

DO LEGAL DESCRIPTIONS DESCRIBE LAND?

Surveyors consider it axiomatic that legal descriptions describe land. We tell clients this, and we tend to believe it ourselves. But do legal descriptions really describe land? Let me explain with two recent examples of legal descriptions that I was asked to review (Cases 1 and 2) and two that I was asked to write (Cases 3 and 4).. — **By Lewis Soloff, PLS**

Case 1: A local surveying company prepared a legal description which was to be the basis of a Minor Lot Line Adjustment. This legal description contained a call to an existing block wall, which, as all parties to this project knew, was scheduled to be demolished. Following is a portion of the legal description:

“...thence North 77°55'24" East a distance of 10 feet to a point in the easterly right-of-way line of Sunset Drive, said point being the true point of beginning, said point also being on the southerly face of an existing concrete block wall; thence...”

I asked the surveyor who wrote this legal description if he really intended for the wall to be a monument for the placing of land being described. He responded that his client wanted the wall be the new lot line, so what else could he do? Here is a portion of my review of his legal description: “If we assume that the wall is a monument, per the rules of construction for legal descriptions the physical location of the wall would control the point of beginning in a north/south axis, regardless of the math leading to it. A future surveyor will need to know where this wall is in order to place the new property lines. However, I believe that this wall will be demolished during the upcoming construction project.”

This may create substantial ambiguity regarding a re-establishment of the property lines in question. Twenty years from now there may be a new block wall. Will a surveyor at that time use the new wall as a starting point? How will he know where the old wall was?”

Case 2: A surveyor was preparing a Record of Survey (RS) covering approximately 30 acres of federal land. Concurrently

he wrote legal descriptions for the various parcels within the 30 acres, which were to be incorporated into deeds to be recorded prior to the recordation of the RS, which may, in fact, never record. The legal descriptions as written were simply a recitation of the math shown on the Record of Survey in progress. A portion of one of these descriptions reads:

“Commencing at a found concrete monument with brass plate stamped ‘LS 2348’ marking the most northerly corner of Parcel 10 of Parcel Map No. 11282, as per map filed in Book 120 Pages 56 through 60 inclusive of Parcel Maps, in the office of the County Recorder of said County; thence along the westerly line of said Parcel Map the following courses: South 22°11'36" West, 662.50 feet; thence South 82°43'02" East, 19.98 feet; thence South 22°12'11" West, 97.64 feet; thence North 82°49'45" East, 20.00 feet; thence South 22°11'58" East, 0.24 feet; thence leaving said westerly line North 67°48'18" East, 2261.37 feet to the POINT OF BEGINNING; thence South 22°11'36" West...” (I have not corrected various typos in the surveyor’s legal description).

The point of commencement is a corner of a Parcel Map. The initial courses between the point of commencement and the point of beginning trace out the lines along the westerly edge of the Parcel Map and then, leaving it, the legal descriptions goes 2,261.37’ along a ‘free’ course to the point of beginning. The final course along the Parcel Map is 0.24’. I pointed out to the surveyor that the establishment of the bearing of this 0.24’ course would control the bearing of the following 2,261.37’ course, and that a minor difference, even a few hundredths of a foot, in the establishment of the smaller course would have a dramatic effect on the terminus of the

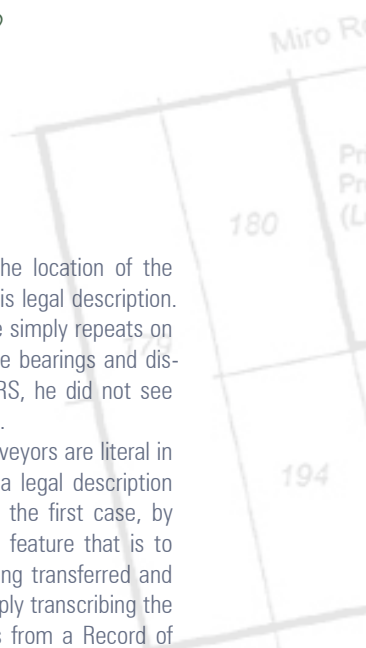
larger one, and thus the location of the point of beginning for his legal description. He responded that if he simply repeats on the legal description the bearings and distances shown on the RS, he did not see how he could be wrong.

In both cases the surveyors are literal in their understanding of a legal description as describing land: In the first case, by describing the physical feature that is to be the limit of land being transferred and in the second case simply transcribing the bearings and distances from a Record of Survey in progress. However, in both cases the lines involved will be the subject of ongoing boundary dispute.

Case 3: I was hired by a company building a pipeline to write legal descriptions, the centerline of which traverses a number of small, and very difficult to establish, private parcels. Our intention was to have the legal descriptions encumber each private parcel, providing a continuous strip easement.

If I believe that each legal description ‘describes’ the strip as it traverses the individual parcels I will embark on an extensive boundary survey of the individual holdings and write legal descriptions for the portion of the strip contained in each. One drawback of this approach is the cost and time required for a detailed survey of the individual private parcels. However, this pales when compared to the fact that the ‘continuous’ strip which I had hoped to create will almost certainly be broken and skewed at each property line, as separate surveyors over time establish each individual segment of the strip as it crosses their client’s property.

Instead, I took a functionalist view of legal descriptions, as advocated herein, and wrote a description of the overall strip



based on clear monumentation, which will be perpetuated over time, and encumbers each individual parcel by reference, such as, "...that portion of (individual parcel) lying within a strip of land, (X) feet in width, located in (general location), the center line of said strip described in: (metes and bounds of entire center line)"

Of course the irony of this more effective approach is that I cannot claim to know the location or shape of the easement area over any specific parcel of land. And, of course, I do not consider this to be a problem because I know that legal descriptions need not, and in fact do not, 'describe' land.

Case 4: My client owned a number of contiguous lots and had constructed buildings spanning the property lines. He later wished to sell the buildings individually and it was brought to his attention that these buildings encroached on the lot lines. A Minor Lot Line Adjustment was proposed to remedy this situation and it was my task to prepare the necessary legal descriptions. I was mindful of the need to establish lines that will be reestablished in the physical location that I intend, since they must fit the small spaces between the buildings. Consequently, for the final lot configuration I wrote metes and bounds legal descriptions which tie into significant, nearby, documented, well ('standard survey') monuments.

Another surveying company was asked to review my work and suggested simple 'of' descriptions, relating to the original lots. They, no doubt, felt this to be the obvious approach and considered my work to be needlessly 'wordy'. Here is a portion of my response:

"...I am not inclined to use an 'of' approach as applied to these legal descriptions. I had considered a simplified format for them, such as the ones that you prepared and have proposed. I decided, however, on the more lengthy version that I have submitted. In legal description writing I don't consider brevity to be, per se, an overriding, or even significant value. As you have mentioned in your e-mail the goal is to "...insure that the existing buildings do not encroach into the adjoining lots."



However, using your approach it is my opinion that the likelihood that currently buildings may in the future be considered to encroach over the adjusted lot lines is increased.

The key difference between us is that I am describing the adjusted lines, in the critical NW/SE direction in a geometrical relation to two well monuments, while you describe them in relation to lot lines. Lot lines are typically subject to two reestablishment issues: (1) Measurements, and (2) boundary judgment. Of these two, within the project distances involved of a few hundred feet no surveyor should have any difficulty measuring within a fraction of an inch. And this measuring ability will only increase over time.

However, based on boundary judgment different surveyors might disagree materially regarding the location of the lines dividing the original lots. Although the original lots are more or less rectangular, as is the block, this is a very old subdivision, and it does not have accepted monuments at the four surrounding intersections. Since using your approach the new lot lines are being tied to the original lot lines, they will both move together as future surveyors disagree over the latter, and possibly move into buildings, which are fixed in space. However, my legal descriptions have side stepped this problem: differences between future surveyors over the location of the lines dividing the original lots has absolutely no affect on the new lot lines, since these new lot lines are tied to physical monuments. Of course, I have placed the necessary 'calls' to the lot lines that are not being adjusted. It is only the critical lines which are being adjusted to avoid going through buildings that are set in a fixed relation to the well monuments. Please note that these well monuments are the subject of recorded ties notes, and will be perpetuated over time.

In your e-mail of yesterday you state that your approach would "... allow the lot line adjustment to be based on record information based on the underlying map as opposed to a field survey." I don't think that this is an accurate reference to my approach. I have described the new lot

lines based on both record information and field data (note that the monuments are 'of record,' although perhaps not record in regard to the underlying map). This is necessary because we are dealing on the one hand with underlying lot lines that are not being adjusted and, on the other, with physical objects, i.e., buildings, and the relation between the proposed lot lines and the buildings must be controlled. I don't know of any brief way of writing such a legal description.

Also, you seem to be suggesting that a pure record information legal description is inherently optimal. I don't think that is an accepted generalization among surveyors, and in this specific case I believe that the opposite is true."

Summary

The idea of a legal description as 'describing' land is the single greatest impediment to sound legal description writing. What then is the relation between a legal description and the land that is it written for? A legal description has the same relation to the land that it 'describes' as a recipe has to the food being prepared. It is a set of instructions to produce a certain end. Taken programmatically, a legal description is our effort to constrain surveyors to follow that specific procedure in locating property on the ground which will, to the greatest extent possible, match out intention in writing the 'description.' We are giving other surveyors 'marching orders', or rules, which they are to follow in the establishment of the land in question.

A functionalist approach is essential to the understanding of legal descriptions. A legal description does not 'describe' land. It is a mechanism, a tool, the purpose of which is to produce a uniformity, repeatability, and an adherence to a defined procedure in the physical establishment of a parcel of land. This is, in fact, what the great 'scriveners' of legal descriptions have realized, and it conscious application will be a service to our clients and the public.