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## Fripps Versus Walters

In 2005 a California court case involving the boundary common to portions of a PLSS 1/4 section was decided. In this installment of Footsteps we will examine that case for lessons we can glean as boundary surveyors. We'll start with a discussion of the timeline for the events in the case. This timeline will include transactions involving the two parcels on either side of the boundary line. This timeline can get a bit confusing, so consult the timeline diagram if you want to view the transactions for each parcel as a separate chain.

### Timeline

**1923:** Ida Dempsey and her daughters, Marguerite Dempsey and Ruth Haddick convey a portion of the southeast 1/4 of Section 13 to HH Stoddard. (Parcel Chain #1)

Ida and Marguerite convey their interest in the remainder of the 1/4 section to Ruth. (Parcel Chain #2)

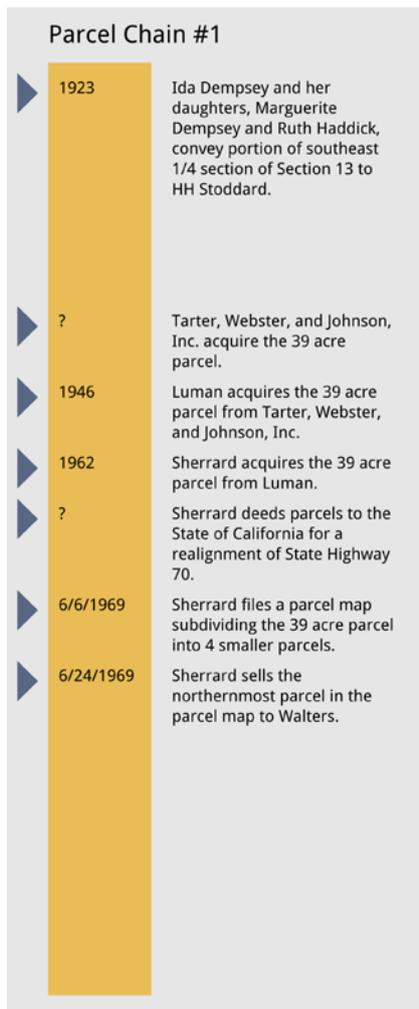
Tarter, Webster and Johnson, Inc. acquire the 39 acre parcel. (Parcel Chain #1)

**1946:** Luman acquires the 39 acre parcel from Tarter, Webster, and Johnson. (Parcel Chain #1)

**1962:** Sherrard acquires the 39 acre parcel from Luman. (Parcel Chain #1)

Ruth Haddick and the Sherrards deed parcels to the State of California for a realignment of State Highway 70. (Parcel Chain #1 and Parcel Chain #2)

**6/6/1969:** Sherrard files a parcel map subdividing the 39 acre parcel into four (4) smaller parcels. (Parcel Chain #2)



**Note:** Not all property transactions in the two (2) parcel chains are listed in the court's decision. As a result, they are not included in the timeline for this article.

**6/24/1969:** Sherrard sells the northernmost parcel in the parcel map to the Walters. (Parcel Chain #1)

**4/2000:** Frripps hire a surveyor to perform a boundary survey of their property.

**1994:** Frripp's purchase the remainder of the 1/4 section from the estate of Ruth Haddick. (Parcel Chain #2)

**9/7/2005:** Decision by Appeals Court in Favor of Frripps

## Methods to Interpret "West" Directional Calls

- 1 Hold record angles in description.
- 2 Hold cardinal directions.
- 3 Run parallel to south line of section.
- 4 Run perpendicular to east line of section.
- 5 Run parallel to east-west 1/4 section line.
- 6 Run on mean bearing between south section line and east-west 1/4 section line.

### Facts of the Case

There are a couple of important facts we need to consider before we look at the questions raised in this case. First, we need to take a look at the land descriptions for the Fripps Parcel and the Walters Parcel.

The important portion of the land description used when Ida and her daughters sold the 39 acre parcel to Stoddard in 1923 is as follows:

Beginning at the section corner common to Sections 13 and 24...18 and 19...and running thence North along the section line 780 feet; thence West 830 feet; thence South 48-39 West 333 feet; thence West 1560 feet; thence South 560 feet to the 1/4 section corner between Sections 13 and 24...thence East 2640 feet to the place of beginning; containing 39 acres more or less.

Second, we need to look at how the 1969 parcel map resolved the boundary common to the Walters and Fripps parcels. The court states the civil engineer who stamped and signed the map held three (3) monuments with no record reference, stamp, tag, or other identifying marks to locate the north boundary. Although it isn't stated in the court decision, we can likely assume these monuments were found in the angle points of the common boundary in dispute.

### Questions Raised

The appeals court was only interested in answering one legal question raised by this case. The Walters claimed the parcel map creating their north boundary was a "government sanctioned survey" because it had been reviewed by the County Surveyor. They asserted

the boundary resolution shown on this parcel map could not be challenged because of the immunity granted government-sanctioned surveys.

The events surrounding this case also raise a couple of interesting questions that were not directly discussed by the court in its decision. These are:

1. Why did the civil engineer hold the monuments not of record? Was this the right decision?
2. Were the westerly and southerly calls along the boundary common to the Fripps and Walters parcel correctly interpreted by the retracing surveyor hired by the Fripps?

### The Court's Decision

The court's decision on the one legal question heard on appeal was simple. A parcel map is not a government-sanctioned survey. As a result, the parent parcel boundary shown on a parcel map can be successfully contested, as it was in this case. The court comments on several other cases related to the immunity of "government-sanctioned maps." I encourage you to read through this case to see those comments.

I believe most surveyors would agree with the court's decision on this question. If the court had decided differently, we would be presented with one of two very bad conclusions:

The subdivider could use an erroneous parcel map to subdivide and convey property he did not own.

The County Surveyor is responsible for the accuracy of every boundary resolution shown on parcel maps filed in his jurisdiction.

Clearly, neither of the above results is a desirable. We want those who subdivide and profit from the sale of subdivided lots to bear the cost of accurately surveying what they own. We do not want county surveyors to be solely responsible for the accuracy of the boundary resolution of parcel maps filed in their jurisdiction. That burden rightfully belongs to the surveyor (or in this case civil engineer) who has gathered the evidence, performed the field measurements, and who will profit (hopefully) from the filing of the parcel map. Map checking fees, as outrageous as they may be, don't pay for all of that. That work is (or should be) paid for by the subdivider, and his consulting surveyor or engineer should be expected to do that work.

### Answers to Other Questions

What about the other two (2) questions we mentioned? Let's start with the first:

#### Why did the civil engineer hold the monuments not of record?

There are a couple of possible answers to this question. The court doesn't comment on this issue extensively, as it was not the legal question being decided. However, a discussion of the possible answers to the question would be helpful.

We know the civil engineer found the monuments during his field survey. They may have appeared close to what he suspected was the location of the boundary common to the Fripps and Walters parcel. He may have even been told by the Walters that these were the monuments marking the common line.

To me, how he handled this evidence is the important question. What steps did he take to verify the reliability of these monuments? Did they fit well with physical occupation? Did they fit well with the geometry described in the land description? Did the monuments agree with the interpretation of the land description with the aid of a proper section breakdown?

If the civil engineer simply accepted these monuments after their discovery in his field survey, without answering this type of questions, even on the word of his client, he made big mistake.

If on the other hand, he did review additional evidence and accepted these monuments after a thorough vetting process, his decision may have been sound. Tags and caps aren't always

placed as they should be, and they often are removed, damaged, or lost. I've accepted monuments without tags or identifying marks before, and I've also accepted monuments not of record. The court doesn't provide the additional details, so we are left to wonder.

Now let's consider that second question:

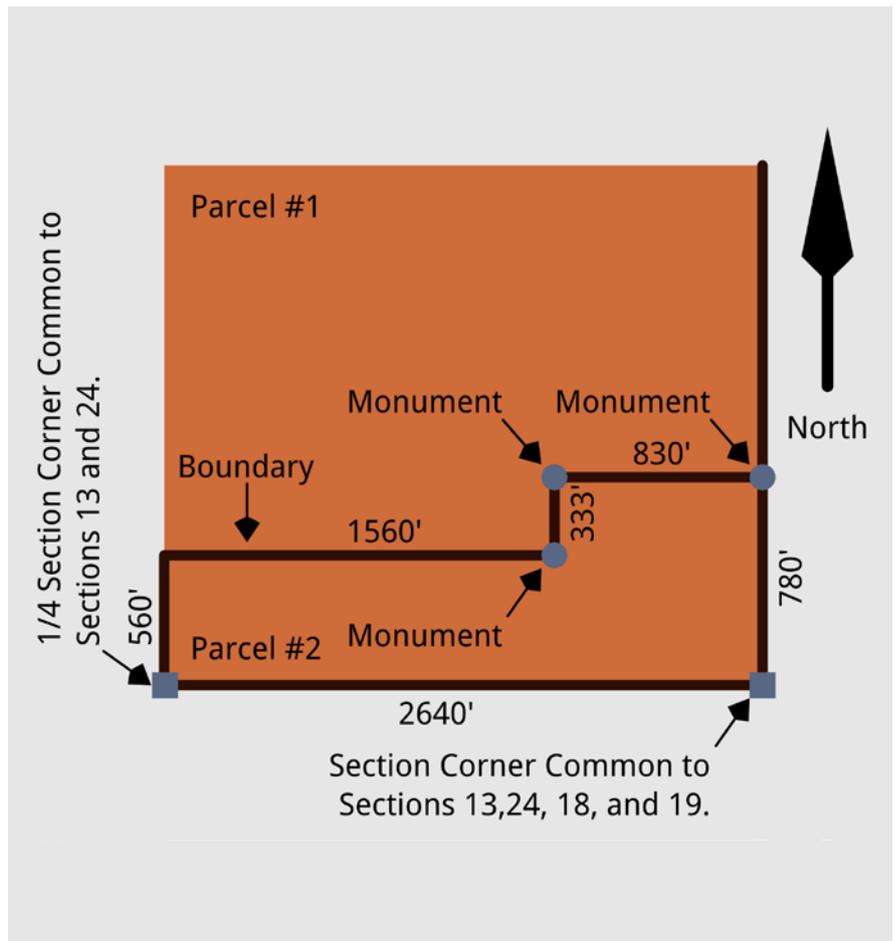
**Were the westerly and southerly calls along the boundary common to the Fripps and Walters parcel correctly interpreted by the retracing surveyor hired by the Fripps?**

The land description at issue in this case clearly left some things to be desired. How would you interpret a call for a course "west" in the description of the north boundary of the 39 acre parcel? You would have several options. These might include the following:

- Hold the record angles in the description.
- Hold cardinal directions.
- Run parallel to the south line of the section.
- Run perpendicular to the east line of the section.
- Run parallel to the east-west 1/4 section line of the section.
- Run on a mean bearing calculated from the south line of the section and the east-west 1/4 line of the section.

There are perhaps more solutions I haven't included in my list. I certainly wouldn't hold cardinal directions in this case without some strong evidence that was the intent, but all of the other solutions seem to be reasonable. Which of the above methods would result in the smallest closure error? Which of the above methods would agree with physical occupation? Would any of the above methods agree with the monuments not-of-record? Could you use one of the methods above and have your distance calls match the elements of the section called for in the land description? Which method did the civil engineer filing the parcel map use? Which method did the retracing surveyor hired by the Fripps use? How big are the positional differences in the property corner locations between the different methods?

These are all important questions. The court doesn't answer them, so again, we are left to wonder. Still, it is helpful to ask



yourself, "What would I have done as the surveyor creating the parcel map or the surveyor retracing the Fripps parcel?"

**Important Lessons**

This case has three (3) important lessons for surveyors.

3. Don't assume the boundary resolution shown on a parcel map is the correct one. This may be the easy solution, and it may be backed up by monuments on the ground, but it isn't always the correct solution. You don't want to be the land surveyor who relied on a parcel map or other filed map for a boundary resolution, only to have that decision later questioned and overturned by a court. Learn to question everything, even filed survey maps. Your peers are imperfect, and at times they record their mistakes in the public record.
4. You can hold monuments that are not identified with a tag, or those not of record, in a boundary resolution. However, if you do this,

be very careful. Walk through the analysis and extra work needed to vet the monuments. Don't just hold them because it is the convenient thing to do. Do your best to figure how who set them, why they were set, and the reason why they were set where in their particular locations. Be prepared to defend your decision to hold the monuments. It may have been the correct decision, but your battle to defend that decision may be difficult. Understand your reasons and make sure your logic is sound.

5. Be careful with calls for cardinal directions in deeds for parcels in the PLSS that do not contain explicit "along" calls which tie to section or aliquot parcel lines. These calls could be interpreted in a number of different ways. What was the intent of the deed that created the parcel? Which method of interpretation fits the best with the other evidence? Be prepared to answer these questions and explain your reasoning. *AS*