

Chapter 2: Nature and Description of Real Estate

CHARLES J. JACOBUS
REAL ESTATE PRINCIPLES
Tenth Edition
© OnCourse Learning Rev. 9/2013

Real Estate

- Land
 - Improvements
 - Rights to the Property
 - Appurtenances
- Real Estate Defined:
 - Land and anything permanently attached to the land;
 - Including:
 - structures to the land,
 - property to the structures and
 - sometimes things growing on the land

Real Estate's Dimensions

- Land includes the of the earth, the and everything to of the earth.
- *Ad Infernos*
- *Ad Coelum*

**Distinguishing
Real/ Personal Property**

| | |
|---|--|
| <p>Real Property</p> <ul style="list-style-type: none"> ▪ Method of conveyance: <input type="text"/> ▪ Distinguishing features: <ul style="list-style-type: none"> ▪ <input type="text"/> ▪ Immovable ▪ <input type="text"/> ▪ Optional Name(s): <ul style="list-style-type: none"> ▪ Real estate, realty, "land" | <p>Personal Property</p> <ul style="list-style-type: none"> ▪ Method of conveyance: <input type="text"/> ▪ Distinguishing features: <ul style="list-style-type: none"> ▪ <input type="text"/> ▪ Temporary ▪ Optional Name: <ul style="list-style-type: none"> ▪ Chattle, Personalty |
|---|--|



"Real Property" the Term


- Land – The earth's surface
- Real Estate – The land and the improvements
- Real Property – The land, improvements and all the rights



IMPROVEMENTS

- Anything affixed to land with the of being permanent is considered to be part of the land and therefore real estate.
- Improvements include the buildings, the fences, the sidewalks and drive ways, and the landscaping.
- Although our property descriptions will only describe the land, the improvements are conveyed along with the land.

© OnCourse Learning




FIXTURES

- When an object;
 - that was once
 - is to land (or an improvement thereon)
 - so as to become part of the real estate,


it is called a fixture.

© OnCourse Learning



Attaching Personal Property to Real Estate

- Four Tests to prove the **INTENTION** of the Attacher:
 - Manner of *How is it adapted to the use?*
 - Existence of an *Have the parties agreed?*
 - **Relationship** of the parties: *Is there a relational dictate? ie. Trade Fixtures*
 - What about growing things?
 - What about things like keys and garage door opener remotes?





Fixtures in Nebraska

“it is plain to be seen that **fixtures** are in the between real and personal property in Nebraska” *Frost v. Schinkel et al. (1931), 121 Neb. 784 at 801.*

👉

Grain Bin Case - Fixtures Defined

- Method of attachment clear
- Adapted for the use
- BUT, bin
- The owner

Pasture Pâté de foie gras



Is Manure a Fixture?

- Is "it" attached?
- Is "it" adapted to the use?

- Cow pie in pasture...



- Cow pie in feed yard

Including Manure "Rights" in Sale

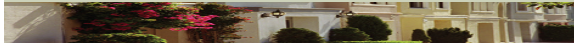
Manure Rights: There is a deep pit hog finish building immediately adjacent to the farm with liquid hog manure that is injected immediately after harvest each fall. Custom applicators are available at cost of about 1.3 cents/gallon. This farm rights from [unclear] which will essentially cover the fertilizer needs of the vast majority of the farm. Fall 2011 application will be the responsibility of the current landowner. Application is the responsibility of the new farm owner after 2011. Approximately 800,000-1,000,000 gallons is available each year.

- Calcium (Ca)
- Magnesium (Mg)
- Sodium (Na)
- Copper (Cu)
- Iron (Fe)
- Manganese (Mn)
- Zinc (Zn)
- Moisture
- Total Solids
- Total Salts
- pH

APPURTENANCES

- a right or privilege or improvement that belongs to and passes with land but is a part of the land.
- examples of appurtenances are and rights-of-way.

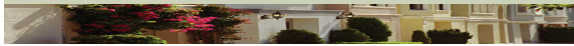
© OnCourse Learning



Water Rights

- Riparian Rights, Littoral Rights and Prior Appropriation
- Doctrine of Capture and Percolating Water
- Common Enemy and Right of Diversion

© OnCourse Learning



Land Descriptions

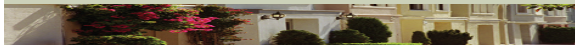
- Metes & Bounds
- Rectangular Survey System
- Recorded Plat
- Reference to Documents other than Maps
- Informal Reference - address
- Assessor's Parcel Number

© OnCourse Learning



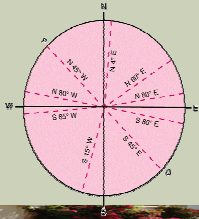
Land Descriptions

- Metes & Bounds
- Rectangular Survey System
- Recorded Plat
- Reference to Documents other than Maps
- Informal Reference - address
- Assessor's Parcel Number

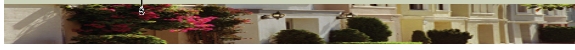


Naming Directions for a Metes and Bounds Survey

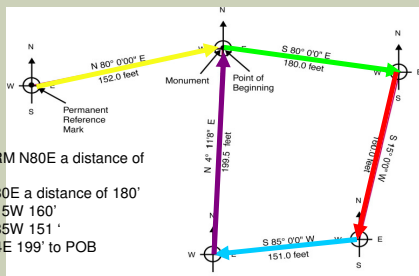
Bearing Measurements



Moving in a clockwise direction from the point of beginning, set the center of a circle compass on each corner of the parcel to find the direction of travel to the next corner.



Describing Land by Metes and Bounds

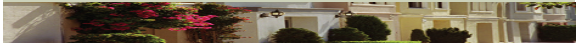


From the PRM N80E a distance of 152' to POB
 THENCE S80E a distance of 180'
 THENCE S15W 160'
 THENCE S85W 151'
 THENCE N4E 199' to POB

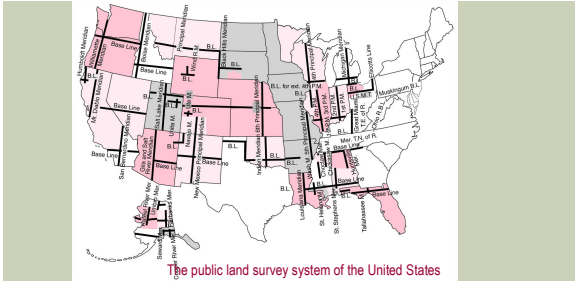


Describing Land by the Rectangular Survey System

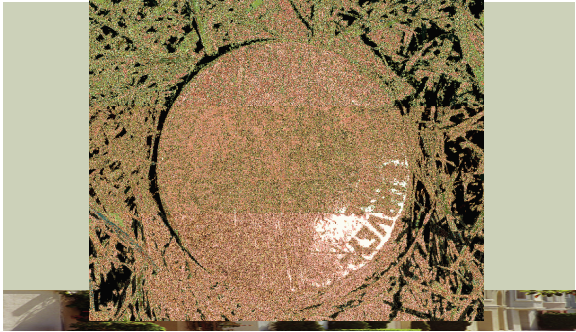
- Prime meridians
- Base lines
- Broken down into:
 - Quadrangles
 - Townships
 - Sections
- Most often used to describe regularly shaped (square or rectangular) large parcels



Parallels and Meridians



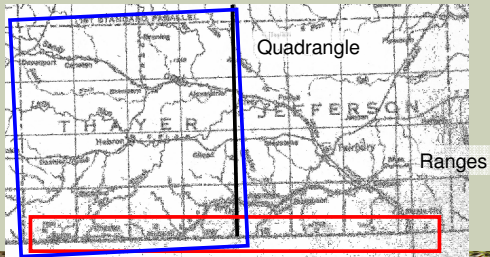
Survey Marker in Northern Nebraska



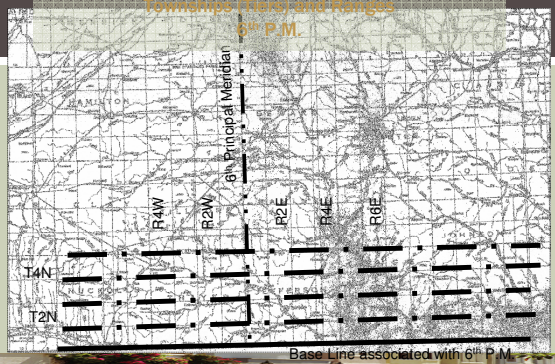
6th Principal Meridian and
40th North Latitude



6th P.M. Divides Nebraska
(runs on west side of Jefferson County)



Townships, Ranges and Ranges
6th P.M.



Township divided into Sections (36)

T2N R3E
6 miles

Sections
Numbered:

**One Section (640 Acres)
Subdivided**

One
acre
=

square
feet
(About
five to
seven
city lots)

Section 32, T2N, R3E

1 Mile

5280 Feet

Describe R

A B C D E F G H I J K L M N O P Q

[]

Describe E []

[] Acres

[]

Describe []

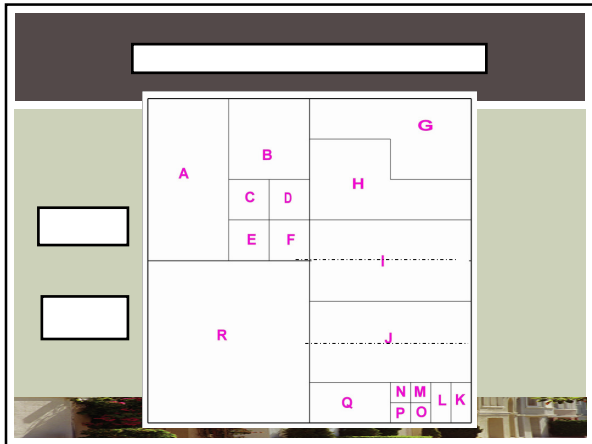
[] Acres

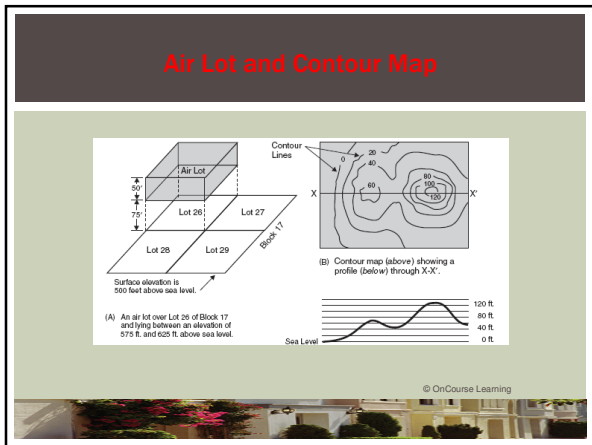
[]

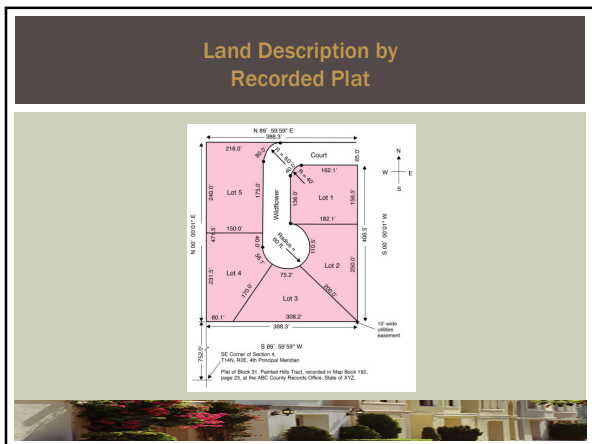
[]

[] Acres

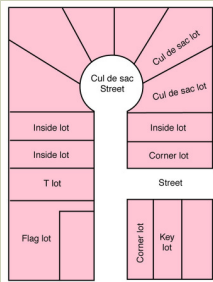
Describe []





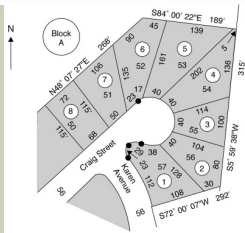


Lot Types



© OnCourse Learning

Assessor's Map



Assessor's Map
Book 34
Page 18
Assessor Parcel Numbers
shown in circles
Lots 50 through 57 of
Tract 2116, filed in
Recorded Maps, Book 63,
page 39.


The tax assessor assigns every parcel of land in the county its own parcel number. For example, the westernmost parcel (lot 50) in the map would carry the number 34-18-8, meaning Book 34, Page 18, Parcel 8.

What Happens When the Salesperson/Broker Omits Part of the Legal Description?

- **Curtis v. Giff and Chase Home Finance, 17 Neb. App. 149 (2008)**
 - Property located part in Iowa (front yard & house) and part in Nebraska (back yard and boat house)
 - Quiet Title action against BFP (bona fide purchaser)
 - Agents/brokers described the property on the listing & purchase agreement only by the street address
- Owner failed to pay Nebr. taxes, was sold on tax sale
- Purchaser claimed title
- Court rules that possessors of real estate must receive notice of foreclosure for tax deed to be valid


Physical Characteristics of Land

- Nonhomogeneity or Heterogeneity
-
- Immobility
- Land
- Land does not wear out
- Land



Economic Characteristics of Land

- Scarcity
-
-
- Situs (location, location, location)
- land
- Ability to add Improvements
- Investment permanency and immovability
-



Key Terms

- Fixtures
- Improvements
- Meridians
- Metes & Bounds
- Monument
- Fixity
- Scarcity
- Personal property
- Real Estate
- Base Lines
- Recorded Plat
- Riparian Rights
- Littoral Rights
- Situs