

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

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In the Matter of the Petition of

Court File No. **62-CV-15-5870**

Valeria L. Meyer,

To register boundary lines to the  
Following described real estate in  
Ramsey County, Minnesota:

Lots 9 and 10, Block 3, Jean's Addition,

FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

vs.

Daniel R. Schwinghammer and Ruth A.  
Barrett, Respondents.

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The above entitled matter came on for hearing before Wayne D. Anderson, Examiner of Titles for Ramsey County, Minnesota, as referee, at the Ramsey County Courthouse, St. Paul, Minnesota, on July 27, 2017. Chad D. Lemmons, Esq. appeared on behalf of Petitioner. Thomas Olson, Esq. and Katherine Wahlberg, Esq. appeared on behalf of Respondents.

The Court received Petitioner's exhibits 1-21 and Respondents' exhibits 101-145 without objection. The Court heard testimony from Eric Stonestrom, Jonathan Faraci, Valeria Meyer, Jim Brault, Allen Schlipp, Dustin Engstrom, and Daniel Schwinghammer, and received the testimony of Jennifer Soldow and Marvin Aitken through written transcripts of their deposition testimony. Based on the testimony of the witnesses, the exhibits introduced, and the files and records herein, the Court makes the following:

## **FINDINGS OF FACT**

1. On September 9, 1977, the Registrar of Titles of Ramsey County entered certificate of title no. 277026 in favor of Bernard M. Meyer and Valeria L. Meyer, as joint tenants, for Lot 10, Block 3, Jean's Addition, Ramsey County, Minnesota ("Lot 10").

2. The petitioner is the surviving joint tenant and resides on Lot 10, which has a street address of 2047 Iowa Avenue E., St. Paul, Minnesota.

3. On June 8, 2002, the Registrar of Titles of Ramsey County entered certificate of titles no. 528459 in favor of Daniel R. Schwinghammer and Ruth A. Barrett, for Lot 9, Block 3, Jean's Addition, Ramsey County, Minnesota ("Lot 9").

4. The respondents reside on Lot 9, which has a street address of 2053 Iowa Avenue E., St. Paul, Minnesota.

5. The East line of Lot 10 is the West line of Lot 9. The location of the boundary between 2047 and 2053 is in dispute.

6. Petitioner had her property surveyed by Lake and Land Surveying, Inc. A plat of survey was prepared and certified by Jonathon L. Faraci, Registered Land Surveyor and registered Engineer, on May 12, 2015.

7. Respondents had their property surveyed by M & P associates. Two plats of survey were prepared and certified by Allen C. Schlipp, Licensed Land Surveyor, the first was certified on April 26, 2017, and the second on July 25, 2017.

8. The surveyors located the boundary line between Lots 9 and 10 in different locations.

9. The plat of Jean's Addition was filed of record in July 1955. It was certified by R. W. Wolfgram, registered land surveyor, and shows five survey monuments on the corners of Block three.

10. Marvin Aitken owned and occupied Lot 9 from 1959 to 1979. Mr. Aitken created a stainless steel marker attached to a 20 inch pipe to mark the location of an existing iron pipe which he believed marked the southwest corner of Lot 9.

11. The location of the iron pipe has not changed significantly, although it appears to have been disturbed sufficiently to lean toward the east/southeast.

12. Mr. Aitken pointed out the stainless steel marker to petitioner's husband and identified it as marking the corner of Lots 9 and 10.

13. Within a few years of acquiring Lot 9, Mr. Aitken had a chain link fence installed along his westerly boundary within the lot lines marked by iron pipes and the stainless steel marker. The fence remained in place when petitioner acquired Lot 10. The western edge of the cement footings for the chain link fence were intended to be along the boundary line between Lots 9 and 10.

14. The chain link fence was replaced with a wooden fence in the same location.

15. Petitioner's driveway is near the boundary line between Lots 9 and 10. It has been replaced twice during petitioner's ownership of Lot 10. The location of the driveway was not changed. Petitioner's husband discussed the boundary line with Mr. Aitken before constructing a garage near the boundary line, which has been accessed using the driveway.

16. The found  $\frac{3}{4}$  inch iron pipe located .82 feet northeast of the PK nail was installed and relied on as a boundary corner for over 50 years.

## **CONCLUSIONS OF LAW**

1. The survey monument located at the southeast corner of Lot 9 is an original monument, the location of which is controlling.
2. The found monuments at the northwest corner of Lot 2, the northwest corner of Lot 4, the southwest corner of Lot 11, and the southwest corner of Lot 13 should be given great weight in determining the location of the original boundary between Lot 9 and 10.
3. The original platted southeast corner of Lot 10 is marked by a PK nail as shown in the July 25, 2017, survey prepared by M&P Associates.
4. Based on the bearing of the Lot lines between Lots 1 and 2, Lots 3 and 4, Lots 11 and 12, and Lots 13 and 14, as determined from found irons, the original line between Lot 9 and 10 had a bearing of S11°40'23" when drawn from the north corner.
5. Neither the July 25, 2017, survey by M&P Associates nor the May 12, 2015, survey by Lake and Land Surveying accurately depict the original location of the shared north corner of Lots 9 and 10.
6. The location of the boundary between Lots 9 and 10 has been established by practical location, under the theory of acquiescence.
7. Petitioner's driveway lies on her side of the property boundary established by practical location.
8. Respondents' wooden fence lies on their side of the boundary established by practical location.
9. The lean toward the east/southeast of the iron marker at the southeast corner of Lot 10 is consistent with the grading work done in reconstructing Petitioner's driveway.

10. The boundary line between Lots 9 and 10 commences at a point on the northerly lot line that is even with the most westerly portion of the existing wooden fence (including footings), runs southerly along the westerly face of the fence to the southwesterly corner of the fence, then continues in a straight line to the found  $\frac{3}{4}$  inch iron pipe located .82 feet northeast of the PK nail.

11. The attached memorandum is incorporated herein by reference.

### **ORDER**

1. Petitioner's surveyor shall prepare a survey delineating the boundary line as determined herein. The survey shall include proposed locations of judicial landmarks. A copy of said survey shall be provided to the Respondents and filed with the court.
2. Respondents shall have 20 days from receipt of said survey to object to the location of the boundary by filing and serving a notice of objection.
3. Thereafter, Petitioner's surveyor shall mark the boundary line as determined herein with judicial landmarks, with one set at the south lot corner between Lots 9 and 10, one set at the north lot corner between Lots 9 and 10, and one set at any point on the boundary line where the bearing of said line changes.

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Judge of District Court

The foregoing facts were found by me after due hearing and entry of this ORDER is recommended.

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Wayne D. Anderson  
Examiner of Titles

## **MEMORANDUM**

This action involves a dispute over the location of the common boundary line between Lots 9 and 10, Block 3, Jean's Addition, Ramsey County, Minnesota. The parties each presented evidence supporting two theories to establish the location of the boundary line. First, the parties had Registered Land Surveyors and staff testify as to the original location of the common boundary as established in the plat of Jean's Addition. Second, evidence was presented to establish the boundary under the theory of practical location of boundaries.

Because I believe the current boundary has been established by practical location, I will not spend a great deal of time on the original location of the boundary line. The experts agreed that original monuments were controlling if they could be located. Petitioner's surveyor identified a number of found monuments as original monuments on the survey he prepared. Most significantly, he identified a found iron monument as the original southeast corner of Lot 9, and largely based his survey on this found iron. Respondent's surveyor pointed out that the original plat of Jean's addition included only 5 original monuments in Block 3, and of these only the southeast corner of Lot 10 could be located.

The additional monuments located by the surveyors were not original monuments, but should be given great weight as they were set near the time of the original plat, and apparently were intended to reflect the original lot lines. Within the plat of Jean's Addition a number of monuments were found which enabled the surveyors to determine the bearing of the side lot lines as S11°40'23" when drawn from the north.

Petitioner's surveyor incorrectly identified all of the found monuments as original. Respondents' surveyor incorrectly applied the bearing of an adjacent street as the bearing of the common side lot line. These errors affect the weight the court gives to their expert opinions, and

make it impossible to accept either survey as accurately depicting the original line between Lots 9 and 10. Accordingly, while the respondents' surveyor's method for determining the southerly end of the original lot line is persuasive, the northerly end of the original lot line is not accurately depicted on either survey, and can only be determined by applying the proper bearing (S11°40'23") to the line.

Determining the original location of the common line was only the first step in locating the current boundary between the lots. A common boundary can be relocated through actual use. A boundary clearly and convincingly established by practical location may prevail over the contrary result of a survey. *Phillips v. Blowers*, 161 N.W.2d 524 (Minn. 1968). There are three different theories under which practical location of boundaries can be established: agreement, acquiescence and estoppel.

To establish a boundary by practical location through express agreement the line must have been expressly agreed upon by the interested parties and afterwards acquiesced in. A person must prove that an express agreement between the landowners set an 'exact, precise line' between their properties and that the agreement had been acquiesced to 'for a considerable time.' *Beardsley v. Crane*, 54 N.W. 740 (Minn. 1893).

Without a specific discussion identifying the boundary line or a specific boundary-related action clearly proving that the parties or their predecessors in interest had agreed to a specific boundary, a boundary is not established by practical location based on express agreement . . . An express agreement requires more than unilaterally assumed, unspoken and unwritten mutual agreements corroborated by neither word nor act. *Slindee v. Fritch Investments, LLC*, 760 N.W.2d 903 (Minn. App. 2009).

While there was evidence of some discussion of the location of the boundary line between adjoin owners, there was not sufficient evidence to establish an express agreement.

A second theory that may be used to establish a boundary by practical location is estoppel. The party whose rights are to be barred must have silently looked on with knowledge of the true line while the other party encroached thereon or subjected himself to expense which he would not have incurred had the line been in dispute. Estoppel requires knowing silence on the part of the party to be charged and unknowing detriment by the other. *Theros v. Phillips*, 256 N.W.2d 852 at 859 (Minn. 1977).

In the present case, it appears that the parties believed the iron monument at the south end of the boundary represented one of the lots corners and that the various improvements were within the appropriate lots when originally constructed.

The theory that applies in this case is acquiescence. To establish a boundary by practical location the location relied upon must have been acquiesced in for a sufficient length of time to bar a right of entry under the statute of limitations. A "person must show by evidence that is clear, positive, and unequivocal that the alleged property line was acquiesced in for a sufficient length of time to bar a right of entry under the statute of limitations," which is 15 years in Minnesota. The acquiescence required is not merely passive consent but conduct from which assent may be reasonably inferred. *Britney v. Swan Lake Cabin Corp.*, 795 N.W.2d 867 (Minn. App. 2011).

The burden of proof is on the person asserting the new boundary line. *Bjerketvedt v. Jacobson*, 44 N.W.2d 775 (Minn. 1950). In this case it appears that each party may encroach across the original boundary line, and accordingly, each bears the burden of establishing the portion of the line on which they are relying. The standard of proof is: the evidence of the new boundary line must be clear, positive and unequivocal. *Britney v. Swan Lake Cabin Corp.*, 795 N.W.2d 867



(Minn. App. 2011). The evidence was compelling that both the iron monument to the south and the fence were used as boundary markers for well in excess of 15 years. Additionally, the driveway had been in its present location for a sufficient amount of time to further establish the boundary.

Given the relatively small amount of property in dispute, even using today's modern surveying techniques, it was not possible to determine a precise location and description for the entire boundary line. Accordingly, the petitioner's surveyor should mark and describe the boundary between the lots.

Respectfully submitted,

Wayne D. Anderson, Ramsey County Examiner of Titles