

Book: 632 Page: 60-70

Receipt #: 54799

Total Fees: No Charge

Pages Recorded: 11

Cashier Initials: JESS

RESOLUTION NO. 11-2025

Date Recorded: 6/2/2025 10:53:42 AM
0063200060

**A RESOLUTION BY THE CHEROKEE COUNTY, KANSAS BOARD OF COMMISSIONERS
ACTING AS FENCE VIEWERS, PURSUANT TO K.S.A. 29-201**

WHEREAS when a controversy arises between adjoining landowners regarding construction, repair, and/or maintenance of a partition fence, either party may apply to the fence viewers to assign to each party his or her equal share to be kept up and maintained.

WHEREAS attached hereto and incorporated by reference is "Exhibit 1," an aerial photograph showing the relative locations of parcels "A" (Parcel ID 011-127-35-0-00-00-015.02-0) (owned by Mr. and Mrs. Snow) and "B" (Parcel ID 011-127-35-0-00-00-015.06-0) (owned by the JSM Trust, represented by Mr. and Mrs. Wyatt).

WHEREAS on April 15th, 2025, a survey was conducted of Parcel A, by Cornerstone Regional Surveying, LLC and is attached hereto and incorporated by references as "Exhibit 2."

WHEREAS the board of county commissioners, in each county in this state, or their designees, shall be fence viewers in each township of such county. K.S.A. 29-201.

NOW THEREFORE the Cherokee County Board of Commissioners hereby resolves:

Procedural Background

1. On March 13, 2025, Mr. Levi Snow submitted a written request for the Board to conduct a fence viewing at his property located at 3583 SE 45th Street, Columbus, Kansas (Parcel ID 011-127-35-0-00-00-015.02-0), hereinafter referred to as "Parcel A".
2. The adjoining property (Parcel ID 011-127-35-0-00-00-015.06-0), hereinafter referred to as "Parcel B", is owned by JSM Trust.
3. Reasonable notice was provided to each party as required by K.S.A. 29-304.
4. The Cherokee County Commissioners, in their capacity as fence viewers as designated by K.S.A. 29-201, conducted a fence viewing on April 7, 2025 at 11:00 a.m. Levi and Robynn Snow, owners of Parcel A were present at the fence viewing. Matthew and Samantha Wyatt were present as representatives of JSM Trust, the owner of Parcel B.
5. On April 21st, 2025, the Cherokee County Commissioners approved County Resolution 08-2025 setting out certain orders and findings assigning partition fence responsibility. The same resolution was recorded with the County Register of Deeds Office.

6. On April 28th, 2025, the Cherokee County Commissioners approved Corrective Resolution 09-2025, editing clerical errors in Resolution 08-2025 and recorded the same with the County Register of Deeds Office.
7. On May 13th, 2025, Counsel for Mr. and Mrs. Snow filed a Notice of Appeal with the County Clerk's Office, appealing the orders and findings made by the Cherokee County Commissioners in Resolutions 08-2025 and 09-2025.

Factual Findings

8. The Factual Findings of County Resolutions 08-2025 and 09-2025 are superseded by the Factual Findings contained herein.
9. According to Exhibit 2, Parcels A & B share approximately 788.64 feet of common boundary line; to wit: 402.94 feet on the east side of Parcel A and 339 feet on the south side of Parcel A.
10. Parcel A is generally west and north of that shared boundary line.
11. Both parties state they wish to have their respective parcels enclosed.
12. On or about April 1st, 2025, and before the April 7th fence viewing, a three-wired or five-wired barbed fence was seen running along the southern shared property line by Commissioner Jack Garner. Survey markers were also observed at the property line.
13. At the April 7th fence viewing, parties observed that barbed wires that had been cut and posts that had been removed and the fence that had been standing was in a state of disrepair on the ground.

Legal Authority

14. The owners of adjoining lands shall keep up and maintain in good repair all partition fences between them in equal shares, so long as both parties continue to occupy or improve such lands, unless otherwise agreed. K.S.A. 29-301.
15. If any party neglect to repair or rebuild a partition fence, or the portion thereof which he ought to maintain, the aggrieved party may complain to the fence viewers, who, after due notice to each party, shall examine the same, and if they determine that the fence is insufficient, shall signify it, in writing, to the delinquent occupant of the land, and direct him to repair or rebuild the same within such time as they may judge reasonable. K.S.A. 29-302.
16. If such fence be not repaired or rebuilt accordingly, the complainant may repair or rebuild it, and the same being adjudged sufficient by the fence viewers, and the

value thereof, with their fees, being ascertained by them and certified under their hands, the complainant may demand of the owner of the land where the fence was deficient, the sum so ascertained; and in case of neglect to pay the same for one month after written demand, may recover it, with interest at the rate of one percent per month, by action in any court of competent jurisdiction. In any such action the court shall allow the prevailing party a reasonable sum for attorney's fee. K.S.A. 29-303.

17. When any controversy shall arise about the rights of the respective owners in partition fences, or their obligations to keep up and maintain the same in good repair, and if they cannot agree among themselves, either party may apply to the fence viewers of the township in which such fence may be situated, who, after a reasonable notice to the other party, shall proceed, on application as aforesaid, to view such fence, and assign to each party, in writing, his equal share or part of such partition fence, to be by him kept up and maintained in good repair; which assignment shall be recorded by the register of deeds of the county in a book to be provided for that purpose, and shall be final, conclusive and binding upon the parties, and upon all the succeeding occupants of the lands, and they shall be obliged thereafter to maintain their respective portions of said fence. K.S.A. 29-304.
18. If a party neglect or refuse to erect or maintain the part of the fence assigned him by the fence viewers, it may be erected and maintained by the aggrieved party in the manner before provided, and he shall be entitled to recover the ascertained cost thereof, with interest at the rate of one percent per month and a reasonable attorney's fee to be fixed and allowed by the court, by action in any court of competent jurisdiction; and the amount recovered, with costs, shall be a lien against the land chargeable with the same. K.S.A. 29-305.
19. All assignments of the fence viewers shall be certified and signed by them and shall contain a certain description of the lands divided by such partition fence and the names of the owners thereof. [irrelevant portion omitted]. K.S.A. 29-306.
20. When in any controversy between owners of adjoining lands as to their respective rights in any partition fence, it shall appear to the fence viewers that either of the owners had, before any complaint made to them, voluntarily erected the whole fence, or more than his just share of the same, or otherwise become proprietor thereof, the other occupant shall pay for so much as may be assigned to him to repair or maintain, the value of which shall be ascertained and recovered in the manner hereinbefore provided. K.S.A. 29-307.
21. All partition fences shall be kept in good repair throughout the year, unless the owners of the land on both sides otherwise agree. K.S.A. 29-308.

22. No person not wishing his land enclosed, and not occupying or using it otherwise than in common, shall be compelled to contribute to erect or maintain any fence dividing between his land and that of an adjacent owner; but when he encloses or uses his land otherwise than in common, he shall contribute to the partition fence as in this act is provided. K.S.A. 29-309.
23. When lands owned in severalty have been enclosed in common without a partition fence, and one of the owners is desirous to occupy his land in severalty and the other refuses or neglects, on demand, to divide the line where the fence should be built, or to build a sufficient fence on his part of the line when divided, the party desiring it may notify the fence viewers who shall give written notice to both owners that unless said owners agree on the erection of said fence, the viewers will, in not less than twenty nor more than 40 days, divide and assign said line and, in writing, assign a reasonable time (having regard to the season of the year) for making the fence; and if either party neglect to comply with the decision of the viewers within the time assigned, the other party, after making his own part, may make the other part, and recover the ascertained value thereof, with interest at the rate of one percent per month, together with the fees of the fence viewers as above provided and a reasonable attorney's fee to be fixed and allowed by the court. K.S.A. 29-310.
24. When land which has been unenclosed is enclosed, the owner thereof shall pay for one half of each partition fence between his land and the adjoining lands, the value to be ascertained and stated in writing, under their hands, by the fence viewers, in case the parties cannot agree; and if the owner enclosing as aforesaid shall neglect, for sixty days after the value has been so ascertained and demand made, to pay the same, the owners of such partition fences may recover, with interest, as hereinbefore provided; or the party enclosing may, at his election, rebuild and make half of each of such partition fences, and if he neglect so to do for sixty days after making such election, he shall be liable as before provided. K.S.A. 29-313.
25. A person building a fence may lay the same upon the line between his own land and the land adjacent, so that the fence may be partly on one side of such line and partly on the other; and the owner shall have the same right to remove it as if it were wholly on his own land. K.S.A. 29-316.
26. The foregoing provisions concerning partition fences shall apply to fences standing wholly upon one side of the division line, and used as a partition fence. K.S.A. 29-317.
27. If an adjoining landowner is given the statutory authority to repair or to rebuild a partition fence, then, by implication, the adjoining landowner should be permitted

to enter on the land of the other adjoining landowner for that purpose. *Muhl v. Bohi*, 37 Kan.App.2d 225, 234-35, 152 P.3d 93 (2007).

ORDERS AND FINDINGS ASSIGNING PARTITION FENCE RESPONSIBILITY

NOW, THEREFORE, THE BOARD OF COUNTY COMMISSIONERS OF CHEROKEE COUNTY, KANSAS, SITTING AS FENCE VIEWERS PURSUANT TO K.S.A. 29-304, hereby find as follows:

1. That the barbed wire fence observed by Commissioner Garner on or about April 1st, shall be deemed the partition fence for the south and east shared boundaries between Parcel "A" and Parcel "B" as depicted and described in Exhibit 2.
2. The assignment of responsibility for the upkeep, maintenance and repair of the partition fence line described above shall be as follows:
 - a. The owners of parcel "A," are hereby assigned full responsibility for the initial rebuild of the barbed-wire fence that had been standing on the southern shared property line, to be built with the same specifications as set forth in K.S.A. 29-105(a).
 - b. After rebuild of the barbed-wire fence, the owners of parcel "A" and the owners of parcel "B," are hereby assigned responsibility for the upkeep, maintenance and repair of a barbed-wire fence, with the same specifications as set forth in K.S.A. 29-105(a) along the southern shared property line with the owners sharing the cost of such upkeep, maintenance and repair on a 50/50 basis.
 - c. The owners of parcel "A" and the owners of parcel "B," are hereby assigned responsibility for the initial construction, upkeep, maintenance and repair of a barbed-wire fence, with the same specifications as set forth in K.S.A. 29-105(a) along the eastern shared property line with the owners sharing the cost of such construction, upkeep, maintenance and repair on a 50/50 basis.
3. That the partition fence described above shall be maintained and kept in at least as good a condition and state of repair as is required by Kansas law.
4. This Assignment shall be recorded by the Register of Deeds of Cherokee County, Kansas, pursuant to K.S.A. 29-304.

BE IT RESOLVED this 2 day of June 2025 by the Cherokee County Board of Commissioners.

Approved:

Attest

Myra Carlisle Frazier

Myra Carlisle-Frazier
County Commissioner

Michelle Mosler

~~Rebecca Brassart~~
County Clerk

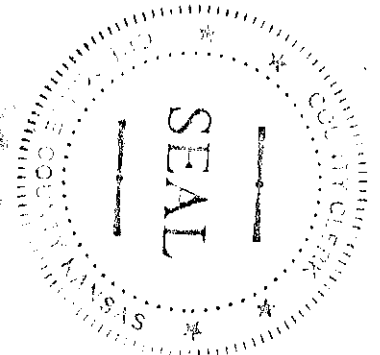
Michelle Mosler
Deputy Clerk

Jack Garner

Jack Garner
County Commissioner

Cory Moates

Cory Moates
County Commissioner



BOUNDARY DESCRIPTION

Deed Book 527 Page 754
 Beginning 1,870 feet North of the Southwest Corner of the Southeast Quarter (SE 1/4) of Section Thirty-five (35), Township Thirty-three (33) South, Range Twenty-four (24) East of the Sixth Principal Meridian, Cherokee County, Kansas, on the Quarter Section line, then North 00 Degrees 17 Minutes 38 Seconds West, an assumed bearing, 443 feet along the West line of said Southeast Quarter (SE 1/4), then North 89 Degrees 42 Minutes 22 Seconds East 261.46 feet, then South 85 Degrees 58 Minutes 25 Seconds East 124.90 feet to a point 386 feet East of the West line of said Southeast Quarter (SE 1/4), then South 00 Degrees 17 Minutes 38 Seconds East 434.36 feet, then South 89 Degrees 48 Minutes 46 Seconds West 386 feet, Parallel to the South Section line to the Point of Beginning, according to the United States Government Survey thereof, Cherokee County, Kansas.

LEGEND

- Existing Iron Rod
Origin Uncertain (unless noted)
- ⊙ Set 1/2"x24" Iron Rod with 1.5" Plastic Orange Cornerstone Cap Stamped LS110 (unless noted)
- △ Section Corner
Origin Uncertain (unless noted)
- Boundary Line
- X- Fence Line
- (GLO) General Land Office
- (M) Measured Dimension
- (D) Deed Dimension
- (P) Plat Dimension
- R/W Right of Way

CENTER CORNER
 SEC. 35-T33S-R24E
 EXIST. 60d NAIL IN CONCRETE
 SET BY LS 1046, 7/2/2002
 NOT RECOVERED THIS SURVEY

EXIST. 1/2" IRON BAR 15.02' NORTH OF CENTER SECTION.
 SET BY GREG McDOWELL, PS 1393 ON 8/16/2011
 FOR SURVEY OF 2.26 ACRES TO WEST.

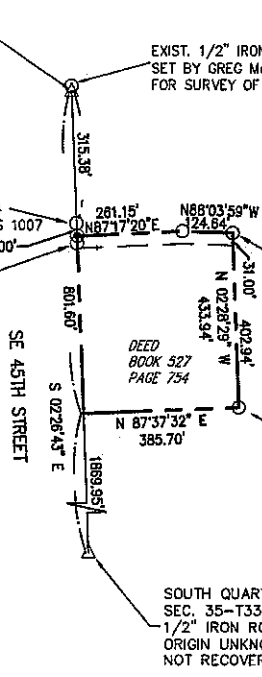
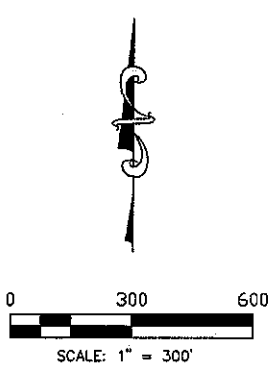
EXISTING 1/2" IRON ROD
 SW COR. BK 442, PG 484
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EXISTING 1/2" IRON ROD
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EXISTING M 1/2" IRON ROD
 0.28' N. OF DEED PROPERTY
 CORNER ALONG EAST LINE
 PROJECTED NORTH.

EXISTING 1/2" IRON BAR
 FOUND IN THE SAME LOCATION
 AS PRIOR SURVEYS - UNDISTURBED
 PINK PAINT STILL ON BAR.
 LOCATION POINT IS THE TOP CENTER
 OF BAR. - THIS BAR IS NOT BENT
 (AT TIME OF SURVEY)
 PER SURVEYOR CONVERSATION WITH
 LAND OWNER.

SOUTH QUARTER (S/4) CORNER
 SEC. 35-T33S-R24E
 1/2" IRON ROD
 ORIGIN UNKNOWN
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SURVEYOR'S CERTIFICATION

I, Rodney R. Zinn, a duly licensed Land Surveyor in the State of Kansas, do hereby certify that this plat was prepared from the notes of an actual on the ground field survey done by me or under my direct supervision on April 4, 2025 and that the information shown hereon is true and correct and meets or exceeds current Kansas Minimum Standards for Boundary Surveys.



Rodney R. Zinn, PS 1559
 r.zinn@cornerstone-rs.com

SURVEYOR'S NOTES

1. The bearings shown hereon are based upon the Kansas State Plane Coordinate System, South Zone.
2. This survey does not reflect any easements, rights-of-way, or other instruments of record which may encumber this property per agreement with client.
3. Underground, above ground utilities, nor improvements were located or shown on this survey.
4. All distances are measured unless otherwise noted.
5. Found and Re-established Corners from previous Cornerstone Regional Surveying Project 4-2207308K.

CORNERSTONE
 Regional Surveying, LLC
 Serving Kansas, Missouri & Oklahoma
 677 S. Hwy 69, Pittsburg, KS 66762 Ph:620-235-1166

DRAWN BY: CRA	DATE: 4-7-2025	JOB NO. 4-2203121K
CHECKED BY: RRZ	REVISION DATE: N/A	REF. JOB NO. 4-2207308K
PREPARED FOR: Levi & Robynn Snow		

**BOUNDARY SURVEY of a portion of the
 SE/4 of SECTION 35, TOWNSHIP 33 SOUTH,
 RANGE 24 EAST of the 6th P.M.
 CHEROKEE COUNTY, KANSAS**

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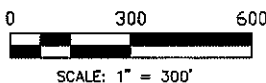
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DRAWN BY: CRA
CHECKED BY: RRZ
PREPARED FOR: Levi & Robynn Snow

DATE: 4-7-2025
REVISION DATE: N/A

JOB NO.: 4-250312HK
REF. JOB NO.: 4-2207308K

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RANGE 24 EAST of the 6th P.M.
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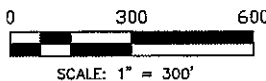
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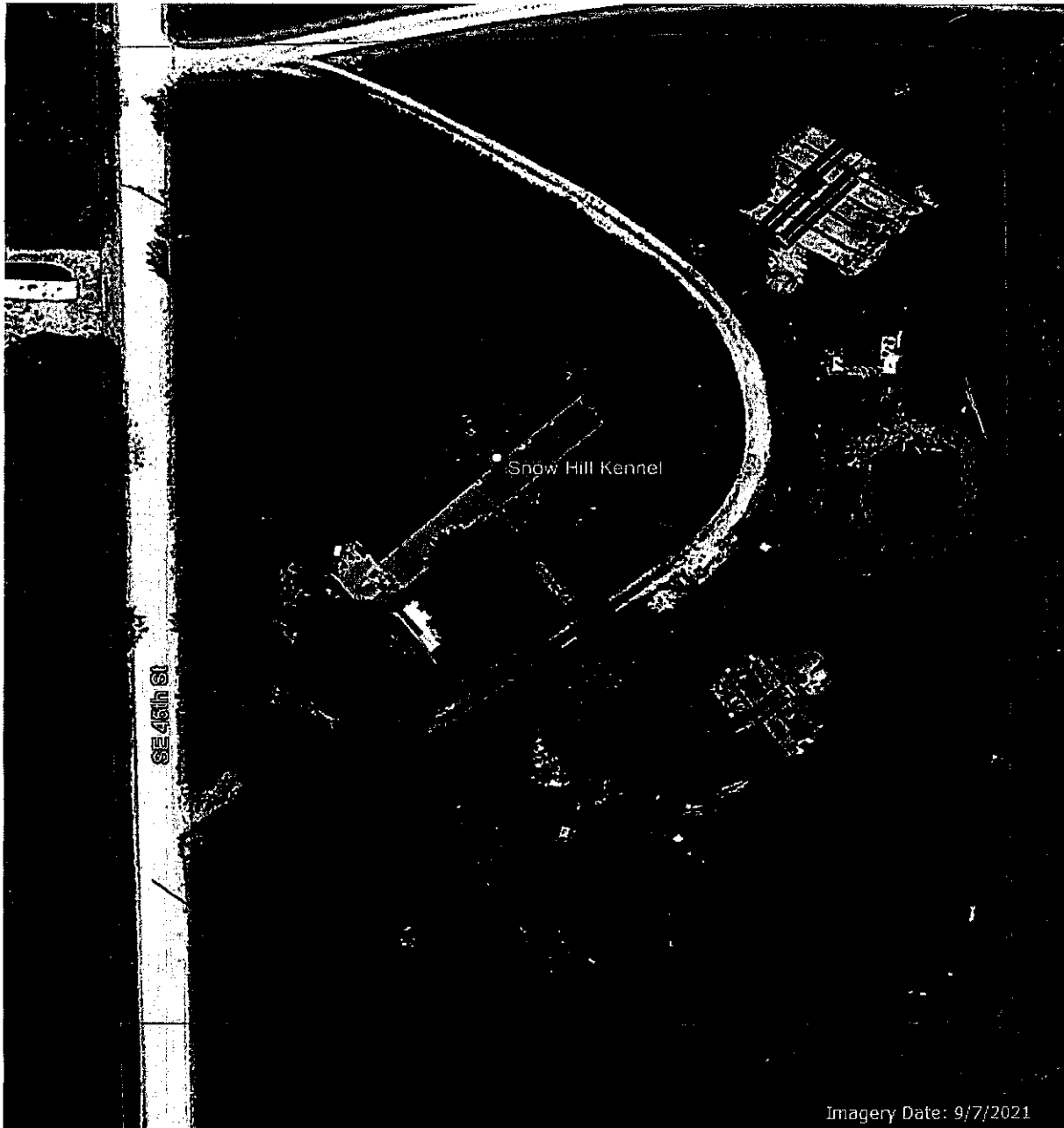


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677 S. Hwy 69 Pittsburg,
Kansas 66762 Phone:
620.235.1166 Fax:
620.331.6776 www.cornerstone-
rs.com

Parcel ID : 11127350000015000
Owner Name : SNOW, LEVI & ROBYNN
Location : 3583 SE 45TH ST, Columbus, KS 68725.

The Below image **does not** constitute a Boundary Survey, nor shall it be used for legal purposes.
It is the results of a Land Survey Performed in the area and it's drawing lines overlaid on an Aerial Image (9/7/2021) from Google Earth. All Property Corners have been found surrounding this property or set as a result of an adjacent survey. This property contains a large portion of County Road (SE 45th St.) right-of-way along it's West Boundary in which Cherokee County maintains. West line falls within that prescriptive easement and requires no further action.



Imagery Date: 9/7/2021

The Lines shown above area approximate (can vary 5'-10'), due to the state plane coordinate system that Cornerstone utilizes (NAD83, KS 1502), and the difference in the Google Imagery shown.

