

FILED

Date: 7/16/2008 By: JC

This survey consists of:

Map: M156-28

Narrative: C.S. 65/64-6A-C

Corner Rpt: _____

DOUGLAS COUNTY
SURVEYOR

**Narrative to Accompany the
Boundary Line Adjustment Survey in the
NE1/4 of Section 28, T. 29 S., R. 7 W., W. M.
Douglas County, Oregon
March-May, 2008
Survey Map No. M156-28**

PURPOSE: This survey was performed to monument the corners of a Boundary Line Adjustment per Douglas County Planning Department file No. 08-M018 to convey 6.00 acres from Candice and David Taylor to Leonard Herzstein and Sharon Sinderbrand. A point on the property line between the Taylors and Patrick Hogan was also monumented just north of Freadman Lane.

- HISTORY:** 1855, Nathaniel Ford, G.L.O. surveyor, partially subdivided Township 29 South, Range 7 West, including all of the exterior section lines of section 28.
- 1897, William F. Briggs, Douglas County Surveyor, retraced the East half of the North section line of section 28 as part of his mining ditch survey for the Olalla Mining Company in Field Book 2, pages 25-29.
- 1897, Eugene Schiller, G.L.O. surveyor, resurveyed South half of the East section line of section 28 as an element in segregating two mining claims in section 27, as shown on the plat dated 1898.
- 1966, John M. Jelley, B.L.M. cadastral surveyor, resurveyed the North section line of section 28 as an element of the subdivision of section 21, as shown on the plat dated 1970. He monumented the original section corner of sections 21, 22, 27, and 28 and the original one-quarter corner of sections 21 and 28. He established the East one-sixteenth corner of section 21 and 28.
- 1972, Victor M. McLind, Oregon Registered Land Surveyor No. 934, resurveyed the exterior section lines and subdivided section 28, as an element of his creation of "Byron Creek Estates" on filed survey map RM2-35. He established the Center one-quarter and the Center East one-sixteenth corners.
- 1974-1976, Harvey E. Wofford, G. Steven Popken, and James J. Carlson, B.L.M. cadastral surveyors, resurveyed the East section line of section 28 as part of their resurvey around section 27, as shown on the plat dated 1978. They re-established and monumented the one-quarter corner of section 27 and 28 by the irregular boundary method.
- 1992, Leonard E. Herzstein, Oregon Registered Land Surveyor No. 2150, resurveyed the West half of the East half of the section line between sections 21 and 28 on filed survey map M114-65. He established the West-East 1/64 corner of the section line.
- 2008, Leonard E. Herzstein, Oregon Registered Land Surveyor No. 2150, perpetuated the Center one-quarter and the Center East one-sixteenth corners of section 28 and the East one-sixteenth corner of section 21 and 28 in C.S. File 65/63, sheets 14-16.

C.S. File No. 65/64-6A

PROCEEDURES: The survey was performed with a Nikon DTM-530 one-second total station in a series of closed traverse loops. The loop closures varied from 1:4000 to 1:34,000. The traverse loops were not adjusted. The Taylor's East and West property lines were determined to establish the new property corners on-line. The East-West section centerline between the Center one-quarter and the Center East one-sixteenth corners was traversed to compute the mid-point position for the Center-West-East 1/64 corner.

The point on the property line between the Taylors and Hogan is 10.5 feet northerly of the centerline of Freadman Lane. The centerline intersection is the NW corner of the 100-foot by 100-foot parcel known as Tax Lot 201.

The remaining acreage of the E1/2 of the W1/2 of the NE1/4 of section 28 after the transfer of the 6.00 acres is 32.89 acres.

McLind's subdivision of section 28 was possibly performed incorrectly, as there is a discrepancy between the mid-point position he used for the one-quarter corner of sections 27 and 28 and the position monumented by the B.L.M. in 1974. See my following analysis.

I used the bearing of N. 89° 15' W. on the section line between sections 21 and 28 from M144-65 and B.L.M. as the basis of my bearings.

The 3/8 inch rebar monuments set are as follows:

- along the adjustment boundary, these two are 12 inches long, driven to refusal;
- the point on line north of Freadman Lane is 24 inches long, driven flush with the ground.

ANALYSIS: Because Victor McLind's subdivision of section 28 did not follow the legal methodology, I completed the following analysis.

The true position of the Center of the section, known as the Center one-quarter, is found by intersecting the section centerlines from opposing one-quarter corners on the section's exterior lines. Intervening one-sixteenth corners on the section centerlines are positioned at mid-point between their controlling one-quarter corners. Lost one-quarter corners are normally re-established proportional to the official record distances. This is the proper methodology for a section subdivision, as described in the B.L.M. Manual of Survey Instructions.

Victor M. McLind, L. S. 934, subdivided section 28 in 1972 on Roll Map 2-35, "Byron Creek Estates". He monumented the Center one-quarter and Center East one-sixteenth corners of section 28. For his subdivision of section 28, he utilized perpetuations of the original one-quarter corners of sections 21 and 28 and of sections 28 and 33. At the one-quarter corners of sections 27 and 28 and of sections 28 and 29, McLind did not recover the original corners. He proportioned these corner positions at mid-point between the found section corners, which is based on the original record. Neither of these two corners was monumented by McLind.

Howard W. Johnstone, L. S. 498, in 1980 resurveyed the section line between sections 28 and 29, returned substantially the same measurements as McLind, and used the mid-point for the one-quarter corner position (M83-63). Surveyor Johnstone did not monument the one-quarter corner. The one-quarter of sections 28 and 29 falls inside a Donation Land Claim and has not been reset since.

The one-quarter corner of sections 27 and 28 was re-monumented in 1974 by Wofford, Popken, and Carlson, B.L.M. Cadastral Surveyors, by the irregular boundary method. They used the found position of corner 1 of the Bell Placer Mine, which was established on the section line by Eugene Schiller, U. S. Mineral Surveyor, in 1897. This mining claim corner was not utilized by McLind in 1972 to proportion the one-quarter corner.

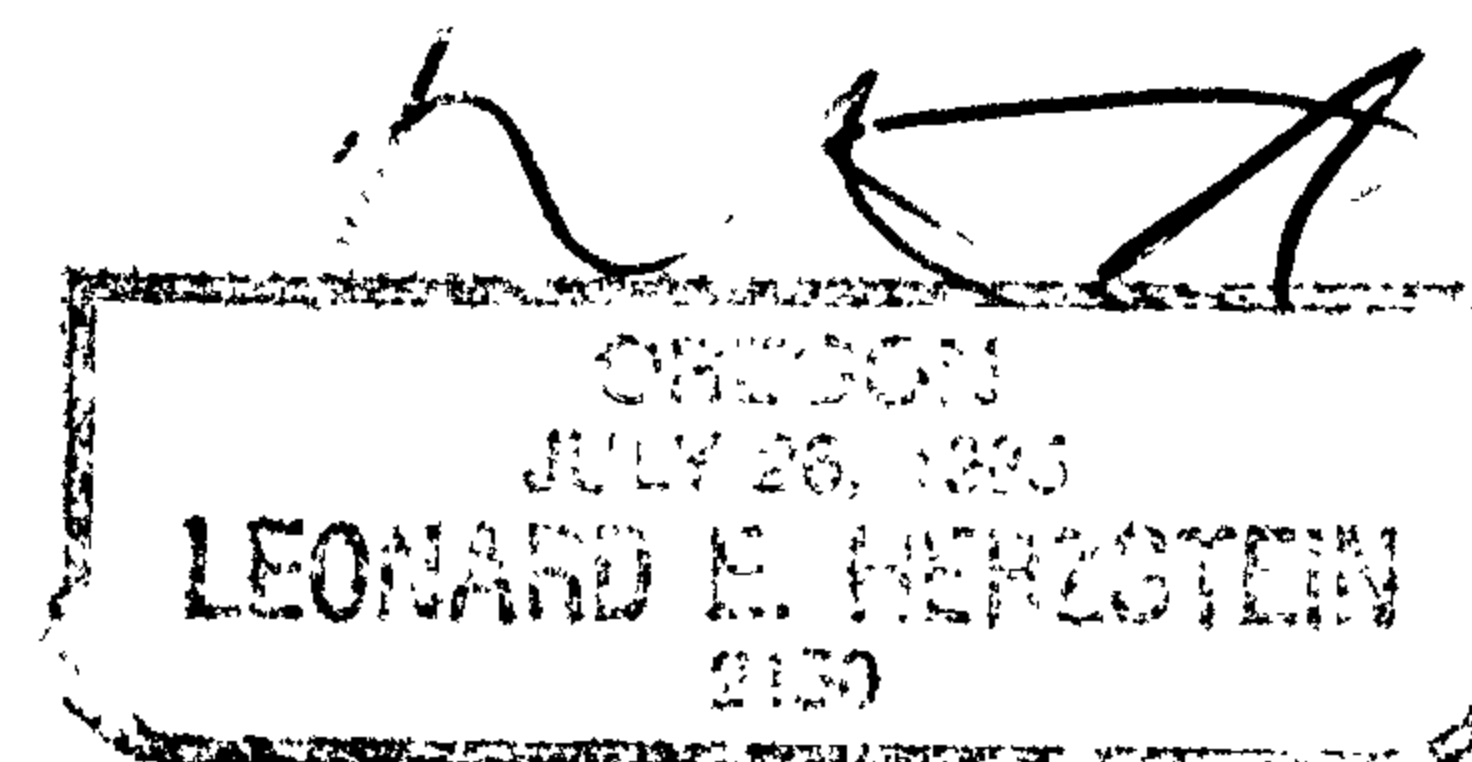
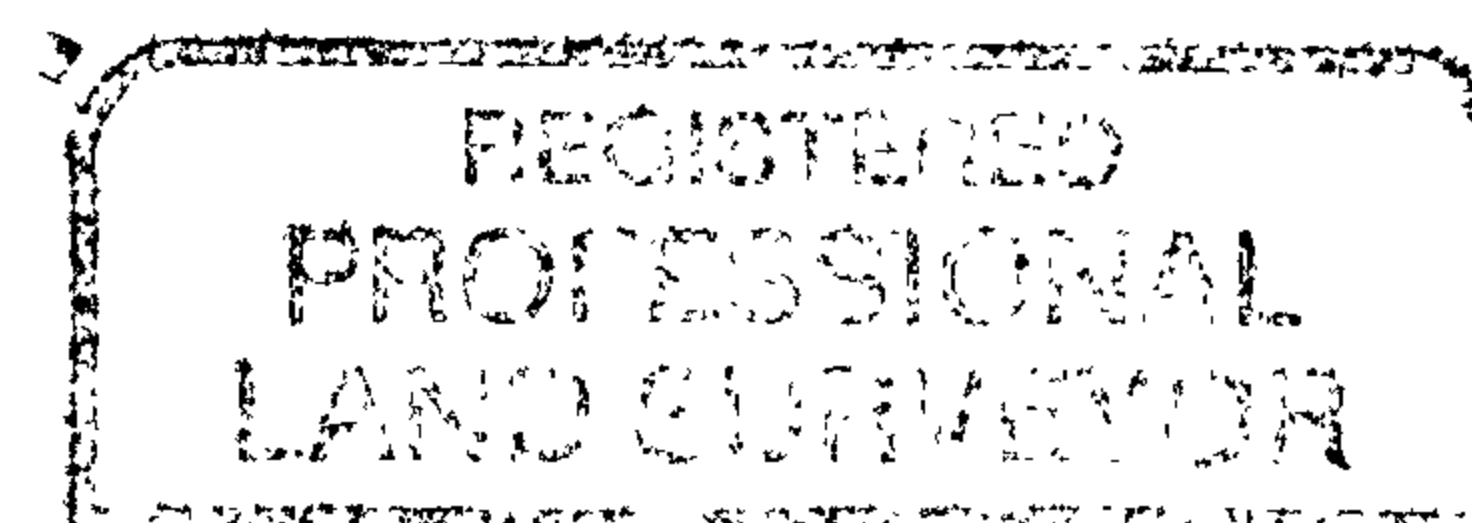
The calculated distances between the sections corners as returned by McLind and the B.L.M. survey are 5295.25 feet and 5295.71 feet, respectively. The mid-point placement of McLind's theoretical 1972 one-quarter corner is within a foot in North-South position and 16.72 feet West of the 1974 B.L.M. position. My analysis of a new section 28 subdivision employing the B.L.M. corner position would place a corrected Center one-quarter corner within 1/4 foot of McLind's position. 1/4 of a foot is easily within the tolerances anticipated from a survey performed in the 1970's. Even if McLind used the irregular boundary method to determine the one-quarter corner of sections 27 and 28 position, he could have placed his monument exactly where he did by mistake. I accept McLind's 1972 monument as the position for the Center one-quarter.

Continuing my analysis, using the 1974 B.L.M. one-quarter corner, a corrected position for the Center East one-sixteenth would place it 8-1/2 feet easterly of McLind's 1972 monument. Two recorded surveys, M133-22 in 1999 and Partition 2007-0061 in 2007, used McLind's monument in retracement of their surveys. In addition, 11 of the Byron Creek Estate lots and a resurvey (M138-29) of one of these lots in the SE1/4 of section 28 are dependent on this monument. Also, logging activities in the NE1/4 and the SE1/4 have utilized this corner monument. Based on the B.L.M. Master Title Plat, there are no federal land interests remaining in section 28, so B.L.M. was not consulted in my analysis. I accept McLind's 1972 monument as the position for the Center East one-sixteenth corner, because of the 36 years this monument has been in place and the dependence placed on it by the landowners.

The Oregon Court of Appeals in *Dykes v. Arnold*, 129 P 3rd 257, (2006), concurs that a local surveyor who subdivides a section is performing a function contemplated in law. The Oregon Revised Statutes in Chapter 209 extends the County Surveyor function to Registered Land Surveyors. McLind's survey becomes the original survey for the interior of the section and despite the error in it, "an original county survey marking the center of a section, despite flawed methodology, should be deemed an original survey, one that is "left in repose" and given legal effect."

LEONARD E. HERZSTEIN JR. SERVICES
OREGON L.S. 2150
1741 BYRON CREEK ROAD
WINSTON, OR 97496

MY CURRENT CERTIFICATE
EXPIRES 06/30/2009



07/10/2008

C.S. File No 65/64-6c