

Minutes of 03/04/2020 fence viewers - Board of County Commissioners, Cherokee County, Kansas

Present were the following:

County Commissioners: Myra Carlisle Frazier, Chair  
Neal Anderson, Commissioner  
Cherokee County Counselor: Barbara Wright  
Cherokee County Clerk: Kyle Rennie

Complainant/ Property Owner: Joe Mooney  
Kelly Mooney

Respondent/Property Owner: Margaret Radlund  
Counsel for Ms. Radlund: Lucas Nodine  
Other party: Ms. Radlund's daughter, Amy Ross

Fence locations:

Section 12, North-South partition fence between:  
Mooney Parcel 011-081-12-0-00-00-004.00-0 and Radlund Parcel 011-081-12-0-00-00-002.00-0  
NW Coalfield Rd. borders both parcels on the south  
partition fence from NW Coalfield between Mooney's 153.3 A and Radlund's 156.8 A

Section 14, North-South partition fence between:  
Mooney Parcel 011-086-14-0-00-00-002.00-0 and Radlund Parcel 011-086-14-0-00-00-003.00-0  
NW Coalfield Rd. borders both parcels on the north  
NW 10th borders Mooney's 72.69 A. on the east  
partition fence is between Mooney's 72.89 A. and Radlund's 81.57 A.

Section 14, East-West partition fence between:  
Mooney Parcel 011-086-14-0-00-00-002.00-0 and Radlund Parcel 011-086-14-0-00-00-045.00-0  
Starting at NW 10th, partition fence goes west between Mooney's 72.69 A and Radlund's  
38.65 A

A quorum of the Board of County Commissioners of Cherokee County, Kansas, met at the location of the fence and parcels in Section 12, west of Highway 7 on NW Coalfield Road, and at the location of the fence and parcels in Section 14 west of the intersection of NW Coalfield Road and NW10th Street, where the Board viewed the condition of the fences, temporary electric fencing and brush and hedge trees that exist in the fence rows. The Commissioners engaged in discussions with the attending property owners and counsel. A number of alternative solutions to resolve the inadequate partition fences were discussed along with the comparative costs and benefits to the respective landowners. Having observed the parties tentatively agree to a plan for clearing and rebuilding fence and allocation of costs and expenses, the Commissioners ended

their fence viewing assignment. Subsequently, Mr. Nodine announced that he has filed a petition in the District Court of Cherokee County against Mr. Mooney and his co-owners alleging adverse possession, but notice and service of process had not been served upon defendants, and he did not provide details of the claim.

The Commissioners will deliberate at a future meeting and issue an order with findings and assignments.

  
Cory Moates  
Cherokee County Commissioner

  
Myra Carlisle Frazier, Chair  
Cherokee County Commissioner

  
Neal Anderson  
Cherokee County Commissioner

ATTEST:

  
Kyle Rennie, Cherokee County Clerk

(SEAL)

**Book: 557 Page: 489-495**

Receipt #: 40184

Total Fees: No Charge

Pages Recorded: 7

Cashier Initials: KAREN

Date Recorded: 3/16/2020 11:21:53 AM  
0055700489

**FENCE VIEWERS CASE:**

Complainant, Joe Mooney, et. al., and Respondent, Margaret Radlund

**A. FACTUAL BACKGROUND INFORMATION**

**I. PROPERTY OWNERS AND FENCE LOCATIONS**

Owners: Joe Mooney, Kathy Ferraro

Partition fence line: South and West Boundary Line

Parcel 011-086-14-0-00-00-002.00-0

S14, T32, R23, ACRES 72.69, E/2 NE4 EXC BEG NE COR NE4 W1016.3 S230 E816.3 S35  
E200 N TO POB, LESS R/W

Owners: Joe Mooney, Kathy Ferraro, Frances Ferraro

Partition fence line: West Boundary Line

Parcel 011-081-12-0-00-00-004.00-0

S12, T32, R23, ACRES 153.3, SE4 EXC BEG NE COR SE4 TH W208.7 S208.7 E208.7 N TO  
POB LESS R/W

Counsel for Mr. Mooney:

P. Bernard Irvine

Morrison, Frost, Olsen, Irvine & Schartz, LLP

323 Poyntz, Suite 204

Manhattan, KS 66502-6387

785-776-9208

Owner: Margaret Radlund

Partition fence line: East Boundary Line

Parcel 011-086-14-0-00-00-003.00-0

S14, T32, R23, ACRES 81.57, W/2 NE4 LESS R/W

Owner: Margaret Radlund

Partition fence line: North Boundary Line

Parcel 011-086-14-0-00-00-045.00-0

S14, T32, R23, ACRES 38.65, NE4 SE4 LESS R/W



Owner: Margaret Radlund  
 Partition fence line: East Boundary Line  
 Parcel 011-081-12-0-00-002.00-0  
 S12, T32, R23, ACRES 156.8, SW4 EXC BEG 604N SW COR SEC 12 TH N300 E494 S300  
 W494 TO POB LESS R/W  
 Counsel for Ms. Radlund: Lucas Nodine  
 115 S.18th, Suite 212  
 P.O. Box 1125  
 Parsons, Kansas 67357  
 620-717-7668

## **II. COMPLAINT**

01/27/2020 - Joe Mooney presents detailed complaint to Board of County Commissioners, (BOCC), Cherokee County, that the partition fences between his properties and properties owned by Margaret Radlund are inadequate, and the parties and their attorneys have not been able to reach an agreement for the owners to share the costs to rebuild the fence. Mr. Mooney stated that he has had his properties professionally surveyed.

Mr. Mooney will obtain written authority from co-owners of the properties to proceed on their behalf. The Board scheduled follow-up on the 02/03/2020 agenda.

02/03/2020 - Joe Mooney provides written authorizations from co-owners of property. BOCC scheduled fence viewing for 02/26/2020, 10:00 a.m. at the site located approximately 1/2 mile west of Highway 7 on Coalfield Road. Written notice will be sent to Margaret Radlund and her attorney, Lucas Nodine.

02/04/2020 - Lucas Nodine, counsel for Margaret Radlund, contacted County Counselor, Barbara Wright, to acknowledge fence viewer proceedings on behalf of his client and to request that the viewing be rescheduled due to his prior commitments on 02/26/2020. He wants to attend the fence viewing. BOCC will be advised of his request, and that his staff will be available by telephone on Monday, 02/10/2020, at 9:00 a.m. to coordinate a new date. Mr. Mooney will appear in person to participate in rescheduling the fence viewing.

02/04/2020 - Emails from Mr. Nodine to the County Counselor indicate that Ms. Radlund will not agree to relocate the fence to the surveyed boundaries based on a potential adverse possession claim.

02/10/2020 - Mr. Mooney appears, and BOCC contacts Mr. Nodine's office. Fence viewing rescheduled for 03/04/2020, 1:30 p.m. at the properties 1/2 mile west of Highway 7 on Coalfield Road.

03/04/2020 - A quorum of the Board of County Commissioners of Cherokee County, Kansas, met at the location of the fence and parcels in Section 12, west of Highway 7 on NW Coalfield Road, and at the location of the fence and parcels in Section 14 west of the intersection of NW



Coalfield Road and NW10th Street, where the Board viewed the fences and held discussions with the property owners and counsel.

Present were the following:

County Commissioners: Myra Carlisle Frazier, Chair  
Neal Anderson, Commissioner

Cherokee County Counselor: Barbara Wright  
Cherokee County Clerk: Kyle Rennie

Complainant/ Property Owner: Joe Mooney  
Kelly Mooney

Respondent/Property Owner: Margaret Radlund  
Counsel for Ms. Radlund: Lucas Nodine  
Other party: Ms. Radlund's daughter, Amy Ross

### **III. FENCE VIEWERS' EXAMINATION 03/04/2020**

Section 12, North-South partition fence between:

Mooney Parcel 011-081-12-0-00-00-004.00-0 and Radlund Parcel 011-081-12-0-00-00-002.00-0  
NW Coalfield Rd. borders both parcels on the south  
partition fence runs between Mooney's 153.3 A and Radlund's 156.8 A

Section 14, North-South partition fence between:

Mooney Parcel 011-086-14-0-00-00-002.00-0 and Radlund Parcel 011-086-14-0-00-00-003.00-0  
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NW 10th borders Mooney's 72.69 A. on the east  
partition fence is between Mooney's 72.89 A. and Radlund's 81.57 A.

Section 14, East-West partition fence between:

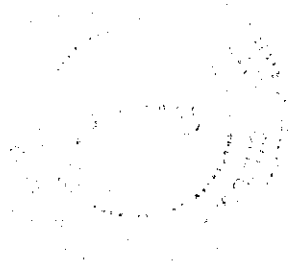
Mooney Parcel 011-086-14-0-00-00-002.00-0 and Radlund Parcel 011-086-14-0-00-00-045.00-0  
Starting at NW 10th, partition fence goes west between Mooney's 72.69 A and Radlund's  
38.65 A





## **B. COUNTY COMMISSION FINDINGS AND ASSIGNMENTS**

1. Joe Mooney announced he wishes to conduct cattle and farming operations on his subject properties, and that enclosure with sufficient fencing is required.
2. That the land of Joe Mooney, et. al. and the land of Margaret Radlund are not used in common between them.
3. That cattle and farming operations are performed on Margaret Radlund's properties.
4. That cattle and farming operations are performed on Joe Mooney's properties.
5. That the parties could not come to an agreement as to how to share the responsibilities with respect to the partition fences that Joe Mooney has proposed to build.
6. That fences are necessary to separate the properties of Ms. Radlund and Mr. Mooney, and existing fences are insufficient for cattle and farming operations.
7. That Mr. Mooney has provided, at his expense in the amount of \$2100.00, a survey, together with designated pins and/or markers, showing the exact boundary lines between the parcels.
8. That there is a hedge row and assorted wild brush growth on the boundary lines that hinder the construction of partition fences.
9. That it will be necessary for dilapidated fence material, brush and hedge row trees to be removed to allow for the construction of adequate fences.
10. That Mr. Mooney will remove and clear the dilapidated fence material, brush and hedge with his bull dozer and push up and pile the debris on his property.
11. That fence material, brush and/or hedge row shall be removed to assist in the construction of the fence, a distance the width on either side of the survey line necessary to operate the bull dozer.
12. That the total estimated cost of clearing debris, brush and hedge, and building five (5) quarters of partition fences is Thirty-two Thousand, Five Hundred Dollars (\$32,500.00).
13. Mr. Mooney is authorized to proceed with the clearing and partition fencing on the survey lines and is assigned responsibility for the balance of the costs and expenses that exceed Ten Thousand Dollars (\$10,000.00). (Survey is attached)
14. That Ms. Radlund is responsible for Ten Thousand Dollars (\$10,000.00) of the costs and expenses for clearing and fencing. Said amount is to be reimbursed to Mr. Mooney upon receipt of his invoice.



15. Pursuant to K.S.A. 29-304, this assignment shall be recorded by the Cherokee County Register of Deeds 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 fences.

16. The Ten Thousand Dollar (\$10,000.00) cost assigned to Ms. Radlund shall be liens upon the properties, until satisfied, in proportion to the parcel acreages as follows:

Parcel 011-086-14-0-00-00-003.00-0  
S14, T32, R23, ACRES 81.57, W/2 NE4 LESS R/W: 29% = \$ 2900.00

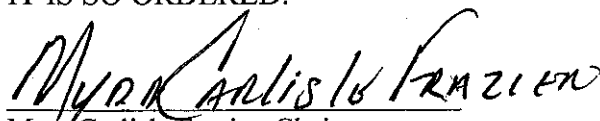
Parcel 011-086-14-0-00-00-045.00-0  
S14, T32, R23, ACRES 38.65, NE4 SE4 LESS R/W: 14% = \$ 1400.00


Parcel 011-081-12-0-00-00-002.00-0  
S12, T32, R23, ACRES 156.8, SW4 EXC BEG 604N SW COR  
SEC 12 TH N300 E494 S300 W494 TO POB LESS R/W: 57% = \$ 5700.00


On March 16, 2020, the Board of County Commissioners of Cherokee County, Kansas, met in regular session, and after considering all the information provided to it, approves the above assignments and findings of the Board.

The above findings and assignments are incorporated by reference and made the final Order of the Board. These findings shall become official minutes of the Board. Such findings shall be recorded in the Office of the Register of Deeds of Cherokee County, Kansas, and be binding upon all successors in interest to the parties hereto.

IT IS SO ORDERED.

  
Myra Carlisle Frazier, Chairperson  
Cherokee County Commissioner

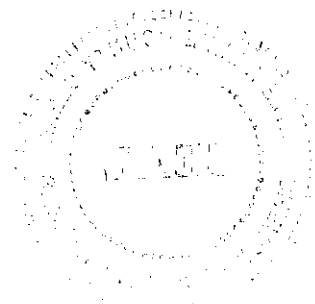
  
Cory Moates  
Cherokee County Commissioner

  
Neal Anderson  
Cherokee County Commissioner



ATTEST:

  
Kyle Rennie, Cherokee County Clerk

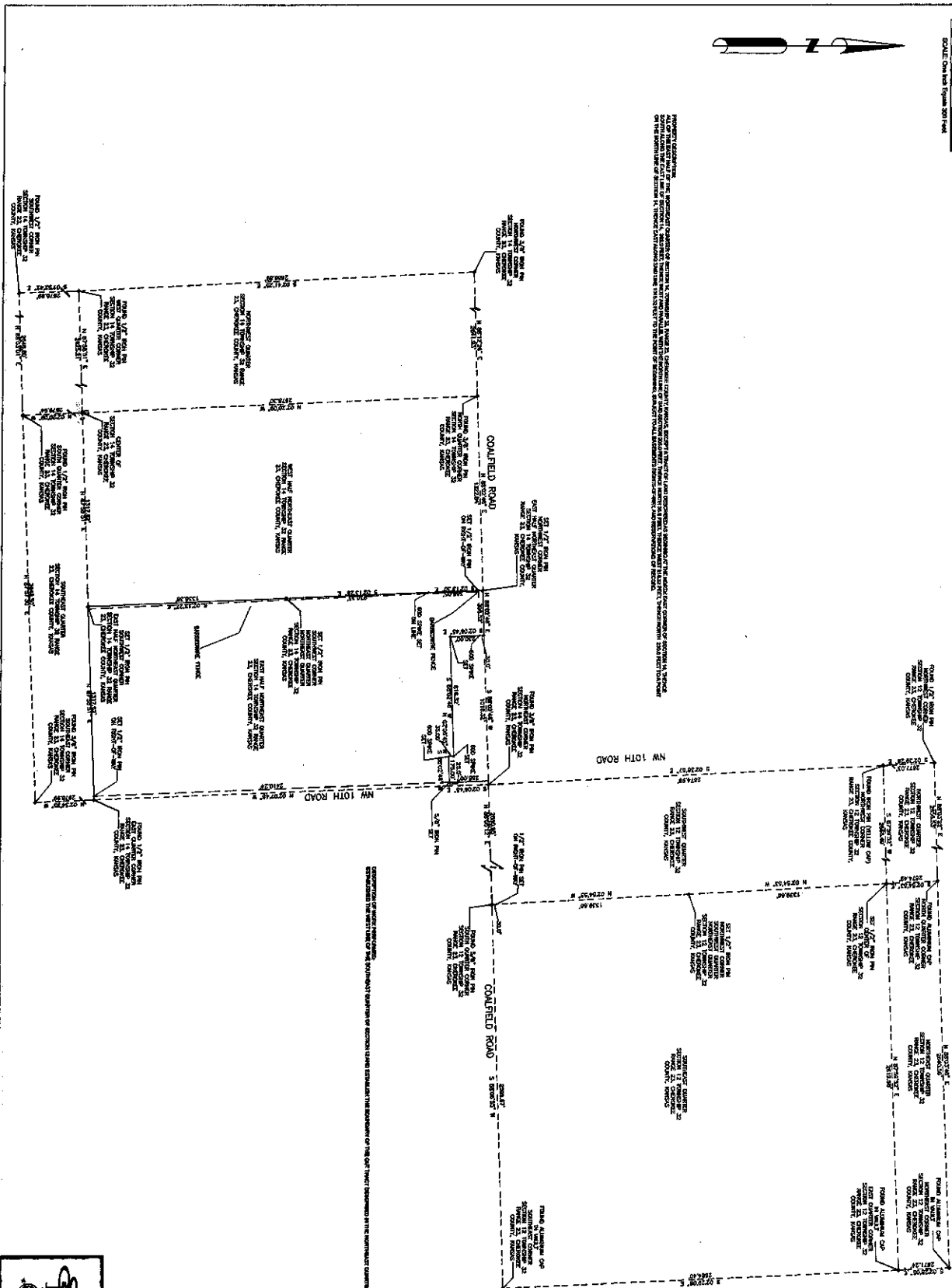


(SEAL)





NAME OF PROPERTY, PARTIAL LINE OF SECTION 14 AND SECTION 15, TOWNSHIP 36 N, RANGE 12 W, COUNTY OF MONTGOMERY, MISSOURI



SECTION 14, TOWNSHIP 36 N, RANGE 12 W, COUNTY OF MONTGOMERY, MISSOURI. THE PARTIAL LINE OF SECTION 14, TOWNSHIP 36 N, RANGE 12 W, COUNTY OF MONTGOMERY, MISSOURI, AS SHOWN ON THE SURVEY MAP OF SECTION 14, TOWNSHIP 36 N, RANGE 12 W, COUNTY OF MONTGOMERY, MISSOURI, DATED AND RECORDED IN THE PUBLIC RECORDS OF THE COUNTY OF MONTGOMERY, MISSOURI, IN BOOK 10, PAGE 10, IS HEREBY CORRECTED TO THE PARTIAL LINE OF SECTION 14, TOWNSHIP 36 N, RANGE 12 W, COUNTY OF MONTGOMERY, MISSOURI, AS SHOWN ON THE SURVEY MAP OF SECTION 14, TOWNSHIP 36 N, RANGE 12 W, COUNTY OF MONTGOMERY, MISSOURI, DATED AND RECORDED IN THE PUBLIC RECORDS OF THE COUNTY OF MONTGOMERY, MISSOURI, IN BOOK 10, PAGE 10.

DESCRIPTION OF NORTH BOUNDARY  
 CORNER OF THE WEST LINE OF THE GOVERNMENT SURVEY OF SECTION 14 AND SECTION 15, TOWNSHIP 36 N, RANGE 12 W, COUNTY OF MONTGOMERY, MISSOURI, AS SHOWN ON THE SURVEY MAP OF SECTION 14, TOWNSHIP 36 N, RANGE 12 W, COUNTY OF MONTGOMERY, MISSOURI, DATED AND RECORDED IN THE PUBLIC RECORDS OF THE COUNTY OF MONTGOMERY, MISSOURI, IN BOOK 10, PAGE 10.

**JOHN MOONEY**  
 Surveyor  
 State of Missouri  
 Commission Expires 12/31/2018

**Alpert**  
 Surveying & Mapping, Inc.  
 1000 N. 10th Street, Suite 100  
 St. Louis, MO 63108  
 Phone: (314) 433-1111  
 Fax: (314) 433-1112  
 Website: www.alpert.com

PROJECT	DATE	BY	CHECKED
JOE MOONEY			
SCALE	DATE	BY	CHECKED
APPROVED	DATE	BY	CHECKED

