

Court of Appeals No. 40864-3-II

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

DENNIS WALKER and SANDRA WALKER,

Appellants,

v.

JEFFREY PLUMMER and KELLI PLUMMER,

Respondents

10 DEC - 1 AM 10:18
COURT OF APPEALS
DIVISION II
STATE OF WASHINGTON
DEPUTY

APPELLANTS' OPENING BRIEF

MICHAEL SIMON, WSBA No. 10931
LANDERHOLM, MEMOVICH,
LANSVERK & WHITESIDES, P.S.
805 Broadway Street, Suite 1000
P.O. Box 1086
Vancouver, WA 98666-1086
(360) 696-3312

And

CASSIE N. CRAWFORD, WSBA No. 26241
NELLOR|RETSINAS|CRAWFORD
1201 Main Street
P.O. Box 61918
Vancouver, WA 98666
(360) 695-8181
Of Attorneys for Appellants

TABLE OF CONTENTS

	<u>Page</u>
I. ASSIGNMENTS OF ERROR	1
A. THE COURT ERRED IN STRIKING TESTIMONY BY LORI TIPTON CONCERNING HER CONVERSATION WITH JACK JANUSKA, THE ORIGINAL OWNER OF BOTH THE PLUMMER AND WALKER PROPERTIES REGARDING THE LOCATION OF SURVEY MARKERS WHICH MARKED THE BOUNDARY BETWEEN THE PROPERTIES.	1
B. THE COURT ERRED IN ENTERING ITS JUDGMENT AND DECREE OF QUIET TITLE DATED MAY 18, 2010 AND FINDINGS OF FACT NOS. 4, 5, 7, 8, 9, 12, 18-22 AND CONCLUSIONS OF LAW 3-10.	1
II. ISSUES RELATING TO ASSIGNMENTS OF ERROR	1
A. JACK JANUSKA OWNED THREE ADJACENT FIVE-ACRE PROPERTIES	1
B. THERE IS NOT SUBSTANTIAL EVIDENCE TO SUPPORT THE COURT’S FINDINGS OF FACT AND CONCLUSIONS OF LAW AND THEREFORE ITS JUDGMENT AND DECREE OF QUIET TITLE DATED MAY 18, 2010 SHOULD BE REVERSED.....	2
1. Standard of Review.....	2
III. STATEMENT OF THE CASE.....	3
A. THE PROPERTIES	4
B. TESTIMONY OF LORI TIPTON HODGKINSON	5
C. TESTIMONY OF MARK FOSTER	8
D. TESTIMONY OF JARRETT SUTHERLAND.....	9

E.	TESTIMONY OF DENNIS WALKER.....	10
F.	TESTIMONY OF JEFF PLUMMER	12
G.	TESTIMONY OF KELLI PLUMMER.....	12
H.	JANUSKA’S ACTS OF ACQUIESCENCE AND RECOGNITION	13
IV.	ARGUMENT	13
A.	STATEMENT BY JANUSKA REGARDING LOCATION OF SURVEY MARKERS WAS ADMISSIBLE.....	13
B.	BOUNDARY ADJUSTMENT THEORIES	15
C.	ADVERSE POSSESSION.....	16
D.	MUTUAL ACQUIESCENCE AND RECOGNITION....	19
E.	LOCATION BY COMMON GRANTOR.....	21
V.	CONCLUSION.....	23
APPENDIX		

TABLE OF AUTHORITIES

Page

Cases

<i>Atwell v. Olson</i> , 30 Wash.2d 179, 190 P.2d 783 (1948).....	22
<i>Chaplin v. Sanders</i> , 100 Wash.2d 853, 676 P.2d 431 (1984).....	16, 17
<i>Faubion v. Elder</i> , 49 Wash.2d 300, 301 P.2d 153 (1956).....	18
<i>Frolund v. Frankland</i> , 71 Wash.2d 812, 431 P.2d 188 (1967).....	17
<i>Hanson v. Lee</i> , 3 Wash.App. 461, 476 P.2d 550 (1970).....	20
<i>Heriot v. Lewis</i> , 35 Wash.App. 496, 668 P.2d 589 (1983).....	19
<i>Howard v. Kunto</i> , 3 Wash.App. 393, 477 P.2d 210 (1970).....	17
<i>Kent v. Holderman</i> , 140 Wash. 353, 248 P. 882 (1926).....	19
<i>Lamm v. McTighe</i> , 72 Wash.2d 587, 434 P.2d 565 (1967).....	19
<i>Makuc v. American Honda Motor Company, Inc.</i> , 835 F.2d 389 (1 st Cir. 1987).....	15
<i>Meshner v. Connolly</i> , 63 Wash.2d 552, 388 P.2d 144 (1964).....	19
<i>Reitz v. Knight</i> , 62 Wash.App. 575, 814 P.2d 1212 (1991).....	2, 17
<i>Reymore v. Tharp</i> , 16 Wash.App. 150, 553 P.2d 456 (1976).....	17
<i>Tegman v. Accident & Medical Investigations, Inc.</i> , 107 Wash.App. 868, 30 P.3d 8 (2001).....	2
<i>Thompson v. Bain</i> , 28 Wash.2d 590, 183 P.2d 785 (1947).....	22
<i>Winans v. Ross</i> , 35 Wash.App. 238, 666 P.2d 908 (1983).....	21, 22

Rules

ER 803(a)(1).....	14
ER 804(b)(3).....	14

Treatises

17 Wash. Prac., <i>Real Estate</i> , § 8.21 (2d ed.).....	16
-----------------------------------------------------------	----

I. ASSIGNMENTS OF ERROR

- A. THE COURT ERRED IN STRIKING TESTIMONY BY LORI TIPTON CONCERNING HER CONVERSATION WITH JACK JANUSKA, THE ORIGINAL OWNER OF BOTH THE PLUMMER AND WALKER PROPERTIES REGARDING THE LOCATION OF SURVEY MARKERS WHICH MARKED THE BOUNDARY BETWEEN THE PROPERTIES.**
- B. THE COURT ERRED IN ENTERING ITS JUDGMENT AND DECREE OF QUIET TITLE DATED MAY 18, 2010 AND FINDINGS OF FACT NOS. 4, 5, 7, 8, 9, 12, 18-22 AND CONCLUSIONS OF LAW 3-10.**

II. ISSUES RELATING TO ASSIGNMENTS OF ERROR

- A. JACK JANUSKA OWNED THREE ADJACENT FIVE-ACRE PROPERTIES**

Before 1992, Jack Januska owned three adjacent five-acre parcels in rural Clark County. These are the Plummer, Walker and Sutherland properties shown on Exhibit 51, attached.

In 1992, Jack Januska sold five acres to Lori Tipton (the "Plummer Property"). It was very important to Ms. Tipton that she know the boundary lines of her property. Mr. Januska told her to look in certain areas for the survey markers. She and her husband spent a day clearing blackberry bushes from these areas and eventually found what she believed were the survey markers and then built a fence between them. This fence marked the boundary line between the property Ms. Tipton bought and the property Mr. Januska retained. Did the trial court err in sustaining an objection to the statement by Mr. Januska that Ms. Tipton should look in a certain place to find the survey marker?

B. THERE IS NOT SUBSTANTIAL EVIDENCE TO SUPPORT THE COURT'S FINDINGS OF FACT AND CONCLUSIONS OF LAW AND THEREFORE ITS JUDGMENT AND DECREE OF QUIET TITLE DATED MAY 18, 2010 SHOULD BE REVERSED.

Instead, the evidence is clear that parties on both sides of the Tipton fence honored the fence as a boundary line between the two properties from 1992, when it was constructed, until 2007, when this controversy arose. The evidence is also clear that the owners of the Walker Property used it as an owner of rural property would be expected to use it in view of its location and prior history. Is anything more needed to prove the elements of adverse possession, location by common grantor, and mutual acquiescence and recognition?

1. Standard of Review

The Court of Appeals' review of a trial court's findings of fact and conclusions of law is a two-step process. The Court first determines whether the trial court's findings of fact were supported by substantial evidence in the record, i.e., evidence which, viewed in the light most favorable to the party prevailing below, would persuade a fair-minded, rational person of the truth of finding, then if the findings are adequately supported, the Court next decides whether those findings of fact support the trial court's conclusions of law. *Tegman v. Accident & Medical Investigations, Inc.*, 107 Wash.App. 868, 30 P.3d 8 (2001); *Reitz v. Knight*, 62 Wash.App. 575, 814 P.2d 1212 (1991).

III. STATEMENT OF THE CASE

This case was tried on April 22 and September 17, 2009. The Findings of Fact and Conclusions of Law were entered on May 19, 2010 and a Judgment and Decree of Quiet Title was entered on the same day. A Notice of Appeal was filed on June 17, 2010; an Amended Notice of Appeal was filed on June 25, 2010; and a Designation of Clerk's Papers was entered on August 11, 2010. The Statement of Arrangements was filed on August 16, 2010; and an Amended Statement of Arrangements was filed on August 23, 2010.

This case involves the location of a boundary between two properties located in the rural area of Clark County, Washington. The properties will be referred to as the "Walker Property" and the "Plummer Property".

On August 25, 1989, Wilford Butterfield sold these two properties to Jack Januska by a purchaser's Assignment of Deed recorded under Clark County Auditor's No. 8908250210. (CP 96; F/Fact No. 1) On December 23, 1992, Mr. Januska conveyed the eastern portion of this property to John and Lori Tipton by Real Estate Contract recorded under Clark County Auditor's No. 9212230031. (CP 97; F/F No. 2) The Tiptons sold their property to the Plummers on March 1, 1999. (CP 99; F/F No. 13) Mr. Januska retained the other property which is the Walker Property. He sold it to the Walkers on November 18, 1997. He then sold his remaining five acres to the Sutherlands in 1998.

A. THE PROPERTIES

Exhibit 51¹ shows the relative locations of the Walker and Plummer properties and their neighbors, Foster, Sutherland and Davis. Exhibit 1 is the survey which includes the fence line, the deed line and the “disputed area” between them.

The earliest aerial photograph of the properties admitted at trial is Exhibit 60. This Exhibit has been modified in the Appendix to show the Walker Property (“W”), the Plummer Property (“P”), and the heavily timbered area of the Plummer Property circled. This photograph was taken in 1994. As will be explained below, Lori Tipton and her husband logged the property to create a home construction site. Exhibit 73 is a 2002 photograph which shows the Plummer Property after it was cleared and after Tipton built the fence². The 2002 photograph shows the Plummer house in the process of being constructed.

Exhibit 53 is a topographical map of the Walker and Plummer properties. The only flat, useable areas on the Plummer surveyed property are the eastern portion and the disputed area. Exhibit 31 shows the retaining wall which borders the Plummer driveway needed because of the topography of this area. The retaining wall was built by the Plummers as part of their house relocation activities. The Tipton fence can clearly be seen in this photograph, just above the retaining wall.

¹ The trial exhibits referenced here are attached in numerical order.

² On all subsequent exhibits, the fence line is located between the two “F’s” written on exhibit. Additions are made to the trial exhibits so the Court can better understand them. When additions are made, the additions will be explained.

Exhibit 54 is a series of four photographs showing the Walker and Plummer properties from the four compass directions. The “W” and “P” are added to clearly locate the Walker and Plummer properties. All four photographs show the fence line, the trees that have been replanted by the Walkers with mulch along the bottom of them, Plummer’s asphalted driveway, what appears to be a round hot tub at the end of the driveway and the retaining wall next to the hot tub.

Exhibit 33 shows the well and the tree trunk next to it that Dennis Walker cut because he was concerned with the roots damaging the well. On the left side of that picture is a car parked on the Plummer driveway. The Tipton fence can clearly be seen in the photograph. Exhibit 34 was taken from the disputed area looking northeast toward the Plummer driveway with the hot tub located on the driveway.

B. TESTIMONY OF LORI TIPTON HODGKINSON

Lori Tipton testified by way of deposition and videotape. The references to her testimony will be to the page numbers of the transcript of her deposition.

When Ms. Tipton bought the property with her then husband, there was a well house at the bottom of the hill. (Tipton Dep., p. 11) There was also a dilapidated house where they lived with plans of putting a mobile home on the property at the top of the hill near the western boundary line. (Tipton Dep., pp. 11 and 37) The Walker Property forms the western boundary of the Plummer Property. The Tiptons found survey markers at both ends of this boundary as located by Jack Januska. (Tipton Dep., p.

73) They had to cut away a lot of blackberry bushes to find them. (Tipton Dep., p. 50) They put the same fencing around the perimeter of their entire property, including the western boundary between their property and the Walker Property. (Tipton Dep., pps. 14 and 15) The fence between the Walker Property and the Plummer Property was placed between the survey markers the Tiptons found on each side of the property. (Tipton Dep., pps. 18-19) In addition to the well at the eastern portion of their property, there was a well on the Walker Property. This well was just a hole in the ground with a lid on it which was about eight feet from the fence line inside the Walker Property. (Tipton Dep., pps. 23-24) This well was not on the Plummer Property. The well was obvious to Ms. Tipton because she could see it and as it was near the fence she built. (Tipton Dep., p. 25)

The Tiptons planned to raise llamas on the property so they wanted to be sure that the entire boundary was fenced. They also put cross fencing throughout the property to divide it into separate fields to house their llamas. (Tipton Dep., p. 14) It took them one to two weeks to put in all this fencing.

There were hundreds of trees especially at the western part of the Plummer Property. (Tipton Dep., p. 31; Ex. 60) Lori Tipton and her second husband had these trees logged to create a flat area for them to put a doublewide mobile home.³ (Tipton Dep., p. 31) A distinguishing

³ Between the time Lori Tipton purchased the property and the time she sold it to the Plummers in 1999, she was divorced and remarried to Mr. Hodgkinson.

feature between the Plummer and Walker properties was that most of the trees were on the Plummer side of the Tipton fence, while the other side, the Walker side, was pasture. “But the pasture land on the Walker side was right up to the property line, that was pasture land.” (Tipton Dep., p. 26) By “property line” she meant the Tipton fence line. It was very important to her to make sure that she knew where the boundary line was because the property had changed hands frequently so it was important to her to know which piece was hers. (Tipton Dep., p. 27) When the Tiptons built the fence along the Plummer-Walker property line, they put it between where they found the markers which was actually three feet farther towards the Plummer Property than an old existing fence. (Tipton Dep., pp. 28-29, 36) In fact, when they were getting the permits to set the doublewide mobile home, the Tiptons double checked the distance from the fence to its location to make sure they had the correct setback. (Tipton Dep., pp. 37-38) Before they could move the doublewide onto the property, the Tiptons sold to the Plummers.

Before the Plummers purchased the property, they met with Tipton at the property who showed them where the property lines were, the markers and the setback for the house. The Plummers eventually built the house to comply with the setback from the fence. The Plummers knew where the property lines were and walked along the Walker-Plummer boundary line and Lori Tipton told Plummers that the fence was on the property line.

While Tiptons lived on the Plummer Property, they recognized it was used by Jack Januska for grazing cattle. Most of the Walker Property at that time was pasture land. (Tipton Dep., pp. 22-23) The grass in the pasture area was kept short by grazing animals. They never saw Mr. Januska mow the grass on it. (Tipton Dep., p. 46)

C. TESTIMONY OF MARK FOSTER

Mark Foster testified at trial. References to his testimony will be by page number of the transcript.

Mr. Foster lived directly to the north of the line separating the Walker-Plummer properties. (Ex. 51) He could clearly see both properties from his property. (RP 251) He moved there in 1986. (RP 253) Januska lived directly to the south of the Walker Property. (The Sutherland Property, Ex. 51) The Sutherland and Walker properties were separated by a fence but there were two permanent openings in the fence. Januska allowed his cattle to roam freely between the Sutherland and Walker properties. Januska used the Walker Property only to graze his cattle. “[T]hey were just always there.” (RP 258) Januska’s cattle were always on the Walker side of the fence. (RP 258)

Januska also had a water trough for the cattle located in the northeast corner of the Walker Property. Mr. Foster was a general contractor, (RP 252) and had a bulldozer. (RP 260) When Januska still owned the Walker Property, he was planning on building a barn or shop on the Walker Property and hired Foster to grade the Walker Property along the west side of the fence in the disputed area. (RP 261)

Foster saw Dennis Walker mowing the disputed area. (RP 261) However, he never saw the Plummers work on the fence or do anything in the disputed area. (RP 262) However, he did see both Januska and Sutherland work on the fence between the Walker and Plummer properties because Januska and then Sutherland ran cattle in there. (RP 262)

After Sutherland purchased Januska's property, he continued to freely run cattle through the two permanent openings in the fence onto the Walker Property until the Walkers built their house in 2002. (RP 263)

D. TESTIMONY OF JARRETT SUTHERLAND

The Sutherlands bought Jack Januska's homesite in 1998. (The Sutherland Property, Ex. 51) Within a few months, they decided to "clean it up" and put a few cattle on it. (RP 178) By this time, the Walkers had purchased their property and Mr. Sutherland asked Dennis Walker in person for permission to let his cattle graze on their property. (RP 180) Sutherland's cattle accessed the Walker Property by the same two gates that Januska had used. Mr. Sutherland testified that his cattle were all over the Walker Property and that "[t]hey were always there" (RP 182) The cattle went back and forth at will. They roamed freely on both properties 24/7. (RP 182) Mr. Sutherland saw his cattle in the disputed area by the fence between the Walker-Plummer properties. (RP 183-184)

In the year 2000, the Plummers moved a house from a nearby property onto their property within ten feet of the fenceline. To do this, they removed part of the fence separating the Walker and Plummer

properties. Mr. Sutherland asked them to replace it so his cattle wouldn't get onto their property. Mr. Sutherland asked the Plummers to put the fence back up so his cows could not get out of the Walker pasture land. They complied. (RP 184-186; 188-190)

E. TESTIMONY OF DENNIS WALKER

Dennis Walker is one of the Plaintiffs in this action. He purchased his property in November, 1997. They broke ground to build their house in April, 2002. (RP 23) Mr. Walker is a battalion chief with the Vancouver Fire Department with 30 years of experience. (RP 24) The length of the fence between the Walker and Plummer properties is approximately 330 feet long.

When they first visited the property with Jack Januska, the Tiptons had just logged up to the fence separating the two properties. He and Mr. Januska walked the pasture land area in the disputed area where Mr. Januska "kicking at the cow patties" The grass was grazed down to a nub. (RP 43)

The Fosters asked the Walkers for permission to ride horses and take fallen wood off of the Walker Property and Sutherland asked Dennis Walker to graze his cattle on it and the Walkers approved both requests. (RP 46) When the Walkers purchased the property, Lori Tipton was living in the small house at the bottom of the hill on the eastern portion of the Plummer Property near her well. She had trenched from that well all the way up the hill near the fence to supply water to the building area. (RP 63) Lori Tipton was never on the disputed property. (RP 64)

Between the time the Walkers purchased the property and the time they built their house in 2002, in addition to giving permission to Fosters and Sutherlands to use the property, they used the Walker Property as follows: (1) they cut trails through the forested grove in the middle of the property which was accessed at multiple places (RP 77); (2) they put in a new well with a concrete casing and a new pump and trenched from the well to their building site on the west side of grove of trees (RP 77-78); and (3) he cut down a very large tree that was next to the well because he was concerned that the roots would encroach on it. (RP 87)

From the time they started building their house in 2002 to when this dispute arose, the Walkers also contoured the property to make it more level; transplanted large fir trees with irrigation lines from the well to the trees all along the fence; hired someone with a spade truck to transplant 25 to 30 large trees on the property to create privacy on their property from the Plummer Property and put mulch around many of the trees. (RP 79-86) Several times when Dennis Walker was working on his property, he had casual conversations with Jeff Plummer. In one of these conversations, Jeff Plummer asked if Dennis was willing to remove the fence and Mr. Walker told him he was not because he was having a problem with blackberries and he was thinking about getting some goats to keep them down, so he'd want the fence to keep them on his property. (RP 99) Mr. Plummer also asked Mr. Walker about putting a gate in the fence. They also discussed the Walkers putting in a nicer fence between their properties. Mr. Walker said he might be interested but they never

followed up on that. (RP 99-100) Until this dispute arose, the Walkers never saw Lori Tipton or the Plummers in the disputed area.

F. TESTIMONY OF JEFF PLUMMER

Jeff Plummer did not testify at the trial.

G. TESTIMONY OF KELLI PLUMMER

Kelli Plummer and her husband Jeff visited the Plummer Property at least four times before they purchased it. They were looking for a property that could keep horses. She went to the top of the property, i.e., the west end adjoining the Walker Property, one time with Roy Hodgkinson but claims that no one showed her the boundaries and that she never talked to Roy or Lori Hodgkinson or the realtor about the boundaries. (RP 355-57) When they started the negotiations to move a house from a nearby property to this property in mid-1999, she went to the top of the hill every day. (RP 360)

When they moved the house onto their property, she admits that Mr. Sutherland told her his cows grazed on the Walker Property so he needed the fence put back up. "He was afraid they would get out." She knew by then that Sutherland had been grazing cattle on that property. (RP 389) She admits that she doesn't notice a lot of things that can happen right in front of her unless it's pointed out to her. (RP 393-94) She admits that she knew the Walkers did the following work on the disputed property: (1) She saw a man working on the well in November, 2001 when the Walkers were building their house; (2) She knew Dennis Walker planted trees along the fenceline in 2003, but never said anything

about them, because “I like trees”. (RP 377-78) (3) She watched Dennis Walker mow the pasture about every other month but said nothing to him because “[h]e can mow my property”. (RP 381) (4) She saw Dennis Walker digging the trench line from the well to his house in 2002. (RP 387) (5) She saw Dennis Walker taking down the tree next to the well but said nothing. (RP 396)

H. JANUSKA’S ACTS OF ACQUIESCENCE AND RECOGNITION

The well in the disputed area was drilled in 1970. (Ex. 4)⁴ It was tested again in 1980. (Ex. 5) When Januska listed the Walker Property in the MLS in 1997, he advertised it as having a well. (Exs. 7 and 8) The only well serving the Walker Property is that shown on Exhibit 33. The purchase and sale agreement between the Walkers and Januska required Januska to pay for a well flow rate test and a well water purity test. (Ex. 9) These tests were conducted and paid for by Januska on the well shown in Exhibit 33. (Exs. 12-17, 21, 23) This well was identified by Januska on the seller’s property condition report for vacant land. (Ex. 24) Jack Januska advertised his ownership of the well, showed it to the Walkers as being included in the sale, and included it in the sale to the Walkers.

IV. ARGUMENT

A. STATEMENT BY JANUSKA REGARDING LOCATION OF SURVEY MARKERS WAS ADMISSIBLE

⁴ These exhibits are not attached as they don’t help visualize the property.

The trial court held that the following colloquy between Plaintiffs' attorney and Lori Tipton at p. 73, ls. 7-14 was inadmissible.

Q. "Januska also showed me the original survey post on the north side of the Plummer property," so do you recall Jack showing you either of those survey markers that were in the ground or are you referring to something different?

A. Yeah, he told me where to look for it –

Q. Okay.

A. -- and it was along –

MR. HAMILTON: The same objection.

This admission by Jack Januska of the location of the boundary line between the properties was a statement against interest admissible under ER 804(b)(3) as not excluded by the hearsay rule. At the time of the trial, Mr. Januska was a resident of California. (Ex. 27) Therefore, any statement which at the time of its making subjected him to civil liability for misrepresentation such that a reasonable person in his position would not have made the statement unless the person believed it to be true. Here, because the statement located the boundary line between the Plummer and Walker properties at a location which shorted Tipton and later Plummer, this subjected Mr. Januska to civil liability for a breach of the statutory warranty deed. Unless he believed the statement to be true, Mr. Januska would not have made it.

The statement is also admissible under ER 803(a)(1) as a present sense of impression. Mr. Januska was on the property with Lori Tipton who asked him where the boundary line was. Believing the survey

markers were located in a specific spot, he immediately responded as to their location. The rule presumes that the element of spontaneity reduces a chance of misrepresentation to an acceptable level. There is no requirement that the statement be made in response to a startling or exciting event. In *Makuc v. American Honda Motor Company, Inc.*, 835 F.2d 389, 392 (1st Cir. 1987), the defense was allowed to offer testimony that a motorcycle had been examined by a mechanic and the mechanic said it would cost \$325 to repair the bent frame. The appellate court noted that the mechanic's statement "amounted to statements that described or explained the condition of the bicycle at the very time the mechanic was engaged in examining it."

For both of the above reasons, the testimony by Lori Tipton regarding her conversation with Jack Januska and his statement to her regarding the location of the survey markers should have been admitted. These statements clearly show that both Lori Tipton when she built the fence, and Jack Januska agreed to the boundary line between the properties. Their later actions show that they mutually recognized the fence line she built (the Tipton fence) as the boundary line between the properties.

B. BOUNDARY ADJUSTMENT THEORIES

Plaintiffs brought this lawsuit under four related boundary adjustment doctrines. These are adverse possession, location by common grantor, estoppel in pais and mutual acquiescence and recognition. The Walkers asked the Court to adjust the boundary between their property

and that of the Plummers. As noted in 17 Wash. Prac., *Real Estate*, § 8.21 (2d ed.):

And keep in mind one very practical observation: if one neighbor or his predecessors has made substantial use of a portion of the other neighbor's land for a long number of years, and the usage is not by a grant of permission that amounts to a license or leasing, then there is a high probability that, on one theory or another, their boundary has adjusted to conform to the usage. Courts do not like to disturb boundaries that have long been fixed by substantial acts on the ground.

C. ADVERSE POSSESSION

To establish title by adverse possession, the claimant must prove his possession was (1) open and notorious; (2) actual and uninterrupted; (3) exclusive; and (4) hostile. *Chaplin v. Sanders*, 100 Wash.2d 853, 676 P.2d 431 (1984).

There is no dispute that neither the Tiptons nor the Plummers ever went onto the disputed area after the Tiptons purchased their property from Januska and built the Tipton fence. Thus, for a period of 15 years, i.e., from 1992-2007, whatever activity occurred in the disputed area occurred as a result of actions of Januska or the Walkers. There is also no dispute that these actions were continuous, open and notorious and hostile. The only question appears to be whether the extent of the activity shows actual use. So the question to be resolved by the trial court and reviewed by this Court is what level of activity must a disputed owner of property undertake with that property?

The general principle is that actual possession involves possession of a character which a true owner would assert toward the land in view of

its nature and location. *Frolund v. Frankland*, 71 Wash.2d 812, 431 P.2d 188 (1967), overruled on other grounds; *Chaplin v. Sanders*, 100 Wash.2d 853, 676 P.2d 431 (1984). The elements of adverse possession overlap greatly so that actual use, hostility and open and notorious need to be looked at together. Because an owner only needs to make use of property in view of its nature and location, in two Hood Canal cases, the Court of Appeals found that “summertime only” possession was sufficient physical possession. *Reymore v. Tharp*, 16 Wash.App. 150, 553 P.2d 456 (1976); *Howard v. Kunto*, 3 Wash.App. 393, 477 P.2d 210 (1970) overruled on other grounds, *Chaplin v. Sanders, supra*.

In *Reitz v. Knight*, 62 Wash.App. 575, 814 P.2d 1212 (1991), the Court overruled the trial court’s finding that the possessor had not proven his claim when the record disclosed undisputed evidence of an encroachment over the survey line by the eaves of a house and an exclusively maintained row of shrubs and plants. In *Reitz*, the Court of Appeals found that the trial court’s findings were not supported by substantial evidence and in fact no evidence supported most of the Court’s findings on Knight’s adverse possession claim. The Court found rather that the eaves overhanging the boundary line and Knight’s rather substantial plantings supported the adverse possession claim. The plants were located and maintained in such a manner as to establish a discernible boundary line and indicated physical occupation. The Court found that it is enough to establish adverse possession when the party claiming

ownership held, managed, and cared for the property. The exclusive maintenance of a row of shrubs and plants met this requirement.

In this case, the evidence is much stronger. The Tiptons built the fence between the Plummer and Walker properties in 1992. After that, they maintained their property, logged approximately 300 trees up to the fence, measured and began to build a construction pad for a mobile home in relationship to the setback from the fence, and never went onto the Walker Property. On the other side, i.e., the Walker side, Jack Januska continued using the property as he had before, i.e., for grazing cattle. We know this is the type of activity an owner would pursue on this property because when Jack Januska was the owner of the Plummer Property, he used the Walker Property for grazing cattle and continued to use the Walker Property after he sold the Plummer Property to the Tiptons in exactly the same way he had before, i.e., for grazing cattle. When the Walker Property was sold to the Walkers, the use intensified through the Walkers cutting trails through the grove of trees in the middle of the property; by allowing Fosters to ride horses on it and take firewood off of it; by allowing Sutherlands to graze cattle on it 24/7; and eventually by having the property graded, planting and replanting trees, cutting down trees, mowing the property, improving the well and digging the trench from it to their house.

Examples of activities that have helped to establish possession of rural land include building a fence and cultivating pasture land up to it, *Faubion v. Elder*, 49 Wash.2d 300, 301 P.2d 153 (1956); clearing,

draining, fencing and cultivating, *Kent v. Holderman*, 140 Wash. 353, 248 P. 882 (1926); maintaining a partial fence and annually cutting brush, *Heriot v. Lewis*, 35 Wash.App. 496, 668 P.2d 589 (1983). Mowing of lawn up to a line between houses is sufficient to show actual possession because it is indicative of ownership. *Mesher v. Connolly*, 63 Wash.2d 552, 388 P.2d 144 (1964).

D. MUTUAL ACQUIESCENCE AND RECOGNITION

The doctrine of mutual acquiescence and recognition requires activities on the ground for ten years or more. The doctrine was best described in *Lamm v. McTighe*, 72 Wash.2d 587, 434 P.2d 565 (1967) as follows:

From the foregoing cases, as well as others, in which we have dealt with the doctrine, it may be gleaned that the following basic elements must, at a minimum, be shown to establish a boundary line by recognition and acquiescence: (1) The line must be certain, well defined, and in some fashion physically designated upon the ground, e.g., by monuments, roadways, fence lines, etc.; (2) in the absence of an express agreement establishing the designated line as the boundary line, the adjoining landowners, or their predecessors in interest, must have in good faith manifested, by their acts, occupancy, and improvements with respect to their respective properties, a mutual recognition and acceptance of the designated line as the true boundary line; and (3) the requisite mutual recognition and acquiescence in the line must have continued for that period of time required to secure property by adverse possession.

Lamm at 592-593.

In *Lamm*, the court recognized that if adjoining properties occupy the respective properties to a certain line for a long period of time, they are precluded from claiming that the line is not the true one. In *Lamm*, the

court held evidence supporting this doctrine by the erection of a fence between two properties which consisted of only two strands of smooth wire strung upon cedar posts. One of the adjoining landowners cleared portions of their property up to the fence line, planted some berry bushes, mowed some of the grass and occasionally used a strip adjacent to the fence line as a roadway for field deliveries. Later, the owners of the adjoining property replaced the fence. A later survey showed that the fence was located approximately 15.5 feet off of the true boundary line. Based on this skimpy evidence, the trial court found that the fence established the boundary between the properties by acquiescence and recognition.

In *Hanson v. Lee*, 3 Wash.App. 461, 465-66, 476 P.2d 550 (1970), the court stated “[t]he existence of an express agreement is not essential; an agreement implied from actions of the interested parties is sufficient. . . . The boundary line here involved was acquiesced for the minimum ten year period required as in the case of adverse possession.” (Citations omitted) In *Hanson*, the plaintiff and her mother purchased their property in 1922 and lived on it for nearly 45 years. She was told that the boundary line between her lot and the adjoining lot was the line of equal distance between the two lots running the length of the properties. She heard that all lot lines in the block were off but did nothing about it. Later, a survey showed that the center line agreed upon for so many years did not conform to the platted boundary line and that the common garage that was built between the two properties was located entirely on the defendants’

property and that the boundary line extended four feet into the plaintiff's house. The court found the original agreement on the common boundary line and the recognition of it and concrete strips that were installed to the garage and their subsequent, uninterrupted use from at least 1941 to 1962 for common driveway purposes was sufficient evidence to support a finding of an agreed boundary line through mutual acquiescence and recognition.

In our case, the Tiptons located the boundary line based upon Jack Januska's statement to them that the survey markers were in a particular place. The Tiptons built the fence between the two properties using those survey stakes. The Tiptons and the Plummers on their side of the fence and Januska and the Walkers on their side of the fence all honored the fence as the boundary line between the two properties. There is no evidence that either Tipton nor Plummers ever crossed the fence onto the Walker Property and there's no evidence that Januska or Walker ever crossed the fence onto the Plummer Property until this dispute arose in 2007. That is 15 years after the fence was built and much longer than the ten years needed to establish a change in the legal boundary between the properties.

E. LOCATION BY COMMON GRANTOR

The elements required to adjust a boundary by actions of a common grantor are stated in *Winans v. Ross*, 35 Wash.App. 238, 666 P.2d 908 (1983).

A grantor who owns land on both sides of a line he has established as the common boundary is bound by that line. . . . The line will also be binding on grantees if the land was sold and purchased with reference to the line, and there was a meeting of the minds as to the identical tract of land to be transferred by the sale. . . . The common grantor doctrine involves two questions: (1) was there an agreed boundary established between the common grantor and the original grantee, and (2) if so, would a visual examination of the property indicate to subsequent purchasers that the deed line was no longer functioning as the true boundary?

(Citations omitted) *Winans* at 240-241.

Under this doctrine, a boundary line is established by a grantor and grantee in one instant in the passing of title so there is no period of limitations. The transfer of title takes place immediately. *Thompson v. Bain*, 28 Wash.2d 590, 183 P.2d 785 (1947). Once the boundary line is located between the grantor and the grantee, their successors in title will also be bound by that line if, when they succeed the title, the indicated line is physically visible on the ground. So if a fence or hedge is there plainly to be seen, that will give constructive notice. *Atwell v. Olson*, 30 Wash.2d 179, 190 P.2d 783 (1948).

In this case, Januska told Tipton that the survey markers between the Plummer and Walker properties were both in the blackberry bushes. The Tiptons spent a day removing the blackberry bushes on both sides of the line and found the markers. They then built the fence between these two survey markers. This fence around the entire perimeter of their property was made of the same material. When Jack Januska told them where the survey markers were and that the survey markers located the corners of the Plummer Property, he agreed that the line between them

was the boundary line. Placing the fence along this line established the boundary line for all subsequent purchasers of both properties to see. The fence was clearly visible along this line, especially after the Tiptons logged nearly 300 trees off their property. The fence could clearly be seen by Januska, Sutherland, Foster, Walker and the Plummers. In fact, it was five to eight feet from the Plummer driveway and within 15-20 feet of their house and garage.

V. CONCLUSION

The Walkers ask this Court to rule that the trial court erred in finding no substantial evidence to quiet title to the disputed area in the Walkers; to reverse the trial court and rule that there are substantial facts in the record which require it to quiet title in the disputed area to the Walkers under any of the alternative theories presented by them.

DATED this 30th day of NOVEMBER, 2010.

Respectfully Submitted,

LANDERHOLM, MEMOVICH,
LANSVERK & WHITESIDES, P.S.



MICHAEL SIMON, WSBA No. 10931
Attorneys for Appellants

APPENDIX

Trial Exhibit 1

Trial Exhibit 31

Trial Exhibit 33

Trial Exhibit 34

Trial Exhibit 51

Trial Exhibit 53

Trial Exhibit 54

Trial Exhibit 60

Trial Exhibit 73

Deposition of Lori Tipton Hodgkinson

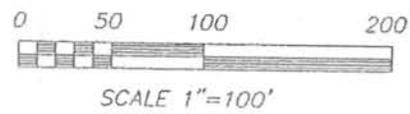
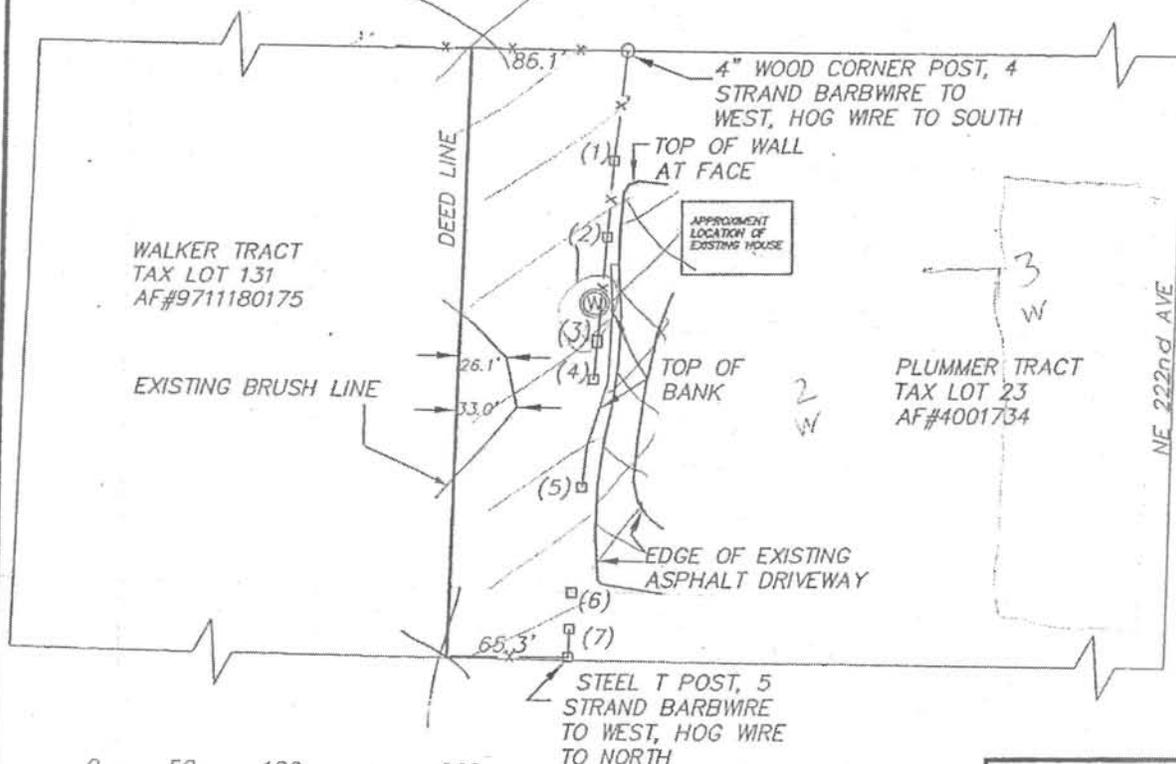
APPENDIX

EXHIBIT FOR PLUMMER & WALKER PARCELS



LEGEND

- (1) N 88°16'18" W 80.4' TO DEED LINE
- (2) N 88°16'18" W 78.1' TO DEED LINE
- (3) N 88°16'18" W 74.6' TO DEED LINE
- (4) N 88°16'18" W 73.5' TO DEED LINE
- (5) N 88°16'18" W 69.6' TO DEED LINE
- (6) N 88°16'18" W 66.0' TO DEED LINE
- (7) N 88°16'18" W 65.5' TO DEED LINE
- ⊙ WELL
- STEEL T POST



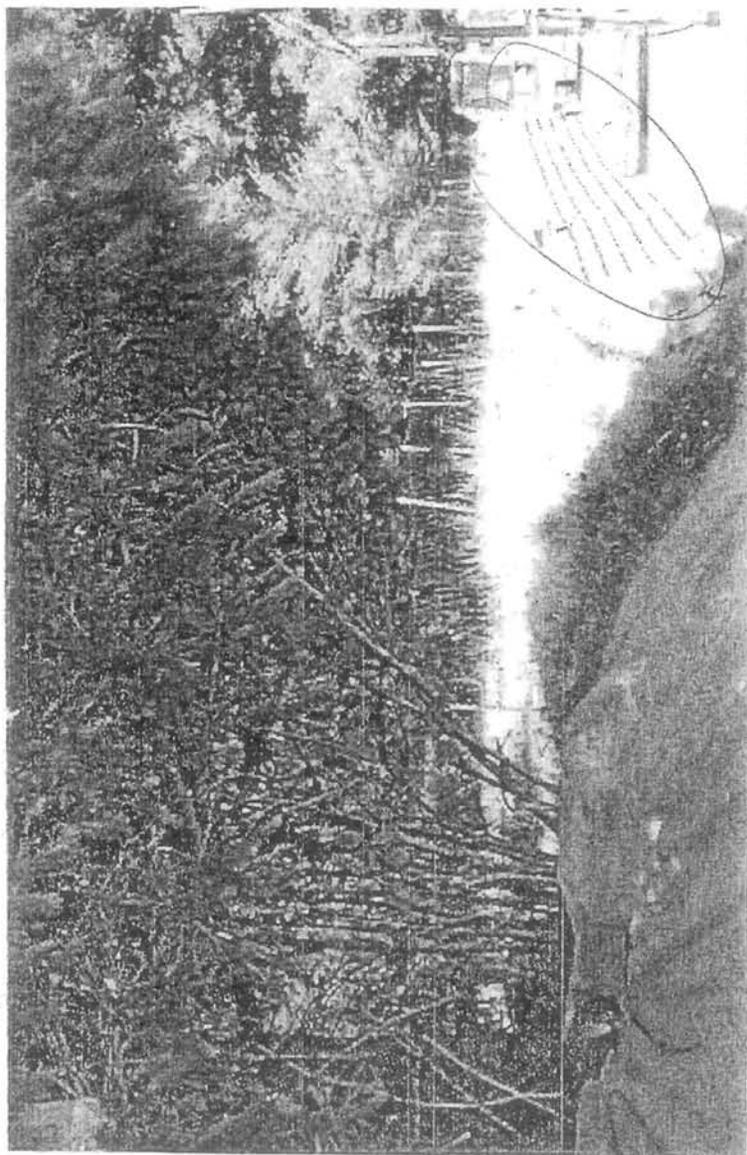
HAGEDORN, INC. Surveying and Engineering		
1924 Broadway, Vancouver, WA 98663 Ph: (360) 696-4428 FAX 694-8934		
SCALE: 1"=100' DATE: 11-19-07 JOB NO.: 07-229	CALC. BY: T.H. DRAWN BY: T.H. CHECKED BY: B.C.J.	DWG # 07-229.dwg SHEET 1 OF 1

Ex 1

Exhibit 1 2/17/08

Jeffrey Plummer

Rider & Associates
800-869-0864



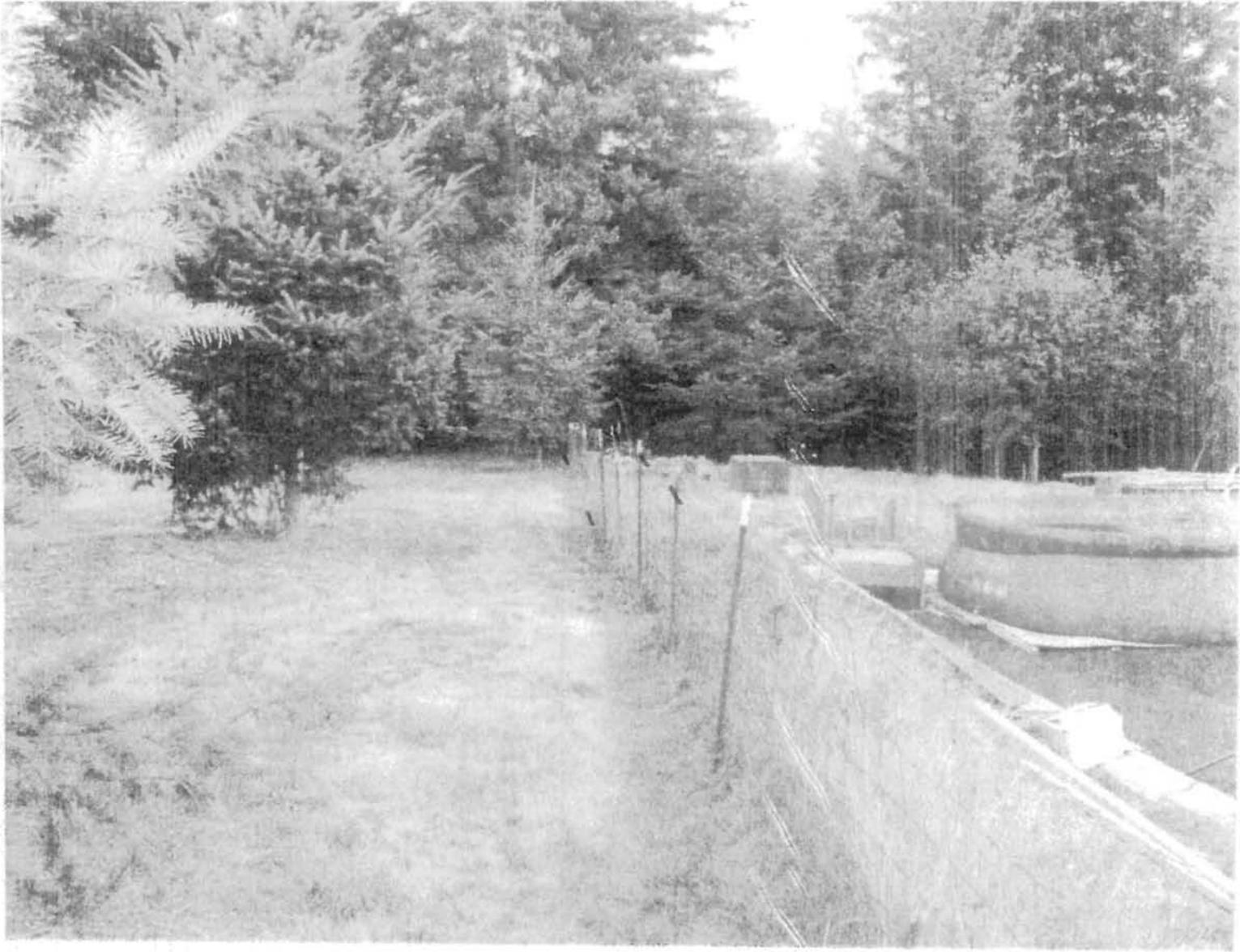
Ex. 31



Ex 33

~~Exhibit 3418109
Lori
File: Hoag Kinton
Rider & Associates
800-869-0864~~

~~Exhibit 20.21768
Tiffany Plummer
Rider & Associates
800-869-0864~~

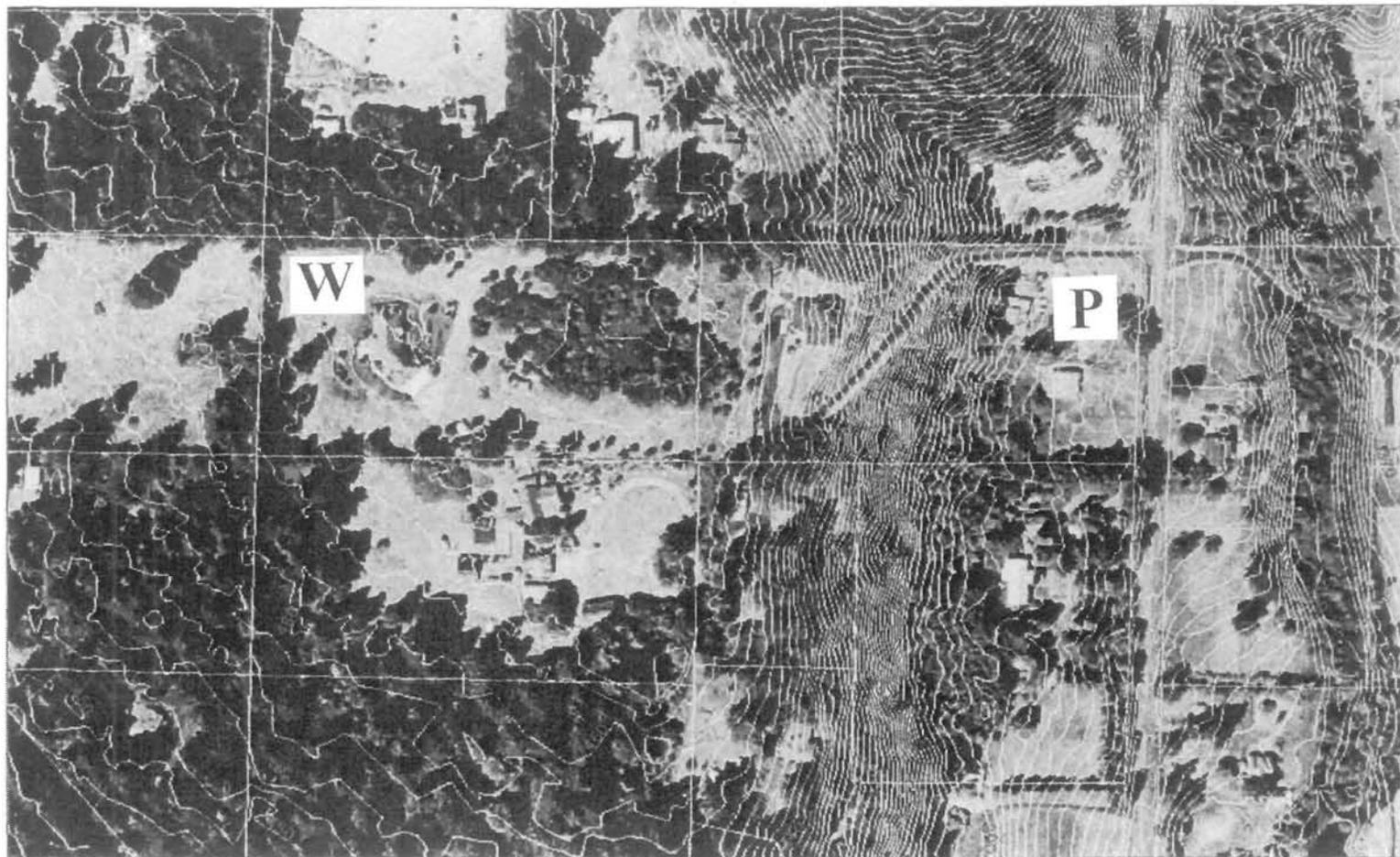


Ex. 34

~~Exhibit 14869~~
~~Lot 11~~
~~Hubkinton~~
Rider & Associates
800-869-0864

~~Exhibit 232768~~
~~Taylor Plummer~~
Rider & Associates
800-869-0864

Clark County Contours



Legend

- Parcel
- Elevations
- 5 Foot Contours
- Aerial Photography
- Waterbodies
- City Boundaries
- Urban Growth Boundaries
- County Boundary

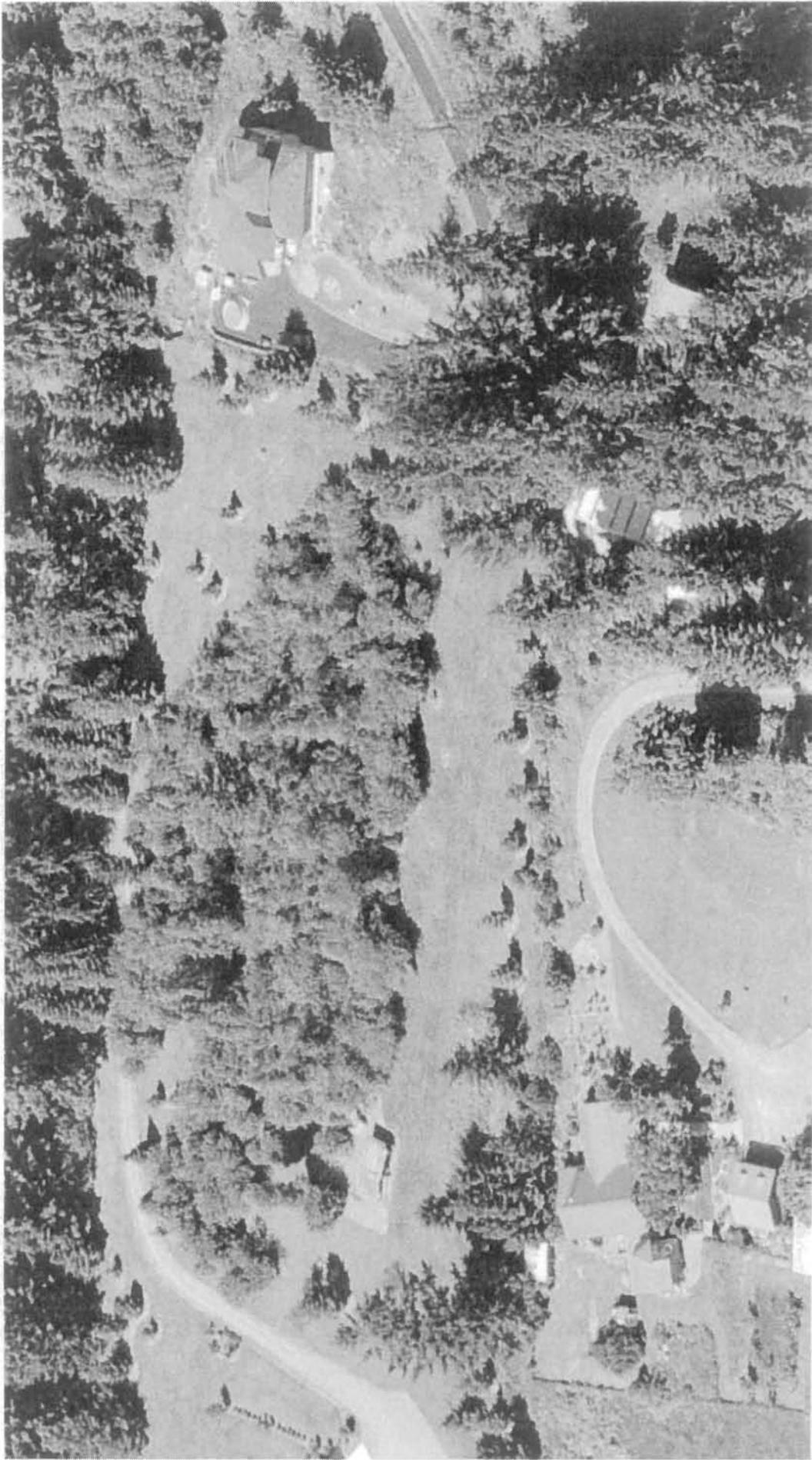
0 250 500 750 ft.

Ex. 53 Map center: 46° 41' 48.5" N, 122° 26' 51.8" W



Scale: 1:2,500

Information shown on this map was collected from several sources. Neither Clark County nor the producer of this document accept responsibility for any inaccuracies that may be present.



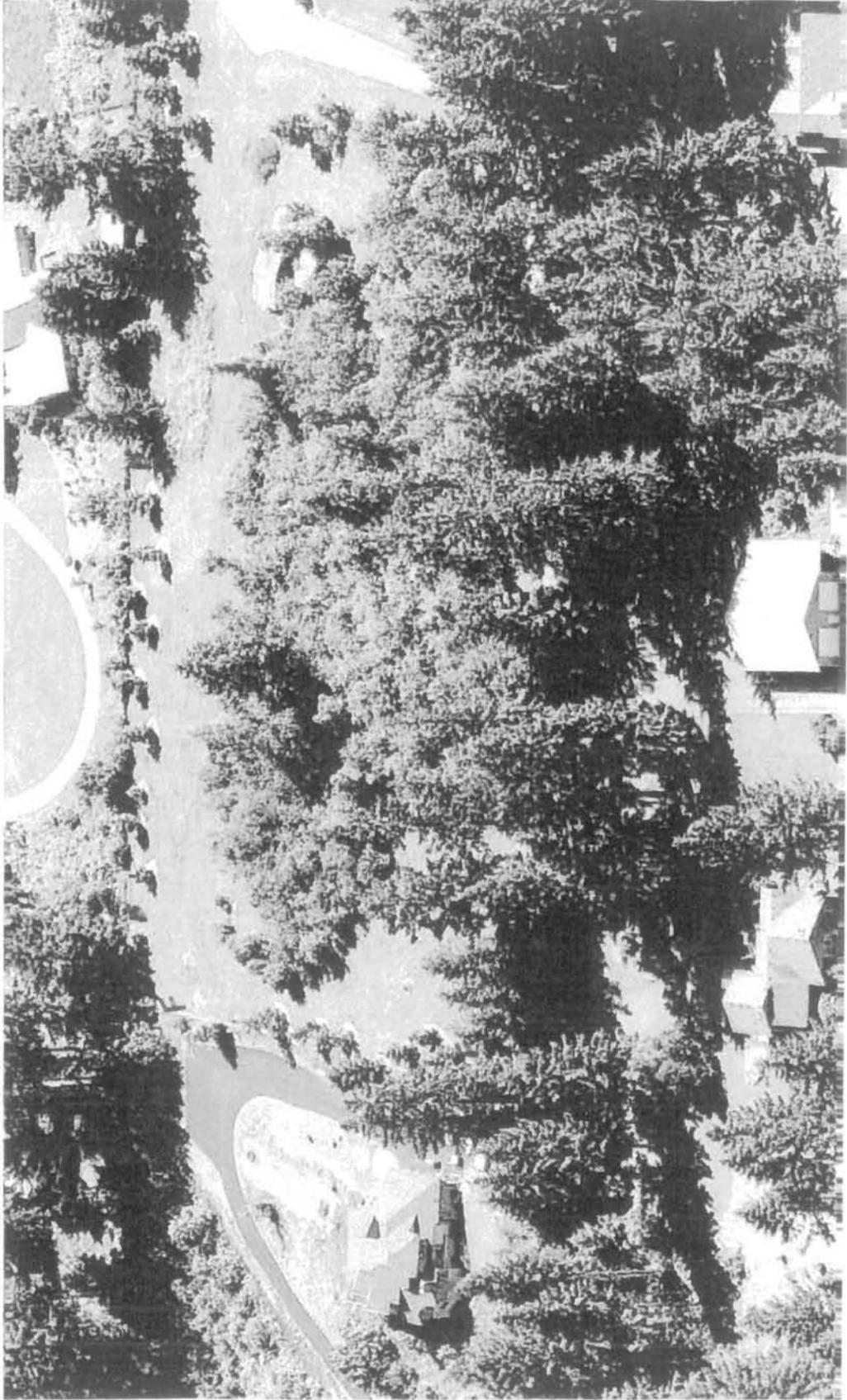
LOOKING NORTH
(RECENT)

P

3

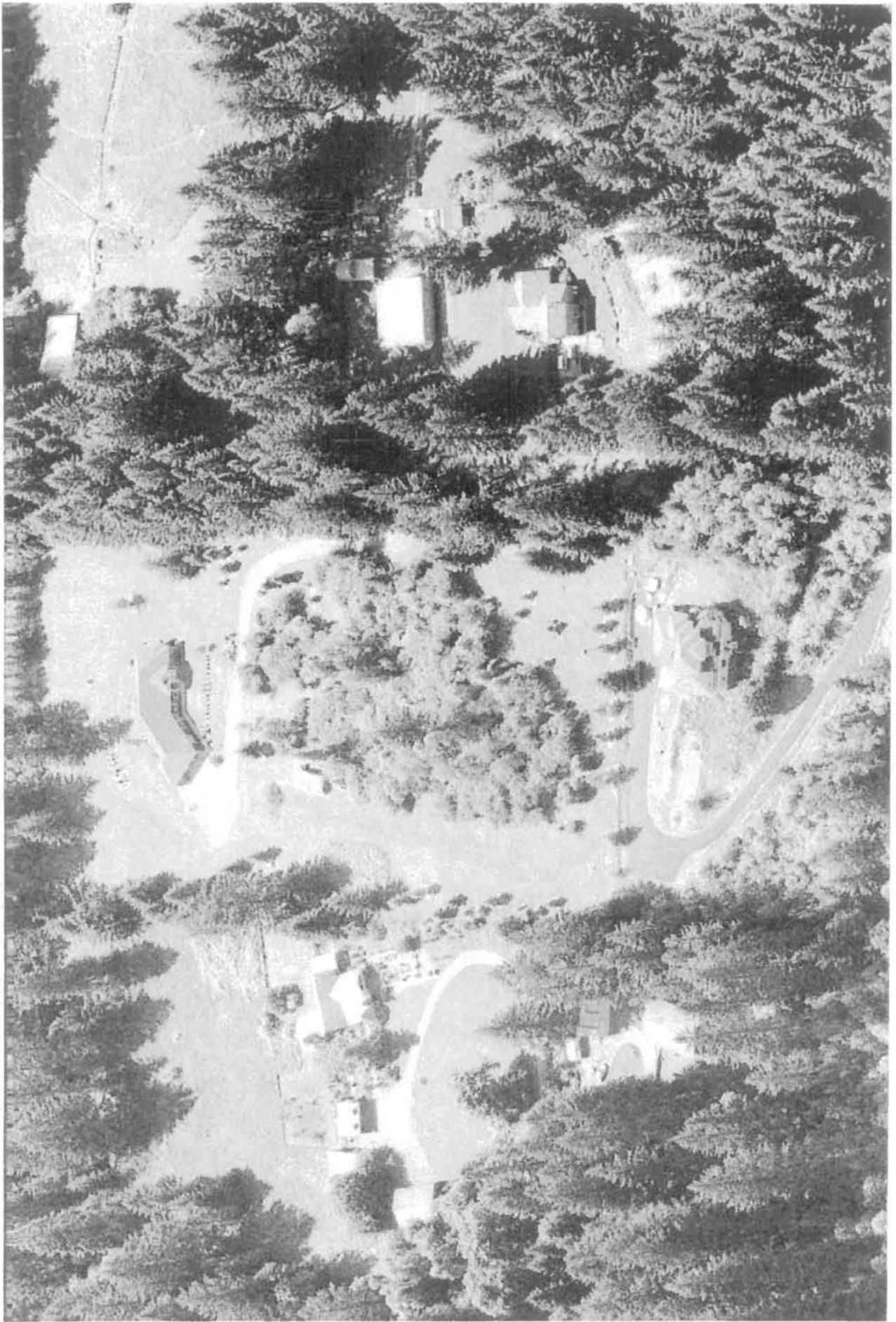
Ex 54

3



LOOKING SOUTH
(RECENT)

P



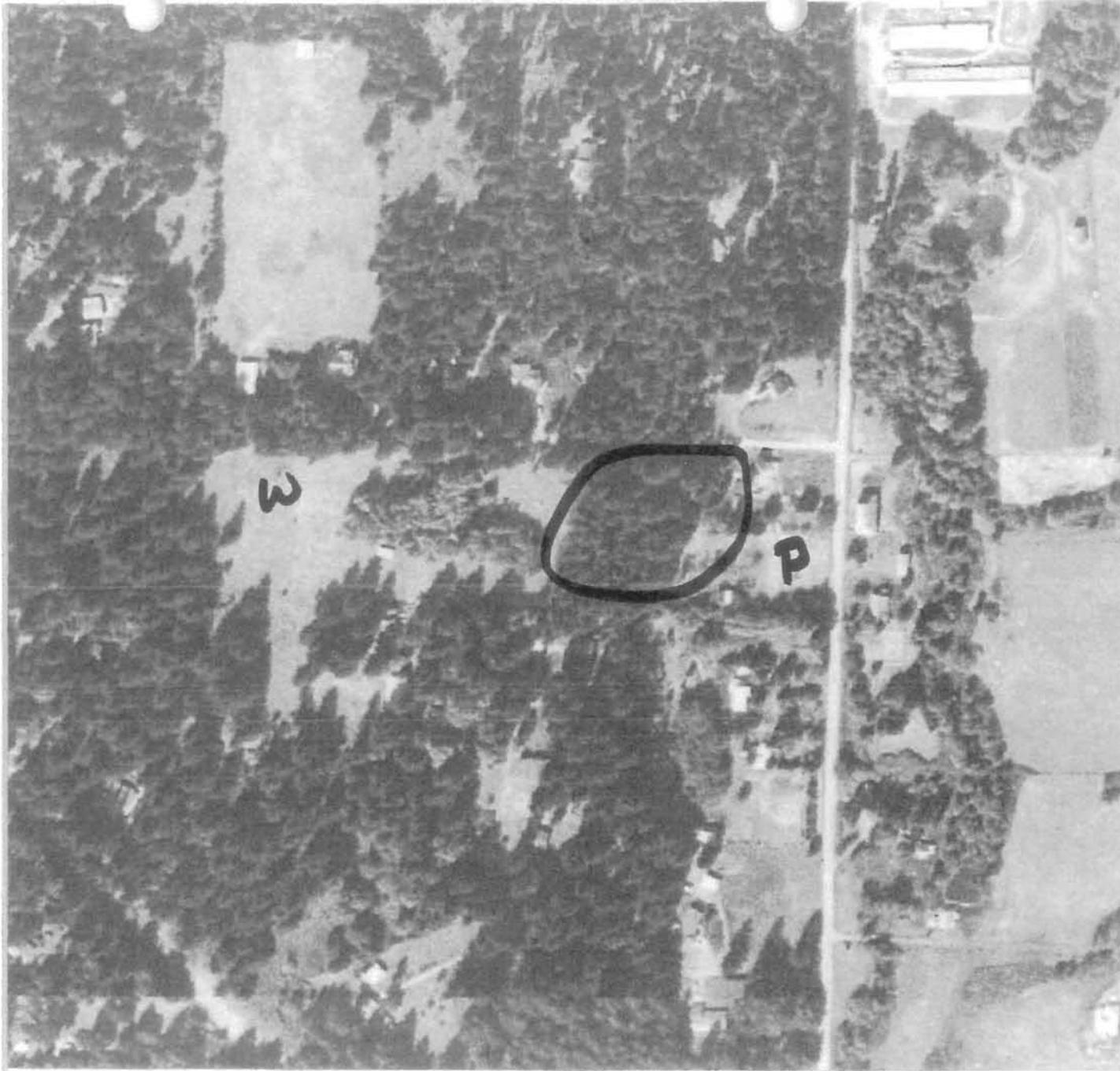
LOOKING WEST
(RECENT)



LOOKING EAST
(RECENT)

1994 Photography

SW 1/4 of Section 33 T3R3E WM



I hereby certify this is a true and correct copy of the original information file and maintained by the Department of Assessment and GIS of Clark County, Washington.
Sandra Mattila, Deputy Assessor
April 16, 2009

- Major Roads
- State
- State On-Ramp
- Interstate
- Interstate On-Ramp
- Primary Arterial
- Arterial
- Municipal Jurisdiction
- Unincorporated
- Incorporated

Set Dept Name in Preferences



CLARK COUNTY
WASHINGTON
Plot Date: Apr 15, 2009
Map produced by: LM

Information shown on this map was collected from several sources. Neither Clark County or the agency producing this document accept responsibility for any inaccuracies that may be present.

(Scale 1:3600)



Ex 60





USGS May 8, 2002

Ex 73

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLARK

DENNIS WALKER & SANDRA WALKER, a)
marital community,)

Plaintiffs,)

vs.)

JEFFREY PLUMMER & KELLI PLUMMER,)
a marital community,)

Defendants.)

No. 07 2 05168 0

ORIGINAL

VIDEOTAPED DEPOSITION UPON ORAL EXAMINATION

OF

LORRI M. HODGKINSON

DATE TAKEN: Wednesday, April 8, 2009
TIME: 1:30 p.m.
PLACE: 1201 Main Street
Vancouver, Washington

COURT REPORTER: CINDY J. HOLLEY, CSR

APPEARANCES

FOR THE PLAINTIFFS:

MS. CASSIE N. CRAWFORD
Nellor/Retsinas/Crawford
1201 Main Street
Post Office Box 61918
Vancouver, WA 98666

FOR THE DEFENDANTS:

MR. JAMES D. HAMILTON
Attorney at Law
201 N.E. Park Plaza Drive
Suite 285
Vancouver, WA 98684

ALSO PRESENT:

JAMES TURBEVILLE: LIMELIGHT VIDEO
KELLI PLUMMER
JANIE WILSON
SANDRA WALKER
DENNIS WALKER

I N D E X

<u>Examination</u>	<u>Page</u>
Direct Examination By Ms. Crawford	5
Cross-Examination By Mr. Hamilton	82
Redirect Examination By Ms. Crawford	86
Recross-Examination By Mr. Hamilton	93

EXHIBITS

<u>Exhibit No.</u>	<u>Description</u>	<u>Page</u>
1	Photograph	36
2	Photograph	39
3	Photograph	43
4	Photograph	47
5	Photograph	48
6	Photograph	51
7	Declaration of Lorri Tipton	69
8	Hagedorn Survey	74
9	Photograph	75
10	Forest Practices Application	86
11	Seller's Property Report	88
12	Photograph	90
13	Water Bacteriological Analysis	95

1 VIDEOGRAPHER: My name is James Turbeville, I work
2 for Limelight Video Productions located at 2636 N.W. 26th
3 Avenue in Portland, Oregon 97210. This deposition is being
4 held on April 8th, 2009, the time is 1:33 p.m. Pacific time.
5 Our location is 1201 Main Street, Vancouver, Washington.

6 The case caption is Dennis Walker and Sandra Walker
7 versus Jeffrey Plummer and Kelli Plummer pending in the
8 Superior Court for the State of Washington for Clark County,
9 Case Number 07-2-05168-0. The Deponent is Lorri M. Tipton.
10 Would the parties present please identify themselves for the
11 record.

12 MR. HAMILTON: James Hamilton, attorney representing
13 Defendants.

14 MS. PLUMMER: Kelli Plummer.

15 MS. WILSON: Janie Wilson.

16 MR. WALKER: Dennis Walker.

17 MS. WALKER: Sandra Walker.

18 MS. CRAWFORD: Cassie Crawford.

19 VIDEOGRAPHER: The party giving notice today for the
20 deposition is the Plaintiff. This deposition is being taken
21 before Cindy Holley, court reporter, who will now swear in the
22 witness.

23 LORRI M. HODGKINSON,
24 called as a witness in behalf of the Plaintiffs, having been
25 duly sworn, was examined and testified as follows:

1 THE WITNESS: And it's Lorri Hodgkinson.

2 DIRECT EXAMINATION

3 BY MS. CRAWFORD:

4 Q. I was going to ask you to clarify that so we'll do
5 that, that's fine. I can call you Lorri; is that okay?

6 A. Oh, yeah.

7 Q. Okay. Lorri, you know that we're here to basically
8 get your testimony and we're videotaping it so that it can be
9 used later at the trial without the necessity of you having to
10 come back and testify at a trial, so while we're learning
11 things from you today we also are going to be putting together
12 the story as you know it so that the judge can see this for
13 himself at the trial; okay?

14 A. Yeah.

15 Q. All right. Let me go through just a couple of ground
16 rules first for depositions. Have you ever had your deposition
17 taken before?

18 A. Yes.

19 Q. Okay. A lot of -- a few times or just --

20 A. A couple of times.

21 Q. Okay. So I've explained to you that the court
22 reporter can only take down the testimony or the -- well, I'll
23 say testimony of one person at a time so you need to wait until
24 I'm done asking my question before you start to answer and I
25 need to wait until you're done answering before I ask another

1 question because she can't have an overlap of us both talking
2 at the same time. Are you taking any kind of medication today
3 that impairs your ability to remember things?

4 A. No.

5 Q. Okay. And what about to sit through this for an hour
6 or two, you're okay to do that?

7 A. Yes.

8 Q. Okay. And we've talked about whenever somebody needs
9 to take a break we will and don't be shy about, you know, when
10 you need to take a break because it's no big deal.

11 A. Okay.

12 Q. You're -- besides this visual video for the judge
13 we're also going to have your testimony put into a written
14 transcript, she will transcribe it and it will look like a
15 little booklet, and after today you'll have an opportunity --
16 somebody will mail you that and you can look through it and if
17 you want to make changes to it, if something doesn't look
18 right, that's fine, but it's important for us to get your best
19 answers today, your best recollection, because either side
20 could comment on your changes at trial.

21 So it's best just to if we can get your best
22 recollection today and if you think of something after you
23 answered a question, feel free to jump back in and clarify
24 something earlier, that's just fine because this is a, you
25 know, pretty long period of time and things kind of come to

1 mind, probably as you start talking about one aspect of it you
2 might remember other aspects of it. So do you have any
3 questions about the process at all?

4 A. No.

5 Q. Okay. All right. Well, we'll just get started. Why
6 don't you clarify your last name for the record so we have
7 that.

8 A. When we purchased the five acres I was married to
9 John Tipton and we got a divorce and I married Roy Russell
10 Hodgkinson.

11 Q. And your last name now is Hodgkinson?

12 A. Yes.

13 Q. Okay. All right. And Roy lived at the property,
14 Russell lived at the property as well as did your first husband
15 live on the property?

16 A. Yes.

17 Q. Okay. So both of your husband's have lived on the
18 property?

19 A. Correct.

20 Q. All right. All right. Just for purposes of making
21 it consistent I'm going to refer to the property that you owned
22 and sold to the Plummers as the Plummer property today, and I'm
23 going to refer to the Walker property as the Walker property so
24 that we're clear on that, and it's just again for ease. Do you
25 recall generally the time period that you owned the Plummer

1 property?

2 A. We sold it in '99 --

3 Q. Okay.

4 A. -- and I was trying to remember, I believe we
5 purchased it six years before that so it would have been '90,
6 '91 I think.

7 Q. Okay. All right. And have you -- you sold the
8 property to the Plummers and that was 1999?

9 A. Yeah.

10 Q. Okay. So have you ever met the Plummers before today
11 face-to-face?

12 A. Yes.

13 Q. Okay. And you know Dennis and Sandy Walker?

14 A. Yes.

15 Q. Did they own the Walker property at the same time
16 that you owned the Plummer property at some point in time?

17 A. Yes.

18 Q. Okay. And what was the name of the person who sold
19 you the Plummer property?

20 A. Jack Januska.

21 Q. Okay. And have you ever met Jack Januska?

22 A. Yes.

23 Q. All right. A few times or --

24 A. Yeah.

25 Q. Okay. Do you remember the first time you met him?

1 A. Yes.

2 Q. Okay. Was it at the Plummer property?

3 A. Yes.

4 Q. Okay. Can you tell me what you recall from that
5 visit, in other words what was the reason that you went there
6 that day, if you can recall who was there, if anybody, besides
7 you and Jack Januska and what the conversation was between you
8 and Jack Januska?

9 MR. HAMILTON: I object to testimony about the
10 conversation on the basis that it's hearsay.

11 MS. CRAWFORD: Okay. And we'll have it and he can
12 decide.

13 MR. HAMILTON: If you can separate them, the
14 questions, as to who was there, what happened and conversation
15 would be easier.

16 BY MS. CRAWFORD:

17 Q. Okay. All right. Let's -- let me break that down.
18 First of all do you recall whether you and Mr. Januska were the
19 only people during that first meeting?

20 A. Yes.

21 Q. Okay. And what was the purpose of you going to the
22 Plummer property that day?

23 A. I actually didn't go to the Plummer property --

24 Q. Okay.

25 A. -- or the Walker property.

1 Q. Okay. Well, you purchased ultimately the Plummer
2 property --

3 A. Yes.

4 Q. -- right? Okay.

5 So when you met Jack Januska for the first time, what
6 property were you looking at?

7 A. At the Plummer property.

8 Q. Okay. And had you seen the Plummer property, been on
9 it, before the day that you went out to meet with Jack Januska?

10 A. Yes.

11 Q. Okay. And did you meet anybody there?

12 A. Our real estate agent.

13 Q. Okay. And do you recall his name?

14 A. Yes, it's Scott Mitchum, M-i-t-c-h-u-m.

15 Q. Okay. So how did you learn of the Plummer property
16 being for sale, did you, did you have a realtor out looking for
17 you or --

18 A. My ex-husband Jack Tipton, his brother is Scott
19 Mitchum and he had just gotten his real estate license and so
20 he was touring properties and he knew we had to -- that we had
21 sold our house and we purchased that piece of property, the
22 Plummers' property.

23 Q. Okay. All right. So was his last name was Mitchum;
24 correct?

25 A. Yes.

1 Q. Mr. Mitchum, was he your agent or was he Jack
2 Januska's agent?

3 A. He was our agent.

4 Q. Okay. All right. And did Jack Januska have his own
5 agent?

6 A. I don't remember.

7 Q. Okay. But the property was listed through Multiple
8 Listing Service?

9 A. Yes.

10 Q. Okay. So, all right, and what was your impression of
11 the property when you first went there, what do you remember
12 standing out?

13 A. There was a very dilapidated house --

14 Q. Okay.

15 A. -- it had been empty for quite some time and it had
16 to have extensive cleaning and painting and repairing before we
17 could move in and it was just about a week before Christmas.

18 Q. Okay. So what about the surrounding property, was
19 there anything distinguishable about the surrounding property
20 that the house sat on?

21 A. There was a well house that was old and rusty and
22 there was another building, and if you were standing on 222nd
23 it would be on the right-hand side of the property, and I
24 believe that street it's a private road and I believe that's
25 104th --

1 Q. Okay.

2 A. -- there was a building that they had used for
3 working on cars --

4 Q. Okay.

5 A. -- and then there was a lean-to off of that and so I
6 made it into a barn for my Llamas --

7 Q. Okay.

8 A. -- and a birthing area.

9 Q. Okay. So when you said there was another building
10 that -- you're referring to the building that they worked on
11 cars that had the lean-to?

12 A. Yes.

13 Q. Okay. And where was the well house located on the
14 property, was it towards the bottom or towards the top?

15 A. No, it's on the bottom. And if you're looking at the
16 property, it would be on the left-hand side and the house sat
17 here and the well was about there.

18 Q. Okay. So it was --

19 A. So it was kind of diagonal from the back corner of
20 the house.

21 Q. Okay. And how many feet from the house would you say
22 the well house was?

23 A. It wasn't very far, less than 100 feet I think --

24 Q. Okay.

25 A. -- something like that.

1 Q. All right. And how many wells were on the property
2 when you bought the property from Januska?

3 A. One.

4 Q. All right. And is that the well that's in the well
5 house that you just described to us?

6 A. Yes.

7 Q. Okay. And what other attributes did the property
8 have? Did it have -- I mean was it treed or --

9 A. Yes, it had a lot of trees on the top part of the
10 property and there were a couple of large trees on the bottom
11 by the house and it would be on the left-hand side of the
12 house. There was a rickety fence at the top of the property
13 and there, there wasn't any other fencing at that time when we
14 first purchased.

15 Q. Okay. So no fencing on any other sides or the
16 frontage that faces 222nd?

17 A. No. There was a small area of fencing on the
18 left-hand side up at the top of the property and it belonged to
19 Davis.

20 Q. Okay. All right. So when you bought the property
21 did you have any -- what was your intentions, what were you
22 going to do?

23 A. I had planned on raising my Llamas --

24 Q. Okay.

25 A. -- so the very first thing we did was put fencing all

1 the way around the property --

2 Q. Okay.

3 A. -- and some cross fencing as well.

4 Q. Okay. So what kind of fencing did you put all the
5 way around the property?

6 A. It's called field fencing or horse fencing.

7 Q. Okay.

8 A. It starts out with a smaller square of wire and then
9 it gradually goes up to a larger amount.

10 Q. Okay. And did you actually put up that, the fence,
11 on around the property yourself or did you hire that done?

12 A. No, my ex-husband and I did it and our son.

13 Q. Okay. And his first name was John Tipton?

14 A. His legal name is John W., it would be John William
15 Tipton but he went as Jack --

16 Q. Okay.

17 A. -- because his stepfather's name was John.

18 Q. Okay. So I'll refer to him as Jack Tipton then. And
19 did it take you -- do you remember how long it took you to do
20 the fencing, did you do it over a couple of weeks or all in
21 one day?

22 A. No, it took probably a week, maybe two weeks to get
23 it all done, it's a very rocky land on the bottom part.

24 Q. Okay. And in order to put the fencing in did you
25 have to do anything to the property before you put any fencing

1 on?

2 A. Yeah, we talked to Jack Januska and he told us --

3 MR. HAMILTON: I'm going to object to any discussion
4 with Jack Januska on the basis that it's hearsay.

5 MS. CRAWFORD: Okay. Let me think about this.

6 BY MS. CRAWFORD:

7 Q. So for now let's leave out direct conversations
8 between you and Mr. Januska and just tell me what you did
9 basically instead of what conversations went with your actions.
10 So before you put in the fence around the property did you
11 actually fence all four sides of the property?

12 A. Yes.

13 Q. Okay. Did -- so what did you have to do before you
14 put in the fencing?

15 A. Well, the first thing we had to do was find the
16 surveyor markers.

17 Q. Okay. Tell me about that.

18 A. And --

19 Q. How did you know there was surveyor markers? Did you
20 learn that from somebody secondhand?

21 A. From it was on the paperwork that the courthouse has
22 of all the properties, it gives you a description of the
23 property.

24 Q. Are you talking about the written out description?

25 A. Yes.

1 Q. Okay. So you used the written out description to
2 locate survey markers?

3 A. Yes.

4 Q. Okay. And did you find any survey markers?

5 A. Yes.

6 Q. Where were they?

7 A. One of them is on the property line between the
8 Davis' --

9 Q. Okay.

10 A. -- and the other one was on 104th and they were both
11 survey metal stakes --

12 Q. Okay.

13 A. -- into the ground. And we had to take out all of
14 the blackberry bushes and old grass that had grown along that
15 side of the road and there was a really old fencing that had
16 been trampled down many years --

17 Q. Okay.

18 A. -- and we finally found it, but it took us a day --

19 Q. All right.

20 A. -- of doing just that.

21 Q. Looking for the survey markers?

22 A. Uh-huh.

23 Q. Okay.

24 A. And I believe her name is Anderson, she's a little
25 old lady that lives on 104th, as you come up 104th it would be

1 on your right-hand side, and I spoke with her and --

2 MR. HAMILTON: I'll object to anything that -- any --
3 to that conversation also.

4 MS. CRAWFORD: Well, she hasn't said anything that
5 Mrs. Anderson said to her. Lorri is describing that she spoke
6 to Mrs. Anderson so that's just establishing an event.

7 BY MS. CRAWFORD:

8 Q. So when you finish answering your answer if you could
9 again just relate it to the actions of what you did and not the
10 exchange. So did you have to check with Mrs. Anderson about
11 the location of the survey markers?

12 A. I asked her and then she asked her son and then I had
13 a conversation with him.

14 MR. HAMILTON: The same objection.

15 THE WITNESS: Well, I'm sorry.

16 MS. CRAWFORD: It's okay. You're -- it's fine.

17 BY MS. CRAWFORD:

18 Q. Okay. So you and Jack Tipton found the survey
19 markers?

20 A. Yes.

21 Q. Okay. And you said there was an old dilapidated
22 fence, was that fence the fence that's -- was that fence in the
23 area between the Walker and the Plummer property line?

24 A. No.

25 Q. Okay. Where was the old dilapidated fence?

1 A. It was down 104th.

2 Q. Okay. And did you remove that completely when you
3 put up your new fencing?

4 A. Yeah.

5 Q. Okay.

6 A. It had barbwire on it too.

7 Q. Oh, it did?

8 A. Yeah.

9 Q. Okay. All right. So when you put up your new
10 fencing did you have to do any logging or anything like that
11 before you put up the fencing?

12 A. No.

13 Q. Okay. And when you put up your new fencing you've
14 described the type of fencing it was, did you put up any
15 fencing between the boundary line of the Plummer property and
16 the Walker property?

17 A. Yes.

18 Q. Okay. And did you and Jack Tipton actually do that
19 together?

20 A. Yes.

21 Q. Okay. Did anybody help you?

22 A. My son.

23 Q. Okay. And your son's name is?

24 A. Dion.

25 Q. Dion, okay. Is it Dion Tipton?

1 A. Yeah, it's Norman Dion Tipton.

2 Q. Okay. So the three of you put up the fence?

3 A. Yes.

4 Q. Okay. Was Jack Januska around at all when you were
5 putting up the fence?

6 A. No.

7 Q. Okay. And did you put the fence up in line with
8 where the two survey markers that you found and have described
9 for us are located?

10 A. Yes.

11 Q. All right. And how is it that you determined the
12 angle of the fence, did you just run a straight line between
13 the two survey markers?

14 A. Yes.

15 Q. Okay. All right. Have you ever logged the Plummer
16 property?

17 A. Yes, we did.

18 Q. What year did you log?

19 A. It was '98.

20 Q. Well, you sold in '99 we decided, so it was about a
21 year before you sold?

22 A. Yeah --

23 Q. Okay.

24 A. -- not quite a year.

25 Q. All right. You have a pretty good memory of dates.

1 All right. When you purchased your property from Jack Januska
2 did you have any problems in the purchase and sale transaction
3 itself, meaning were there any squabbles after you, you know,
4 wrote up a purchase and sale agreement, was there any argument
5 or problems after that before you closed escrow?

6 A. With Januska?

7 Q. Yes.

8 A. No.

9 MR. HAMILTON: Before she answers, Counsel, I'm -- I
10 don't want to keep objecting to relevance, so are you willing
11 to stipulate that objections to relevance --

12 MS. CRAWFORD: Yes.

13 MR. HAMILTON: -- can be preserved until trial?

14 MS. CRAWFORD: Yes.

15 MR. HAMILTON: Okay. Then I'm just not going to
16 object to relevance at this time and will at trial.

17 MS. CRAWFORD: Okay.

18 MR. HAMILTON: Okay. That's fine.

19 BY MS. CRAWFORD:

20 Q. So did you buy your -- the Plummer property from
21 Januska outright and either pay cash or go get a bank loan or
22 did you buy the property from Jack Januska on an installment
23 basis where you made payments directly to him?

24 A. We put \$10,000 down on it and we set up an escrow
25 account with I think it was West Point.

1 Q. Okay. And you just made your payments into this West
2 Point escrow?

3 A. Yes.

4 Q. Okay. And was it your understanding that Jack
5 Januska owned the Plummer property when you were purchasing it
6 outright or if did -- was it your understanding that there was
7 still money owed to some third party on the Plummer property?

8 A. Yes. Our payment was made to West -- I think it's
9 West Point or West Port escrow, the escrow company took -- Jack
10 Januska still owed money to Dennis Daly who owned the whole
11 ten acres.

12 Q. Okay.

13 A. And originally his father and mother owned the
14 property.

15 Q. Okay.

16 A. And when Januska purchased the property from Dennis,
17 he was making payments directly to Dennis --

18 Q. Okay.

19 A. -- and our money was sent to an escrow company and
20 they sent that to Dennis Daly.

21 Q. Okay. So did any portion of your monthly payment go
22 to Januska or did it all go directly to Dennis Daly?

23 A. It was split --

24 Q. Okay.

25 A. -- a portion of it went to Dennis Daly and the other

1 portion went to Januska.

2 Q. Okay. When you went out to look at the Plummer
3 property when -- before you bought it did you look at any
4 surrounding properties at the same time?

5 A. We looked at the Januska's property. It wasn't up
6 for sale at that point in time, but when we were up looking at
7 the property I spoke to my ex-husband and I spoke to Januska.

8 Q. Okay. So when you say "the Januska property" do you
9 mean the property that is now the Walker property?

10 A. Oh, yes.

11 Q. Okay, that's fine, I just wanted to clarify. And
12 when you looked at the Walker property was there any type of
13 fencing that was up before you bought the property between the
14 Walker property and the Plummer property?

15 A. Yes.

16 Q. Okay. What kind of fencing was up?

17 A. It was very rusty and old and bent down --

18 Q. Okay.

19 A. -- but it was the same type of fencing that we
20 eventually put up.

21 Q. Okay. So did you when you looked at the Walker
22 property was it being used for anything at that time?

23 A. Yes, Januska had cows on it. I don't remember if the
24 cows were his or if he was letting somebody just graze on the
25 property because it didn't have any trees on it, it was mostly

1 just pasture land.

2 Q. Okay. And when you looked at the Walker property at
3 the same time you were looking at the Plummer property do you
4 recall what, if anything, basically was in between the Walker
5 property and the Plummer property? And by that I mean you've
6 described a fence, was there anything else in between the two
7 properties that you can recall?

8 A. There was a well on it --

9 Q. Okay.

10 A. -- on the Walker's property.

11 Q. Okay. What kind of well, was it in a house as well
12 or was it --

13 A. No.

14 Q. Okay.

15 A. In fact it was just a hole in the ground and it had a
16 lid over the top of it and then there was a pump inside so far
17 down.

18 Q. Okay. And it would have been, I always get my
19 directions mixed up here, it would have been to the west of the
20 Plummer property; correct? Do I have those --

21 A. I'm not good with east and west, Honey.

22 Q. Okay.

23 A. If you were standing on 222nd and you were looking at
24 the property, the well would have been on the left-hand side --

25 Q. Okay.

1 A. -- and it's maybe eight feet from the property line.

2 Q. Okay. And when you say the well was eight feet from
3 the property line do you mean inside the Plummer property line
4 or inside the Walker property line?

5 A. Inside the Walker property line.

6 Q. Okay. And why do you say that the well is about
7 eight feet on the inside of the Walker property line, what
8 makes you say that?

9 A. Because I was up on the land and Januska was up there
10 and we had a conversation about our well and because I was
11 having problems with the well and he --

12 MR. HAMILTON: I'm going to object to anything that
13 any --

14 MS. CRAWFORD: That Januska said?

15 MR. HAMILTON: Correct.

16 BY MS. CRAWFORD:

17 Q. Okay. It's okay, go on. You were saying that you
18 knew the well was about eight feet inside the Walker property
19 line because you saw it there at some point with Mr. Januska?

20 A. Yes.

21 Q. Okay. And when you purchased your property was there
22 any well besides the well that's in the pump house? Was it
23 your understanding was there any well besides the well that's
24 in the pump house belonged to the Plummer property? Did I, I
25 worded that awkward, let me say it again.

1 When you purchased the Plummer property, okay, was it
2 your understanding that there was one well and that was the
3 well behind the pump house?

4 A. Yes.

5 Q. Okay. Did you ever have an understanding that the
6 well that was eight feet from the property line on the inside
7 of the Walker property line was your well?

8 A. No.

9 Q. Okay. Were you ever given permission to use that
10 well?

11 A. No.

12 Q. Okay. And did you ever use that well?

13 A. No.

14 Q. Okay. And you were telling us how you knew it was
15 about eight or why you thought it was about eight feet inside
16 the Walker property line, is that based on some calculations
17 that you did or something somebody else did?

18 A. No.

19 Q. Okay.

20 A. It was just very obvious where it was.

21 Q. Okay. Why was it obvious?

22 A. Because I could see it.

23 Q. Okay. And because it was behind a fence?

24 A. Yes.

25 Q. Okay. Anything else? Did the, did the grade of the

1 land or the topography look different? You've described
2 pasture on the Walker side and timber on the Plummer side;
3 correct?

4 A. Correct.

5 Q. All right. Was there any distinguishing feature
6 right on the property line, in other words did timber go right
7 up to that fence and did pasture start right on the other side
8 on the Walker side?

9 A. Yeah, the trees, the trees weren't right on the
10 property line, there was a lot of different sized trees, but
11 the pasture land on the Walker side was right up to the
12 property line, that was pasture land.

13 Q. Okay. And was there any pasture under -- on the
14 Plummer side of the fence?

15 A. Down on the bottom.

16 Q. Okay. By the house?

17 A. By the house --

18 Q. Okay.

19 A. -- by 222nd. It was kind of level for a while and
20 then it went up and then there was like a plateau up at the
21 top, but it was all wooded and there wasn't any grazing in that
22 area.

23 Q. Okay.

24 A. So we -- my ex-husband Jack we went to the top of the
25 incline and we put a piece of fencing across there also so that

1 the Llamas wouldn't go up into the trees.

2 Q. Okay. So the fencing that you put up did you have
3 any other purpose other than to keep the Llamas inside your
4 property line?

5 A. Just to make sure that, that we knew where the
6 property lines of the property was. It was very important to
7 us to make sure that -- because the property had changed hands
8 so many times, it was important to us to know that we knew
9 which piece was ours --

10 Q. Okay.

11 A. -- and so we weren't paying for something that we,
12 you know, didn't belong to us.

13 Q. Okay. And was the concern only with the Walker side
14 of the property or did you have that concern with any other
15 adjoining neighbors?

16 A. We had concerns with the Davis property which would
17 have been on the left-hand side of the property.

18 Q. Okay.

19 A. We were up doing fencing and we heard motorcycles and
20 that was up into the top part where the Plummer and the Walker
21 property are.

22 Q. Okay. Joined?

23 A. It was a very wooded area and the Davis children used
24 that property to ride their dirt bikes on, make forts, and one
25 particular day we heard gunshots going off which terrified us

1 and that's when we put the fencing on the top of the edge of
2 the property on --

3 Q. Between the Walker and the Plummer property?

4 A. Right, we put -- that's when we put that second piece
5 of fencing in.

6 Q. Okay.

7 A. And I had a conversation with Mr. Davis when he came
8 home from work and --

9 MR. HAMILTON: The same objection, it's hearsay.

10 BY MS. CRAWFORD:

11 Q. Okay. Let me, let me ask you a couple of follow-up
12 questions to what you said. So the fencing that you put up
13 between the Walker and the Plummer property, did you put that
14 in the same place that the previous fence had been or did you
15 put it in a different location at all?

16 A. Actually the old fence was not on the property
17 line --

18 Q. Okay.

19 A. -- and so we did put it on when we found the, the
20 markers.

21 Q. Okay. And when you say it wasn't on the property
22 line was it towards the Walker, was it off by being towards the
23 Walker side or the Plummer side?

24 A. The Walker property line was short --

25 Q. Okay.

1 A. -- so that fence was actually -- let me see.

2 Q. When you put the fence up did the Walker property
3 gain property or did the Plummer property gain property?

4 A. The Walker --

5 Q. Okay.

6 A. -- property. The Walker property when we put the
7 fencing in, the extra property would have been the Walker's
8 property.

9 Q. Okay. And about give or take do you remember how
10 many feet difference there was?

11 A. Maybe three feet --

12 Q. Okay.

13 A. -- at that.

14 Q. Okay. All right. Were the motorcycles and the
15 gunshots happening on the Plummer property or the Walker
16 property?

17 A. On the Plummer property.

18 Q. Okay. So when you put your fence up then, besides
19 keeping the Llamas in and identifying your boundary lines it
20 was also to keep other people off; correct?

21 A. Yes.

22 Q. Okay. All right. You sold your property to the
23 Plummers around 1999; correct?

24 A. Yes.

25 Q. Okay. And when you sold the property to them what,

1 what had changed as far as the condition from when you
2 purchased the property to when you sold it? So did you do
3 anything to improve or enhance or change the property while you
4 lived there?

5 A. Yes.

6 Q. Okay. You logged?

7 A. I logged all the trees off.

8 Q. Okay.

9 A. Then I got married and my new husband and I put the
10 road in. We couldn't get access from 104th or I think
11 Januska's is 109th --

12 Q. Okay.

13 A. -- none of the neighbors would give us access so we
14 put the road in on the Plummer property.

15 Q. Okay. From 222nd?

16 A. Yes.

17 Q. Okay. And so when you say you put a road in, it
18 abutted right out to the public road 222nd and it was like --
19 was it a driveway or a road? Was it for purposes of driving to
20 the top of the property?

21 A. Yes.

22 Q. Okay. And did you asphalt that or gravel that?

23 A. No.

24 Q. Okay. So it was still kind of the same dirt
25 condition as the surrounding property?

1 A. (Witness nods head affirmatively.)

2 Q. All right. So you put in a driveway or a road, you
3 logged, do you know how many trees you logged, did anybody keep
4 track?

5 A. Yeah --

6 Q. Okay.

7 A. -- but I don't remember.

8 Q. Okay. Was it a few hundred?

9 A. I have paperwork, yes --

10 Q. Okay.

11 A. -- it was several hundred.

12 Q. Okay. And any other improvements? Did you bring in
13 any utilities or anything onto the property?

14 A. Yes.

15 Q. Okay.

16 A. We had gotten permission from the permit department
17 to use the existing well and we were going to have to put in a
18 new septic system up there, but we could use our well which
19 would be the Plummers well, and the electricity was being
20 brought in from across 222nd, so we took the telephone line,
21 the electrical line and the waterline, we did all of that.

22 And we didn't do the electricity to do the pole yet
23 because we weren't at that particular time, but all the
24 utilities were brought up to the top part of the Plummer
25 property.

1 Q. Okay. What was your intention for use for the top
2 part of the property?

3 A. My husband had a doublewide mobile and we were going
4 to take it up and put it up on the top of the property.

5 Q. Okay. Did you ever do that?

6 A. No, we sold it before.

7 Q. Okay. And so when you sold the property basically
8 what did you leave for the Plummers to do as far as finishing
9 the utility work on the property?

10 A. They would have had to have brought the electricity
11 up and they would have had to put in a septic system.

12 Q. Okay. And did you have any part in actually doing
13 some of this trenching that would have been necessary for pipes
14 and wiring or anything?

15 A. My husband and I did all of it by ourselves.

16 Q. Okay. You did, okay. So you didn't hire any outside
17 contractor to do it?

18 A. No.

19 Q. Okay. When you lived on the Plummer property did you
20 have to do any improvements, maintenance or repair to the well
21 that was at the bottom of the property?

22 A. Yes. We had a problem with the water and the pump
23 not pumping the water and we had the original company that put
24 that, they had I think it was '80, I think it was '87 --

25 Q. Okay.

1 A. -- they had come and put a new jacuzzi pump and a new
2 reservoir with a bladder in it --

3 Q. Okay.

4 A. -- and so when we started having problems, I got the
5 information from Mr. Januska to --

6 Q. To contact them?

7 A. Yeah, to contact to find out who had done the work
8 and he told me, and I contacted them and they came out and we
9 needed to buy a new reservoir, that the bladder had gotten bad
10 in it.

11 Q. Okay. And did Januska pay for any part of that?

12 A. No.

13 Q. Okay. And were you actually without water at any
14 point in time or -- and what I mean by that is you were living
15 in the house at that time --

16 A. Uh-huh.

17 Q. -- and you started having these problems, so did you
18 still have water coming from that well or did you not have any
19 household water for a few days?

20 A. We didn't have any household water for a few days.

21 Q. Okay. And was it just a few days?

22 A. Yeah, it was less than a week.

23 Q. Okay. So how did you function in the house without
24 the well, did you bring in water from the outside? And what I
25 mean by that is buy water somewhere or bring in, you know,

1 containers of water?

2 A. Yeah.

3 Q. Okay.

4 A. We just filled containers up. His mom and dad had
5 property there so we just got bottled water and we'd just take
6 it over.

7 Q. Okay. And did you ever consider using the well on
8 the Walker property?

9 A. No.

10 Q. Okay. To your understanding is, is there any
11 connection from the well on the Walker property with waterlines
12 or anything to the house at the bottom of the hill?

13 A. No.

14 Q. Okay. All right. Did, did -- what was your
15 understanding of what the condition of the water was in the
16 well that was on the Walker property?

17 A. I was told by Mr. Januska --

18 MR. HAMILTON: I'm going to object.

19 THE WITNESS: I knew you were going to say that.

20 MS. CRAWFORD: It's okay.

21 BY MS. CRAWFORD:

22 Q. Just what was your understanding of the condition of
23 the water? You don't need to tell me where you got that
24 understanding, I'm just asking you what was your understanding?

25 A. My understanding was that the water was good.

1 Q. Okay. Drinkable, human drinkable?

2 A. It had not been used, and the reason I know this is
3 because when we had the water tested --

4 Q. For your well?

5 A. -- for my well I had the water company look up the
6 water test that had been just done on the Walker property --

7 Q. Okay. Okay.

8 A. -- and that paperwork showed that it had been used
9 for irrigation only --

10 Q. Okay.

11 A. -- but that it was a good well and it was humans --

12 Q. Okay.

13 A. -- could drink out of it.

14 MS. CRAWFORD: Okay. All right. I want to make
15 sure, we can use some drawings here to, to make sure that we're
16 all talking about the same areas so let me find which one would
17 be the best to start with here. Okay. Let me see, how did she
18 stack these. Let's start with this one.

19 This was previously marked as an exhibit to Jeff
20 Plummer's deposition that we took in this case a while ago so I
21 think I'll go by the same numbers, is that, or should I start
22 renumbering, Jim, do you have a preference?

23 MR. HAMILTON: Whatever you want to do.

24 MS. CRAWFORD: Okay. Well, I think I will renumber
25 then. We'll put this as 1 and I want to put that in front of

1 you and see if you can take a look at it and see if anything
2 looks familiar to you, and if not I'll help you get your
3 bearings.

4 (Exhibit No. 1 marked for identification.)

5 BY MS. CRAWFORD:

6 Q. Do you recognize this as the fence that is in between
7 the Walker property and the Plummer property?

8 A. Yeah.

9 Q. Okay. And does this look like the same fence that
10 you put up or that was there previously?

11 A. No, that's what we put up.

12 Q. Okay. Did you use the same posts, metal posts, or
13 did you put in new metal posts?

14 A. We put in new metal posts.

15 Q. Okay. So you didn't use any of the previous
16 material?

17 A. No.

18 Q. Okay. And when you put the posts in then did you --
19 you actually put them three feet to the east, let me see,
20 towards the, I always do this --

21 A. Three, it went three feet towards the Plummer
22 property.

23 Q. Okay. So you had fence holes where the old fence was
24 and you took out those posts and you put posts --

25 MR. HAMILTON: Object, it's leading and that's not

1 what she testified to.

2 THE WITNESS: No. The fence --

3 MR. HAMILTON: Ma'am, you should wait until she asks
4 a question.

5 THE WITNESS: Well, excuse me.

6 BY MS. CRAWFORD:

7 Q. It's okay. Why don't, no, that's okay, why don't you
8 explain what, what it was again?

9 A. This fence is the fence that we put in.

10 Q. Okay.

11 A. There were fence posts with an old dilapidated fence
12 on it --

13 Q. Okay.

14 A. -- we didn't touch that.

15 Q. Okay.

16 A. When we were getting our permits to put our house up
17 on the property, there's what they call setbacks and that was
18 another reason that we double-checked. My new husband Russell
19 Hodgkinson, after the trees were off and everything was leveled
20 out we double-checked the property stakes and lines because we
21 wanted to make sure that when we put the mobile up that we had
22 the setback from it.

23 Q. Okay. And what kind of setback was that; do you
24 remember?

25 A. I think it's 50 feet --

1 Q. Okay.

2 A. -- from each property, from property lines.

3 Q. Okay. When you logged the property in 1998 the year
4 before you sold to the Plummers, how did you decide what
5 portions you would log and what portions you wouldn't log,
6 where you would start, where you would stop?

7 A. Basically I had bids from four different companies
8 and they came out and they looked at the trees and there was a
9 couple of big trees down at the residence or the house --

10 Q. Okay.

11 A. -- on the Plummer side that we took out --

12 Q. Okay.

13 A. -- they were real close to the house and we didn't
14 feel comfortable, plus they were old growth, I had a lot of old
15 growth trees up on the top. There wasn't any trees from the
16 top going down towards 222nd.

17 Q. Okay.

18 A. So they each gave me their bid and basically which
19 way I would get the best amount of money --

20 Q. Okay.

21 A. -- out of the trees. And I still wanted to leave
22 trees, you know, trees up there, so we didn't take any -- take
23 all of them out, we only took a portion.

24 Q. Okay. All right. I'm going to mark this as 2 and
25 show you.

1 (Exhibit No. 2 marked for identification.)

2 BY MS. CRAWFORD:

3 Q. Now this, I'll represent to you that this is a aerial
4 that was taken and it has the Plummer residence in the picture
5 right here.

6 A. Uh-huh.

7 Q. I think that's the swimming pool and then this
8 asphalted area so that you can kind of get your bearings.

9 A. Uh-huh.

10 Q. All right. How --

11 MR. HAMILTON: Counsel, I don't care if you show her
12 this, but I'm not, I'm not willing at this point to stipulate
13 to the authenticity or --

14 MS. CRAWFORD: Okay.

15 MR. HAMILTON: -- what it is. I don't know that it's
16 not, all I'm suggesting is that we leave those issues for
17 trial.

18 MS. CRAWFORD: That's fine.

19 MR. HAMILTON: I think I know what it is, but I'm not
20 sure where it comes from.

21 BY MS. CRAWFORD:

22 Q. Okay. So in looking at this do you see what looks
23 like the Plummer property that you sold to them and then this
24 area being the Walker property?

25 A. Yes.

1 Q. Okay. And how close to the fence did you log the
2 Plummer property when you were clearing it? And when I say
3 "the fence" I mean the fence that divides the Walker and
4 Plummer property. Well, okay. What I'm trying to find out is
5 were there trees at the top of the hill?

6 A. Yes.

7 Q. Okay. And that was in the area of the boundary line
8 between the Walker and the Plummer property?

9 A. Yes.

10 Q. Okay. So when you were logging did you remove trees
11 that were at the top of the hill?

12 A. Top of the hill between the Plummer and the Walker --

13 Q. The Walker?

14 A. -- property?

15 Q. Uh-huh.

16 A. Yes.

17 Q. Okay. And you moved them because you were trying to
18 level it out and create an area for your mobile home?

19 A. That and I wanted to have money to do all the things
20 that needed to be done to put a house up there --

21 Q. Okay.

22 A. -- plus pay off the property.

23 Q. Okay. So you logged for two reasons, to clear the
24 property in part and to generate some income in the meantime?

25 A. Yes.

1 Q. Okay. So how close to that property line did you log
2 on the Plummer property? So if you can -- I guess what I'm
3 trying to ask you is was there a tree ten feet on the east side
4 or were there the trees much farther back?

5 A. This isn't a very good picture that we get.

6 Q. Okay, let me, all right. Well, let's -- why don't
7 you go back to the one underneath it. Okay. So here's kind of
8 a picture of the fence line --

9 A. Right.

10 Q. -- and the Plummer property has the pool on it, were,
11 were there trees within ten feet of this fence line that you
12 needed to log or were they farther away?

13 A. No, that's about right where it was. The trees
14 weren't like in rows or anything --

15 Q. Okay.

16 A. -- and we took out the biggest ones and we took out
17 the smaller ones, some of the smaller ones so that the other
18 trees that we left would get more sunshine because it was, it
19 was quite forested.

20 Q. Okay. So how did you know where to stop or what,
21 what -- how did you make the decision of where you would stop
22 logging in the area that is the boundary between the Walker and
23 the Plummer property?

24 A. We cleared, cleared that area so that we would have
25 the view of the mountains I believe on that, on the front side

1 of it and we were going to build a shop up there as well.

2 Q. Okay. And when you were designating to the people
3 who did the logging for you, you know, cut this tree, cut that
4 tree or stop here, how did you identify for them where they
5 should stop in the area that is in the vicinity of the property
6 line between the Plummer and the Walker property?

7 A. We staked out the area that the house would be in --

8 Q. Okay.

9 A. -- where the garage and the shop would be --

10 Q. Okay.

11 A. -- and so we cleared those trees out of that area and
12 then we cleared some on each side of it so that we could see
13 the view.

14 Q. Okay. And were there trees the same size on the
15 other side of the fence, on the Walker side of the property, at
16 the same time that you were clearing trees from the Plummer
17 property?

18 A. There were trees there --

19 Q. Okay.

20 A. -- but it wasn't like ours was.

21 Q. Okay. As far as old growth --

22 A. Yeah.

23 Q. -- or --

24 A. It had more pasture.

25 Q. Okay. Did you consider cutting any trees on the

1 Walker side of the property?

2 A. No.

3 Q. Okay. And so the trees that you just described as
4 being smaller on the Walker side, you didn't cut those trees
5 down because you didn't think they belonged to you?

6 A. Right.

7 Q. Okay. All right. Let me show you a couple other
8 pictures here. All right. We'll mark this one as -- this was
9 Exhibit 20 in Jeff Plummer's deposition and I guess I'll mark
10 it as 3. I'm writing the number for you, I don't know if you
11 want me to not do that but --

12 (Exhibit No. 3 marked for identification.)

13 BY MS. CRAWFORD:

14 Q. Okay. Do you recognize anything in that picture?

15 A. That's the --

16 Q. I think is the fence line in there?

17 A. Yeah.

18 Q. Okay. So this is the Walker property, this is the
19 Plummer property.

20 A. Okay.

21 Q. All right. When you lived on the Plummer property
22 did you ever notice this well and tree stump on the other side
23 of the fence, on the Walker side?

24 A. Yeah, that's, that's Jack Januska's well.

25 Q. Okay.

1 A. That's why I said there was no pump house or
2 anything, it was just a hole in the ground --

3 Q. Okay.

4 A. -- and he had to bring in electricity to start the
5 pump, to check the pump.

6 Q. Okay. Did you ever see him doing that?

7 A. Yes.

8 Q. How many times?

9 A. Once.

10 Q. Okay. And why did he want to start the pump? Was he
11 going to use the well water for --

12 MR. HAMILTON: Object, I'm going to object to the
13 foundation.

14 BY MS. CRAWFORD:

15 Q. Did you see what he did, if anything, on the property
16 after he started the pump? Was it your understanding that
17 he --

18 A. He, he, he went and had the water tested --

19 Q. Okay.

20 A. -- to see if the water was good water for humans to
21 drink --

22 Q. Okay.

23 A. -- and he said that he was going to put --

24 MR. HAMILTON: I'm going to object to anything that
25 Mr. Januska said.

1 BY MS. CRAWFORD:

2 Q. Okay. Let me ask it to you this way. So you were
3 talking about him bringing electricity onto the property,
4 Januska, so he could start the pump, was that at or about the
5 same time that the water was tested in the -- on the Walker
6 well?

7 A. Yes.

8 Q. Okay. And you observed him firsthand testing that
9 water?

10 A. (Witness nods head affirmatively.)

11 Q. Okay. Were you there when anybody came out from any
12 agency or anything to look at that?

13 A. No.

14 Q. Okay. All right. Did you ever see any water being
15 used on the Januska property when he owned it and the cattle
16 were grazing?

17 A. No.

18 Q. Okay. Did you ever see any other kinds of animals
19 besides cattle in the pasture on the Walker property?

20 A. No.

21 Q. Okay. All right. So there's a tree next to the well
22 that looks like it's been kind of cut off in an awkward and
23 ugly way, was, was that tree stump there when you recall seeing
24 the well?

25 A. No, I don't remember seeing it there.

1 Q. Okay. So you didn't cut that tree stump?

2 A. No.

3 Q. Okay. Did you -- besides testing the well water for
4 human consumption did you see Jack Januska doing anything else
5 at any point in time in the pasture on the Walker property?

6 A. No.

7 Q. Okay. You didn't see him walking around or anything
8 like that?

9 A. No.

10 Q. Okay. All right. Did -- was the pasture mowed or
11 was it kept -- the grass kept cut by basically the grazing?

12 A. It was short.

13 Q. Okay. So did, do you know, did anybody mow that
14 property?

15 A. No.

16 Q. Okay. Did --

17 MR. HAMILTON: Can I ask, does that mean no, nobody
18 mowed it or no, she doesn't know?

19 THE WITNESS: It's no I never saw anybody or heard
20 anybody cutting the grass.

21 MR. HAMILTON: Okay.

22 BY MS. CRAWFORD:

23 Q. Did Jack Januska to your knowledge ever make any type
24 of repairs to the fence that was in place that you took down?
25 Did you ever see him making any repairs to that fence?

1 A. We did not take down his fence, and, no, I did not
2 see him do any repairs to the fence.

3 Q. Okay. Well, then I think I'm still confused. You
4 say you didn't take down his fence, but I thought what you had
5 said is when you put up a fence which was the same kind of
6 material you replaced all the material, you put it about
7 three feet more towards the Plummer property; isn't that what
8 you said? Maybe I --

9 A. There was a fence --

10 Q. Let's use Exhibit 1 if we can.

11 A. Okay.

12 Q. And let me give you a pen, a red pen, and that might
13 be easier just if you can kind of draw for us.

14 A. This is the fence that we put in.

15 Q. Okay.

16 A. There was another fence -- no.

17 Q. That's okay, take your time.

18 A. There was another fence on the inside. No, wait a
19 minute, wait a minute.

20 Q. This is an important point so just take your time.
21 And let me see if I can find some more pictures that might help
22 you. Okay. This is -- I'll mark this as 4.

23 (Exhibit No. 4 marked for identification.)

24 BY MS. CRAWFORD:

25 Q. I'm going to show you another picture and it's taken

1 from a different angle of the fence so I don't know if this
2 will help or not. I'll represent to you that this is the
3 Plummer side of the property and so this is a car at the
4 Plummers' house and this is the fence, you see it kind of in
5 the --

6 A. Uh-huh.

7 Q. Okay. This is --

8 MR. HAMILTON: So what you're pointing to isn't going
9 to be on the record.

10 MS. CRAWFORD: I know, that's why I'm going to have
11 her -- I'm just trying to get her acclimated.

12 BY MS. CRAWFORD:

13 Q. Okay. So here's the fence that you put up?

14 A. Uh-huh.

15 Q. And here's an area beyond the fence that's close to
16 the Plummer property, and then here's the Walker property over
17 on the other side. Does that kind of look -- make sense when
18 you look at that? I know it's hard because you haven't seen it
19 for a while and I'm going to show you another one too because
20 I'm going to let you pick which one you think will work best to
21 show us where you put the fence versus where the fence was
22 before, so we'll mark that as 5.

23 (Exhibit No. 5 marked for identification.)

24 MS. CRAWFORD: Let me give you one, Jim.

25 MR. HAMILTON: Thanks.

1 BY MS. CRAWFORD:

2 Q. So just look at those. It's fine, you can just take
3 your time. Let me ask you this: When you pushed the fence
4 more towards the Plummer side was the fence that Januska had on
5 dividing the two properties was it closer to the well or
6 further away from the well?

7 A. It was further away from the well.

8 Q. Okay.

9 A. His fencing was on the Plummers' side --

10 Q. Okay.

11 A. -- and there wasn't that much fencing there, there
12 was only just a few posts --

13 Q. Okay.

14 A. -- and so we made the fence more towards the Plummer
15 property where it should have been.

16 Q. Okay. So Januska's fence was closer to the well and
17 yours was farther away; is that what you're saying?

18 A. No.

19 Q. The other way?

20 A. The other way.

21 Q. Okay. All right.

22 A. Januska was using part of the Plummer property.

23 Q. Okay. All right. That's helpful. Okay. So now
24 given using the well kind of as a marker because I think that
25 works, if you could whichever drawing you think is easiest to

1 show it on, these last couple that I gave you, 4, 5 or 1, can
2 you draw just a dotted line where you recall and think that the
3 Januska fence was?

4 A. Where this well is, is this tree on Januska's
5 property or on --

6 Q. This is the Walker side, that's the Plummer side.
7 This is Walker, this is Plummer where the cars are --

8 A. Okay.

9 Q. -- because you can see their asphalt on the ground.

10 A. Yeah.

11 Q. Okay.

12 A. So it would have been on the outside where we put the
13 fencing in.

14 MR. HAMILTON: Counsel, when she's finished can I
15 take a look at it?

16 MS. CRAWFORD: Yes. I want to make sure, I'm going
17 to try to verbalize as well as to make sure that we understand.

18 BY MS. CRAWFORD:

19 Q. So, okay, so let me take a look at it first and then
20 we'll -- let me make sure. Okay. So you've drawn some red
21 broken lines on Exhibit 3, and, okay, I know this is hard
22 because the fence is there and it's a 3-D kind of a situation?

23 A. Exactly.

24 Q. Okay. So this is your fence and you put your fence
25 farther away from the well than Jack Januska had it or --

1 A. Yes.

2 MS. CRAWFORD: Okay. Here you go, Jim, which one was
3 it now. All right. Let me mark, are we on 6, okay.

4 (Exhibit No. 6 marked for identification.)

5 BY MS. CRAWFORD:

6 Q. What I've marked as Exhibit 6 I'll represent to you
7 again that this is an aerial photograph and to give you your
8 bearings here this is the Plummer house. Well, let me --

9 A. It looks like that right there.

10 Q. Actually, yes, you're right because this is -- is
11 this the lean-to or is that --

12 A. I'm not sure what that is.

13 Q. Okay. Let me see here, hold on for a second.

14 A. Because I don't recognize that --

15 Q. Oh, no, actually --

16 A. -- house down below.

17 Q. Yes, no, that's not it. Okay. Here's the Plummer
18 property, here's the line between Plummers and Walkers, okay,
19 this is Walker on this side, so there's some kind of an
20 outbuilding on I'm not sure if it's on the Walker property or
21 somebody else's, but that's the view we're looking at; okay?

22 A. Okay.

23 Q. So the Plummers' house is at the top and the Walker
24 property is on the bottom of this Exhibit 6. Do you see how
25 this is treed, a treed area in the middle?

1 A. Yeah.

2 Q. Was that, did that -- does that look similar to what
3 your property looked like when you purchased it or --

4 A. Man, it's really hard.

5 Q. Okay. Let me find a better picture because I don't
6 want to make this more confusing, it's already --

7 A. Yeah, because I can't get my bearings from --

8 Q. Okay.

9 A. -- where the little house is and where the road was.

10 Q. Okay, that's fine. We'll find a better picture. All
11 right. Let me jump back to where I kind of left off here. So
12 I was asking you about how you made your decision of where to
13 stop cutting timber on your property in the area between the
14 Walker and the Plummer property?

15 A. There are setbacks that you have to do and when you
16 get your road permits and all your other different permits, it
17 says how far away from property lines you have to be.

18 Q. Okay. So did you ever measure from the survey
19 markers to determine how far back, did you say it was 50 feet
20 you thought it might be?

21 A. I think it's 50.

22 Q. Okay. So do you recall if you or your husband ever
23 or your ex-husband ever did measurements from the survey mark
24 back into your property to figure out where 50 feet was?

25 A. Not my ex-husband.

1 Q. Okay. Russ?

2 A. Russell, uh-huh.

3 Q. Okay. So you recall him doing that, taking some
4 measurements?

5 A. Yeah, we both did it.

6 Q. Okay. And that's actually what I'm asking, I did it
7 not very well. What kinds of measurements or work did you do
8 as far as measuring before you knew where your setback was, how
9 did you figure out where your 50-foot setback would be?

10 A. We measured.

11 Q. Okay. And you measured from what?

12 A. It may not be 50 feet --

13 Q. Okay.

14 A. -- it may be 10 feet --

15 Q. Okay.

16 A. -- from that line.

17 Q. All right. So I'll just call it your setback because
18 we don't know how many feet. How did you figure out where your
19 setback would be on the Plummer property when you wanted to
20 clear it and put your mobile home in there?

21 A. After we put the fence up and it was on with the
22 markers and we put our fence up, then we measured whatever the
23 setback was there and then we determined which trees we were
24 going to take out and where the house was going to be set,
25 where the shop, where the garage was going to be.

1 Q. Okay. So once you put the fence up you considered
2 that to be your boundary line, but the fence between the Walker
3 and the Plummer property --

4 A. Yes.

5 Q. -- and you made measurements from that fence?

6 A. Yes.

7 Q. Okay. Did you ever have the property surveyed when
8 you owned it?

9 A. No.

10 Q. Okay. And do you know if it was ever surveyed before
11 you purchased it?

12 A. That piece of property went through so many hands I
13 don't recall.

14 Q. Okay. Did it go through transfers or conveyances
15 before Januska had purchased both the Walker and the Plummer
16 property or were there transactions after he purchased it?

17 A. No, before.

18 MR. HAMILTON: I'm going to -- I'll object based on
19 lack of foundation.

20 BY MS. CRAWFORD:

21 Q. Okay. Tell me how you know that.

22 A. When, when Russell Hodgkinson and I decided that we
23 were going to put a house up at the top part of the property,
24 we found the markers and in order to get the loan that we were
25 going to need to do to move the house up and do the repairs, I

1 was required to go to the courthouse or wherever the records
2 are and start at the beginning of where the property was owned
3 to the present so I had to make copies of chronological order
4 of who owned the property at what time, how it was conveyed
5 back and forth.

6 Q. Okay. And you did that yourself?

7 A. Yes.

8 Q. Okay. So when you were looking at those records did
9 they go back further than the Daly ownership?

10 A. Yes.

11 Q. Okay. So Daly was still in, Daly acquired before
12 Januska obviously but acquired from somebody else, it wasn't
13 part of a bigger piece, 80 acres or something --

14 A. No.

15 Q. -- of the Dalys?

16 A. No.

17 Q. Okay. And is it your understanding that the Dalys
18 owned both the Walker property and the Plummer property?

19 A. Yes.

20 Q. And is it your understanding that Januska was buying
21 the Walker property on contract from the Dalys as well as the
22 Plummer property? Because I think you had told us that when
23 you bought the Plummer property, Januska was still paying Daly
24 for your property, was it your understanding that Januska was
25 paying on -- still paying Daly on the Walker property?

1 A. Yes.

2 Q. Okay. All right. Did Januska ever approach you
3 about the fence that you put up?

4 A. No.

5 Q. Okay. So did anybody else ever approach you about
6 the fence you put up being in the wrong location while you
7 lived there?

8 A. No.

9 Q. Okay. And now when I say "the fence" I'm talking
10 about the boundary fence?

11 A. (Witness nods head affirmatively.)

12 Q. Okay. Were you going to add something?

13 A. Yeah.

14 Q. Okay.

15 A. We did use on the left-hand side of the property
16 where Davis was he had a partial small fence there and we did
17 not use Januska's fencing posts or Mr. Davis' fencing posts.

18 Q. Okay. So are you saying when you replaced the fence
19 on the Davis side, you put in all your own new fencing
20 material?

21 A. Right.

22 Q. Okay. And did Davis have a problem with that?

23 A. He was upset because his children would -- wouldn't
24 have access to the property.

25 Q. Okay. And those were the children that would shoot

1 guns and ride motorcycles?

2 A. Exactly.

3 Q. Did you put any breaks in the fencing, gates or
4 anything that you can recall --

5 MR. HAMILTON: Do you mean --

6 BY MS. CRAWFORD:

7 Q. -- anywhere?

8 MR. HAMILTON: Do you mean --

9 BY MS. CRAWFORD:

10 Q. Any portion of your fencing along 109th, along 222nd?

11 A. There was cross fencing that had gates on it.

12 Q. Okay. The cross fencing would be inside; right?

13 A. Inside, yes.

14 Q. Okay. So the cross fencing would allow the Llamas to
15 go from one area inside your property to another area inside
16 your property?

17 A. Exactly.

18 Q. Okay. Were there any other? On the perimeter
19 fencing did you put in any gates or openings?

20 A. (Witness shakes head negatively.)

21 MR. HAMILTON: Can you stop just a second, Cassie?

22 MS. CRAWFORD: Yes.

23 MR. HAMILTON: I just dropped some stuff I want to
24 pick up.

25 MS. CRAWFORD: Okay. Yes, we've been going a while.

1 How about we take a break?

2 THE WITNESS: That would be good.

3 VIDEOGRAPHER: One moment, please.

4 (Pause in proceedings.)

5 VIDEOGRAPHER: This is the beginning of tape number
6 two on the record.

7 BY MS. CRAWFORD:

8 Q. Okay. Lorri, we're just going to pick back up where
9 we left off just kind of continuing on with questions. When
10 you removed and logged portions of your property were there any
11 conditions to your removal, in other words did you have to get
12 permission from some governing authority and did they have any
13 conditions to that?

14 A. When we took the trees down it had to be inspected
15 first and then there's they, they count the amount of trees,
16 the different kinds of trees.

17 Q. When you say "they" do you mean a government agency
18 or the loggers?

19 A. The loggers do that, but also there was an agency, I
20 don't know if I have that paper or if you have it.

21 Q. That's okay.

22 A. But one of the requirements was that we had to
23 reforestation and that means that you have to plant a certain
24 amount of trees for the ones that you took out --

25 Q. Okay.

1 A. -- and there was 300 trees that had to be replanted.

2 Q. Okay. So did you replant any of the 300 trees while
3 you lived there?

4 A. No.

5 Q. Okay.

6 A. It was such a muddy muck they couldn't be done so we
7 got an extension.

8 Q. Okay. And did they -- does this government agency
9 designate where you had to replant or was that your option on
10 your property?

11 A. No, you had to, you had to make most of them up at
12 the top where we had cleared --

13 Q. Okay.

14 A. -- but you could put them on the boundary lines --

15 Q. Okay.

16 A. -- around, you didn't have to put them like right in
17 the middle of your view or anything --

18 Q. Okay.

19 A. -- and you were also able to do some down on the
20 pasture area.

21 Q. Okay. At the bottom of the Plummer property --

22 A. Yes.

23 Q. -- towards 222nd?

24 A. Yes.

25 Q. Okay. So did you have any plans of where you were

1 actually going to plant them even though you weren't able to
2 because of the weather conditions? Did you know what kind of
3 trees you wanted to plant in certain areas?

4 A. We were going to put in Spruce and Pine --

5 Q. Okay.

6 A. -- and Fir.

7 Q. And is that the type of trees you removed?

8 A. Yes.

9 Q. Okay. Did you have any plans to put any trees along
10 the fence line between the Walker property and the Plummer
11 property?

12 A. Yes.

13 Q. What, what were your plans?

14 A. We were going to plant some trees there but then we
15 didn't want to plant right in the view area so that the
16 Walkers, you know, we didn't want any problem with --

17 Q. Their view?

18 A. Yeah, Januskas view at that point and then the
19 Walkers.

20 Q. Okay. So were you going to keep the fence in place
21 or were you going to remove portions of the fence and put trees
22 there instead?

23 A. No --

24 Q. Okay.

25 A. -- we weren't going to remove the fence.

1 Q. Okay. Now when you sold the property to the Plummers
2 had you replanted any of the trees at that point?

3 A. No.

4 Q. Okay. And was the requirement of replanting the
5 trees communicated to the Plummers?

6 A. Yes.

7 Q. Okay. And was it your understanding that they were
8 going to comply with the replanting provision?

9 A. Yes.

10 Q. Okay. Perfect. Have you -- when's the last time
11 you've been back up in that area? Has it been since you left
12 in 19, and when I say "left" I mean sold the Plummer property
13 in 1999, have you been up -- back up there since?

14 A. Yeah, I think I went by a couple of years ago or
15 maybe last year.

16 Q. Okay. Did you drive up either 104th or the driveway
17 of the Plummers?

18 A. I didn't, I went up 104th --

19 Q. Okay.

20 A. -- and I went up where 222nd was, but I didn't go
21 onto their property.

22 Q. Okay. Could you tell if the Plummers had replanted
23 any of the 300 trees?

24 A. No, they didn't.

25 Q. Okay. Did -- was it your understanding that the

1 governing authority was going to come back out at some point in
2 time and check?

3 A. Yes.

4 Q. Okay. Did, did they ever contact you after -- did
5 the governing authority ever contact you after you sold the
6 property and ask you questions about the replanting?

7 A. No. I did have a conversation with Kelli Plummer and
8 she said that she was --

9 Q. Well, you can tell me --

10 A. Oh, I'm sorry.

11 Q. Well, no, go ahead. Go ahead because she's a party.
12 Go ahead. I'm sorry, I didn't mean to interrupt you.

13 A. Okay. I talked with Kelli and she said she was quite
14 aware that they were supposed to put the trees in, but she had
15 gotten an extension and because she wasn't sure where they were
16 going to put their house accordingly.

17 Q. Okay. So the conversation you had with Kelli Plummer
18 about the replanting was before they had their house moved onto
19 the property?

20 A. Yeah.

21 Q. Okay. Did you talk to Kelli Plummer the time that
22 you were just referencing a few years ago that you saw the
23 property?

24 A. No.

25 Q. Okay. All right. When the cattle would graze in the

1 pasture area on the Walker property was there cross fencing
2 inside the Walker property as well that you recall or --

3 A. No.

4 Q. So did the cattle basically have free rein of all of
5 the grassy area that was on the other side of the fence that
6 divided the two properties?

7 A. Of what I could see.

8 Q. Okay. Let me ask you what you recall about the first
9 time that you showed the Plummers the property, okay, and what
10 I mean specifically is do you recall who was there the day that
11 you first showed the Plummers the property?

12 A. The real estate agent showed the property, we weren't
13 there.

14 Q. Okay. Did you ever meet the Walker, the, I'm sorry,
15 did I say Walkers, I meant Plummers, did you ever meet the
16 Plummers out at the property before you sold the property to
17 the Plummers?

18 A. Yes.

19 Q. Okay. Do you recall how many times?

20 A. No.

21 Q. Okay. But it was while the transaction was pending,
22 they had not closed escrow on the purchase yet?

23 A. Correct.

24 Q. Okay. And who was there when you met the Walkers at
25 the property, I mean Plummers? The real estate agent showed

1 them the first time?

2 A. Uh-huh.

3 Q. And then you recall being on the Plummer property
4 with the Plummers?

5 A. Yes.

6 Q. Okay. Who was there?

7 A. I believe my husband was there.

8 Q. Russ?

9 A. Russell, uh-huh.

10 Q. Okay. And you?

11 A. Uh-huh.

12 Q. And was both Mr. and Mrs. Plummer there?

13 A. Yeah, I think, I don't know. I couldn't -- I don't
14 remember.

15 Q. Okay. Does somebody -- does one of the Plummers
16 stand out in your mind as you know for certain one of them was
17 there and --

18 A. Yes, Kelli.

19 Q. Okay. So you're not sure about Jeff, but you
20 remember Kelli?

21 A. Uh-huh.

22 Q. All right. And what did you and Kelli discuss when
23 you -- when they came out and met with you at the property?

24 A. We talked about the property lines and we showed --
25 her husband was there --

1 Q. Okay.

2 A. -- on the, on one of the occasions, we showed them
3 where the property lines were, the markers, and discussed the
4 reforestation, we talked about the setback for the house. She
5 had said they were going to build a house up there. They
6 allowed us to leave our doublewide on the 104th side piece of
7 property because at that time we, we thought we were purchasing
8 a piece of property down at the coast and that fell through and
9 then we found another place and so we had a date that we had to
10 have it out by.

11 Q. Okay. Who brought up the subject of the property
12 lines if you can recall first when you met with Kelli and Jeff
13 Plummer at the property?

14 A. I imagine we did.

15 Q. Okay. And do you recall what you told them?

16 A. We showed them where the property lines were.

17 Q. Did you walk to all four corners or walk along the
18 entire perimeter?

19 A. We walked along the Plummer/Walker --

20 Q. Boundary line?

21 A. Uh-huh. And we went to the Davis side and showed
22 them that fence line going down and you could -- up at the top
23 of the property you couldn't see the 104 side very well, down
24 lower you could because it was, it had regrown --

25 Q. Okay.

1 A. -- but they were aware of it because we discussed why
2 we put access to the property, at the top of the property
3 down -- starting down on 222nd and bringing it up.

4 Q. Okay.

5 A. There was an original road on that side, there was a
6 mechanical -- a barn type thing with a lean-to and on the
7 backside of it closest to 104th, there was a road there from
8 years and years before.

9 Q. Okay. So you showed them that old road --

10 A. Right.

11 Q. -- and pointed it out to them?

12 A. Yeah.

13 Q. Okay.

14 A. Because originally we were going to take that old
15 road and that's what we did, we took that old road and made an
16 easement out to 222nd so it was still on our property line.

17 Q. Okay. Did the Plummers, if you recall did they ask
18 you any questions about the placement of the fence between the
19 Walker and the Plummer property? Did they ask you if it was on
20 the boundary line?

21 A. Oh, yeah, we told them it was on the boundary line.

22 Q. Okay. Did they ask you if you measured and if you
23 were sure it was on the boundary line?

24 A. Yes.

25 Q. Okay. So you talked about the placement of that

1 fence?

2 A. Yes.

3 Q. Okay. What about the well on the Walker side, did
4 the subject of that well come up at all?

5 A. No.

6 Q. Okay. And when you sold the property to the
7 Plummers, how many wells did you tell them were on the
8 property?

9 A. There was just the one.

10 Q. Okay. And that being the one at the bottom of the
11 hill --

12 A. Yes.

13 Q. -- towards 222nd?

14 A. Yes.

15 Q. Okay. Did they ask you any questions about that
16 well?

17 A. Just if it was -- if we had good water, if we had had
18 it tested and we showed them the reports on that.

19 Q. Okay. And did they ask you if you had ever had to
20 tap into or use for emergency purposes the well on the Walker
21 property?

22 A. No.

23 Q. Okay. Did they seem satisfied with your explanation
24 of where you put the fence between the Walker and the Plummer
25 property lines?

1 A. Yes.

2 Q. Okay. So they didn't raise any questions about the
3 correctness of that?

4 A. No.

5 Q. Okay.

6 A. We made copies of all the permits that were drawn,
7 drawn up, and it, the paperwork that clearly shows that the
8 well that's down on the lower part of the Plummer property was
9 going to be able -- they were going to be able to use that
10 well.

11 Q. After they purchased the property?

12 A. Yeah.

13 Q. Okay. And they would have to put in a septic system
14 you said?

15 A. Yeah.

16 Q. Okay. Okay. So do you -- other than that one
17 conversation where you do recall talking to them about the
18 fence did it come up at any other meetings, was there any
19 repetition of questions about the boundary lines at all from
20 the Plummers?

21 A. No.

22 Q. Okay. And did the Plummers ever tell you that they
23 wanted to get the property surveyed or anything to verify the
24 boundaries before they purchased?

25 A. No.

1 Q. Okay. All right. I'm going to go through a couple
2 of exhibits now. All right. I'm going to show you what is 7.

3 (Exhibit No. 7 marked for identification.)

4 BY MS. CRAWFORD:

5 Q. This is a Declaration of -- by you prepared by me;
6 correct?

7 A. Uh-huh.

8 Q. All right. And I'm going to let you read through it
9 because I want to make sure that the information in this
10 Declaration is correct as we sit here today and memories been
11 jogged and things have gone along.

12 MR. HAMILTON: While she's reading, Counsel, I am
13 going to object to admission of this at trial.

14 MS. CRAWFORD: Okay.

15 MR. HAMILTON: I mean of this exhibit.

16 MS. CRAWFORD: Right.

17 BY MS. CRAWFORD:

18 Q. Okay. I want to go over about three things with you
19 because I think there may be some errors regarding the
20 directions of east/west on here. Okay. So remember the Walker
21 property is west, WW, that's how I'm going to remember it now,
22 and the Plummers are on the east side of the fence, okay. So
23 if we look at Paragraph 3 it says "while I owned the Plummer
24 property, I had one area of the property cleared at the top of
25 the hill in contemplation of building a home on that cleared

1 area. That area is approximately 50 feet from the existing
2 fence and well. I specifically stopped my logging to the west
3 of the existing fence because the fence separated the Plummer
4 Property and the Walker Property."

5 Should that be east because it's talking about you
6 stopping and not going any further in the other direction?

7 A. Yeah. And there's after rereading this and speaking
8 with my husband we did not move the fence back --

9 Q. Okay.

10 A. -- it was right on the property line.

11 Q. Okay. So the fence that was there when you moved
12 onto the property and the fence that you replaced later were in
13 the exact same location?

14 A. Yes.

15 Q. Okay.

16 A. Yes, and I apologize for that. At the top of the
17 page it says "Jack and I walked around the Walker Property at
18 one point."

19 MR. HAMILTON: Counsel, I'm going to ask that she not
20 read anything that Mr. Januska said.

21 MS. CRAWFORD: Okay, that's fine. It's okay.

22 THE WITNESS: I wasn't going to.

23 MR. HAMILTON: That's okay.

24 THE WITNESS: It says "Jack and I walked around the
25 Walker Property."

1 BY MS. CRAWFORD:

2 Q. When you were looking at the Walker property and the
3 Plummer property both at the same time?

4 A. Yeah.

5 Q. Okay.

6 A. I, Jack, my Jack that I was married to was divorced
7 by then --

8 Q. Okay.

9 A. -- and I'm not sure how Jack and I walked around
10 the --

11 Q. Could it have been Januska, referring to Januska
12 right here?

13 A. Hu-huh.

14 Q. No?

15 A. Hu-huh.

16 Q. Well --

17 MR. HAMILTON: Where are you referring to?

18 MS. CRAWFORD: Okay. She's on Page 2, Line 1.

19 MR. HAMILTON: Okay.

20 BY MS. CRAWFORD:

21 Q. So this sentence says Jack and I walked around the
22 property at one point and then there was some discussion about
23 having the well inspected, so was that with Jack Januska?

24 A. No.

25 Q. Okay.

1 A. Wait. Well, no.

2 Q. Did Jack ever tell you anything about the well on the
3 Walker property?

4 A. Yes.

5 MR. HAMILTON: Jack, Jack who?

6 MS. CRAWFORD: Jack Januska. Thank you.

7 BY MS. CRAWFORD:

8 Q. Did Jack Januska ever tell you anything about the
9 condition of the water of -- on the well on the Walker side?

10 A. Yes.

11 Q. Okay. So this sentence, then, it says Jack and I
12 walked around the Walker Property and then there was a
13 discussion about the well and the well water?

14 A. Correct.

15 Q. So is this --

16 A. I just wanted to clarify that this wasn't Jack
17 Tipton, this was Jack Januska.

18 Q. I think that's very important, thank you, that's
19 good. All right. So going down to number 3 then, is it --
20 when it says you specifically stopped logging you would be
21 stopping on the Plummer side which is to the east?

22 A. Yes.

23 Q. So this should be changed to east?

24 A. I believe so.

25 Q. Okay. And I know the directions are confusing

1 because we've gone all over the place with that, but then the
2 very last sentence of number 3 which is Line 19 on Page 2 it
3 says "Jack also showed me the original survey post on the north
4 side of the Plummer property"?

5 MR. HAMILTON: Actually it says "Januska."

6 BY MS. CRAWFORD:

7 Q. "Januska also showed me the original survey post on
8 the north side of the Plummer property," so do you recall Jack
9 showing you either of those survey markers that were in the
10 ground or are you referring to something different?

11 A. Yeah, he told me where to look for it --

12 Q. Okay.

13 A. -- and it was along --

14 MR. HAMILTON: The same objection.

15 MS. CRAWFORD: It's okay.

16 BY MS. CRAWFORD:

17 Q. Not, not what he told you, but did Jack Januska
18 actually point out to you any of the survey markers or did he
19 tell you where they were and then you found them on your own
20 later?

21 A. I found them on my own.

22 Q. Okay. And then the last thing on number 4 on that
23 same page it says "for the entire time that I owned the Plummer
24 Property, I never used, controlled or maintained any property
25 to the east of the existing fence," well, the east would be the

1 Plummer side so should that be west?

2 A. Yes.

3 Q. Okay. I just wanted to get that clarified in case it
4 becomes an issue later. All right. Now I'm going to show you
5 8.

6 (Exhibit No. 8 marked for identification.)

7 MS. CRAWFORD: There's yours, Jim.

8 BY MS. CRAWFORD:

9 Q. And I'll represent to you that this was a drawing
10 done by Hagedorn Surveying, they're a land surveying company in
11 town --

12 A. Uh-huh.

13 Q. -- when the boundary dispute started between the
14 Plummers and the Walkers, they went out and took some
15 measurements and looked at deeds and so forth and did a drawing
16 of deed line versus the fence line, okay. So my question to
17 you is if you look the fence line is the one that's right here
18 on the inside of the deed line --

19 A. Yes. Okay.

20 Q. -- the next line over, it's broken in spots and it
21 has X's, and you can see the -- can you see the little w for
22 well right along that? It's right here where I'm going to
23 circle in red for you.

24 A. Oh, okay, I see it, uh-huh.

25 Q. Yeah, okay. All right. So did the fence actually --

1 when you lived there did the fence actually run from, let me
2 circle it in red so that it's clear for the record, did the
3 fence run from the survey mark on the north to the survey mark
4 on the south or was it broken in places?

5 A. No, the fence was solid.

6 Q. Okay. So continuous --

7 A. When we put --

8 Q. -- when you put it up?

9 A. Yes, it was solid.

10 Q. Okay.

11 A. And it was still solid when the Plummers came and
12 looked at the property and we walked through the property.

13 Q. Okay. Did you still have Llamas when the Plummers
14 came to look at your property?

15 A. Yes.

16 Q. Okay. All right. Now I'm going to show you 9.

17 (Exhibit No. 9 marked for identification.)

18 THE WITNESS: And this --

19 BY MS. CRAWFORD:

20 Q. Is there something that doesn't look right?

21 A. Yeah, where they've got the well drawn.

22 Q. Okay. Why does that not look right? It's on --
23 well, they have it right on the fence line; is that what you
24 mean?

25 A. Yes.

1 Q. Okay.

2 A. Yeah.

3 Q. And it's actually the fence line to your knowledge
4 has never been right next to the well, there's always a few
5 feet in between?

6 A. Yeah.

7 Q. Okay.

8 A. And where it says "deeded line" and then you have
9 this jaggedy fence here, those are two different things?

10 Q. Are you asking me to clarify?

11 A. (Witness nods head affirmatively.)

12 Q. The deeded line is the line that the surveyors
13 determined from reading the written out legal descriptions on
14 deeds and then the fence line of course is to the east from
15 there. These little right here, these little marks, that's not
16 a fence, they're just using it for their arrows. It says
17 "existing brush line." That's fine, really my question was
18 about whether the fence was continuous or broken?

19 A. Yeah, it was continuous and on -- when you're looking
20 at this and it says that there's a four-inch wood corner post,
21 four strand barbwire to the west and hog wire to the south,
22 that's not correct.

23 Q. Okay. How, what's wrong about it?

24 A. On that side of the property that's the 104th --

25 Q. Right.

1 A. -- there is a metal --

2 Q. Survey pin?

3 A. Yeah. Yeah.

4 Q. That's pounded into the ground?

5 A. Stake, yes, but it's a metal one --

6 Q. Okay.

7 A. -- and it had a painted top on it too --

8 Q. Okay.

9 A. -- I think it was yellow.

10 Q. Okay. And then so then look at the other the
11 opposite end it says "steel T post five strand barbwire to
12 west, hog wire to north"?

13 A. (Witness shakes head negatively.)

14 Q. All right.

15 A. No, we took every piece of steel of barbwire out and
16 that particular -- that side did not have any barbwire --

17 Q. Okay.

18 A. -- it had a small existing fence right in here but it
19 wasn't actually a fence fence --

20 Q. Okay.

21 A. -- it was just to keep their dog I think on their
22 side of the property.

23 Q. Whose dog?

24 A. Davis.

25 Q. Davis, okay.

1 A. Davis, yeah.

2 Q. Okay. Anything else jump out at you as looking not
3 how you remembered?

4 A. I guess it's just the proportions.

5 Q. Okay. That's fine.

6 A. Because it says that the existing house right here,
7 this square, the house is down here, it's not up on this hill.

8 Q. Well, the Plummers' house I think is what they're
9 referring to, not older house.

10 A. It says "existing house."

11 Q. Well, the Plummers' house was there when the surveyor
12 was.

13 A. Okay. Okay.

14 Q. Yeah. Okay. Let me show you what I've marked as 9,
15 okay, and so we can get our bearings again here the Plummer
16 property is where the vehicles are parked, they have an
17 asphalted driveway.

18 A. Okay.

19 Q. And then do you see the fence?

20 A. Yes.

21 Q. And then the Walker property is on the west side of
22 that fence. Now this in this picture it looks like some of the
23 wire is bent and --

24 A. The wire is bent, the posts have been taken out
25 because that fence was straight across the property --

1 Q. Okay.

2 A. -- like this deeded line, it was straight across from
3 one end to the other --

4 Q. Okay.

5 A. -- and Russell and I put that, put new fencing on
6 those posts.

7 Q. Okay. So this is the fence that you and Russell put
8 in in this condition. Now let me ask you, when you said
9 Januska had a fence there prior to you putting a new fence to
10 for your Llamas did Januska's fence look like this condition or
11 not as bad or worse?

12 A. It was worse.

13 Q. It was worse. Okay.

14 A. Uh-huh.

15 Q. So it was pushed down in areas and --

16 A. Uh-huh.

17 Q. Was it solid when it was the Januska fence?

18 A. Yeah, I think it was pretty much, they had a strand
19 of barbwire and I had -- oh, I can't say that, okay.

20 Q. Did you remove barbwire or something or --

21 A. Yeah, we took -- we had a conversation --

22 Q. Okay.

23 A. -- and he didn't care.

24 Q. Okay. All right. Okay.

25 MR. HAMILTON: Well, I'll object to that.

1 THE WITNESS: I knew you were going to say that,
2 that's why I didn't finish my sentence.

3 MS. CRAWFORD: That's okay. Okay. I think I'm
4 getting close to being done, I have just a couple of questions.

5 BY MS. CRAWFORD:

6 Q. Did you ever mow on the west side, on the Walker side
7 of the fence at all?

8 A. No.

9 Q. Okay.

10 A. I didn't mow any of my land.

11 Q. Okay. Okay. And we need to be careful here about
12 using words that Jack Januska used, but I'm going to ask you
13 your impression about something. Given the dealings that you
14 had with Mr. Januska purchasing the Plummer property from him
15 do you consider Jack Januska to be an honest and forthright
16 man?

17 A. No.

18 Q. Okay.

19 MR. HAMILTON: That I'm going to object on a number
20 of bases.

21 MS. CRAWFORD: What?

22 MR. HAMILTON: First of all relevance, and, secondly,
23 evidence of character.

24 MS. CRAWFORD: Well, it's not the parties --

25 MR. HAMILTON: It's not proper evidence of character.

1 MR. CRAWFORD: Okay.

2 BY MS. CRAWFORD:

3 Q. When you were in your transaction with Mr. Januska
4 did you feel that on your end that the transaction was all on
5 the up and up and everything went well?

6 A. With purchasing the property?

7 Q. Yes.

8 A. Yeah.

9 Q. Okay.

10 A. With the purchasing of the property, yes.

11 Q. Okay. And did that impression ever change as far as
12 doing some kind of a business deal with Mr. Januska?

13 A. Yes, it did.

14 Q. Okay. What were the events that changed it?

15 A. I had to do a bankruptcy and the attorney that did
16 the bankruptcy wasn't very bright and he included the house in
17 the bankruptcy and he shouldn't have and you're going to say
18 it's hearsay.

19 Q. Basically if you can just again kind of relate it to
20 actions or what you experienced rather than what somebody said
21 to you.

22 A. Okay.

23 Q. At some point in time after you purchased the
24 property did you and Jack Januska disagree on you continuing to
25 purchase the property?

1 A. Yes.

2 Q. Okay. And was that a result of what he thought to be
3 a default in the payments?

4 A. Yes.

5 Q. Okay. And did Mr. Januska attempt to take the
6 property back from you?

7 A. Yes.

8 Q. Okay. Was he successful at all in that?

9 A. No.

10 Q. Okay. And is it at that point in time that you paid
11 Mr. Januska off entirely or was it later than that?

12 A. It was before --

13 Q. Okay.

14 A. -- I paid him off.

15 Q. Okay. And would you ever do another business
16 transaction with Mr. Januska?

17 A. No.

18 MR. HAMILTON: I'm going to object.

19 MS. CRAWFORD: Okay. I think that's all I have on
20 Direct.

21 CROSS-EXAMINATION

22 BY MR. HAMILTON:

23 Q. Mrs. Hodgkinson, I just want to make sure that I
24 understood a couple of the things that you said. The fence
25 between the two pieces of property you said you established the

1 location of it by the survey markers on the north and the
2 survey marker on the south?

3 A. (Witness nods head affirmatively.)

4 Q. You need to answer out loud.

5 A. Right. Yes.

6 Q. She can't take down a nod.

7 A. Oh, I'm sorry.

8 MS. CRAWFORD: That's okay.

9 BY MR. HAMILTON:

10 Q. That's something we all do. And you located both of
11 the survey markers yourself? By that I mean the survey marker
12 on the south side and the survey marker on the north side?

13 A. Yes.

14 Q. And I think you said a few minutes ago that the
15 survey marker on the north side you remember as being a pipe or
16 a rod or something with a yellow paint on top?

17 A. Uh-huh. It was either yellow or it was red --

18 Q. Could it have been --

19 A. I can't remember.

20 Q. Could it have been a yellow plastic cap on top of the
21 rod?

22 A. I don't know.

23 Q. The only reason I say that is that's something
24 common --

25 A. Is it?

1 Q. -- commonly used.

2 A. Yeah. I just remember that it, it stood out. Once I
3 got the brush and stuff taken out, it was real easy to find it.

4 Q. And it was pounded into the ground?

5 A. Yes.

6 Q. How about on the south side which would be I think
7 the Davis side, was there also a survey marker there?

8 A. Yes.

9 Q. What did it look like?

10 A. It was the same kind of metal rod.

11 Q. Okay. Did it also have a colored top?

12 A. That one I don't, I, I don't remember if that one had
13 one on it at all. Mr. Davis showed me where that one was.

14 Q. Okay. And did you look and did you then locate the
15 fence by doing a straight line between the two markers?

16 A. Yes.

17 Q. And was that fence that you put up by locate --
18 strike that.

19 Was the fence you put up between the two markers
20 still in place when you left the property and the Plummers took
21 possession?

22 A. Yes, it was.

23 Q. And also I think you said, and I'm just trying to
24 make sure, that you never saw Mr. Januska mow the Walker
25 parcel; is that correct?

1 A. Yes.

2 Q. That was poorly phrased. It's no, he never mowed it;
3 would that be a correct statement?

4 A. To my knowledge he didn't.

5 Q. Okay. And you never saw him maintain a fence;
6 correct?

7 A. No.

8 Q. And you never saw him do any maintenance activities
9 up there at all; correct?

10 A. Only when he was working on the well.

11 Q. No others besides working on the well?

12 A. That he --

13 Q. Let me, let me rephrase that a little bit. You never
14 saw him doing anything other than maintenance activities up
15 there other than working on the well; correct?

16 A. Correct.

17 MR. HAMILTON: Okay. I don't have anything else.

18 MS. CRAWFORD: Okay. I had given some documents to
19 my assistant to copy that Lorri brought today and I just
20 realized she didn't bring those in so I forgot to ask, there's
21 only like two documents, do you have any objection to me
22 getting those and asking Lorri?

23 MR. HAMILTON: No.

24 VIDEOGRAPHER: Going off the record?

25 MS. CRAWFORD: Yes, just for a sec.

1 VIDEOGRAPHER: Off the record.

2 (Pause in proceedings.)

3 VIDEOGRAPHER: Back on the record.

4 REDIRECT EXAMINATION

5 BY MS. CRAWFORD:

6 Q. Okay. I want to ask you a couple of questions. This
7 is 9 or 10, okay.

8 (Exhibit No. 10 marked for identification.)

9 BY MS. CRAWFORD:

10 Q. Okay. I'm going to show you what I marked as
11 Exhibit 10.

12 MR. HAMILTON: Counsel, I'm, I'm also going to object
13 to these or questions about these. You can go ahead and ask,
14 but I just want to put on the record --

15 MS. CRAWFORD: Okay.

16 MR. HAMILTON: -- that I'm going to object to them as
17 a result of failure to produce, but we can talk about that
18 later.

19 MS. CRAWFORD: Okay.

20 MR. HAMILTON: You can go ahead and continue the
21 deposition and we'll deal with that later.

22 MS. CRAWFORD: Okay.

23 BY MS. CRAWFORD:

24 Q. Lorri, do you recognize this document?

25 A. Yes.

1 Q. Okay. Is this a document that you brought with you
2 today?

3 A. Yes.

4 Q. Okay. Is this a document that you sent to me in the
5 past?

6 A. No.

7 Q. Okay. What, what is this?

8 A. This is the application to have my trees cut down --

9 Q. Okay.

10 A. -- and you have to answer all these questions and on
11 the back page 29 it says V11, GENERAL DESCRIPTION SECTION, and
12 it says "provide any details that will give a better
13 understanding of your project" and it says "harvest 2 acres of
14 5 --

15 Q. Acre tract?

16 A. Yeah. -- 5 acre tract" and then it says
17 "reforestation to follow harvest in the Spring 1997."

18 Q. Okay. When you completed this application process
19 with -- does it say what agency this is, with this governing
20 agency did you have to submit any photographs or drawings or
21 anything that showed or anything, aerials or anything with that
22 so that they could see that the areas that you were talking
23 about doing the logging on?

24 A. No, they just did the description. And I had several
25 different companies come out and look at the different trees,

1 and at that time harvesting of trees was real profitable and
2 like I stated before there was old growth trees and most of the
3 trees that they took were exports and then they took some that
4 were just small trees that they, they used, chop it up for
5 different purposes --

6 Q. Okay.

7 A. -- and we left -- we still left trees up there.

8 Q. Okay. All right. Let me show you what I'll mark as
9 11.

10 (Exhibit No. 11 marked for identification.)

11 BY MS. CRAWFORD:

12 Q. Please, can you tell me if you recognize that
13 document?

14 A. Yes, I do.

15 Q. All right. What is it?

16 A. This is it says SELLER'S PROPERTY CONDITION REPORT
17 VACANT LAND and when you're selling a piece of land or a
18 residence, you have to answer all these questions so that the
19 real estate agent can convey to the buyers what's on the
20 property --

21 Q. Okay.

22 A. -- and anything that they need to be aware of.

23 Q. All right. Do you remember ever having any direct
24 discussions with the Plummers about after they looked at your
25 disclosures, did they come back to you with any questions or

1 want any clarification on anything?

2 A. Not at the beginning, no.

3 Q. Okay.

4 A. And on the very last page it says SELLER'S COMMENTS
5 300 trees need to be replanted on property --

6 Q. Okay.

7 A. -- and it's signed by the Walkers and at that time --

8 Q. Plummers you mean?

9 A. I'm sorry, the Plummers, and at that time I was then
10 married to Russell Hodgkinson.

11 Q. Okay. If you look under on the first page under
12 Section E where it says WATER --

13 A. Uh-huh.

14 Q. -- the first question says "is the property served by
15 a public water main fronting the property," so public --

16 A. Right.

17 Q. Right. And you put NO?

18 A. Correct.

19 Q. And that's because it was served by well water;
20 correct?

21 A. Yes.

22 Q. Okay. And then it asks where the nearest water main
23 is located and you respond DON'T KNOW because you had never
24 used public water?

25 A. Correct.

1 Q. Okay. And it says "have you obtained a Certificate
2 of Water Availability from the City" and you said NO. Was
3 there any discussion between you or your realtor or the
4 Plummers about designating how many wells were on the property
5 or had that question already been answered by you to the
6 Plummers?

7 A. Yeah, the Plummers were aware that, that there was a
8 well on the existing property --

9 Q. Okay.

10 A. -- and --

11 Q. At the bottom of the hill?

12 A. At the bottom of the hill --

13 Q. Okay.

14 A. -- and that they would be able to use that water up
15 at the top where they also were going to have a house built.
16 And also they were given the information on the warranty for
17 the reservoir that we had just purchased and put in there.

18 Q. Okay. So you actually turned some paperwork over to
19 the Plummers about who did that repair work?

20 A. Yes.

21 Q. Okay. All right. Let me show you what we'll mark as
22 12 and I'll let you kind of look at that and then I can give
23 you some more explanation if you need.

24 (Exhibit No. 12 marked for identification.)

25 /////

1 BY MS. CRAWFORD:

2 Q. This is an aerial photograph as well and we see the
3 Plummers' property, the pool is a helpful thing because that --

4 A. Uh-huh.

5 Q. -- that shows it off real good, and you see the
6 asphalted driveway --

7 A. Yes.

8 Q. -- paved driveway? Okay.

9 Now when you were doing your logging it looks like
10 did you have to log -- can you actually draw it for me with use
11 a black marker and just show me the area around the Plummer
12 house that you recall logging. And obviously this isn't with,
13 you know, a scale so I'm looking for a more general
14 description?

15 A. (Witness complies.) And then down here you won't see
16 but it would be --

17 Q. Closer to 104th?

18 A. No, 222nd.

19 Q. Oh, okay.

20 A. 222nd is this way.

21 Q. Yeah. Okay. So let me see what you kind of
22 designated.

23 A. It's hard to tell how far over 104th would be but --

24 Q. Okay. At the same elevation as the logging for the
25 cleared area for the house --

1 A. Uh-huh.

2 Q. -- did you go all the way over to 104th?

3 A. We left a perimeter of trees.

4 Q. Okay. Along in there?

5 A. Along it for privacy.

6 Q. Okay. All right. Let me just take a look at this
7 and show it to Jim and then I have just a follow-up question on
8 that. So you've marked the area that you cleared in a broken
9 dotted black line?

10 A. Uh-huh.

11 Q. Okay. All right. So my question to you is, and I'm
12 going to circle a couple trees here, now if you look at the
13 area that I circled there are the trees to the left of the pool
14 and the driveway?

15 A. Yes.

16 Q. Okay. Did you ever consider removing any of those
17 trees when you were doing your logging?

18 A. No, that's on the Walker property.

19 Q. Okay. So those trees are on the other side of the
20 fence then?

21 A. Yeah.

22 Q. And were they there when you did your logging? Do
23 you recall there being some trees?

24 A. Yeah, there were trees on that property, just not as
25 many as ours.

1 Q. Right.

2 A. And this must be the Davis property here because we
3 took trees down in -- you can't tell from this but it was very,
4 very wooded --

5 Q. Okay.

6 A. -- and so we selectively took trees down in between
7 them so that the trees that we left would get more sunlight,
8 and there were trees, we left more trees over on the Davis
9 side, and like I said there were a few down in the -- where the
10 house was.

11 MS. CRAWFORD: Okay. Okay. I think that may be it,
12 just let me look at these pictures. All right. I think that's
13 all I have. Do you have any follow-up, Jim?

14 RECROSS-EXAMINATION

15 BY MR. HAMILTON:

16 Q. This seller's property condition report that's
17 Exhibit 11, that was done at the time that you sold the
18 property to the Plummers; is that correct?

19 A. Yes.

20 Q. And all of the answers on here are true and accurate?

21 A. I believe so. I'm a truthful person, but if you want
22 me to go over it, I will.

23 Q. On the first page look at Item E.6, see it's down
24 there around line, look down around Line 66, see the little
25 numbers on the left?

1 A. Yeah.

2 Q. It says "have water samples recently been tested" and
3 you checked YES --

4 A. That's true.

5 Q. -- do you see that?

6 A. Yeah, that's true.

7 Q. And if your answer is -- and it says if your answer
8 is yes, see where it says "if your answer is yes a copy of the
9 most recent purity test report is attached, the last, the last
10 purity test was done on 11-6-97"; do you see that?

11 A. Yes.

12 Q. And there was a test of the, of the well down below
13 done on 11-6-97?

14 A. The water was tested twice, once when my ex-husband
15 and I bought the property and again it was one of the
16 requirements to put a house up -- a permit to put a house up on
17 the top of the property.

18 Q. But there was a water purity test on November 6th of
19 1997 --

20 A. Uh-huh.

21 Q. -- correct?

22 MS. CRAWFORD: For the well at the bottom of the
23 property?

24 THE WITNESS: Yes.

25 MS. CRAWFORD: Okay. I just wanted to clarify

1 because --

2 MR. HAMILTON: I get to ask my own questions.

3 MS. CRAWFORD: No, I'm sorry, I just -- I mean,
4 excuse me.

5 MR. HAMILTON: It's just like home.

6 THE WITNESS: And that water test was also a copy
7 went to the Plummers.

8 MR. HAMILTON: I understand.

9 BY MR. HAMILTON:

10 Q. And that was done by Southwest Washington Health
11 District?

12 A. Yes, I have it right here.

13 MS. WILSON: Do you have a copy of that?

14 MS. CRAWFORD: I'm going to mark it. Can we mark
15 that as 13, Jim, and we'll make a copy, any objections?

16 MR. HAMILTON: I don't care if it's marked, I might
17 still object to these at trial.

18 MS. CRAWFORD: Right, that's fine. We'll make a copy
19 when we're done and then mark that.

20 THE WITNESS: Okay.

21 (Exhibit No. 13 marked for identification.)

22 MR. HAMILTON: Can I see that again?

23 MS. CRAWFORD: Do you need to clarify something or --

24 MR. HAMILTON: No, I don't have anything further.

25 MS. CRAWFORD: Okay. Do you need -- you look like

1 you wanted to add something?

2 THE WITNESS: Yeah, I need you to read this because I
3 think I know what, that, that's something that should be
4 brought out.

5 MS. CRAWFORD: I'll explain it to you afterwards why.

6 MR. HAMILTON: Can I take a look at it?

7 MS. CRAWFORD: Sure. I think you may have produced
8 that to me.

9 MR. HAMILTON: Yeah, I recognize it.

10 MS. CRAWFORD: Yeah. Okay. I don't have anything
11 further either so we -- oh, I'm sorry.

12 VIDEOGRAPHER: Is that the end of the deposition?

13 MS. CRAWFORD: Yes.

14 VIDEOGRAPHER: This marks the end of tape two, the
15 end of the deposition, off the record.

16 (Signature reserved.)

17 (At 4:00 a.m. videotaped deposition concluded.)

18 /////

19 /////

20 /////

21 /////

22 /////

23 /////

24 /////

25 /////

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

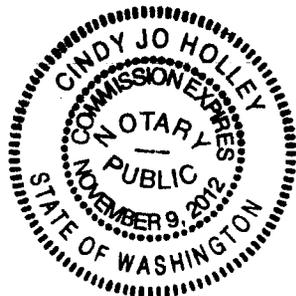
CERTIFICATE

STATE OF WASHINGTON)
) ss.
COUNTY OF CLARK)

I, Cindy J. Holley, a Notary Public for Washington, certify that the videotaped deposition of LORRI M. HODGKINSON here occurred at the time and place set forth in the caption hereof; that at said time and place I reported in Stenotype all testimony adduced and other oral proceedings had in the foregoing matter; that thereafter my notes were reduced to typewriting under my direction; and the foregoing transcript, Pages 1 to 97 both inclusive, contains a full, true and correct record of all such testimony adduced and oral proceedings had and of the whole thereof.

I further advise you that as a matter of firm policy, the Stenographic notes of this transcript will be destroyed three years from the date appearing on this Certificate unless notice is received otherwise from any party or counsel hereto on or before said date.

Witness my hand and notarial seal at Vancouver, Washington, this 14th day of April 2009.



Cindy Jo Holley
Cindy Jo Holley, CSR #2416
Notary Public for Washington
My commission expires: 11-9-2012

FILED
COURT OF APPEALS
DIVISION II

10 DEC -1 AM 10:18

STATE OF WASHINGTON

BY _____
DEPUTY

Court of Appeals No. 40864-3-II

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

DENNIS WALKER and SANDRA WALKER,

Appellants,

v.

JEFFREY PLUMMER and KELLI PLUMMER,

Respondents

AFFIDAVIT OF MAILING

MICHAEL SIMON, WSBA No. 10931
LANDERHOLM, MEMOVICH,
LANSVERK & WHITESIDES, P.S.
805 Broadway Street, Suite 1000
P.O. Box 1086
Vancouver, WA 98666-1086
(360) 696-3312
Of Attorneys for Appellants

STATE OF WASHINGTON)
) ss.
County of Clark)

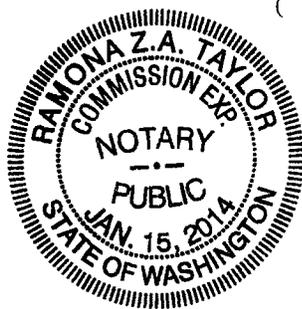
I, Linda Gill, being first duly sworn on oath, depose and state that I am now and at all times herein mentioned was, a citizen of the United States, a resident of the State of Washington, and over the age of 21 years.

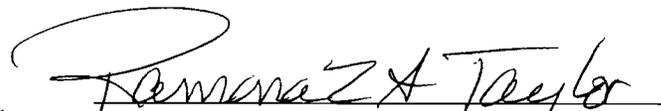
On November 30, 2010, I caused to be mailed a true copy of the Appellant's Opening Brief by regular U.S. Mail and via e-mail to the following person:

James D. Hamilton
Attorney at Law
201 NE Park Plaza Drive, Suite 285
Vancouver, WA 98684
E-mail address: jdh@jdhamiltonpc.com


LINDA GILL

SUBSCRIBED AND SWORN to before me this 30th day of November, 2010 by Linda Gill.




NOTARY PUBLIC for the State of
Washington, Residing in the County of
Clark.
My Commission Expires: 01/15/14