

HENRY O. WOODRUFF

IBLA 76-230

Decided March 18, 1976

Appeal from a decision of the Oregon State Office, Bureau of Land Management (BLM), rejecting appellant's public sale application for a certain tract of revested O & C land and offering a small tract lease of the land.

Affirmed.

1. Surveys of the Public Lands: Dependent Resurveys

Restoration of a lost corner by means of proportionate measurement in accordance with the record of the original survey is the proper procedure in a dependent resurvey where there is a lack of conclusive evidence as to the location of the original survey corner.

2. Surveys of the Public Lands: Dependent Resurveys

Surveys of the United States, after acceptance, are presumed to be correct and will not be disturbed except upon clear proof that they are fraudulent or grossly erroneous. An appellant challenging a Government resurvey has the burden of establishing by clear and convincing evidence that the resurvey is not an accurate retracement and reestablishment of the lines of the original survey.

3. Small Tract Act: Appraisals

An appellant contending that the rental for a small tract lease (Act of June 1,

1938, as amended) set by BLM appraisal is excessive has the burden of proving by substantial and positive evidence that the appraisal is in error.

APPEARANCES: Henry O. Woodruff, pro se.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

This appeal is brought from a decision of the Bureau of Land Management (BLM) which rejected appellant's public sale application on the ground that the Act of September 26, 1968, 43 U.S.C. § 1431 et seq. (1970), does not apply to revested Oregon and California (O & C) railroad grant lands. The decision noted that a part of the land applied for, consisting of approximately 0.61 acres described by metes and bounds which contains applicant's residence, has been classified for residential lease purposes. The decision offered the applicant a small tract lease for the 0.61 acre parcel at an annual rent of \$50 pursuant to the Act of June 1, 1938, as amended, 43 U.S.C. § 682a et seq. (1970). ^{1/}

On appeal appellant contends that the resurvey which located the 1/4 corner of Sec. 13 and led to the filing of his application is erroneous and that his residence is on his property and not trespassing on Government land. Specifically, appellant asserts that:

Single proportion of a 1/4 corner in a section is not legal with the existing bearing tree. This corner is not exact but has been proportioned.

Appellant further contends that the appraisal of the tract of land offered for lease at \$50 per year is too high.

Appellant filed a public sale application with the Bureau of Land Management (BLM) pursuant to the Act of September 26, 1968, supra, describing the SE 1/4 SE 1/4 SE 1/4 NE 1/4 of Sec. 13, T. 28 S., R. 4 W., Willamette Mer., Douglas County, Oregon. The subject land is revested O & C land. Title to the contiguous land on the east and south sides of the subject tract is privately

^{1/} The BLM decision also notified appellant of an occupancy charge of \$320 which he must pay to compensate the United States for the trespass from May 10, 1967, the date of acceptance of the Government resurvey which established the fact of the trespass, to September 30, 1975. As appellant has not challenged this part of the decision on appeal except to question the accuracy of the resurvey, that part of the decision is not before us on appeal and has become final.

held. Appellant holds title to the contiguous land to the south (NE 1/4 SE 1/4) by chain of title from John D. Illig who received a patent for the land in 1924. This application was filed subsequent to a Government dependent resurvey of the East boundary of Sec. 13 executed in 1965 and approved in 1967, which disclosed that applicant's residence is partially situated on the subject O & C tract giving rise to a trespass on Government land.

An opinion received from the Office of the Regional Solicitor by the Oregon State Office, BLM, advised that O & C land is not subject to disposal under the Act of September 26, 1968, supra, because the statute authorizes sale only of "public domain" land and the O & C lands do not fall within the category of public domain. Pursuant to this opinion, the BLM classified the subject land for small tract lease under the Act of June 1, 1938, as amended, 43 U.S.C. § 682a et seq. (1970). Subsequently the decision below was rendered denying appellant's public sale application and offering him a small tract lease. With respect to the argument on appeal, we find:

[1] 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. U.S. Department of the Interior, Bureau of Land Management, Manual of Instructions for the Survey of the Public Lands of the United States § 6-4 (1973) (hereinafter cited as Manual); Orion L. Fenton, 1 IBLA 203, 207 (1971); Alfred Steinhauer, 1 IBLA 167, 171 (1970). The objective of the dependent resurvey is to retrace and reestablish the lines of the original survey in their true original positions according to the best available evidence of the positions of the original corners. Restoration is based upon identified existing corners of the original survey and other recognized and acceptable points of control, and upon the reestablishment of missing corners by proportionate measurement in accordance with the record of the original survey. Manual § 6-25; Nina R. B. Levinson, 1 IBLA 252, 256, 78 I.D. 30, 34 (1971); Alfred Steinhauer, supra at 171.

A lost or missing corner is a point of a survey whose position cannot be determined, beyond reasonable doubt, either from traces of the original marks or from acceptable evidence that bears upon the original position, and whose location can be restored only by reference to one or more interdependent corners. Manual § 5-20. The proportionate measurement method of relocating a lost corner is always employed unless outweighed by conclusive evidence of the original survey. Manual § 5-21. Thus, proportionate measurement is the accepted method of reestablishing a survey corner unless outweighed by conclusive evidence of the original survey.

[2] Surveys of the United States, after acceptance, are presumed to be correct and will not be disturbed except upon clear proof that they are fraudulent or grossly erroneous. In challenging a Government resurvey, an appellant has the burden of establishing by clear and convincing evidence that the resurvey is erroneous and not an accurate retracement and reestablishment of the lines of the original survey. Nina R. B. Levinson, *supra* at 256, at 33-34. Appellant cannot expect the Department to assume his burden of searching the record and the law to find reversible error. Mrs. J. W. Moore, 8 IBLA 261, 262 (1972).

The allegations of the appellant in his statement of reasons are essentially conclusory in nature. He fails to make sufficient factual allegations to compel a conclusion that the dependent resurvey is in error. Appellant alleges that there is a "corner tree" or bearing tree which has been used to identify the boundary of the property on prior occasions and that the corner located by proportionate measurement is inconsistent with this tree. However, appellant fails to relate this landmark to the original survey of the tract upon which the patent to appellant's land was based. In order to show that the corner established by the resurvey is in error, the appellant would have to show that the subject tree was a bearing tree for the corner in the original survey, that the original survey corner can be located using this tree, and that the corner as located in the original survey is in a substantially different location from that established by the resurvey.

[3] Regarding the appraisal of the subject tract of land for purposes of leasing under the Act of June 1, 1938, as amended, *supra*, appellant has offered no factual allegations to support his conclusion that the appraisal is too high. An applicant for a small tract lease who contends that the rental set by the BLM appraisal is excessive has the burden of proving by substantial and positive evidence that the appraisal is in error. Harold Kyllonen, 16 IBLA 86, 91, 81 I.D. 364, 366 (1974). This burden has not been met in this case.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Anne Poindexter Lewis
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Martin Ritvo
Administrative Judge

