

NARRATIVE AND METHOD OF SURVEY FOR NANCY ORDWAY
IN
PORTIONS OF THE HIRAM SMITH DONATION LAND CLAIM, NO. 45,
NE1/4SW1/4 of Section 2, Township 1 South, Range 10 West,
of the Willamette Meridian, Tillamook County, Oregon.
June 4, 1988

DISCUSSION:

The primary difficulty with this survey was proving which deed record value along the north boundary of the Hiram Smith D.L.C. was to prevail for determination of the positioning of the west boundary of the Nancy Ordway Tract. Ultimately, the deed record call of 1300 feet from the northeast corner of the Barview Addition to Bay City was held, as said distance can be found to be the most senior right, as contained in Warranty Deed from J.T. and Clara B. McChesney, husband and wife, grantors, to United Railways Company, grantee, as recorded in Book 19, Page 445, of the Tillamook County Deed Records, dated March 31, 1911. Evidently, subsequent partitioning to the west of this line intended to convey the entire width of the United Railways Tract as the east/west dimensions of adjoining properties, when added up, equaled 1300 feet, which is consistent with the most senior deed call. Unfortunately, a serious blunder was made in the creation of several of the adjoining documents, and the ensuing discussion will try to outline why this occurred, as it is pertinent to explaining the wide disparity between record title boundaries, and the evidence of occupation which currently exists (see my plat).

On or around 1946, Herbert Miller and Gordon Henderson acquired title to the United Railways Company tract, and commenced to partition same. The exact date of acquisition is unimportant here, as only the date of first partitioning is of significance with regard to the issue of junior/senior rights. The first partition created a tract which had a point of beginning "300 feet east of the Northeast corner of BARVIEW ADDITION to Bay City". On June 10th or 19th (the exact day is unclear, due to water marks on the deed document), 1946, Herbert Miller, et al., grantors, conveyed to Lloyd and Ethel Sperling, grantees, the following described tract:

"Beginning at the intersection of the north boundary line of the Hiram Smith D.L.C. with the east line of the highway running from Tillamook to Bay City, which point is 300 feet east of the northeast corner of Barview Addition to Bay City, and running thence east 352 feet for place of beginning of the tract hereby conveyed, and running thence east 295 feet; thence south 478 feet to the north side of Highway No. 101; thence following said highway northwesterly"

The deed recorded above was a correction deed for the same conveyance recorded in Book 94, pages 485-6, Tillamook County Deed Records, and represents the first of several correction deeds recorded relative to partitions within the former United Railways tract. I only mention this as it may indicate some lack of knowledge regarding deed construction by the creators. Please note the deed call of 300 feet from the northeast corner of the Barview Addition. Although this

Page 1 of 5

See map * B-1312

PAGE 9 A

distance represents a latent ambiguity for this description (the physical monument of the highway would supercede this called distance if it were found to be in error), subsequent partitions within the former United Railways tract ignore the deed call to the point of intersection of the north boundary of the Hiram Smith D.L.C. and the easterly right-of-way boundary of Highway 101, and simply call for distance, utilizing the erroneous 300 feet from the northeast corner of Barview Addition. It is obvious to this surveyor, that subsequent deeds were created by protraction, and not based upon information derived from survey data, as no record of any can be found. Herbert Miller is still alive, and I spent some time with him discussing the creation of these parcels, but his memory was not clear, due to the antiquity of the work. I took him out on the property, and tried to jog his memory as to how the respective partitions were created. He seemed to remember that they were based upon survey data, as he was on the survey crew for the Tillamook County Surveyor (W.E. Anderson) at the time he sold the subject properties. He showed me the location of the 1/2 inch iron bolt in the 2 inch galvanized iron pipe in the center of Warren Street, and said that he remembered that W.E. Anderson held that monument as being on the north boundary of the Hiram Smith D.L.C. (see my plat for clarification). He also showed me a point in the vicinity of the easterly right-of-way boundary of U.S. Highway 101 which he seemed to recall as the control monument for surveys of the subject partitions, but this point falls in the middle of a driveway with a culvert running beneath, and I could find no evidence of any monument at this location. Upon completion of my control network survey, it became obvious that if W.E. Anderson had used any point at that location, all of his surveys would have been grossly in error, and, since Herb Miller's recollection was very uncertain as to the location of this point, I let it drop without further search. I could not get any positive statement from Mr. Miller that the subject partitions were for certain based upon survey information. He could not remember surveying any of the tracts, but he did say that if they had done any surveys, the monuments would have been 2"x2" wooden stakes, as he remembered distinctly that W.E. Anderson was using wooden stakes extensively at that time. Considering how many years have elapsed since the first partitions within the United Railways tract, finding deed monuments to clarify the intent was impossible. This meant going back to the deed data to resolve the ambiguity, if possible.

Unfortunately, we cannot simply hold the point of intersection of the North boundary of the Smith D.L.C., and the easterly right-of-way boundary of Highway 101 and proportion easterly therefrom, as the second partition by Herbert Miller, et al., would not conform to this solution.

The second partition had for a point of beginning, a point "1142 feet east of the northeast corner of BARVIEW ADDITION to Bay City" (see Book 97, Page 313, Tillamook County Deed Records, Herbert Miller, et. al., grantors, to Wilbur Sherman, et ux, grantee, dated June 12, 1946). The balance of the description reads as follows:

Page 2

B - 1812

"and running thence East 158 feet, thence South 554 feet to the North line of the Oregon Coast Highway, thence Westerly along the North line of said Highway 170 feet, more or less, to a point due South of the place of beginning, thence North to place of beginning."

From this description, it is apparent that the intent was to convey a strip of land, being 158 feet in width, along the easterly boundary of the former United Railways Company tract, between the North line of the Hiram Smith D.L.C. and the North line of the Oregon Coast Highway. This tract was again sold by Wilbur Sherman, et ux, grantor, to Anton & Johanna Beeler, husband & wife, grantees, by deed recorded in Book 121, Page 203, Tillamook County Deed Records, dated December 28, 1949. Mrs. Beeler still resides on the property. Upon completion of my traverse control calculations, it became quite apparent that the fences around the Beeler property were not in accordance with the record title boundaries. On May 18, 1988, I interviewed Mrs. Beeler to find out something of the history of the establishment of her fencelines. She stated that at the time they purchased their property, no evidence existed as to the position of record title boundaries (further supporting my contention that no surveys were ever done) so her husband simply paced off along the highway about what he felt they owned, and then paced back 550 feet, more or less, to establish the perimeters of the tract, such that it could be fenced to graze cattle. As can be seen from my plat, this method of establishment certainly explains why the existing fence-lines more closely approximate lying at right angles to the old highway (now Alderbrook Road), and do not conform to record direction. The kink near the middle of the "north/south" fencelines conform to topographic features which would have prevented Mr. Beeler from maintaining a continuous line of sight while pacing. Mrs. Beeler stated that she knew the fences did not conform to record positions, and was willing to move her fences in accordance with deed record, but as can be seen by my plat, such a matter is not quite so simple, as her home does not lie entirely on the property for which she has written right. I went ahead and set the southwest corner of the "Nancy Ordway" tract at deed record position, based upon my discussion with Mrs. Beeler. The disparity between record title rights, and physical evidence of occupation in this area does not stop with the Beeler Tract, either.

On June 21, 1949, Gordon and Irene Henderson quitclaimed all right, title, and interest in the following tract to Herbert and Pearl Miller, as recorded in Book 118, Page 511, of the Tillamook County Deed Records:

"Beginning at the intersection of the North boundary line of the Hiram Smith D.L.C. with the East line of Highway 101, which point is 300 feet East of the Northeast corner of Barview Addition to Bay City, Ore. thence East 842 feet, thence South to the North boundary line of said highway, thence Northwesterly along the North boundary line of said Highway to the place of beginning,"

This description would have created no problem, had it called for the west boundary of the Beeler tract as its east line, but instead, here again it presumed the erroneous 300 ft. dimension and then added 842 feet to it. This, in and of itself does not really

B - 1312

present a problem, as I feel the intent is clearly to quitclaim to the west boundary of the Beeler tract, whether specifically stated or not. Herb Miller subsequently partitioned the remaining "195 feet" to various grantees.

The real problem is that we can prove that the most senior right is to the east boundary of the United Railways tract(1300 feet). We can also prove that deed calls for the distance between the northeast corner of the Barview Addition to Bay City, Ore. and the easterly right-of-way boundary of U.S. Highway 101 of 300 feet were in error. What we now find is a deficiency in measure for those tracts between the easterly line of Highway 101 and the east boundary of the United Railways tract of some 52 feet. This surveyor does not believe that proration is the method of choice in this matter, due to the already wide disparity between occupation and written rights. This surveyor feels that property owners in the area should seek legal rectification for the apparent difference between record title ownership and physical evidence of occupation.

METHOD OF SURVEY:

1. The position of the easterly right-of-way boundary of U.S. Highway 101(1929 alignment) was computed from existing right-of-way monumentation, where available, and the apparent centerline of the Alderbrook County Road(former Hwy. 101). Computed positions were then compared with record ties to the centerline of the S.P. & S. Railroad and the Northwest corner of the Vaughn D.L.C. No. 37, as additional checks on survey accuracy.
2. The computed position for the Northeast corner of the Barview Addition to Bay City, Oregon was derived from the Tillamook County Surveyor 1947 survey of the City of Bay City, as this appears to be the only consistent method with surveys of record, and represents the best fit with physical evidence.
3. The found 1/2 inch iron bolt in 2 inch galvanized iron pipe in the center of Warren Street was held as a point on the North boundary of the Hiram Smith D.L.C. No. 45., as called on the Stannard and Richardson survey of the City of Bay City, Ore, which represents the "survey standard" for surveys within Bay City.
4. I held the deed record distance of 1300.00 feet along the North boundary of the Hiram Smith D.L.C. No. 45, to determine the positioning of the west boundary of the Nancy Ordway tract. See my Discussion, preceding.
5. I held the direction of north/south lines as called in the United Railways deed, and all subsequent partitions to be at right angles to the north boundary of the Hiram Smith D.L.C.

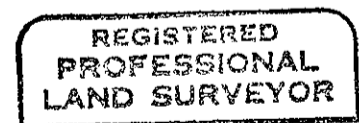
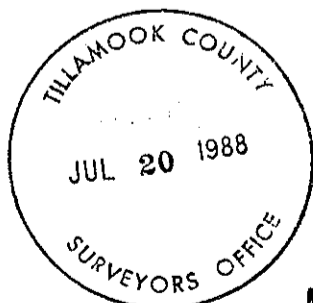
Page 4

B-1312

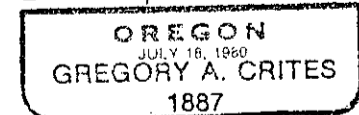
PAGE 9 D

6. I computed the positioning of the centerline of 19th street in Cone and McCoy's addition to Bay City, Ore., based upon the dimensions given for said subdivision in the Tillamook County Surveyors 1947 survey of Bay City, additionally using as a basis for proportionality, the Stannard and Richardson survey of Bay City, between the found monuments along the north boundary of the Hiram Smith D.L.C. at the center of Warren Street, and the southeast corner of the Obed Thomas D.L.C. No. 41(see plat for details). Said proportionality was computed only after deducting for street widths of record.
7. I held, where practical, deed record data for the Nancy Ordway tract. Any deviations are slight, and represent calculations to force mathematical closure of a deed which did not close, and was created by protraction.
8. Although I did not need to actually locate the position of the easterly right-of-way boundary of U.S. Highway 101, 1929 alignment, along the curve, it is worth noting that previous surveys have held record data for the radius and delta angle from the 1929 survey by the Oregon State Highway Division. Let the record show that said survey was in error, and physical evidence of the centerlines of Alderbrook Road, and the present Highway 101 do not support using 1929 record data. I have shown on my plat what I feel represents the best fit, based upon O.S.H.D. right-of-way surveys completed at the time of realignment. Please note that the 1929 survey calls for a bearing equation of 5 minutes of arc between the original alignment of Highway 101, and the 1929 realignment. This equation would render the delta angle shown for the curve in 1929 to be in error.
9. The distance recorded along the North boundary of the Hiram Smith D.L.C. as shown on the Carlich survey(T.C.S.R. plat No. B-733) was in error, but I recomputed it from corollary data supplied by Carlich on his survey, which is the distance I have shown on my plat, for his record data.

Gregory A. Crites R.L.S. No. 1887
 dba Horizons West Land Surveying
 2043 Cedar St.
 Seaside, Oregon 97138 (503)738-3473



Gregory A. Crites



PAGE 9 5 B-1312