

Preamble

This is a bit of a convoluted example because it attempts to incorporate a number of legal surveying principles. Some of the boundary issues are purposely large to be obvious (in a real situations, these would be investigated for mistakes). With some notable exceptions, there should be uniform methods rooted in common law to deal with these issues, regardless their size.

Does that mean there is always a “right” answer? Far from it, particularly in an example like presented here. In order to discuss legal principles in a short time frame requires some limitations.

This example is restricted to the evidence provided in narrative, although many participants can readily identify other types or sources. One of the most critical aspects of boundary surveying is research, which can encompass many diverse sources that vary depending on location. By adding or removing one piece of evidence, the conclusion can be substantially altered.

Common law can vary between jurisdictions so we often have to generalize. For example, most surveyors will say that the State cannot be the subject of adverse possession, and most surveyors would be correct. However, Wisconsin is one of the few places where, given certain conditions are met, the State can lose land due to adverse possession. Hence, we should avoid using terms like “always” and “never”, etc, when applying common law principles, instead replacing them with “usually”, “sometimes”, and “it depends”

One final parting thought before getting started: When dealing with boundaries, there are Matters of Survey (MoS) and Matters of Title (MoT).

MoS are those things over which surveyors have control and can decide. Example: When written calls conflict and there is no evidence to indicate otherwise, the surveyor knows monuments control over directions.

MoT are those things which ultimately affect legal ownership. For example, only a court can decide if the elements of adverse possession have been met and ownership changed between parties.

These aren’t mutually exclusive, but it is important to recognize which is the appropriate doctrine. The surveyor may collect the information used to identify the extent of possession (MoS), but only the legal system can adjudicate if an ownership claim has ripened (MoT).

All surveyors are familiar with the *Rules of Construction* as an evidence evaluation framework, but consider there are only three categories to the framework

1. Unwritten rights
2. Senior right in the event of an overlap
3. Written intentions of the parties

The first is a MoT, the third is a MoS, the second is an MoS but under a specific condition. Sometimes, the surveyor must leave it to the legal system for a final decision. Find a good lawyer and befriend him/her.

Boundaries

Angus and the Hutches were abutting property owners. Of the two, the Hutch parcel was the senior one. In Sep 1979, Francis and Mary Hutch acquired by warranty deed a southeasterly portion of the Simon Angus parcel, Figure 1. The parcel's deed description read:

A parcel located in the northeast quarter of Section 28, Township 3 North, Range 4 West, Hostrop Meridian, Badger County, WD, described as follows:

Commencing at the northeast corner of said section, thence South along the section line 1140 ft to a point; thence S 78°30' W, 675 ft to the point of beginning, being a three-quarter inch iron pin in a road center-line; thence continuing S 78°30' W along the center-line, 780 ft to a three-quarter inch iron pin; thence N 6°00' W, 700 ft to a three-quarter inch iron pin; thence N 84°00' E, 720 ft to a three-quarter inch iron pin; thence S 11°30' E, a distance of 630 ft, more or less, returning to the point of beginning. Containing 11.5 acres, more or less and subject to a 30 ft wide public street easement parallel with the southerly boundary thereof.

The deed was duly recorded on pages 21-22, volume 181, Badger Co Register of Deeds.

The land was rented out for crops so was plowed and cultivated annually.

In 1994, after his wife died, Francis Hutch considered selling a portion the parcel. He hired an old friend, J. Donaldson, a retired DoT engineer who did surveying on the side, to divide the parcel. Donaldson used the record information and did some computations to come up with a five lot subdivision drawing, Figure 2. Before he made any measurements and set any monuments, Hutch decided to not continue. Donaldson was paid for his work to date and he gave the drawing to Hutch.

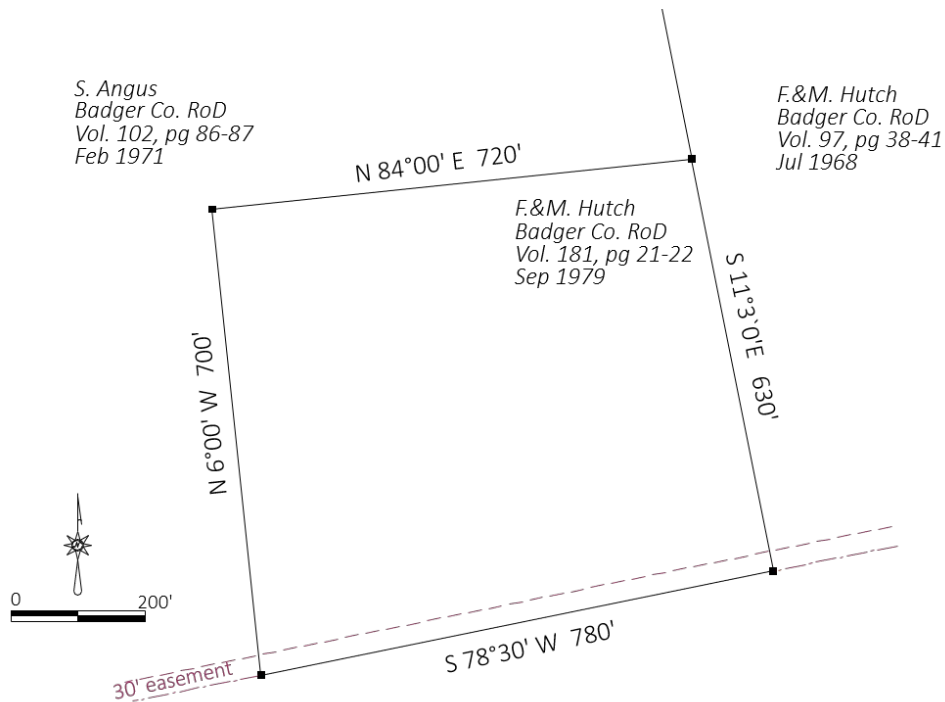


Figure 1: 1979 Acquisition

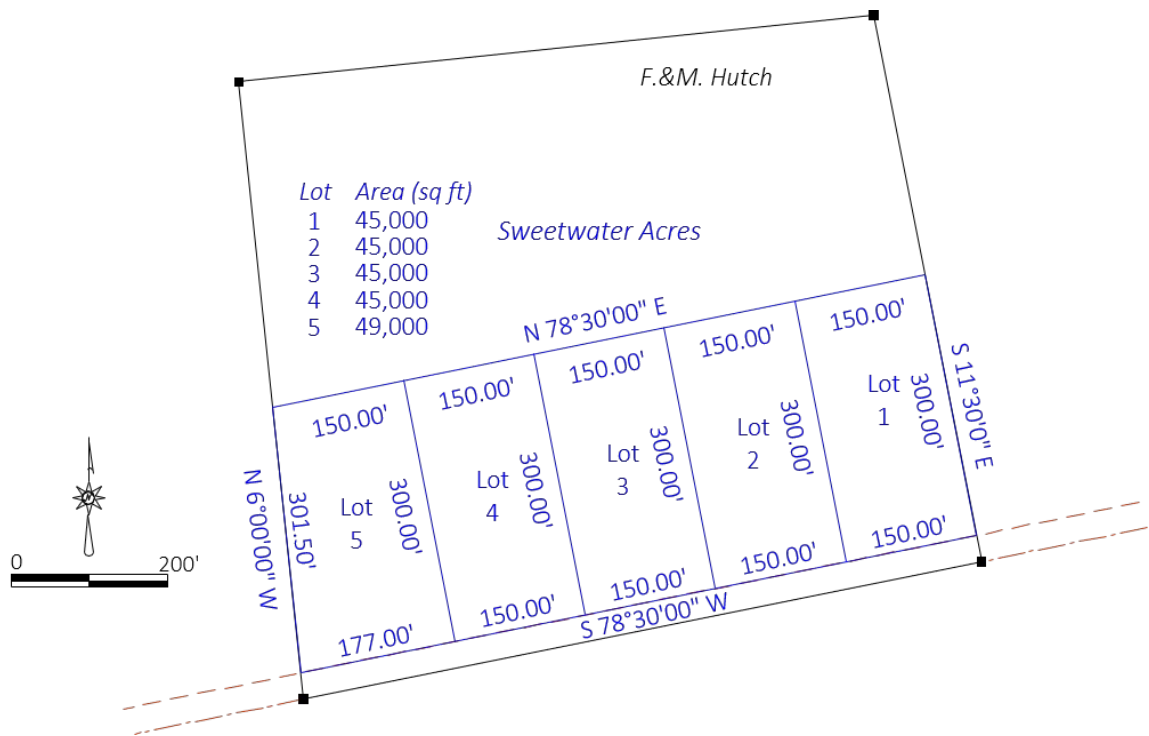


Figure 2: Donaldson Map

Francis decided to delay selling any land figuring the value would appreciate over time. The entire parcel continued to be used for crops.

In the early 2000s, Francis decided it was time to retire and sell some land to generate money for traveling. A friend, D. Thomas, expressed interest in the area of Lot 1. Francis, with Donaldson's drawing in hand, some #4 rebar, and a 100 foot cloth tape, staked the corners. Francis then went to see his attorney about drafting a deed. Although the only property law with which the attorney was familiar was its division between divorcing parties, because Francis was an old client he agreed to draft the deed.

The deed was recorded on 13 May 2004 in Volume 214, pages 35-36 using this description

A parcel located in the northwest quarter of Section 28, Township 3 North, Range 4 West, Hostrop Meridian, Badger County, WD, and part of the property of F. Hutch (vol 181, pages 21-22), described as follows:

Commencing at the northeast corner of said Hutch property; thence S 11°30'00" E a distance of 300 ft to the point of beginning; thence continuing S 11°30'00" E a distance of 300.00 ft; thence S 78°30'00" W a distance of 150.00 ft; thence N 11°30'00" W a distance of 300.00 ft; thence back to the point of beginning, containing 45,000 square feet, more or less.

A second friend, A. Warner, wanted to purchase a parcel although not near Thomas'. Because staking the first parcel wasn't that difficult, Francis did the same with Lot 5. Seeing that the previous description wasn't all that complicated, and all the dimensions were on his map, Francis decided to write it himself to save money. The deed was recorded on 28 March 2005, in Volume 214, pages 163-164. The description was:

Located in the northwest quarter of Section 28, Township 3 North, Range 4 West, Hostrop Meridian, Badger County, WD, and part of the property of F. Hutch (vol 181, pages 21-22), described as follows:

Commencing at the northeast corner of said Hutch property; thence S 11°30'00" E a distance of 300 ft; thence S 78°30'00" W a distance of 600.00 ft to the point of beginning; thence S 11°30'00" E a distance of 300.00 ft; thence S 78°30'00" W a distance of 177.00 ft; thence N 6°00'00" W a distance of 301.50 ft; thence back to the point of beginning, containing 49,000 square feet, more or less.

Francis sold off two more parcels, over the next few years, each time staking them and writing their descriptions himself.

To T. Brown, recorded 8 June 2006 on pages 23-24 in volume 215

Located in the NW quarter of Section 28, Township 3 North, Range 4 West, Hostrop Meridian, Badger County, WD, and part of the property of F. Hutch (vol 181, pages 21-22), described as follows:

Commencing at the northeast corner of said Hutch property; thence S 11°30'00" E a distance of 300 ft; thence S 78°30'00" W a distance of 450.00 ft to the point of beginning; thence continuing S 78°30'00" W a distance of 150.00 ft; thence S 11°30'00" E a distance of 300.00 ft; thence N 78°30'00" E a distance of 300 ft; thence N 11°30'00" W a distance of 100 ft; thence S 78°30'00" W a distance of 150.00 ft; thence return to the beginning point. Contains approximately 60,000 sq ft.

To P. Taylor, recorded 27 Feb 2008 on pages 91 and 92 in volume 216

Located in the northwest quarter of Section 28, Township 3 North, Range 4 West, Hostrop Meridian, Badger County, WD, and part of the property of F. Hutch (vol 181, pages 21-22), described as follows:

Commencing at the northeast corner of said Hutch property; thence S 11°30'00" E a distance of 300 ft; thence S 78°30'00" W a distance of 150.00 ft to the point of beginning; thence continuing S 78°30'00" W a distance of 300.00 ft; hence S 11°30'00" E a distance of 200.00 ft; thence N 78°30'00" E a distance of 150.00 ft; thence S 11°30'00" E a distance of 100 ft; thence N 78°30'00" E a distance of 150.00 ft; thence return to the beginning point. Contains approximately 75,000 sq ft.

Before each parcel was conveyed, Hutch showed the grantee the rebar at each corner.

A. Warner sold her property to B. Starky using the same description as on her deed and moved to Florida. Starky's deed was recorded on 6 Sept 2010 in Vol 219 on pages 18 and 19.

In 2020, *Location Specialties, Inc.*, was engaged by Brown to survey his property and replace missing monuments. Based on written records, interviews, and extensive physical searches, the original monuments were found at all four corners of the Hutch parent. Using the road center-line monuments as the bearing origin, the parcel exterior was surveyed, Figure 4.

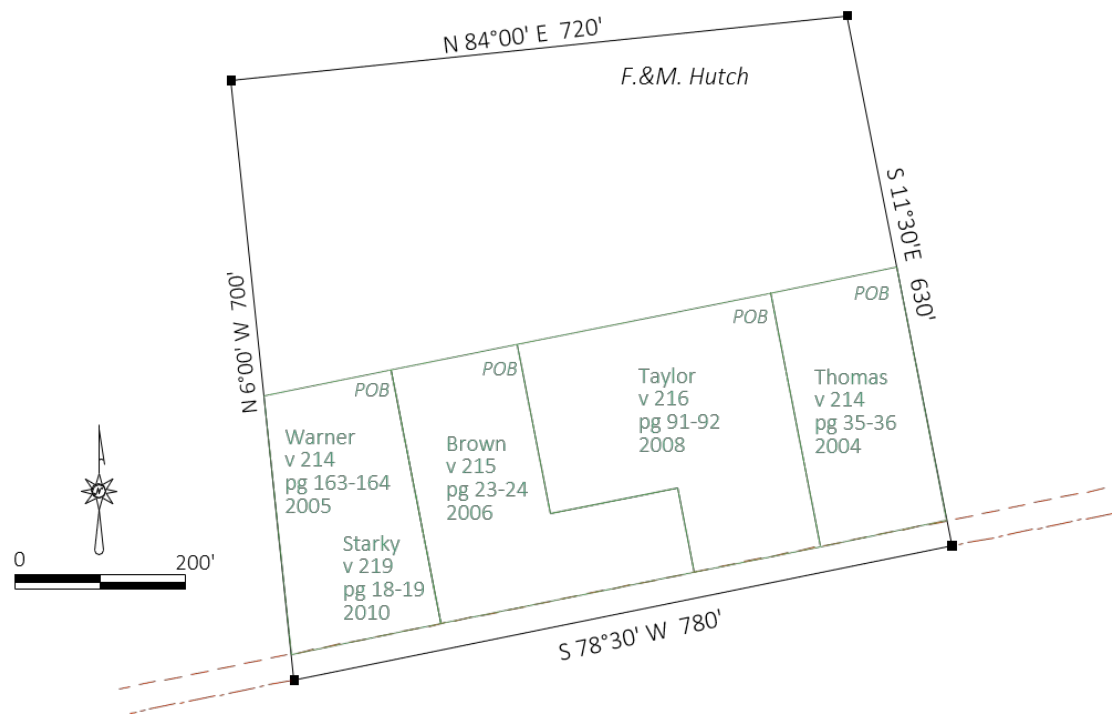


Figure 3: Parcel Conveyances

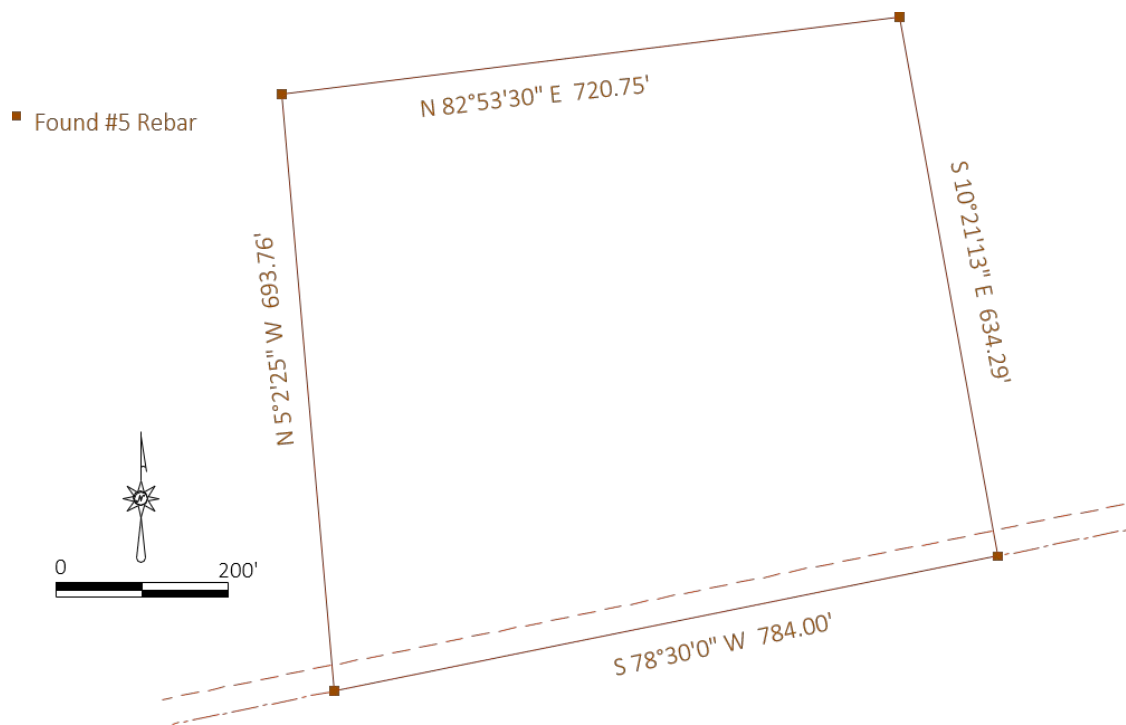


Figure 4: Hutch Parcel Survey

Other physical evidence in the form of additional monuments, a fence, and a hedge were found, Figure 5. Property owners were interviewed to determine the origins of the physical evidence.

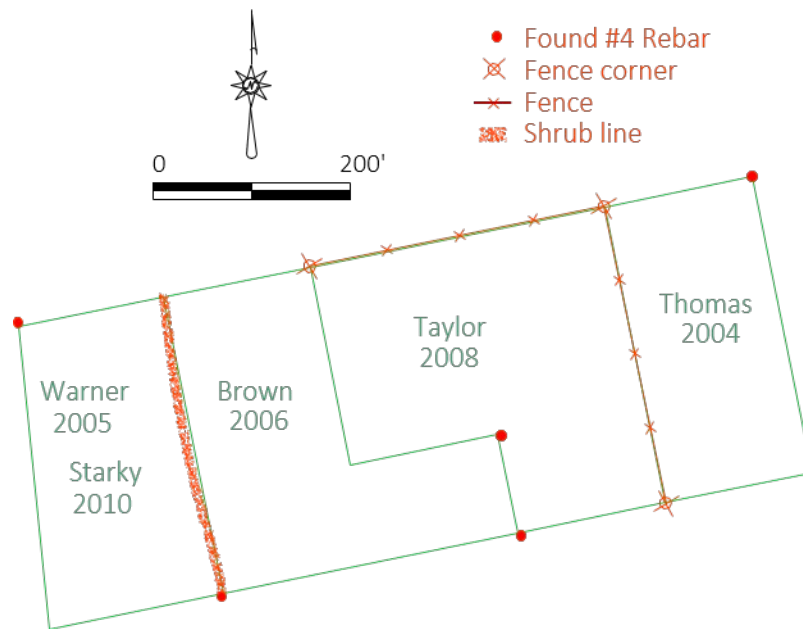


Figure 5: Physical Evidence

Brown told *Location Specialties'* surveyor he'd planted the shrub line right after buying the property. For the south end he used an existing rebar. He'd met with Warner who showed him the rebar at her northwest corner. Brown paced 150 feet from Warner's northwest rebar and searched for, but did not find a monument. He decided to use the paced location as the north end of the shrubs.

He thought the two rebar on his east line were the ones set by Hutch since they seemed to be in the right locations.

Brown couldn't find his NE rebar so he talked with Taylor, knowing Taylor want to erect a fence. They both agreed on a corner location at which Taylor set a fence post

Taylor said he found rebars at his northeast, and the two south-central corners. He wanted to erect a fence on his north and east lines. He replaced the northeast rebar with a fence post. He met with Brown in the proximity of the northwest corner and they mutually agreed on the common corner location where Taylor erected a fence position.

To locate his southeastern corner, he measured 150 ft, using a cloth tape, northeasterly "parallel with the road", and set a third fence post. He ran in the two fence sections shortly thereafter.

Thomas told *Location Specialties'* surveyor that after Hutch had shown him all four rebar at his corners, he didn't concern himself with them. When Taylor put up the fence (which he felt was ugly on his side), Thomas assumed Taylor had found and used the corner rebars.

None of the current owners were aware of any monuments other than those recovered by the surveyors.

Hutch had passed away and his daughter had inherited the Hutch lands. She was interviewed about the parcels and said she remembered her father had hired a surveyor many years ago when she was about 10. After digging through her father's old papers, she found Donaldson's map, all folded up and torn in a few places, but still legible.

Location Specialties' surveyed the physical evidence, Figure 6. Then they plotted the parent parcel and physical evidence survey results together with the original descriptions. Each found monument was labeled with its N-S and E-W offset with respect to the corresponding description corner. Those adjacent to the parent parcel boundaries and easement also show their location with the respective line Figure 7.

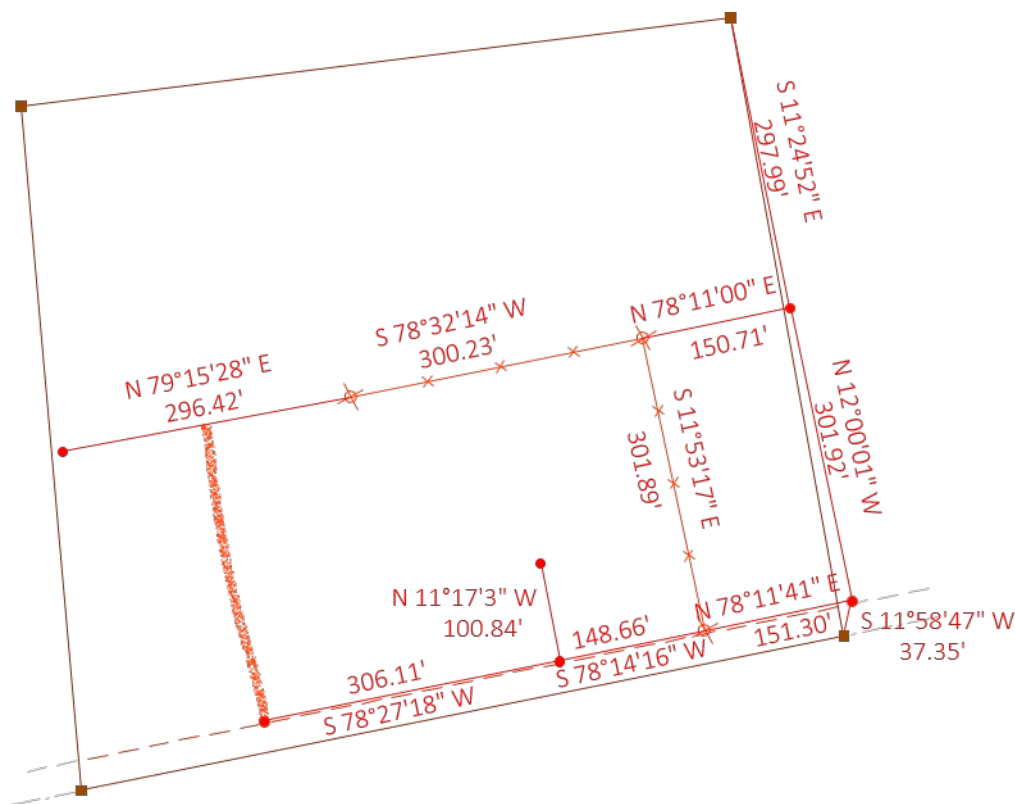


Figure 6: Evidence Survey

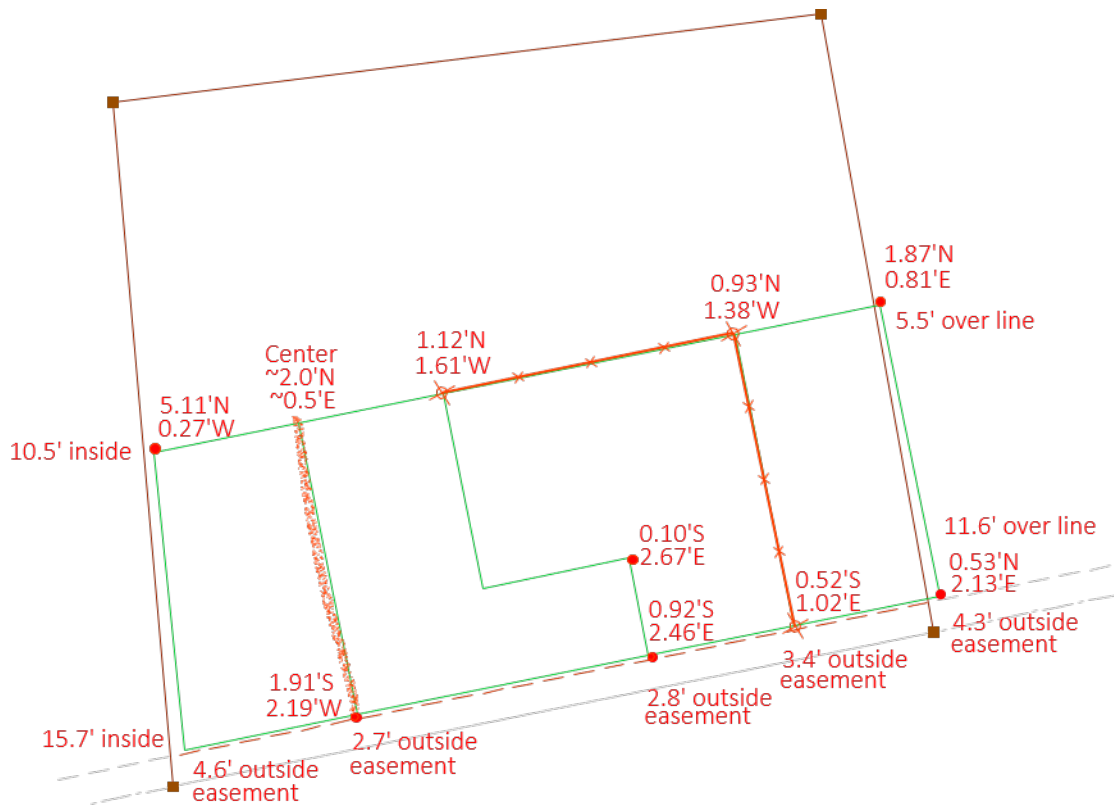


Figure 7: Evidence Offsets from Description Corners

Questions:

Using the information provided, answer the following questions. If you need clarification, ask: don't assume.

1. What role(s) do the monuments have?
2. What role does Donaldson's map have?
3. Do junior and senior rights exist? If so, list the parcels, by current owner, from most to least senior.
4. Are any parcels affected by the easement?
5. Are there any probable encroachments?
6. Are there any other issues that may/probably will arise?

Do any of your answers change if each description included a call to the unrecorded plat? For example:

2004 Thomas: "also being Lot 1 of Sweetwater Acres, an unrecorded plat."

2005 Warner: "also being Lot 5 of Sweetwater Acres, an unrecorded plat."

2006 Brown: "also being the Lot 4 and the south 100 ft of Lot 3 of Sweetwater Acres, an unrecorded plat."

2008 Taylor: "also being Lot 2 and the north 200 ft of Lot 3 of Sweetwater Acres, an unrecorded plat."

Why or why not?