

Editor's note: Reconsideration denied by the decision at 4 IBLA 49 (Oct. 12, 1971)

ALFRED STEINHAEUER

IBLA 70-41

Decided December 15, 1970

Surveys of Public Lands: Generally -- Surveys of Public Lands:
Dependent Resurveys

In a township where the interior section corner monuments cannot be found, the proper method of determining what land passed from the Government by patent is by proportionate measurement between existing and properly restored corners on the township boundaries.

Surveys of Public Lands: Generally -- Surveys of Public Lands:
Dependent Resurveys

In determining whether original survey corners were properly reestablished by an official dependent resurvey of public lands, the fact that the measured distance and bearing between two section corners as determined by the resurvey differs somewhat from the measurement and bearing given in the original survey is not sufficient alone to disprove the reestablishment of the corner, as discrepancies between measurements and bearings in old and more recent surveys are not uncommon.

1 IBLA 167

IBLA 70! 41

: Group No. 273, Oregon

ALFRED STEINHAUER

: Protest against dependent
resurvey and survey of sub-
divisions dismissed

: Affirmed

DECISION

Alfred Steinhauer has appealed to the Secretary of the Interior from a decision dated February 25, 1969, whereby the Chief, Division of Cadastral Survey, Bureau of Land Management, dismissed his protest against acceptance of the dependent resurvey of portions of T. 17 S., R. 8 W., W.M., Oregon, and a survey of the subdivisions within sections 2 and 3 of the township. The survey was designed to restore the corners in their true original positions and to subdivide sections 2 and 3 so as to identify the remaining public lands therein, and was executed under authority given to the Secretary of the Interior by the Act of March 3, 1909, as amended. 43 U.S.C. § 772 (1964).

The record shows that official cadastral surveys of T. 17 S., R. 8 W., W.M., have been made as follows:

The east boundary and the east two miles of the south boundary were surveyed by W. R. Walker and H. C. Perkins in 1872. In 1881, C. A. Wooley surveyed the north and west boundaries and the subdivisional lines, and independently resurveyed the east boundary. The entire south boundary was independently surveyed by Laban H. Wheeler in 1881. Portions of the north boundary were resurveyed or retraced by Alonzo Gesner in 1893-1894. The east boundary was retraced and partially reestablished by Carl S. Nicklin in 1898. The south boundary was resurveyed by Guy H. Richardson and Norman D. Price in 1927-1928. Norman D. Price made an investigative retracement of the east boundary in 1929, and in 1931-1933 he also resurveyed the west

boundary and retraced the west three miles of the north boundary. A portion of the subdivisional lines were resurveyed by Hans W. Thielsen in 1956. The west five miles of the north boundary were resurveyed by William W. Glenn and John M. Jelley in 1962-1965.

The survey under protest and appeal is a dependent resurvey of a portion of the south boundary, the east boundary, a portion of the subdivisional lines, and subdivision of sections 2 and 3, T. 17 S., R. 8 W., W.M., and was executed by John M. Jelley, William W. Glenn, Floyd A. Brooks, and Rolla R. Steward, Cadastral Surveyors, Bureau of Land Management, under Special Instructions dated November 22, 1941, and Supplemental Special Instructions dated June 22, 1962, which provides for the surveys included under Group No. 273, Oregon, approved February 12, 1942, and June 25, 1962, respectively.

The public lands remaining in sections 2 and 3 are described in the subject survey as lot 5 (NW1/4NW1/4) section 2, lots 5, 6 (E1/2NE1/4), lots 7, 8, 9 (S1/2SW1/4, SW1/4SE1/4) section 3.

Investigation pursuant to the Supplemental Special Instructions approved June 25, 1962, showed that an official survey of the subdivisions within sections 2 and 3, T. 17 S., R. 8 W., W.M., had never been made by a Cadastral Surveyor of the Bureau of Land Management, or of its predecessor, the General Land Office, and that there was not any recorded survey of such subdivisions by a competent local surveyor.

The original survey corners, marked by wooden posts and witnessed by small maples, alders, dogwoods, or fir trees, were difficult to recover because of a serious forest fire in 1910, and because of careless logging operations at about the same time. Prior to making the survey under protest, original corners were recovered for the northeast corner of section 1 (1, 6, 31, 36), the northwest corner of section 2 (2, 3, 34, 35), the northwest corner of section 3 (3, 4, 33, 34), the southwest corner of section 6 (6, 7), the southeast corner of section 12 (12, 13), the south quarter corner for section 11 (11, 14), the southeast corner of section 13 (13, 24), the southwest corner of section 15 (15, 16, 21, 22), and others in the south half of the township. Evidence supporting the situs was accepted for the northeast corner of section 2 (1, 2, 35, 36), the east quarter corner of section 2 (1, 2), the east quarter corner of section 3 (2, 3), the west quarter corner of section 9 (8, 9), the southwest corner of section 9 (8, 9, 16, 17), the southeast corner

of section 14 (13, 14, 23, 24), the southwest corner of section 14 (14, 15, 22, 23), and others in the south half of the township.

Based on the original corners of the earlier surveys which were recovered, and the corners accepted after sufficient identification, the southeast corner of section 3 (2, 3, 10, 11), and the southwest corner of section 3 (3, 4, 9, 10), as well as the south quarter corner of section 2 (2, 11), the south quarter corner of section 3 (3, 10), and the west quarter corner of section 3 (3, 4), were reestablished by proportionate measurement in harmony with the record of the original surveys, and in accordance with the procedures set out in the Manual of Surveying Instructions, sections 364, 365 and 367 (1947 Edition). Subdivision of sections 2 and 3 was then accomplished from the reestablished corners.

The appellants protested that the cadastral surveyors had ignored established property and fence lines as they had existed in sections 2 and 3 for more than 60 years, when the section and quarters corners were reestablished.

The Chief, Division of Cadastral Survey, stated that none of the fence lines within section 3 both started and terminated at section corners or a point identified as a section corner, and further, that most of the fence lines were only intermittent. There are existing fence lines which appear to run south from the corners of sections 2, 3, 34, 35 and of sections 3, 4, 33, 34, but the corners of sections 2, 3, 10, 11 and of sections 3, 4, 9, 10 which could control the direction of the lines between sections 2 and 3, and between sections 3 and 4, are not in evidence. Accordingly, he held that the corners on the south line of sections 3 had to be reestablished by proportionate measurement, and dismissed the protest against acceptance of the survey. He stated that proportionate measurement presented the only solution to reestablish corners when no conclusive evidence of the original corners exists.

The appellant here reiterates his protest against ignoring the existing fence lines in the reestablishment of the east and west lines of section 3, but he has not introduced any new or substantive evidence to show that the original locations of the controlling section corners on the south side of section 3, (2, 3, 10, 11) or (3, 4, 9, 10), were in different locations from the points where they were reestablished by proportionate measurement in this survey.

When the retracements show that the principal resurvey problem is one of obliteration, with comparative absence of large discrepancies, i.e., that the early surveys had been made faithfully, then that official survey can be reconstructed or restored as it was in the beginning. The methods applied are termed a "dependent resurvey." Manual of Surveying Instructions, § 399 (1947).

The dependent resurvey is designed to accomplish a restoration of what purports to be the original conditions according to the record, based, first, upon identified existing corners of the original survey and other recognized and acceptable points of control, and, second, upon the restoration of missing corners by proportionate measurement in harmony with the record of the original survey. This type of resurvey is applicable to those cases showing fairly concordant relation between conditions on the ground and the record of the original survey. Titles, areas, and descriptions should remain absolutely unchanged in the typical dependent resurvey. Manual, § 400.

A dependent resurvey consists of a retracement and reestablishment of the lines in the original survey in their true original positions, according to the best available evidence of the positions of the original corners, without reference to tract segregations of alienated lands entered or patented by legal subdivisions of the original survey. J. M. Beard (On Rehearing) 52 I.D. 451 (1928); United States v. Sidney M. and Esther M. Heyser, 75 I.D. 14 (1968). In legal contemplation, and in fact, lands contained in a certain subdivision of a section of the original survey and those contained in the corresponding subdivision of the corresponding section of a dependent resurvey are identical. Cf. J. M. Beard, supra.

The appellant has stressed the fact that ancient fences in the areas were laid out along lines consistent with the bearings set forth on the plat of the 1881 survey, or at right angles thereto on interior subdivisional lines. However, there has been no evidence or indication that any fences were built to an accepted corner established by that survey, or that any fence started at and terminated at established corners of that survey. The alleged consistency of the fence lines does not establish that they were in the correct location relative to the original section lines for there is no control to the south. The Departments holding in Sunrise Development Company, Atom Ore Uranium Company, A-28026 (August 18, 1959), that in a dependent resurvey of public land, an obliterated quarter corner may be established by testimony which indicates that an existing fence corner marks the position

of and has been accepted as the quarter corner for an extended period of years, may be distinguished from the present case. There, the positive testimony was to the effect that the fence corner was actually on the point established as the original quarter corner. In the instant case, no such positive testimony was adduced relative to the west quarter corner of section 3. At best, the showing by Steinhauer indicates that a line was run around his property by a layman, who passed over the location of the alleged quarter corner situs.

Our review of the field notes indicates that the cadastral surveyors of the Bureau of Land Management correctly followed the Special Instructions of November 22, 1941, and the Supplemental Special Instructions of June 22, 1962, in executing the dependent resurvey in T. 17 S., R. 8 W., W.M., and the survey of the subdivisions of sections 2 and 3. Lines between the original corners recovered or accepted were traced on the ground with bearing and record distance noted. As the locus of the original section corners on the south side of sections 2, 3, and 4, as well as the quarter corners on the south side of these sections, and the west quarter corner of section 3, could not be located from the plat or field notes of the original survey or by competent extrinsic evidence, it was necessary to reestablish these corners by proportionate measurement. In a township where the interior section corner monuments cannot be found, the proper method of determining what land passed from the Government by patent or grant is by proportionate measurement between existing and properly restored corners on the township boundaries without regard to incidental items of topography. J. M. Beard, supra. That method was followed in the dependent resurvey of section 2 and 3.

Although the field notes of the original survey of 1881 recite that the section lines between sections 2 and 3, and between sections 3 and 4, were run on cardinal directions (or nearly so), perpetuation of such lines due south from the recovered original section corners on the north township line of T. 17 S., R. 8 W., would not permit retention of the proportionate distances recited in those field notes for the lengths of the south section lines of sections 1, 2, 3, and 4 in this township. Further, in determining whether the original survey corners were properly reestablished by the dependent resurvey, the fact that the measured distance and bearing between an identified original corner and a reestablished corner as determined by the resurvey differ somewhat from the measurement and bearing given in the original survey is not

sufficient alone to disprove the reestablishment of the corners, as discrepancies between measurements and bearings in old and more recent surveys are not uncommon. Cf. Rubicon Properties, Inc., *supra*.

We have reviewed the appellant's contentions in their entirety, and from the record information, we must conclude that his protest was properly dismissed. Accordingly, when this case is returned to the Bureau of Land Management, the plat of the dependent resurvey of portions of T.17 S., R. 8 W., W.M., and survey of the subdivisions of sections 2 and 3, accepted February 25, 1969, may be officially filed in the Oregon land office.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F.R. 12081), the decision appealed from is affirmed.

Martin Ritvo, Member

I concur:

I concur:

Edward W. Stuebing, Member

Anne Poindexter Lewis, Member

