

CENTER OF SECTIONS IN MINNESOTA

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In the public land survey states, few things are as fiercely debated among surveyors as issues related to the center of sections. On the surface that is a remarkable situation considering the simplicity of the controlling law, which states in part:

And the boundary lines which have not been actually run and marked shall be ascertained, by running straight lines from the established corners to the opposite corresponding corners; but in those portions of the fractional townships where no such opposite corresponding corners have been or can be fixed, the boundary lines shall be ascertained by running from the established corners due north and south or east and west lines, as the case may be, to the watercourse, Indian boundary line, or other external boundary of such fractional township. 43 USCS 752

Confusion about the proper method of subdividing sections occurred in the earliest days of the U.S. Public Land Surveys and in some manner has lingered on to the present time. In the 1896 General Land Office (GLO) circular dealing section subdivision, the Commissioner of the GLO referred to the “many letters making inquiry in regard to the proper method of subdividing sections of the public lands...”¹ The uncertainty in the proper method for setting center of sections was so wide spread that an inquiry was forwarded to Abraham Lincoln in 1859. In his response he wrote:

“The acts of Congress, approved Feb. 11, 1805 prescribing rules for the subdivision of Sections of land within the United States system of Surveys, standing unrepealed, in my opinion, is binding on the respective purchasers of different parts of the same Section, and furnishes the true rule for Surveyors in establishing lines between them. That law, being in force at the time each became a purchaser, becomes a condition of the purchase. And, by that law, I think the true rule for dividing into quarters, any interior Section, or Section which is not fractional, is to run straight lines through the section from the opposite quarter section corners, fixing the point where such straight lines cross, or intersect each other, as the middle, or center of the Section.”²

In reality much of the confusion dealing with section subdivision was the result of various state and territorial legislatures enacting their own laws dealing with section subdivision instead of simply conforming to the controlling federal laws. Such laws can be disregarded by surveyors because they “have been declared invalid as contravening the federal statutes.”³ Minnesota Territorial and State Legislatures were among a group that enacted laws that were not in conformity with federal laws.

In 1851, the Minnesota Territorial Legislature enacted the following law:

“Whenever a surveyor is required to make a subdivision of a section, as established by the United States survey, he shall proceed as follows, except when the section is fractional: commencing at either quarter section corner of the section, he shall run north or south, east or west, across said section, and establish a common centre...” Territorial Statutes Chapter 8, Article 7

This territorial law was certainly ambiguous, but it remained the same with the first state statutes. In 1861 the legislature revised the language as follows:

“Whenever a surveyor is required to make a subdivision of a section, as established by the United States survey, he shall proceed as follows, whether the section is fractional or not, excepting on the northern and western tier of sections of those townships, whose northern boundary is a “standard parallel” or “correction line,” hereinafter provided for: commencing at either quarter section corner of the section, he shall run direct lines to the opposite quarter section corner of the section, and at the intersection of said lines he shall establish a common centre therefore....” General Laws of Minnesota 1861, Chapter 8

Although this law still contained ambiguity, certain parts were in conformity with federal requirements. In 1870 the legislature added the following language to the laws.

“That all surveys made after the passage of this act by county surveyors or other surveyors shall be made in strict conformity to the original United States government surveys, and to enable surveyors to conform to the requirements of this act, the county commissioners of each county are hereby required to procure

and keep on file in the office of register of deeds certified copies of the original plats and field notes of the United States government surveys in their respective counties.” General Laws of Minnesota 1870, Chapter 43

The 1870 law seemed to imply - regardless of what we say elsewhere - federal laws are the correct method. In the 1875 legislature added yet another paragraph to the “rules for surveys” law, creating more ambiguity.

“...in sections on the northern and western boundary lines of townships, the surveyor, in making a subdivision of such sections, shall commence at the quarter-section corner on the south or east boundary of the section, (as the case may be,) and run a line to a point intersecting a direct (right angle) line running from the quarter-section corners east and west, or north and south, at a point equi-distant from the said quarter-section corners; and at said point of intersection he shall establish a post for a common centre, as hereinbefore provided for; and from said common centre he shall continue the line northerly or westerly, in a direct line, to the quarter-section corner on the north or west section line, (as the case may be.)” General Laws of Minnesota 1875, Chapter 31; Gen. St. C. 8, § 235

In 1890 the Minnesota Supreme Court ruled on a case dealing with the proper subdivision of quarter sections. The court stated:

“In accordance with the acts of congress and rules of the land department, all subdivisional lines of a section must be straight lines running from the proper corner in one exterior line to the proper corner in the opposite exterior line of the section as established in the original survey. The state statute (Gen. St. C. 8, § 235) is inoperative when it comes in conflict with the rules established by the acts of congress for subdividing sections. And when lines can be run and established in conformity with the government survey, as ascertained by fixed monuments, corners, and distances, they will control, and the rights of parties who purchase according to the government survey cannot be affected by the act of the legislature.” Chan v. Brandt, 47 N.W. 461 (Minn. 1890)

The Supreme Court recognized that the State legislature can not pass laws that “interfere and overthrow the public surveys.” In 1903 the legislature finally got around to revising the statutes.

“The surveyor shall re-establish all lost government corners, according to the rules of the general land office of the United States, in its printed circular entitled, ‘Restoration of lost or obliterated corners and subdivision of sections,’ dated March 14, 1901, and approved the same date by the secretary of the interior. And from such corners so re-established, or from the original government corners where the same have not been lost, shall subdivide as set forth in the petition, all sections therein included, according to the said rules of said general land office for the subdivision of sections, dated March 14, 1901, approved by the secretary of the interior on the same date, (said rules being in accord with the rules of Minnesota but more specific in language.)” General Laws of Minnesota 1903, Chapter 51

The law was eventually further simplified to state:

“In all surveys the basis for the courses must be defined. In subdividing townships, sections, or parts of sections, as established by the United States survey thereof, and in restoring lost or obliterated government corners, the county surveyor shall follow the rules established by or pursuant to the acts of Congress, and all such surveys shall be made in strict conformity to the original survey made by the United States.” Minnesota Statutes § 389.04.

Although M.S. 389.04 is part of the county surveyor laws, it can safely be said that this provision of the law applies to all Minnesota land surveyors.

In 1893 the Minnesota Supreme Court ruled on another section subdivision case. Although the case dealt with a fractional section, the court cited the applicable federal law as the proper method for establishing quarter lines. Of possibly more importance the court stated:

“It is well settled that when the grant describes the premises by distinct and definite boundaries, from which the lands may be located, no extrinsic facts or parol evidence can be resorted to for the purpose of controlling or varying the description. The boundaries must be got at by the calls in the deed, when they are definite and distinct.” Beardsley v. Crane, 54 NW 740 (Minn. 1893)

Chan v. Brandt and Beardsley v. Crane are Minnesota Supreme Court cases that mandate how public land survey boundaries in Minnesota are to be determined. They clearly state that section subdivisions are to be determined in compliance with federal law, and extrinsic facts or parol evidence cannot alter unambiguous legal descriptions. Is there any land description that is more distinct than a recital for a quarter section?

A legal center of section is a record monument clearly defined by the February 11, 1805, Act of Congress. The original surveyor of the center and all other corners of aliquot parts is effectively the surveyor that set the original exterior section corners.⁴ The correct position of these record monuments is dependent on the exterior section corners. Subsequent surveyors that set physical monuments at aliquot part corners are only retracement surveyors. Record monuments are without error, while physical monuments are always subject to error. Even with the best of our Total Stations and GPS equipment, land measurement is still an inexact science.⁵

What about an old monument that was set to represent the center of section, but is now found to be in a position that is non-compliance with federal law? Will long reliance on such a monument effectively make it the center of section? Again the Minnesota Supreme court answered both of these questions. In 1927, the Court heard a case that dealt with a monument set to represent the center of section, but not in conformity with federal laws. The court ruled that a stone monument set in a "surveyor like manner in 1872" and long accepted as the center of section by neighboring owners was not the true corner because it was not in conformity with federal law. Lunz v. Sandmeier's Estate, 215 N.W. 426 (Minn. 1927)

It is not uncommon to find monuments in the vicinity of the center of section. In many cases there has been long term reliance on their location for numerous subsequent subdivisions. While corners such as these are not the legal center of section, they may have ripened into a title corner or ownership corner.⁶ In circumstances such as these a surveyor should use a great deal of caution not to "plunge whole neighborhoods into quarrels and litigation"⁷ by infringing on the possible unwritten rights of others.

When defects between written title and possession are found, a surveyor has an obligation to report the facts to their client. The report can be a part of the certificate of survey drawing or a separate written document for the purpose of disclosing differences between occupation lines and written title, and the fact that land can be gained or lost by unwritten acts. Dealing with reports in this manner rather than simply making verbal reports will help to insure the third parties, who have a right to rely on a surveyor's findings, will be properly informed.⁸

There are major differences in laws relating to perpetuation of original Public Land Survey corner monuments versus subdividing a section. Restoring a lost PLS monument can be a subjective process, while subdividing a section should generally be an objective process. The land surveyor's role in the latter is to determine the relationship of possession and title lines.⁹ If that were fully understood, there would be no disagreements over the center of section.

¹ Circular On Restoration Of Lost Or Obliterated Corners and Subdivision of Sections, General Land Office, 1896, Page 15.

² The Collected Works of Abraham Lincoln, The Abraham Lincoln Association, Springfield, Illinois, Roy P. Basler, Editor, Rutgers University Press, New Brunswick, New Jersey, 1953

³ A Treatise on the Law of Surveying and Boundaries, Page 49, Frank Emerson Clark, The Bobbs-Merrill Company Publishers, Indianapolis, Indiana 1922

⁴ Subdivision of a Section, Professor John McEntyre, ACSM Surveying and Mapping Journal, American Congress on Surveying and Mapping publisher, Dec. 1984

⁵ Dittrich v. Ubl, 13 NW2d 384, Supreme Court of Minnesota, 1944 "The fact, generally known and quite apparent in the records of the courts, is that two consecutive surveys by different surveyors seldom, if ever, agree; the greater number of surveys, the greater number of differences and disagreements will occur."

⁶ Subdivision of a Section, Carlisle Madson & Alver Freeman, ACSM Surveying and Mapping Journal, American Congress on Surveying and Mapping publisher, Dec. 1983

⁷ The Judicial Functions of Surveyors, Chief Justice Thomas M. Cooley, Supreme Court of Michigan, 1864-1885

⁸ Land Surveyor's Liability to Unwritten Rights, Curtis Brown, ACSM Surveying and Mapping Journal, American Congress on Surveying and Mapping publisher, Vol. XXXIX, No. 2, 1979

⁹ Boundary Control and Legal Principles, 2nd Edition, Page 111, Curtis Brown, John Wiley & Sons publisher, 1969