Surveying the Boundaries of the Fond du Lac Reservation: Part 1.
MINNESOTA SURVEYOR

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Enough already…spring cannot arrive soon enough! The snow cover is overwhelming — but thank goodness, the sun’s power is enough to provide a sense of hope.

The 67th Annual Meeting was a great success and I enjoyed meeting new people within our profession and the conversations had with friends and past co-workers. I would like to extend a big thank-you to the events committee and the Ewald staff for another successful meeting!

I had the opportunity over the last couple of months to present to the St. Cloud Technical and Community College Land Surveying students in St. Cloud, MN. I was also able to present to the North Dakota State College of Science Land Surveying students in Wahpeton, ND. I am encouraged by the quality of both programs and proud that MSPS has a long history of supporting land surveying programs through scholarships. I am so inspired by the next generation of talent and all that they have to offer our profession. We are fortunate that professors are dedicated to all of the land surveying programs throughout our region when demand for new talent is on the rise.

We have a board meeting on March 14, 2019, where I look forward to identifying goals for this year. Top on my list is looking at the Minnesota definition of land surveying and how it compares to our neighboring states and nation. This will tie into the need for us to consider how we proceed with our lobbying needs in the future.

I am also encouraged by the continued use of our virtual sand box. Thank you to Cindy Hidde for having it on display at the Pequot Lakes High School Career Fair on February 26, 2019. She received some great press in the Brainerd Dispatch, which helps to reinforce what a great tool this is for connecting with kids. The board is looking at options to add more virtual sand boxes to alleviate the strain of transporting one sand box back and forth across the entire state.

Please register for the spring seminar, “Wisconsin Refresher,” scheduled for April 25, 2019. My hope is that this snow will be long gone by then. I look forward to seeing you all there!
Dear MSPS Members,

It was great to see so many of you at the 2019 Annual Meeting, which was a very successful event. We had good attendance and heard lots of positive comments about the sessions along with a few requests for more coffee at the breaks. Please be sure to check out the Annual Meeting recap and photos in this magazine.

As we move into 2019, we see a very strong membership renewal. In early March, we were at about a 92% retention rate, which is excellent. We are pleased to see the positive response with our firm membership. The new tiers of firm membership seem to be well received as firms sent in their updated membership rosters and took advantage of their firm member benefits. Going forward, the firm membership renewal process should be more streamlined now that we have updated records and good information to work with for future years.

The MSPS Board of Directors is energized to move forward. At their March strategic planning meeting, they identified several key priorities for 2019. The board will continue to focus on managing the budget and exploring opportunities to reduce costs and generate new revenues. The board continues to focus on public relations efforts to promote the surveying profession and address long-term workforce development needs. The board is also gearing up to review the definition of land surveying in Minnesota Statutes to see how it compares with other states in our region to determine if it makes sense to update definition consistent with the NCEES the model legislation.

The board is also engaging the various committees to identify additional priorities of concern to the membership. If you want to volunteer to serve on any of the committees, please send me a note at leeh@mnsurveyor.com.

Again, it is a great pleasure to connect with membership, and I look forward to our upcoming events and working with the board to advance the Society’s key priorities. As always, please feel free to give us a call at 651-203-7256 if you have questions or if you need help with your membership profile.

Best regards,

Lee Helgen
Executive Director
From the NSPS Governor

Chris Ambourn

The Problem with “They”

I started writing this article with the intent to highlight various deregulation efforts that have become more common across the country, with the most recent being some proposed legislation in West Virginia that NSPS has helped identify and fight back against, and I typed the words “we take it for granted that they won’t let it happen.”

That phrase took my mind in a whole different direction and I began to think a little deeper about the word “they” and how, in most cases, it’s really the ultimate scapegoat word. Whenever something we like (or more often don’t like) happens, we immediately start looking for something or someone to blame. That’s human nature; unfortunately, sometimes we can’t find a particular person or thing at which point we find a “they.” They did it, they let it happen, they don’t care, I told them but they didn’t listen... on and on.

It’s not often that you hear the word used in a positive context — sure, maybe a stray “they did a great job” — but usually when we give praise, we identify the group or person by name.

I guess the impersonality of “they” allows us to detach ourselves from the commonalities that we have and highlights that “they” are completely different than “us.” We see it all the time when discussing opposing viewpoints — whether it be politics, religion, race, or even less sensitive subjects like sports — but in the context of our professional organization is where I’d really like to see “they” be replaced with more “I” and “we.”

Our profession’s issues are all our issues. Take your pick — labor shortages, deregulation threats, technological innovation — these things will affect every one of us in this profession, so now more than ever we need people who care enough to have curiosity on a subject to step up and lend a hand. MSPS and NSPS is run by people, just like any one of us, that decided that “they” could use some help. We have a few great people doing a lot of great work, but we honestly do need help. Please, next time you find yourself wondering what “they” are going to do about something, or even better if you find yourself displeased with what “they” did, consider reaching out and lending a hand. They and we would really appreciate it.

Chris Ambourn, LS
NSPS Governor/Director

OBJECTIVE

The objective of this association is to unite all the registered land surveyors in the State of Minnesota, to elevate the standards of the surveying profession in the State of Minnesota; to establish basic minimum requirements for surveys, to assist in promoting legislation and educational programs to improve the professional status of the land surveyor; to work in cooperation with local, county and state governments in our field of endeavor; to uphold a rigid code of ethics and strive to improve our relations with our clients and the public by work with precision and integrity.

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Prolog

I view the rectangular land surveys through a geographic lens, describing and explaining how the grid established by the surveying operations spread across the land surface of Minnesota. My interest in the fieldwork and office work that comprised those surveying operations necessitates I examine a variety of documentary evidence to tell a story. Different documents reveal different aspects of that story and, inevitably, one type of document leads to a particular story. Here I describe the story of a deputy surveyor who established the boundary of the Fond du Lac Reservation in Carlton County, Minnesota, through the letters written by the three individuals involved. It speaks to the difficulties of working in a little-known area and, surprise, working for the government.

Introduction

The rectangular land surveys could only spread across land that had been ceded by indigenous peoples to the United States government. So the earliest surveys were restricted to that portion of the Minnesota Territory ceded by the Chippewa in the treaty of 1837 between the St. Croix and Mississippi river south of a line, “Beginning at the junction of the Crow Wing and Mississippi rivers, between twenty and thirty miles above where the Mississippi is crossed by the forty-sixth parallel of north latitude, and running thence to the north point of Lake St. Croix, one of the sources of the St. Croix River.” (Fig. 1)

On September 30, 1854, two commissioners representing the United States government and the chiefs and headmen of the several bands comprising the Chippewa Indians of Lake Superior and the Mississippi signed a treaty in which the tribes ceded land in the northeastern part of the Minnesota Territory that would allow the surveys to spread northwards. (Fig. 2) In the treaty the United States agreed “to set apart and withhold from sale” several tracts in the ceded area for the tribes, the boundaries of which would be defined “by actual survey.” One tract of land was given to the Fond du Lac bands, the boundary of which was described as, “Beginning at an island in the St. Louis River, above Knife Portage, called by the Indians Paw-paw-sco-me-me-tig, running thence west to the boundary line heretofore described, thence north along said boundary line to the mouth of Savannah River, thence down the St. Louis River, to the place of beginning.” This line needed to be established before the rectangular surveys could spread and in his annual report...
dated October 21, 1855, the Surveyor General of Wisconsin & Iowa, Warner Lewis, “respectfully and urgently” called the attention of the Commissioner of the General Land Office “to that portion of the Territory … ceded by the Chippewas, on the 30th of September, 1854, which is situated on the north shore of Lake Superior, and on the left bank of the St. Louis river.”9 He wrote, “In view of the great interest manifested in this section, not only by actual settlers, but by people of the east, it is necessary that provision should be made without delay for its early survey,” stating “that repeated applications have been made for these surveys, and within the last few days I have obtained reliable information from a gentleman direct from the country as to the settlements in this region, and the necessity for immediate survey of at least a portion of it.”10 He warned of the difficulties of surveying this area, however, writing,

> You are, without doubt, aware that in this high northern latitude every moment of favorable weather must be improved in prosecuting surveys, from the fact that but little reliance can be placed upon the needle, owing to the presence of magnetic trap, so prevalent in this section. The solar compass, therefore, is the only instrument that can be used; and as the solar apparatus can only be employed in bright weather, and not then through the entire day, at certain periods, the whole season, which is but short at best, is greatly reduced. To accomplish anything of importance, therefore, the deputies must be in the field by the first of May, which will, in all probability, be long before the general appropriation bill will have become a law. Under these circumstances, I would respectfully suggest that you take such steps as in your judgment may be deemed necessary to secure an advance appropriation for prosecuting the surveys as above referred to.11

His comments, which would prove prophetic, fell on deaf ears because no action was taken despite the fact that the Commissioner wrote in his annual report the following year, “The extensions of certain connecting lines have also been ordered for tribal and other Indian reserves, under the Chippewa treaties of 30th September, 1854, and 22d February, 1855, lying beyond the main body of the contemplated surveys.”12 In his annual report the same year the Surveyor General stated, also incorrectly, “Special instructions were also prepared for the survey of the Indian reservations.”13 Clearly they were not, and the inaction continued the next year, 1857, as the surveying district of Minnesota became established and organized.

In January of 1858 the Surveyor General of Minnesota, Charles L. Emerson, responding to a letter from the Commissioner dated June 4, 1857, that he would soon be informed on how to carry out the surveys required by the treaties, noted he had previously called “the attention of the Dept. to the necessity of an early establishment of the outlines of those reservation.”14 He also wrote,

> Not having received instructions from the Dept. relative to the subject of this communication and as the locality within which the reservations in question are situated is rapidly filling with settlers desirous of perfecting their titles to the land, which cannot be done until the public surveys shall have been extended over the same, I would again most respectfully call the attention of the Dept. to the necessity of issuing instructions for the establishment of the outlines of the Reservations in question believing that the public interest will be advance by so doing.15

A few weeks later, on March 4, 1858, the Commissioner of the General Land Office wrote to Emerson,

> I have now to inform you that the Indian Office having finally decided that the reservation of 100,000 acres, is to be defined, in accordance with the express letters of the treaty, it is therefore important that the western boundary of the Fond du Lac Reservation which is identical with the western boundary of the ceded lands by Chippewas of Lake Superior describes in the 1st Article of the foregoing treaty, should be surveyed and marked only to the extent of the western boundary of the Reservation and no further.16

He authorized the Surveyor General to

> (E)ngage a competent deputy at $5 per diem, and his actual necessary expenses, and direct him to proceed to the source of the East branch of Snake river from which point you cause him to run a straight random line to the mouth of East Savannah river a tributary of St. Louis river, and to correct it back under such point of compass as would strike the source of Snake
He continued with the following detailed instructions,

You will require your deputy to mark the boundaries of the reservation by stone monuments or by mounds at the intervals of one mile in a plain and distinct manner according to the character of the country over which the boundaries of the reservation shall pass. Where the country is densely timbered, the trees immediately on lines should be uniformly marked by a distinct chop facing the line run, and the trees within 5 feet of the lines on each side thereof blazed on the sides facing the lines. The starting and the S.W. corner of the Reservation should be perpetuated by stone columns, say 3 feet above the ground or of durable wood of the like elevation, and of not less than 12 inches square, with pyramidal heads, the monuments to be sunk 4 feet beneath the surface of the earth, one of their sides facing the boundaries and indicating thereon the words S.E ext. F. du Lac R & S.W. ext. F. du Lac R. and the monuments which will be similar those employed in public surveys for township corner will be marked on their faces each by the lines 1M 2M 3M on the faces of the monuments fronting the Reservation words to be deeply cut F du Lac R.¹⁸

As a result, on April 1, the Surveyor General awarded Peter E Bradshaw a contract to establish the reservation boundaries, writing,

It being necessary before proceeding with the Public Surveys in the vicinity and west of the St. Louis River (Lake Superior) to survey the boundaries of the reservation of 100,000 acres granted to the Fond du Lac band of Chippewa Indians by Treaty of September 30, 1854 and having selected you for the performance of this duty I have to give you following instructions for your guidance....¹⁹

His instructions to the deputy were lengthy. He stated,

The western boundary of the above reservation is a part of the line of ceded territory described in the first Article of the Treaty before referred to, which therefore must be first ascertained; the words of the Treaty defining such ceded lands (where they form the boundary of the reservation) are as follows: “Beginning at a point where the east branch of Snake River crosses the northern boundary line of the Chippewa country, running thence up the said branch to the source, thence nearly north in a strait (sic) line to the mouth of East Savannah River, thence west to the said branch to the source, thence nearly north in a strait (sic) line to the mouth of East Savannah River, thence up the St. Louis River to the mouth of the East Swan River, thence” &c

You will therefore make due search for the East branch of the Snake River and following up same to its source. You will from there run a random line as near as may be to the mouth of East Savannah River which empties into the St. Louis River, and find the course of a corrected line from the mouth of said river to the source of the East branch of Snake river from which you started your random line. Thence meander the St. Louis River downstream on the right bank to an island in same above “Knife portage and called by the Indians “Paw-Paw-sco-me-me-tiq” thence running due west ascertain the distance from said Island to your corrected line, from the mouth of East Savannah River, and with these boundaries ascertain the area contain therein and if the same amounts to 100,000 acres or more you will proceed to establish the boundary line as hereinafter directed, but should the contents fall short of 100,000 acres you will change the south boundary of the Reserve by carrying it further South, until you have obtained...
a sufficient amount of land to make up the required 100,000 acres.

The boundary lines will be marked as follows: at the point on the St. Louis river which you have ascertained will be the starting point for your South boundary you will establish a stone monument (if suitable stone can be readily obtained) or otherwise of durable wood not less than 12 inches square sunk four feet below the ground and rising three feet out with pyramidal head and squared and marked in its north and west sides as follows “S.E. cor. F-du-Lac R.” then running west you will establish monuments at the distance of every mile until you intersect your western boundary such monuments to consist of posts set 3 feet in the ground and rising two feet out and squared above ground to not less than 4 inches and marked on their face cut by the line “1M”, “2M” &c and on the face fronting the Reservation “F du Lac R.” Should the line pass over prairie country the posts will be further established by being set in mounds raised three feet above the ground (general) surface the earth for which will be taken from a quadrangular trench, to be surrounding the same; but if the country is timbered you will take the bearing of 4 trees (if such are within reasonable a distance) from said posts marking them “F. du Lac R. B.T.” In running the line through a timbered country it is to be well blazed by a distinct chop on the side facing the line, and, on sight or line trees a chop must be made on each side thereof, and the trees within 5 feet thereof, one each side to be blazed on the sides facing the line. On arriving at the point where this southern boundary will intersect your corrected line for the source of Snake River to the mouth of the Savanna forming the western boundary of the Reserve, you will establish a similar monument to that directed for the South East corner of the Reserve, marking the same “S.W. cor. F. du Lac R.” on the side thereof. You will then proceed Northward on said corrected line or west boundary, establishing Similar monuments at every mile from the last mentioned corner as posted for the South boundary and marking and blazing the line in a like manner until you arrive at the mouth of the Savannah River on the St. Louis, there establishing the North corner of the reserve. In the same way as described for the South East and South West corners respectively.

In addition Emerson directed,

You will take full and complete notes of your survey, which you will return to this office accompanied with a correct Journal of each day’s proceedings and also with a diagram of the same on a scale of 40 chains to an inch.

You will also be required on the completion of your Survey and before the account is forwarded to Washington for payment to enter into a bond, with two good and sufficient sureties in the sum of $2,000 that the said survey had been properly and faithfully executed.

You will be allowed $5. per day for your services while actually engaged in the prosecution of the foregoing surveys together with your actual necessary expenses, but it is expected that you will use all possible economy in prosecuting the same, employing no more assistants than absolutely required to complete the survey in an efficient manner, and with all reasonable dispatch. Voucher for your disbursements for such charges and expenses to accompany your account.

You are expected to use Burt’s improved Solar Compass, or some other instrument of equal utility, independent of the magnetic needle. I enclose herewith a commission as a Deputy of this office and a blank bond in duplicate to be executed on the completion of your survey and returned with your notes as heretofore mentioned.

Rather optimistically, as the subsequent correspondence would show, he wrote,

It is not presumed that you will find any difficulty in the finding or establishment of these boundaries except possibly as to what may be deemed the Source or head of the East branch of the Snake River, the particular locality of which I am unable to furnish you with any data in this office, and have therefore directed you in the first post of these instructions to follow from a known position of the River up to the source. Should it rise from a spring or small Lake of course the point is at once determined but if in a marsh or swamp, the most correct course would be to start as near as may be from the centre of the same.
He ended by stating, “I have also mailed to you this day a copy of ‘general instructions’ issued by the General Land Office for the guidance of U.S. Deputy Surveyors” and asked the deputy to acknowledge receiving the letter and to state when he could start the survey, which “should be done at as early a day as possible.”

Deputy Bradshaw, then at Twin Lakes, acknowledged receiving Emerson's letter and the Manual of Instruction two weeks later. He was obviously bemused by some of the Surveyor General’s instructions and wrote, “In order the better to carry out your instructions you will allow me to ask you the following questions.” Quoting from the Surveyor General’s letter, “Thence meander the St. Louis River downstream on the right bank to an Island” … “above Knife Portage” called … “Paw-Paw-sco-me-me-tiq” he asked, “Is this meander to be made down the St. Louis River to a point opposite said Island making the Island the initial point?” also, “How far is the Island mentioned; above Knife Portage” noting that “Paw-Paw-sco-me-me-tiq” means an Island in a River, without designating any one in particular. He asked,

Can you send me a diagram showing where Snake River forks in what T & Range; as well as the northerly Town (or section) line, that crosses the “East branch of Snake River” that I can have some known point to start from

And,

Can you furnish me any maps (or notes) showing the relative position of head of Snake & mouth of Savannah Rivers?

He then turned to the instructions on how to mark bearing trees, writing,

Do I understand correctly that “the trees within 5 feet of the line or sight trees are to be blazed & facing said line trees 5 ft wide on each side thus making the line blazed 10 feet wide at some sight trees & the rest of the line blazed narrow & say 1-3 feet each side of the line or the whole established line to be blazed 10 feet wide throughout?

Shall the mile posts on West boundary commence numbering at 0 on the South West cor. and increase as they run thence North or continue the nos. from the South East cor. to the North West cor. continuous?

He did not understand how he and his assistants were to be paid, enquiring,

Shall the vouchers for wages, provisions &c be made out in the name of “U.S. Govt.” or in my own name. Have you any particular form for said vouchers, and do you wish them duplicate? When & how will the men be paid for their services? Can I draw on you for money to meet current expenses of the survey provisions &c. Will my own pay “$5. per day” amount to Thirty (30) or Thirty five (35) dollars per week while engaged on the work? The latter I may have already rec’d when employed by Government by the day, “together with your actual necessary expenses” what does such expenses include; is it expected that I am to furnish tents, camp furniture &c at my expense?

He was concerned about the fact that the boundary line was to include an area of 100,000 acres, inquiring, “If it is found in running the first line west (south boundary) that the area is a few acres less than 100,000 acres would any less be allowable or should the line be rerun? Is there any limit within which the meander of the whole of the Reservation must close if so; what is said limit?”

He ended his letter by noting that he would not be able to start his work for the next month for several reasons, stating,

I have this date sent East for a “Solar Compass” (not having one here) & shall on arrival of the same (Say 1 month from date) be ready to commence the above mentioned Survey, it would be nearly impracticable to do so much before on account of the quantity of water in Rivers & swamps rendering the country almost (sic) impassable; it will also be impossible at this time to obtain provisions for the Survey in this part of the Country, there being but a few barrels of (illegible word) Flour for sale in Superior and that $15 per barrel. I shall have to await the arrival of Boats from below for provisions at any rate.

The Surveyor General, clearly perturbed by the deputy’s letter, replied promptly,

From the general tenor of your letter I am induced to believe that you have doubts of being able to effect the survey required under the instructions
furnished you from this office dated April 1st and from your enquiries on certain matters connected with your returns, allowances & I fear that you have no had that experience on the public surveys that I had supposed and I think is necessary to enable you to perform the duty required in a satisfactory and complete manner.

I would at this time and before any proceedings based on my instructions have been taken by you impress upon you the careful consideration and judgement that the Survey will require on your part and would request you to inform me at once whether you feel able to undertake it with the information that can be furnished as well as to make such a complete & correct Survey thereof as required by the Department & expected by this office.35

In response to the questions posed by Bradshaw, he wrote,

Had this office been in possession of any further data or information than that furnished you in my letter of the 1st either as regards the starting point of your Survey, the exact position of the Island in the St. Louis River, that mouth of the East Savannah River, or the relative position of the latter with the head of the Snake River it would as a matter of course been supplied you but as the public surveys have not yet covered any part of the territory adjoining or included in this reservation (as indeed they could not having to close on to it) the information asked for by you could not be given.

The Public surveys have not extended far enough to show where Snake River forks, and you was (sic) therefore instructed to make due search for it and follow up the east branch to its source and thus find your starting point. I cannot well give you more precise directions and it is necessarily as much a part of your duty connected with such a survey to find certain natural points on which nearly all the surveys of Indian Reservations are based as to make the survey of the boundaries after the same are found.

With regard to the Island in the St. Louis River I can give you no clearer information than already furnished. The meanders of the right bank would stop in the first instance opposite thereto.

Answering Bradshaw’s other queries; about the size of the reservation, he stated, “the quantity of lands to be contained within the lines of the Reserve must not be less than 100,000 acres but as you would have to certify that it contains that quantity, a very slight excess would not be important.” About blazing, he stated, “the trees within five feet of each side of a line or sight tree to be blazed.” About the mile posts, he stated “the mile posts on west boundary may commence or number from the S.W. corner.”36

He ended by answering the deputy’s question about compensation, writing,

All vouchers for wages, provisions &c should be made out to the U.S. and are invariably required in duplicate. Your own time may include the whole period engaged from the day of starting until you return as well as a reasonable time for preparing your diagram and notes for this office. (Your journal must show the employment of each day) but it is possible that the department may object to charging for Sundays. You will be allowed a reasonable amount for the use of camp equipage.37

As a postscript he added,

I must impress upon you in the course of your prosecuting the Survey of the necessity of its being carried forward with the least possible delay. I may also add that payment for all Government Surveys is only made after completion & the notes & plats returned and approved & will then be by Draft from the U.S. Treasurer. I am not furnished with funds to pay surveying expenses.38

A few days later, probably as soon as he received the Surveyor General’s letter, Bradshaw responded, somewhat defensively,

(My) letter of the 18th April was not written because I have my doubts of being able to make the above mentioned survey to your satisfaction, but in hopes that you might be able to furnish me a little more precise information in order that I might the more expeditiously push forward with the survey. I had been informed that the North T Line of the public survey enclosed the fork of Snake River. I should not be willing to undertake said survey and give bond for and
certify to its correctness unless I felt perfectly able to undertake the same. I am now making up my party and expect to be in the field ere you receive this.39

On June 1, the deputy wrote in his Journal that he left Superior and went to Twin Lakes where he camped to begin his survey.40 The deputy, chainmen, axemen, and flagman swore the preliminary oaths, which were notarized by a notary public at Twin Lakes, two days later.41 The next month, on July 15, 1858, the Surveyor General, concerned about Bradshaw’s apparent lack of progress, which was delaying the spread of the public land surveys, asked about his progress and when he expected to finish, writing “I had expected to have heard from you before this in relation to your survey of the Reserve.”42 Five days later he wrote again, obviously concerned,

I have deemed it advisable having received no intelligence from you since May 12 & my letter to you per mail of July 15 having brought no reply, to forward this communication by a special messenger from Superior City, and have to require that you will write per return as to the present state of your survey and if not yet finished, when you expect to complete the same and have the notes returned to this office.

I would remark that from the date of your taking the field to commence this survey it constantly appears to me more than sufficient period has elapsed (after making due allowances for the time that might be occupied in exploring for your starting point and connecting it with the N W point of the Reserve) to run out and establish the exterior boundaries of this reservation. More particularly as one of the boundaries being formed by a river would only require meandering, leaving but two sides which could hardly exceed 40 miles in length to be established by monuments.

You will please pay the expense of the messenger that will be sent from Superior City with this letter (taking duplicate receipts therefor and include the disbursement in your account of expenses, when the same will be repaid you with the other charges connected with the survey.43

Bradshaw completed his survey on September 16 and then returned to Twin Lakes where he camped and subsequently discharged his party spending the next ten days “making up notes” and “making up plans.”44 The final affidavits of his assistants, two chainmen and two axemen, were notarized on September 25 and the affidavit of the deputy was notarized September 29.45 This ended Bradshaw’s survey, but not his involvement with the Surveyor General and the Commissioner of the General Land Office.

In his annual report dated October 11, 1858, the Surveyor General stated, somewhat optimistically,

A deputy was despatched (sic) in May last, in accordance with your instructions of March 4, to proceed to the survey of the boundaries of the Indian reservation on the St. Louis river, (reserved under treaty with the Chippewas of Lake Superior and the Mississippi to the “Fond du Lac” band,) but owing to unforeseen difficulties he was unable to take the field as soon as expected, and from the peculiar character of the survey necessarily consuming much time in the search of his starting point, (being the source of a small stream,) and requiring a preliminary survey of many miles to establish the position of its western boundary, before he could commence the actual survey of the reserve itself, has delayed the completion and return of the notes much longer than I anticipated. I have, however, recently received information that the work is completed and that the deputy might shortly be expected to deliver his notes, in person, at this office, when they will be immediately examined and platted, and if found correct a map and transcript thereof will be transmitted without delay to your office. The establishment of this reserve will enable me at once to connect the public surveys with its southern boundary.46

October 28, the Surveyor General sent Bradshaw’s account for his work “together with the vouchers relating thereto and numbered from 1-18 inclusive, also the bond of Mr. Bradshaw in double the amount of his account for the faithful execution of the survey to the Commissioner of the General Land Office.447

Finding from Mr. Bradshaw’s notes and account that the survey had occupied a much longer time than I had anticipated I called on the deputy for the causes of the delay and received from him a letter (copy of which is herewith enclosed) stating the difficulties he had encountered both from the character of the country and the general
unfavorable weather for using the solar compass which together with the necessity of packing all his provisions by men through a totally unsettled and swampy country were I consider satisfactory reasons both for the time occupied as well as the expense incurred in making the survey.

From the tenor of your letter of the 4th March last giving instructions for the survey of this Reserve I judged that the Reservation was intended to contain 100,000 acres only, but on a careful reading of the treaty with the fact that the Indian office had decided that the Reservation was to be defined in accordance with the express letter thereof, I came to the conclusion that the boundaries as described in the 4th Article should be established, excepting only on its being found that they would not embrace 100,000 acres in which event the southern boundary was to be changed as to include not less than that amount of land. It will therefore be found that the established line of this reserve are those described in the treaty although the area embraced therein is 125,294 acres.

Mr. Bradshaw's letter also contained reference to the improvements of the Indians within the Reservation as well as their reported objections to its present southern boundary as not embracing their most important and valuable settlement.

Mr. Bradshaw requests that the draft for the amount of the enclosed account may be addressed to Pete Edes care of E & G W Blunt No. 179 Water Street, New York.\(^48\)

He closed by stating that he had mailed separately a package containing “a map and transcripts of the field notes of this survey.”\(^49\)

On November 9, the Commissioner of the General Land Office wrote back to the Surveyor General objecting to many of the items in the deputy's account that totaled $2,422.88, writing,

Mr. Bradshaw's individual account numbered 19, for $636.50, for his per diem &c, has been allowed and reported for payment, and the other accounts are returned to be corrected, and to have the receipts of the parties given to Mr. Bradshaw instead of to the Government.\(^50\)

Complaining about the way in which the deputy calculated the pay of his assistants and the packmen he employed, he stated,

The accounts of his packmen, chainmen &c, do not appear to be calculated upon any field basis, and hence it is necessary in order to render them uniform, that, where they are paid at the rate of $40.00 per month, the amount they would be entitled to for a full quarter, should be multiplied by the number of days they served, and divided by the number of days in that particular quarter. When these executions shall be made and evidence that those expenditures were indispensable furnished to this office, the matter will be further considered and definitely acted upon.\(^51\)

He then proceeded to give his objections to the specific expenses described in the vouchers, writing,

An examination of the locality of the Reservation and his means of access to it, and the extent of work performed by the twelve persons he had in his service for the months of June, July and August and the eight returned with him in the month of September, leaves no room for doubt that Mr. Bradshaw … involved the Government in at least twice the expense than was actually necessary. The southern and western lines of the reservation including the meanders of the St. Louis River, will scarcely make an aggregate of one hundred miles of surveying, and hence it appears that he did not average one mile per day, though he had thirteen assistants in his pay.\(^52\)

I find from the field notes of the random line from the source of Snake River to the mouth of Savannah River 0 the same being an air line 42 miles in length – that the running of it only required thirty-five days, and the time of the running and marking of the thirteen miles of a portion of the same line from the mouth of the River Savannah to the Southwest corner of the reservation, required thirteen days. This exhibits a very slow progress, but if only a reasonable number of men had been employed in the work, this office would not interpose any serious objections to it. As, however, the large force hereinbefore mentioned, was retained during the five months, I deem it my duty to make further inquiry into the matter before adjusting the whole account and reporting on the same.
Interestingly he complained about the food consumed by the crew, or rather the food’s cost,

The bills of his expenditures show that this party consumed pork and dried beef to the amount of $131.10, flour and bread to the value of $87.10, sugar to the amount of $61.63; with $89.63 of dried apples, $29.50 of tea, $17.50 of coffee, $15.75 of beans, $12.36 of rice, $6.24 of corn meal, $6.00 of mustard, and $6.88 worth of caustic soap. In addition to this, there is an expenditure of $16.00 for bags or sacks, which, if left (word illegible) ought to have been passed to the credit of the Government to the amount of their value.53

The Surveyor General replied to the Commissioner the next week, probably as soon as he received news that Bradshaw’s account needed to be modified.54 He clearly was trying to be the conciliator,

With respect to the amount of Mr. Bradshaw’s account. I would most respectfully state that on examining the same and with his journal and notes of survey, I was equally with yourself of the opinion that the expense of the survey was altogether beyond what it should have amounted to considering only the extent of the surveys and length of boundaries actually established.

I expressed my view to Mr. Bradshaw and it was only at his urgent request and representation of the difficulties and delays of attending the survey, both from the character of the country and the state of the weather during nearly the whole time he was engaged in the field, that I consented to forward his account in its then state, and leave it for the Department to decide whether (after giving due weight to the circumstances) it should be allowed or not.

I shall at once inform Mr. Bradshaw of the objection made to the amount of the expenses incurred by him and call upon him for additional evidence of the necessity for the employment of so large a number of assistants together with the change required in the form of the vouchers; and on the receipt of same will forward them to you with a copy of Mr. B’s journal showing each day’s employment of himself and his party.55

He wrote to Bradshaw the following day, sending him a copy of the Commissioner’s letter,

As I stated to you personally when you returned your notes and accounts, I much feared the Department would object to the great expense incurred by you in making this survey and I am not therefore surprised that they should return it and require some evidence from you as to the necessity of employing the large force returned by you without apparently expediting the survey thereby.

You will observe that the Department requires a correction in the form of your vouchers as also in the mode of calculating the wages of your assistants, packmen &c so as to make them uniform.

On being furnished with your amended vouchers and account together with the evidence that the expenses incurred were really indispensable and necessary and that the survey could not have been made without the employment of the men engaged and for the time stated I will forward the same to the Department and apprize you of the result.56

On November 25, a very disgruntled Bradshaw acknowledged receiving the Surveyor General’s letter along with the “extract from the Commissioner’s letter of Oct. 9” and also his vouchers for the expenses he had occurred.”57 He was particularly upset that his account was accepted but his men’s were not, stating,

I learn also from Commiss’s letter Nov. 9 that my personal account No. 19 “has been allowed and reported for payment” Such being the case allow me to say I do not see how the other vouchers could be otherwise treated. The men were hired by me for the Govt., each man’s services were fairly and well rendered for each day charged; and I will plainly say that if the account is to be shaved I should rather it would be on my own voucher though I might fail to see the propriety thereof.58

He described the difficulty he now faced to overcome the Commissioner’s objections because his crew had dispersed. He wrote,

(T)he men are of a class that get their living by going on surveys or expeditions in any part of the country; several have left the state; others are off on surveys and expeditions. Of several I do not know nor have I the means of obtaining their addresses. If absolutely necessary I can obtain the receipts as wished of a few, but not
being able to obtain the whole have returned them as before with amendments which I hope will be found to answer the purpose."  

He continued,

As the kind of “evidence” required on account of the various voucher I am somewhat at a loss to know. I have made oaths to my notes, journal & accounts, the chainmen and axemen also as required by law. I have herein endeavored to account for the use of each man, and have more particularly than heretofore refered (sic) to the manner in which the survey was conducted. If the evidence herein adduced is not sufficient I will thank you for to suggest to me the kind required.

There are not to my knowledge any person in this country competent to give information on this subject (illegible word) having a knowledge of the country and attendant circumstances excepting those that were employed with me, and as before stated I have no access to them.

In conclusion I may state that I remain in this country solely with a view to the settlement of this business at great loss of time and expense to myself and anything I can do to relieve you as well as myself form the trouble and inconvenience attendant thereon will be cheerfully done.

He took issue with the Commissioner’s “exceptions to the form of the vouchers returned, requiring “said vouchers to be made out to me instead of the U.S. Govt.” noting,

You will observe by reference to my letter 18th April /58 2nd page "Shall the vouchers for wages & provisions &c be made out in the name of the Govt. or my own name and have you any particular form for said vouchers" Your answer under date of April 28th /58, “All vouchers for wages, provisions &c should be made out to the U.S and are invariably required in duplicate.

He next took issue with how the Commissioner suggested he calculate payment for the packmen he employed.

“I do not understand that part of the Commissioner’s letter refering (sic) to the uniformity of said vouchers, or how they can be calculated as he proposes; the enclosed schedule “A will show the names of assts. as well as their rates of pay; being employed at different rates, as well as for different lengths of time, I do not see how they can be made more uniform. In this connection, I beg leave to refer to certain inadvertences that I find in the “Extract from Commiss’s letter Nov 9,” by it I learn that I had in my employ in the months of June, July, and August twelve assistants, eight in the month of September, and refering (sic) to the southern and north western lines and meander of the St. Louis River it states the no. at thirteen! I would respectfully refer to schedule “B” (enclosed) where it will be seen that the largest no. ever in my employ was eleven and that only on one line; nine in August and seven in September. Schedule B also shows the length of time as well as the lines or work on which each man was employed.

Then he tackles the question of the length of time he took to complete the survey, writing,

Reference is made in the Commis’s letter Nov. 9 to the westerly boundary of the Reservation as “a portion of the same line” as the Random line, such however is not the case. The initial point of the Westerly boundary being at the mouth of the Savannah River due east and distant from the end of the Random line 1½ miles, slightly (word illegible) the same as it runs to the S.W. cor. said boundary line being marked and run in an entirely different manner from the random line. Allusion is also made to the length of time taken to run said Westerly boundary as being thirteen days. By reference to my journal I find that between the 27th July and 8th August inclusive, the time employed in running same that there were six days to wit; [he then lists the days and mileage per day totaling 6 miles] … that it was absolutely impossible for me to run any line on account of entire absence of sun. Several other days on which there was very little, and not a fair day.

“In this connection I would refer to one restriction under which I made this survey; reference to your letter April 2nd /58 “You are expected to use ‘Burt’s Improved Solar Compass’ or some other instrument of equal utility independent of the magnetic needle” Where there is not a rod of line appertaining to said Reservation Survey
that was run other than with the Solar Apparatus, said Compass of course entirely dependent on the sun shining to enable the survey to advance a foot. I must here repeat what I said to you personally at St. Paul viz; that the bad weather this Summer and want of sun shine was the principal reason of the expense of said Survey. I ... bought provisions and lined up the men expecting to be through in six weeks; the no. of miles run by Solar Compass on said line was 113, allowing 3½ to 4 miles for a fair days work on such a line and you will see that with reasonably fair weather, the survey would have been completed at least half the present cost and within the time I expected.

In my Journal accompanying the notes and which I have made oath to describing particularly the weather for each and every day, is contained the principal evidence that can give that I made due diligence (sic) in the execution of the work, and upon it I shall principally rely, knowing that it is correct and cannot be gainsaid.63

Next, he goes into more detail about the vouchers, which gives interesting insights about the effort involved in some of the surveys.

I started from Superior with the first nine men mentioned in schedule “B” for the source of Snake River, having sent my provisions in bulk by boat to Fond-du-Lac. Was one day packing provisions from Fond-du-Lac to this place and then on to near the source of Snake River, the packers immediately returning to Fond-du-Lac (distant about 60 miles) for provisions for the party. I at the same time took three packers and followed Snake River in order to find its true source, returning from ‘chengtratana’ ran the Random line across to Savannah River.64 Before arriving there however sent two packers ahead with directions to the two boatmen who had then arrived there to return to Superior for more provisions. While running this line the provisions were brought through the woods from Fond-du-Lac, Twin Lakes, Knife River Portage and mouth of Savannah River, but with the no. of packers employed it was impossible to keep the party supplied and we were several times on short allowances, such was the nature of the country traversed, the packers being able to bring but small loads and consume more time, in so doing. Two packers were discharged on arriving at Savannah River.

The 1st line, the two boatmen Posi & Martin started with canoe from Superior breaking bulk of provisions at Fond-du-Lac and making depots of same at Knife Portage and Savannah River. These two men up to the discharge of Posi were employed exclusively on the river making three trips loaded up the St. Louis to Savannah River and also with the party during the meander of the St. Louis River as hereinafter mentioned. Arriving at the Savannah River ran connection from mouth of Savannah to Random line; then as soon as practicable (see Journal this date) ran westerly boundary line, finished that and returned to mouth of Savannah on arrival there sent Saxton Lyons packers across country to Twin Lakes to mail letter for Sur Genl at St. Paul with direction to then proceed across country to Knife Portage to guard the provisions stored there from depredations by the Indians, as from information that I had secured I was afraid the Indians would otherwise steal them.

On returning to the mouth of Savannah after running westerly boundary line the canoe men arrived from Superior with 3rd load of provisions. I then started to run the meanders of the St Louis River on the bank, proceeded a short distance and found that I could not make any time at all in running the line in that manner, the brush being so very thick; I then caused the party to construct a large raft on which I placed my compass, loaded the canoe with all the provisions and traps and sent it ahead with the two boatmen and (word illegible); taking one packer, one axeman, and cook with me to work the raft which was at times more than they could do owing to the current of the river, leaving one axeman and the chainmen to run the chain on the edge of bank. It will be seen by reference to Journal that the best time 3½ to 4½ miles per day was made on this the naturally most difficult line to run; for the simple reason that I had sun shine by which to run.65

He then refers to the Commissioner’s comments about access to the area where he was to work.

“The only point at which supplies and men could be obtained was Superior (the provisions obtained at Twin Lakes were given as a personal favor, at cost price they not being held there sale) the nearest point of Reservation to which is the S.E. cor. and the same is distant from Superior...
by the only practicable route, via St. Louis River with canoe with load of say 12 cwt, 6 days time viz. 1 day from Superior to foot of “Grand Portage”. 4 days on said portage, and 1 day from grand portage to S.E. cor. of Reservation total 6 days two men to a canoe. The nearest point of any road or trail to Reservation is from this place to said S.E. cor. on a direct line of 4½ miles, to travel about 13 miles which distance a packman with a 60 lb. pack would make in from one and a half days. The round trip from Superior to Savannah River from 14 to 17 days according to stage of water and wind. Any rainy weather must be added to above time as provisions cannot well be moved in the rain particularly over the Portages.

B. Earley & W. B. Hoge, see vouchers, were employed by me while making up my notes. I thought it cheaper for the Govt. and more expeditious to employ Earley as cook than to do the same myself I being alone in the woods.66

He ended this portion of his letter by writing, “I have thus far endeavored (I hope satisfactorily) to account for the presence of every man specifying his particular work.”

Part of the vouchers I have paid in cash. Last year when in the employ of the War Dept. every voucher I returned was absolutely required to be receipted in full else not audited though the officer to whom I reported well knew that they were not paid. The same practice I have seen pursued on Rail Road for 12 years back; such has been the case with those vouchers. The men were employed and the provisions bought in the name of the U.S. as per your order, letter 29 April /58 before refered (sic) to with the distinct understanding that they would be paid when I received the money from Govt for that purpose, and due bills were given them stating the indebtedness of Govt. to them in the meantime.

Reference is made in the Commissioner’s letter to the Amount of Provisions; the prices of same are such as they are usually in this part of the country. Undoubtedly in transporting such an amount of provisions, packing & repacking during so much rainy weather, some was unavoidably lost, particularly flour, meal & sugar, as also coffee & tea though I do not know or believe any unusual amount so lost. There is undoubtedly many provision (word illegible) in camp, men being in 3 or 4 several parties much more wasted than in a civilized mode of life, reference (Same letter) is particularly made to the items of ‘bags or sacks’ used amount $16

All provisions are necessarily carried into camp in packages (bags) of 60 to 80 lbs. weight; using pork and sugar in them nearly spoils them; I (send?) something between 20 & 30 of said bags; paid the Indians at “Knife Portage” $1 – for washing the same, have of them new 5 large & small in my possession the rest I sold for $1 (the $1 paid Indians is not charged in account rendered) the most I could get for them. The five I have new are pretty good worth say from 15 to 20 cts. each, say $1. This amount I have not [charged] the Govt. with (though I should not object to the deputy doing so if it thinks proper) for this reason; that I have paid out larger amts. not charged in actual account to wit: H.R. Sutherland packer went from Random line to Superior Wis. to get some groceries, cooking utensils, and shoes for some of the men, his expenses amount $2 paid. T.B. Kellogg chainman went from “Knife Portage” to Superior Wis. to hire axemen which (three words illegible) his expenses were $1.25 total $3.25. Govt. Cr. to bags $1. (word illegible) expenses $3.25.67

He emphasized,

It should be borne in mind that when I took this survey, the approximate length (even) of line, the relative positions of different points, or even the length of time it would require to run any given line could not be known, neither at what points or in what quantities to deposit provisions. Now it is easy enough and entirely different; it was not safe on account of Indians to leave any amount of provisions at any point on the work without guard; I would not have done so with my private property. I did not think it expedient to do so with that belonging to Govt.68

He enclosed “Vouchers from No. 1 to 18 inclusive and also Schedules A & B” in a package with his letter.69

On November 30 the Surveyor General sent the deputy’s revised account to the Commissioner, writing,

I have this day received from Mr. Bradshaw a communication explanatory of the causes of the time consumed and expenses incurred in the survey of the Fond-du-Lac Reservation on the
St. Louis River, a copy of a portion of which is herewith included. I also forward the vouchers which accompanied his account (and were returned by you for informality &c.) to each of which Mr. Bradshaw has added an explanation and certificate marked together with two additional statements marked respectively A & B showing more fully the number of men employed by him at different periods of the survey and the rate of wages paid thereon.70

The heading of the vouchers was as you will perceive from Mr. B’s letter in accordance with instructions from this office and was presumed to be the proper form for such surveys; but he omitted to insert his own name in the receipt for their payment or what would have been better, to have made the vouchers simply receipts for money from him for services performed on such a survey. The information omitting Mr. Bradshaw’s name in the receipt and account was noticed before their transmission but knowing also that for the reasons given in Mr. B’s letter other vouchers could not be obtained. I concluded to forward them without comment, considering them sufficient to discharge the Government from any liability therefor.

I also forward a copy of Mr. Bradshaw’ journal to which reference is made in his letter & would express the hope that after further examination of is account with the additional explanations now furnished the same may be approved.71

The same day the Surveyor General wrote to the deputy acknowledging his letter dated November 25 and vouchers that he had forwarded to the Treasury Department for a decision. He repeated what he had told the deputy when he was in Dubuque, “that no expedition [clearly was meant to be “expediency”] was used in this survey and that consequently the expenses have been unnecessarily increased.”72

In his annual report, dated October 10, 1859, Surveyor General Emerson stated,

The survey of the Indian reservation on the St. Louis river to the Fond-du-Lac band of the Chippewas of Lake Superior and the Mississippi has been fully complete, and, since my last annual report and the boundaries of the same properly established, the notes have been carefully examined and platted, (including some thirty-four miles of meanders,) and a transcript of same with a diagram of the reserve, showing the are thereof, transmitted to Washington.73

There seems to have been no further communication between the deputy and the Surveyor general so, presumably, his accounts were settled.

Conclusion

The chain of letters associated with a particular contract describes many aspects of the surveying operations, including the difficulties faced by particular deputies. They must be used to adequately portray the way in which the deputies carried out their duties.

End Notes

1. I have previously written about the rectangular land surveys and reservation boundaries; “The Red Lake Reservation Boundaries: An Overview and the Southern Boundary.” (Spring 2015); “The Western and Eastern Boundaries of the Red Lake Indian Reservation.” (Summer, 2015); “The Diminished Red Lake Reservation Boundary.” (Fall, 2015); “The Rectangular Land Surveys and the White Earth Indian Reservation.” (Winter, 2016) “Incorporating the Southwestern Boundary Line of the Original Red Lake Indian Reservation into the Rectangular Grid. Part I Closing the Grid from outside the Reservation.” (Spring, 2016).

2. The surveys of the Indian reservation boundaries comprise a distinct class of surveys see Minnesota Secretary of State. Land Survey Field Notes p.7. In the Bureau of Land Management (BLM) General Land Office Records database <Minnesota>, hereafter “BLM GLO” all of the field notebooks for these surveys are designated with the prefix “R”.

3. Treaty dated July, 29, 1837. 7 Stat.536. At the time, the area was part of the Wisconsin Territory, established the previous year.


5. 10 Stat.1109. The treaty was proclaimed by President Franklin Pierce, January 29, 1855.

6. Article 8 of the 1854 treaty.

8. The “said boundary line” was the western boundary of the cession. Interestingly, for this particular reservation, the treaty stated that “if said tract shall contain less than one hundred thousand acres, a strip of land shall be added on the south side thereof, large enough to equal such deficiency.”


10. Ibid.

11. Ibid.


15. Ibid.


17. Ibid.

18. Ibid.


20. Ibid. p.15-17.

21. Ibid. p.18. Was a journal required in all reservation surveys?

22. Ibid.

23. This method of compensation differs from the usual method, in which deputies were paid for the actual miles run.

24. Ibid. The deputy would pay for the survey expenses and be reimbursed by the government.


27. Ibid. p.18.

28. Letter dated April 18, 1858, U.S. Surveyors General. Letters Received vol. 44. The individual letters have been bound into a volumes and thus possess no page numbers.

29. Ibid.

30. Ibid.

31. Ibid.

32. Ibid.

33. Ibid.

34. Ibid.


37. Ibid. p.63-64.

38. Ibid p.64.

39. May 12, 1858, Letters Received vol. 44.

40. Journal titled “Survey of Indian Reserve St. Louis River 1858” BLM GLO Records R0015 p.4. In his field notes, Bradshaw stated that he began his survey June 18 and so, for over two weeks, he was travelling with his supplies, trying to find the source of the east branch of the Snake River, his starting point. See Journal p.5-9. His notes show that he began the actual work on June 18. BLM GLO Records, R0019 p.5.


44. He discharged his party on September 20. BLM GLO R0015 p.26.

45. BLM GLO R0019 p.86, 66. The Journal was notarized on October 4. BLM GLO R0015 p.32.


48. Ibid.

49. Ibid. p.232.

50. M27 vol.18, p.158-159.

51. Ibid. p.158.

52. Ibid. p.158-159.

53. Ibid. p.159.


55. Ibid.


57. U.S. Surveyor General. Letters Received vol.44, I have rearranged some of the paragraphs in the letter.

58. Ibid.
64. I do not know what ‘chengratana’ means.

67. Ibid.

70. I presume the term “informality” meant “for additional information.”


Save the Date— 2019 MSPS Summer Meeting

2019 Summer meeting | Aug 15-16, 2019
Breezy Point Resort, Breezy Point MN, 56472
THANK YOU, MSPS MEMBERS!
the MSPS Events Committee

2019 ANNUAL MEETING:

The 2019 Annual Meeting has come and gone, and the Events Committee wants to thank everyone for attending. It was another successful meeting where over 400 members, exhibitors and guests had the opportunity to expand their knowledge, network with colleagues and catch up with friends. Some highlights from the meeting included:

- Several sessions on drones as they can be utilized by surveyors.
- Various legal topics to keep us up to speed.
- Ethics presentations to fulfill Minnesota licensing requirements.
- Updates relating to the 2022 Datum changes.
- A technical track of sessions dedicated to topics of interest for technicians and students.
- The MSPS AR Sandbox, “Get Kids into Survey” Posters and updates on MSPS Public Relations Presentations available to members.
- Award winners:
  - **Pat Veraguth** was awarded Surveyor of the Year for his efforts on the statewide remonumentation project.
  - **Dan Kvaal** was recognized with the William Kelley Memorial Award, which is given to an MSPS member who has contributed greatly to the community.
  - **Rick Morey** was recognized with the EA Rathbun Memorial Award, which is presented to an active member who has served the MSPS over a long period of time.

See [this article](#) for details.

- The MLS Foundation awarded $28,400 in scholarships to 16 students.

UPCOMING EVENTS:

- **SPRING SEMINAR.** As always, the Events Committee is looking forward to planning more seminars to meet your PDH needs. On April 25, we will host a seminar at the Ewald Conference Center in St. Paul that will fulfill the Wisconsin Specific licensing Requirements for those of you licensed in Wisconsin.

- **WINTER SEMINAR.** Get your engineer hats ready (the train type, not the civil type). The winter seminar this year will be “Railroad Surveying 101” which will be presented by AREMA and Licensed Land Surveyor Charlie Tucker. Make sure to mark your calendars for December 6, 2019.

- **2020 ANNUAL MEETING.** If you’re already getting anxious for next year – Save the Date! We have our facility set for the 2020 Annual Meeting. We will be returning to the DECC in Duluth, February 19-21, 2020.

CALL FOR VOLUNTEERS:

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I have been requested to provide an opinion as to whether the legal description of concern in the Mattson Ridge, LLC v. Clear Rock Title, LLP case was ambiguous or not. My opinion is in four parts.

Part one will include extrinsic evidence, the deed of 1891, the incipient deed, and review the instrument from the point of view of the parties at the time it was executed. It will look at the marketable title issue as cited in City of North Mankato v. Carlstrom, N.W. 2nd 130, 133 (1942). A marketable title is “one that is free from reasonable doubt; one that a prudent person, with full knowledge of all the facts would be willing to accept.” Mattson Ridge deemed the title unmarketable because the description was ambiguous.

Part two is the location of the original trail or township road on the ground.

Part three is based on the face of the document, all of the deed of 2005, and not just a part of it. That opinion is limited to the rules of construction in interpreting instruments, the meaning of words and the difference in, and the value to be applied to, directory calls and locative calls, as well as the intent of the instrument, none of which were used by the attorneys or the courts.

Part four is one surveyor's opinion of the ambiguity and unmarketable title sections of Mattson Ridge, LLC v. Clear Rock Title LLP, a case which is now law.

PART ONE: Construing the Description of 1891, the First Deed, with the Aid of Extrinsic Evidence. Placing oneself in the seats that were occupied by the parties at the time the instrument was executed, and take it by its four corners and read it, a certain amount of discovery was needed beginning in that time period.

I made a partial list of areas to explore:

A visit to the Chisago County Recorder's Office provided a copy of the first document noting the exception. A quit claim deed from Morris and Bertha Calmenson to A.C.F. DeRenee dated May 19, 1891, at 11 p.m. It is filed in Book V, page 176.

On May 19, 1891, the Q.C. Deed transferred tracts of land from the Calmensons to DeRenee, all in Township 34, Range 21, Chisago County.

1. The SW ¼ of the SE ¼ of Section 23 (about 40 acres)
2. The SE ¼ of the SE ¼ of Section 23 (about 40 acres)
3. All that part of the N. half of the NE ¼ of Section 26 lying Northerly of a certain highway, excepting a piece of land 12 rods by 18 rods (about 30 acres); and
4. The tract in the NW corner of Section 25; as follows

Also the tract, piece or parcel lying and being in the aforesaid County of Chisago commencing in the Northwest corner of the Northwest Quarter of the Northwest Quarter (NW ¼ NW ¼) of Section 25, Township 34, Range 21; thence South 30 rods to intersection of the road leading from the County Road at or near Charles Magnuson’s Place to 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 Quarter of said Northwest Quarter (NW ¼ NW ¼) being the place of beginning. Hereby intending to convey all that part of said described 40 acre lot that is lying West of the road and containing about 2 acres more or less.

There are some differences between the 1891 deed and the 2005 deed:

“The road leading from the County Road at or near Charles Magnuson’s place to Sunrise City” (1891). Rather than the 2005 text, “in Sunrise City.” (2005)
In documents after the original, the words to Sunrise City have been altered to in Sunrise City or just Sunrise City. These are scrivener’s errors. The correct wording is the original wording of “to Sunrise City.”

Paramount is intent, the last part of the deed.

The words “intending to convey all that part of said described 40 acre lot that is lying West of the road and containing about 2 acres more or less,” show the location of the parcel with no ambiguity. Intent is important as to whether the words “at or near Charles Magnuson’s place to Sunrise City” are ambiguous and an inconsistent part of the description or whether they matter at all.

**Pertinent Citations**

In the construction of the instrument the intentions of the parties as expressed by the writings, are to be pursued, if possible; and when a general and particular provision is inconsistent, the latter is paramount to the former. So a particular intent will control a general one that is inconsistent with it.

2-24 Evidence and Procedures for Boundary Location, Brown & Elridge

In the order of importance of conflicting deed elements, the intent of the parties to a conveyance, as expressed by the writings, is the paramount consideration of the court, senior rights excepted.


**Determining the Intention of the Parties**

The Minnesota cases in which the courts have been asked to interpret descriptions all emphasize the importance of ascertaining the intention of the parties to the conveyance. The surveyor or lawyer interpreting the description is to keep in mind the following:

1. The object of the construction of the deed is to discover and effectuate the intention of the parties
2. The intention is to be gathered from the words of the conveyance read in the light of surrounding circumstances.

3. The conveyance is to be made with reference to the conditions and state of the premises at the time, and no subsequent change will invalidate it.
4. A construction which is consistent with all the terms of the description should be given, rather than one consistent with some of these terms.
5. It is the intention of the parties definitely expressed in the instrument that controls.

Even if there is a conflict in the description itself, the courts will attempt to ascertain what is meant by the description, rather than defeat the conveyance. City of North Mankato v Carlstrom, 212 Minn. 32, 2 N.W. 2d 130 (1942).

The intent is to convey all that part lying west of the road. There is no ambiguity, there never was. The road referred to is the old trail from Wyoming to Sunrise City. Nobody looked at the deed of 1891. Not the lawyers, not the title companies and not the judges.

This particular call in the 1891 deed is worth analysis:

“Thence south thirty (30) rods to intersection of the road leading from the country road at or near Charles Magnuson’s place to Sunrise City.”

Let’s look at the phrases which make up the call:

a. Thence South 30 rods to
b. the intersection of the road
c. leading from the county road
d. at or near Charles Magnuson’s place
e. to Sunrise City

There is no punctuation within this call. The sellers, Morris and Bertha Calmenson, could not read or write in the English language. The deed was affixed with their marks (x ) rather than their signatures. This is not unusual where parties to a deed are immigrants to this country. They could not have written the deed. They obviously did relate their wishes to a scrivener who wrote out the deed to their satisfaction.

In the call “Thence South 30 rods to the intersection of the road leading from the county road at or near Charles Magnuson’s place to Sunrise City:” All the words to make a complete sentence are there, but the last three are out of place.

Placing commas after the words “county road” and “Magnuson’s place” would also have clarified the sentence.
The words “To Sunrise City” do not modify the phrase “at or near Charles Magnuson’s Place.” They modify the phrase “leading from the county road” which modifies the word “road” — the subject of the call in “the intersection of the road.”

The call then becomes:

“Thence South 30 rods to the intersection of the road leading from the county road to Sunrise City, at or near Charles Magnuson’s Place.”

This is grammatically correct and makes sense. Adding the words “to Sunrise City” at the end of the call was most likely an attempt to further clarify the subject of the call, the road.

Further, it is common practice to describe a road as going from someplace to someplace else. In this case, the road leads from the county road to Sunrise City.

The words “Charles Magnuson’s place to Sunrise City” makes little sense. How does Charles Magnuson’s place go to Sunrise City? Places can’t usually go anywhere else. Analysis of the grammatical structure of the sentence clarifies a bit of less-than-articulate writing. Remember, the courts will attempt to ascertain what is meant by the description rather than defeat the conveyance. That did not occur in Mattson Ridge.

The County Surveyor’s Office

Necessary research took me to the office of the Chisago County Surveyor where I was helped by Assistant County Surveyor Gary Anderson. I was provided with the following:

1. From the 1888 Plat Book, the sheets on Lent Township, Wyoming Township, Chisago Lake Township and Sunrise Township.
2. A copy of a survey by Henry Swenson dated April 5, 1909, of the subject exception in the NW corner of Section 25.
3. A copy of a 1938 Aerial Topographic Survey from the records of the Minnesota Department of Natural Resources dated 9/24/38 (1938). This included the site of this discussion and a lot of what was to become the Carlos Avery Wildlife Management Area.
4. Chisago County Highway Right-of-Way Plat No. 66, sheets 1 and 3 of 6, dated May 15, 2009, the county road called out in the deeds.

All of the above are public records.

The 1888 Plat Book for Chisago County had a page for Lent Township. The owners of the various tracts are noted. Acreage is shown, houses are shown, as are the roads, railroads and rivers. The road going north from the county road is shown. It comes from the south line of Section 35 and leaves Lent Township at the east line of Section 24. It’s coming from someplace and going to someplace, as most roads do. Gene Olson, a township supervisor, stated that was the old road or trail from Wyoming to Sunrise City.

There are three houses around said road from the County Road north. There is a house on Morris Calmenson’s property on the west side of the road about 400 feet north of the county road. There is a house on C. G. Cederholm’s property on the east side of said road about 300 feet north of said county road. There is a house on Charles Magnuson’s property on the north side of the county road about 350 feet west of said road. Magnuson also owned about 50 acres south of the county road. The three houses were within an 800 foot radius. All three were neighbors.

Charles Magnuson purchased the northeast ¼ of Section 26 on July 17, 1869, and it was filed on July 3, 1871. Later he split it up, selling the south half to P.J. Anderson on May 2, 1872, and then about 30 acres of the north half north of the county road, less Magnuson’s home site, to Nels Swenson on September 11, 1876. Said north 30 acres was later acquired by Calmenson. Charles Magnuson retained the part south of the County Road for himself. With the information from the Plat Book of 1888, Gene Olson, Lent Township Board Member and Road Historian, and the deed of 1891, Calmenson to A.C.F. De Renee we can accurately say:

Mr. Calmenson and Mr. Magnuson were neighbors. Magnuson was an owner of considerable property in Lent Township, all within a mile and a half of the intersection of the county road and the road to Sunrise City. The road or trail from Wyoming to Sunrise City is the road noted in Calmenson’s description as the road leading from the county road to Sunrise City. That is where Charles Magnuson’s Place is and it is at or near the road to Sunrise City. There is no ambiguity and there never was.
Henry Swenson’s Survey
On April 4, 1909, Henry Swenson surveyed the exception in the NW corner of Section 25, all in Township 34, Range 21, Chisago County.

Swenson was employed to survey the two acre strip in Sec. 25 belonging to Otis (Sec. 26) and where Otis claims the road was not put on the line. Swenson notes the description was very misleading.

Swenson’s survey showed he went south from the NE cor of Sec. 25, 30 rods (495 ft.), where he intersected the road coming from the county road. He then went northeasterly to a point 24 rods (396 ft.) east of said NW cor on the north line of said NW ¼, and thence 24 rods west to the NW cor of said Section 25. He shows a road labeled “Present Road” within the triangle and has questions marks along the hypotenuse of the triangular 2-acre tract.

The description shown on his survey was:

Commencing NW corner of NW ¼ Section 25-34-21 thence south 30 rods to the intersection of the road running from the County Road; thence along center of road to where said road crosses the section line; thence along the north line 24 rods to place of beginning.

Swenson shows the present road did not go from a point 30 rods south of the NE cor of Sec. 25 to a point 24 rods east of said corner. He shows the road within that triangular boundary but not in detail. He does not include the words “at or near Charles Magnuson’s place to Sunrise City.”

The words “present road” indicated that there are changes to the road proposed in the future.

The trail or road did exist in 1909. It was within the triangular part of the NW ¼ of the NW ¼ of Section 25 cited in the description of 1891. Swenson questions Otis owning east of the road. He said the description is very misleading but doesn’t say what was misleading. However, he leaves out “at or near Charles Magnuson’s Place to Sunrise City.” He does show the road as the property line.

The 1938 Aerial Photo and Gene Olson’s Comments on the Road from Wyoming to Sunrise City
The County Surveyor’s office had copies of a 1938 aerial photo done for the Minnesota Department of Natural Resources, and available on their website, of the area from the county road through the north line of Section 25. The aerial photo shows a township road from about a mile south of the county road to about a mile northeasterly of said county road and another trail to the west more or less paralleling said township road north of the county road. I’ve shown this photo to several other land surveyors and we all agree that is the old road or trail.

The old trail or road existed as of 1938 but it had been replaced as a township road with a newer traveled surface laying to the east. It was probably abandoned since it was no longer repaired or used by the township. The new township road from prior to 1938 to today has been acquiesced to for over 77 years, and was annexed to Chisago City in 2005. It is now called Ivywood Trail.

Said 1938 DNR aerial photo shows a trail from the county road just west of and parallel with the township road. It appears that the township road was straightened out somewhat and moved a bit easterly of the trail.

I also talked to Gene Olson, a member of the Lent Township Board for 40 years. The town clerk stated that Olson was the person who was most knowledgeable about the town roads and their history.

When I brought up the road in the northwest corner of Section 25, Olson stated that “the road or trail from Wyoming to Sunrise City was a very early road or trail and it went through that northwest corner of Section 25.” It entered Lent Township at the south side of Section 35 and left at the east side of Section 24, going through or along Sections 35, 26, 25 and 24. Olson knew for a fact it went into Sunrise Township.

To Olson’s knowledge, the road that went through the two acre exception in the NW corner of Section 25, Lent Township, was part of the early trail from Wyoming to Sunrise City.

I discussed Lent Township road acquisition practices with Olson. He said the township didn’t have records for a lot of the roads or trails in the township. A review of the Township Road orders for Lent Township at the county auditor’s office bore that out. There are a few records of road acquisitions or survey. There are no survey or acquisition records for the road from the county road to the north of Section 25 in Lent Township.
Townships have the right to maintain and improve their roads. They can shift them a bit. It also appears that all the parties acquiesced in that shift.

Chisago County Highway Right-of-Way Plat
Chisago County Highway Right-of-Way Plat No. 66, filed May 15, 2009, as Document No. A 509889, is State Aid Highway No. 19 and is the county road referred to in the 1891 deed, Calmenson to DeRenee, as a certain highway running through said land (N ½ NE ¼ Sec. 26) to Middle Fork and also the county road referred to in the description of the 2 acres in the NW corner of Sec. 25.

Said document shows the following:

From the NW corner of Section 25, T34, R21, Chisago County, the west line of the NW ¼ of Section 25 bears South 00° 59' 32" East a distance of 615.9 feet to an iron pipe monument at the intersection of said line and the center of said county highway.

The centerline of the present city road, Ivywood Ave., is 11.75' easterly of the section line at the county road.

The city road bears North 07° 41' 20" East from said county road centerline.

The center of the city road is no longer where it was in 1891 or 1909. It has shifted east and been straightened out a bit. This newer alignment of what was the township road has been in effect since between 1938 and 1909.

Harold Shoberg, whose property Mattson Ridge purchased, told me he was 80 years old and had lived on the site all his life. He thought the township (now city) road was the east property line of his land, meaning the most easterly of the roads shown in the 1938 aerial photo (Ivywood Trail).

In concluding Part Two of this report, it is evident that a diligent inspection of the Public Record and a short talk with an elected Lent Township Board Member would have made clear that there was never any ambiguity in the description of the two acre Parcel in the Northwest corner of said Section 25 cited in the Quit Claim Deed, Calmenson to De Renee (1891).

An ambiguous description is one which can be located in more than one place. Deeds should be viewed with knowledge of the time they were created, in court decision after court decision. Consider the following:

1. The 1891 deed includes a written intent.
2. The 1891 deed uses the words to Sunrise City, later deeds used in Sunrise City or just Sunrise City. The original words prevail in all the deeds.
3. The 1888 Plat Book of Chisago County includes a map of Lent Township, which shows tracts of land owned by Charles Magnuson, M. Calmenson and C. G. Cederholm around said road leading from the county road. They were neighbors.
4. The 1891 deed from Calmenson to De Renee, where Calmenson states that said road goes to Sunrise City. Calmenson lived on the road and he would know.
5. The 1891 deed from Calmenson to De Renee, where Calmenson states that the intersection of the road from the county road to Sunrise City is at or near Charles Magnuson’s Place. Calmenson was Magnuson’s neighbor. If he said it was at or near Charles Magnuson’s place, it was. The 1888 Plat Book shows C. Magnuson’s place to be at or near said intersection.
6. The testimony of an elected Town Board Member, serving on said Board for 40 years, and their expert in town road history, stating that said road leading northerly from the county road was the old trail or road from Wyoming to Sunrise City.
7. The deed of 1891 is to be construed in accordance with the written intent of the document and in the era it was created.
8. The writings in the Deed of 1891, and its intent, carry through to all future deeds where it is used.
9. This description can only be located in one place. It is within the north half of the northwest quarter of Section 25, Township 34, Range 21, Chisago County, Minnesota. It cannot be in Sunrise City. There is no ambiguity.

The above points clearly show no ambiguity once the description is viewed within its era and through public records.

Opposed to the above points and all other points pointed out in this report is the testimony of Travis D. Stottler, Attorney for Mattson Ridge LLC in District Court File No. 13-CV-07-1136 of February 21, 2008.
“It was discovered that the legal description for the property itself was ambiguous and the ambiguity related specifically to a reference that the road leading from the county road at or near Charles Magnuson’s Place in Sunrise City was part of the legal description. I think as the court can be well aware that would lead to ambiguities because....you know, simply put, who is Charles Magnuson, where is his place and will he continue to be in that place forever? Clearly it was ambiguous.”

The above paragraph sums up Stottler’s argument for ambiguity. All that had to be done to check his argument was to go to the public record. The public record shows where Charles Magnuson’s place was. Said deed of 1891, Magnuson to De Renee, shows the words “to Sunrise City” were original and “in Sunrise City” and “Sunrise City” in subsequent deeds are scrivener errors and do not follow the original wording. Stottler asks whether Charles Magnuson will be in his place forever and implies that concept to be mandatory. He argues that somebody told him it was ambiguous, so it is, and the court brought that argument.

This is not an argument for ambiguity. It’s an argument for ignorance. Was this an example of due diligence? Further, if that road can be surveyed it is not ambiguous.

Also standing out in opposition to Stottler’s position is intent, the last part of the deed, of 1891, and the first item on the list to consider.

“Intending to convey all that part of said described Forty (40) acre lot that is lying West of the road and containing Two (2) acres more or less.”

With those words the sellers have stated that the deed line is the center of the road, the road as it existed in 1891. It is a monument. There were no other roads in that two acre, more or less, tract in the Northwest Quarter of the Northwest Quarter of said Section 25.

The written intent makes clear that all the importance placed on the directory call, “at or near Charles Magnuson’s Place to or in Sunrise City” in the court case was meaningless. There never was any ambiguity. The written intent is the controlling factor in the deed, and in subsequent uses of the deed.

The deed line is in only one place, and in no other place. It can’t be ambiguous. In 1891, there was only one road or trail north of the county road through the Northwest Quarter of said Northwest Quarter of Section 25, and that was the old trail or road from Wyoming to Sunrise City noted by the seller, Calmenson. The center of the road is the deed line.

The deed of 1891 removed any possibility of ambiguity. Why wasn’t it utilized?

PART TWO: Locating the Description on the Ground by a Competent Surveyor

Finding the Trail from Wyoming to Sunrise City in Section 25

A proof of non-ambiguity is whether the description can be located on the ground by survey. It was clear that the present lvywood Trail was not the road leading from the county road to Sunrise City described in the 1891 deed, but a new road replacing that trail. The center of the old trail was the property line cited in said deed.

If a legal description sufficiently describes the land so that it can be located upon the ground by a competent surveyor, then it is not ambiguous or defective. Curtiss & Yale Co. v. City of Minneapolis, 123 Minn. 344, 349, 144 N.W. 150, 152 (1913). If the surveyor, with the deed before him, and with the aid of extrinsic evidence, if necessary, can locate the land described and establish its boundaries, the legal description is sufficient. City of North Mankato v. Carlstrom, 212 Minn. 32, 2 N.W. 2d 130 (1942).

Part three is the actual location on the ground of the old trail from Wyoming to Sunrise City as it ran through the northwest corner of section 25 in 1891. In order to do that, it was necessary to find evidence on the ground of said old wagon trail. The latest evidence was the 1938 aerial photo which showed lvywood Trail in its present position and an old sand or gravel road westerly of it. That evidence was 77 years old.

On March 31, 2015, an experienced three-person crew drove from Minneapolis to the site of the old trail from Wyoming to Sunrise City as it passed through section 25 of Lent Township, in Chisago County, Minn. The survey crew had a minimum age requirement of 72 years from each member, as
experience was valued more than agility. Dennis Purcell, licensed Minnesota land surveyor No. 13594, was the youngest member of the crew, and had experience with old trails. Ron Murphy, L.S. 10832, was 80 years old and also had experience with old trails and would be outmaneuvered by Purcell later in the day. Joyce Murphy, Ron’s wife, was the navigator and in charge of equipment and bandages. The crew had a great deal of combined experience, some of it good.

Once the site was attained, the crew parked their vehicle in an old driveway which led to the remains of a home site in section 26, once owned by the Calmenson’s in 1891. The survey equipment was unloaded: a cloth tape, a paint can, lath, lumber crayon and a hammer with a heavy head which Ron later apparently lost.

Dennis and Ron set up a base line northerly of County Road 19 on the approximate center of Ivywood Trail, marking off 100 foot stations until we passed the north line of Section 25 (about 650 feet). Our intention was to measure westerly a number of times from the center of Ivywood Trail to where we thought the old trail should be. Our reasoning was that the old trail should still be there as the land had not been disturbed since it had been purchased by the state in the late 1930s. Further, it was protected by a very well developed buckthorn thicket.

As we were determining who would venture into the buckthorn thicket, Purcell outmaneuvered Murphy by playing the bad hip card. He couldn’t go into the thicket as his hips wouldn’t take him through it in an upright position. Joyce quickly stated that she wouldn’t know what an old trail would look like and also that this was no way to treat arm candy that had already found a deer skeleton.

The only one left who would know what an old trail might look like then picked up the lath, the hammer and the tape and strode bravely westward. The first 30 feet went well and then I hit the thorns and began missing the heavy jacket and gloves I left at home, for buckthorn is not only invasive, it’s malicious.

Busting my way through the buckthorn I found what I considered to be the old trail, a flat area which differed from the surrounding ground. It looked like an old trail to me and I planted a lath in its center with the stationing at Ivywood Trail and the distance west of it marked in lumber crayon. Then, back through the thicket, out to the center of Ivywood Trail and on to the next station where the lath, the hammer, the tape and I would head back into the thicket.

I did this 11 times, each time finding a part of the trail which differed from the surrounding ground and which parts were consistent with each other. The trail appeared to be from 8 to 12 feet wide. This was an old wagon road, remember, and the wagons were pulled by oxen or horses. Travel was by foot, horse or wagon. I found no wagon ruts as the soil was sand and gravel, not clay. There were also trees along the trail which had been in place for many years. Any trees in the trail would have to be less than 77 years old, as none were shown in the 1938 aerial photo.

Our preliminary location survey, determining whether or not a trail still existed, found the trail to range from 37 to 53 feet from the center of Ivywood Trail and along a curve. We found what I considered, as did Dennis, 11 points of solid evidence of the old trail.

Sunrise City was platted in 1853 and again in 1857. The village of Wyoming was platted in 1869. The trail we located was near 150 years old.

When I finished the last trip into the thicket, Joyce pointed out that payment had been taken in blood by the buckthorn for my invasion. Both arms and hands had flowing scratches. While the blood clotted, I took comfort in the fact that my wounds would heal, but Dennis would still have his bad hips.

We had successfully located an ancient trail, sufficiently for Egan, Field & Nowak to come out later and tie it to the section lines and corners.

We had proven by survey that the legal description of 1891 was not ambiguous. We gathered up our equipment and headed off to the Swedish restaurant in Lindstrom for a victory celebration befitting our age.

**PART THREE: Construing the Description**

**Cited in the Deed of 2005 in Accordance with the Following Four Citations:**

The Method Usually Used by the Courts

**Pertinent Citations**

A description is made up of a series of calls. The Definition of Surveying Associated Terms, ACSM and ASCE (1978 Rev.) states:
A call is a reference to, or a statement of, an object, course, distance, or other matter of description in a survey or grant requiring or calling for a corresponding object, or other matter of description of the land.


“To” is a word of exclusion. “To a stone”, “to a stake” and “to the point of beginning” are all examples of the word “to” where distance, area, or course given yield to the object or point called for.


Principle 22. A particular intent will by presumption control a general one that is inconsistent with it. This applies to cases where the specific description is not ambiguous.

Directory calls are those that merely indicate the neighborhood wherein the different calls may be found, whereas locative calls are those that serve to fix boundaries.

Partial calls are special locative calls; general calls are descriptive or directional. General calls are merely to direct a person’s attention to the vicinity or neighborhood, whereas locative calls are made with care and exactness. General calls cannot be given much credit when in conflict with a particular locative call.

Clark on Surveying and Boundaries, Fourth Edition, by John S. Grimes, Section 344, Page 422 states: MAY DISCARD LESS IMPORTANT CALLS.

If a location has certain material calls sufficient to support it and to describe the land, other calls less material and less compatible with the essential calls of the entry may be discarded. The court uses the Rule of Common Sense in construing the language used and the acts of man. On such principles the court will determine the meaning of the language used in the description.

In construing inconsistent descriptions in the deed, preference is given to the part most likely to express the intention and as to which there is the least likelihood of mistake.

Sandretto v. Wahlsten, 124 Minn 331, 144 NW 1089 (1914)
It is proper to reject any terms of a description by which the application of the principles of construction may be declared to be erroneous if enough of the description remains to describe with certainty the land intending to be conveyed.

The Legal Elements of Boundaries and Adjacent Properties, 1930, Ray H. Skelton, Section 65, Page 68.

It is the intention effectually expressed, not merely surmised. This rule controls all others. Judge Sanderson of California graphically outlined how this intention is to be ascertained when he ruled that in construing instruments, “the only rule of much value — one which is frequently shadowed forth, but seldom, if ever, expressly stated in the books — is to place ourselves as nearly as possible in the seats which were occupied by the parties at the time the instrument was executed; then take it by the four corners, read it.”

The Deed of 2005
The alleged ambiguity in Mattson Ridge LLC v Clear Rock Title LLP and Ticor Title Insurance Company case has to do with the description of real property in Chisago County, Minn., cited in document no. A-460934 and filed in the office of the County Recorder on November 30, 2005 at 2:35pm and noted as Exhibit A in the court documents.

The North ½ of the Northwest ¼ of Section 25, Township 34, Range 21, Chisago County, Minnesota, excepting however, two acres, more or less, in the Northwest corner of the Northwest ¼ of Northwest ¼ 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 ¼ of Northwest ¼ or to place of beginning.

Excepting therefrom, all that part of the Northwest ¼ of Northwest ¼, Section 25, Township 34, Range 21, Chisago County, Minn., which lies Southerly of State Aid Road No. 19 and Easterly of State Aid Road No. 80.
The tract of land described is in the North Half of the Northwest ¼ of Section 25, Township 34, Range 21, Chisago County, Minn.

That means that it is held within the boundary of that finite tract and nowhere else. It can’t be in Sunrise City.

There is an exception to the description: Excepting 2 acres, more or less, in the Northwest corner of the Northwest ¼ of the Northwest ¼ of said Section 25.

The exception is wholly within said Northwest ¼ of said Northwest ¼ and nowhere else. It can’t be in Sunrise City.

The exception is then described with the following calls:

“Commencing at the Northwest corner of said Section 25;”

The Northwest corner of said Section 25 is a monument of the Public Land Survey. Said N.W. corner was originally set in 1849 by U.S. Gov’t Surveyor Henry Madden, while subdividing Township 34, Range 21, of the Fourth Principle Meridian.

The next call is:

“Thence south 30 rods to the intersection of a road leading from the County Road at or near Charles Magnuson’s place in Sunrise City;”

From the Northwest corner of said Section 25, the call extends to the South 30 rods (495’) to the intersection of a road from the County Road.

South is here used as a general direction to the intersection of the road from the county road. Had it been meant to be along the west line of the Northwest Quarter of the Northwest Quarter it would have been so noted. The word “to” shows the call is to said intersection excluding distance and direction. We may be within said Northwest ¼ of the Northwest ¼ or we might be a bit west.

The intersection is then noted as, “At or near Charles Magnuson’s place in Sunrise City.” The words “At or near Charles Magnuson’s place in Sunrise City” are a directory call. They merely indicate the neighborhood where the different calls in the description may be found.

All the other calls have been locative calls.

Directory calls are not necessary to define the boundaries. Locative calls are.

Sunrise City is an unincorporated village in Sections 4 and 5 of Sunrise Township, about 9 miles north and 2 miles east of the Northwest corner of said Section 25. It is not in the Northwest ¼ of the Northwest ¼ of Section 25.

If Charles Magnuson’s place is in Sunrise City and not within or near the Northwest ¼ of said Section 25, how can said phrase apply to this description? The land cited is in said Section 25. I’ve walked on it.

The proper thing to do is to either take it out of the description entirely and see if the description works without it or clarify it. In order to clarify it, we would need to examine the incipient description and the 1888 plat book, which we did in part one.

The next call is:

“Thence along the center of the road to where said road crosses the section line,”

This center of the road is the easterly line of the exception. It runs from said Intersection in a Northeasterly direction to the north line of said Section 25. The road was existing at the time this first exception to the Northwest ¼ of the Northwest ¼ of Section 25 was filed at the Recorder’s Office in 1891. The road is a monument and the north line of said Northwest ¼ of the Northwest ¼ is a record monument.

The exception lies between three monuments:

1. The W line of the NW ¼ NW ¼, a record monument,
2. The existing road, a physical monument,
3. The N line of said NW ¼ NW ¼, a record monument.

And its place of beginning is another monument. The road is within the Northwest ¼ of the Northwest ¼ of Section 25, as are all four monuments.

The last call is:

“Thence along the north line of said Section 24 rods (396’) to the Northwest corner of said Northwest ¼ of the Northwest ¼ or to the place of beginning.”
This too is within said NW ¼ of the NW ¼ of Section 25. And so ends the particular calls for that exception, all within the NW ¼ of the NW ¼ of Section 25, and nowhere else.

The main tract description is clear and apparently understood by all: The N ½ of the NW ¼ of Section 25, Township 34, Range 21, Chisago County.

The particulars of the exception are clear: it is bounded by three monuments; the west line of said Section 25, the existing road, and the north line of said Section 25. It is defined by locative calls, which are specific.

Taking out the directory calls, which are not necessary to define the boundaries, and holding with the locative calls as written the description is:

The North ½ of the NW ¼ of Section 25, Township 34, Range 21, Chisago County, Minnesota, excepting however, 2 acres, more or less, in the NW corner of the NW ¼ of the NW ¼ of Section 25, described as follows: Commencing at the NW corner of said Section 25; Thence south 30 rods to the intersection of road leading from the County Road; 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 NW corner of said NW ¼ of NW ¼ or to the place of beginning.

Excepting therefrom all that part of the NW ¼ of NW ¼, Section 25, Township 34, Range 21, Chisago County, Minnesota, which lies southerly of State Aid Road No. 19 and easterly of State Aid Road No. 80.

There is no ambiguity in the locative calls in this description. The property can be surveyed. All that has to be understood is the difference between, and the importance given to, directional calls and locative calls.

In reading the transcripts of the trial, I found no reference to the first deed creating the exception. How can we make reasonable decisions on a description where certain areas are not clear and are obviously of a historical nature without looking at the inceptual deeds? How can title companies and abstractors ignore the chain of title in this case? How can the attorneys?

The concentration on throwing out the bathwater (the directory call “at or near Charles Magnuson’s Place in Sunrise City”) caused the baby (the description consisting of locative calls) to be thrown out with the bathwater. Where was the minimal scholarship requiring a review of the inceptual deed? Why did ignorance replace common sense?

PART FOUR: A Land Surveyor’s Opinion of the Ambiguity and Unmarketable Title Sections of Mattson Ridge

The first section of the opinion is a listing of appropriate learned writings and Minnesota Supreme Court cases which could have been applied to the case and are applied to the opinion. The second section has to do with the events leading up to the case in District Court. The third section concerns the District Court case. The fourth section skips appellate court and goes directly to the Supreme Court. The last part amplifies the opinion.

Section One

In order to understand what went wrong with Mattson Ridge we need to understand the roles of the court, the attorney and the land surveyor in title and boundary questions. As the discussion proceeds, I will comment on how well or how poorly those roles were adhered to in Mattson Ridge.

Exhibit 1

The role of the court in title and/or boundary questions is much different from that of the surveyor or the attorney. The surveyor’s responsibility is to collect evidence of past boundaries described in documents, to collect evidence of possession and use, and to create new evidence to be left for future surveyors to recover. In questions of title or boundaries, the surveyor can then be called on to testify and give opinions to help the court or the jury understand complicated areas. Usually, an expert is not requested if the facts are within the capabilities of the jury to understand. Surveyors should not be considered as advocates for a particular client or position.

Attorneys, on the other hand, are the means by which legal questions are presented to the courts. They are advocates, espousing the position of their clients, right or wrong. At times it may seem that surveyors are advocates, but one must differentiate between honest differences of opinion among
surveyors and the advocacy of a surveyor who may seem to be an advocate.

The courts are present to apply the various laws, both statute and common, to the facts presented. If there is a question as to the facts, it is in the province of the jury to decide what facts to believe and to apply.

In actual practice, the surveyor may encounter numerous attorneys and judges who do not understand this principle and maxim.

In applying this statement, courts will attempt to ascertain the application of common-law doctrines, such as adverse possession, estoppel, and agreement to boundaries, whereas juries will determine which of the two surveyors is to be trusted in testimony and how much weight should be given to any evidence and the resulting facts. Surveyors will ascertain the interpretation of words in a description that is contained in a deed and the jury will determine which of the two is correct, whereas the courts and the judge will determine whether the deed meets the requirements for legality and sufficiency. A court or legislature cannot bestow this authority on any person or agency.

Because of the court’s exclusive right to determine the meaning of words contained in a conveyance that is being questioned and then to determine where that parcel is located according to the description, it is necessary for surveyors to know and understand how courts interpret these meanings and what order of importance to place on them.


Title is history. An abstract of title is the history of instruments of record affecting rights in the property. In a question of ambiguity or nonmarketable title, reviewing the abstract of title is one of the first tasks of a competent land surveyor. From the abstract, the pertinent instruments can be obtained from the county recorder.

In understanding what went wrong with Mattson Ridge, it is important that we understand that the abstract and prior deeds were not viewed by the attorneys. No abstractor was consulted.

Exhibit 2: Abstractors
An abstractor compiles a chain of title on parcels of land from its origin or from a set time in the past (usually 40 years or more, set by accepted community practice or by statute) to the present time, all in accordance with the public record; unrecorded items are not included. An abstract is a collection and chronological summary of any instruments or documents of record affecting rights in the property. An abstractor is responsible for the accuracy of the records but is not responsible for the legality of each recording.

Abstracting ancient land records is fast becoming a lost art. Years ago, most young attorneys put in time in local courthouse record rooms “searching” or abstracting titles. These attorneys went on to become circuit court judges and appellate judges, taking with them their knowledge of titles and boundaries. This is no longer so. In courthouse record rooms, paralegals and registered surveyors are the usual visitors. We now have a generation of judges who are knowledgeable in contract and criminal law, but have very little knowledge of real property law and boundaries. In fact, today, one may find attorneys and judges who never have “run a title” to a parcel of land.

Today, it seems that abstracting is being replaced by buying title insurance and the prayers needed to assure proof of ownership and lines.


Exhibit 3
There is a proper way to read instruments and determine intention. It’s been around a long time. Ray Skelton in Boundaries and Adjacent Properties (1930), Pages 65 and 66, lays it out very clearly. Understanding what went wrong with Mattson Ridge requires this knowledge. Surveyors use it all the time.

Control of Intention
The Rule. The ancient rigidity of technical rules has given way in modern times to the more sensible and practical rule of the control of actual expressed intention as set forth by Judge Savage of Maine who said, “The cardinal rule for the interpretation of deeds and other written instruments is the expressed intention of the parties, gathered from all parts of the instrument, giving each word
its due force, and read in the light of existing conditions and circumstances. It is the intention effectually expressed, not merely surmised. This rule controls all others.” Judge Sanderson of California graphically outlines how this intention is to be ascertained when he ruled that in construing instruments, “the only rule of much value — one which is frequently shadowed forth, but seldom, if ever, expressly stated in books — is to place ourselves as nearly as possible in the seats which were occupied by the parties at the time the instrument was executed; then, taking it by the four corners, read it.”

Method of Application. When the engineer pictures himself in the seat of the scrivener he should keep in mind that:

1. The object of the construction of a deed is to discover and effectuate the intention of the parties.
2. The intention is to be gathered from the words of the conveyance read in the light of surrounding circumstances.
3. The conveyance is presumed to be made with reference to the conditions and state of the premises at the time, and no subsequent change will invalidate it.
4. A construction which is consistent with all the terms of the description should be given, rather than one consistent with some of these terms.
5. (5) It is the intention of the parties definitely expressed in the instrument that controls.

Exhibit 4
What is a marketable title is laid out in Hubacher v. Maxbass Security Bank, 117 Minn. 163, 169, 134 NW 640, 642.

A MARKETABLE TITLE

is one that is free from reasonable doubt; one that a prudent person, with full knowledge of all the facts, would be willing to accept. A title that may involve the purchaser in litigation to remove apparent or real defects appearing upon the face of the record is not one which the vendee will be compelled to accept. The question is, not whether a court would on the facts disclosed adjudge the title good, but whether, without the aid of a specific decision, the title is so far free from doubt that a reasonable person, acting in good faith, would accept it. The question must be considered from the stand point of the intending purchaser, and not from the viewpoint of the court.

In understanding what went wrong in Mattson Ridge it is important to note how this decision was used in district court and changed in Minnesota Supreme Court.

Exhibit 5
In City of North Mankato v Carlstrom, 2 NW 2nd 133, 134, the courts state that a description must be sufficient to identify the property intended to be conveyed, but the courts are extremely liberal in construing descriptions.

And under the maxim that “that is certain which can be made certain,” courts lean against striking down a deed for uncertainty of description of the land conveyed.

And “if a surveyor with the deed before him can with the aid of extrinsic evidence if necessary, locate the land and establish its boundaries, the description therein is sufficient.”

These issues are relevant in understanding what went wrong in Mattson Ridge.

Of course, there must be a description sufficient to identify the property intended to be conveyed. It must be such as to identify the property or afford the means of identification aided by extrinsic evidence. 26 C.J.S., Deeds, §§ 29 and 30, and cases cited under notes.

But, as stated in 16 Am. Jur., Deeds, §262 :

“The courts are extremely liberal in construing descriptions of premises conveyed by deed with the view of determining whether those descriptions are sufficiently definite and certain to identify land to make the instrument operative as a conveyance. … and it may be laid down as a broad general principle that a deed will not be declared void for uncertainty in description if it is possible by any reasonable rules of construction to ascertain from the description, aided by extrinsic evidence, what property is intended to be conveyed.”

Even where the description is doubtful, “the court will keep in mind the position of the contracting parties and the conditions under which they acted and interpret the language of the instrument in the
light of these circumstances.” Under the maxim that “that is certain which can be made certain,” courts properly “lean against striking down a deed for uncertainty of description of the land conveyed,” and generally will adopt “a liberal rule of construction... to uphold the conveyance. So, if a surveyor with the deed before him can, with the aid of extrinsic evidence if necessary, locate the land and establish its boundaries, the description therein is sufficient.”

Exhibit 6
The proper rule in construing exceptions in a deed.

1. The rule in Minnesota is that all ambiguity in a deed shall be resolved in favor of the grantee. That rule is modified, among other things, to the extent that in construing reservations and exceptions in a deed, the proper method is to determine the intention of the parties from the entire instrument and the facts and circumstances surrounding the making of the deed.

Resler v. Rogers, 139 N.W. 2nd 379 (1965).

The proper rule for the construction of a deed of conveyance which contains an exception or reservation is to ascertain the intention of the parties by consideration of the entire instrument, the purpose of introducing the exception or reservation, its nature, and the attending facts and circumstances surrounding the parties at the time of its execution.

An “exception” in a deed is part of the thing granted and must be in use at the time of the grant.

A “reservation” is some new thing created by the terms of the grant, as an easement or right of way. They are often used interchangeably.

There are certain elementary principles with reference to the construction of reservations and exceptions in deeds, which require no special consideration. The intention of the parties is to be ascertained from the entire instrument, including the reservation or exception. This includes the ordinary meaning of the words, recitals, context, subject matter, the object or purpose of introducing the exception or reservation clause, the nature of the reservation or exception, and the attending facts and circumstances surrounding the parties at the time of the making of the deed. It is also elementary that the reservation or exception is void, when totally repugnant to the granting clause. When the grant is direct and positive, it cannot be set aside by an indirect method in the form of an exception or reservation.

While each part of the exception now before us, when considered separately, fails to express any definite, valid, exception or reservation, when considered as a whole it becomes intelligible.

Carlson v. Minnesota Land & Colonization Co. et al. 129 NW 768, 769.

EVENTS LEADING UP TO THE COURT CASE
Mattson Ridge, a real estate development company formed in 2004, purchased 88 acres from Harold and Judith Shoberg in Chisago County for $1,296,000 in September 2005. At issue is the legal description of a two acre exception to the property. The legal description on the deed read as follows:

The North ½ of the Northwest ¼ of Section 25, Township 34, Range 21, Chisago County, Minnesota, excepting however, two acres, more or less, in the Northwest corner of the Northwest ¼ of Northwest ¼ 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 ¼ of Northwest ¼ or to the place of beginning.

Excepting therefrom, all that part of the Northwest ¼ of Northwest ¼, Section 25, Township 34, Range 21, Chisago County, Minnesota, which lies Southerly of State Aid Road No. 19 and Easterly of State Aid Road No. 80.

Mattson Ridge purchased title insurance from Ticor Title Insurance Company (Ticor) for the purchase amount of $1,296,000. A Ticor authorization to exceed contract liability limitation identified “vague legal description” as a usual or extra hazard risk.

Mattson Ridge entered into a purchase agreement with Thompson Builders and Contractors (Thompson) to sell the property for $2,900,000. The
purchase agreement required Mattson Ridge to provide marketable title.

In May 2006, Thompson attempted to obtain title insurance from Commercial Partners Title, LLC (Commercial). Commercial stated that the legal description appears ambiguous and should be surveyed and reformed.

Commercial denied title insurance until the apparent ambiguity of the legal description should be surveyed and reformed.

Comments:
Commercial did not read the legal description in the manner put forward by Judge Sanderson. They did not state that there was an ambiguity, just that there appeared to be one and that it had to be cleared up before they would insure title. They mentioned nothing about the abstract of title or prior deeds. In fact, they could not have read the deed of 1891, the first deed to include the two acre exception, with its written intent and use of “to” rather than “in”, in the reference to Sunrise City. That would have cleared up the objection.

We should also consider the circumstances concerning housing and title insurance in 2005 and 2006. The housing market was booming and title companies were writing a lot of title insurance which wasn’t always well reviewed. I was an expert witness in a case of reforming a description where a mortgagee had eight different mortgages over about a ten-year period. Three of them were written with calls missing from the description. The case I was on had three calls missing out of eleven. Errors were common in that intense market.

Was Commercial within its rights to object to an apparent ambiguous description without checking the abstract of title and the deeds? Yes, it was. The title might have involved the purchaser in litigation to remove apparent or real defects appearing on the face of the record. Apparent or possible defects are enough for the title insurance company to turn the policy down. They were not required to accept any description or project they don’t want to; however, turning the policy down does not make it unmarketable. It just means it’s a transaction Commercial doesn’t want to deal with. See Exhibit 4, Hubacher v. Maxbass.

Commercial was aware that Ticor had insured title insurance to Mattson Ridge. Their thinking seems to be, why not let them clear up the problem of apparent or real ambiguity? They wrote a policy, let them clean up the mess.

Mattson Ridge’s attorney number 1 (MR Attorney 1), in August 2006, sent a claim letter to Clear Rock Title, attaching Commercial’s objection as to the ambiguous description. MR Attorney 1 did not review the property abstract or prior deeds. He asserted that the ambiguity “is clear on its face and a survey clearly was not required to raise the issue.” MR Attorney 1 proposed that Ticor issue a $2,900,000 policy to insure over the objection, and that Ticor pay for the registration action.

Comments:
MR Attorney 1 did not review the abstract or prior deeds. He assumed the role of finder of evidence and determined no further evidence was needed. He assumed the role of surveyor as well as attorney. See Exhibit 1. He disregarded the necessary foundation of an abstract of title and prior deeds. See Exhibit 2. By not reading the instructions as set forth by Judge Sanderson, he did not place himself in the seat occupied by the parties at the time of the instruments execution. See Exhibit 3. He did not include the words “with full knowledge of all the facts” in his definition of marketable title. See Exhibit 4. He did not look at the description from the points of view of Exhibits 5 & 6, nor did he test his assertion by seeing if a surveyor, with the deed before him, with the aid of extrinsic evidence, if necessary, could locate the land and establish its boundaries, finding the description sufficient. MR Attorney 1 failed to do any of these reasonable and required actions to provide evidence for his assertion. His assertion consisted only of his opinion of a document wrongly read which contained scrivener errors opposed to the first instrument containing the exception, and was opposed to the written intention of that deed. It would be difficult to display more ignorance of what should have been done.

Section Two: At Trial in District Court

Mattson Ridge was represented by MR Attorney 2, the partner of MR Attorney 1. The case for ambiguity is shown in the trial transcripts.
“It was discovered that the legal description for the property itself was ambiguous. And the ambiguity related specifically to a reference that the road at or near Charles Magnuson’s place in Sunrise City, was part of the legal description. I think as the court can be well aware that would lead to ambiguities ... You know, simply put, who is Charles Magnuson, where is his place and will he continue to be in that place forever. Clearly it was ambiguous.

“So your Honor, I think the issue is fairly clear that there was an ambiguous legal description, the whole idea that this Charles Magnuson’s property and that’s not an ambiguous description to me is laughable.”

Comments:
MR Attorney 2 accepted MR Attorney 1’s position as to ambiguity on the face of the document. He made no attempt to research the abstract or prior deeds. No surveyor was used to provide evidence and research. The lessons of Exhibit 2 were ignored. MR Attorney 2 was ignorant of the interpretation of deeds. He did not place himself in the seats which were occupied by the parties at the time the instrument was executed. See Exhibit 3. He did not read the pertinent description with full knowledge of all the facts (see Exhibit 4, which leads back to Exhibits 2 and 3). He did not look at the description as a whole or consider that “a deed will not be declared void for uncertainty in description if it is possible by any reasonable rules of construction to ascertain from the description, aided by extrinsic evidence, what property is intended to be conveyed” (See Exhibits 5 & 6 and Parts 1 and 3 of this discussion).

In the matter of Zahrada 472 NW 2nd 153 (Minn. App. 1991), the court states, “a written instrument is ambiguous if it is reasonably susceptible of more than one meaning.” Consider that the instrument of 2005 was not an exact duplicate of the deed of 1891, which used the word “to,” where the deed of 2005 uses the work “in”, a major difference in meaning. And the deed of 1891 stated the intent of the description. MR Attorney 2’s assertions are from a deed with a scrivener’s error which is not viewed in the time of its execution or from easily available extrinsic evidence.

The books say, in general terms “the first deed and the last will shall prevail.” Witt v. St. Paul & N.P. Rq. Co. 35 NW 862 (1888).

MR Attorney 2 looked for Charles Magnuson’s place in the wrong century. A lot of his argument had to do with where is Charles Magnuson now, where is his place now! Without proper foundation, that is what will occur. Garbage in, garbage out.

A man in his late 60’s was retired and looking for something to do. He discussed this with a friend who suggested he try modeling clothes as he was still in decent shape. And it was what the friend did on occasion. There was a casting call to model men’s underwear, set for the following Saturday and the friend suggested he should give it a shot. The retiree asked for any helpful hints or advice. The friend said “you have to help nature along a bit. Stuff a potato in the shorts. Use this regular baking potato.” So that Saturday the retiree happily headed out to the casting call. On Sunday he stopped at his friend’s house to return the potato and was asked how things went. He said “terrible, they called me a pervert and a nut case, told me never to come back, and kicked me out.” I don’t understand, said the friend, “show me exactly what you did.” The retiree did and the friend said “I think I see what went wrong. Did you ever once, just once, consider putting the potato in front? And you can keep the potato.”

And that pretty well describes MR Attorney 2’s presentation. He kept everyone concentrating on where the potato was, what it obviously was on its face, so to speak, and not looking at the situation as a whole. The opposing attorney bought it and the court bought it. Nobody considered the first deed showing the 2 acre exception. The deed of 1891 wasn’t brought into the record.

The attorney for Ticor Title Insurance Company (Ticor Attorney 1), held as the main defense position the following from the district court trial transcripts:

“The policy definition excludes land which abuts streets or roads.” (Page 14) To which the court replied:

THE COURT: I guess you’re making your comment about not being - - the insurance company not being on the hook because of there being roads involved. But, even though there are roads involved it’s the entire property that is unmarketable. If this isn’t covered what is covered by your title insurance policy?

The second area of defense dealt with the assertions of ambiguity and unmarketable title. From the court transcripts:
Ticor Attorney 1: “they say that at any moment in time the property’s legal description could be ambiguous because of this reference to Charles Magnuson’s place. Again we don’t have any evidence that Charles Magnuson’s place can’t be identified right now. If you go back in the records, if you have a surveyor go back and do the research. That would be the type of evidence that you would anticipate seeing to support a claim of ambiguity. And there are case law cited on our - - in our papers, that support Minnesota’s tendency to use other things, places, as references for adjacent properties. And it’s been accepted as non-ambiguous legal descriptions.

“The second thing is that what I mentioned with the Commercial Title’s commitment. They say that it appears ambiguous, we don’t have any evidence from Commercial Title in the record that they did in fact find any ambiguity . So I mean, it appears ambiguous from the title commitment is not sufficient evidence to support Plaintiff’s claim of ambiguity.” (Page 13)

The Court: “Isn’t the problem with the legal description a defect?”

Ticor Attorney 1: “Well, no, they’re saying the problem with the legal description is the reference to Charles Magnuson’s property, and there is case law that says - - we don’t - - in Minnesota, that they allow reference to other people’s property as long as you can identify it. And there is no evidence in the record that nobody could - - or that there couldn’t be an identification of Charles Magnuson’s property by a surveyor who went out and went through the records.” (Page 19)

Comments:
Ticor Attorney 1 did not utilize the services of a land surveyor to provide the evidence needed to defend the case. There was ample evidence available in the public records to defeat the assertions of ambiguity and unmarketable title. An in house paralegal raised the questions, “Is there anything in the county records that would show and clearly identify Charles Magnuson’s place as described in the legal description? Can a surveyor locate it with relative certainty? Again, the question of ambiguity.” The paralegal suggested, “obtain second opinion from a surveyor as to ambiguity of legal description. Research what makes a legal description ambiguous. Get the original abstract or a copy of it.”

Ticor Attorney 1 appeared to feel that the work a surveyor could do should be done, but it should be done by Mattson Ridge.

Ticor Attorney 1 presented no evidence to support the case. The land surveyor was omitted from the process. See Exhibit 1. The chain of title was not reviewed, nor were prior deeds. How can one defend against ambiguity and unmarketable title without searching the record (See Exhibit 2)? The attorney did not understand how to interpret an instrument and the construction of a deed (Exhibit 3). The attorney did not understand that a marketable title requires a prudent person, with all knowledge of all the facts. See Exhibit 4. The attorney did not know how that ambiguity in a deed should be resolved as noted in Exhibit 6. The attorney knew the courts tend to take a liberal view of descriptions but did not provide any evidence or assertions to support that view. (Exhibit 1)

Ticor Attorney 1 followed right along with MR Attorney 2’s assertions that Charles Magnuson and his place were current without presenting evidence to the contrary.

It is hard to address the magnitude of ignorance of Ticor Attorney 1 and MR Attorneys 1 and 2, but as the land surveyor who researched and proved there was no ambiguity or unmarketable title and under the maxim “that is certain which can be made certain” (Exhibit 5), I am qualified to do that and this discussion includes my proofs. All three were incredibly ignorant of the issues discussed and property law.

Section Three: The District Court Analysis
“The sole issue is whether the reference to Charles Magnuson’s place in the legal description was ambiguous and therefore made the property unmarketable. The reference to Charles Magnuson’s place is reasonably susceptible of more than one interpretation based on its language alone. Therefore the legal description is ambiguous.”

Comments:
The description cited in this case from the deed of 2005 uses the words “in Sunrise City”. The deed of 1891, the first deed to include the approximately two acre exception in this northwest corner of the 40, uses the words “to Sunrise City”. The deed of 2005 uses the wrong wording, through a scrivener’s
error. The wording of the originating deed should carry through and take precedent over a later one which includes a scrivener’s error. The call “to the intersection of the road leading from the county road, at or near Charles Magnuson’s place, to Sunrise City (commas added) has a different meaning than “to the intersection of the road leading from the county road at or near Charles Magnuson’s place in Sunrise City.” Why didn’t the court request foundation for the deed of 2005 to assure its accuracy? Why didn’t Ticor’s attorney bring it up?

The district court stated that the sole issue is whether the description is ambiguous. Having precedent over any issue of ambiguity is intent. What was the intent of the description when it was executed? The last words of the description of 1891 are “hereby intending to convey all that part of said described 40 acre lot that is lying west of the road containing about 2 acres more or less.” Had the court requested foundation for Mattson Ridge’s assertion of ambiguity, bringing forward the deed of 1891, there would be no issue of ambiguity. Why didn’t Ticor’s attorney present the deed?

Remember, the first deed and the last will prevail! As a practicing land surveyor for over 40 years, who has been guided by case law and decisions of the court through those years, I hold the court to a higher standard than I do advocating attorneys. I expect some wisdom and knowledge of the subject as well as knowledge of the law. Of course, there was something wrong with the words “the road leading from the intersection of road leading from the country at or near Charles Magnuson’s place in Sunrise City.” I quickly checked that description against the original deed showing the two acre more or less exception as noted in the deed of 1891.

There was a scrivener’s error in the deed of 2005 and also in other deeds between 1891 and 2005. Once given the date of 1891, I could prove where Charles Magnuson’s place was. The attorney’s instant declaration of ambiguity was enormously ignorant and not checking it out through the chain of title was not due diligence.

The land has not changed since 1891 and the instrument executed in 1891 with the wording of the description had not changed either. It still applied. There were better options to pursue other than claiming ambiguity. Ambiguity was the assertion of ignorance. I’ve meticulously gone over other possible and positive solutions to the problem caused by the scrivener’s error in parts one, two and three. With so many positive options available, one must ask, where was the required learning in appropriate legal principles and case law? When was it replaced by ignorance and hubris? If the court is presented an incorrect deed containing a subject changed by error, and the court cites “a written instrument is ambiguous if it is reasonable, susceptible of more than one interpretation based on its language alone” as to ambiguity, how does that apply? Does it apply to the incorrect description and is therefore not applicable? What good is it?

The court also cited, as to marketable title, “a marketable title is one that is free from reasonable doubt and one that a prudent person would be willing to accept”, quoting Hubacher v. Maxbass Security Bank (1912). The court incorrectly cites the quote from Hubacher and because of the paucity or evidence in this case, I think it deliberate in order to fit the little evidence presented. The actual quote is “a marketable title … is one that is free from reasonable doubt; one that a prudent person, with full knowledge of the facts, would be willing to accept. The words “full knowledge of all the facts” were omitted, and they are important. No one in this case had full knowledge of all the facts. It’s a fact, and a shameful one, that no one looked! The court was presented with assertions concerning a description in a deed with a subject changed by scrivener’s error. There was no substantial evidence presented against those assertions.

Ticor’s assertion that there was no evidence in the record to support Mattson Ridge’s assertion of ambiguity, while accurate, did not make up for Ticor’s inability to present any evidence to deny or refute Mattson Ridge’s assertion of ambiguity even though the public record was inundated with that evidence. Ticor was ignorant of that evidence, Mattson Ridge was ignorant of that evidence, and the court did not expand its interest in the case beyond what was asserted, leaving it ignorant also.

The court stated that Commercial Partners’ declaration that the legal description “appeared ambiguous” coupled with the subsequent action of registering the land with a new legal description to alleviate any doubts shows that title was unmarketable. The appearance of ambiguity to some is not the same as actual ambiguity. Howe v. Coates has applicable quotes, to paraphrase here,

“we are not able to accept the judge’s theory for the alleviation of any doubts.” And “we confess our inability to grasp the force of the judge’s contention.”

Commercial Partners required the question of ambiguity — real, or apparent or non-existent — to be cleared up before they would write the policy. One way to accomplish that, and the most economical way, is to pursue ambiguity as I’ve shown in parts one and two. Registering the land is simply another way to make the title agreeable to Commercial Partners. A third way, that cited in City of North Mankato v. Carlstrom (1942) 2 NW 2nd 130, 131, a case cited in the Minnesota Supreme Court’s decision in Mattson Ridge is, “if a surveyor with the aid of extrinsic evidence, if necessary, can locate land conveyed and establish its boundaries, description thereof in deed is sufficient.” There was no ambiguity, there was no unmarketable title.

Further, under the maxim “that is certain which can be made certain”, courts properly lean against striking down a deed for uncertainty in description of land conveyed and generally will adopt a liberal rule of construction to uphold conveyance. I believe that parts one, two and three of this report have proven that there was never an ambiguity. The description could be located on the ground in 1891 and in 2015 and any time in between.

Commercial Partners did not attempt to review an abstract of title or prior deeds. How can a title insurance company rely on the advice of an attorney who doesn’t examine the record? (Exhibit 2) How can said company and its attorney be ignorant of how to read and interpret an instrument? (Exhibit 3). How can a title insurance company rely on advice as to marketable title which does not include full knowledge of all the facts? (Exhibit 4). How can a title insurance company rely on advice from an attorney that goes against City of North Mankato v. Carlstrom as to descriptions, their construction and the possible evidence of a surveyor in locating the land and its boundaries from a description (Exhibit 5)?

The title insurance company made an assertion, an ignorant assertion, without all the facts. The court was in error when it assumed Commercial Partners knew what they were talking about. Had Commercial Title and its attorneys checked out the title to this property as they could have, by employing a diligent land surveyor or abstractor, the question of ambiguity, wholly in the mind of Mattson Ridge Attorney 1, would have gone back to the smoke it was made from. This property would have sold and there would have been no court case.

The Evidence Available to the Supreme Court as to Ambiguity and Unmarketable Title Case Law Ignored

“The first deed and the last will shall prevail.” Witt v. St. Paul and N.P. Ry Co. 35 NW 862 (1888). The rule in Minnesota is that all ambiguity shall be resolved in favor of the grantee.

That rule is modified, among other things, to the extent that in construing reservations and exceptions in a deed the proper method is to determine the intention of the parties from the entire instrument and the facts and circumstances surrounding the making of the deed. See Exhibit 6. Resler v. Rogers, 139 NW 2nd 379 (1965). Also cited in Carlson v. Minnesota Land Colonization Co. et al., 129 NW 768 (1911) and Vang v. Mount, 220 NW 2nd 498 (1974).

“Title was unmarketable when several professionals in the field expressed well founded doubts about the adequacy of the legal description of the property.” Syllabus of the court, part 1.

The district court syllabus mentions Dusenka’s affidavit but no other experts in the field. Who were the experts in the field? The two attorneys who were advocates for Mattson Ridge and Dusenka. Frankie Dusenka was a part owner of Mattson Ridge, and the mayor of Chisago City. The two attorneys and Dusenka not only were prejudiced but did not know what they were talking about. I’ve meticulously shown the ignorance of the two attorneys and can reasonably state that being mayor of a city does not provide the ability to make well-founded doubts about a legal description. If the description was not ambiguous, which is clearly shown in this discussion, the title is not unmarketable. Future readers should be wary when the terms “several professionals in the field” and “well founded doubts” are used. These terms are shorthand, in this case for individuals ignorant of all the facts making supposedly reasonable comments based on that ignorance. Once again, garbage in, garbage out.

The court’s opinion states, “a marketable title is one that is free from reasonable doubt, one that a prudent person, will full knowledge of all the facts,
would be willing to accept." City of North Makato v. Carlstrom, 2 NW 2nd 130, 133 (1942).

Who in this case had full knowledge of all the facts? Not the attorneys for Mattson Ridge and Ticor. Not the judges who were presented with misinformation and ignorance of the issues.

None of Mattson Ridge’s assertions were based on knowledge of all the facts. They did not research all the facts and stayed ignorant of all the facts through the trials. Ticor’s attorney was also ignorant of the issues and bereft of any of the pertinent facts, partly because they were ignorant of the proper method of research and the basic maxim that the first deed shall prevail and partly because of the other incorrect assertions they made.

“Therefore, even after researching and examining relevant records, the doubts expressed by experts about the adequacy of Mattson Ridge’s title to the property were reasonable because the reference in the property’s legal description to ‘Charles Magnuson’s Place’ was ambiguous.” Page 9 of Westlaw report. No one in this case researched the relevant records. All were ignorant of them. No one had full knowledge of all the facts, and without full knowledge of all the facts, one can’t meet the criteria for either marketable or unmarketable title. All the facts are necessary for that determination.

There are no experts in this case. The so-called experts provided a deed with a scrivener’s error obfuscating its meaning, a problem easily cleared up by looking at the first deed. The experts didn’t deal at all with intent when it’s written into the first deed. The experts didn’t research the public records to determine the location of Charles Magnuson’s place. The experts had no idea as to how to construe a description with an exception. The experts were too ignorant to read the first deed. The experts claimed ambiguity on the face of the document with no knowledge of the proper way to construe the description or knowledge of the pertinent case law. The experts have provided garbage for the courts to work with.

It is interesting that the opinions of experts were not noted in the district court’s opinion, but somehow evolved into the way to truth in the Minnesota Supreme court. I confess my inability to grasp the force of this statement when they examined or researched no relevant records and were in no way experts.

As a practicing land surveyor and an avid reader of case law as it affects surveying, and as one who uses case law as a guide in surveying, I have a great deal of respect for the courts and a system where differences can be presented and discussed in a generally civil manner with a ruling based not on emotion but on the law. Therefore, I hold the courts to a high standard and I look to the courts for reasoned wisdom.

For example, in City of North Mankato v. Carlstrom, the court states under the maxim “that is certain which can be made certain,” and “if a surveyor with the deed before can with the aid of extrinsic evidence, if necessary, locate the land and establish its boundaries, the description is sufficient.” These words are elegantly said and based on previous court cases. The meaning is clear.

In Resler v. Rogers, the court stated, “in construing reservation and exceptions in a deed the proper method is to determine the intention of the parties from the entire instrument and the facts and circumstances surrounding the making of the deed.” This was clearly stated and reasonable.

The words of Judge Sanderson of California, “the only rule of much value, one which is frequently shadowed forth, but seldom if ever, expressly stated in books — is to place ourselves as nearly as possible in the seats which were occupied by the parties at the time the instrument was executed, then, taking it by the four corners, read it” are clearly stated with great dignity and are meaningful today.

In Howe v. Coates (1906) the court states, “we are not able to accept the respondent’s theory for the construction of this contract,” and “we confess our inability to grasp the force of the respondent’s contention that the appellant is claiming a forfeiture.” The wording is very civil, the case is a primer on marketable title, and an entertaining read.

In Hedderly v. Johnson 44 NW 527 (1890) the court states:

1. To make a title to real estate unmarketable, so that specific performances of a contract to convey will not be enforced against the vendee, there must be a reasonable doubt as
to its validity. If the doubt raise a question of law, it must be a fairly debatable one — one upon which the judicial mind would hesitate before deciding it. If the doubt depend on a matter of fact, and there is no doubt as to how the fact is, and if it may be readily and easily shown at any time, it does not make the title unmarketable. (Emphasis added.)

This is nicely reasoned and well stated. Having stated my admiration for case law and the judicial system as it affects land surveying and boundary law and given examples of case law I find exemplary, how does Mattson Ridge LLC v. Clear Rock Title et al. compare? What can the practicing land surveyor, the real estate attorney and future courts take from Mattson Ridge as to ambiguity and marketable or unmarketable title?

To place my opinion in its proper position, I am not an attorney; I am not the means by which legal questions are presented to the court. I am not a judge, applying various laws to the facts presented. What I am is that prudent person sought for in this case and the only person in this case (including attorneys and judges) with full knowledge of all the facts as to ambiguity, marketable title and descriptions. I am the licensed land surveyor who researched and obtained sufficient proof that the description in question did not compare to the original created in 1891, which it should, that the intent noted in that deed of 1891 was ignored, that there is extrinsic evidence showing the location of Charles Magnuson’s place, and the location of the trail or road noted in the description can be located. Basically I have proved there was no ambiguity in the description and therefore no unmarketable title. Further, I am that “surveyor who with the deed before him, and with the aid of extrinsic evidence, located the trail and established its boundaries, making the description therein sufficient.”

Had the evidence and facts I presented here been brought forth by any of the attorneys involved, the matter would have been settled in district court and possibly not have gone that far. The court cases were a showplace for ignorance and should be valued as such. If the facts upon which the assertions, opinions and judgments are made are flawed or simply wrong, then it is reasonable to believe the judgements of the courts are wrong.

I assert that this series of fact-based opinions shows that the assertions and opinions presented by Mattson Ridge’s attorneys, which are the foundations upon which these court cases were decided, have no basis in reality and never did. And that fact places great doubt as to the value of the Mattson Ridge LLC v. Clear Rock Title et al. case for future references to ambiguity and unmarketable title. In fact, this series of reasoned proofs nullify the future value of this court case for the thoughtful student of case law. Where was the grasp of property law that we expect from our courts? Why didn’t the courts uphold the “general principle that 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 is intended to be conveyed?” Why didn’t the courts ask to see the first deed containing the exception or the attorneys to proffer it?

Is it possible that Brown’s Boundary Control and Legal Principles 7th Edition is correct when it states the following?

“Abstracting ancient land records is fast becoming a lost art. Years ago, most young attorneys put in time in local courthouse record rooms ‘searching’ or abstracting titles. These attorneys went on to become circuit judges and appellate judges, taking with them their knowledge of titles and boundaries. This is no longer so. In courthouse record rooms, paralegals and registered surveyors are the usual visitors. We now have a generation of judges who are knowledgeable in contract and criminal law but have very little knowledge of real property law and boundaries. In fact, today, one may find attorneys and judges who never have ‘run a title’ to parcel of land.

“Today, it seems that abstracting is being replaced by buying title insurance and the prayers needed to assure proof of ownership and lines.”

Is the practice of law now such an expanding field that the relatively small field of real property law should not be practiced by every attorney? That it should not be judged by every judge? Are we now entering a field abandoned by the many, a
field where most must be ignorant? Knowledge and expertise did not exist in Mattson Ridge. Is the answer experts in the field?

Yet from this turbulence there are still some things we can hold on to. “That is certain which is made certain.” “The first deed and the last will shall prevail,” and “garbage in and garbage out.”

**A Final Summation**

By any viewpoint, this is bad case law. It is not worthy of being cited in future cases. **But it is the law in Minnesota.** The attorneys were ignorant and the evidence, if any, was flawed. Although experts were cited, there were no experts. The judges had poor material to work with and they did not rise above that material as so many other judges I’ve cited have. No one had a sound grasp of real property law. No one. The theme of this case is ignorance, an ignorance which I’ve labored to dispel.

The solution to Mattson Ridge as bad law, as I see it, is to attack the experts. Put them on the stand, show that they are not experts. If they don’t cover the issues I’ve discussed here, they are not experts in legal descriptions and description dealing with ambiguity. Be rigorous in examination of their qualifications, smite them with good case law. If necessary, bring out the flaws in Mattson Ridge.

Ron Murphy, Minn L.S. 10832
December 21, 2016

**MSPS/MACS National Surveyors Week Display at the Minnesota State Capitol**
Board Elections

Past President Mavis & President Balcome - Passing the Gavel

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President-Elect—Pat Veraguth
Past President—Chris Mavis
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2019 MSPS Annual Meeting Photos

MSPS Bixby Award Winner – Jason Teczynski

MLS Foundation Board

MSPS Board
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Annual Meeting Photo Contest Winner - Ron Jacobson

Lisa Van Horn - NSPS President-Elect

AR Sandbox - in action

MLS Foundation - Scholarship
February 15, 2019 (Brooklyn Park, Minn.) – In recognition of excellent achievements, expertise and volunteerism in the Land Surveying industry, the Minnesota Society of Professional Surveyors (MSPS) honored three members on Feb. 15 during its annual meeting in Brooklyn Park.

Douglas County Surveyor Pat Veraguth was recognized with the Surveyor of the Year Award, which is presented to an active MSPS member for recent and significant contributions of time and talent that benefit the MSPS. In addition to his various volunteer efforts, Veraguth recently took on a challenge spearheading an effort to remonument section corners in the state of Minnesota. Remonumenting means placing a new monument in the same location as where the original government surveyors placed them during Public Land Survey System work from the mid to late 1800s. The Public Land Survey System is the basis for almost every legal description in Minnesota.

St. Cloud Technical & Community College Surveying Instructor Dan Kvaal was recognized with the Wm. Kelley Memorial Award, which is given to an MSPS member who has contributed greatly to the community. Beyond his teaching duties, Kvaal volunteers to help Boy Scouts receive their Surveying Merit Badge. He’s also a volunteer with the National Society of Professional Surveyors’ Young Surveyors Network (YSN). He has served as YSN president and is a driving force behind the growing success of its events and social media campaigns.

For additional information: Mr. Chris Mavis, President of the Minnesota Society of Professional Surveyors, at 952-941-3491.
Rick Morey was recognized with the EA Rathbun Memorial Award, which is presented to an active member who has served the MSPS over a long period of time. Morey is a 36-year veteran of the MnDOT surveying community, the last 14 years as the Assistant Director for Surveying and Mapping for the Office of Land Management. He has volunteered for the surveying community in various ways including: chair of the Land Surveyor in Training (LSIT) Committee, judge on the Future Cities Competition, proctor for the Certified Survey Technician exam, and a member for the Government Relations Committee for 12 years, 10 of which were as chair.

“Dan, Pat and Rick are three great ambassadors of the 500-plus MSPS members who ensure the accuracy of property boundaries, construction projects, mapmaking and much more around Minnesota,” said MSPS President Chris Mavis. “Every Minnesotan comes in contact with the work of professional surveyors dozens of times each day, whether it’s in their homes, on the roads they drive, the bridges they cross and so on.”

MSPS members combine traditional land surveying methods with new technologies that include GPS, 3D laser scanning, robotic total stations, drones, digital photography and other equipment. Additional information about surveying, including careers, can be found at www.mnsurveyor.com, or by calling the MSPS office toll-free at 800-890-LAND (5263).

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The Minnesota Land Surveyors Foundation is accepting donations to the Blethen Memorial Scholarship in memory of long-time MSPS member Peter W. Blethen.

Peter was a graduate of the University of Colorado, Boulder; he was a dedicated employee of Bolton & Menk, Inc., for more than 31 years until his retirement in 2014. Peter passed away in January 2016 following a courageous battle with cancer. He was a Registered Land Surveyor in both Minnesota and Iowa. Peter worked very hard in advancing survey technology within Bolton & Menk as well as in the surveying industry. In addition to his MSPS membership, Peter served in multiple capacities within the society — including as chapter secretary, chapter vice president, chapter president, MSPS board member, secretary and president. Peter was recognized as MSPS Surveyor of the Year in 2006 for his contributions to the land surveying profession in Minnesota.

Throughout Peter’s career, he supported the work of the MLS Foundation. He believed there was no better way to promote the surveying profession than to support surveying students in their education. In 2002, he was the first owner of the prestigious MSPS Traveling Bearing Tree Trophy.

Further demonstrating his strong belief in surveying education, Peter served on the South Central College Civil Engineering Technology Advisory Committee and on the MnDOT Survey Technical Workshop Committee.

The Foundation is working with Peter’s family to determine the criteria for the Blethen Memorial Scholarship. In the meantime, we encourage members to make a donation to the scholarship fund.

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MSPS will recognize interesting and outstanding work by our members via a special section in the *Minnesota Surveyor* magazine! We're looking for projects that presented challenges requiring creative solutions, unique projects, big projects, weird projects, etc. Simply write up a description of the project including the basics of the project, some description of what made it unique and any particular surveying techniques that you employed. Include photos and any other documents that help tell the story. Send submissions to Staff Editor Laurie Pumper at lauriep@mnsurveyor.com.

The deadline for the Summer 2019 issue is June 1, 2019.