

AGREEMENT DESCRIPTIONS

EXHIBIT A, description of record (Schultz, 08-048-0016)

All that tract of land described in Quit Claim Deed recorded as Entry number 2313942 on 03-Jan-2008 described therein Part of the Southwest Quarter of Section 8, Township 5 North, Range 2 West, Salt Lake Base & Meridian, U.S. Survey: Beginning at a point North 2116.31 feet from the Southwest corner of said Section 8; Running thence North 150 feet; Thence East 907 feet; Thence North 34 feet to the South Bank of the Hooper Canal; Thence East 413 feet; thence South feet from the point of beginning, Thence North 724 feet, Thence West 463 feet to the point of beginning. Excluding the deed either, did not know the monument existed or did not use the county position to describe the property. West 33 feet for a county road.

EXHIBIT B, description of record (Elwell Trust, 08-048-0015)

All that tract of land described in Quit Claim Deed recorded as Entry number 1822367 Book 2203 page 2355 on 23-Jan-2002 described therein as follows Surveyed Description Lot 2, Part of the Southwest Quarter of Section 8, T.5N., R.2W., S.L.B&M., U.S. Survey,

Beginning at a point on the section line and the centerline of 5100 West Street, said point being S00°44'14"W along said section line 195.98 feet from the West Quarter corner of said Section 8; Thence S89°15'46"E 261.36 feet; Thence S00°44'14"W 200.00 feet; Thence N89°15'46"W 261.36 feet to said section and centerline; Thence N00°44'14"E along said lines 200.00 feet to the point of beginning. Contains: 1.20 acres.

EXHIBIT C, description of record (Elwell Ranch, 08-048-0083)

All that tract of land described in Quit-Claim Deed recorded as Entry number 1900689 Book 2302 page 1112 on 30-Dec-2002 described therein as follows:

Part of the West half of Section 8, Township 5 North, Range 2 West, Salt Lake Base and Meridian, U.S. Survey: Beginning at the West quarter corner of said Section 8 and a point on the centerline of 5100 West Street (basis of bearings being North 0 degrees, 44 minutes, 14 seconds East along the section line between the Southwest corner and said West quarter corner of said section 8); thence North 0 degrees, 32 minutes, 04 seconds East along said centerline 81.13 feet to the North line of the Hooper Canal; thence along said North line the following twelve (12) courses: (1) S76°40'37"E 206.31 feet, (2) S72°33'31"E 121.21 feet, (3) S69°18'39"E 83.70 Feet, (4) S64°06'00"E 75.89 feet, (5) S60°30'29"E 109.24 feet, (6) S57°05'50"E 154.56 feet, (7) S54°19'17"E 69.10 feet, (8) S58°59'29" E 48.53 feet, (9) S66°46'29"E 38.50 Feet, (10) S68°13'19"E 46.82 feet, (11) S65°33'02" E 23.37 feet, and (12) S89°14'24"E 16.64 Feet; thence S00°44'14"W 96.67 feet; thence N89°15'46"W 645.64 feet; thence N00°44'14"E 200.00 feet; thence N89°15'46"W 261.36 feet to said section line and centerline of said 5100 West Street; thence N00°44'14"E 195.98 feet to the beginning point.

EXHIBIT D, as surveyed (agreed boundary line)

A line being the subject of this agreement being located in the Southwest Quarter of Section 8, Township 5 North, Range 2 West, Salt Lake Base and Meridian, having a basis of bearing of South 00°44'14" West between the currently monumented location of the West Quarter corner (having NAD83 State Plane Utah North Zone coordinates of record of N=3591116.8 E=1474478.3 U.S.ft, stamped with the year 2004) and the Southwest corner (having NAD83 State Plane Utah North Zone coordinates of record of N=3588476.43 E=1474444.32 U.S.ft. stamped with the year 2016) as maintained by the Weber County Surveyor's Office, said line being more particularly described as follows: COMMENCING at a point in the East right of way line of 5100 West Street said point located 331.96 feet South 00°44'14" West and 33.01 feet South 88°45'44" East to a rebar and cap set by Landmark Surveying, Inc., as the point beginning point of an agreed boundary line, FROM said West Quarter corner of Section 8; RUNNING thence South 88°45'44" East 865.37 feet, to an existing fence post;

Thence North 14°22'50" East 32.50 feet, more or less, to an existing fence post said post being the physical evidence of the northeasterly corner of a certain parcel described in Quit-Claim Deed recorded as Entry number 1900689 Book 2302 page 1112 on 30-Dec-2002, being the point of terminus of said agreed line.

SURVEYOR'S CERTIFICATE

I, Ernest D. Rowley, do hereby certify that I am a professional land surveyor in the State of Utah and certificate no. 171781-2201 as prescribed by the laws of this State. That I have made a survey of the property(s) shown hereon in accordance with UCA 17-23-17. That this plat was prepared from the field notes of this survey and from documents (and records as listed or noted hereon but not limited

NARRATIVE

The purpose of the survey is to document the history of a boundary dispute and subsequent Agreement made with respect to the common boundary line between the John L. Elwell, Jr., Elwell Ranch, LLC, (Elwell) and Ronald William Schultz & Joan Hadley Schultz Family Trust (Schultz) properties (collectively the Parties). The basis of bearing is as noted in the As Surveyed description of the Boundary Line Agreement (Exhibit D) as shown on this plat.

This survey began as a dispute between the Parties over the location of an existing fence line and property lines identified by surveys. Significant research and documentation has been done related to the circumstances of the properties and their boundaries. As will be hereinafter documented, several surveys of the properties has been done over a period of time, none of which have agreed with respect to the location of the common boundary between the Parties properties. As part of my survey I produced a document which initially began as a confidential report for the Schultz legal council but as the negotiations progressed it was released to Elwell's legal council and eventually provided to Silverpeak

The report contains vital information and research related to these properties as well as relevant information for other properties in the area and because the research information affects more than just these two properties much of that information is being included herein for the benefit of future surveyors. The report was produced so that it could be converted to a Rule 26 Expert Report (with some additions and clarifications) should that have been necessary and in

light of the Agreement between the Parties to settle the boundary the report will probably not be used in that capacity. Any use of the provided report should be limited to that of a survey document and not to be used or considered as a Rule 26 report. As stated above, subsequent to the production of the report and it being shared

with Elwell's legal council the report was provided to Silverpeak Engineering for their evaluation. As a result Silverpeak Engineering produced a document titled "Summary of Findings". I also responded to this Summary of Findings and produced another report in connection with the findings of Silverpeak. Only my initial report and findings are included herein. The Silverpeak Summary and my response are contained in the private project file of Landmark Surveying, Inc. My response may be provided for a fee upon request, however, I will not provide the Summary of Findings report of Silverpeak, that will need to be obtained from them directly.

In the remainder of this document I have numbered paragraphs and included the same numbers with in a box in the graphic portion of the plat to aid the reader in locating the specific areas being referenced, shown or noted.

EXCERPTS of Confidential Expert Analysis Report of Ernest D. Rowley, PLS, CFedS

Facts pertaining to the property, maps, and documents that I have reviewed are;

on April 29, 2002. Hereinafter "the Williford survey".

April 13, 2009. Hereinafter "the Kunz survey" 3. Record of Survey plat No. 005627 by Gardner Engineering, certified by Klint H. Whitney, PLS filed on

December 21, 2016. Hereinafter "the Gardner survey"

4. "2nd Draft" of an October 11, 2016 letter addressed "To Whom It May Concern:", delivered certified mail to Elwell Ranch, LLC and John L. Well Jr. Family Living Trust. RE: Boundary Line with Shultz Family, prepared by M. Darin Hammond, esq, of Smith Knowles, P.C.

5. October 12, 2017 letter "To whom it may concern:" addressed to Elwell-Shultz, South Property Fence Line, West Haven, UT 84315, prepared and signed by Randy R. Hartman. (See Exhibit A, sheet 3 of 3.) 6. Numerous deeds found in the chains of title that are on record in the Weber County Recorder's Office for the West Half of Section 8, Township 5 North, Range 2 West, Salt Lake Base and Meridian.

7. Ownership plats (tax maps of the county recorder) for: 1) end of quarter for September 2014, 2) end of year 2015, 3) print date of 12-4-2017. 8. 1947 Aerial photograph of the area obtained from the State office of the AGRC (Automated

Geographical Reference Center). A digital copy of this photograph was obtained and inserted as a background image to aid in the location of the canals and roads.

9. Digital 2012 Aerial photographs of the area which were also obtained from the State office of the AGRC used for the same evaluation purpose to compare how the canal locations differ or are similar.

REVIEW, COMMENTS, CONCLUSIONS and OPINIONS: 10. This dispute is arising over the location of the common boundary line between property owned by the

Shultz family and Mr. John Flwell. 11. This dispute apparently began when a survey was conducted by Randall (Randy) Williford, PLS while he was employed by Reeve and Associates, Inc., the Williford survey. This survey was conducted for the Elwell property for the purpose as stated on the plat narrative as follows; "The purpose of this survey is to define the Elwell property for John Elwell and create descriptions of two parcels within said property." 12. The location that the Williford survey established the common boundary between the Elwell and Shultz property is 395.98 feet southerly of the monumented location of the West Quarter corner of Section 8. The ocation of this quarter corner that the Williford survey is utilizing was originally set by the Weber County Surveyor and in my opinion, is in the wrong location to control the property line in question. 13. The origin of the boundary line in question was created by a Warranty Deed recorded Entry no. 430010

Book 778 page 549 on July 8, 1964 and signed by William C. Schultz and his wife Elva R. Shultz on July 6th, 1964. 200 feet, more or less, to the center of a canal; Thence Southerly along said canal to a point East 463 feet and South 724

14. The current monument was set by the county in 1963 but it is my opinion that the scrivener of the Hartman 15. It is my opinion based on the evaluation detailed in this report that the common property line is the location of an old fence line that has been in existence between these properties for many years. HISTORICAL BACKGROUND:

> 16. To develop an understanding of the historical background I started with an examination of the chain of title for the entire West Half of Section 8. The details of this examination will be provided in the Evaluation of

> 17. During that investigation several clues to the location of Monument's surfaced. It was learned that the location of the West Quarter corner has not been stable in the written record when comparing deed monument ties with the physical location of the Hooper and Wilson canals. These canals have remained in place for around a hundred years and have been included as bounds calls (see footnote 3 on sheet 3 of 3) in many documents relating to the properties in this area.

> 18. Because of the age of the canals and the frequency in which they have been used as deed bounds calls they have become, in my opinion, the most reliable "monuments" which have controlled the location of the property boundaries. A chronological chain of relevant documents related to the properties will demonstrate the positions of section corners and how the introduction of the 1963 county monument has created additional confusion over the location of property lines in this area.

19. According to a letter written and signed by Randy R. Hartman, October 12, 2017, (see footnote 4 on sheet 3 of 3) Mr. Hartman constructed with his Father, the cedar post fence line that is still in existence between the two properties. This fence was built in 1964. 20. Roy and Elouise Hartman purchased this property from William Schultz in 1964. The document that was

used in this purchase was the origin of the boundary line in question. Prior to this conveyance the Elwell and Schultz properties were under a single title and description that called for the Hooper canal as the north boundary and extended several hundred feet south of what is now the disputed division line. 21. The Williford survey placed the property boundary about 56.5 feet south of the existing fence line at the east end and about 73 feet south of the fence at the west end.

22. The Kunz survey placed the property boundary about 25.5 feet south of the existing fence line at the east end and about 42 feet south of the fence at the west end. 23. The Gardner survey held the existing fence line as the property boundary.

24. Once this dispute arose, there was an attempt to enter into a boundary line agreement with respect to the location of the existing fence line, however, that agreement it did not occur. 25. This evaluation of necessity began in the county abstract records with the oldest documents for the

Northwest and Southwest Quarters of Section 8. 26. The first transaction found was the patent, (see footnote 5, sheet 3 of 3)

. Patent for the South Half of the Northwest Quarter of the section. a. was issued to John Adkin, grantee, and signed 8-23-1875, however, the document book and page is not able to be found at this date.

28. bK-25 (see footnote 6, sheet 3 of 3) conveyed the South Half of the Northwest Quarter, a. John Adkins, grantor, Richard Papworth, grantee, signed 7-17-1876.

29. bK-366 conveyed an approximate 20 acre parcel in the Southwest Quarter described as a rectangle 20 and 1/3 rods north-south and 100 rods east-west with the northwest corner of the parcel beginning at the West

a. Calvin C Wilson, grantor, Richard Papworth, grantee, signed 5-3-1877.

30. bN-354 conveyed the North Half of the Southwest Quarter by patent,

a. from the USA, grantor, Calvin C Wilson, grantee, signed 4-5-1877. 31. bN-290 conveyed the South Half of the Northwest Quarter,

a. Richard Papworth, grantor, Calvin C Wilson, grantee, signed 9-7-1881.

32. b10-575 conveyed a parcel that is 1650 feet (100 rods) north-south and 2640 feet (160 rods) east-west. a. Calvin E Wilson, grantor, Emeline E. Wilson, grantee, signed 12-19-1890.

- b. Examining this description with the aid of the 2012 Aerial photographs I can visually see a line that looks like the remnants of the 1/16th section line, that being the north line of the south half of the northwest quarter. Holding these fence lines and setting another line 1650 feet to the south identifies what I believe was the intended south boundary of this parcel as shown below in yellow
- c. This south line also matches an existing fence line which I have also shown in red lines. The only part of the fence that does not match this south boundary is the fence line that is in dispute.
- d. This deed also provides some information on where the West 1/4 corner may have been believed to be in the 1890's which is about 24 feet north of the current 1963 county brass cap monument. (see footnote 7, sheet 3 of 3)

Image A



33. b29-433 conveyed approximately an additional 5 feet on the south of the yellow parcel shown above and indicated in the document that it was "given to correct "n" of deeds page 290". Instead of deeding 20 rods it deeded 20 1/3 rods.

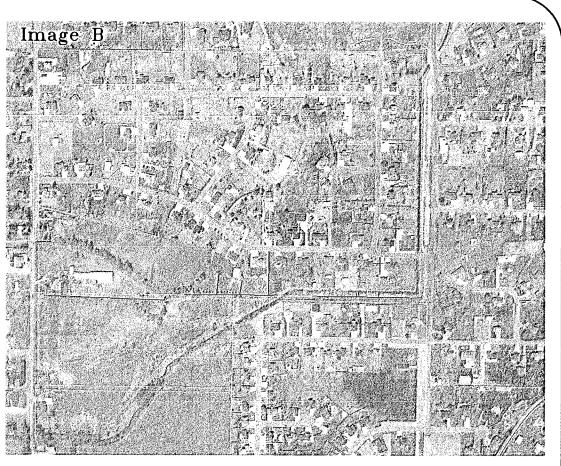
a. Richard Papworth, grantor, Calvin C Wilson, grantee, signed on 11-24-1897.

34. b47-217 conveys a parcel of property that is north of the properties in question. a. Emeline E. Wilson husb. Calvin C. Wilson, grantors, Henery P. Green, grantee, signed on 10-31-1904.

b. The relevance that this document has to this property is the location that the deed places the Section line. The relevant part of the description reads: "Beginning at a point 13 rods 14 1/2 feet north of the southwest corner said quarter section in the center of the Wilson Canal, where said canal intersects the east line of the road which runs on the west line of said section

c. This description does two things; one, places the section line on the east line of 5100 West Street and two, places the West 1/4 corner of the section at a location 13 rods 14 1/2 feet (229.00 feet) south of the center of the Wilson Canal. This location would be physically on or near the south bank of the Hooper Canal.

> DECEIVEN MAR 1 3 2020



d. This location is approximately 28 feet north of the location that b10-575 places the West 1/4

b54-260 conveyed what is now the parent parcel to the Schultz and Elwell properties. At this point they were not separate parcels but encompassed that shown in blue above. (see Image B) a. Emeline Wilson husb. Calvin Wilson, grantors, to Thomas Fowles, grantee, signed 11-7-1907. b. As can be seen this deed encompasses the area where the disputed line is located.

b107-426 creates the north boundary of the Elwell property as being the West Bank of the Hooper Canal. This description seems to have caused some confusion on what the "West" Bank of the Hooper Canal is intended to describe in the deed.

a. Thomas Fowles estate, grantor, James I Fowers, grantee, signed 6-17-1927 as an Order Confirming

Sale of Real Property b. In deed b54-260 the west bank of the Hooper canal is used as a boundary line. In this deed, b107-426, the properties are bounded by a line being 20 rods (330 feet) south of the quarter section line at a point that could be interpreted to be on the north-south 1/16th section line. This 1/16th section line is an old fence line and now the west boundary of the Stonefield Estates Subdivision.

c. The line that is 20 rods south of the East-West 1/4 section line is evidenced, in my opinion, by an existing fence line that has been previously referred to and the same location as the yellow line in the aerial photo below. (see Image C below and footnote 8, sheet 3 of 3)



d. Using this fence line as part of the north boundary of this deed and extending the boundary to the ocation of the bounds call, being the West Bank of the Hooper Canal, the line does intersect the canal at a point where the canal runs in a northerly direction thereby giving meaning to the term West Bank. The confusion for this description is that it continues to call the north property line to be thence North Westerly along the West bank of the Hooper Canal to the West line of said Section 8". believe that a more accurate description of the boundary intended would be something that called this wes

bank the north bank through this part of the meanders of the canal or something to help clarify that the west bank becomes the north bank because of the bend in the canal but returns to being the west bank on the west side of 5100 West Street. e. The black and white image above shows in a purple color drafting of the boundaries of this

description over the 1947 aerial imagery. (see Image C)

f. In this same document, b107-426 which conveyed to James I. Fowers the property south of the canal another description conveyed to Wallace B Peterson property that was north of the canal. In that description it again calls for the west bank of the Hooper Canal and provides a distance from the West bank (which is actually the northerly bank) of the Hooper canal to the center of the Wilson Canal. These two locations can be seen on the 1947 aerial images as the purple and blue lines.

g. The Peterson description reads in part: thence continuing Westerly to the West bank of the Hooper Canal, thence Westerly and Northwesterly along!" the West bank of said Hooper Canal to the West line of said Section 8, thence North along said Section line 210 feet more or less to the Wilson Canal, thence along said Canal Easterly and Northerly \dots " . h. In this description is specifies 210 feet between the two canals and from the drafting I have done

this distance is very close to what was the north bank of the Hooper canal and center of the Wilson canal. It should be noted that the Hooper canal in this location has been piped and the precise location of that bank can no longer be identified except for the location of the remnants of the old bridge.

At this point in time there is evidence of two different locations for the West 1/4 corner being about

38. **b127-430** conveying same as b107-426.

a. James I Fowers, grantor, Martha A Fowers, grantee, signed 3-10-1936.

b127-430 conveyed same as b107-426.

a. Martha A Fowers, grantor, William C. Schultz wf Elva R., grantees, signed 9-16-1936. b. This document is where the Schultz family obtained the property which identifies the West bank of the Hooper Canal as the north boundary of the property, again note that the deeds are referring to the West bank but physically on the ground this would be the North bank of the canal which point is also 210 feet south of the center of the Wilson canal.

c. It should also be noted that at this time the section line was believed to be on the east boundary of

Landmark Surveying, Inc. 4646 South 3500 West - #A-3 A Complete Land Surveying Service West Haven, UT 84401 www.LandmarkSurveyUtah.com 801-731-4075 CLIENT: Neil R. Schultz Property Address: 4492 S 5100 W, Hooper, UT Boundary Line SW 1/4 of Section 8, Township 5 North, Agreement - ROS Range 2 West, Salt Lake Base and Meridian. DRAWNBY: EDR CHECKED BY:

DATE:

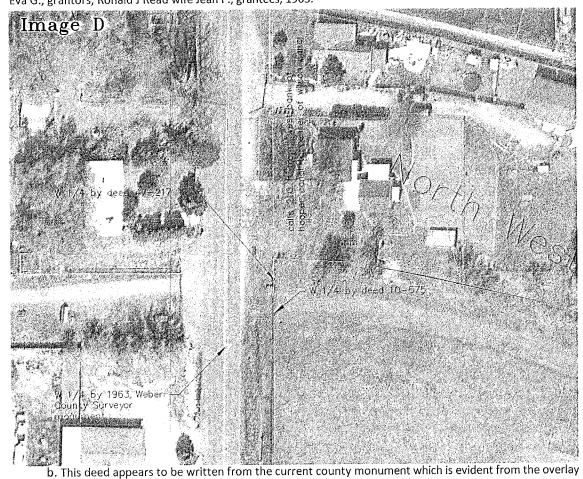
40. b655-423 conveyed the same property as b127-430 & b107-426.

a. William C Schultz and wife Elva Schultz, grantors, William C Schultz and wife Elva Schultz, grantees, signed 8-15-1960.

b. This document appears to be recorded to establish joint tenancy of husband and wife and made no change to the description of the property that was granted in b127-430.

41. The next document in the chain of title is Weber County Surveyor Monument Tie Sheets. One was recorded for the West Quarter Corner of the section providing a location for the newly established brass cap. It was recorded as b14-54 on January 20, 1964. This monument is shown to be in the middle of the paved street and not at the historic location of the section line as evidenced by the deed record. (see footnote 9, sheet 3 of 3) 42. b753-538 conveys a tract of land that is in the Northwest quarter of Section 8. a. Wallace L Peterson wife

Eva G., grantors, Ronald J Read wife Jean P., grantees, 1963.



with the existing fences and the north bank of the canal. c. The Hooper canal is referenced in this document and called to be "the north bank of the Hooper Canal". This bounds call, when drafted from the current county monument, plots to be very close to the interpretation of the "West bank" of the canal as I have digitized from the 1947 aerial photography. Still, this description utilizes the canal "north bank" as a monument for the south line of the property 43. **b778-549** conveys property to Hartman that is now the Elwell's and creates the division line that is in

a. William C. Schultz wife Elva R. Schultz, grantors, Roy Hartman wife Elouise F. Hartman, grantees, signed 7-6-1964

b. The description from the deed is as follows: i. "A part of the Southwest Quarter of Section 8, Township 5 North, Range 2 West, Salt Lake Meridian, U.S. Survey: Beginning at the Northwest corner of said Southwest quarter of Section 8 and running thence **South 365 feet**; thence East 907 feet; thence **North 34 feet** to the Hooper Canal; thence Northwesterly along said canal to the West line of said Section 8; thence South 45 feet to the point of beginning, containing 5.48 acres, more or less."

c, To begin to analyze the writing of the description to see where the boundaries would be by the writing there are several things in this description that give information related to the intent of the grantor. d. First there is the call for the West Quarter of the section as the beginning point. At first look it might

be thought that because the county monument was set January 2nd, 1963 that this description being written in July of 1964 that this document would be using the county monument as the beginning point. However, when examining several bounds calls it is not likely that this description was written based on the county monument but rather from some historical records of the corner location.

e. There are two bounds calls that give the location of the point that this description was using for the West Quarter of the section; one, the bounds call for the Hooper Canal and two, the last metes of the description to close the description, "South 45 feet". When these two calls are examined simultaneously it is evident that the location this description was using is the one identified by b10-575 which has existed since

f. The call for the Hooper Canal may be thought to identify the center of the canal because of the normal "construction" of the word "to" being used in the bounds call. In this case it is my opinion that the call for the canal was intended to be the same line of the canal that the Schultz family received title to for their north boundary line, that being the "west bank" of the canal. In previous deed analysis it has been shown that what is physically the North Bank of the canal for this small stretch of the overall canal is what was actually intended to be the boundary even when the use of "West Bank" was continued in the deeds.

g. Additionally, b753-538 deeded a parcel of land on the north of the Schultz property and in this document what has been referred to as West Bank was now being referenced as North Bank.

h. To assume the normal construction of the word "to" as meaning the center of the canal there would be a strip of land between the center of the canal and the "West bank" of the canal which would not have been deeded but rather retained by William Schultz.

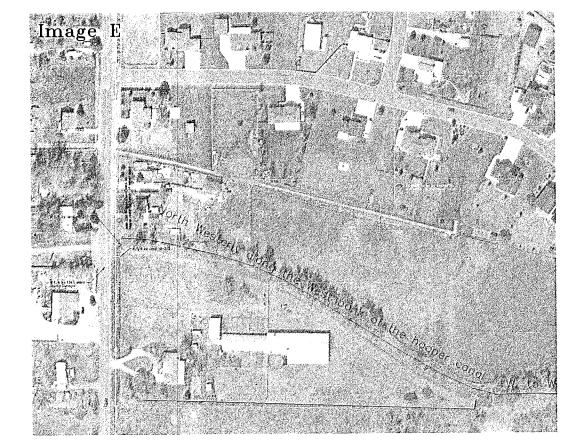
i. "It is presumed that a party granting land does not intend to retain a narrow strip between the land sold and his boundary line in the absence of express provision to that effect in the deed, especially where the strip is so narrow as to be of no practical use to the grantor. [fn1] (see footnote 10, sheet 3 of 3). However, this presumption, sometimes also referred to as the "strip and gore" rule or doctrine, [fn2] (see footnote 11, sheet 3 of 3) is rebuttable, the question being purely one of intention; and when the intention is ascertainable from the face of the instrument or a record, other evidence is not admissible. [fn3] (see footnote 12, sheet 3 of 3) The presumption is inapplicable where the strip is commercially valuable property. [fn4] (see footnote 13, sheet 3 of 3) "Where there is no language in a deed relating to the purpose of the grant or limiting the estate conveyed, and it conveys a definite strip of land, the deed will be construed to convey a fee simple title. [fn5] (see footnote 14, sheet 3 of 3)"

j. With this in mind it is evident that William Schultz did not intend to retain half the canal when his north property line is the "West" bank of the canal (demonstrated to be the north bank of the canal). Therefore, holding the "West" bank of the canal as the intended north boundary of the Hartman conveyance aids in identifying the location of the beginning point.

k. Assuming that the location of the 1890 West Quarter is the location that this document was using as the beginning point and holding this location to be on the east line of the street as stated in a previous deed, a drafting of the description is as shown below with the yellow lines. (see Image E)

I. This description has been rotated to approximate the east right of way of the road. This was done assuming that the center stripe of the current road is close to the bearing that the road has always used. To refine this right of way bearing a more detailed survey of the road would need to be made which may help to identify the historic right of way and thereby the historic federal section line.

m. Holding these assumptions, the draft shown below (see Image E) shows that the existing fence, shown in red, is not at the same location as what the deed would be identifying as the property line. (see footnote 15, sheet 3 of 3) The East end of the fence as shown in this draft is about 17 feet north of where the deed line would place the property boundary. At the West end of the fence as shown the fence is about 3 feet south of the location that the deed would place the property line. These distances will vary depending on the actual bearing of the right of way of 5100 west street as it was in the 1960's and or late 1800's. However, we don't have any information related to the location in the 1960's but the rotation that is shown is close enough to see that the fence and the deed line are not built in the same location with the assumptions indicated.



n. This document also states that the parcel being conveyed has an area of 5.48 acres. When calculating the area based on the location of the property as shown in the above draft there is only 5.27 acres. However, if the property is adjusted to the west to coincide more with the location of the monumented section line then there is 5.57 acres enclosed. To adjust the parcel east to conform more to the 5.48 acres the West boundary of the description would be located about 10 feet East of the monumented section line (about the same location as the east edge of the pavement of the street).

o. Generally, in construing descriptions area is at the bottom of the list when evaluating items that are most reliable. (see footnote 16, sheet 3 of 3)

But in this situation evaluating the area supports the location of the existing fence as being close to the deeded line of the property. Moving the property north would lessen the area and moving it south would increase the area beyond that intended. p. In fact, to move the description to the location that is used in the Williford survey the grant would be of

6.55 acres, over an acre larger than the stated intent. q. "Deeds are construed to determine the intent of the parties.[fn1] (see footnote 17, sheet 3 of 3) To construe a deed, a court looks first at the language of the instrument because the court presumes it

declares the intent of the parties.[fn2] (see footnote 18, sheet 3 of 3) When, and only when, the meaning of a deed is not clear, or is ambiguous or uncertain, [fn3] (see footnote 19, sheet 3 of 3) will a court resort to established rules of construction to aid in the ascertainment of the grantor's intention by artificial means where such intention cannot otherwise be ascertained.[fn4] (see footnote 20, sheet 3 of

When the intent of the parties to a deed is not clear from its face, it must be construed in light of the terms used and the circumstances surrounding the deed.[fn5] (see footnote 21, sheet 3 of 3)

In construing a deed, the court considers the known use to which a property was to be subjected and therefrom gives the conveyance the effect intended by the parties.[fn6] (see footnote 22, sheet 3 of 3) Extrinsic evidence is admissible to illuminate the intent of the parties if the terms of a deed are ambiguous,[fn7] (see footnote 23, sheet 3 of 3) the interpretation of such intent being a question of fact determined from the instrument itself,[fn8] (see footnote 24, sheet 3 of 3) but if the language of the deed is unambiguous, then its interpretation is a question of law to be resolved by the reviewing court without resort to extrinsic evidence.[fn9] (see footnote 25, sheet 3 of 3)

It is the court's duty to interpret a deed in the light of the law in existence at the time of its execution and delivery, which must be read into and become an enforceable part thereof.[fn10] (see footnote 26, sheet 3 of 3) " 23 Am.Jur.2d Deeds § 192. (emphasis added.)

44. b815-533 conveyed the remainder of the Schultz family property to Ronald Schultz and his wife. a. William C. Schultz wife Elva Schultz, grantors, Ronald W. Schultz wife Joan H. Schultz, grantees, signed

b. This description is subject to the prior conveyance to Hartman (b778-549) making this parcel Junior in title right, meaning that whatever was left after the property was deeded to Hartman is what Ronald Schultz received and by extension the Schultz family trust being the current owners.

b816-666 is a correction deed for the same property conveyed in b815-533.

a. The only correction that I could see was that in b815-533 the deed contained an area of 19.02 acres, and in the corrected document there was no area. b. Correction deeds in Utah usually do not function as a conveyance or correction document without the signature and acknowledgement of the original parties, meaning both the grantor and grantee must sign a correction document for it to be effective. (see footnote 27, sheet 3 of 3)

c."A deed of confirmation may be appropriately utilized in order to remove doubts as to the operativeness of a prior deed to convey title to the land intended.[fn1] (see footnote 28, sheet 3 of 3) A mistake in the description of the land conveyed may be corrected by a subsequent deed executed by the same grantor for the purpose of correcting the description and confirming in the grantee the title to the land intended to have been described in the prior deed, and the two deeds, taken together, will operate to pass the title

to the grantee named therein.[fn2] (see footnote 29, sheet 3 of 3) The correction deed need not restate all material portions of the deed being corrected if such portions contain no errors.[fn3] (see footnote 30, sheet 3 of 3) Under some circumstances, however, the grantor may intend the second deed to vacate, supersede, and

replace the earlier deed,[fn4] (see footnote 31, sheet 3 of 3) and acceptance of such second deed by the grantee

constitutes an election to take the land comprised in the correcting deed and to relinquish title to the land conveyed by the earlier deed.[fn5] (see footnote 32, sheet 3 of 3) Where the name of the grantees is omitted, the omission may be cured by a subsequent deed incorporating the names of all the grantees in accordance with the intention of the parties.[fn6] (see footnote 33, sheet 3 of 3) " 23 Am. Jur. 2d Deeds § 272 (emphasis added.)

46. **b918-304** conveys the Hartman property, b778-549, to John Elwell. a. Roy Hartman wife Elouise F. Hartman, grantors, John L. Elwell, Jr. wife Mary Jo Fry Elwell, grantees, signed

47. **b1381-1262** attempts to convey the remainder of the Schultz property that is south of the Elwell / Hartman

a. Ronald W. Schultz wife Joan H. Schultz, grantors, RS-S CHAROLAIS, grantee, signed 4-8-1981. b. A discussion of this document would not include an evaluation of the description because it is evident that Ron Schultz (Ronald Schultz) was only changing the name of the entity that the title to the remainder property is being held under. This fact is born from deed b1943-1142 in which Ronald W. Schultz signed the document as the President of the RS-S CHAROLAIS corporation.

48. **b1479-2445** conveys the property on the north of the "West Bank" of the Hooper canal except that which has been deeded to the Read's. a. John W. Peterson as personal representative of the Estate of Wallace L. Peterson, grantor, John W.

Peterson, Jean P. Read, Margaret P. Untersinger, Bessie M. Peterson, Gayle P. Billings and Cathryn P. Smith, grantees, signed October 25th, 1985. b. Again, this document is holding the historic boundary of the "West Bank" of the Hooper canal which is physically the north bank of the canal along this portion of the canal.

49. b1778-1743 conveys the same property as described in b1479-2445.

a. Clyde Roberts Untersinger as personal representative of the estate of Margaret Untersinger, grantor, to Clyde Roberts Untersinger, grantee, signed October 31, 1995.

50. b1808-2688 conveys a part of the property between the North boundary of the Hooper Canal and the center of the Wilson canal except that which had been conveyed to Read's previously.

a. John W. Peterson, Bessie M. Peterson, Cathryn P. Smith, Jean P. Read, Gayle P. Biliings and Clyde Roberts Untersinger, grantors, John L. Elwell, Jr. and Mary Jo Fry Elwell, grantees, signed May 3rd, 1996. b. This conveyance makes it clear that what has been previously referred to as the "West Bank" of the Hooper canal is in fact the North Bank of the Hooper canal.

51. **b1943-1142** attempts to convey the remainder property of the Schultz family which is south of the Elwell

a. RS-S CHAROLAIS, grantor, Ronald W. Schultz and Joan H. Schultz, grantee, signed on July 23, 1998 by Ronald W. Schultz as president of the RS-S CHAROLAIS corporation. b. The description contained on the face of this document has the typeset that is used by the County Recorder in preparation of tax descriptions. Many times the recorder will print their "created" tax remainder descriptions for

the public and then these descriptions are attached to deeds. c. These remainder descriptions that the county writes or creates themselves are virtually always in error and creates gaps and overlaps in the written record where none existed prior to their interference in the record. Therefore, I distrust descriptions that originate in that government office. (see footnote 34, sheet 3 of 3)

52. **b2203-2353** conveys what appears to be a copy of a description from a survey plat titled "Surveyed

Description Lot 1". a. John L. Elwell Jr., and Mary Jo Fry Elwell, grantors, Elwell Family Limited Partnership, grantee, signed January 23rd, 2002.

b. Comparing the typeset of the description in this document with the Exhibits of the Elwell Affidavit it appears that the description was taken from Exhibit E, the Williford survey. c. This Lot 1 describes the larger parcel that does not include the house.

53. **b2203-2355** conveys what appears to be a copy of a description from a survey plat titled "Surveyed

a. John L. Elwell Jr., and Mary Jo Fry Elwell, grantors, John L. Elwell, Jr. Family Living Trust Dated January 1, 2001, grantee, signed January 23rd,2002. b. Comparing the typeset of the description in this document with the Exhibits of the Elwell Affidavit it appears

that the description was taken from Exhibit E, the Williford survey. c. This Lot 2 describes the smaller parcel that the house is on.

54. **b2203-2546** attempts to convey property on the north of the Hooper canal and south of the Wilson canal excepting the property already conveyed to the Read's. a. John L. Elwell, Jr. & Mary Jo Elwell, grantors, to Elwell Family Limited Partnership, grantee, signed Jan. 1,

2000 but not recorded until Jan. 23, 2002. b. The reason that I indicate that it 'attempts' to convey the property as noted above is because the description has several issues and does not, by the metes, follow the lines as bounded by the two canals. It also fails

c. However, since this transaction does not appear to have a material effect on the dispute an evaluation that attempts to correct the errors in the metes will not be attempted herein.

55. **b2302-1111** conveys the same property as described in b2203-2546. a. Elwell Family Limited Partnership, grantor, Elwell Ranch, L.L.C, grantee, signed Dec 28, 2002. b. This document is not included as an exhibit since it is only converting the title into the Elwell Ranch.

a. Elwell Family Limited Partnership, grantor, to Elwell Ranch, L.L.C, grantee, signed Dec. 28, 2002. b. A more detailed discussion of the Williford survey is made hereinafter.

56. **b2302-1112** conveys Lot 1 as described on the Williford survey.

Therefore, a detailed analysis of this description is not necessary.

57. Entry no. 2313942 (see footnote 35, sheet 3 of 3) conveys the remainder parcel of the Schultz family property that is south of the Elwell/Hartman property.

a. Ronald W. Schultz and Joan H. Schultz, grantors, to Ronald William Schultz and Joan Hadley Schultz Family Trust established by trust agreement dated December 29, 2007, grantee, signed December 29th, 2007. b. This description seems to again use a tax description remainder to identify the property that was left from the Hartman conveyance. Even though this description fails to correctly identify the common line between the Elwell/Hartman south boundary the Schultz' family still retains all that was remaining after the Hartman conveyance.

c. While this description is slightly different than that of b1943-1142 it is still subject to the same suspicions of being a remainder created by the County Recorder's Office and as such contains errors that were introduced by that office and does not accurately reflect the title or ownership of the property.

Entry no. 2481979 conveys the property that is listed on the tax record as parcel 08-048-0024. a. Jean P Read, grantor, Jean P Read Living Trust dated the 15 day of July, 2010, grantee, signed July 15, 2010. b. This document is a prime example of the manner in which tax record descriptions are introduced into the public record as discussed above. The description portion of this document is simply a copy of the tax record printout from the County Recorders Office. (see footnote 36, sheet 3 of 3)

59. It is at this point in the evaluation of the property boundaries that other evidence is needed to understand the reason that the existing old fence line is located in a different location than that which is shown in yellow in the above sketch. (see Image E)

EVALUATION of AFFIDAVITS

60. I have been provided with two documents, one being an Affidavit of John Elwell (in the bottom left corner is a note: "SLC_333841.2"), and the other a document titled Statement of Neil R. Schultz which looks to be a rough draft of responses to select numbered paragraphs of the Affidavit of John Elwell. 61. This evaluation will be in connection with the Exhibits attached to the Affidavit of John Elwell.

62. Elwell Paragraph 2. a. The copy of the county tie sheet for the West Quarter of Section 8 is not the current tie record, in fact, the county has several other sheets associated with this monument over the period of time from 1963 to the present. They

will be discussed hereafter b. In regard to this question related to the position of Weber County section corner monuments, I served as the Weber County Surveyor chief deputy from April of 1995 to March of 2006. In February of 2006 the County Surveyor, Martin B. Moore, Jr., PLS, died and left the office vacant at which time the Weber County Commission appointed me as the Weber County Surveyor to finish the term of Mr. Moore which ended in December of 2006. I subsequently filed to run for the newly combined office of Weber County Recorder/Surveyor and was successfully elected in November 2006 and served as the County Recorder/Surveyor from January of 2007 to January 2015. As an employee of the county for nearly 20 years in responsible charge of maintaining and evaluating county survey control and monumentation I have

had significant experience related to many of the county section corner monuments. c. It is my experience that a significant number of monuments that exist in the county and considered to be section corners are, in fact, not representative of the original federal GLO surveys which established section and quarter section corners to be used in describing land.

d. The West Quarter corner of this Section 8 is an example of a monument that purports to be a government corner but fails to accurately identify the correct location of that corner. e. The first record of this Weber County Brass Cap Monument was created on January 2, 1963. A copy of this

record is attached hereto as Exhibit C (see sheet 3 of 3). This record clearly shows that the monument was established in the center of the traveled way of 5100 West Street.

f. The record shows that there were two reference monuments set in addition to the actual corner position. These reference monuments were generally of the same type and material as the section corner and established so that if the corner monument was buried or missing in some way the location of, or physical monument, could be recovered from those monuments and using the distance ties noted thereon. According to county records only the south reference monument still exists along with the section corner monument.

g. The corner records were updated later that same year signed by E. Paul Gilgen, County Surveyor, showing that the monument location was 68 feet south of the bridge for, what they label the North Branch of the Wilson Canal, but what is being called in the deed record the Hooper Canal. This corner was again visited by the county in 1977 when the corner monument was reset and the ties to the reference monuments indicate that it was replaced in the same location that it was set in 1963. It was again visited by the county in 1980, 1981, 1982, 1987, 1996, 2004, and 2005. All visits find the monument in essentially the same condition and location that it exists today.

h. The distance shown on the Gilgen record indicating the monument to be 68 feet south of the South edge of the bridge over the Hooper Canal provides information that is in disagreement with that of the deed record. Assuming that the section was a standard 80 chains (320 rods) long and that the quarter corner was located at the mid point the location of the corner would be approximately 45 feet south of the north bank of the Hooper canal. If the bridge was 20 feet wide then the county monument was located 88 feet south of this north bank which makes the current county monument 37 feet further south than the assumed location of the corner.

i. There is another deed b47-217 that locates the corner to be 13 rods 14 1/2 feet (229 feet) south of the center of the Wilson Canal. This Wilson canal would be the ditch which is identified in many deed descriptions and is about 210 feet north of the Hooper canal. Holding the center of the Wilson Canal and identifying the distance of 229 feet to the south the location of the monument would be about 16 feet south of the north bank of the Hooper canal. This location is about 28 feet north of the location identified by b10-575. j. B 47-217 was signed on October 31, 1904 and b10-575 was signed on December 19, 1890, a difference of 14

years. In that time the location of the corner was believed to be essentially on the south bank of the Hooper Canal and the Weber County Surveyor in 1963 located the monument to be 68 feet south of that position. k .Another material discrepancy in the location of the current county monument and the location of the historical section line is again derived from b47-217 wherein it states;

"Beginning at a point 13 rods 14 1/2 feet noth of the southwest corner said quarter section in the center of the Wilson Canal, where said Canal intersects the east line of the road which runs on the west line of said section eight (8), and. . . "

I. The pertinent part of this description is the notation that the section line and the east right of way line of 5100 West Street are the same. The county monument position for the section corner being placed in the middle of the street is not the location that the section line was in 1904.

63. Elwell Paragraph 3.

a. The deed b778-549 (referred to as Instrument No. 430010 in the Elwell Affidavit) indicates that there is "5.48 acres, more or less". This is not a precise value but can provide help in evaluating the true location of the property. b. This has been discussed in more detail in the Chronological Evaluation of Documents above for b778-549.

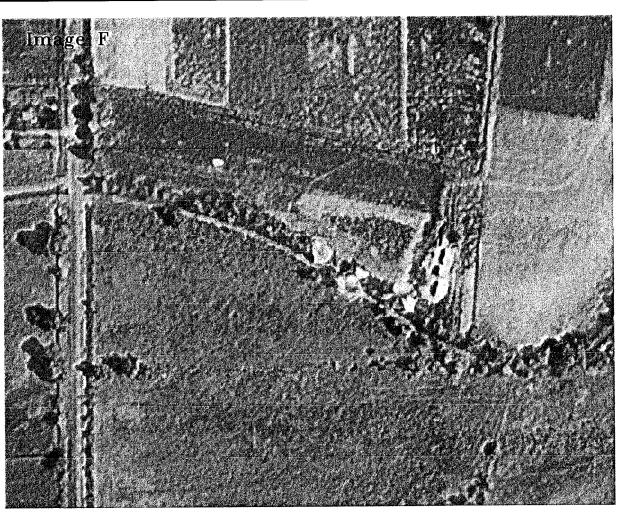
64. Elwell Paragraph 4.

a. The comments relating to the fencing and when the fences were in existence or constructed have an effect on the outcome of the location of the legal boundary.

b. Randy R. Hartman has written a letter October 12, 2017 that states that there was a fence line that separated the property of the Hartman and Schultz properties. That he personally helped construct that fence of cedar post and wire in 1964. The construction of this fence was done the same year that the Hartman's received title to the property. c. I have not been provided any information relating to the kind of knowledge or experience that the Elwell's had related to the property prior to their purchase of it, nor have I seen a statement in the Affidavit of John Elwell which indicates that he had been on the property in 1964 or before to know the circumstances of the fencing prior to his

taking possession of the property. d. The Schultz' have stated that there were no fences in this location until the property was purchased by the

e. I NEED TO OBTAIN AERIAL PHOTOGRAPHY OF THIS AREA OF YEARS THAT WILL SHOW THE FENCE SITUATION. I have not done this yet except for the 1947 photography which I have used hereinabove. The image below is another copy of the 1947 imagery without any drafted lines. (see Image F)



65. Elwell Paragraphs 5-10.

"livestock fence"?

a. These paragraphs essentially carry on the same dispute as to the existence of the fence and whether the fence identified the property line. In light of the statement from Randy R. Hartman regarding his helping his dad construct the fence that divides their property from the Schultz property and which the Elwell's would have no knowledge of unless they were informed of such, an examination of the relevance of the fence, it's construction, and

b. Mr. Elwell states in paragraph 5 that, "There was no fence in place along this Elwell/Schultz boundary ("Elwell/Schultz Boundary"), and as of that time no survey had ever been completed from which to stake that boundary."

c. Then later in paragraph 7 Mr. Elwell states that, "Acme Fence Company installed new chainlink fencing ("Chainlink Fencing") along an old mostly fallen down livestock fence line just south of our new home, utilizing as they were able existing livestock fence posts, all of which were

located within the Elwell Property." d. These two statements appear to be in conflict, that being in paragraph 5 it is stated that "[t]here was no fence in place along this..." boundary and yet in paragraph 7 it is stated that the fencing company installed a new fence "along an old mostly fallen down livestock fence line". Based on the statement of Randy R Hartman (see footnote 37, sheet 3 of 3) and coupled with the statement in paragraph 7 I believe there to have been a fence in

place on the south of the Elwell property which was built by the Hartman's. e. Furthermore, the statement from Mr. Elwell is that the fence was "old". He also characterizes it as a "livestock" fence. My reservation on it being characterized as a "livestock fence" goes to the Elwell's knowledge of the area prior to his purchase of the property.

i. Were the Elwell's personally acquainted with the property prior to their purchase? ii. Had the Elwell's visited the property enough prior to purchase that they could discern that the fence was some how different than a boundary fence?

iii. Is there something in the Elwell's experiences with property boundaries that they can tell a

"livestock fence" from a boundary fence by it's appearance? iv. What specific set of facts are the Elwell's basing their representation on of this fence being a

v. What experience do the Elwell's have related to fences to know if the fence is "old" or new? f. Continuing in paragraph 7 Elwell indicates that Ron Schultz had a conversation with him at the time the chainlink fence was being installed and told him that the fence line was "some 50 feet north". Yet, according to Mr.

Elwell there had not been a survey of the property. (see footnote 38, sheet 3 of 3) i. If there had not been a survey of the property then how would the Schultz or anyone else know the location of the property line related to the location of the fence? g. Mr. Neil Schultz in his "Statement" indicates that when the property was surveyed by Reeves, his father, Ron

Schultz, "was caught by surprise by the survey stake and post installed some 70 to 71 feet into our property. My dad h. In Elwell paragraph 10 a statement is made that also conflicts with Neil Schultz recollection of the reaction

ng the location of the Reeve survey stake. Quote, "Ron Schultz and I both always believed and agreed that the actual boundary between our properties was not the new Chainlink Fencing, but some distance

i. These are again conflicting statements regarding the status of the fence. i. In light of these statements acquiescence in the boundary then becomes a question to consider. k. "Under this more recent case law, we have abandoned any mutual occupancy requirement, finding the occupation element satisfied when a claimant occupies his or her property up to a visible line. Accordingly, to the

extent our early cases required a claimant to show that both parties occupied up to a visible line to satisfy the occupation element, we here expressly disavow any such requirement. Because the facts show that Ms. Fautin occupied her parcel up to the fence, we affirm the court of appeals' judgment." Anderson v. Fautin, 2016 UT 22, ¶11 I. "Now, we no longer attempt to imply an agreement. Consonant with adverse possession jurisprudence, our current boundary by acquiescence caselaw looks to the claimant's occupancy alone to determine whether the

claimant provided notice to the nonclaimant. The nonclaimant need not provide express consent, but can acquiesce through inaction. This present approach, while markedly different from our prior approach, is preferable for policy reasons." Anderson v. Fautin, 2016 UT 22, ¶27

m. "Therefore, to ensure clarity in future cases, our boundary by acquiescence doctrine requires a claimant to show: (1) a visible line marked by monuments, fences, buildings, or natural features treated as a boundary; (2) the claimant's occupation of his or her property up to a visible line such that it would give a reasonable landowner notice that the claimant is using the line as a boundary; (3) mutual acquiescence in the line as a boundary by adjoining landowners; (4) for a period of at least 20 years." Anderson v. Fautin, 2016 UT 22, ¶31 n. How this recent Utah Supreme Court case affects the situation at hand and the conflicting statements

regarding the condition, use, and understanding of the boundary I will leave the question of acquiescence to the attorney. My focus for this discussion will relate to another doctrine that of Practical Location or sometimes known

o. "Where the provisions of a deed are doubtful the court may look to the practical construction placed upon the instrument by the parties.[fn1] (see footnote 39, sheet 3 of 3) The construction put on such a deed by the parties is an indication of their intention, [fn2] (see footnote 40, sheet 3 of 3) and to determine their construction the court may properly consider their subsequent acts or conduct[fn3] (see footnote 41, sheet 3 of 3)` and statements or admissions.[fn4] (see footnote 42, sheet 3 of 3)

Great weight is to be given to the construction put upon an ambiguous or uncertain deed by the parties, especially in the case of doubtful questions which must be presumed to be within their knowledge,[fn5] (see footnote 43, sheet 3 of 3) and such practical interpretation of the parties themselves by their acts under a deed is entitled to great, if not controlling, influence.[fn6] (see footnote 44, sheet 3 of 3) " 23 Am. Jur. 2d deeds § 207

p. "It is a well-settled cannon of construction that, in construing a deed or any other written instrument whose terms are susceptible of more than one meaning, it is proper to place the court in the position of the parties thereto at the time the instrument was executed, and to show what was subsequently done by the parties themselves in carrying out the contract, as showing their understanding of its provisions. [Citations omitted]. The rule is thus stated ..'In expounding a written contract, although parol evidence is not admissible to prove that other terms were agreed to which are not expressed in the writing, or that the parties had other intentions than those to be inferred from it, yet it is competent to offer parol evidence to prove facts and circumstances respecting the relations of the parties, and the nature, quality, and condition of the real and personal property, which constitute the subject matter respecting which it is made. It is also competent to prove by parol evidence -- indeed, it can hardly be done by any other -- the acts of the parties at and subject to the date of the contract, as a means of showing their own understanding of its terms.' Carter v. Foster, 145 Mo. 383, 392, 47 S.W. 6,8 (1898_." Cravens v. Jolly, 623 S.W. 2d 569 q. Understanding that surveyors must consider parol and extrinsic evidence in the conduct of a survey the following evaluation is one possible explanation of the Acts and Actions of the owners relating to the location of the

r. In the discussion above related to the Elwell Paragraph 2, I discuss the location of the section corner being thought to be at the south bank of the Hooper canal. This was derived from b47-217. Using a location that is about 25 feet south of the North bank of the Hooper canal as I have established from a digitization of the 1947 aerial photography and rotating the description to match the bearing of the existing fence the deed distance of 365 feet from this West Quarter corner to the southwest corner of the property matches closely the west end of the fence. s. Having identified this fact, a reasonable explanation of the reason for the fence to be in the location that it is and at the angle that it runs may be derived from the following assumptions;

i. one, there was a period of time where the south bank of the Hooper canal was believed to be the location of the West Quarter corner of the section. (see footnote 45, sheet 3 of 3)

This is reinforced by a copy of a 1966 Weber County Ownership map (tax map) a copy of which is attached as Exhibit D (see sheet 3 of 3). This map shows the Hooper canal and the West Quarter corner to be at or near one another

ii. two, the owner, Roy Hartman, may have measured the frontage of his property from this south bank of the Hooper canal section corner location. This would explain the location of the west end of the fence. iii. The location of the back of the property could have been also measured by the owner to be the 34 feet from the "West" bank of the Hooper canal. This would explain the location of the east end of the fence. iv. Connecting a line between these two point would place the fence line at the location and angle that it currently resides

t. This method of establishing the property line, which we have letter stating that the Hartman's were the ones that built the fence, would be a Practical Construction or Practical Location of the property line by the owner. Thus reflecting what both the grantor and grantee believed was being conveyed.

u. This possible action of Roy Hartman of essentially surveying the property that he was to take possession of could in fact be considered the first and original survey of the property. Original surveys and their relevance will be discussed hereafter.

66. Elwell Paragraphs 11-16.

a. In these paragraphs some dialogue was given related to 3 survey plats that are attached as Elwell Exhibits D, E, and F. These plats will be examined hereafter.

b. The Elwell Exhibit D plat is one that I do not have a large copy of to be able to adequately read or analyze. However, from the copy that is included in my copy of the Affidavit of John Elwell it is evident that this plat has no Surveyor Certification or signature indicating that it is a final product of Reeve & Associates, Inc. c. The lack of signature indicates to me that any information contained therein should be considered

preliminary and subject to revision or change and is thereby unreliable as a certified survey record. It is not uncommon for preliminary work to be presented to a client in the process of a project and then changes made prior to certification and signature. In such cases I would be looking for a subsequent plat in the county records that has been certified relating to the same property for a more clear meaning of the surveyors opinion of the boundary. d. In this case there is a subsequent record of a Reeve & Associates, Inc. survey plat, being Elwell Exhibit E (hereinafter the Williford survey), in the county records that contains both the certification and signature of Randall J. Williford. PLS which is substantially different than the Exhibit D map. This survey has a Record of Survey number 002868. Because Elwell Exhibit D is uncertified and unsigned and an official record of the property conducted by the

67. Elwell Exhibit E, the Williford survey plat.

a. The plat was filed with the county survey April 29, 2002, signed by the surveyor on April 26th, 2002 and contains a date in the title block of 12-11-01.

b. This plat shows several glaring problems with the identification of the boundaries and how they are conveyed in the deed given to the Hartman's. (see footnote 47, sheet 3 of 3)

same Company is on file with the county I will rely on the Record of Survey plat no. 002868 as the "first" (see

footnote 46, sheet 3 of 3) survey conducted by a licensed land surveyor of the property.

i. The distances used on the west boundary of the Williford survey noted on the plat are 395.98' on the south of the West Quarter corner and 81.13' on the north of the same West Quarter corner. The notation for this corner indicates that the county monument was used as the location for this corner.

ii. The corresponding deed distances for the west boundary are given in b778-549 as "365 feet" to the south of the West Quarter corner and "45 feet" to the north of the West Quarter corner. iii. On the Williford survey the west boundary of the property is 477.11 feet in length and the corresponding line in the deed conveyed 410 feet. This is a discrepancy of 67.11 feet. There is no indication on the

Williford survey to show why he believed the west boundary should be so much longer than what was deeded. iv. The east boundary as represented on the Williford survey notes the distance to be 96.67 feet and the deed is written to grant 34 feet for this line of the property. This is a discrepancy of 62.67 feet and again there is no indication on the Williford survey to show why he believed the east boundary should be so much longer than what was deeded.

c. The narrative as contained on the Williford survey plat states, "The north line was fixed by the north line of

i. Comparing the location in which the Williford survey identifies the north line of the canal and where I located the north line from digitizing the 1947 aerial photos the location that is noted on the plat is a little south of my digitized line except at the northwest corner of the property. There the Williford survey identifies the northwest corner of the property to be north of where I digitized the canal location.

ii. The discrepancy could be explained as the difference of a ground survey as opposed to an interpretation of an aerial photo. I do not have any information on the date the Hooper canal was piped through the property so I don't know if the location shown in the Williford survey is from physical evidence of the canal bank or

from a "best guess" of such. iii. Still, the indication is that he used the north line of the canal as the north boundary of the property and yet exceeded the north-south location of the property line by 67.11 feet and 62.67 feet on the west and east

d. The Williford survey plat clearly shows that there is a fence line a significant distance north of where he established the south boundary although he shows it to run from the east boundary running westerly but stopping it [the fence] far short of the west boundary. Again, there is no explanation of why the location of this fence was either ignored or not considered as evidence of the south boundary of the property.

i. Without an explanation of how the south boundary was determined we are left without any means of evaluating the decision show on the Williford survey and only left to conclude that the south boundary is in significant error because of the large discrepancy with the deeded property. ii. It is therefore, my opinion, that the Williford survey is in error.

68. Elwell Exhibit F, the Kunz survey plat. a. The plat was filed with the county survey April 13, 2009 as Record of Survey number 004287, signed by the surveyor on April 8th, 2009 and contains a beginning date in the title block of 04-01-09.

b. The first concern with the Kunz survey is evident from the representation of the Hooper canal. On the plat it clearly shows that the north boundary of the Elwell property is identified as the South Line of the Hooper canal and not the North Line of the Hooper canal as called for in the deed (b778-549) nor as shown on the prior Williford survey. In the Kunz survey narrative he states that the Hooper canal as shown on the plat is his interpretation of the

"West Bank of the Hooper Canal". c. The proper identification of the "West Bank" of the canal has been dealt with hereinabove in the section on

Chronological Evaluation of Documents for b107-426. d. While the Kunz survey does hold the distance of 365 feet to the south of the county West Quarter corner monument as stated in the deed the distance north of the West Quarter corner does not reflect the 45 feet that the deed expresses. It is worth noting here again that it is my opinion that the county monument for the West Quarter corner is not the corner location that was historically used for many of the deeds in the West Half of Section 8.

e. The other concern is related to the east boundary of the property as reflected on the Kunz survey wherein it shows the east boundary to be 32.35 feet in length and not the 34 feet expressed in the deed. This is apparently derived by holding the county West Quarter corner monument, traversing along the county monumented section line the deed distance of 365 feet and then traversing a bearing that is perpendicular to the county monumented section line for the distance of 907 feet as expressed in the deed. Then the east boundary was made parallel to the county monumented section line and closed on Mr. Kunz interpretation of the "West Bank" of the Hooper canal. f. Here again, as with the Williford survey, this Kunz survey seems to Ignore the existence of the fence line which the Kunz survey notes as being 30.0' north of the line he has established as the south boundary of the

g. This survey, in my opinion, does two things to the property,

i. it shorts the Elwell's property that they own on the north boundary and leaves a title gap between the Read property and land the Elwell's own between the West Bank (see footnote 48, sheet 3 of 3) of the Hooper canal and the center of the Wilson canal, and ii. shows an encroachment on the Schultz property to the south.

the chain of title and historic locations of the West Quarter corner and section line.

69. In both the Williford survey and the Kunz survey there is no indication that any consideration was given to the chain of title, the historical locations of the West Quarter corner, or the historical location of the section line being coincident with the east right of way line of 5100 West Street.

70. Elwell Exhibit G, the Great Basin survey plat.

a. In Elwell Affidavit paragraph 18-19, Mr. Elwell states that he requested Great Basin to conduct a new survey b. The only copy of this survey that I have is the one attached to the Elwell Affidavit as Exhibit G and it is too

c. Page 2 of Exhibit G Elwell affidavit is an enlargement of the western property line from the plat but does not contain a copy of the narrative or other pertinent information of the plat. d. This enlargement does indicate that they measured 365 feet to the south of the county West Quarter corner monument for the southwest corner of the Elwell property. the distance to the north of this monument is noted as 69.63 feet when the deed distance is only 45 feet. This is most likely because Great Basin is accepting the

county monument as the controlling monument for the property. This assumption also ignores or fails to consider

rndmark Surveying, Inc.

A Complete Land Surveying Service www.LandmarkSurveyUtah.com

801-731-4075

4646 South 3500 West - #A-3

2 of 3

West Haven, UT 84401

CLIENT: Neil R. Schultz Property Address: 4492 S 5100 W, Hooper, UT

Boundary Line SW 1/4 of Section 8, Township 5 North, Agreement - ROS Range 2 West, Salt Lake Base and Meridian. DRAWNBY: EDR

> CHECKED BY: DATE: FILE: 3763

This Plat is the Intellectual Property of Landmark Surveying, Inc., all legal rights are reserved.

SUMMARY of CONCLUSIONS and OPINIONS

71. Conclusion related to the location of the West Quarter corner of Section 8. In my opinion, the West Quarter corner of Section 8 as monumented by Weber County is not at the location that it has historically been nor was it used in the conveyance b778-579 to Roy Hartman. The county monument should not be used to position the property.

72. It is my opinion, that the Williford survey is in error and does not represent the true or correct location of the property boundaries essentially because the survey fails to account for the historic location of the West Quarter corner and section line.

73. It is my opinion that the Kunz survey does not correctly identify the "West Bank" of the Hooper canal as was deeded throughout the title record. Because this survey failed to identify the correct West Bank of the Hooper canal it also fails to properly identify the location of the south property line of the Elwell/Hartman parcel. Additionally, this survey also accepts the county monument as controlling for the property as described in b778-579 which, in my opinion, is an error and fails to take into account the historic location of the West Quarter corner and the section line.

a. the stated actions of the Hartman's as expressed in letter attached hereto as Exhibit A, it is my opinion that the fence line is the physical manifestation of the deed line as it was established and constructed by the Hartman's. (This opinion is also based on the analysis of this property as contained in this report.),

b. the fence was constructed by the Hartman's in the same year as they purchased the property, c. the east end of the fence as I have digitized it, closely represents a location that would be 365 feet south of the West Quarter corner based on b47-217 (see footnote 49, this sheet) location which was documented to be on the south bank of the Hooper canal,

d. that the county 1966 Ownership plat (see footnote 50, this sheet) also is representing to the public that the corner would be at or near the south bank of the Hooper canal, and

e. that the east end of the fence is in a location that closely matches the 34 foot distance from the West Bank of the Hooper canal as I have digitized it from 1947 aerial photography;

f. Therefore, it is my opinion, that the fence line is the physical manifestation of the property line by Practical

EXHIBITS

Exhibit A

October 12, 2017

South Property Fence Line West Haven, UT 84315

To whom it may concern:

I have the following comments on the south fence line the divides the Elwell and Schultz properties.

I helped my Dad dig holes for the Cedar posts and help with a barbed wire fence that would establish the south property boundary. I visited the property and witness that some of those original fence posts are still present.

When the property was sold to Mr. Elwell, there were no other fences on the property to contain livestock nor any other fences that would indicate any South boundary. I helped to construct the South boundary fence in 1964.

All of the information in this statement is true and correct to the best of my knowledge.

Exhibit B

The original report contained copies of the documents included in exhibit B, however, these documents can be obtained from the Recorder's office and will not be attached hereto. They are:

Book K page 366, Book N page 354, Book N page 290, Book N page 291, Book 10 page 575, Book 29 page 433, Book 47 page 217, Book 54 page 260, Book 107 page 426, Book 127 page 430, Book 655 page 423, Book 778 page 549, Book 815 page 533, Book 816 page 666, Book 918 page 304, Book 1381 page 1262, Book 1479 page 2445, Book 1778 page 1743, Book 1808 page 2688, Book 1943 page 1142, Book 2203 page 2353, Book 2203 page 2355, Book 2203 page 2546, Book 2302 page 1112, Entry# 2313942, Entry# 2481979,

Exhibit C

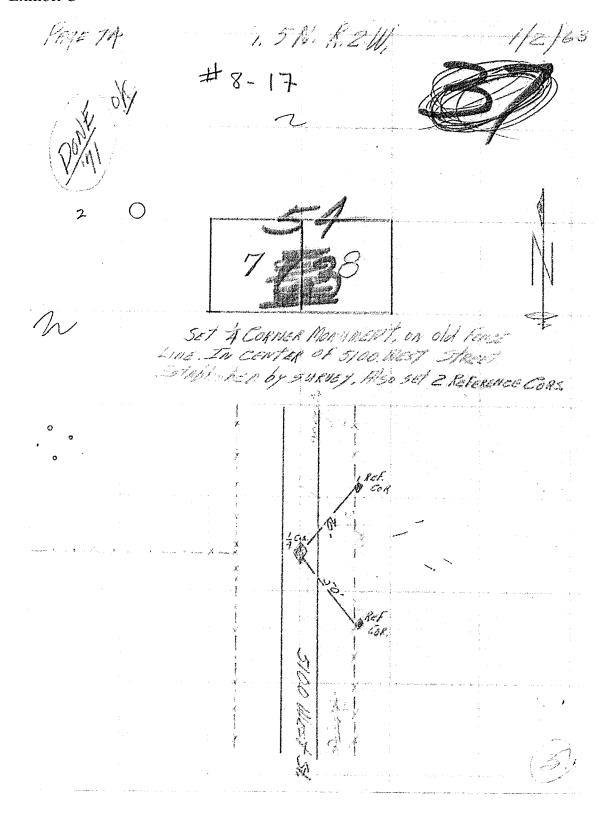
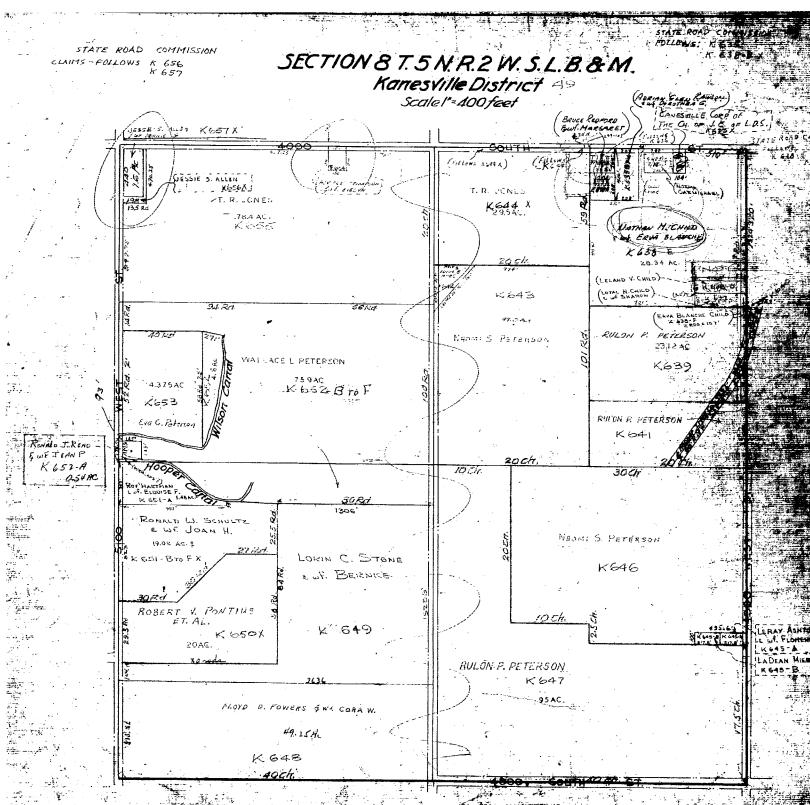


Exhibit D



FOOTNOTES:

3. It should be noted that a "bounds" call in a deed is one part of the description of the property in the Metes and Bounds description. The bounds, under common law, generally takes precedence as to boundary location over the metes. Metes literally meaning "to measure or apportion" in Old English and derived from metan.

4. See Exhibit A.

5. It should be noted that the dates, where available, will be the date that the document was signed or acknowledged rather than the recording date. This is because of the time difference between some of the transactions when they were delivered and when they may have been recorded.

6. This format for deed book and page will be used throughout this document that being b25-241 representing Book 25 at page 241 of the Weber County deed records.

7. The aerial photo background was obtained from the State office of the AGRC (Automated Geographic Reference

8. The aerial image background was obtained from the State office of the AGRC and is dated 1947.

9. See exhibit C.

Center of year 2012.

10. Coleman v. Gaskins, 165 S.C. 301, 163 S.E. 790 (1932); Pocahontas Land Corp. v. Evans, 175 W.Va. 304, 332 S.E.2d 604 (1985) There is a sound public policy discouraging the separate ownership of narrow strips of ground. Cravens v. Jolly, 623 S.W.2d 569 (Mo.Ct.App. S.D.1981).

11. Cravens v. Jolly, 623 S.W.2d 569 (Mo.Ct.App. S.D. 1981); Angelo v. Biscamp, 441 S.W.2d 524 (Tex. 1969); Pocahontas Land Corp. v. Evans, 175 W.Va. 304, 332 S.E.2d 604 (1985).

12. Fowler v. Wood, 73 Kan. 511, 85 P. 763 (1906).

13. Angelo v. Biscamp., 441 S.W.2d 524 (Tex. 1969).

14. Brown v. State, 130 Wash.2d 430, 924 P.2d 908 (1996). 23 Am.Jur. 2d deeds § 253

15. This fence location has been digitized from the 2012 aerial photography. A more accurate location would need to be surveyed but for purposes of this evaluation the location is probably with a couple feet of what would be surveyed. [Note, that since this report had been produced I have surveyed the fence and it is shown on Sheet 1 of this Record of

16. "When there is a conflict in the calls of a metes and bounds survey, the courts have generally accepted the following ranking of priority: Stanford v. Wilson, 764 S.W2d 715 (Mo. 1989) 1. Lines actually run in the field; Riley v. Griffin, 16 Ga. 141 (1854). 2. Natural monuments; Unites States v. Williams, 441 F.2d 637 (5th Cir. 1971). 3. Artificial monuments; 4. Adjoiners; 5. Courses; 6. Distances; Staaf v. Bilder, 68 Wash. 2d 800, 415 P.2d 650 (1966). 7. Area or quantity. State Highway Bd. v. Jamac Corp., 131 Vt. 510, 310 A.2d 120 (1973). From Clark on Surveying and Boundaries, Sixth Edition, Walter G. Robillard, Lane J Bouman, ISBN: 1-55834-022-X; Page 396 § 4.21. Conflicting calls in descriptions.

17. Matter of Teranis, 128 F.3d 469 (7th Cit 1997), as amended on denial of reh'g, (Nov. 10, 1997) (applying wisconsin law); U.S. v. Johansen, 93 F.3d 459 (8th Cir. 1996) (applying North Dakota law); Wilson v. Brown, 320 Ark. 240, 897 S.W.2d 546 (1995); Smith v. Smith, 622 A.2d 642 (Del. 1993); C & G, Inc. v. Rule, 135 Idaho 763, 25 P.3d 76 (2001); State Bank & Trust of Kenmare v. Brekke, 1999 ND 212, 602 N.W.2d 681 (N.D. 1999); Kipp v. Estate of Chips, 169 Vt. 102, 732 A.2d 127 (1999); Lim v. Choi, 256 Va. 167, 501 S.E.2d 141 (1998); Brown v. State, 130 Wash.2d 430, 924 P.2d 908 (1996).

18. Milner v. Vivens, 255 Ga. 49, 335 S.E.2d 288 (1985); snydr v. Haagen, 679 A.2d 510 (Me. 1996); Okemo Mountain, Inc. v. Town of Ludlow Zoning Bd. of Adjustment, 164 Vt. 447, 671 A.2d 1263 (1995). The habendum clause may be considered in determining the intent of the grantor from an Examination of the entire deed. Busby v. Thompson, 286 Ark. 159, 689 S.W.2d 572 (1985).

19. U.S. v. Goodrich Farms Partnership, 947 F.2d 906 (10th Cir. 1991) (applying Colorado law); Barnes v. Barnes, 275 Ark. 117, 627 S.W.2d 552 (1982); Il Giardino, LLC v. Belle Haven Land Co., 254 Conn. 502, 757 A.2d 1103 (2000); Urbaitis v. Commonwealth Edison, 143 III. 2d 458, 159 III. Dec. 50, 575 N.E.2d 548 (1991); In re Fleck's Estate, 261 lowa 434, 154 N.W.2d 865 (1967); McGeechan v. Sherwood, 2000 ME 188, 760 A.2d 1068 (Me. 2000); Crockett v. McKenzie, 1994 OK 3, 867 P.2d 463 (OPkla. 1994).

20. U.S. v. Goodrich Farms Partnership, 947 F.2d 906 (10th Cir 1991) (applying Colorado law); Norken Corp. v. McGahan, 823 P.2d 622 (Alaska 1991); Barnes v. Barnes, 275 Ark. 117, 627 S.W.2d 552 (1982); Foundation for Preservation of Historic Georgetown v. Arnold, 641 A.2d 794 (D.C. 1994); In re Fleck's Estate, 261, Iowa 434, 154 N.W. 865 (1967).

21. Rivershase Homeowners Protective Ass'n, Inc., v. City of Hoover, 531 So.2d 645 (Ala. 1988); Norken Corp. v. McGahan. 823 P.2d 622 (Alaska 1991); Bolan v. Avalon Farms Property Owners Ass'n, Inc., 250 Conn. 135, 735 /a,2d 798 (1999); Foundation for Preservation of Historic Georgetown v. Arnold, 641 A.2d 794 (D.C. 1994); City of Kellogg v. Mission Mountain Interests Ltd., Co., 1535 idaho 239, 16 P.3d 915 (2000); Heyen v. Hartnett, 235 Kan. 117, 679 P.2d 1152 (1984); McGeechan v. Sherwook 2000 ME 188, 7601 A.2d 1068 (Me 2000).

22. Tazian v. Cline, 686 N.E.2d 95 (Ind. 1997).

23. Belville Min. Co. v. U.S., 999 F.2d 989 (6th Cir. 1993) (applying Ohio law); Paterson v. Buffalow Nat. River, 76 F.3d 221 (8th Cir. 1996) (applying Arkansas law); Il Gardino, LLC v. Belle Haven Land Co., 254 Conn. 502, 757 A.2d 1103 (2000); McGeechan v. Sherwood, 2000 ME 188, 760 A.2d 1068 (Me. 2000); Crockett v. McKenzie, 1994 OK 3, 687 P.2d 463 (Okla. 1994).

24. C & G, Inc., v. Rule, 135 Idaho 763, 25 P.3d 76 (2001).

25. Belville Min. Co. v. U.S., 999 F.2d 989 (6th Cir. 1993) (applying Ohio law); Eaton v. Town of Wells 200 ME 176, 760 A.2d 232 (ME 2000); Chevy Chase Land Co. v. U.S., 355 Md. 110, 733 A.2d 1055 (1999); In Re Rattee, 145 N.H. 341, 761A.2d 323 (ME 2000); South Carolina Dept. of Natural Resources v. Town of McClellanville, 345 S.C. 617, 550 S.E.2d 299 (2001); Luckel v. White, 819, S.W.2d 459 (Tex. 1991), reh'g of cause overruled, (Jan. 8, 1992).

26. Gajewski v. Bratcher, 221 N.W.2d 614, 81 A.L.R.3d 211 (N.D. 1974). Generally, as to what law governs in point of time,

27. The reason that correction documents usually do not have an operative effect in Utah is because the parties to the original transaction do not execute the correction document. In this case when the property was conveyed by William Schultz and his wife by b815-533 they no longer have a title right or interest in the property and for them to issue another document, even if it is to the same grantee, modifying the terms of the first conveyance, they have no authority to do so. However, had Ronald Schultz and his wife signed the correction document in addition to William and his wif then the document could be viewed as a modification to the original contract.

28. Hall v. Wright, 137 Ky. 39, 138. Ky. 71, 127 S.W. 516 (1910); Feritta v. Bay Shore Development Corp., 252 Md. 393, 250 A.2d 69 (1969).

29. Golden v. Hayes, 277 So.2d 816 (Fla. Dist. Ct. App. 1st Dist. 1973); Feritta v. Bay Shore Development Corp., 252 Md. 393, 250 A.2d 69 (1969); Parker v. McKinnon, 353 S.W.2d 954 (Tex. Civ. App. Amarillo 1962), writ refused n.r.e., (May 16,

30. Golden v. Hayes, 277 So.2d 816 (Fla. Dist. Ct. App. 1st Dist. 1973).

31. Hall v. Wright, 137 Ky. 39, 138. Ky. 71, 127 S.W. 516 (1910) (first deed conveying 2,000 acres and later deed conveying only 1,500 acres); Cox v. Tanner, 229 S.C. 568, 93 S.E.2D 905 (1956) (first deed to husband alone and second deed to husband and wife).

32. Fertitta v. Bay Shore Development Corp., 252 Md. 393, 250 A.2d 69 (1969); Borgeson v. Tubb, 54 Mont. 557, 172 P. 326 (1918).

33. Cox v. Tanner, 229 S.C. 568, 93 S.E.2d 905 (1956).

34. Note; when I was serving as the County Recorder my policy for remainder descriptions was a strict adherence to only describing the parent parcel less and except that which was sold or divided off the parent. This was to prevent the office from introducing the errors that had been created prior to my term in office.

35. Sometime prior to this recording the County Recorder discontinued using book and page references on documents and elected to only use Entry numbers.

36. Even though I initiated a strict policy regarding the writing and preparation of remainder descriptions there was no practical way to prevent the public from obtaining a copy of the tax record, which the office is required to by law upon request and payment of the associated fee, which they would then attach to their deeds.

37. See Exhibit C, sheet 3 of 3).

38. See Affidavit of John Elwell, Paragraph 5. This affidavit is not attached to this survey filing.

39. Russell v. Geyser-Marion Gold Min.co., 18 Utah 2d 363, 423 P.2d 487 (1967).) The construction put on such a deed by the parties is an indication of their intention,[fn2] (People v. Ocean Shore R.R., 32 Cal.2d 406, 196 P.2d 570, 6 A.L.R2d 1179 (1948); Ryan v. Hudak, 409 Pa. 211, 185 A.2d 570 (1962).

FOOTNOTES continued:

40. [fn2] People v. Ocean Shore R.R., 32 Cal. 2d 406, 196 P.2d 570, 6 A.L.R.2d 1179 (1948); Ryan v., Hudak, 409 Pa. 211, 185 A.2d 570 (1962).

41. Blecher v. Elliott, 312 F.2d 245 (6th Cir. 1962); Slaten v. Loyd, 282 Ala. 485, 213 So. 2d 219 (1968); Wynn v. Sklar & Phillips Oil Co., 254 Ark 332, 493 S.W.2d 439 (1973); Garcia v. Garcia, 86 N.M. 503, 525 P.2d 863 (1974); Ryan v. Hudak, 409 Pa. 211, 185 A.2d 570 (1962).

42. Wynn v. Sklar & Phillips Oil Co., 254 Ar,. 332, 493 S.W.2d 439 (1973); Buchanan Realty Corp. v. Looney, 201 Va. 432,

43. Williams v. Shaney, 236 Miss. 702, 112 so.2d 809 (1959); King County v. Hanson Inv. Co., 34 Wash. 2d 112, 208 P.2d

44. Kennedy v. Henley, 293 Ala. 657, 309 So. 2d 435 (1975); Wynn v. Sklar & Phillips Oil Co., 254 Ark. 332, 493 S.W.2d 439 (1973); Shults v. Bartz, 431 S.W.2d 416 (Tex. Civ. App. Fort Worth 1968).

111 S.E.2d 410 (1959); King County v. Hanson Inv. Co., 34 Wash. 2d 112, 208 P.2d 113 (1949).

45. Again, this is evidenced from deed b47-217.

46. The use of "first" survey in this case does not eliminate the possibility that the true first survey of the property was done by Roy Hartman when he was in the process of constructing the fence dividing his newly acquired property from that of the Schultz remainder property. This reference is simply to identify surveys done by licensed surveyors.

47. See deed b778-579

48. Again, I am emphasizing that the West Bank of the Hooper canal in the location in question would be more accurately described as the North Bank of the Hooper canal.

49. See Exhibit B (b47-217). It should be noted that this document is not part of this survey plat filing.

50. See Exhibit D. This exhibit is included on this sheet.

Neceiven BY: 6467

Landmark Surveying, Inc.

4646 South 3500 West - #A-3 A Complete Land Surveying Service West Haven, UT 84401 www.LandmarkSurveyUtah.com 801-731-4075

CLIENT: Neil R. Schultz Property Address: 4492 S 5100 W, Hooper, UT

3 of 3

Boundary Line SW 1/4 of Section 8, Township 5 North, Agreement - ROS Range 2 West, Salt Lake Base and Meridian. DRAWN BY: EDR CHECKED BY: DATE: FILE: 3763

This Plat is the Intellectual Property of Landmark Surveying, Inc., all legal rights are reserved.