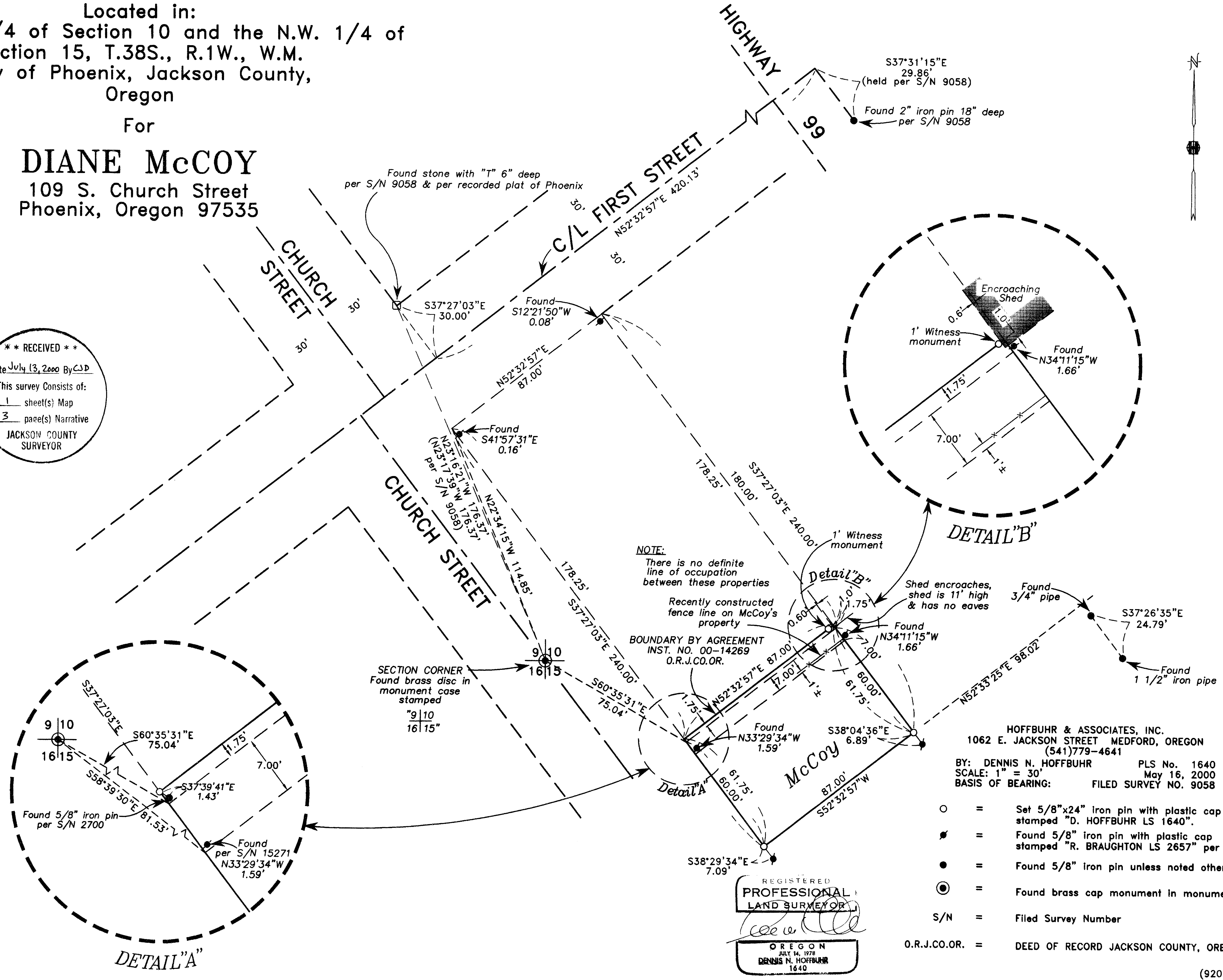


MAP OF SURVEY

Located in:
The S.W. 1/4 of Section 10 and the N.W. 1/4 of
Section 15, T.38S., R.1W., W.M.
City of Phoenix, Jackson County,
Oregon

For
DIANE McCOY
109 S. Church Street
Phoenix, Oregon 97535

**** RECEIVED ****
Date July 13, 2000 By CJD
This survey consists of:
1 sheet(s) Map
3 page(s) Narrative
JACKSON COUNTY
SURVEYOR



NOTE:
There is no definite
line of occupation
between these properties
Recently constructed
fence line on McCoy's
property
BOUNDARY BY AGREEMENT
INST. NO. 00-14269
O.R.J.CO.OR.

HOFFBUHR & ASSOCIATES, INC.
1062 E. JACKSON STREET MEDFORD, OREGON
(541)779-4641
BY: DENNIS N. HOFFBUHR PLS No. 1640
SCALE: 1" = 30' May 16, 2000
BASIS OF BEARING: FILED SURVEY NO. 9058

- = Set 5/8"x24" iron pin with plastic cap stamped "D. HOFFBUHR LS 1640".
- = Found 5/8" iron pin with plastic cap stamped "R. BRAUGHTON LS 2657" per 15271
- = Found 5/8" iron pin unless noted otherwise
- ⊙ = Found brass cap monument in monument case
- S/N = Filed Survey Number
- O.R.J.CO.OR. = DEED OF RECORD JACKSON COUNTY, OREGON

REGISTERED
PROFESSIONAL
LAND SURVEYOR
Dennis N. Hoffbuhr
OREGON
JULY 14, 1978
DENNIS N. HOFFBUHR
1640
EXPIRES 6/30/01

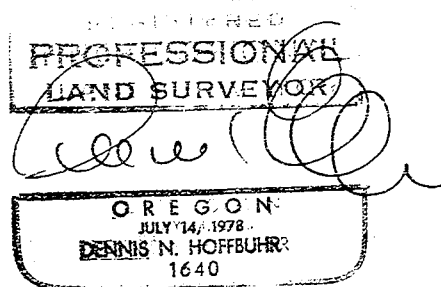
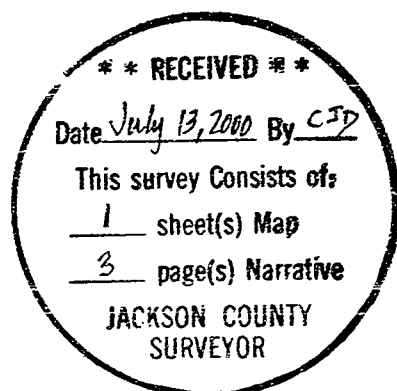
Street). The call to Main Street is superior to, and takes precedence over, the conflicting distance of 187 feet. This deed did not contain the reference to a prior deed for clarification, however, B.H. Butterfield only had title to what he purchased through Volume 145, Page 239, which was a parcel 87 feet by 240 feet. Butterfield, therefore, could not convey to Watkins the additional 7 feet because he did not have title to it. Based on the facts as outlined above, it is my contention that Volume 168, Page 95, and all future references to it, represents a parcel measuring 87 feet by 240 feet, not 247 feet.

A recent survey filed with the Jackson County Surveyor's Office as Survey Number 15271 established property corners for both Tax Lot 7700 and Tax Lot 7600. The narrative for this survey refers to Volume 168, Page 95 as the controlling deed to justify using the 247 foot dimension to locate the property corners for the two subject parcels. The narrative does not refer to any deeds prior to Volume 168, Page 95. The title history which I have outlined above, in my opinion, significantly alters the interpretation of Volume 168, Page 95 and effectively shifts the location of Tax Lot 7600 seven feet to the Northwest. Other than the interpretation of Volume 168, Page 95, I am in agreement with the balance of the findings contained in the narrative filed with Survey Number 15271. Included in these findings is that the width of Tax Lot 7600 was increased to 61.75 feet by Volume 554, Page 71. I also concur that filed Survey Number 2700 was an attempt to solve the contradictions outlined above with boundary line agreements, however, the necessary legal documents were not recorded to establish the property lines as shown on the filed map of survey. Because of the confusion and uncertainty regarding the location of the boundary between Tax Lot 7600 and Tax Lot 7700, a common boundary location as been agreed to and a Boundary Line Agreement has been recorded as Instrument No. 00-14629 of the Official Records of Jackson County, Oregon.

A closed control traverse was used to locate existing monumentation and other significant features identified by past filed surveys, including Survey Numbers 317, 2700, 2960, 6029, 9058 and 15271. The location of First Street was determined from existing monumentation consistent with Survey Number 9058. Based on this data, and the findings outlined above, the boundaries of Tax Lot 7600 were computed and property corners were set as indicated on the attached map of survey.

Basis of
Bearing: Survey Number 9058

Date: May 16, 2000



Dennis N. Hoffbuhr
L.S. 1640 - Oregon
Expires 6/30/01
Hoffbuhr & Associates, Inc.
1062 East Jackson Street
Medford, Oregon 97504

T38S-1W-16AA TL 7600
(92-041 & 00-074)
(mccoynrr.dnh)



In 1891, the estate of Sabra Colver conveyed an undivided one fourth interest in both parcels to Sarah Foudray by means of a Guardian's Deed recorded by Jackson County as Volume 24, Page 381. The parcels are described separately and are consistent with the above descriptions. Tax Lot 7700 is described as being 87 feet and 180 feet adjoining the lot of S.M. Waite on the East and fronting on Main Street (First Street). Tax Lot 7600 is described as being 87 feet by 60 feet commencing (beginning) at the Southwest corner of the lot or parcel on which Maria Colver resided with the same call, referenced above to the section corner. Two years later, in 1893, Sarah Foudray acquired another undivided one fourth interest in the two subject parcels through a deed from Frank Sisley and recorded as Volume 27, Page 74. The descriptions are once again consistent with the previous descriptions of the two parcels.

It is in 1909 that the confusion starts when a deed conveying both parcels from Mary D. Farlow to Martha A. Coleman is recorded as Volume 70, Page 77. The parcels are described as follows: *"...fronting 87 feet on Main street in the Village of Phoenix and running the same width back 187 feet. Also a lot or parcel of land adjoining said lot - commencing at the South west corner of the above described lot and from which the corner to Sections 9, 10 and 15 Township 38, South of range one West of the Willamette Meridian bears North 68 degrees West 1.16 chains distant, thence North 53 degrees East 87 feet, thence North 37 degrees West 60 feet, thence South 53 degrees West 87 feet, thence South 37 degrees East 60 feet to beginning as the same is described in volume 27 at page 74 and 75 of the deed records of Jackson County, Oregon, to which reference is hereby made for a more perfect description."* It is interesting that this deed is the first typewritten document involving the subject parcels. It is, also, the first deed with a number of inconsistencies when compared with the previous handwritten deeds. The areas that I have highlighted in the above description represent what I believe are transcription errors made by the typist. It is fortunate that underlined reference to an earlier document clarifies that no change to earlier deeds was intended. Even though the depth of the first parcel described was changed to 187 feet, the reference to an earlier deed means that the intent was to maintain a depth of 180 feet. Unfortunately all following deeds for Tax Lot 7700 used the incorrect distance of 187 feet. It is also significant that the call to the section corner did not change. If the intent was to change the depth of the lot, the call to the section corner would have to change to accommodate the additional 7 feet. Based on the reference to an earlier deed and no change in the call to the section corner, I consider the 187 feet to be a typographical error which can be rejected.

A deed recorded in 1923 as Volume 145, Page 239 conveying both subject parcels from Norwin R. Walters to B.H. Butterfield contains the incorrect call of 187 feet but also refers to the earlier document (Volume 27, Page 74 and 75) with the correct distance of 180 feet. Once again this reference to a prior document "for a more perfect description" clarifies the intent of the deed which was to convey an 87 foot by 240 foot parcel. This situation is addressed in Section 8.13 of the reference text CLARK ON SURVEYING AND BOUNDARIES, Seventh Edition as follows: *"Scriveners of instruments often make reference to prior conveyances. In such a situation, the intent is manifested in that the title which is intended to be passed is the title that was obtained. By reference, all elements in a prior conveyance are incorporated into the new deed. If a description in a given deed is determined to be deficient, the reference to the prior deed in which the description was adequate, may cure the deficiency in the current deed."* This makes it very clear that by reference the distances in the Volume 27, Page 74 deed take precedence over those contained in Volume 70, Page 77 and Volume 145, Page 239.

Four years later, B.H. Butterfield conveyed both parcels to Mary Gertrude Watkins by means of a deed recorded as Volume 168, Page 95. This document changed the above description to read as follows: *Beginning South 68 degrees East 1.16 chains from the section corner common to Section 9, 10, 15 and 16, Township 38 South of Range 1 West of the Willamette Meridian; thence North 37 degrees West 187 feet to the Southeasterly side line of main street in the town of Phoenix, Oregon; thence North 53 degrees East along said side line 87 feet; thence South 37 degrees East 247 feet; thence South 53 degrees West 87 feet; thence North 37 degrees West 60 feet to the point of beginning."* This description uses the same call to the section corner from the point of beginning. The intent of this call has been shown to place the point of beginning 180 feet from First Street (Main

SURVEY NO. _____

**SURVEY NARRATIVE TO COMPLY WITH O.R.S 209.250
OREGON REVISED STATUTES**

Survey For: Diane McCoy
109 S. Church Street
Phoenix, Oregon 97535

Location: Southwest One-Quarter (1/4) of Section 10 and the Northwest One-Quarter (1/4) of Section 15, Township 38 South, Range 1 West, Willamette Meridian, City of Phoenix, Jackson County, Oregon

Purpose: To survey and monument the boundaries of Tax Lot 7600, Section 10, Township 38 South, Range 1 West, Willamette Meridian (Map No. 381W 16AA). The adjacent property to the North (Tax Lot 7700) was surveyed in January of 1997 and recorded as Survey No. 15271 in the Office of the Jackson County Surveyor. Some confusion and disagreement remain over the location of the boundaries of Tax Lot 7600. Hoffbuhr & Associates, Inc. was asked to survey Tax Lot 7600 in order to offer additional evidence as to the location of the property corners for said Tax Lot.

Procedure: Extensive research was conducted to determine the cause of the disagreement over the location of Tax Lot 7600 and how it had originated. This research included searching the archive files of Hoffbuhr & Associates, including the files of Jack Hoffbuhr, R.L.S. and Verlyn Thomas, R.L.S., both of which had done surveying in the vicinity of the subject property. Mark Boyden, R.L.S., was also consulted to gain any information he may have had about the problem. Donna O'Grady of Jackson County Title Company was very helpful in reviewing the title company archive files and assisting with this research.

The title history of Tax Lot 7700 dates back to October 22, 1864 when Samuel Colver conveyed to P.F. McManus a parcel of ground by a deed recorded as Volume 4, Page 36 of the Jackson County Deed Records. The parcel is described as follows: "...*fronting Eighty seven (87) feet on the Street and running back the same width One Hundred and Eighty (180) feet and adjoining the lot of S.M. Waite on the East and being the same Lot of ground upon which the said P.F. McManus has erected a Dwelling House and other improvements.*" This description clearly establishes the intent to create a parcel with 87 feet of street frontage with a depth of 180 feet. On October 24, 1864 another deed was recorded as Volume 4, Page 247 wherein McManus conveyed the same 87 foot by 180 foot parcel to Maria Colver.

In April of 1872 Jacob Wimer and Wife deeded to Maria Colver as Volume 5, Page 641, a parcel described as follows: "*Commencing at the South corner of the lot or parcel of land on which the Said Maria Colver party of the second part - now resides from which the Section Corner of Sections 9 - 10 - 15 & 16 of Township 38 South, R. 1 W. Bears N. 68 degrees W. 1 16/100 Chains. Running N. 53 degrees E. 87 feet - thence South 37 degrees E. 60 feet thence South 53 degrees West 87 feet - thence N. 37 degrees West 60 feet - the place of beginning.*" Once again the intent of this deed is clearly to create a parcel 87 feet by 60 feet which is southerly of, and contiguous to, previous parcel purchased by Maria Colver. It is also important to note that the call to the section corner which appears in this deed recorded in 1872 is the **identical** call that has been used in the most recent deeds involving Tax Lots 7600 and 7700. The intent of that call to the section corner, as evidenced by this 1872 conveyance, was to establish reference to a point that is a common corner of the two above described parcels. This also means that this common corner, the Northwest corner of Tax Lot 7600 and the Southwest corner of Tax Lot 7700, was intended to be **180 feet** from the street right-of-way (now known as First Street).