

BACKSIGHTS & FORESIGHTS



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3 1/2" x 5"	\$25 per issue
7 1/2" x 5"	\$50 per issue
7 1/2" x 10"	\$90 per issue

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PUBLICATION DEADLINES

<i>Material Cutoff</i>	<i>Publication</i>
January	February
April	May
July	August
October	November

Backsights and Foresights

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Articles and columns appearing in the publication do not necessarily reflect the viewpoint of SDSPLS but are published as a service to its members, the general public and for the betterment of the surveying profession. No responsibility is assumed for errors, misquotes or deletions.

Letter from the President:

We have been busy with several items this spring. First, as I mentioned in my February letter, our Executive Director has decided to step down. So, we reached out to Nancy Hoines to see if she had any interest or would know of anyone who might be. She was interested and graciously accepted the position after several meetings and an interview. We are still finalizing some items, but she will be starting on May 1st. Jody will stay on for the month of May as well as she graciously said she would finish up several items she has started.

We also have moved forward with the Young Surveyors Chapter having a seat on the SDSPLS Board of Directors. The Young Surveyors Chapter will be replacing the Missouri River Chapter. It is still not completed but Jon Geffre is making some good progress.

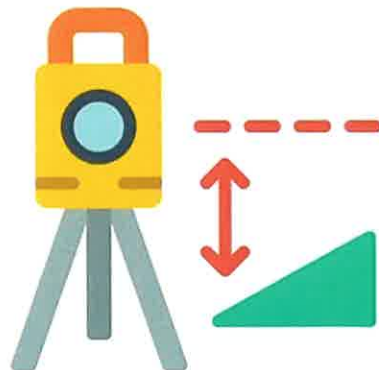
I also have some great news on Southeast Tech, they found and hired a new instructor to replace Rod Breitling. Paul Letsche has accepted the position. Congratulations Paul and thank you for stepping up.

Well, that's all I have for now hope everyone is enjoying the spring and getting back into the field.

Todd Schlunsen

2023 SDSPLS President

**Q: WHAT DID THE THERAPIST
SAY TO THE
SURVEYOR?**



***A: You need to set some
boundaries.***



Hello SDSPLS Members –

First, a quick introduction – My name is Nancy Hoines, and your Board has selected me and my little company to serve as your next Executive Director. I'm very excited to start work with you and want to extend a huge thank you to Jody for her graciousness and willingness to spend the next few weeks working with me and helping to make this switch over as smooth as possible! I also understand she has been busily cleaning out some boxes and eliminating some of the unnecessary paper – which is very much appreciated. I know I have big shoes to fill!

For those of you who don't know me, the Board has asked me to share a little bit about my background, so I'll hit on a few of the highlights here and look forward to getting to visit with you personally soon! First, I'm a licensed professional landscape architect, earning an AAS degree from the University of Minnesota (where I took my one semester of surveying a long, long time ago!) and my BLA from Iowa State University. I obtained my original license in Iowa and have been licensed in several states over the years, but currently just maintain my license in South Dakota, although not actively practicing. I spent most of the first half of my career working for regional landscape architecture and engineering firms, and the second half working in the public sector – most recently the SD Departments of Transportation and Game, Fish and Parks.

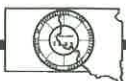
About five years ago, with some nudging from some of your engineering counterparts, I started putting together my own little business and applied for the Executive Director positions with the South Dakota Engineering Society and the American Council of Engineering Companies of SD – and there it began! I now also serve as the Executive Director for the Design Professionals Coalition of South Dakota (DPC), of which SDSPLS is a member organization, and, also, have a more limited contract as Association Manager for the Nebraska Dakotas Chapter of the American Society of Landscape Architects.

Because so many firms, projects, agencies, and the DPC overlap with land surveyors, engineers, and landscape architects, I've been lucky enough to get to know some of you already. Also, because of the overlap, there are some excellent opportunities for efficiencies and collaboration amongst these groups, and I look forward to putting that to work for you! Our office is based in Pierre, but it seems my mobile office can be found in Sioux Falls, Rapid, and around the state on any given day. We'll be following up with contact information once we get everything finalized.

That's enough about me. I look forward to getting to know you all better in the months and, hopefully, years ahead. Please don't hesitate to reach out if you have any questions and, especially, let me know when I can be of assistance.

Have a great week!

Nancy Hoines
605.951.1004



SDSPLS – Board of Directors Meeting

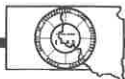
(Virtual Zoom Meeting)

Wednesday, April 12, 2023 – 10:00 A.M. (CDT)

In Attendance: President Todd Schlunsen, Past President Kary Gregoire, President-Elect Paul Letsche, NSPS Director Linda Foster, Treasurer Cory Biegler, Secretary Andrew Kangas, West River Chapter President Adam Thompson, Big Sioux Chapter President Beau Koopal, Executive Director Jody Van Beek, Legislation Committee Jon Nelson (Absent), Education Kristi Goehring (absent), Design Professionals' Coalition Committee Dana Edwards (Absent), Public Information Committee Ruthie Wetzal, Trig Star Committee Chad Dodds (Absent), Young Surveyors Committee Jon Geffre, Membership Andy Scott (Absent), Professionalism & Practice Dean Scott (Absent), Nancy Hoines

1. Meeting called to order at 10:04 A.M. (Central) by Todd Schlunsen.
2. Acceptance of Agenda: Motion by Gregoire to approve the agenda as presented, 2nd by Biegler - Motion approved.
3. Secretary's Report – presented by Andrew Kangas: Written minutes from the Board of Directors Meeting on January 11, 2023 were submitted. Motion by Letsche to approve meeting minutes, 2nd by Gregoire - Motion approved. Minutes are attached.
4. Treasurer's Report – presented by Biegler: Written report submitted. Motion by Kangas to approve treasurer's report, 2nd by Gregoire - Motion approved. Treasurer's report is attached.
5. President's Report – Todd Schlunsen: Report not submitted.
6. Committee Reports:
 - a) Education – Kristi Goehring (absent): No report was submitted.
 - b) Legislation – Jon Nelson (absent): No report was submitted. Included in the DPC wrap up.
 - c) Design Professionals' Coalition – Dana Edwards (absent): Nancy provided a wrap up report.
 - d) Professionalism & Practice – Dean Scott: No report submitted. No updates.
 - e) Public Information – Ruthie Wetzal: No report was submitted.

- f) Membership – Andy Scott: No report was submitted.
 - g) NSPS – Linda Foster: Report was submitted. Linda gave a summary of the report.
 - g) Young Surveyors – Jon Geffre: Report was submitted and read.
 - h) Trig Star – Chad Dodds (absent): Report submitted.
7. Chapter Reports
 - a) West River – Adam Thompson: No report was submitted. Chapter has been working on contacting speakers for the 2024 convention and setting up a Chapter meeting.
 - b) Big Sioux – Beau Koopal: No report was submitted.
 8. Old Business
 - a) Young Surveyors Chapter – Petition was submitted to form the Young Surveyors Chapter of SDSPLS. Foster made a motion to form the Young Surveyors Chapter, 2nd by Biegler – Motion approved. Jon Geffre will spearhead getting the Chapter started.
 - b) Raise 2024 convention costs – Cost of 2024 convention is unknown. This will be tabled until July's meeting. There was discussion on SDSPLS paying for Out of State NSPS Membership fees and capturing those fees from the member.
 - c) SDBOTP – Steve Peters term ends 4/2023 – Cory Biegler has expressed interest in filling the position. Waiting for the appointment to be made by the Governor.
 - d) Surveyor of the Year and Outstanding Contribution to the Land Surveying Profession – Updated wording on the nomination forms – There was discussion on how to handle nominations.
 9. New Business:
 - a) 2023 Convention Report (feedback, auction, merchandise, etc.)
 - b) 2024 Convention at The Lodge in Deadwood (room counts, speakers and etc.) There was a discussion on room counts and speakers. There was discussion on having insurance to cover fees if the convention had to be postponed or cancelled. There was discussion on the location of the 2025 convention. Jody is going to check on rates from Chamberlain and Deadwood.



- c) Trig-Star – Discussion on how to promote the event.
- d) Design Professionals Coalition Representative – open position
- e) Payment for the Southeast Technical College position – Transfer money from the Raymond James account – Payment shall be paid to the Foundation by July 15, 2023. Biegler made a motion to transfer the money. 2nd by Koopal – Motion approved.
- f) Executive Director position – Jody Van Beek is resigning from the Executive Director Position on April 30, 2023. Nancy Hoines has verbally accepted the position and has prepared a contract and an Exhibit of the Executive Director’s Duties. Nancy will start on May 1, 2023.

- 10. Next Board of Directors Meeting will be in July, date and time to be determined.
- 11. Meeting adjourned at 12:40 P.M. (CDT). Motion by Schlunsen, 2nd by Kangas – Motion approved.

Respectfully Submitted

By: Andrew Kangas, Secretary

It is never too early to book your hotel room for the SDSPLS 41st Annual Convention at The Lodge at Deadwood in Deadwood, SD

Dates: Wednesday January 10th, Thursday January 11th and Friday January 12th

The room block is under the South Dakota Society of Professional Land Surveyors.

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The Land Surveyor's Guide to the Supreme Court of

South Dakota – Part 41 – 1988 to 1990

This article represents the forty-first in a series of excerpts from a book prepared by South Dakota licensee Brian Portwood. The complete book can be obtained in PDF form at no charge, either from SDSPLS or directly from the author (bportwood@mindspring.com). It covers 120 years of historic South Dakota cases, answering fundamental land rights questions of potential interest to land surveyors, which are being presented in chronological order here in Backsights & Foresights.

How does payment of property taxes impact an easement?

Brown v Board of Pennington County (1988)

Although the topic of eminent domain, which features the use of condemnation as a means of acquiring land rights, is outside the scope of this book, certain condemnation cases are worthy of note, because they also involve the application of many of the basic concepts and principles that control land rights, and this inverse condemnation action forms a fine example of that, as it further clarifies the role and nature of dedication, while also highlighting the significance of things that were done by predecessors in the distant past. The main lesson communicated here is the importance of differentiating easements from fee ownership of land, and having drawn that distinction, which frames the controversy in the context of easement law, further realizing that dedication in any form represents a grant and not a taking, since these are the principal factors that lead the Court to typically rely upon the concept of dedication as the primary means of protecting public interests in private land. This case also provides an excellent demonstration of the basic operation of acquiescence and estoppel, showing how those equitable elements of common law can decisively support the creation of easements or validate the existence of any given easement, and in addition the outcome of this controversy also illustrates that although the payment of property taxes can often be a factor in adverse possession cases, it typically has no impact on the existence of easements. While notice plays a key role in the case we are about to review, in the context of a rural road, it played an equally prominent role in an urban setting in the 1996 case of *Tan Corporation v Johnson*, a dispute over the use of a driveway located in a parking area that served multiple commercial properties. In that case, during the late 1970s and early 1980s Hegg, who was a developer, acquired several adjoining platted commercial lots in Sioux Falls, and various commercial buildings were erected on these lots during that time period, including a gas station, which occupied the corner lot, and was thus situated at a major intersection. All of the businesses residing within this group of platted lots were served by a typical large commercial parking lot with numerous parking islands, described by the Court as a "campus style commercial development with free flowing traffic between the lots". As the various lots were sold by Hegg and put into use during the 1980s, a number of access easements were created to insure mutual use of the drive lanes that ran through the shared parking area, in purchase agreements and in deeds, but while some of these easements were recorded, others were not. There were evidently two routes of access leading from the parking area into the corner lot containing the gas station, which was owned by Tan, and when Johnson acquired one of the lots adjoining the gas station lot in 1990, he was unaware of the existence of any easement allowing gas station customers to cross his lot. In 1993, the intersection was closed for road construction, forcing all of the gas station customers to drive across Johnson's lot, which he found to be an annoyance, so he barricaded the driveway that connected his lot and the gas station lot. Tan filed an action to compel Johnson to unblock the driveway, but Johnson argued that no unrecorded easement upon his lot providing access to the gas station could be legally binding upon him, because he had no way of knowing of its existence when he bought his lot. Citing the *Wiege*, *Steele* and *Townsend* cases, all previously reviewed herein, the Court fully upheld a lower court ruling ordering Johnson to remove the barricade and honor Tan's access easement, declaring that Johnson had very clearly failed to carry his burden of inquiry notice as a grantee, by failing to ask about the possibility that such an easement existed at the time he acquired his lot, which under statute 17-1-4 had the legal effect of barring him from subsequently denying that the easement existed, or ever impeding the use of it in any way, even temporarily.

Prior to 1892 - Reynolds staked out and filed a large mineral location claim in an unspecified part of Pennington County. He evidently made actual use of the land for mining purposes, and he presumably lived on the land as well, because his ranch eventually became a regular stop on a certain stagecoach route. A road thus developed, a two mile segment of which crossed his property, and Reynolds charged a toll for the use of the road, although whether or not he had actually built the portion of the roadway that was within his



boundaries is unknown, and he did this even though he had apparently not yet acquired legal ownership of the land that he had settled.

1892 - A mineral location survey was done for Reynolds, presumably for the purpose of obtaining his mineral patent, and the surveyed tract was later patented to him at an unspecified date. The survey showed the location of the road running through the Reynolds property, indicating that it was clearly a well established route that was already in regular use by this time.

1893 to 1981 - The use of the road across the Reynolds property continued, and once the stagecoach era ended, it gradually transitioned into a typical modern county road, although whether or not it was ever paved is unknown. Use of the road by the public became common, although the extent and frequency of such use is unknown, and the public use of the road was never objected to by Reynolds, so at an unspecified date the road was informally adopted into the Pennington County road system and given a county road number. Reynolds apparently went on charging a toll for the use of his portion of the road until he died, at an unspecified date, but his descendants evidently did not continue this practice, so by the time the era of modern vehicular travel arrived, the road was being freely used by the public without any objection from the Reynolds family. This entire property apparently remained in the Reynolds family throughout this period, and the family always paid their property taxes on the entire tract, with no reduction in the amount that they paid on account of the existence of the road running through their land.

1982 - Brown acquired the Reynolds tract, despite the fact that the title package that he was given indicated that no public access to the property he was acquiring existed. Brown then had the tract platted, and the plat indicated that the road was private and had never been dedicated, presumably based on the dedication status indicated by the title report. Pennington County objected to the plat however, insisting that the road must be identified as public on the plat, so this was done, and the plat was apparently recorded showing the road as being public.

1984 - Brown was unsatisfied with the poor condition of the road, which was evidently not being well maintained by the county, and he was also upset because the county continued to insist that he must pay taxes on his entire tract, despite the presence of the road. At this time therefore, Brown decided to make a physical demonstration of his ownership and complete control over the entirety of his property, by completely blocking the road at the points where it entered and exited his property, preventing all use of it for one 24 hour period. Whether or not anyone actually tried to use the road during this 24 hour period is unknown, and whether or not the county was aware that Brown had done this is also unknown, but the county took no action whatsoever and made no response of any kind to this action taken by Brown.

1985 - Apparently frustrated by the unresponsiveness of the county, Brown filed an action against the Board of County Commissioners as a whole, and against each of the 5 board members as individuals as well, seeking financial compensation for the taking by the county of a public road across his property.

Brown did not argue that the road running through his property was not public, he effectively conceded that it was public, by arguing that Pennington County had unjustifiably taken that strip of his property from him, or from his predecessors, for roadway purposes, without ever providing either him or his predecessors with any compensation whatsoever, amounting to a violation of their constitutional property rights as private land owners, so he maintained that he was entitled to a cash award from the county on that basis. Pennington County argued that the road in question had never been taken from either Brown or any of his predecessors, yet it had become a public right-of-way, by means of a common law dedication of that roadway by Brown's predecessors, which had been duly accepted by the public long before Brown acquired his land, so the segment of the road passing through Brown's property was burdened with an easement, in the form of a public right-of-way, under the jurisdiction of the county, for which no compensation was due to Brown. The trial court decided that the road at issue was public, and had been public for several decades, having been dedicated by Brown's predecessors and accepted by the public, but agreed with Brown that since no payment for the road had ever been made to anyone by the county, the award requested by Brown for the loss of a portion of his property was merited, granting him a cash award of several thousand dollars.

In land rights disputes, as we have seen from some of our previous cases, the real issue can often be money, rather than the actual land or land rights, and here that was once again the case, since Brown was upset because he felt that he had been cheated in some way, yet he was content to sacrifice the right-of-way in question, if he could obtain compensation for it, so it was clear that his real objective was obtaining payment, rather than eliminating the legal burden that the road placed upon his property. The powerful element of notice was certainly a major factor operating



against Brown, since the roadway in controversy had long been quite plainly apparent for all to see, and Brown had proceeded to acquire the former Reynolds Ranch with full knowledge that the land being conveyed to him bore a roadway, but he apparently hoped to overcome this crucial factor by invoking his constitutional rights relating to the condemnation of real property. Inverse condemnation is a fully legitimate and well recognized concept founded upon constitutional law, which Brown set out to employ as a means to extract compensation from the county, and he would have had a perfectly valid right to a cash award, on the basis that part of his land had been devoted to a public purpose without the consent of anyone who had owned that land, if he could prove that had truly happened. As the plaintiff, Brown bore the initial burden of proof however, so it made no difference what Pennington County might claim or argue, unless Brown was able to present a reasonably convincing argument showing why he was entitled to a financial award, and the passage of time made that a very difficult proposition for him, because he could show no specific evidence relating directly to the origin of the public use of the road. Brown endeavored to use the passage of time in his favor, by emphasizing the long historic use of the road to support his claim that the right-of-way in question had clearly been taken from his predecessor for the benefit of the public, and the trial judge had accepted his premise as valid, but the trial judge was in reality, the Court pointed out, wrong in one key respect, even while being right in another respect. The trial judge had correctly determined that the roadway in dispute had been dedicated and publicly accepted, the Court indicated, but he had failed to understand the legal implications of a successful dedication, demonstrating how poorly understood the concept of dedication really is. A legal presumption that payment was made at some time in the past arises after 20 years of public use of real property, due to the difficulty in proving such facts with the passage of time, similar to the evidentiary considerations underlying adverse possession, which essentially places a blanket of repose over all such matters, so Brown had the virtually impossible burden of affirmatively proving that no payment had ever been made to Reynolds or any of his descendants. Even setting that particular presumption at law aside however, the Court observed, and accepting the notion that no member of the Reynolds family had ever been paid as a fact, Brown could not prevail, because the passage of time was not the essence of the matter at all, so following comparable decisions from California, Idaho, Indiana and New York, while noting that dedication, by definition, creates public rights, the Court spelled out the fundamental reason why the monetary award to Brown could not be allowed to stand:

"Browns brought a claim in inverse condemnation pursuant to ... the State Constitution ... no compensation had been made ... As for the defense of adverse possession, the court ... concluded as a matter of law that the county had not acquired title by adverse possession ... The final question was whether or not the right to compensation was barred ... The key to answering this question lies in the nature of an implied dedication ... In a dedication, the private landowner intentionally appropriates land for public use ... dedication may arise by express grant or by legal implication, whereafter the landowner is stopped from precluding public use of the land ... The public ... acquires an easement on the servient estate of the landowner ... compensation depends upon the manner in which the public acquired the property interest ... The statute ... does not require payment of damages where the public has already acquired an easement because the landowner has made no affirmative attempt to prevent ... use of the road for a period of more than twenty years ... The very essence of a dedication is that there is no (monetary) compensation to the dedicator ... Brown's predecessors acquiesced ... for more than twenty years ... Browns can neither receive compensation for the dedication nor prevent the public use of the roadway."

As is true of virtually every other grantee, Brown stood in the shoes of Reynolds, so the mere fact that Brown himself had not been paid for the right-of-way at issue entitled him to nothing, he was bound to honor the road as public, as a result of the commitment to dedicate it that had been manifested in the acts of Reynolds, and the physical presence of the road itself provided Brown with notice of that situation, in the eyes of the Court. The passage of time was irrelevant, whether or not Brown was entitled to payment was not dependent upon how much time had passed, it was dependent instead upon the manner in which the rights in controversy had been created, the Court declared, emphasizing the distinction between rights taken and rights voluntarily granted. The principle of dedication itself makes compensation irrelevant, the Court informed Brown, so nothing had ever been taken, because the right-of-way that had developed during the stagecoach days had been freely given to the public by the descendants of Reynolds, who had acknowledged it as public by allowing it to be publicly used for decades, while making no demand for any financial compensation. Moreover, when any dedication takes place, the dedicating party or parties are always presumed to be making the dedication for a reason, and that reason is typically to obtain some form of benefit from it themselves, and in this instance, the benefit obtained by the dedicator was simply the use of a public road, the presence of which is obviously a highly valuable asset to real property in itself, as every developer of land knows. While the



by financial considerations, yet the Court wisely apportions the respective duties of the parties based upon the appurtenance of those objects to their respective easement rights.

Prior to 1905 - During this period, many section line roads in Butte County were opened and put into regular use as active routes of public travel. At least part of the county required additional irrigation however, to enhance the productivity of the land, so surveys were done, and plans were made to facilitate the design of an irrigation system, which would cross many of those existing section line roads.

1905 - The United States Bureau of Reclamation commenced work on the Belle Fourche Irrigation Project. Numerous irrigation channels were constructed as part of the project, many of which crossed section lines that were already being actively used for public travel, and in 8 locations bridges were built on section line roads to facilitate ongoing travel over those irrigation channels. No details regarding the size or type of these bridges are known, but the labor and materials needed for the construction of the bridges were all procured with federal funds. These bridges were all built on privately owned land, within the section line right-of-way, but no land rights expressly relating to the bridges were ever acquired from anyone. The roads bearing these bridges subsequently went on being used just as they always had, and the county assumed responsibility for maintaining the bridges that had been built at this time, since the bridges were an integral part of the county road system, and they were all situated within the section line right-of-way, which of course was under county jurisdiction.

1949 - The Bureau turned over full control and responsibility for all of the irrigation channels and structures that had been built by the Bureau to the Belle Fourche Irrigation District, which had been created at an unspecified date. A contract between the Bureau and the District reserved ownership of the physical components of the irrigation system to the federal government, but it made no specific reference to any of the bridges, in effect treating them as if they were really part of the various roadways upon which they sat and not part of the irrigation system at all. The District began maintaining the irrigation channels, but apparently never took responsibility for any of the bridges and never did any kind of repair work on them. Butte County evidently went on maintaining the bridges, treating them as being part of the section line right-of-way which they occupied.

1983 - Seeking to cut back on expenses, the county decided to stop maintaining the 8 bridges, all of which were apparently situated in rural areas, none of them being located within any city or town, or even within any organized township.

1984 - The Bureau and the District entered another contract, which was evidently identical to their 1949 contract and presumably amounted only to a renewal of their original agreement. The District continued to maintain all of the components of the irrigation system that were appurtenant to it, as stipulated by the contract, but took no responsibility for any of the 8 bridges.

1985 to 1989 - During this period, the bridges apparently began to suffer from lack of repair, and presumably complaints were made about their deteriorating condition, creating a potential safety hazard. The District, joined by the owners of the properties upon which 2 of the bridges were situated, filed an action against Butte County, seeking to have the county compelled to accept full legal responsibility for the bridges and keep them in safe operating condition at county expense.

The District and the private land owners argued that the 8 bridges were not part of the irrigation system, because they had been built for the benefit of the county road system, and for the benefit of the citizens of Butte County and the general public, therefore they had become public, either upon construction or with the passage of time, so they were all owned by the county, as part of each of the county roads upon which the bridges sat, and maintaining them was therefore the responsibility of Butte County. The District and the land owners further argued that Butte County had allowed the bridges to be built within the section line right-of-way, which had been controlled by the county at all times, and the county had subsequently acknowledged and accepted the bridges as being a part of the county road system, by maintaining them for several decades, so the county could not deny that it owned the bridges, and therefore could not legally deny that it had a duty to keep them in safe operation at all times. Butte County argued that the bridges had all been built by the federal government, for irrigation purposes, and not by the county for road purposes, so they were still the property of the federal government, and they had never been acquired or adopted by the county, therefore the county had no responsibility to continue maintaining them. The county further argued that the bridges had all been built on private land, and they were appurtenant to the irrigation channels upon which they sat, so repairing them was the responsibility of either the landowners or the Bureau or the District, and the county was free to disregard the bridges, despite the fact that they were located inside the section line right-of-way. The trial court held

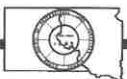


creation of a prescriptive right-of-way for public purposes can be construed as a compensable public taking of private land rights in some situations, dedication never carries any such obligation to compensate, because dedication is in the manner of gift, arising from the mind of the dedicator, leading the Court to wisely be inclined to typically uphold public land rights on the basis of implied dedication, as opposed to prescription. Holding that the ranch was still owned entirely in fee by Brown, since dedication creates only an easement in the location that has been put to public use, which justified the county in taxing him for all of the land within his boundaries, the Court reversed the lower court decision, striking down Brown's monetary award in its entirety. Pennington County had never made any direct assertion of an estoppel against Brown, since the county's legal counsel was evidently cognizant that there was no need to do so, because dedication and acceptance was all that was necessary to create an estoppel effectively preventing Brown from ever legally interfering with the use of the road, the Court stated, confirming that implied dedication is based upon estoppel, which in this instance had arisen from acquiescence. Its important to understand that Brown did not lose his award because the dedication had taken place too far in the past to justify payment to him, time was not a factor in that regard, he lost because any dedication for access purposes, made at any point in time, amounts to an intentional and deliberate relinquishment of a right-of-way required for public use, creating an easement in favor of the public. The 24 hour blockage of the road that had been erected by Brown was likewise completely inconsequential, in the view taken by the Court, because it was unauthorized, thus it could have no impact upon any existing rights held by the public, so the county had no obligation to deal with it at all, and had wisely ignored it, since no one had complained about it. Although a public roadway was formally decreed to exist, its width was never specified, nor even addressed at all by the Court, since none of the parties had ever made the width of the right-of-way an issue, so that was left as a potential source of future debate, should the litigants ever care to engage in another dispute. The perpetual struggle of private rights versus public rights will very likely never end, but the real importance of this ruling lies in the fact that a dangerous precedent, that would have been financially devastating to poor counties, was hereby struck down by the Court.

How is the ownership of a section line bridge determined?

Bryant v Butte County (1990)

At this point, in our ongoing review of the Court's perspective on the legal use, nature and significance of the section line right-of-way, we come to one of the most unique cases presented herein, which is likely to be of particular interest to those surveyors who are employed by government agencies or entities, as it presents a direct contest over rights held in specific locations, in which both county and federal government interests collide, effectively displacing the interests of the adjoining land owners. While this case involves no land ownership, and no conveyances of either land or land rights, it does nevertheless seriously involve land rights, and even an especially bizarre claim of adverse possession, which is truly incredible and completely unique in the history of South Dakota law. Aside from its unusual aspects however, this case also presents a very good example of the fact that misunderstanding the true nature of land rights, particularly those associated with easements, is definitely not limited to landowners or other private parties, as government agencies and their employees can and often do misunderstand their own rights and responsibilities, just as private parties so often do. Although Pennington County happened to prevail in our last previous case, we have repeatedly seen from several earlier cases, such as the Umberger case of 1976 and the Belle Fourche case of 1982, that state, county and local government officials can in fact be mistaken about some aspect of the rights they hold, and the case we are about to review augments that list, since it provides a classic example of a scenario in which both of the litigants are partially right, but both are also partially wrong, about the extent of their respective rights and duties. While adverse possession is not the focal point of this controversy, and does not control the outcome, the odd perspective on adverse possession presented here, as it is conjured up in an effort to deny ownership, rather than an effort to gain ownership, brings up the question of whether or not one party can essentially force adverse ownership upon another party. Though the Court provides no direct answer to that question, the Court's treatment and summary dismissal of the charge made here to that effect would appear to point to a resoundingly negative answer to such a proposition, based on the fundamental principle that adverse possession ultimately requires the intent to obtain and exert dominion over that which is the object of controversy. A more relevant and realistic question, with serious legal implications, which is squarely addressed here by the Court, is whether or not the doctrine of acquiescence can have any valid application to government property or interests in land, and the basic concept that no one, including government officers or employees, has any authority to damage, reduce or diminish public rights, through any acts or omissions of their own, controls the answer provided by the Court to that proposition. The great irony of controversies such as this one is that objects residing upon the land on a permanent basis, which form the subject matter of such disputes, just as in this instance, are representative of land rights that in truth are necessary to all parties, making it clear that their mutual efforts to disclaim ownership and shed their respective responsibilities are really driven entirely

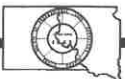


that the bridges were owned by the Bureau but had to be maintained by the District under its contract with the Bureau, so the county could not be legally compelled to continue maintaining them, regardless of where they were located, and regardless of who had repaired them in the past.

Much like the 1988 Brown case, just previously reviewed, this controversy was very obviously focused on money more than on land rights, the specific conflict here being over who must bear the financial burden of maintaining the bridges in question, but the status of the relevant land rights would prove to be a key element in reaching the judicial answer to that question. The involvement of the 2 landowners in this litigation was negligible, the real battle took place between the Irrigation District and Butte County, because both of them knew that they were likely to be saddled with the unwanted nuisance and significant expense of repairing the 8 bridges, both at the present time and henceforward. In a typical land right dispute of course, both sides attempt to present convincing arguments that their rights to the area in question are superior to those of the opposing party and should be upheld as controlling either the use or the ownership of the location at issue, but in this unique case precisely the opposite was true. Since it was the common objective of all of the litigants to shed the economic burden represented by these 8 bridges, both sides diligently argued that the rights of their opponents were superior to their own, with respect to each bridge location. The existence of the section line right-of-way, constituting an acknowledged responsibility of the county, was undisputed, but no right-of-way had ever been acquired by deed for the routes of any of the irrigation channels, by either the Bureau or the District, yet the Court recognized that the irrigation system represented a de facto right-of-way, so each of the 8 bridges sat precisely at the intersection or junction of one right-of-way with another, and within the physical limits of each right-of-way. Two fundamental questions were therefore in play, the Court observed, one being who actually owned the bridges, and the other being who bore the primary responsibility for maintaining the land upon which each of them rested. It was clear, the Court noted, that prior to the construction of the irrigation system, the county already had jurisdiction over the roadways in question, since they were all within the section line right-of-way, and the Court was distinctly disinclined to allow the county to shed or neglect its duty to exert full control over the entire section line right-of-way upon the grounds that the construction of the irrigation system had effectively removed the portion of the section line right-of-way occupied by each bridge from the control of the county. The Court therefore declined to allow the county to discount the fact that the bridges were all inside the section line right-of-way, because even though the section line right-of-way is only an easement, and the land inside it remains in the fee ownership of the patentees and their successors, counties are expressly and statutorily charged with jurisdiction over, and thus responsibility for, that one chain strip. Therefore, regardless of who actually owned the bridges, and regardless of whether they were part of the county road system or part of the federal irrigation system, the Court decided, Butte County had no right and no option to ignore the condition of the bridges in dispute, so the county bore the primary responsibility for getting the bridge repair work done, to protect the safety of the users of the county roads. Quoting in part from statute 46-8-16 however, the Court then proceeded to assess the ownership of the bridges in question, since that would determine the outcome of the critical financial aspect of the controversy:

"The county's duty to repair the road is ministerial ... the commissioners are not allowed to pick and choose which roads to repair ... maintaining secondary roads has been twice ascribed to them by the legislature ... requiring that Butte County commissioners carry out their duty ... no financial responsibility will fall on either Butte County or the commissioners ... It is the county that possesses the equipment to repair bridges ... However ... requiring that the county fulfill its ministerial duties of maintaining the county secondary highways does not end our discussion ... This brings us to ... the ownership of the bridges ... District contests ... that the bridges are public highways by virtue of twenty years of continuous use, work and maintenance as a public highway ... the United States may not lose property by adverse possession ... officers who have no authority at all to dispose of government property cannot by their conduct cause the government to lose its valuable rights by their acquiescence, laches or failure to act ... neither the Bureau nor the District could sit back and permit the county to obtain ownership of the bridges by adverse possession ... An owner of works for the carriage, storage or application of water to beneficial use has the right to cross any public or railroad right-of-way ... the statute ... gives the county the right to prescribe that the owner repair its bridges ... The 1984 contract specifically provided ... All Belle Fourche unit project works, including ... appurtenant structures ... were transferred to the District for care, operation and maintenance ... therefore ... while the county has the statutory duty of maintaining the bridges ... the Bureau was required to pay for the repair."

Although Butte County bore the primary duty to physically maintain the geographic location occupied by each



of the 8 bridges, the Court concluded, by virtue of its statutory duty to insure the safety of the travelling public within every portion of the section line right-of-way, that did not mean that the county had ever taken or accepted outright ownership of any of the irrigation facilities that were located within the section line right-of-way, including even the bridges. The bridges had clearly been the property of the United States at the outset, having been constructed entirely with federal labor, material and funds, and the Court was unwilling to adopt the position that anything that had happened since 1905 had ever transferred ownership of any of the bridges to Butte County, despite the assertions of the District that it had actually lost ownership of the bridges to adverse possession executed by the county. Though the Court had expressly and repeatedly held that it is the acts, and not the intentions, of an adverse possessor that determine the validity of any adverse claim, as we have seen in numerous cases reviewed herein, the ownership of unwanted property has never been forced upon a party who made unintentional use of it, and who never had any desire to exert the essential element of dominion over it. Moreover, as the Court pointed out, all federal property resides outside the realm of items which are subject to adverse claims, coming instead under the protective doctrine known as "Nullum tempus occurrit regi" which translated from Latin means simply "Time runneth not against the King". Statute 46-8-16 was critical to the Court's decision regarding the ownership of the bridges as well, because it served to justify the presence of the irrigation facilities, including the bridges, within the section line right-of-way, by specifying that a supplier of water, such as the Bureau or the District, is authorized to build structures within any existing right-of-way, such as the section line right of way in this particular instance, subject to the typical standard of reasonable use. So the fact that the bridges had long occupied a portion of the section line right-of-way was of no consequence, resulting in no accrual of any adverse rights, the Court indicated, because such structures can occupy a right-of-way owned by one party, and yet remain perpetually in the ownership of another party, ownership being independent of location, even after the passage of several decades. While 46-8-16 makes no direct reference to the creation of an easement, it expressly created a right relating to the land at issue, that was equivalent in force and effect to an easement, so in the view of this scenario taken by the Court, each bridge sat inside 2 overlapping easements, one for purposes of travel held by the county, and one for purposes of irrigation held by the District, and each bridge was equally appurtenant to each right-of-way. The District, the Court therefore ruled, could not escape its responsibility to maintain it's facility any more than the county could escape the legal duties imposed upon it by the section line right-of-way, reversing the portion of the lower court ruling that had released the county from all responsibility, while upholding the portion of that ruling compelling the Bureau and the District to participate financially in the repair effort. In closing, the significance of the contractual language quoted by the Court is particularly worthy of note, since the presence of the word "appurtenant" in the 1984 contract was crucial to the Court's determination that the bridges, which it will be recalled were otherwise never mentioned, were in fact part of the irrigation system, as well as being part of the roadways in each location. Lastly, it should be recognized that this case stands as a classic application of the principle that acquiescence alone has no impact upon any rights held by any government entity in trust for the public, which is a principle that applies to land rights just as well as it does to physical objects, such as the bridges that were at issue here.



Some Geometry Problems

Dr. Richard L. Elgin, PS, PE
Rolla, Missouri

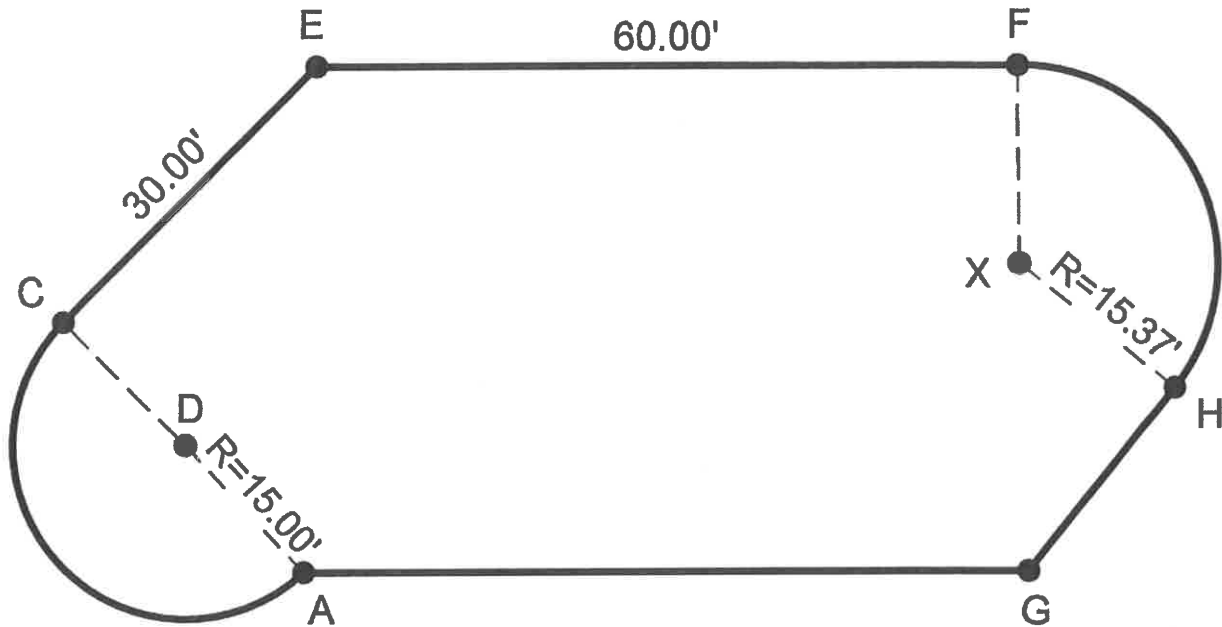
About Dick Elgin

Dr. Richard L. Elgin, PS, PE is a surveying practitioner, educator, researcher, collector and author. He authored the books *The U.S. Public Land Survey System for Missouri*, *Riparian Boundaries for Missouri* and *Shoulda Played the Flute* (memoir of his year flying helicopters in Vietnam). He coauthored the Lietz/Sokkia ephemeris and codeveloped the "ASTRO" celestial observation software products. Dick owns a large collection of early American surveying equipment, rides a Moots bicycle and drives a 1976 Alfa Romeo 1600 GT Junior. He can be reached at: elgin1682@gmail.com

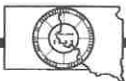
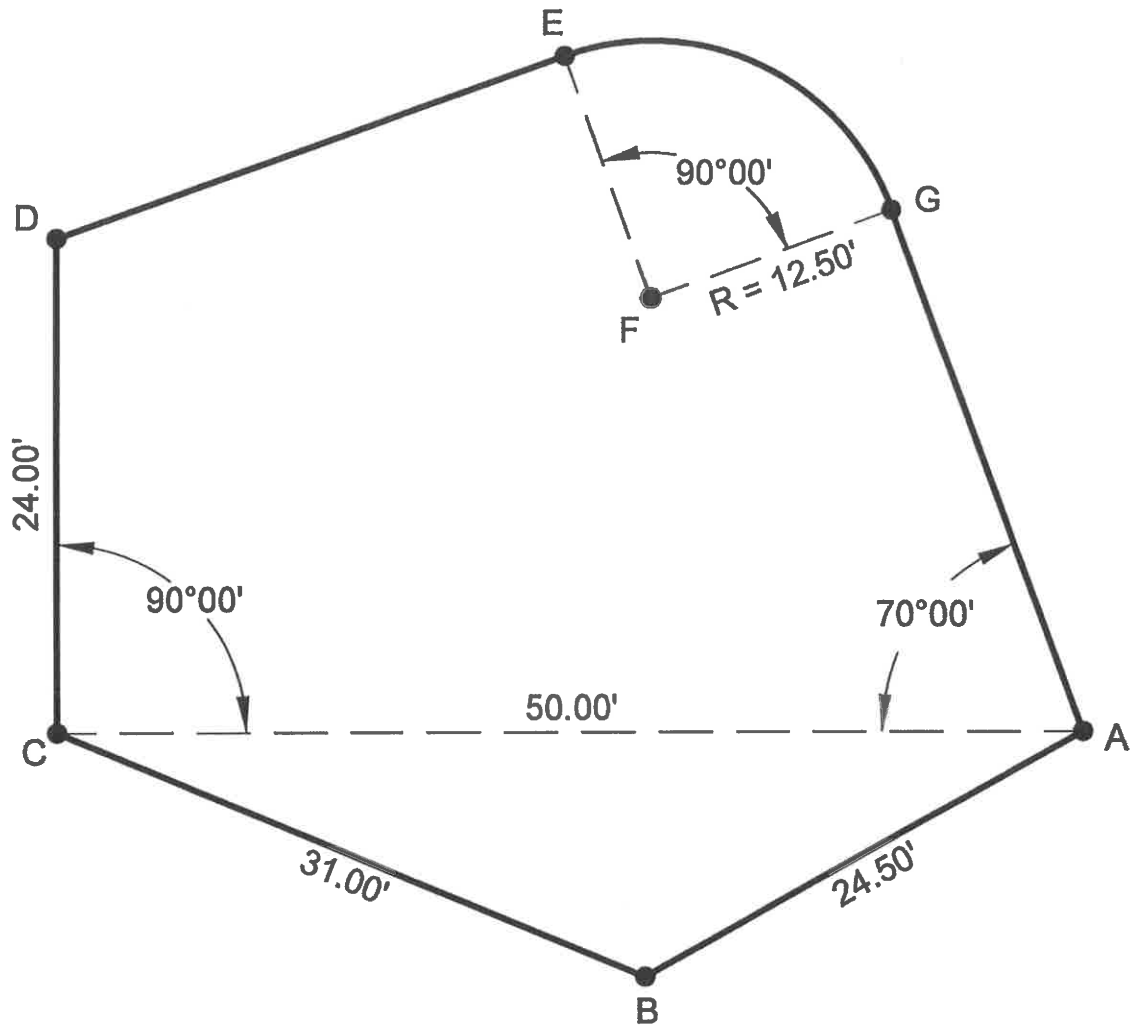
Geometry problems are fundamental to surveying. They involve all aspects of the usual surveying calculation problem such as getting the "picture" of the problem in mind or sketched (somewhat to scale), understanding what is known and what is required, then applying algebra and trigonometry to reach a solution, then considering if the answer seems reasonable. Frequently the solution requires units conversions and an awareness of significant digits. Practicing solving geometry problems seems mundane today, but they are fundamental and should remain an important part of high school mathematics curricula. (IMO: If high schools taught more algebra, trigonometry and geometry and less AP calculus, college students entering surveying and engineering programs would be much better served!) So, here are some geometry problems to challenge those entering or beginning the surveying profession. Handwritten solutions are provided herein.



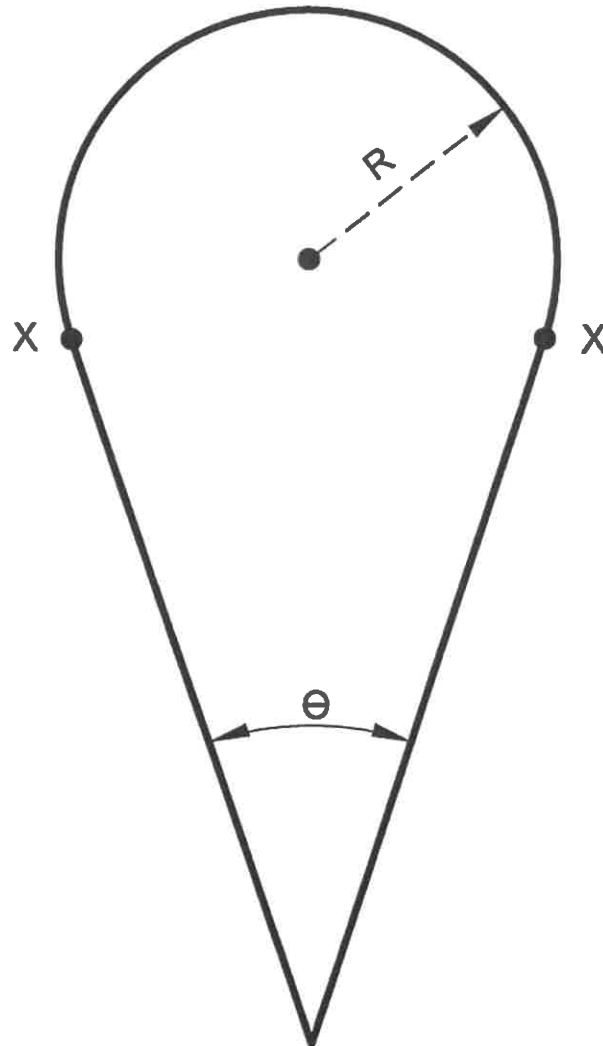
1.) For the figure, compute its area to the nearest 0.01 square foot. Consider the dimensions given to be exact. Lines EF and AG are parallel and the same length. At C, line CE is tangent to the semicircle centered at D, with radius 15.00 feet. Angle FGA is exactly 90° . X is the radius point for circle sector FH. The radius is 15.37 feet. At H, line HG is tangent to the circle centered at X.



- 2.) For the figure, compute its area to the nearest 0.01 square foot. Consider the dimensions given to be exact. Lines GA and ED are tangent to the circle centered at F.



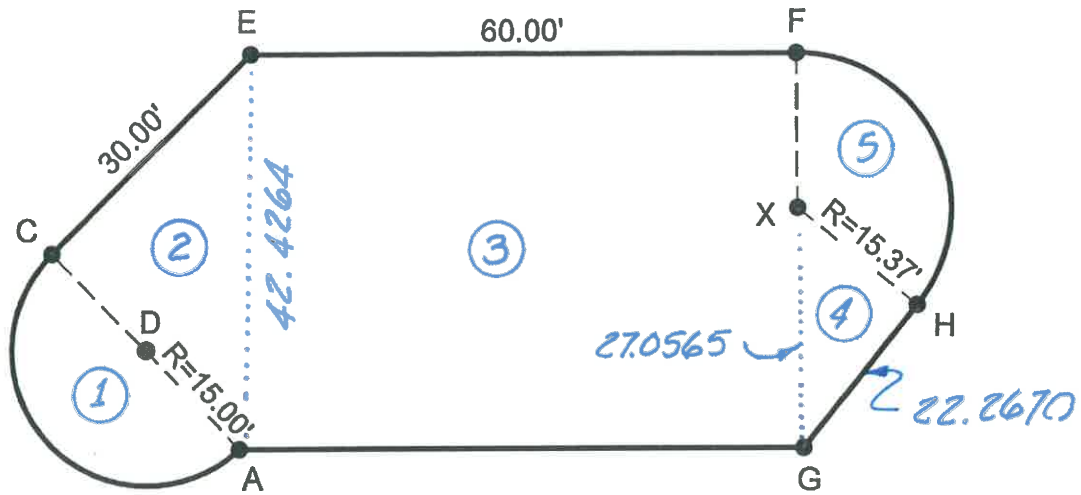
- 3.) For the figure, derive an equation for its area as a function of R and Θ . That is: $\text{Area} = f(R, \Theta)$. At X , the line is tangent to the circle. Reduce the equation to its simplest form. [To check your solution/equation, let Θ be exactly 45° and R be exactly 100 feet. If your equation does not result in the area being 43,777.09 square feet, your derived equation is wrong.]



Solution:

No. 1

Divide the figure into parts 1 through 5:



Semicircle 1:

$$\pi R^2 / 2, \text{ Area} = \dots\dots\dots 353.429$$

Triangle 2, a right Δ

$$(CA)(CE) / 2, \text{ Area} = \dots\dots\dots 450.000$$

Rectangle 3

$$\text{Area} = \dots\dots\dots 2515.584$$

Triangle 4, a right Δ

$$(GH)(HX) / 2, \text{ Area} = \dots\dots\dots 171.121$$

Sector 5

$$\text{Angle } HXF = 124^\circ 36' 56.6''$$

$$\pi R^2 \left(\frac{\angle HXF}{360^\circ} \right), \text{ Area} = \dots\dots\dots \underline{\underline{256.902}}$$

$$\underline{\underline{\text{Figure's Area} = 3777.04 \text{ ft}^2}}$$

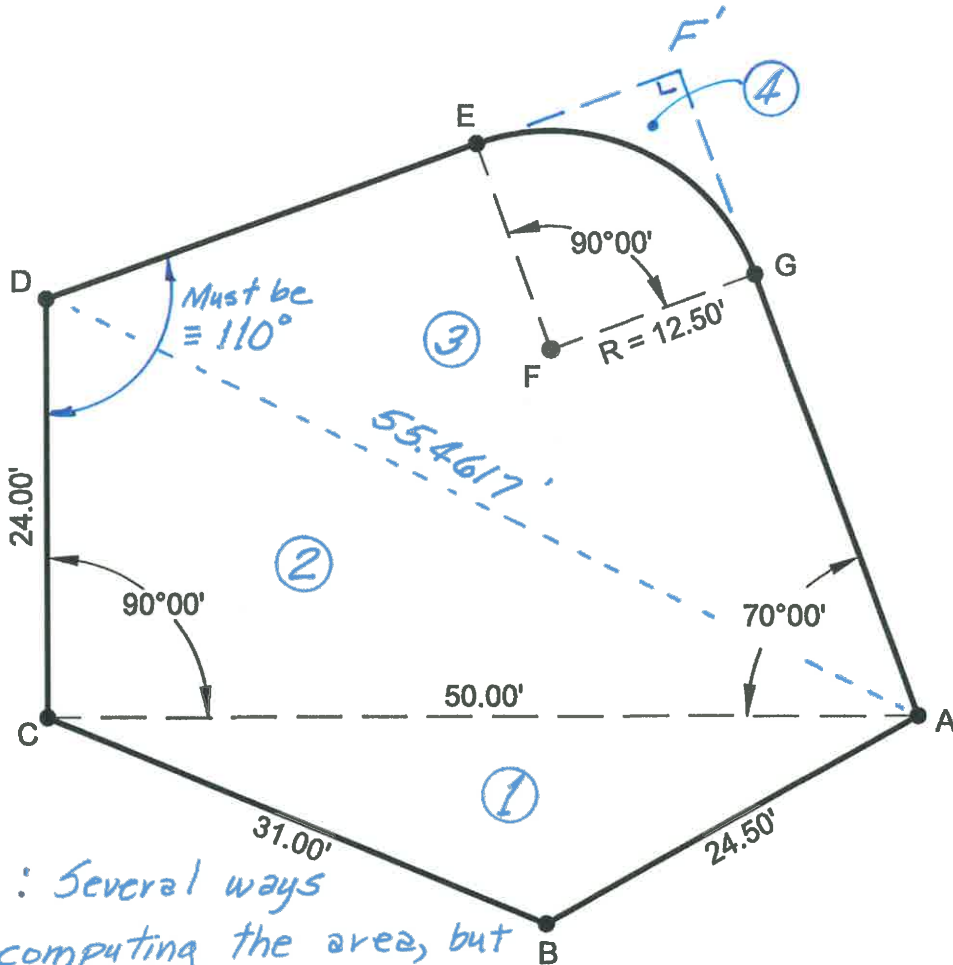
Solution to geometry problem
posed by Dr. Richard Elgin, PS



Solution:

No. 2

First recognize $\angle F'DA \equiv 110^\circ$ ($\angle C F' \equiv 90^\circ$)
 Cut the figure into Δ 's 1, 2 and 3 and
 the fillet, 4.



$\Delta 1$: Several ways
 of computing the area, but

Area = 298.550

$\Delta 2$: Simple, Area = 600.000

$\Delta 3$ ($DF'E$): Several ways, Area = 768.810

The fillet, 4:

$R^2 - \frac{90}{360} \pi R^2$, Area = (-) 33.532

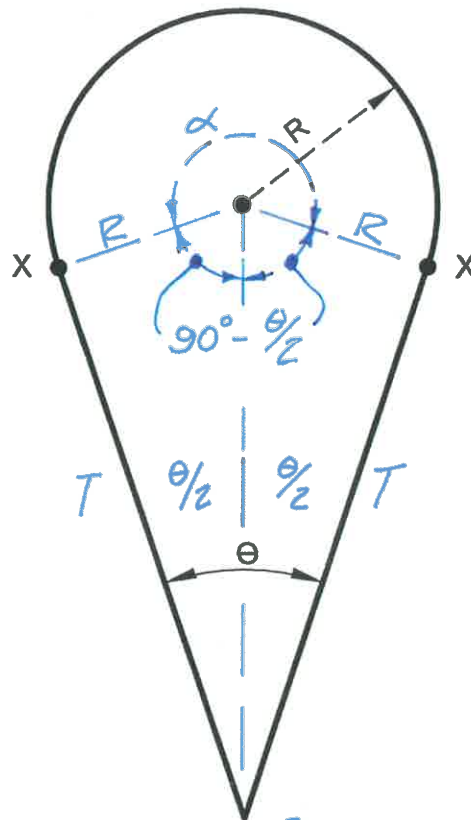
Solution to geometry problem
 posed by Dr. Richard Elgin, P.S.

Figure's Area = 1633.83 ft²



Solution and a check:

No. 3



So -
 $\alpha = 360^\circ - 2(90^\circ - \theta/2)$

$$\alpha = 180^\circ + \theta$$

Total figure area =

$$RT - \frac{\alpha}{360^\circ} (\pi R^2)$$

Substituting:

$$\text{Area} = R \left(\frac{R}{\tan \frac{\theta}{2}} \right) + \frac{\alpha \pi R^2}{360^\circ}$$

$$\text{Area} = R^2 \cotan \frac{\theta}{2} + \frac{(180^\circ + \theta) \pi R^2}{360^\circ}$$

$$\text{Area} = R^2 \cotan \frac{\theta}{2} + \frac{1}{360^\circ} (180^\circ \pi R^2 + \theta \pi R^2)$$

The Equation \rightarrow $\text{Area} = \cotan \frac{\theta}{2} R^2 + 1.570796327 R^2 + 0.00872665 \theta R^2$

The Test \rightarrow For $\theta \equiv 45^\circ$ and $R \equiv 100$ ft,

$$\underline{\underline{\text{Area} = 43,777.09 \text{ ft}^2}}$$

Solution to geometry problem
posed by Dr. Richard Elgin, PS.





Jack Herbert Knust

(May 10, 1936 - April 03, 2023)

Jack Herbert Knust, 86, of Custer, SD, passed away April 3, 2023, in Custer, SD.

Jack was born May 10, 1936, in Mitchell, SD, to Herbert and Frances (Hendrix) Knust. Jack proudly served in the U.S. Navy until his honorable discharge in 1975. Jack married Glenda Rice in 1958 and they enjoyed 64 years of marriage.

Jack is survived by his wife, Glenda of Custer; daughters, Sandra Andruess of Los Angeles, CA; Cathy (Mark) Engleman of Sheridan, WY; brother, Victor Knust of CA; 4 grandchildren and 10 great grandchildren.

Per his wishes, no services will be held.

NSPS
**Workforce
Development**

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Resources Available



April 11, 2023

SDSPLS - NSPS April 2023 Report:

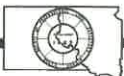
- I attended the NSPS business meetings, Day on the Hill, and student competition held in Arlington, VA/Washington DC, March 28 – April 1, 2023.
 - Day on the Hill
 - During the Day on the Hill event on Capitol Hill in Washington DC, I met with each of South Dakota's Senators and Representatives offices to discuss three topics of interest to the land surveying profession – continued threats to licensure/deregulation, FEMA NFIP & Flood Insurance Mapping Reform, and the BASE Mapping Act [2023 Farm Bill]. The response was positive with some tentative commitment of support.



- Student Competition
 - The Young Surveyors Network (YSN) of NSPS once again organized the two-day student competition held in conjunction with the NSPS spring business meetings. With a record number (24 teams!) participating this year, the event was a great success! One day consisted of finding survey monuments around the Washington DC area, earning points for each. I built the tech used in the competition again this year using GIS for data collection and scoring. The second day consisted of conventional field exercises as the National Mall – running a traverse, level loop, and triangulation. A full summary will be provided in the next NSPS newsletter.
- Business Meetings
 - I was sworn in as the Vice President for 2023 during the regular business meetings, and also presented South Dakota's 40th Anniversary plaque from NSPS.



- I am a part of the Workforce Development Committee which has been meeting monthly. We have developed a standard presentation that can be used to recruit young people into the surveying profession. It was designed to target high school students but could also be used for middle schoolers. This presentation was reviewed by the Board in Tulsa, and well-received. The materials have been finalized and can be accessed [here](#) for anyone to take to a school, conference, etc. to talk about surveying as a profession. I, along with my fellow committee members, was awarded a Presidential Citation for the work done preparing materials and carrying the message nationally.

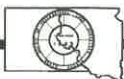




- I serve on the Bylaws and Policy committee. The committee has been meeting monthly to review the bylaws and policy documents for consistency and currency. Areas identified as needing some clean-up were identified and will go forward at the fall meeting along with some additional bylaws amendments.
- I participated in the Great Lakes Council meeting where the member states reported on issues of concern. The trending topics included workforce shortages, educational program decline, and licensure threat. All are working in various ways at the affiliate level to address these on-going concerns and shared some great insights into what seems to be working and what next steps can be taken.
- I have continued to assist NSPS in the development of [GIS web apps](#) that can provide the membership with pertinent information. The current apps were demonstrated to the Directors during the business meeting. They were well received with many ideas provided for additional maps and apps. Build-out continues.
- The United States is hosting the [International Federation of Surveyors](#) (FIG) conference this year in Orlando, FL, May 28-June 1, 2023. This is the first time it has been held in the U.S. in over 20 years. Currently there are 2,300 attendees registered with 1,900 fully confirmed (have their visas, etc.) I will be presenting a paper, moderating a speaker session, and participating in the National Geodetic Survey's Keynote roundtable to be held Wednesday. In anticipation of the new datums to be released by NGS in the next couple of years, [Wednesday of the conference week is dedicated to NGS topics](#).
- Many other topics were covered by committees I'm not involved in. I would encourage you to check out the NSPS quarterly newsletter and other communications for further updates.
- [Fall NSPS business meetings](#) will be held in Cleveland, OH, September 20-22, 2023.

Respectfully Submitted,

Linda M. Foster, PLS, GISP, MGIS
NSPS Director for South Dakota



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SPECIAL OFFER FOR SDSPLS MEMBERS ONLY!

The SDSPLS website (www.sdspls.org) continues to generate interest and inquiries from the public looking for assistance in locating surveyors in South Dakota.

SDSPLS Full Members can provide their name and contact information on the website for public reference. This information is located under “Find A Surveyor” and “Surveying Resources” tabs.

For the 2023 calendar year you are invited to list your name (and/or designated contact) on the website for the fee of only \$50! If you would like to be included, please complete the following information and return this form along with your check payable to SDSPLS.

2023 WEBSITE BUSINESS LISTING

Name: _____

Designated Contact: _____

Company: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: _____ Fax: _____

Email: _____

Website: _____

SDSPLS – Jody Van Beek, Executive Director

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Rapid City, SD 57702

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