

CS # 98018

CONSULTING

Engineers

TENNESON ENGINEERING CORPORATION

PHONE (541) 296-9177

FAX (541) 296-6657

409 LINCOLN STREET

THE DALLES, OR 97058

July 31, 1997

James M. Baumgartner
Black Helterline, LLP
1200 Union Bank of California Tower
707 SW Washington Street
Portland, OR 97205-3529

Mark Womble, Attorney at Law
P.O. Box 1307
Hood River, OR 97031

Reference: Great American Development Company v. Moe

SURVEYORS REPORT

Tennessee Engineering Corporation has been contacted by Mr. James M. Baumgartner of the firm Black Helterline, LLP. and Mr. Mark Womble, PC, Attorney at Law, requested to review two surveys in Section 15, Township 1 North, Range 10, Willamette Meridian, Hood River County, Oregon.

Survey #1, performed by Kevin Dowd for Green Mountain Land Venture, Dick Mueller, Hood River County Survey Recording #94113. The second survey was done by Roy Gaylord, Terra Surveying for Kenneth and John Moe, Hood River County Survey #96073. The purpose of the review was to determine, if possible, which of the two surveys best represented the true property line between the two abutting parties where the survey lines were common, and provide a written opinion as to the basis of such a decision. The review work was performed in May and June of 1997 by Don J. Rohde; Oregon Registered Land Surveyor #1313, and Don J. Branton; Oregon Registered Land Surveyor #385, both principles of the firm of the Tennessee Engineering Corporation. The following is the findings of such review.

GENERAL

- 1) There appears to be no particular discrepancy between the old surveys of record and the deeds describing the subject line. There is a discrepancy between the originating survey and the coordinates of the point of beginning on the tract to the south. (Tract 2, see paragraph 4 below.)

EXHIBIT A

- 2) The deed of the property to the south of the line most certainly originated as a result of surveys recorded in County Survey Records #0084 which includes the entire subject area, and #0086 which appears to be an earlier copy of the survey #0084 showing only two parcels and containing a typed legal description used in the deed for the property to the south, more particularly described as Tract 2 on the survey.
- 3) All of the properties in this area and other properties in the area are described as coordinates being north and easterly of the center of Section 15.
- 4) There is an obvious error between the description of the point of beginning of Tract 2, described as being 1,238 feet north and 544 feet east of the center of the Section, and the plat map survey information given. In order for the point of beginning to fall as shown in the survey and also match the legal descriptions for the other adjacent tracts, this north coordinate needs to be 1,218 feet. There is a penciled mark-in on the recorded survey #0086 indicating such a correction, however, the deeds are still utilizing the original 1,238 foot dimension to an iron pipe. This correction is necessary for all of the parcels to fall on a straight line along the centerline of the old County Road as shown on the survey, and be 175 feet apart as also shown on the survey.
- 5) It is apparent that from the record there has been more than one position established for the center of Section 15.

With this information established, interviews were conducted by Mr. Rohde, and the two surveyors involved in the work. During such interviews, both surveyors provided additional insight in to how they performed the work and additional research information which was gone over again by Tenneson Engineering Corporation. The following specific comments applied to the individual surveys.

DOWD SURVEY

Mr. Dowd provided considerable volume of research of prior surveys, deeds, records, existing alignment maps by the Highway Department, and review of his calculations and methods of survey. It is apparent from the Highway Department Right-of-way maps that in addition to the center of section utilized in 1940 for the preparation of the descriptions of the subject properties, there have been at least two other positions of the center of the section shown. State Highway maps show such positions, including coordinates for all three points. There is a discrepancy for the 1940 center of section coordinates between the right-of-way maps drawing 9B-2-11 May, 1967 and drawing 9B-30-5 April, 1988 which shows coordinates for all three centers of section positions. This discrepancy between the two maps on the 1940 center of section is approximately 15 feet. Mr. Dowd contacted Oregon State Highway Survey section, who was unable or unwilling to provide any reconciliation of this difference. Mr. Dowd's procedure was

then to attempt to reconstruct the position of that missing point, by virtue of other prior surveys. In his research he uncovered a survey by Dan Cron, which developed a position for this missing center of section point from found monuments set in other surveys in the immediate area that had utilized the subject point as a starting monument. Mr. Dowd's opinion was that the point he re-established was within a foot or less of that position developed on the Cron survey. Our review would have to agree with this assumption.

Mr. Dowd then attempted to develop the starting point for the line in question, by traversing to the north and east of this position by retracing the survey information on the old original survey #0086. He recovered an old iron pipe point of beginning of Tract #2, with an old tool handle projecting above ground at the southeasterly corner of Tract 2 of the original 1940 survey, as well as a half inch iron pipe lying almost exact deed call distance 350 feet southwesterly, which would have been the apparent southeast corner of Tract 1 of this survey. Noted that these were also found in a prior survey, Hood River County #93062 by Dan Cron. Mr. Dowd projected this line northeasterly, the deed call distance of 175 feet shown on the old 1940 survey and produced the subject line in question at right angles to the line established by these two pins up to the north line of Section 15. He did note discrepancy in lines of occupancy, which he took the trouble to monument and note on his maps.

DISCUSSION

It was apparent that Mr. Dowd had done an extremely thorough job of research on this project recovering both the deed records and surveys in the area, since 1940. His method of surveying was logical and seem to fit the old survey very closely. His basis of bearing, obviously taken from Geodetic North, matched the Mount Hood Highway survey centerline within less than 20 seconds of angular error and matched the 1940 survey from which the descriptions were taken within $0^{\circ}04'$ of angle. The file number on the Dowd survey is #94113.

GAYLORD SURVEY

Gaylord survey is based on somewhat different concepts and a little different information than the earlier Dowd survey. Mr. Gaylord attempted to located the missing center of section 1940 version utilizing coordinates from the Highway Department. He referred to both Highway Department drawings used by Mr. Dowd, but did not say which set of coordinates that he utilized. He then made an extensive search along the old County Road centerline finding a series of iron pipes, two of which were found in the prior surveys by Mr. Cron and Mr. Dowd. He also located the iron tool handle above ground, where Mr. Dowd had recovered a pipe along side of it but did not indicate the presence of the iron pipe, and he found an old iron pipe to the west some 10 or 15 feet away to the west, which according to his survey notes and Mr. Gaylord, was stated position of the pipe according to the widow of C. R. Nastey who talked to Mr. Moe about the pipe location in September 14, 1996. At this point the procedures between the two surveys became radically different.

Mr. Gaylord then attempted to develop an inverse bearing line from the coordinate position indicated on the highway maps for the 1940 center of section, and this found iron pipe as related to the coordinate differentials given in the original 1940 deed description, which was then developed a basis of bearing for the survey work with which to establish the subject line in question. He did not acknowledge the difference between the call northing of the deed point of beginning and the calculated northing required to fit the old 1940 survey. Doing this, he used global positioning system converted to latitude and longitude and then to North Zone Grid coordinates to make the relationship. He then produced the old County Road centerline northerly from the found iron pipe based on the angular difference from his computed inverse to the center of section and the original survey computed bearing inverse. Using this computed bearing, he then extended the subject line at right angles northwesterly to complete his survey. The end result of this procedure was a line rotated approximately 1 degree clockwise, or lying to the north side of the line established by Mr. Dowd. When this was projected to the northwesterly end of the line, it resulted in a difference between the two lines of approximately 50 feet when measured at right angles to the Dowd line. Mr. Gaylord utilized north zone coordinate system bearings on his survey, when corrected to a true bearing from Geodetic north resulted in a line bearing approximately 1°00' from the original survey bearings. This difference is represented by the difference between the two surveys. Mr. Gaylord indicated on his plat map, references the prior survey works, but had not placed much credibility in the information on those surveys, relying more on the found monuments and the global position inverse between the calculated center of section taken from the coordinates on the Highway Department map.

DISCUSSION

There is little questions in the minds of the reviewing surveyors that the Dowd survey represents the correct line. The research was excellent. The information involved a retracement, including prior surveys related to the original survey and was based in fact on found monuments, which the one referred to a found iron pipe adjacent to the tool handle was believed to be one of the original survey points. During the interview, Mr. Dowd stated that he had searched the area in 1994 where the other iron pipe was found by Mr. Gaylord in 1996 and had not found anything. When he had gone back to the site, just prior to the interview time, the pipe that had been set along side the tool handle was gone and the pipe found by Mr. Gaylord was marked some distance to the west. The procedure used by Mr. Gaylord is at best subject to problems, especially with the error in the point of beginning of the description, which was assumed to be represented by the found pipe that Mr. Gaylord utilized for the basis of inverse from his calculated coordinate position for the center of section. The Highway Department was unsure of which one of those coordinates were wrong and the 15 feet in the coordinate position would be enough to seriously effect the Gaylord procedure. Mr. Gaylord did not tie his survey into any of the highway monumentation to verify his basis of control for his survey.

Lastly, the pipe that Gaylord did find was indicated to lie along side a 38" diameter fir tree. The pipe set in the original survey, as described in the deed, and as per survey #0084 was in

the center line of the road in 1940. We as reviewers simply do not believe that a tree in the center of a road in 1940 has grown to that size in 50 years. The found pipes, even on the Gaylord survey, project through the tool bar handle position. We simply believe the Gaylord procedure has too many possibilities for discrepancy in view in the discontinuity in the deed description and the survey of the original deed point of beginning coordinates, the dual positions given on the highway maps for the same old 1940 center of section position, absolutely no effort to utilize the prior survey which did find other survey monuments referenced from that position and no verification tie into highway monumentation.

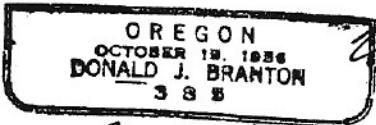
CONCLUSION

Based on these facts as reviewed, it would be our mutual decision that the Dowd Survey #94113 would be the survey best representing the position of the deed described line in question.



Respectfully submitted,

TENNESON ENGINEERING CORPORATION



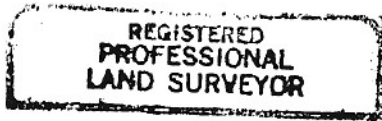
Donald J. Branton

Donald J. Branton, Registered LS

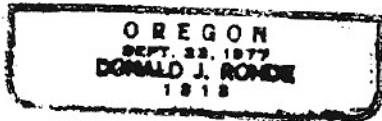
renew 12/31/97

Donald J. Rohde

Donald J. Rohde, Registered LS



DJB;js



EXPIRES 12-31-98

Parcel 1: Beginning at an iron pipe that is 1238 feet North and 544 feet East of the center of Section 15; Township 1 North, Range 10 East of the Willamette Meridian; thence North 29° 38' East along the Old County Road a distance of 175 feet; thence North 60° 22' West a distance of 2489.2 feet; thence South 29° 38' West a distance of 175 feet; thence South 60° 22' East a distance of 2489.2 feet, more or less, to the place of beginning; EXCEPTING THEREFROM any portion thereof that is North of the North line of said Section 15; and ALSO EXCEPTING therefrom any portion thereof that is within the boundaries of those two tracts of land conveyed by Augustine Nex, one tract to Reuben Duda et ux., by deed recorded August 12, 1944, in Book 31 page 172, and the other tract to Bert T. Massey et ux., by deed recorded July 19, 1950, in Book 43, page 187, Deed Records Hood River County, Oregon; ALSO EXCEPTING THEREFROM that portion conveyed to the State of Oregon, by and through its Department of Transportation, Highway Division, by deed recorded April 17, 1978, as Recorder's Fee No. 780802.

Parcel 2: All that portion of Government Lot 7, Section 15, Township 1 North, Range 10 East of the Willamette Meridian, that is Westerly of the West line of the Mount Hood Loop Highway, Easterly of the old County Road, and Northerly of the following described line, to-wit:

Beginning at an iron pipe that is 1238 feet North and 544 feet East of the center of said Section 15; thence South 60° 22' East to the West line of the Mount Hood Loop Highway; EXCEPTING THEREFROM any portion thereof that is within the boundaries of that tract of land conveyed by Augustine Nex to Reuben Duda et ux., recorded June 23, 1943, in Book 30, page 144, Deed Records, Hood River County, Oregon; ALSO EXCEPTING THEREFROM that portion conveyed to the State of Oregon, by and through the Department of Transportation, Highway Division, by deed recorded April 17, 1978, as Recorder's Fee No. 780802, Film Records.

EXHIBIT

B

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FILED
HOOD RIVER COUNTY
MAY 7 4 54 PM '98

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF HOOD RIVER

TRIAL COURT CLERK
BY

GREAT AMERICAN DEVELOPMENT CO.,
an Oregon corporation,

Plaintiff,

vs.

KENNETH L. MOE and JONNY K. MOE, husband and wife,
Defendants.

No. 96-0039CC

STIPULATED DECREE
QUIETING TITLE TO
REAL PROPERTY, AND
JUDGMENT IN
DETERMINATION OF
STATUTORY ACTION TO
ESTABLISH BOUNDARY

This matter having come before the court upon the stipulations of the parties hereto, plaintiff appearing through their attorney James M. Baumgartner, and defendants appearing through their attorney Mark S. Womble, and the court having approved by tele-conference hearing dated April 22, 1997, and upon the stipulation of the parties, the appointment of registered land surveyor Donald J. Rohde of Tenneson Engineering as commissioner pursuant to ORS 105.705 et seq. to resolve uncertainties as to the location of the parties common boundary line arising from inconsistent conclusions reached in prior surveys recorded in the Hood River County Survey records, to wit: Survey No. 94113 filed November 3, 1994, Survey 94131 filed November 25, 1994, and the Plat of Green Mountain Ranch, filed as Survey No. 96061 in August, 1996, and also recorded as Hood River County Fee No. 962644, each by Kevin Dowd of Wyeast Surveys [hereinafter the "Dowd line"], and Survey No. 96073 filed October, 1996 by Roy Gaylord of Terra Surveying [hereinafter the "Gaylord line"], and to determine the boundary line between the parties respective properties based upon the legal descriptions set forth in the parties' respective deeds; and the report of commissioner Rohde dated July 31, 1997, attached hereto as exhibit A, having adopted the Dowd line as the true deed line between

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1 the parties respective properties according to the parties respective deed descriptions and
2 based upon an error in defendants and defendant's predecessors deed descriptions, and
3 said report having been filed by the Hood River County Surveyor as No. 98-018; and the
4 parties having stipulated that notwithstanding the location of the "true deed line" as
5 determined by the commissioner, that the defendants herein have nonetheless established
6 ownership of a portion of the property lying on the plaintiff's side of the true deed line
7 pursuant to the legal doctrines of boundary by acquiescence and adverse possession,

8 NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND
9 DECREED:

10 1. The report of Donald J. Rohde (attached as exhibit A hereto) and it's
11 determination of the center point of section 15 and the location of plaintiff's and
12 defendants parcels is hereby confirmed and accepted in all respects, and the boundary
13 line between the plaintiff's property (described as the **Plat of Green Mountain Ranch**,
14 Hood River County Recorder Fee No. 962644) and defendants' property (described in
15 exhibit B hereto), is and shall be located consistent therewith, and as determined and
16 monumented by Kevin Dowd in Hood River County Survey Nos. 94113, 94131, and the
17 Plat of Green Mountain Ranch, Survey No. 96061, recorded as Hood River County
18 Recorder Fee No. 962644 [said boundary herein referred to as the "Dowd line"].

19 2. Title to all property described in the **Plat of Green Mountain Ranch** lying to
20 the north of the Dowd line, except for Tract A of the Plat of Green Mountain Ranch, is
21 hereby quieted in plaintiff, and plaintiff is hereby declared to be the owner in fee simple
22 and entitled to the possession thereof, free of any estate, title, claim, lien or interest of
23 defendants or those claiming under defendants.

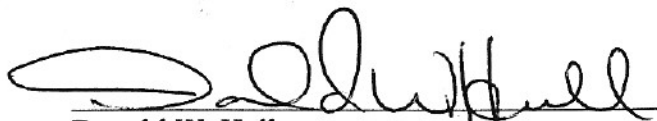
24 3. Title to **Tract A in the Plat of Green Mountain Ranch** is hereby quieted
25 in defendants based upon adverse possession and boundary by acquiescence, and
26 defendants are hereby declared to be the owners in fee simple and entitled to the

1 possession thereof, free of any estate, title, claim, lien or interest of plaintiff or those
2 claiming under plaintiff.

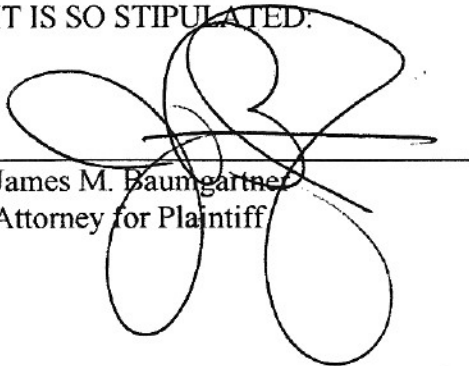
3 4. Title to all property described in exhibit B hereto, as further described and
4 located by the report of commissioner Rohde attached hereto as exhibit A, is hereby
5 quieted in defendants and defendants are hereby declared to be the owners in fee simple
6 and entitled to the possession thereof, free of any estate, title, claim, lien or interest of
7 plaintiff or those claiming under plaintiff.

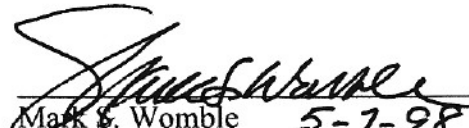
8 5. All other claims of the parties herein are dismissed with prejudice, and
9 neither party shall recover damages, costs, disbursements or attorneys fees from the
10 other.

11 DATED this ^{7th} ~~25th~~ day of ^{MAY} ~~March~~, 1998. DWN

12 
13 Donald W. Hull
14 Circuit Court Judge

15 IT IS SO STIPULATED:

16 
17
18 James M. Baumgartner
19 Attorney for Plaintiff

20 
21 Mark S. Womble 5-7-98
22 Attorney for Defendant