

Test Yourself



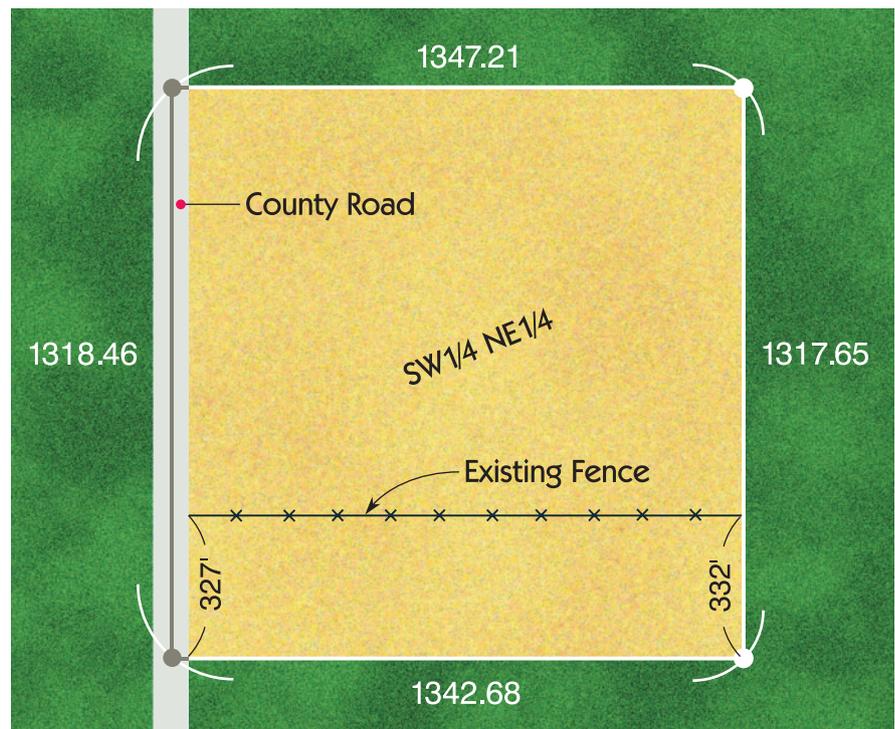
By Richard L. Elgin, PhD, LS, PE

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Where's the Line, Part 2

I'm happy to report that the "Where's the Line" problem in the Jan/Feb '05 issue generated so many responses and some very well-described solutions, that I wanted to share them with our readers. Three interpretations or solutions were proposed:

- 1) Most interpreted the description to convey the south 10.00 acres of the quarter quarter, making the north line parallel to the south line. Comments and justifications usually pointed out that the grantor's intent was to convey 10 acres. . . he said so twice: Once when he mentioned 10 acres and the second when he said the tract was 330 feet by 1320 feet, or, 10 acres. How could one survey anything else?
- 2) Several solutions were to make the tract 330 feet north-south, the north line being parallel to the south line. Reasoning included: A) Dimensions control area, so the 10 acres is secondary to distances. . . make the north-south distance 330 feet. B) Holding 330 feet north-south construes the description most strongly against the grantor. The grantee gets the maximum acreage possible. The ambiguity is cured favoring the grantee. (Okay, but what if the measured east-west distance was less than 1320 feet. . . would this group then opt for surveying the south 10 acres which would make the north-south distance more than 330 feet, or hold 330 feet and give the grantee less than 10 acres?)
- 3) A few responses said they would survey the south one-fourth of the quarter quarter. This interpretation is



based on the belief that the grantor intended to convey one-fourth of the quarter quarter. By quoting 330 feet by 1320 feet, he or she thought each quarter quarter is 1320 feet square, and intended to convey one-fourth of it. . . hence make the survey the south one-fourth of the quarter quarter.

And then, there were a few "fence-sitters" (pun intended). One surveyor pointed out two possible interpretations (south 10 acres and south 330 feet), then said he didn't know which he would survey in the field. A couple of responders said they would have to ask the grantor what that person intended. I suppose that's fine, but depending on how the question is couched, I'll bet I could get whichever answer I desired from the

grantor! (10 acres or 330 feet.) What if the grantor is deceased? Then what?

One response came from a surveying company in which two staff surveyors gave their interpretations: One opted for the south 10 acres; one made it the south 330 feet.

Most of the solutions mentioned the desirability of using a line of occupation to assist in curing the description's ambiguity and to help show the grantor's intent. "I would use an occupation line to show the grantor's intent," was a common comment.

The Correct Solution

So, which is the correct interpretation? I'll let you decide. (There's no nice "pat," works-every-time equation for this one.) We surveyors make judgments daily.

They are based on legal principles and all the evidence we can gather. Once made we must be prepared to justify and defend our decision, and be persuasive in court, if required. Could you convince a court your interpretation is correct? If so, and if it is upheld on appeal, you will have established the common law legal principle for this situation in your state!

Always remember what the late Curtis Brown said: "It is not enough to be right, you must also persuade."

Part 2

Let's revisit the problem. Given is a sketch that shows some of your measurements (enough sufficient for this problem). The boundary description is the same:

All of the south 10 acres of the Southwest Quarter of the Northeast Quarter, being 330 feet north-south and 1320 feet east-west.

The grantor for this tract was the owner to the north, who now owns the remainder (all the quarter quarter except the description given). The fence dates roughly from the time of the conveyance of the south 10 acres.

For this "Part 2" problem, email your response/solution to Dr. Elgin at: richard.elgin@elginsurvey.com

A summary of the responses will be placed in the *The American Surveyor*.

Visit us at: www.TheAmericanSurveyor.com Good luck!