

TITLE ISSUES

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Editor's Note: In this issue of *Title Issues*, we break with tradition by publishing two articles. In the first article, noted author Dick Bales describes a problem that has plagued surveyors for years and offers a solution.

Striking a similar chord, the second article discusses the potential for survey errors. The second article was discovered recently attached, apparently by accident, to an ALTA Statement submitted to Chicago Title for title clearance purposes. Douglas M. Karlen, Regional Counsel, persuaded us to print the article, notwithstanding that the author is still unknown and still, presumably, at large.

THE CENTER OF SECTION PROBLEM AND A POSSIBLE SOLUTION

By Richard F. Bales, Assistant Regional Counsel and Assistant Vice President, Chicago Title Insurance Company, Wheaton, Illinois

The rectangular system of land measurement is used in more than half of the nation's fifty states, including Illinois. First devised in 1785 by a committee headed by Thomas Jefferson, it is characterized by the division of land into sections.¹

At first, one might think that locating the center of a section is fairly simple. However, for more than one hundred years there have been conflicting laws and instructions which have resulted in the mislocation of many centers of section in Illinois as well as in other states. This mislocation has created encroachments and boundary issues. This article will discuss the history of the "center of section" problem, putting all facets into an historical perspective. It will also outline a practical solution to the problem. For those attorneys who may wish to study this problem further, I have included numerous citations to articles and court cases.

The scenario starts in the early 1800s--specifically, the Land Act of February 11, 1805 (hereafter called the "1805 Act"). This Act provided that surveyors should locate the center of a section of land at the intersection of the two straight lines connecting the north and south, east and west, quarter section corners. (These lines connecting the four quarter corners form a "+", or "plus" sign; they delineate the four quarters of a section--the northwest, northeast, southwest, and southeast quarters.)²

Notwithstanding the 1805 Act, however, Justin Butterfield, Commissioner of the General Land Office, issued special instructions from 1849 to 1851 directing that the center of the section be located at the midpoint of the line connecting the east quarter section corner and the west quarter section corner.³ Similar instructions were in use from 1856 to 1883; they were issued to deputy surveyors for the District of Illinois and Missouri. They provided that "[the surveyor should] run a true line from [the east quarter section

corner] to [the west quarter section corner], and at equidistance between them establish [the center of the section].”⁴

Clearly both sets of instructions were contrary to the 1805 Act. Confused Illinois surveyors called conventions in 1856 and 1857 to discuss the matter. Their dilemma caused them to seek an opinion from Abraham Lincoln, who was a prominent surveyor and lawyer before he became president. Lincoln wrote this response just two years before he assumed the nation’s highest office:

The eleventh section of the Act of Congress, approved February 11, 1805, prescribing rules for the subdivision of sections of land within the United States system of survey, standing unrepealed, in my opinion, is binding on the respective purchasers of different parts of the same sections and furnishes the true rule for surveyors in establishing lines between them. That law, being in force at the time that 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 the straight lines cross, or intersect each other, as the middle or center of the section.

Nearly, perhaps quite, all the original survey’s [sic] are to some extent erroneous, and in some of the sections, quite so. In each of the latter, it is obvious that a more equitable mode of subdivision than the above might be adopted; but as error is infinitely various, perhaps no single better rule can be prescribed.

At all events, I think the above has been prescribed by a competent authority.

Springfield, Illinois

January 6, 1859

A. Lincoln⁵

Despite Lincoln’s opinion, in which he agreed with the 1805 Act, many surveyors in Illinois and other states continued to locate the center of a section in accordance with these erroneous survey instructions. Some surveyors, in fact, even went so far as to locate the center, not at the midpoint of that line connecting the east and west quarter section corners, but instead at the midpoint of that line connecting the north and south quarter section corners.⁶

What does the modern surveyor do when he comes across conflicting monumentation of the center of a section? Dual monumentation could result in a section having two

centers of section, the “legal” center of section, established pursuant to the 1805 Act, and the “accepted” center of section, established pursuant to instructions in conflict with the 1805 Act. These two centers could be as much as twenty-five feet apart or more. How should the modern surveyor proceed if he surveys property in a section and discovers that the section was originally surveyed contrary to the 1805 Act, but that plats of subdivision of the land have been recorded or improvements have been built on the land, all in reliance on this “wrong” means of surveying?

The law seems clear that the surveyor should rely on the “accepted” center of section when resurveying the property. For example, in the landmark case *Cragin v. Powell*, 128 U.S. 691, 32 L.Ed. 566, 9 S.Ct. 203 (1888), the United States Supreme Court made this observation in regards to defining a retracement survey: “A resurvey, properly considered, is but a retracing, with a view to determine and establish lines and boundaries of an original survey. . . .”⁷

The classic surveying texts echo federal law regarding retracements. This sentence, for example, appears in *Boundary Control and Legal Principles*: “The responsibility of the retracement surveyor is to follow the footsteps of the original surveyor as nearly as possible.”⁸ Or consider this statement from *A Treatise on the Law of Surveying and Boundaries*: “The cardinal principle guiding a surveyor who is running the lines of a previous survey is to follow in the footsteps of the previous surveyor.”⁹

Accordingly, I suggest that the surveyor consider the following procedures when evaluating a center of section problem. The surveyor should first do extensive fieldwork, investigate records at the Recorder’s Office, and discuss the matter with other surveyors who have worked in the area to make sure that there is indeed a center of section issue. I recently worked on a center of section problem in Will County. The surveyor told me that a survey company was doing work in this area in the 1930’s and uncovered a stone monument that has since been replaced by an iron pipe. This monument was at the “accepted” center of section and has been relied on by other surveyors (and also by the Illinois Department of Transportation) since that time. This pipe also fits with the monumentation along Interstate 55.

In this Will County example, the surveyor determined that when the land was surveyed using the “legal” center of section, there were encroachment problems. But when the land was surveyed utilizing the “accepted” center of section, everything fit perfectly with no encroachments.

It seems to me that if improvements have been constructed in reliance on an “accepted” center of section, it would be imprudent for the surveyor and the title company to ignore the admittedly improper means of surveying and to stubbornly insist that the “legal” center was the only “right” center.¹⁰ In this regard, I am reminded of Justice Cooley, the Michigan Supreme Court justice. He was quoted in the Illinois Supreme Court case *Westgate v. Ohlmacher*, which dealt with a boundary problem in DeKalb County:

Nothing is better understood than that few of our early plats will stand the test of a careful and accurate survey without disclosing errors. This is as true of the government surveys as of any others, and if all the lines were now subject to correction on new surveys, the confusion of lines and titles

that would follow would cause consternation in many communities. Indeed, the mischief that must follow would be simply incalculable, and the visitation of the surveyor might well be set down as a great public calamity.¹¹

The court went on to state that Judge Cooley's remarks were applicable in this case, that "to permit a re-location of the lines dividing the property fronting upon Somonauk Street (which would involve the adjoining blocks and streets) would be to unsettle the title and boundary lines of the entire part of the city of Sycamore in which block 15 is located."¹²

After the surveyor has performed his research, he should prepare his final plat of survey. He should show both centers of section on his survey. The burden is then on the title company to decide how to underwrite the issue. If one uses the "legal" center of section, are there encroachment problems? On the other hand, if one uses the "accepted" center of section, do these problems disappear? If the title company can verify that the accepted center has been relied on for many years, perhaps it can similarly rely on the accepted center of section when insuring the property.

So that title problems do not arise in the future, the legal description should be amended so that it references the location of the "accepted" center of section relative to the location of the "legal" center. For example: "Commencing at a 6 inch by 6 inch monumental stone at the accepted center of section _____, said accepted center being _____ feet (north or south) and _____ feet (east or west) of the intersection of the straight lines connecting all four quarter section corners. . . ."

The twenty-first century finds more and more surveyors measuring land with satellites and GPS (Global Positioning Systems) and preparing plats of survey with computers. How ironic that this technology has the potential of surrendering first chair to a center of section that was set in the "wrong" place 150 years ago with a chain or metal tape! But surrender it must. Justice Cooley was correct. To hold otherwise would, in his words, result in a confusion of lines and titles and consternation in many communities.

THE MOVING MERIDIAN

Author unknown

Did you ever notice that legal descriptions in title commitments and policies issued by Chicago Title Insurance Company in the Chicago metropolitan area contain the phrase "East of the Third Principal Meridian?" Did you ever wonder just where, exactly, that Third Principal Meridian is; how it could be the *third* "principal" meridian; whether there is any inhabited land *west* of the Third Principal Meridian; and, if so, whether water drains out of bathtubs there clockwise or counterclockwise? I wondered about these things just the other day, so I asked my favorite Chicago Title underwriter for help. Now, my favorite underwriter has expertise in dealing with difficult legal descriptions, in reading surveys, and knowing the answers to life's most important questions. With a

knowing smile, the underwriter said, “Go west, young man, to the Third Principal Meridian. I am certain you will find something very interesting.”

The next day, I began my quest for knowledge by referring to the pamphlet published by Chicago Title entitled *Land Measurement Manual*. The pamphlet showed me how the Third Principal Meridian bisects Illinois, running due north from the mouth of the Ohio River to the northern border of the state. The pamphlet also illustrated how an east-west Base Line intersects the Third Principal Meridian, forming the center point of a grid pattern made up of township and range lines. I was fascinated by this point of intersection. I just had to go there—to the center of my real estate universe.

I packed a lunch and drove west toward the Third Principal Meridian. I found it where it crosses the East-West Tollway. The exit was not marked, but I left the tollway and traveled south. I drove along some good roads, some bad roads, and, in some stretches, over no roads at all. Eventually, I found the Base Line in the middle of a soybean field, about ten miles south of Centralia. A farmer, probably the owner of the field, soon came along and asked me what I was doing in his soybean patch. When I told him I was searching for the point of intersection of the Third Principal Meridian and the Base Line, he sighed and said, “Well, I guess you’ve finally caught us. I’ll tell you everything.”

Over steaming cups of coffee in his kitchen, the farmer confessed all. He said, “My family has owned this land since the time of the Northwest Ordinance back in 1785. When the government surveyors came out here after the Ordinance, my Great, great, great . . . granddaddy didn’t take too kindly to the interference with his farming. Well sir, to teach those government boys a lesson, Great, great, great . . . granddaddy decided he would move the stake the surveyors had planted on the first day. So, every night, he would go out and move the stake—a few feet here one night, a few feet there the next. The survey boys never knew it, and they left here thinking they had drawn a straight line. But that line isn’t straight at all. It zigzags from here to Wisconsin.”

I was astounded. “How can this be?” I cried. “The Third Principal Meridian wanders all over the state! How could you do such a thing?”

The farmer replied, “We’re actually very proud of it—family tradition and all. We still move the stake. We don’t move it every night any more—just once a year on April 26, on the anniversary of the Northwest Ordinance. Why, right now, the stake is two miles southwest of where it ought to be.”

This was monstrous. I laughed; I cried; I wanted to call the police. Yet, what crime had been committed? While this family of survey spoilers had probably clouded every title in Illinois, they had not done anything really criminal.

With great sadness in my heart, I left the farmer in his kitchen and drove slowly back to Chicago. As I arrived home in what was supposed to be Section 4, Township 39 North, Range 14 East of the Third Principal Meridian, I finally realized the whole truth—and cheered up. My Chicago Title underwriter had known from the beginning. In fact, all of the examiners and underwriters at Chicago Title know the truth, and they work hard each day counteracting the evil effects of that stake-pulling family. Chicago Title

Insurance Company stands for honest legal descriptions. Because of its dedicated and expert staff and its financial strength, Chicago Title is ready, willing, and able to insure Illinois titles, even in the face of the malevolence I had discovered that day.

“Hey!” I concluded. “Like fraud and forgery, the Moving Meridian is just another hidden title risk that is fully covered by a policy from Chicago Title Insurance Company.” I slept well that night after all.

1. Bureau of Land Management, *Manual of Instructions for the Survey of the Public Lands of the United States* (Washington, D.C.: U.S. Government Printing Office, 1973), p. 59, hereafter *Manual of Instructions*; 43 U.S. Code, ch. 18, sec. 751; Curtis M. Brown, Walter G. Robillard, Donald A. Wilson, *Evidence and Procedures for Boundary Location*, 2nd ed. (New York: John Wiley and Sons, 1981), pp. 179-186.
2. Joe D. Webber, *Early Public Land Surveys in the Northwest Territory and Procedures for the Retracement of Original Government Surveys in Illinois* (Rochester, Illinois: R.E. Church Co., 1981), pp. 234-235, hereafter Webber; see also Curtis M. Brown, Walter G. Robillard, Donald A. Wilson, *Boundary Control and Legal Principles*, 3rd ed. (New York: John Wiley and Sons, 1986), pp. 256-257, hereafter Brown, *et al.*; *Subdivision of Sections* (Bureau of Land Management, 1980), pp. 16-19; *Manual of Instructions*, p. 85; *Federal Instructions for Surveys of the Public Lands From 1785-1843* (Illinois Registered Land Surveyors Association), pp. 57-60; *Lunz v. Sandmeier's Estate*, 172 Minn. 338, 215 N.W. 426 (1927).
3. Brown, *et al.* pp. 318-319. This procedure of locating the center of a section is sometimes called the “East-West split.” See also *City of Bloomington v. Bloomington Cemetery Ass'n.*, 126 Ill. 221, 18 N.E. 298 (1888); *Bloomington Cemetery Ass'n. v. People*, 139 Ill. 16, 28 N.E. 1076 (1891).
4. Webber, p. 338; see also pp. 331, 345-348; John S. Grimes, *A Treatise on the Law of Surveying and Boundaries*, 4th ed. (Indianapolis: Bobbs-Merrill, 1976), pp. 105-06, hereafter Grimes; *Gerke v. Lucas*, 92 Iowa 79, 60 N.W. 538 (1894), hereafter *Gerke v. Lucas*.
5. T.S. Madson II, Louis N.A. Seemann, *Fading Footsteps (or, Retracement and the Land Surveyor)* (Gainesville, Florida: T.S. Madson II, 1980), pp. 79, 115-116.
6. Walter G. Robillard, Lane J. Bouman, *Clark on Surveying and Boundaries*, 7th ed. (Charlottesville, Virginia: Lexis Law Publishing, 1998), p. 276, hereafter *Clark on Surveying and Boundaries*; *Gerke v. Lucas*.
7. *Manual of Instructions*, p. 146; see also *Schoenecke v. Yost*, 1989 Ok. 39, 776 P.2d 1262 (Okla. 1989); *Tolson v. Southwestern Imp. Ass'n.*, 97 Ark. 193, 133 S.W. 603 (1911).
8. Brown, *et al.*, p. 324.
9. Grimes, p. 339; see also p. 366.

10. This conclusion is consistent with *Clark on Surveying and Boundaries*: “If the interested landowners have always relied on the location of the center of the section, albeit incorrectly located, it becomes the center of the section and no one should tamper with it.” See *Clark on Surveying and Boundaries*, p. 276. Writing about the 1856-1883 instructions, Joe D. Webber in *Early Public Land Surveys in the Northwest Territory* reaches a similar conclusion: “If existing evidence indicates the lines and corners conform to their establishment by the 1856 instructions, they should not be changed to conform to later instructions. Because these instructions were the retracement rules in force at the time, corners and lines established under their auspicious [sic] would be valid locations, particularly if acquiescence by adjacent land owners or the public could be shown.” See Webber, p. 205; see also the similar comments regarding the 1849-1851 instructions in Brown, *et al.*, pp. 318-319; see also Brown, *et al.*, pp. 374-376.

11. *Westgate v. Ohlmacher*, 251 Ill. 538 at 542, 96 N.E. 518 (1911).

12. *Id.*