

**COMMONWEALTH OF PENNSYLVANIA**

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**THE STATE BOARD OF PROPERTY**

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Received 4.24.2023  
Board of Property

**IVN GROUP, LP,  
Petitioner**

**v.**

**COMMONWEALTH of PENNSYLVANIA GAME COMMISSION,  
Respondent**

**DOCKET NO. BP 2020-0002**

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**FINAL ADJUDICATION AND ORDER**

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**Jason E. McMurry, Esquire, designee of the  
Secretary of the Commonwealth, Chairman**

**Robert Teplitz, Esquire, designee of the  
Secretary of Community and Economic Development**

**Thomas P. Howell, Esquire, designee of the  
General Counsel**

**Department of Community and Economic Development  
Commonwealth Keystone Building  
400 North Street, 400 Plaza Level  
Harrisburg, PA 17120**

**TAB**

## HISTORY

This matter comes before the State Board of Property (Board) to determine ownership of certain real estate within this Commonwealth otherwise claimed by the Commonwealth. By petition filed on September 21, 2020, IVN Group, LP (“Petitioner”) brought an action in trespass and in ejectment against the Commonwealth of Pennsylvania Game Commission (“Respondent”) concerning certain real property located in Sullivan County, Pennsylvania. On October 5, 2020, Respondent filed an answer with new matter, and on October 16, 2020, Petitioner filed a reply to the new matter of Respondent’s answer.

The formal hearing in this matter was held by video on January 19 and March 25, 2022, before the Board.<sup>1</sup> Petitioner was represented by D. Robert Davidson, Esquire; assistant counsel Jason A. Raup, Esquire, represented Respondent. Petitioner presented its case through documentary evidence and the testimony of its expert Frank A. Grabowski, PLS. Respondent presented its case through documentary evidence and the testimony of its land management group supervisor Philip Kasper and its expert chief of surveys Michael J. Stone, PLS.

The notes of testimony were filed on March 15 and May 23, 2022 (collectively “N.T.”). Petitioner filed its post-hearing brief<sup>2</sup> on October 26, 2022, and Respondent filed its post-hearing brief on December 15p, 2022. Petitioner did not file a reply brief. The Board deliberated this matter at its meetings January 15 and April 15, 2023, and now issues this adjudication and order as a final determination of Petitioner’ petition.

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<sup>1</sup> Board chairman Jason E. McMurry, Esquire and Board member Robert Teplitz, Esquire were present for both days of hearing. Jullia A. Sheridan, Esquire, as then the designee of the General Counsel was present for the hearing on January 19, 2022. After he was designated to replace her, Board member Thomas P. Howell, Esquire was present on March 25, 2022. Ms. Sheridan did not participate in the deliberations or decision in this matter.

<sup>2</sup> Because the brief was not filed in accordance with the Board’s May 24, 2022, order setting briefing schedule or the subsequent email understanding with Board counsel, on October 26, 2022, Respondent moved to strike Petitioner’s brief. By order dated November 3, 2022, the Board denied this request to strike the brief as untimely.

**FINDINGS OF FACT**

1. Petitioner is IVN Group, LP, a Pennsylvania limited partnership with its principal place of business at 2615 Schukraft Road, Quakertown, Pennsylvania.

2. Respondent Pennsylvania Game Commission is an independent administrative commission of the Commonwealth, with an address of 2001 Elmerton Avenue, Harrisburg, PA 17110. (Petition and Answer ¶ 4)

3. By deed dated August 24, 2015, and recorded on August 28, 2015, in consideration of \$267,000 the Estate of George F. Breisch, Jr. conveyed to Petitioner title to certain real estate in Colley Township, Sullivan County which Mr. Breisch and his late wife Alwine B. Breisch by deed dated July 22, 1986, had conveyed to themselves from a larger parcel and described as follows:

BEGINNING at the East corner of lot of Henry Rough; thence along his line North thirty-seven (37 ½) degrees West one hundred twenty-six (126) perches to a corner; thence along unseated land North fifty-two and one-half (52 ½) degrees East one hundred thirty-eight (138) perches to a corner in warrant line between John Brown and George Brown; thence along said warrant line South thirty-seven and one-half (37 ½) degrees East one hundred twenty-six (126) perches to a corner; thence South fifty-two and one-half (52 ½) degrees West one hundred and thirty-eight (138) perches to the place of beginning. Being part of the John Brown and John Campbell warrants.

AS PER survey by W.R. Stepp, in July, 1957.

PIN NO. 02-041-0004

(Petition and Answer ¶ 4 and attached exhibit A, exhibit IVN-A)

4. By deed dated August 24, 2015, and recorded on August 28, 2015, in consideration of \$178,000 the Estate of George F. Breisch, Jr. conveyed to CLF Associates, LP title to certain real estate in Colley Township, Sullivan County which Mr. Breisch and his late wife Alwine B. Breisch by deed dated July 22, 1986, had conveyed to themselves from a larger parcel and described as follows:

BEGINNING at a stake corner on the John Brown Warrant line; thence North 82 degrees 30 minutes West one hundred and thirty-two (132) rods along lands of the F. Vincent Estate to a pile of stones for a corner; thence north 36 degrees West fifty-four (54) rods along lands of Walter Sorbes et ux., to a point in the center of the public road leading from Lopez to Ricketts; thence along the center line of the said road in a Northeasterly direction twenty-four (24) rods to a point; thence in a Southeasterly direction along the center line of a driveway to a stake; thence South 87 degrees 31 minutes East 80 rods along the lands of George Iles et al., to a stake corner; thence North 20 degrees West 21 rods to a stake and stones corner; thence South 87 degrees 30 minutes East seventy-one (71) rods along lands of Christina Behr to a pile of stones corner; thence South 38 degrees East 65 rods to a stake corner on said Warrant line; thence South 52 degrees West fifty-one (51) rods along lands of John Kravitz, to the place of beginning.

AS PER survey by W.R. Stepp, in July, 1957.

PIN NO. 02-041-0009

(Petition and Answer ¶ 6 and attached exhibit B, exhibit IVN-B)

5. By deed dated June 30, 1967, in consideration of \$36,084.50 John Kravitz and his wife Elizabeth Jane Kravitz conveyed to Respondent title to certain real estate in Colley Township, Sullivan County comprised of two tracts which Mr. and Mrs. Kravitz had acquired from widow Alma K. Hull by her deed dated October 7, 1954, and described as follows:

TRACT NO. 1

BEGINNING at an iron post and stones, an old corner, in the John Brown Warrant, along the south side of Highway Route T-390, the most westerly corner of the tract herein described; thence, by land late of Edith Shuman, contracted to be sold to the Commonwealth, Game Commission, the five (5) following courses and distances: North fifty-one (51) degrees, one (01) minute East, in the John Brown Warrant, two thousand two hundred fifty-four and seven tenths (2,254.7) feet to an iron post, an old corner, along the west bank of Shuman Lake, on line separating the John Brown and the George Brown Warrants, South thirty-nine (39) degrees, twenty-two (22) minutes East, on said Warrant line, along said lake bank, one thousand five hundred thirty-three and five tenths (1,533.5) feet to an iron post, North fifty (50) degrees, fifty-eight (58) minutes East, entering the George Brown Warrant, crossing a stream, one thousand nine hundred seventy-seven and four tenths (1,977.4) feet to an iron post, South thirty-nine (39) degrees, thirty-two (32) minutes East, in the George Brown Warrant, one thousand three hundred forty-nine and six tenths (1,349.6) feet to an iron post, and North fifty-one (51) degrees eighteen (18) minutes East, in the George Brown Warrant, two thousand eight hundred sixteen

and two tenths (2,816.2) feet to an iron post, an old corner, on line separating the George Brown and Robert Campbell Warrants and the avid Shaw Warrant; thence, South forty (40) degrees, forty-seven (47) minutes East, on said Warrant line, by other land of the Commonwealth, one thousand four hundred twenty-two and two tenths (1,422.2) feet to an iron post, an old corner, on the Sullivan County – Wyoming County line; thence, along said line and leaving same, by land of A. W. Schmidthenner, entering the Robert Campbell Warrant, the two (2) following courses and distances: South nineteen (19) degrees, twenty-eight (28) minutes West, crossing a swamp, three thousand five hundred seventy-seven and six tenths (3,577.6) feet to an iron post and stones, an old corner and South forty-nine (49) degrees, twenty-five (25) minutes West, crossing a swamp, one thousand seven hundred seventy-nine and five tenths (1,779.5) feet to an iron post and stones, an old corner, on line separating the Robert Campbell and the John Campbell Warrants; thence North thirty-nine (39) degrees, one (01) minute West, on said Warrant line, by land late of the Grantor, contracted to be sold to the Commonwealth, Game Commission, crossing a road, two thousand fifty-nine and nine tenths (2,059.9) feet to an iron post, an old corner; thence, North thirty-nine (39) degrees, thirty-eight (38) minutes West, by land of George Briesch, on line separating the Robert Campbell and the John Campbell Warrants and the George Brown and John Brown Warrants, one thousand eight hundred ninety-one and nine tenths (1,891.9) feet to an iron post and stones, an old corner; thence, South fifty (50) degrees, thirty-seven (37) minutes West, entering the John Brown Warrant, two thousand two hundred seventy-eight and four tenths (2,278.4) feet to an iron post and stones, an old corner; thence, North thirty-eight (38) degrees, fifty-three (53) minutes West, in the John Brown Warrant, by land of C. Behr, two thousand three hundred twenty and three tenths (2,320.3) feet to the place of beginning.

CONTAINING by actual survey 482.9 acres and being parts of the John Brown Warrant, the George Brown Warrant and the Robert Campbell Warrant.

TRACT NO. 2

BEGINNING at an iron post, an old corner, on the west line of the John Campbell Warrant, a corner common to land of the Grantor, land of John Kravitz and land of I. Vincent, the most westerly corner of the tract herein described; thence, North fifty-one (51) degrees, one (01) minutes East, entering the John Campbell Warrant, by land of the latter and land of A. Briesch, along the north side of a road, two thousand seven hundred and seven tenths (2,700.7) feet to an iron post, an old corner; thence, North forty-five (45) degrees, thirty-four (34) minutes East, still in the John Campbell warrant, by land of George Briesch, two thousand three hundred seven and eight tenths (2,307.8) feet to an iron post, an old corner, on line separating the John Campbell Warrant and the Robert Campbell Warrant; thence, on said Warrant line, by other land of the Grantor, contracted to be sold to the Commonwealth, Game Commission, and land of A. W. Schmidthenner, the two (2) following courses and distances: South thirty-nine (39) degrees, one (01) minutes East, crossing a road, two thousand fifty-nine and nine tenths (2,059.9) feet to an

iron post and stones, an old corner and South forty-one (41) degrees, twelve (12) minutes East, nine hundred eighty-eight and three tenths (988.3) feet to an iron post, an old corner, on the Sullivan County – Wyoming Court line; thence, South twenty (20) degrees, twenty-two (22) minutes West, on said County line, entering the John Campbell Warrant, one thousand three hundred sixty-six and seven tenths (1,366.7) feet to an iron post and stones, an old corner; thence, South fifty-one (51) degrees, twenty-two (22) minutes West, along the south line of the John Campbell Warrant, by land of Adolph Otten, crossing a swamp and a stream, three thousand eight hundred forty-four and five tenths (3,844.5) feet to an iron post; thence, North thirty-nine (39) degrees, sixteen (16) minutes West, by land of John Kravitz, crossing a stream and aforementioned road, three thousand five hundred one and six tenths (3,501.6) feet to the place of beginning.

CONTAINING by actual survey 400.2 acres and being part of the John Campbell Warrant.

(Petition and Answer ¶ 7 and attached exhibit C, exhibit IVN-C, exhibit PGC-A)

6. The description for Respondent’s deed was based upon a survey performed in 1967 for Respondent and was not consistent with the description in the 1954 deed by which Kravitz had obtained that property. (N.T. 38)

7. In the opinion of Petitioner’s land surveyor, corner 117 set for Respondent should have been approximately 100 feet further south based upon the prior deeds including of the surrounding properties; with corner 116 set, this created a triangular overlap of about 5 acres. (N.T. 53-57, 71, 77-78, exhibit IVN-D, exhibit IVN-J at 11-12)

8. In the opinion of Respondent’s land surveyor, corner 117 is properly set by its 1967 survey. (N.T. 239-241, 249, exhibit PGC-Z at 9)

9. Dispute as to ownership of this overlap has been ongoing since 2016. (N.T. 201)

10. The line from corner 116 to corner 117 as set on behalf of Respondent is marked in a consistent line with “no trespassing” signs, white blaze, an old stone wall, and boundary marker sign tags. (N.T. 176-188, exhibit PGC-L)

11. Some of the white blaze painted on trees on the boundary line runs through the

bark, indicating that the blaze has been there for quite some time because the tree has healed itself and grown over the cut for the paint. (N.T. 186, exhibit PGC-L)

12. At least one boundary marker tag has been on the tree so long that the tree has grown around it. (N.T. 189, exhibit PGC-L)

13. The forest on Petitioner's side of the line from corner 116 to corner 117 is much younger than on Respondent's side, indicating that it had been cut or logged within the prior 20 years; the much younger forest on Petitioner's side indicates that it has been cut more recently than the much older forest on Respondent's side. (N.T. 181-83, exhibit PGC-L)

14. The logging went up to Petitioner's side of the marked line but did not cross it into Respondent's side. (N.T. 184-85, 191-93, 198-99, exhibit PGC-L)

15. The blazing was placed initially by the surveyor and then painted. (N.T. 180, 186-87)

16. Petitioner and Respondent stipulated that Respondent monumented the line as it believes the line to be. (N.T. 188)

17. Corner 117 is marked with a stone pile and an iron pipe and a witness tree with boundary tags. (N.T. 189-90, exhibit PGC-L)

18. There is no difficulty while walking in following the line from corner 116 to corner 117 and observing the directionality of the line with these monuments. (N.T. 190)

19. This line marking was established originally in approximately 1967 and has been re-monumented and re-identified at least ten times since then. (N.T. 198-99)

20. Petitioner filed its petition on September 21, 2020. (Docket entries)

21. Respondent received service of Petitioner's petition, as shown by its filing of an answer thereto on October 5, 2020. (Docket entries)

22. Petitioner received service of Respondent's answer with new matter, as shown by its filing of a reply on October 16, 2020. (Docket entries)

23. Petitioner and Respondent received notice of the hearing scheduled for January 19 and March 25, 2022, as shown by the attendance of their respective legal counsel at the hearing. (N.T. 5, 311)

24. Petitioner presented testimony from its expert witness with supporting documentation. (N.T. 24-172, 474-75)

25. Respondent presented testimony from its relevant manager and its expert witness with supporting documentation. (N.T. 175-203, 206-298 and 315-463)

26. Petitioner filed its post-hearing brief on October 26, 2022, and did not file a reply brief. (Docket entries)

27. Respondent filed its post-hearing brief on December 15, 2022. (Docket entries)

28. The parties received all pleadings and notices and other documents filed in this matter. (Docket entries)



## **CONCLUSIONS OF LAW**

1. The Board has jurisdiction over this matter under section 1207 of the Administrative Code of 1929, 71 P.S. § 337.

2. The parties received notice and were afforded an opportunity to be heard in accordance section 4 of the Administrative Agency Law, 2 Pa.C.S. § 504. (Findings of Fact 20-28)

3. Respondent has established through the doctrine of consentable line that the common boundary between its property and that of Petitioner is the line Respondent has marked, and thus it and not Petitioner is the owner of the apparent overlap of real estate. (Findings of Fact Nos. 1-19)

4. Petitioner has failed to establish that it is the owner of or otherwise has the right to possess the real estate in the disputed area otherwise claimed by the Commonwealth. (Findings of Fact Nos. 1-19)

## DISCUSSION

Petitioners brought this action to quiet title against Respondent, a Commonwealth agency claiming the real estate. The Board has jurisdiction under section 1207 of the Administrative Code of 1929,<sup>3</sup> 71 P.S. § 337, to consider matter involving a dispute of ownership of real estate involving the Commonwealth. *See, Beishline v. Dept. of Environmental Protection*, 234 A.3d 878, 885 (Pa. Cmwlth. 2020) (Board of Property has jurisdiction to hear and determine cases involving title to land or interest therein brought by persons who claim an interest in the title to lands occupied or claimed by the Commonwealth). The Board has the power to grant declaratory relief when a petition for declaratory judgment is filed within the scope of this jurisdiction. *Id.* The burden is on Petitioner to establish a *prima facie* case by showing title sufficient to base a right to recovery; Petitioner must recover on the strength of its own title and not on any weakness of the Commonwealth's. *Kaiser Energy, Inc. v. Commonwealth, Dept. of Env'tl. Resources*, 535 A.2d 1255, 57 (Pa. Cmwlth. 1988).

The ultimate question for the Board is to determine the location of the line that divides Petitioner's property from that of the Commonwealth. Though apparently agreeing upon the location of corner 116, the parties dispute the location of corner 117. These corners form the ends of the line dividing the parties' abutting properties. Petitioner claims that the correct location of corner 117 is not as far north as Respondent asserts, creating a disputed triangle of 5 acres.

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<sup>3</sup> **Section 1207. Board of Property.**

The Board of Property shall, subject to any inconsistent provisions in this act contained, continue to exercise the powers and perform the duties by law vested in and imposed upon the said board.

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The Board of Property shall also have jurisdiction to hear and determine cases involving the title to land or interest therein brought by persons who claim an interest in the title to lands occupied or claimed by the Commonwealth.

\* \* \*

71 P.S. § 337.

Among its affirmative defenses, Respondent asserts that Petitioner's claims are barred by the doctrine of consentable line. The doctrine of consentable line is a rule of repose for the purpose of quieting title and discouraging confusing and vexatious litigation. *Plauchak v. Boling*, 653 A.2d 671, 675 (Pa. Super. 1995). Under this doctrine, if adjoining landowners occupy their respective premises up to a certain line which they mutually recognize and acquiesce in for the period of time prescribed by the statute of limitations, they are precluded from claiming that the boundary line thus recognized and acquiesced in is not the true one. *Id.*

The requirements for establishing a binding consentable line by recognition and acquiescence are: (1) a finding that each party has claimed the land on his side of the line as his own, and (2) a finding that this occupation has occurred for the statutory period of twenty-one years. *Id.* Though the parties need not have specifically consented to the location of the line, it must nevertheless appear that for the requisite twenty-one years a line was recognized and acquiesced in as a boundary by adjoining landowners. *Id.* at 676. A consentable line by recognition and acquiescence is typically established by a fence, hedgerow, tree line, or some other physical boundary by which each party abides. *Long Run Timber Co. v. Dept. of Conservation and Natural Resources*, 145 A.3d 1217, 1234 (Pa. Cmwlth. 2016). The fence line need not be as substantial as that required for adverse possession. *Niles v. Fall Creek Hunting Club, Inc.*, 545 A.2d 926, 931 (Pa. Super. 1988). A boundary in which the parties have acquiesced may be shown by markings on the ground. *Miles v. Pa. Coal Co.*, 91 A. 211, 212 (Pa. 1914).

As established by the findings of fact, Respondent obtained its property from Kravitz in 1967. In 1967, after acquiring this property Respondent marked the disputed boundary line from corner 116 to corner 117 on the southwestern side by a series of white blazes and red boundary line markers and on the northeastern side by a series of Posted signs. Respondent has updated

these markings over the years. There is no trouble to find or follow these markings. Additionally, the trees on Respondent's side of this line are taller, larger, and fewer than those on Petitioner's side, showing a mature forest. The forest composition on Petitioner's side shows that it has been timbered much more recently but only up to this marked boundary line. .

Coupled with the lack of dispute prior to approximately 2016, these facts establish that for over 50 years, the boundary line asserted by Respondent has been well marked and well known. For almost 50 years, Petitioner (and its predecessors) and Respondent have claimed as their own the land on either side of this line. For over 21 years, the parties have recognized this line and acquiesced in it. Accordingly, by the doctrine of consentable line, Petitioner and Respondent are estopped from asserting that the boundary between their abutting properties is anything other than this marked line. Because this marked line establishes the line between their properties and Respondent is the owner of the real estate on its side of the line, Petitioner's claims must fail.

Because Petitioner cannot establish ownership of the disputed property and thus cannot establish right to possession, it cannot prevail on its trespass claim. *See, Briggs v. Southwestern Energy Production Co.*, 224 A.3d 334, 346 (Pa. 2020) (trespass occurs when person who is not privileged to do so intrudes upon land in possession of another). Nor can it prevail on its ejectment claim. *See, Siskos v. Britz*, 790 A.2d 1000, 1006 (Pa. 2002) (ejectment is an action filed by a plaintiff who does not possess the land but has the right to possess it against a defendant who has actual possession).

Wherefore, the Board enters the following order.


**COMMONWEALTH OF PENNSYLVANIA  
BEFORE THE STATE BOARD OF PROPERTY**

<b>IVN Group, LP,</b>	:	
<b>Petitioner</b>	:	
	:	
<b>vs.</b>	:	<b>Docket No. BP 2020-0002</b>
	:	
<b>Commonwealth of Pennsylvania Game</b>	:	
<b>Commission,</b>	:	
<b>Respondent</b>	:	

**FINAL ORDER**

AND NOW, this 24th day of April 2023, having duly convened and considered the entire record of the proceedings, and based upon the foregoing Findings of Fact, Conclusions of Law and Discussion, the State Board of Property hereby **DISMISSES** the petition of IVN Group, LP, in the nature of an action in trespass or ejection including in the nature of an action to quiet title or for declaratory judgment, and enters judgment in favor of the Pennsylvania Game Commission.

**BY ORDER:**

  
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Jason E. McMurry, Esquire  
Designee of the Secretary of the Commonwealth  
Chairman, Board of Property

*Counsel for Petitioner:* D. Robert Davidson, Esquire  
HUMMEL, LEWIS & SMITH, LLP  
3 East Fifth Street  
Bloomsburg, PA 17815

*Counsel for Respondent:* Bradley C. Bechtel, Chief Counsel  
Jason A. Raup, Assistant Counsel  
Pennsylvania Game Commission  
2001 Elmerton Avenue  
Harrisburg, PA 17110-9797

Board counsel: Thomas A. Blackburn, Esquire

Date of mailing: 4.24.2023 via email and USPS



**COMMONWEALTH OF PENNSYLVANIA  
GOVERNOR'S OFFICE OF GENERAL COUNSEL**

Thomas A. Blackburn  
Hearing Examiner

email: [tblackburn@pa.gov](mailto:tblackburn@pa.gov)

April 24, 2023

Robert J. Burnett, Esquire  
Brendan A. O'Donnell, Esquire  
HOUSTON HARBAUGH, PC  
Three Gateway Center  
401 Liberty Avenue, 22<sup>nd</sup> Floor  
Pittsburgh, PA 15222

Bradley C. Bechtel, Esquire  
Pennsylvania Game Commission  
2001 Elmerton Avenue  
Harrisburg, PA 17110-9797

Re: *IVN Group, LP v. Pa. Game Commission*,  
Docket No. BP 2020-0002

Dear counsel:

Enclosed please find a final adjudication and order issued by the State Board of Property in the referenced matter.

Sincerely,

A handwritten signature in blue ink that reads "Thomas A. Blackburn".

Thomas A. Blackburn, Counsel  
State Board of Property

enclosure

cc: Eileen Quinn, Board administrator

