

M 167-25

Date: 2/11/2014 By: NW

This survey consists of:

Map: M 167-25

Narrative: CS 65/81-4 A-C

Corner Rpt: \_\_\_\_\_

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**Narrative for the Property Boundary Survey for Richard and Linda Mehlhaff**  
**Byron Creek Estates Subdivision**  
**In the NE1/4 of Section 32, T. 29 S., R. 7 W., Willamette Meridian**  
**Douglas County, Oregon**  
**October-January, 2014**

**PURPOSE:** This survey was performed to locate and monument the corners of the property of Richard and Linda Mehlhaff. Since three of the unmonumented corners fall within the creek banks of Olalla Creek, I established points on line to witness these corner positions.

**SURVEY 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 32.  
 1866, Linus and Lucinda Bushnell acquired the East half of the Northeast quarter of section 32 from the federal government in document no. 594 under the 1850 Oregon Donation Act.  
 1876, Edmund Gage acquired the West half of the Northeast quarter of section 32 from the federal government in document no. 634 under the 1862 Homestead Entry Act.  
 1892, William F. Briggs, Douglas County Surveyor, surveyed a 10 acre parcel of the Bushnell Homestead for Henry Bushnell in Old Volume 1, pages 223-224.  
 1924, Fred Mensch, G.L.O. Civil Engineer, retraced the South, North, and East boundaries of section 32 as an element of surveying Township 29-1/2 South, Range 7 West, as shown on the G.L.O. plat dated 1926.  
 1928, G.L.O. supplemental plat of section 32 showing new government lotting.  
 1970, James W. Byron, Douglas County Surveyor, surveyed the North-South centerline of section 32 and set the approximate Center one-quarter corner on filed survey map C.S. File 54/115.  
 1972, Victor M. McLind, Oregon Registered Land Surveyor No. 934, resurveyed the East half of the North section line and the North half of the East section line of section 32, as an element of his creation of "Byron Creek Estates" on filed survey map RM2-35. He utilized William Briggs' 1892 survey to establish the boundaries of Byron Creek Estates in section 32.  
 1975, Herbert L. Northcraft, Oregon Registered Land Surveyor No. 230, performed a land partition in the Southeast 1/4 of the Northeast 1/4 of section 32, based on the 1892 survey, on filed survey map M57-62.  
 1976, Russell B. Bass, Washington Registered Land Surveyor No. 9130, established the Center East one-sixteenth corner of section 32, based on the 1928 Supplemental Plat utilizing James Byron's approximate Center one-quarter corner, on filed survey map M62-52.

- 1978, Glen S. Baughman, Oregon Registered Land Surveyor No. 536, performed a land partition in the Southeast 1/4 of the Northeast 1/4 of section 32, based on the 1892 survey. on filed survey map M74-20.
- 1980, Howard W. Johnstone, Oregon Registered Land Surveyor No. 498, retraced the East half of the North section line of section 32 as an element of his subdivision of section 29 on filed survey map M83-63.
- 1991, Ronald Geisler, Oregon Registered Land Surveyor No. 1988, perpetuated the Center East one-sixteenth corner as established on M62-52.
- 2000, Ted C. Baker, Oregon Registered Land Surveyor No. 2488, subdivided section 32 on filed survey map M136-9. He re-established the Center one-quarter and Center East one-sixteenth corners in new locations based on the 1928 supplemental plat. He did not utilize monuments set by Victor McLind in 1972 on the North section line.

**PROCEDURE**: The survey was performed with a Nikon NPL-350 one-second total station in a series of closed traverse loops. The loop closures varied from 1:7,400 to 1:37,000. The traverse loops were not adjusted. I used the record bearing of West on the South boundary of Lot 49 from Victor McLind's Byron Creek Estates survey in 1972 as the basis of my bearings.

See my analysis below of the subdivision lines in the Northeast quarter of section 32.

Except for the Northwest corner of Lot 50, all controlling corners of the Byron Creek Estates survey were found. The Southeast corner of Lot 50 was found 10 inches below the surface. All other found corners were projecting 4 to 8 inches above the ground. The Northwest corner of Lot 50 was re-established 15.8 feet beyond the end of and on the projection of an existing fence line between Lots 52 and 50. The adjoiner, Lawrence Armstrong, said the original corner was in existence after the fence was built.

New property corners were created in 1991 with the reciprocal deeds, nos. 91-19382 and 91-19383. These deeds utilized the Byron Creek Estates survey measurements. There is a slight distortion between the 1972 survey and my measurements, so that all bearing and distances of the deeds cannot be honored to locate the 1991 corners. To locate the new corners, I used the deed distances along the lot lines of 329.65 feet and 300.00 feet, respectively.

**ANALYSIS**: McLind's 1972 survey of the Byron Creek Estates within section 32 was a subdivision of the land originally settled by the Bushnell family. This is the East half of the Northeast quarter of section 32, minus the 10 acre parcel surveyed by Briggs in 1892. McLind followed Briggs' 1892 survey of the same Bushnell property.

Briggs surveyed the North-South centerline of the Northeast quarter between Bushnell and Gage based on the 1855 G.L.O. survey. But he did not perform a comprehensive subdivision of section 32, or use the proper methodology. A proper section subdivision would have been to run the section centerlines between opposing one-quarter corners to establish the Center one-quarter, then subdivide the Northeast quarter of the section. Instead, Briggs ran lines in cardinal directions and at 20 and 40 chains as depicted on the 1855 G.L.O. plat, in a practice known as stubbing. Because all of the Northeast quarter of section 32 was held in private, Briggs' survey performed the function as contemplated in the law. No matter that his method would not be considered legitimate nowadays.

The 1924 G.L.O. survey and the subsequent 1928 G.L.O. Supplemental Plat, changed the way surveyors and landowners looked at the property lines in section 32. Because Ford's 1855 G.L.O. survey was also performed by stubbing, there was great distortion in section 32. The 1924 survey found that the southern half of section 32 is over 10 chains (660 feet) shorter than depicted in the 1855 survey. The 1926 G.L.O. plat noted that the entire section was patented. The 1928 Supplemental Plat was prepared after landowners in the South half of section 32 cancelled their government patents. They were then issued new patents with the 1928 government lot descriptions and additional property in other sections to gain their requisite 160 acre allotments.

Since 1976, various surveyors have ignored Briggs' 1892 survey and established new property lines wholly based on the 1928 G.L.O. Supplemental Plat. These surveyors seem to be practicing simplistic surveying, disregarding evidence, and ignoring precedence and common law. I accept McLind's Byron Creek Estate survey as the East half of the Northeast quarter of section 32, because it is based on Briggs' 1892 survey.

The Oregon Court of Appeals in *Dykes v. Arnold*, 129 P.3<sup>rd</sup> 257, (2006), concurs that a county surveyor who subdivides a section is performing a function contemplated in law. Briggs' survey becomes the original survey for the interior of the section and despite the error in it. My analysis is based on the court's statement "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."

