Recorder's Record

IN THE IOWA DISTRICT COURT FOR MADISON COUNTY

* *

BERACHAH VALLEY BIBLE CAMP, INC., Plaintiff, vs. RALPH L. PENDER and ZORAH B. PENDER, Defendants.	CE No. 21519 SETTLEMENT AND BOUNDARY LINE AGREEMENT

* *

FILED
1978 JUN 15 PM 9:54
CLERK DISTRICT COURT
MADISON COUNTY, IOWA

THIS AGREEMENT, made and entered into this 14 day of June, 1978, by and between Berachah Valley Bible Camp, Inc., an Iowa non-profit corporation, hereinafter referred to as "Plaintiff" and Ralph L. Pender and Zorah B. Pender, husband and wife hereinafter referred to as "Defendant", each of St. Charles, Iowa.

WHEREAS, the Plaintiff owns the following described real estate, to-wit:

> The Southeast Quarter (SE¼) of the Southeast Quarter (SE¼) of Section Twenty-two (22) and the South 12½ feet of the South Half (S½) of the Northwest Quarter NW¼) of the Southwest Quarter (SW¼) of Section Twenty-three (23), all in Township Seventy-five (75) North, Range Twenty-six (26) west of the 5th P.M., Madison County, Iowa;

and

WHEREAS, the Defendant owns the following described real estate, to-wit:

> The South Half (S½) of the Northwest Quarter (NW¼) of the Southwest Quarter (SW¼), except the South 12½ feet thereof, of Section Twenty-three (23), and the Northeast Quarter (NE¼) of the Southeast Quarter (SE¼) and the East Half (E½) of the Northwest Quarter (NW¼) of the Southeast Quarter (SE¼) of Section Twenty-two (22), all in Township Seventy-five (75) North, Range Twenty-six (26) West of the 5th P.M., Madison County, Iowa;

and

WHEREAS, the Plaintiff and Defendant desire to enter into a settlement and boundary line agreement as concerning their respective above-described properties;

STATE OF IOWA, MADISON COUNTY, ss. Inst. No. 2739 Filed for Record this 15 day of June 1978 at 1:48 P.M.
Book 32 Page 56 Recording Fee 22.50 Mary E. Welty, Recorder, By _____ Deputy

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Plaintiff and Defendant hereby agree as follows:

(1) For specific reference to the following boundary line agreement, the Plaintiff and Defendant agree to use and be bound by the survey as prepared by Vance and Hochstetler Consulting Engineers, Winterset, Iowa, encompassing a portion of the South one-half of the Northwest Quarter of the Southwest Quarter of Section Twenty-three (23), all in Township Seventy-five (75) North, Range Twenty-six (26) West of the 5th P.M., Madison County, Iowa, dated February 17, 1977, marked Exhibit "A", and incorporated herein by this reference thereto.

(2) That the boundary line between the Plaintiff's property, specifically, the Southeast Quarter of the Southeast Quarter of Section Twenty-two (22), all in Township Seventy-five (75) North, Range Twenty-six (26) West of the 5th P.M., Madison County, Iowa, and the Defendant's property, specifically the Northeast Quarter of the Southeast Quarter of Section Twenty-two (22), all in Township Seventy-five (75) North, Range Twenty-six (26) West of the 5th P.M., Madison County, Iowa, shall be the present irregular fence line as now located from tree to post and separating said above parcels.

(3) That the Plaintiff shall be responsible for maintaining a lawful fence, as defined in the 1977 Code of Iowa, Chapter 113, commencing at the Northwest corner of

Plaintiff's above-described property, thence easterly along the present irregular fence line meandering from tree to post to the west edge of the Creek as the same is now located.

(4) That the Defendant shall be responsible for maintaining a lawful fence, as defined in the 1977 Code of Iowa, Chapter 113, commencing at the west edge of said Creek, thence easterly along the present irregular fence line meandering from tree to post to the Southwest corner of the Northwest Quarter of the Southwest Quarter of Section Twenty-three (23), Township Seventy-five (75) North, Range Twenty-six (26) West of the 5th P.M., Madison County, Iowa. Said responsibility and maintenance shall specifically include the water gap. The water gap shall be repaired according to lawful fence standards within one (1) month from the date that this settlement and agreement is executed by the parties hereto. The Plaintiff shall in good faith make every effort to keep the creek free from dead trees so as not to block or damage the water gap, referred to herein as the fencing obligation of the Defendant.

(5) That the Defendant shall remove, within three (3) months, the present fence now located west of the present patio to the Southwest corner of the Northwest Quarter of the Southwest Quarter of Section Twenty-three (23), Township Seventy-five (75) North, Range Twenty-six (26) West of the 5th P.M., Madison County, Iowa, (See Exhibit "A"), and shall replace and maintain, at their own cost, a new and lawful fence, as defined in the 1977 Code of Iowa, Chapter 113. Said new and lawful fence shall be placed upon the Vance and Hochstetler survey line which shall be referred to

as the North line of the South twelve and one-half (12½) feet of the South Half (S½) of the Northwest Quarter (NW¼) of the Southwest Quarter (SW¼) of Section Twenty-three (23), all in Township Seventy-five (75) North, Range Twenty-six (26) West of the 5th P.M., Madison County, Iowa, until said fence reaches a point as shown on the survey which is located approximately forty (40) feet in a northwesterly direction from the West corner of the present patio fence, marked by a mature hickory tree and number ' 12" ', as shown on survey attached hereto. Said hickory tree shall remain as a permanent marker and shall not be removed by either party without a specific agreement as to a replacement marker.

From that point, as marked on the survey by the mature hickory tree and number ' 12" ', the Defendant shall remove the present fence up to the west corner of their patio fence and shall, at their own cost, replace and maintain a new and lawful fence, as herein defined. The four (4) trees (See Exhibit "A") that will be located west of the mature hickory tree (12") and south of the new fence line when installed, may be removed by the Plaintiff at its own expense. During construction of the new fence line the Defendant shall place said new fence upon the north side of any trees that border the survey line.

(6) The present location of the Defendant's south patio fence shall remain the same and shall serve as the boundary line between the two parties respective properties.

The Defendant shall be solely responsible for the maintenance and upkeep concerning said patio fence.

The present tree located approximately one foot south of the present patio fence and directly south of the south side of the Defendant's home, as now located, shall remain in place for so long as the Defendant desires unless said tree becomes diseased or dies, at which time, Defendant shall be responsible for removal of same at their expense. The Defendant shall not be permitted to plant any trees south of the present patio fence.

(7) That from the southeast corner of the present patio fence to a point on the north-south quarter section line, twelve and one-half (12½) feet north of the southeast corner of the Northwest Quarter of the Southwest Quarter of Section Twenty-three (23), all in Township Seventy-five (75) North, Range Twenty-six (26) West of the 5th P.M., Madison County, Iowa, the boundary line between the Plaintiff's and Defendant's properties shall be the Vance and Hochstetler survey line, further described as the North line of the South twelve and one-half (12½) feet of the South one-half of the Northwest Quarter of the Southwest Quarter of Section Twenty-three (23), all in Township Seventy-five (75) North, Range Twenty-six (26) West of the 5th P.M., Madison County, Iowa. In the event a fence is ever placed upon the parties above described boundary line, east of the present patio, said fence shall be a legal fence consisting of three (3) board horizontal design.

(8) That all trees now located south of said survey line (see Exhibit "A") and east of the Southeast corner

of the present patio fence shall remain in place, regardless of the survey line, with the exception of two (2) trees which will be marked by Defendant and removed by the Defendant, at their expense, within seven (7) months from the date this Settlement and Boundary Line Agreement is entered hereto. Defendant shall maintain and care for said trees and debris therefrom and when said trees become diseased or die, the same shall be removed at Defendant's sole expense.

(9) In view of the present location of Defendant's front yard, both the Plaintiff and Defendant hereby agree to maintain, in good and presentable condition, their own property along the boundary line between the southeast corner of the Defendant's present patio fence (see Survey) and the southeast corner of the Northwest Quarter of the Southwest Quarter of Section Twenty-three (23), all in Township Seventy-five (75) North, Range Twenty-six (26) West of the 5th P.M., Madison County, Iowa.

(10) The Plaintiff and Defendant hereby agree to equally share in the expense of maintaining the private lane that borders or transverses the east-west Quarter Section line between the Northeast Quarter and the Southeast Quarter of the Southwest Quarter of Section Twenty-three (23), all in Township Seventy-five (75) North, Range Twenty-six (26) West of the 5th P.M., in Madison County, Iowa, and also presently serves as the only means of ingress and egress for both parties' property. The standard for maintenance shall

be defined as snow removal, weed control and a quantity of white rock or gravel necessary to provide safe passage for the parties present vehicles, specifically, passenger cars and pickup trucks.

(11) The Defendant shall, at their sole cost, install and maintain a lateral septic field, according to Madison County Engineering and Health Departments specifications, within twelve (12) months from the date this Agreement is entered into.

(12) The Defendant, at a cost of up to Two Hundred Dollars ($200.00) shall pay for the additional surveying necessary to relocate the new and lawful fence to be installed from the southwest corner of the Defendant's present patio fence (see survey) to a point along the north-south Section line twelve and one-half (12½) feet north of the southwest corner of the Northwest Quarter of the Southwest Quarter of Section Twenty-three (23), all in Township Seventy-five (75) North, Range Twenty-six (26) west of the 5th P.M., Madison County, Iowa.

Also included shall be the cost for the surveying and material and labor to install survey stakes every one hundred fifty feet (150') along said boundary line (see survey) from the southeast corner of the Defendant's present patio fence to four (4) steel posts as shown on the survey. If the Defendant's costs total more than Two Hundred Dollars ($200.00) for the above surveying and cost of material and labor for the survey stakes, the additional

costs shall be shared equally by the parties. Vance and Hochstetler shall do whatever surveying necessary for the new fence lines and sitings..

(13) Both Plaintiff and Defendant shall be responsible for and pay their own survey costs and attorney fees incurred to date. The parties hereby agree to equally share in and pay the Court costs for this cause of action and judgment shall be rendered against them for said costs.

(14) It is the intention of both the Plaintiff and Defendant that this Settlement and Boundary Line Agreement be forever binding upon themselves, and their heirs, successors and assigns and that Settlement and Boundary Line Agreement satisfy the requirements of the 1977 Code of Iowa, Chapter 113.12 and Chapter 650.17.

(15) This Settlement and Boundary Line Agreement consists of the entire agreement between the Plaintiff and Defendant and supersedes any and all prior agreements, written or verbal. Said Settlement and Boundary Line Agreement shall not be changed, altered or modified without the express written consent of both parties hereto and any said alteration, modification or amendment shall be in writing, signed by both parties and recorded in the Madison County Recorder's Office before it shall be given full force and effect.

DATED and executed this 14 day of June, 1978.

BERACHAH VALLEY BIBLE CAMP, INC.

By William M. Buchanan
William M. Buchanan,
Vice-President

BERACHAH VALLEY BIBLE CAMP, INC.

By Bula R. Buchanan
Bula R. Buchanan, Secy.-Treas.
PLAINTIFF

Ralph L. Pender
Ralph L. Pender

Zorah B. Pender
Zorah B. Pender
DEFENDANT.

STATE OF IOWA)
)ss
COUNTY OF POLK)

On this 14th day of June, 1978, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Ralph I. Pender and Zora B. Pender, husband and wife, to me known to be the identical persons named in and who executed the within and foregoing instrument, and acknowledged that they executed the same as their voluntary act and deed.

HARRISON E. CASS Iowa NOTARIAL

Harrison E. Cass

Notary Public in and for the State of Iowa.

STATE OF IOWA)
)ss
COUNTY OF POLK)

On this 14 day of June, 1978, before me, the undersigned, a Notary Public in and for the State of Iowa personally appeared Bula R. Buchanan and William M. Buchanan to me personally known, who, being by me duly sworn, did say that they are the Secretary & Treas. and William M. Buchanan respectively, of said corporation executing the within and foregoing instrument, that no seal has been procured by the said corporation; that said instrument was signed on behalf of said corporation by authority of its Board of Directors; and that the said Bula R. Buchanan and William M. Buchanan as such officers acknowledged the execution of said instrument to be the voluntary act and deed of said corporation, by it and by them voluntarily executed.

John Connally Jr.

Notary Public in and for the State of Iowa.

W. LINE NW.1/4 SW.1/4 SEC.23-75-26

5/8" BAR SET

15"

24"

18.5'

10.5'

N. LINE SOUTH 12.5 FEET NW1/4 SW.1/4 SEC 23-75-26

24" 60'

15" 45'

12" 73'

12" 11.0'

12" 6.5'

15" 6.0'

13.0'

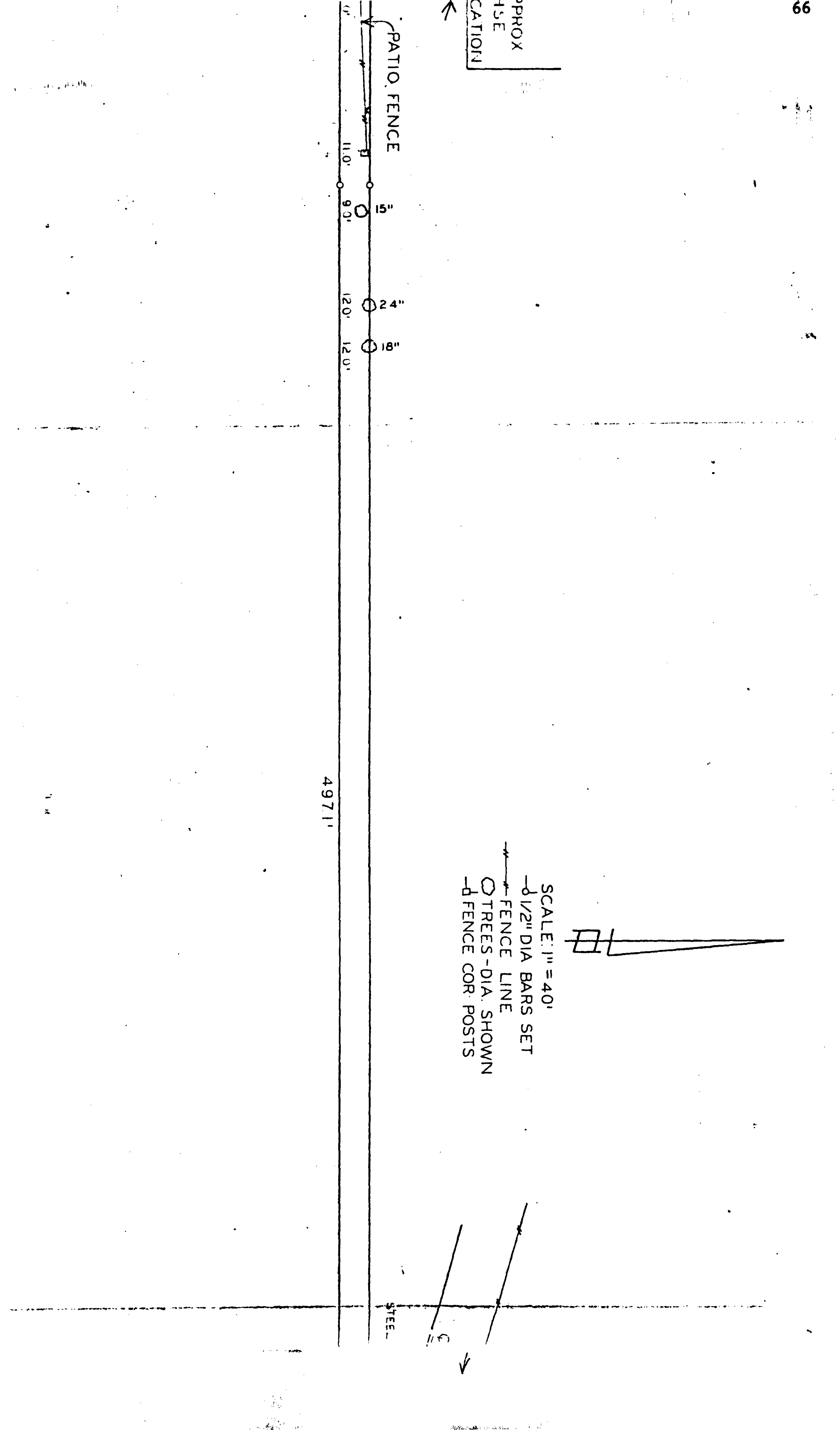
351 6'

215.0'

SW. COR. NW.1/4 SW.1/4 SEC.23-75-26 FD. STONE

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APPR
HS
LOCA


PPROX
HSE
CATION
PATIO FENCE
11.0'
9.0'
15"
12.0'
24"
12.0'
18"
497.1'
SCALE: 1" = 40'
1/2" DIA BARS SET
FENCE LINE
TREES-DIA. SHOWN
FENCE COR. POSTS

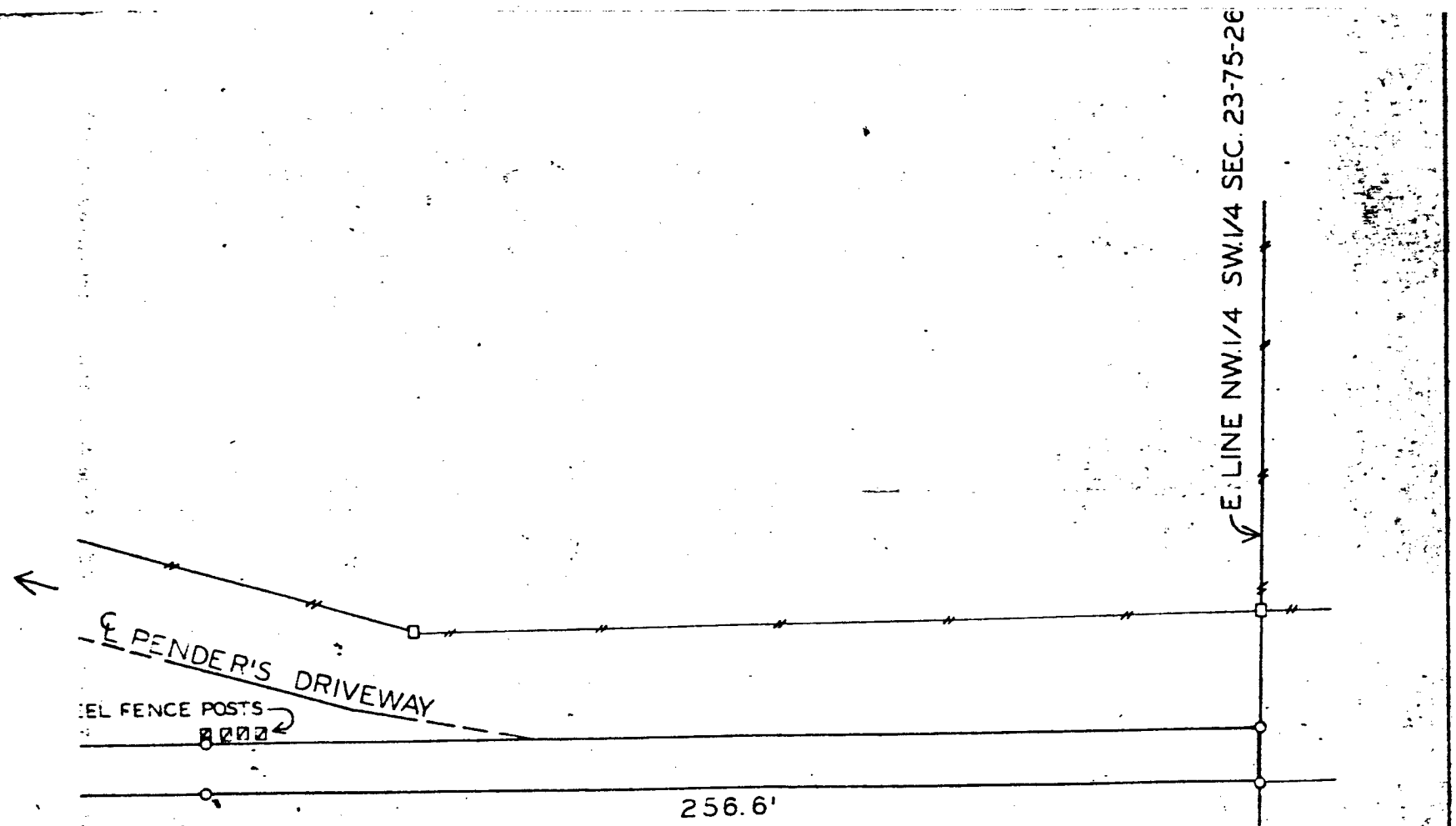


EXHIBIT "A"

I hereby certify that this plat, map, survey or report was made by me or under my direct personal supervision and that I am a duly registered Land Surveyor under the laws of the State of Iowa.

Signed J. M. Hochstetler Date 2-17 1977

J. M. Hochstetler, P.E., L.S. Iowa Reg. No. 6808

BERACHAH VALLEY BIBLE CAMP
DRIVEWAY DRAWING
VANCE & HOCHSTETLER

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MARY E. WELTY
RECORDER
MADISON COUNTY, IOWA

FOR ORIGINAL
See PLAT File

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