

## Summary of *Yellowstone Basin Properties, Inc. v. Burgess*

(Montana 1992)

by

Knud E. Hermansen

Knud is a licensed professional land surveyor, professional engineer, and attorney at law. He teaches at the University of Maine in the surveying engineering technology program and has a consulting practice specializing in boundary disputes, title, land development, liability, and easements. <http://www.umaine.edu/set/svt/articles/>

Note: The principles discussed may not apply to all states. The reader is encouraged to research the law in their own state.

A surveyor reestablished a section corner that he determined was “lost.” The surveyor’s location was disputed after a subsequent survey by the Forest Service and Bureau of Land Management. As a result of the disparity between the surveys, the developer felt compelled to buy the land within the overlap. To recover the cost, the developer sued the surveyor for breach of contract, negligence, and breach of warranty. While there was considerable testimony concerning the validity of the government surveys, the surveyor was eventually found not liable. This is a good example to illustrate how putting the “cart ahead of the horse” helped the surveyor. Rather than first determine where the correct location of the boundary is, the developer went on the presumption that the government surveys were correct (although unofficial) and the surveyor’s erroneous. Since there was insufficient evidence to show the surveyor’s location was erroneous, the court eventually determined the developer had no foundation to claim liability.

(Note: From a legal perspective, the developer faced a “no win” situation. Regardless of the official or unofficial nature of the government survey, the fact that there is a disagreement makes the title to the subdivision lots unmarketable. To litigate and determine the correct boundary will hold up the sale of lots for years and probably cost more than the land is worth. On the other hand, to avoid delay, the developer is forced to settle on the presumption the government survey is correct. However, unless the boundary is litigated, there is no basis for recovering the costs from the surveyor.)

The court made some important comments that are worth repeating and noting to lay persons who seek a surveyor’s services. “[T]he land surveyor's work often involves retracing the footsteps of surveyors who, approximately 100 years previous, performed surveys, kept field notes and set stone monuments to establish and perpetuate section lines and corners.... it is a foregone conclusion that present-day surveyors may or may not find a particular ancient monument ... it is impossible for him to insure that he is, in fact, standing in the 100-year old footprints of the original surveyor..... It is possible for two qualified surveyors to meticulously follow the standards of practice for surveying while retracing a 100-year old survey, and disagree on a corner location without either being negligent .... Locating and remonumenting ancient corner locations is not an exact science, and mere location of a corner, or approval or disapproval of a particular survey does not automatically establish either compliance of [sic] non-compliance with a surveyor's standard of care... [S]urveyors are not insurers--their duty is to

*complete a survey using the best evidence available to them according to the accepted rules and regulations. ”*