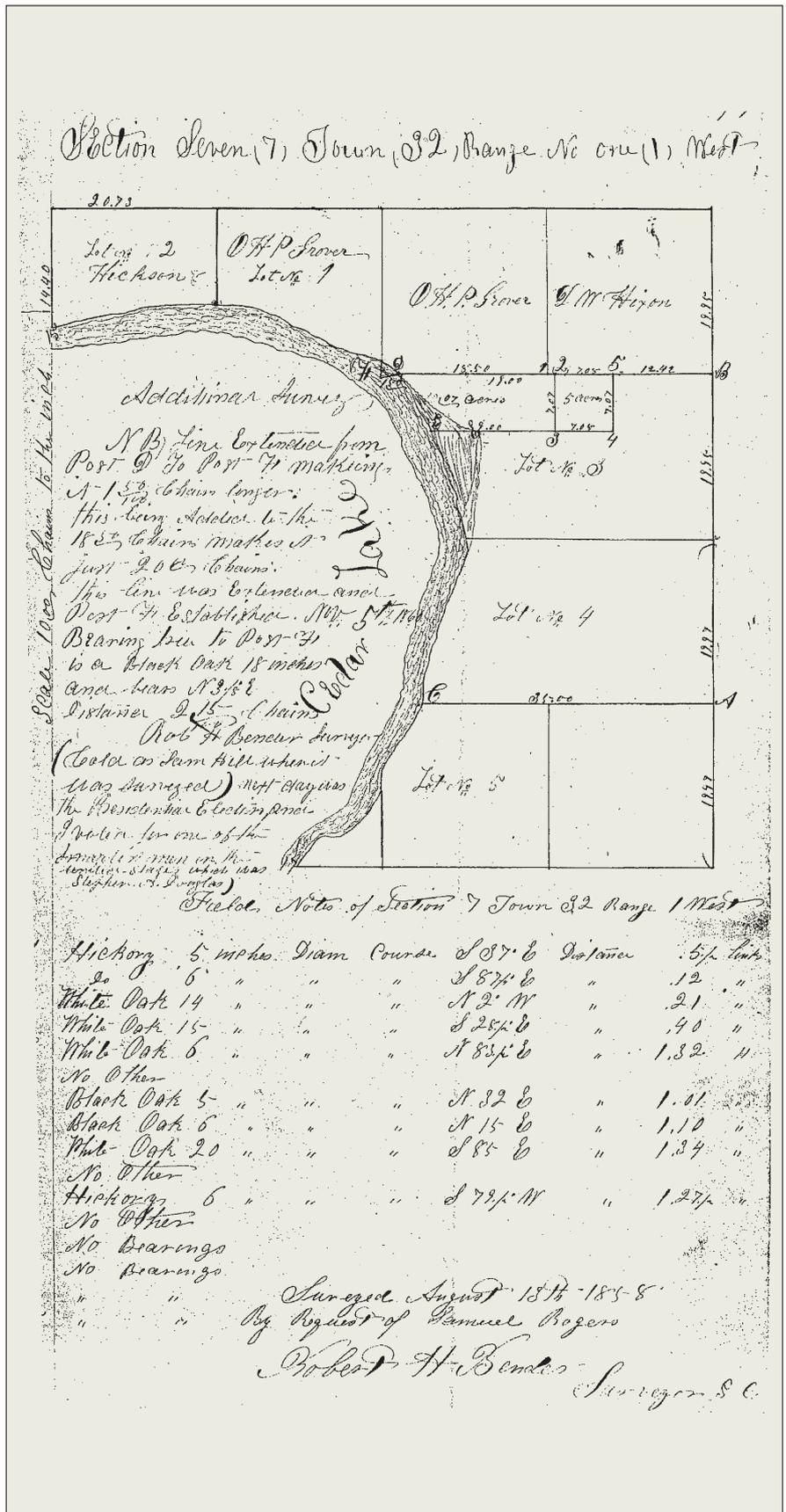
The trial court had ruled that this description was insufficient and patently ambiguous in referring merely to "the half" and in referring to two different sections, and, as such, it did not convey any real estate. The conveyance was ruled invalid.

Upon appeal, however, the Indiana Court of Appeals noted that "[s]ome effect will, if possible, be given to the instrument, for it will not be intended that the parties meant it to be a nullity. It is a rule of construction that words of particular description will control more general terms of description, when both cannot stand together."

It rejected the general "a part of fractional section number 19" as contradicting the definite description of lands in Section 29 that followed. It ruled that the deed conveyed "the half of the west half of the north-west quarter" of Section 29.

Interestingly, and as an aside to the topic at hand, with regard to what "the half" meant, the court said, "This [description] is definite, except as to the 'half,' and the language in that respect cannot be effective to convey any particular half. But there is nothing that forbids a construction which will make it good for an undivided half, and this it may receive. It was, we think, therefore, not void for uncertainty. There was no evidence aliunde to aid in giving a construction to this deed. We have merely the instrument itself, and the fact that at its date the grantor was seized of the west half of said north-west quarter."

Surveyors should always strive to avoid putting their clients or their clients' successors in title (not to mention themselves) in the position of having to resort to litigation to determine the intent of a description. As such, careful thought should be given when rewriting descriptions, or when considering writing unnecessary descriptions that can potentially cause confusion in the future. *A*



A survey from 1858 in which the surveyor added the personal note: "Cold as Sam Hill when it was surveyed. Next day was the Presidential Election and I voted for one of the smartest men in the United States which was Stephen A. Douglas."