

February 2020

BACKSIGHTS & FORESIGHTS



"Muddy Intern"

Photo by Jon Geffre and Chase Ringheimer

IN THIS ISSUE:

Finding the Verendrye Plate
.....

2020 Convention Highlights
.....

Land Surveying and Quality
.....

Photo Contest
.....

The Land Surveyor's Guide
to the Supreme Court of SD
Part 29

Customized survey solutions: **RDO does that.**



RDO Integrated Controls has a diverse portfolio of UAV technology and services for the market. Our goal is to create a solution that is customized to your needs and supports the integration and workflow of that solution within your business.

Call to see what RDO Integrated Controls can do for you.

Rapid City, SD
Dalton Kelley
605-939-4175
dkelley@RDOIC.com



RDOIC.com

2020 SDSPLS BOARD OF DIRECTORS

PRESIDENT

Travis Jacobson
IHS
PO Box 148
Ft. Pierre, SD 57532
605-222-3333

PAST PRESIDENT

Linda Foster
Ferber Engineering Co.
729 E. Watertown St.
Rapid City, SD 57701
605-390-1526

PRESIDENT-ELECT

Jon Collins
SD DOT
1255 Fairbanks Dr.
Box Elder, SD 57719
605-484-4750

SECRETARY

Jonathan Nelson
SD DOT
700 E. Broadway
Pierre, SD 57703
605-389-2491

TREASURER

Travis Kropuenske
Johnson Engineering Co.
1800 Broadway Ave. – Ste. 3
Yankton, SD 57078
605-310-1496

NSPS DIRECTOR

Thomas Berkland
3104 S. Williams Ave.
Sioux Falls, SD 57105
605-332-5781

WEST RIVER CHAPTER

Brad Limbo
All Aspects, Inc.
444 St. Joe St.
Spearfish, SD 57783
605-490-2944

BIG SIOUX CHAPTER

Aaron Norman
Norman Engineering, Inc.
3800 W 53rd St.
Sioux Falls, SD 57106
605-310-6228

MISSOURI RIVER CHAPTER

Donald Jacobson
111 W. Park Ave.
Ft. Pierre, SD 57532
605-222-4041

2020 COMMITTEE CHAIRPERSONS

EDUCATION

Kristi Goehring
Goehring Surveying
27172 421st Ave.
Parkston, SD 57366
605-928-7653

MEMBERSHIP

Jon Collins
SD DOT
1255 Fairbanks Dr.
Box Elder, SD 57719
605-484-4750

PUBLIC INFORMATION

Ruthie Wetzel
Clark Engineering
1410 W. Russell St
Sioux Falls, SD 57104
605-331-2505

LEGISLATION

Gary Andersh
Schmitz, Kalda & Assoc.
320 N. Main Ave.
Sioux Falls, SD 57104-6043
605-332-8241

STANDARDS

Dean Scott
DC Scott Surveyors
3153 Anderson Rd.
Rapid City, SD 57703
605-393-2400

DPC REPRESENTATIVE

Donald Jacobson
111 W. Park Ave.
Ft. Pierre, SD 57532
605-222-4041

TRIG-STAR

Chad Dodds
5610 Doubletree Road
Rapid City, SD 57702
605-661-3016

EXECUTIVE DIRECTOR

Rebecca Dodds
PO Box 9625
Rapid City, SD 57709
SDSPLS.RebeccaDodds@outlook.com
605-545-7884

ADVERTISING FEES

<i>Size</i>	<i>Rates</i>
3 1/2" x 5"	\$25 per issue
7 1/2" x 5"	\$50 per issue
7 1/2" x 10"	\$90 per issue

Backsights and Foresights accepts advertising from equipment suppliers and others offering surveying related services. There is no charge for help wanted or positions wanted, employment ads or equipment for sale by practitioners whose main business is not equipment sales or rental.

PUBLICATION DEADLINES

<i>Material Cutoff</i>	<i>Publication</i>
January 15	February 1
April 15	May 1
July 15	August 1
October 15	November 1

Backsights and Foresights

Backsights and Foresights is the official publication of the South Dakota Society of Professional Land Surveyors. It is published quarterly. Material published is not copyrighted and may be reprinted without written permission as long as credit is given. All material must be submitted by the middle of the month preceding the issue date, and should be directed to: The Executive Director.

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.

Greetings SDSPLS Members,

Well, I believe convention was successful and I hope the days since have been good for everyone. I imagine everyone is ready to move on from winter and look forward to spring. I was out working and happened to notice some of the trees were getting buds on them.

I hope everyone has seen the legislative information I have sent out, it is a great resource for anyone interested in contacting their representatives. It has been a bit of a busy session and there are two bills (HB1269 and HB1276) that we are currently keeping a watch on. The DPC is opposed to both of these bills and if necessary, will lobby to kill them, but it would be great to get some of our members to reach out and explain why these bills are bad for surveying and bad for South Dakota.

Goals for the Board this year will be improving our social media and website, so we can keep you more in touch with updates, and other information that we will all need to deal with, such as; the datum changes coming in 2022, the zones we will be setting up for Low Distortion Projections, the removal of the US Survey foot and many more exciting changes coming. Hopefully this will help get information out to the public and maybe even interest some to become the next generation surveyors. I also encourage you all to get out and educate the public in person, attend your local schools STEM programs, speak at career fairs or recruitment days, take time to mentor and keep surveying interesting. I know we all are looking for that one out of hundreds of young people that will become a surveyor, just keep interacting with them through whatever means you have available or time you can donate.

I look forward to what the rest of the year brings and I am excited to face the new challenges that await the surveying profession, our group and myself.

Travis Jacobson, RPLS

2020 SDSPLS President



Brad Limbo-West River Chapter President, Jon Nelson- Secretary, Linda Foster-Past President,
Travis Kropuenske-Treasurer, Travis Jacobson-President, Jon Collins-President Elect
Don Jacobson-Missouri River Chapter President, Tom Berkland-NSPS Director
(not pictured, Aaron Norman-Big Sioux Chapter President)



(This report subject to Board approval)

In Attendance: President Linda Foster, President Elect Travis Jacobson, Treasurer Travis Kropuenske, Secretary Jon Nelson, Big Sioux Chapter President Aaron Norman, West River Chapter President Brad Limbo, NSPS Director Tom Berklund, DPC Chair Don Jacobson, Legislation Committee Chair Gary Andersh, Professionalism & Practice Chair Dean Scott, Membership Chair Jon Collins, Public Information Committee Chair Ruthie Wetzel and Executive Director Rebecca Dodds

1. Meeting called to order at 09:08 am by President Foster.
2. Acceptance of Agenda: Foster requested items 8d and 8e be removed from the agenda. ++Motion by Berklund to approve the agenda with the removal of items 8d and 8e, 2nd by Limbo; Motion approved.
3. Secretary's Report – Jon Nelson: Written minutes submitted for review.
 - a) October 18, 2019 Board of Directors meeting minutes – General discussion pertaining to meeting minutes. ++Motion by Norman to approve meeting minutes as submitted, 2nd by Kropuenske; Motion approved.
 - b) December 11, 2019 Request for action through e-mail communication - ++Motion by Norman to approve meeting minutes as submitted, 2nd by Kropuenske; Motion approved.
4. Treasurer's Report – Travis Kropuenske: 2019 Operating Budget Recap written report submitted for review. Kropuenske commented the 2019 Convention expenses followed what was budgeted for the most part. Expenses for the Design Professional's Coalition was \$1750 over budgeted amount due to increased activity by DPC Attorney during the 2019 Legislative session. Kropuenske also indicated speaker expenses were not included in the 2020 Operating Budget. Dodds indicated 2020 Convention participation is trending about normal, a few new members offsetting member retirements. Dodds increased Design Professional's Coalition amount in anticipation of upcoming 2020 State Legislative session adding \$1750 in Additional Lobbyist Fees. D. Jacobson indicated the \$530 amount under Legislative Watch should be reduced to \$30 and the additional \$500 should be placed under separate line item for misc. expenses. Dodds indicated misc. expenses increased due to Wild Apricot Membership Management software moving to an upper expense tier of \$90 a month. QuickBooks software added for the 2020 proposed budget. Action items: Dodds to update membership numbers and adjust Legislative Watch numbers by move \$500 of the \$530 to misc. expenses in anticipation of DPC Attorney activity this next Legislative session. Speaker expenses of \$3700 to be added to the 2020 Convention Proposed Operating Budget report. General discussion pertaining to online convention registration and how the new system is working. Dodds indicated she has received positive feedback from

members that used the online registration. ++Motion by Berklund to approve Treasurer's Report as submitted, 2nd by Limbo; Motion approved.

5. President's Report – Linda Foster: Written report submitted.
6. Committee Reports:
 - a) Education – Kristi Goehring: Written report submitted. Highlights of the report include: Board of Directors approved 2 grants this year. Southeast Technical Institute work experience trip to Custer State Park for \$3000 to help with travel expenses for 21 students. The other grant approved for \$2000 was for an enclosed trailer for transporting the Augmented Sand Box. Foster and Limbo attended the STEM day at SDSM&T in Rapid City. They visited with students and handed out many items from NSPS such as sticky note pads, candy holders, stickers, compasses and cozies. This was great for getting exposure to the Junior High School level. There were five scholarship winners this year in the amounts of \$4000, \$3000, \$2000, \$1000 and \$500.
 - b) Legislation – Gary Andersh: Written report submitted. Andersh indicated SB166 was introduced as a hog house bill during last year's session was defeated. The bill intended to enact a sunset clause for all licensed professions and occupations. Codified Law 36-1B-1 was revised to include military personnel to the expedited military spousal licensure bill. Andersh indicated this addition should not affect the survey profession within South Dakota. General discussion pertaining to SDSPLS stance on the Military/Military Spousal bill. 2020 Legislative Session starts next Tuesday January 14th.
 - c) Design Professionals' Coalition – Don Jacobson: No written report submitted. Jacobson indicated a board meeting was held and there was a general discussion with lots questions pertaining to legislative research providing information about upcoming bills. General discussion pertaining to legislative bills and timing of information provided. SDSPLS will continue to watch upcoming bills for any sunset legislation.
 - d) Professionalism & Practice – Dean Scott: No written report submitted. Scott indicated final edits are being made to the Guidelines for the Professional Practice of Land Surveying in South Dakota and the new addition will be ready for release next year. Dodds indicated she responded to Steve Oberg of Lynn Jackson Law Firm in Sioux Falls, that a copy of the 2003 Guidelines for the Professional Practice of Land Surveying in South Dakota is available but has not received any response to date.
 - e) Public Information – Ruthie Wetzel: No written report submitted. Wetzel indicated Land Survey monument plates will be available for purchase. General discussion pertaining to how to sell the plates through the website or at convention.
 - f) Membership – Jon Collins: No written report submitted. Collins indicated SDSPLS gained a few full members and one LSIT to PLS. General discussion pertaining to dues associated to the technician and



associate. Current bylaws define the technician and the associate. Scott suggested bylaws need to be revised to allow for more membership in the Technician category. Draft bylaws have already redefined the Technician category and will be placed on the next board meeting for discussion and approval.

- g) NSPS and Young Surveyors – Tom Berkland: Written report submitted for the Spring and Fall NSPS Board of Director Meetings. Berkland indicated the next meeting will take place the 1st of April in DC coinciding with Lobby Day. General discussion pertaining to meetings and topics of interest to SDSPLS. Berkland invites anyone that is interested to come and participate in meetings.
- h) Trig Star – Steve Thingelstad & Chad Dodds: Written report submitted. Highlights of the report include: Trig-Star competition was held May 6th, 2019 on SDSM&T campus. The competition drew 36 students representing 9 High Schools. The average score was 46 and the average score of the top 10 placing students was 87. The 1st place winner received a score of 100. Our state winner Logan Lagenfeld of Spearfish placed 28th in the National Trig-Star Competition.

7. Chapter Reports

- a) Chapter History/Organization - General discussion on the SDSPLS Board Member Handbooks (“Blue Binders”) pertaining to State society bylaws. Foster indicated some type of Organizational history and bylaws should be provided to new board members.
- b) West River – Brad Limbo: Written report submitted. Highlights of the report include: West River Chapter partnered with the Black Hills Digital Mapping Conference offering a survey tract for the conference. Limbo indicated turnout was good and hopes to continue partnering with BHDH for future conferences. Limbo also indicated the West River Chapter would be planning a field trip to the location monument near Deadwood this spring.
- c) Big Sioux – Aaron Norman: Written report submitted. Norman indicated a Chapter meeting was held this last fall. Members assisted Southeast Technical Institute in their Sioux Falls monument recovery project. Chapter members continued providing house staking for Habitat for Humanity this past year.
- d) Missouri River – Keith Howe: No report submitted. D. Jacobson indicated a meeting has been planned for tomorrow to elect a new Chapter President.

8. Old Business

- a) Corner Records/On-line Records System – Foster, Nielson, Peters and Jacobson: Foster indicated pieces are in place to move forward. The Lawyer for the Department of Labor lawyer is looking into legislation changes needed to move recording of corner records from Register of Deeds office to the State GIS coordinator in the Bureau of Information and Telecommunications (BIT). General discussion pertaining to old corner records, new filings, funding and financial support for new records system.

- c) SDBOTP – Licensure Applicant Evaluation Form – Peters, Norman, Breitling and Meyer: General discussion on purpose of form. Several Board Members expressed the need to expand on survey background and surveying experience. Norman to come up with a few examples for discussion at next meeting.
- g) Legislative Planning – General discussion pertaining to sunset bills.
- h) Low Distortion Projection (LDP’s) and 2022 Datum Change: SDSPLS taking the lead on changes to the State Plane Coordinate System. General discussion pertaining to Current zones and possible changes. Foster indicated other states provide updates on progress being made on their Surveyor Societies website. Nelson indicated SDDOT’s Secretaries Office has assigned a lawyer and will looking into sponsoring necessary legislative changes.
- i) 2021 Convention: Requests from membership on moving venue. General discussion pertaining to logistics and participation at other venues. General discussion on increased convention costs. Limbo suggested presenting a couple of venue options to the membership for a vote. Discussion on changing convention schedule from 2 half days and one full day to 2 full days.
- k) Executive Director Updates: No report submitted.

9. New Business

- a) Southeast Technical Institute – Breitling Retirement: Foster indicated Rod Breitling formally submitted his retirement to Southeast Technical Institute. Norman indicated he was involved in meetings pertaining to Rods replacement and requirements for the position. There were general concerns about the requirements and pay being offered for Rod’s replacement. Andersh indicated SDSPLS has a member on Southeast’s advisory board. General Discussion on providing financial support to Southeast’s Survey program through grants for survey equipment and attracting new students to the survey programs. Foster indicated Rod will offer his PowerPoints and courses for the LSIT program for others to teach and expand on. General discussion pertaining to credit hours for teaching LSIT courses. Collins indicated he planned on attending the South Dakota Board of Technical Professionals meeting and would discuss credit hours for teaching LSIT courses.
 - b) Website and webpage/Wild Apricot - Dodds reported we have fully migrated from the old system to Wild Apricot. Soft rollout of Wild Apricot website. Wetzel currently working with Dodds on transitioning SDSPLS website over and updating content and links.
10. Next Board of Directors Meeting: Tentatively set for April 10th, 2020 location and time TBD.
11. Meeting adjourned at 11:35 am Central

Respectfully Submitted

By: Jon Nelson – SDSPLS Secretary



Finding the Verendrye Plate

“I think the LaVerendrye Plate has been found.”

With those words to Bishop Thomas O’Gorman, South Dakota State Historical Society Director Doane Robinson announced one of the most important historical finds in the northwestern United States.

In his letter to O’Gorman dated Feb. 17, 1913, Robinson wrote “yesterday a party of school children playing upon one of the gumbo knobs in Fort Pierre village found a lead plate.” Robinson went on to describe the dimensions of the lead plate and the inscriptions on both sides of the plate.

In an address to the South Dakota State Historical Society years earlier, O’Gorman had predicted that a lead plate buried by the Verendrye expedition on March 30, 1743, would be found somewhere between Fort Pierre and Fort Bennett, about 35 miles above Fort Pierre. Finding the plate helped establish the route of the explorers and served as the first physical record of a visit of white men to South Dakota. The Verendryes claimed the region for France when they buried the plate.

An article in the 1914 volume of South Dakota Historical Collections states that “a party of seven young people” were strolling on the bluffs at Fort Pierre on the warm Sunday afternoon of Feb. 16, 1913, when Harriet “Hattie” Foster saw the end of a metal plate protruding above ground and picked it up. She handed the plate to George O’Rielly, who scraped off the dirt. O’Rielly kept the plate, and they started down the hill. Different accounts state that Hattie was 13 or 14 years old and O’Rielly two years older when the plate was discovered.

In her account of finding the plate, Hattie states that before O’Rielly got to the bottom of the hill he met George Olson, a high-school boy. O’Rielly was going to throw the plate away when Olson advised O’Rielly to take the plate home.

In letters to the South Dakota State Historical Society written in the 1930s, George White and Elmer Anderson described their role in finding the plate. They were in Fort Pierre that Sunday afternoon when they were approached by William O’Rielly and his son, George. White was familiar with the story of the

Verendrye plate. He wrote, “I proceeded to eliminate the mud from the plate and read the Latin inscription on the face until I came to the last part including the words 'LaVerendrye posuit.' Then I pronounced it one of the Verendrye plates and remarked to the O’Rilley’s that it was one of the most valuable discoveries and markers in American History.”

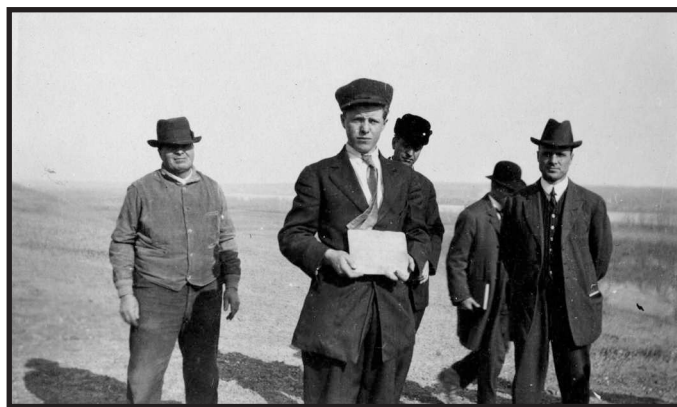
Anderson wrote that they suggested taking the plate to Doane Robinson for further investigation, but the O’Riellys would not let it out of their possession.

Anderson and White returned to Pierre and phoned Robinson to tell him of the discovery.

Robinson and Charles DeLand went to Fort Pierre the next morning and took the testimony of those present when the plate was discovered.

Robinson found “a dispute” between George O’Rielly and Hattie Foster when he arrived in Fort Pierre that Monday morning in 1913. A notice from Hattie would soon appear in a newspaper claiming possession of the “French tablet or Government Monument” which she found in Fort Pierre.

Different versions of finding the plate surfaced throughout the years. Ethel Parish Hepner Roberts would write the State Historical Society that she, Hattie and George were the only ones present on that Sunday afternoon. Blanche Lunquist, Hattie’s sister, wrote that she was present when the plate was found, and George O’Rielly insisted in a newspaper article that he found the plate, not Hattie, and gave an account of finding the plate in which Hattie was not present.



The photo of the man holding the plate is of George O’Rielly
Photo Credit: South Dakota State Historical Society – State Archives



Robinson stated in a letter written in 1931 that White identified the plate as soon as he saw it and said it was “worth a million dollars.” “I guess that it was at that moment that O’Reilly discovered that he had found the plate,” Robinson wrote.

William and George O’Rielly kept possession of the plate after its discovery. In March 1915, Pattison McClure, the president of the South Dakota State Historical Society, sent a letter to members stating that the holder of the Verendrye plate had agreed to accept \$500 for it. The state Senate had passed a bill to purchase the plate, but it was defeated in the House of Representatives. Members were asked to donate money to purchase the plate. Through donations and funds available to the Department of History, the plate was purchased. Adjusted for inflation, \$500 in 1915 was equal to about \$12,437 in 2019.

“We had come against a situation where we had to act to keep the relic within the state,” Robinson stated in a thank-you letter to a donor.

In 1916 and 1917, attorneys representing Hattie wrote Robinson requesting that the tablet be returned to Hattie as she discovered the plate, or pay her \$500 if the state desired to keep custody of it. Hattie received \$200.

The state retained ownership of the plate, and it is displayed in the museum of the South Dakota State Historical Society at the Cultural Heritage Center in Pierre. The site where the plate was found in Fort Pierre is a National Historic Landmark that people can visit and learn about its importance.

This moment in South Dakota history is provided by the South Dakota Historical Society Foundation, the nonprofit fundraising partner of the South Dakota State Historical Society at the Cultural Heritage Center in Pierre. Find us on the web at www.sdhsf.org. Contact us at info@sdhsf.org to submit a story idea.



The photo Labeled Verendrye Plate finders is, left to right, Leslie Stroup, Hattie Foster and George O’Rielly.
Photo Credit: South Dakota State Historical Society – State Archives

DATES TO REMEMBER

2021 SDSPLS Annual Convention

January 6, 7, & 8

(Wednesday, Thursday & Friday)

**Arrowwood Cedar Shore Resort
Chamberlain, SD**

For reservations, visit their website:

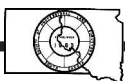
arrowwoodcedarshore.com

or call:

1-888-697-6363



Photo Credit: Jeremy Lichtenberg



Land Surveying and Quality

Christopher Moehrl, PE, PLS, CMQOE (ASQ)

Statistics show companies that focus on quality tend to be more successful over time when compared to companies that do not. A focus on quality provides a competitive advantage, is good for employees, the surveying profession, and our clients. When land surveyors are hired to perform a survey, we seek to deliver quality to clients in alignment with scope, schedule, and fees. We all start with good intentions at the onset. But effectively implementing quality is complicated: our biggest resources are people, rather than machines, the world around us is constantly changing, and client expectations increase over time.

The roots of quality come from the manufacturing sector whereby products are created by machines. Machines can be programmed, have defined tolerances, and are good at completing repetitive processes with some level of consistency. In the land surveying profession, people carry out most of our processes and procedures. This means best practices need to be applied pragmatically with a twist since working with people is a very different challenge.

To be successful, we must understand and acknowledge that people aren't perfect. We all make mistakes. If mistakes never happen, it's probably a sign that we aren't innovating. If we don't innovate, we become inefficient and wasteful with our limited resources, which also affects quality. No one likes it when mistakes occur. Rather than assign blame, reframe mistakes as opportunities for improvement. As Henry Ford once said "Don't find fault; find a remedy." Seek to understand why a mistake occurred, determine root causes, seek the facts, and avoid personal blame. That doesn't mean we aren't accountable. If we have a strong quality culture, we hold ourselves responsible to understand those mistakes, learn from them, improve processes, innovate from them, and share what we've learned with our colleagues so that we can mitigate them for the future.

In order to learn from mistakes or defects in our processes, we need to have a way to detect them when they occur. If we don't know when we make a mistake, we can't make improvements in a process. In order to detect mistakes or defects in the process, we might include redundant checks in the field, check the

quality of field work through data review in the office, and finally might check the final product with a staff member who didn't do the work. When we find a defect, ask ourselves, if there's a way to change the process through the application of technology and automation, which can eliminate the possibility and risk of error. Sometimes there isn't, and we may mitigate risk with an adjustment in a manual checklist. In these situations, prevention and continual improvement should always be considered first. If done well over time, this protocol will reduce the need for manual checklists, increase innovation, improvement, and efficiency. Quality is awareness; it's continual improvement; it's innovation - they're all connected.

The world is changing around us every day. In order to stay relevant, we must embrace change, which requires a culture in which employees are encouraged to, and rewarded for, challenging existing processes and procedures together. How we did things yesterday does not mean that it's still the best way today. Using technology as an example, when I was in college, mine was one of the last classes in the program to be taught how to "throw a chain." Total stations were coming into practice. No longer could land surveying be effectively completed using metal chains and theodolites. We had to adapt and ask ourselves how we could survey more effectively, challenging ourselves and our vendors to find a better way. It required us to learn new technology, to understand its risks, and to create new processes and procedures around them. Then came GPS, a new black box technology. We learned how to use GPS equipment for surveying but came to understand its limitations. We put processes in place that would help us detect things such as multi-path through redundant field checks. We built processes and training around it to mitigate its risk. These are just some small examples.

We need to focus on effective training and development. We need training systems that don't just train for the sake of training, but are designed and specific to the needs of rules and requirements; training material that teaches best practices and processes with context; training plans that make the most out of unlimited resources built around risk, prevention, and continual improvement. Training systems should be continual and include mentoring and career development. No matter what our experience level, there is always something new to be learned throughout an entire career and beyond.



Expectations of our clients and the public increase over time. Asking for feedback, understanding it, and following up on it drives improvement. Creating a culture where employees engaging in a feedback process are recognized and rewarded regardless of whether the feedback is positive or constructive, results in more employee engagement and more improvements comet which is the goal. We must understand that because employee A gets positive feedback from one client and employee B gets constructive feedback from another, doesn't mean that employee A is any better than employee B. There are just too many factors and misperceptions to draw those kind of conclusions. Then focus shouldinstead, be on process engagement and improvement over time. Less focus on scores and more focus on awareness, opportunities and improvements will yield happier employees, an engaged workforce, calmer happier clients, and more success for everyone.

As land surveyors, we are detectives, treasure hunters, and historians. We embrace technology and we can, and must be, quality experts in order to be successful. It's also a lot of fun!

As seen in the MSPS Minnesota Surveyor, Fall 2019

“People who wonder if the glass is half empty or half full, miss the point. The glass is refillable.”
-Sinek

"The man who is unwilling to alter his opinion is like stagnant water, and breeds reptiles of the mind."
- William Blake

SCHOLARSHIP AWARD WINNERS



ASHLEY SCHWEITZER
CHAD JANIS
CHASE RINGHEIMER
NICHOLAS MALLON
BRANDON NICKELS

CALL FOR ARTICLES BACKSIGHTS & FORESIGHTS

Share your experiences and expertise with your peers in our newsletter!

Do you have writing experience? Expand your professional resume and author an article for our newsletter.

The best articles may come from our own members! The best photos certainly do!

If you would like to share your story, case study, field experiences or a photo, please email SDSPLS.RebeccaDodds@outlook.com

Deadlines for Submissions:

April 1, 2020 for May 2020 Newsletter
July 1, 2020 for August 2020 Newsletter
October 1, 2020 for November 2020 Newsletter

Please include a headshot, if you have one as a separate JPG file. Include your byline. Please send photos in JPG format. Not all submissions will be used.



Benefiting Members and the Surveying Profession

The National Society of Professional Surveyors has an active government affairs program that protects the interests of the surveying and mapping professions in the federal legislative and regulatory arenas. Working with a government affairs consultant, NSPS monitors federal government activities that may be of interest and concern to our members. The consultant works closely with members of the NSPS Government Affairs Committee and our Executive Director to represent members' interests before Congress and Executive Branch Agencies.

Plus, we offer members these professional benefits:

Advocacy Programs

- Political Action Committee
Jefferson Club (*contact NSPS to learn more*)
- Assistance on state-specific matters
- Other geospatial organizations, such as the International Federation of Surveyors (FIG) and the Coalition of Geospatial Organizations (COGO)

Education

- ABET-Lead Society for surveying/geomatics program evaluation for accreditation
- Scholarship Program: 15 annual awards

Licensing / Standards

- NCEES – Participating Organizations Liaisons Council
- ALTA/NSPS Land Title Survey Requirements
- NSPS Model Standards

Outreach Opportunities

- Trig-Star
- Boy Scouts Surveying Merit Badge
- National Surveyors Week
- Getkidsintosurvey.com
- Beasurveyor.com

Certification Programs

- Certified Survey Technician Program
- Hydrographic Certification opportunities
- Certified Floodplain Surveyor
- Certified Federal Surveyor

News and Networking

Check Out the NSPS Newsletter and Podcast

Sign up for the weekly email newsletter by visiting multibriefs.com/briefs/NSPS and clicking "subscribe." Listen to the Surveyor Says! podcast on Spotify, iTunes, and Google Play, or by going to surveyorsays.podbean.com.

Follow Us on Social Media



Member Discount Programs



Apparel

Buy a wide range of NSPS apparel through Lands' End, including tops, bottoms, outerwear and accessories.

- business.landsend.com/store/npsinc

Insurance

NSPS Endorsed Program

Assurance Risk Managers

888-454-9562

Arm-i.com/nps.html

ARM is a full service agency that can meet all your insurance needs.



Learn more about Assurance Risk Managers



Individual Life & Health Insurance

Mercer Consumer

- 800-424-9883
- nps.insurancetrustsite.com

Group Health

Mass Marketing Insurance Consultants

- 800-349-1039
- mmicinsurance.com/NSPS

Travel Discounts

NSPS members qualify for a Member Travel Discount Program through Localhospitality, which applies to hotels and car rentals.

- Go to: nps.us.com
- Click "Membership"
- Click "Member Travel Discounts"
- You must sign in to search

PerksConnect Program

PerksConnect saves you money on the things you use every day. You'll find businesses in your area offering savings on dining, retail, auto and home services, pet needs, health, fitness, recreation, entertainment and more. To sign up for PerksConnect, go to:

- Discounts.perksconnection.com
- Click "Activate account now"
- Use group code: NSPS

Tire Discounts

Save 10% on your order! Go to tirebuyer.com/nps and apply the NSPS coupon code that appears in the pop-up window.



New benefits on page 2!

Announcing New NSPS Member Savings!

**Office DEPOT.
OfficeMax®**

up to 80% off office essentials



credit card processing rates
less than 1%

HE **HOTELENGINE.**

up to 60% off 100,000+ hotels



free cash back rebate program



up to 60% off theme parks,
movies and more



83% off tradeshow
and LTL shipping



discounted online
accounting services



up to 25% off personal
and business rentals

Sterling
Talent Solutions

background screening



A more human resource.™

up to 20% off payroll services



outsourced business
workforce solutions

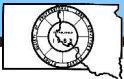
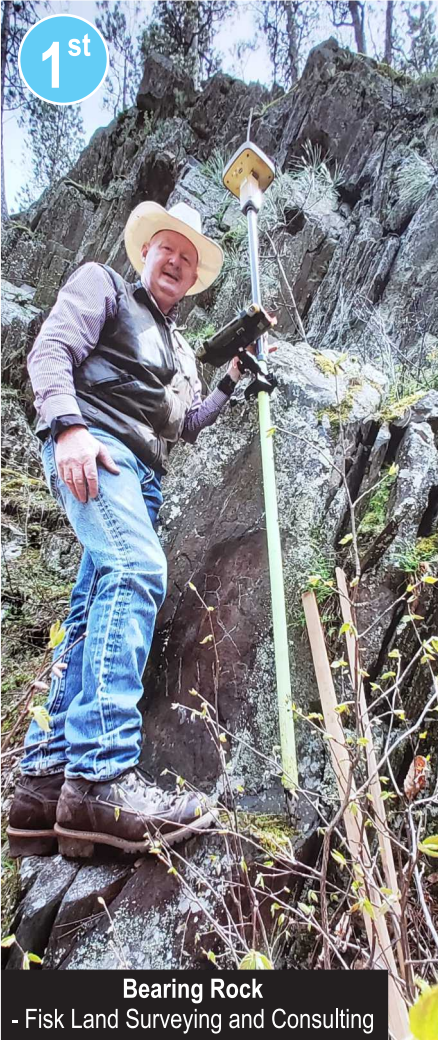


everyday low ink
and toner pricing

Start saving today: **NSPS.SavingCenter.net**

For more information: ✉ membercare@savingcenter.net ☎ 888.868.4030

PHOTO CONTEST WINNERS



ADDITIONAL PHOTO SUBMISSIONS



Stockwell



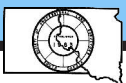
Banner



Stockwell



John Gale of McClary Engineering



2020 CONVENTION PHOTOS



Photos courtesy of Chad Dodds and Ruthie Wetzel



2020 CONVENTION PHOTOS



Photos courtesy of Chad Dodds and Ruthie Wetzel



The Land Surveyor's Guide to the Supreme Court of South Dakota – Part 29 – 1960 to 1963

This article represents the twenty-ninth in a series of excerpts from a book prepared by South Dakota licensee Brian Portwood. The complete book can be obtained in PDF form by double clicking on the link in the lower left portion of the SDSPLS Homepage. 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.

Can accretion or reliction be adversely possessed?

Sioux City Boat Club v Mulhall (1962)

The case we are about to review contains one of the most extensive and highly detailed timelines presented herein, and those details, which relate primarily to the migrations of a certain section of the Missouri River, are worthy of careful attention, because they serve to set the stage and provide context for the key events that eventually bring the litigants into conflict. Although the lands in dispute in this case are the product of accretion or reliction, that factor ultimately proves to be merely an incidental circumstance, and as will be seen, the truly significant elements of law and equity that control the outcome of this legal battle relate to the actions and intentions of the parties themselves, rather than the specific character of the land or the means through which it was physically formed. The Court's treatment of this controversy provides a classic example of a covert effort to acquire land cheaply, at the expense of innocent parties whose rights to that land are of dubious origin, being derailed by safeguards against such conduct that have been wisely extracted from common law and incorporated into statutory law, in order to place long established land use in repose, while silencing land rights issues that might otherwise be unjustifiably leveraged by opportunists, such as the defendant here. The doctrine of re-emergence once again appears as a factor in this scenario, as does the 1905 boundary compact struck by South Dakota and Nebraska, but the most prominent aspect of this case lies in the Court's adoption of clear parameters for adverse possession, which have been consistently applied by the Court ever since this time, including an excellent example of the important role and the critical impact of documents that have no directly controlling legal

value, yet have great equitable value, as color of title. Just as our present case illustrates that adverse possession can extend to, and operate upon, both originally riparian and originally non-riparian lands that have been subsequently submerged and exposed by water, the 1970 case of *Broadhurst v American Colloid* reveals that adverse possession can also extend to mineral rights. In that case, *Broadhurst* was the owner of two adjoining quarter sections that had been settled as a homestead in 1917 and patented to the original homesteader in 1923, while *American Colloid* was the owner of placer claims that had been filed by another party pertaining to the same two quarters in 1920 and 1921. Because the land rights of the original homesteader began to legally accrue to his benefit in 1917, even though he did not obtain his patent until 1923, the placer claims were void, since the mineral rights to the area in question were no longer available to be claimed after 1917, being legally attached to the surface rights accruing to the homesteader. Therefore, *American Colloid* had to rely upon adverse possession to assert its ownership of the mineral rights beneath the *Broadhurst* property, and the company produced evidence that it had in fact extracted minerals from the land at issue from 1949 to 1952, but no further mining had been done since that time. *Broadhurst* sought to quiet his title to the mineral rights under his land, but *American* charged that by 1970 he had acquiesced to *American's* right to mine his property for over 20 years. The Court proceeded to clarify that adverse possession of the surface of any tract does include any mineral rights associated with the adversely possessed area, unless the mineral rights that were once associated with that area were already legally detached from the surface and conveyed into separate ownership prior to the commencement of the adverse possession. In addition, the Court held that adverse possession of mineral rights alone, distinct from surface ownership, is also possible, the Court upheld a lower court decision against *American* however, finding that the mining work done by the company in this instance, having lasted only a few years, was insufficient to support adverse possession.

1861 - A certain township traversed by the Missouri River was subdivided and platted by the GLO. The river ran in a northeasterly direction through the southeast quarter of Section 34, and it covered just a small portion of the southeast quarter of the northeast quarter, but this section of the river was particularly disinclined to be restricted to any certain channel.



1862 to 1879 - Some, if not all, of the land in Sections 27 and 34 was patented into private ownership during this period. The northeast quarter of Section 34 and most of the south half of Section 27 were apparently patented to Shay, and adjoining portions of those sections were patented to an unknown number of other settlers. Nothing is known about the use that was made of these lands by the original patentees, nor is the duration of their ownership known, but it appears that the river was migrating northward during this period, apparently submerging most, if not all, of the land on the north side of the river in Section 34, and at least some of the land in Section 27 as well. Consequently, much of the land that had been patented to Shay and his neighbors, if not all of it, soon became unusable and worthless to those unfortunate settlers, due to the intrusive behavior of the river.

1880 - Since no taxes had been paid on the northeast quarter of Section 34, it was acquired by Union County for unpaid taxes, although it may have already been either mostly or entirely underwater by this time.

1881 to 1904 - The movements of the portion of the river lying within this township during this period are unknown, but by the end of this period it was presumably still situated well to the north of its platted location, and it was probably still moving northward, rendering more of the land that had been platted north of the river useless, with the result that little attention was paid to the ownership of those lands.

1905 - Nebraska and South Dakota entered a compact, permanently locking down the location of the state line along the south boundary of Union County at the 1905 river location.

1906 to 1918 - The river evidently continued to migrate even further northward during this period, submerging an unspecified additional amount of Section 27, apparently reaching its maximum northerly position around the end of this period, but the north boundary of Nebraska remained fixed in the 1905 river location.

1919 - Shay died, and his will bequeathed all of the lands that he had once owned in Sections 27 and 34 to his widow, who promptly distributed all of those lands to her 8 children, who were all presumably adults by this time. There is no indication of where any of these members of the Shay family lived, and they apparently had no knowledge of the river or the land, so the fact that the land listed in their late father's will in Section 34 was no longer in his ownership at the time of his death, because he had lost it nearly 40 years before, by failing to pay taxes on it once it had become covered by the river, was either unclear or unknown to them. In addition, the Shay heirs were also apparently unaware that their late father had conveyed some, if not all, of the land that he had once owned in Section 27 to various unknown others, who had evidently never utilized it, and who had eventually abandoned it themselves, presumably upon concluding that just like Section 34, it was also destined to be lost to the river, so in fact the heirs had inherited little or no land at all from their late father.

1920 to 1924 - During this period, the Sioux City Boat Club (SCBC) decided to acquire some land lying along the north side of the river in Union County, and it acquired the lands of the Shay heirs, by means of warranty deeds from each of them. Whether or not any of the parties to these conveyances were aware that some, and perhaps most, of the land being conveyed to SCBC had been submerged by the river, is unknown, but it was evidently believed or supposed by the parties that at least some of the land being conveyed in Section 27 had remained unsubmerged, and still existed as dry land, although there is no indication that any resurveys of this land were ever done, so how the location or extent of the unsubmerged land was determined by the parties is unknown.

1925 to 1939 - There is no indication that SCBC made any physical use of the land that it had acquired in Union County during this period, and it appears that most of that land may still have been submerged beneath the river for most of this period of time, but at an unspecified point in time, the river evidently began migrating back to the south, and the lands acquired by SCBC began to emerge from the river, either as accretion to the north bank of the



river, or through reliction of the northerly portion of the river channel. There is no indication that any of the former Shay land was taxed during this period, presumably it had been dropped from the tax rolls as it was devoured by the river, SCBC did apparently mortgage all of it's Union County land holdings however, several times during this period, thereby using the land for financial purposes, and there is no indication that any other parties ever made any use of the land that had been deeded to SCBC.

1940 - By this time, a substantial amount of the land lying along the north bank of the river, in the area that had been deeded to SCBC, had again become usable for agricultural purposes, for the first time in decades, so SCBC began leasing an unspecified amount of that land to a tenant farmer, and the land was put under cultivation.

1941 - Having apparently observed that substantial portions of Sections 27 & 34 had emerged from the river, thereby once again becoming valuable land, Mulhall apparently decided to investigate the history of the titles to these lands, which revealed that the Shay heirs did not actually own the lands that they had sold to SCBC, for the reasons outlined above, so SCBC had never legally acquired the land that SCBC was utilizing. Upon making this discovery, Mulhall evidently proceeded to acquire the 60 year old tax title to the northeast quarter of Section 34, and also most of the south half of Section 27, from the record owners of those lands, who were the various successors of Shay and possibly other original settlers and patentees of the area, presumably by means of quitclaims, and he then paid the taxes on whatever portion of the land in the area was subject to assessment for tax purposes at this time. Aside from paying the taxes for this one year however, Mulhall evidently chose to remain silent, rather than voicing his claim of ownership to anyone at this particular time, choosing instead to allow SCBC an opportunity to improve the land, before openly asserting his ownership of it.

1942 - In an effort to prevent the SCBC lands that had been exposed by the river from being

regularly flooded, SCBC had a dike built along the north side of the river, enabling the land north of the dike to become highly productive for agricultural purposes. Apparently upon learning that the long untaxed portions of Sections 27 & 34 had once again become subject to taxation, SCBC began paying the property taxes at this time, evidently without any objection from Mulhall.

1943 to 1960 - The river evidently continued to retreat to the south during at least part of this period, finally exposing all of Section 27, and exposing at least part of the northeast quarter of Section 34 as well, if not all of that quarter, before eventually stabilizing it's location. Whether or not the tenant farmer who was leasing the SCBC lands ever made any actual use of the additional land that accreted or relict along the south side of the dike after it was built in 1942 is unknown, and there is no indication that any buildings or other structures were ever built anywhere on the SCBC property, but SCBC presumably used the accreted or relict area for access to the river, on at least an occasional basis for boat launching and boat landing purposes. At an unspecified date near the end of this period, upon learning of Mulhall's assertion that he was the true owner of all of the SCBC land, SCBC elected to file an action against Mulhall, seeking to quiet it's title to all of those portions of Sections 27 & 34 that were described in the deeds that had been issued by the Shay heirs.

SCBC argued that all of the lands that had been described in the will of Shay had been granted to SCBC by Shay's heirs, and SCBC had possessed all of that land in good faith since 1924, to the exclusion of all others, in the manner of a typical land owner, exerting dominion and control over all of the land in question, in full accord with the requirements of the 10 year adverse possession statute, so SCBC had acquired all of the land at issue by that means. SCBC argued alternatively that it's use of the land in controversy since 1940 had been sufficient, in terms of both the character of the use that was made of the land, and also the extent of time for which the land was used, to satisfy the 20 year adverse possession statute, so should the 10 year statute be deemed inapplicable, SCBC had nonetheless acquired that land under the 20 year statute by 1960. Mulhall



argued that since the river had moved so far back to the south that it was now located south of the 1905 compact boundary, not all of the land being used by SCBC north of the river was in South Dakota, part of it was actually in Nebraska, therefore South Dakota had no jurisdiction over the controversy, so the courts of the South Dakota judicial system were powerless to quiet the title of SCBC. Mulhall further argued that the land in question had not been granted to SCBC in good faith, so SCBC could not successfully maintain its ownership of the land under the 10 year adverse possession statute, nor was SCBC's use of the land at issue sufficiently extensive in character to support any adverse possession claim made under the 20 year adverse possession statute, so the grantors of Mulhall had still owned the land at the time it was conveyed to him, and he had thus legitimately acquired all of it. The trial court found that the possession of SCBC was sufficient to satisfy both the 10 year and 20 year statutory requirements, and therefore quieted title to whatever portion of the SCBC land was located north of the 1905 state boundary, as requested by SCBC, through adverse possession, leaving Mulhall with nothing.

Initially, it must be noted that the sheer length of the timeline that provides the backdrop for this case, and the fact that events spanning a full century were potentially relevant to the outcome of the case, both show very clearly why courts see the doctrine of adverse possession as being quite valuable in the enforcement of justice, since there are always parties such as Mulhall about, who are perpetually watching for unfolding events to create opportunities for them to turn long bygone errors or omissions to their own advantage. By 1960, Mulhall apparently believed, SCBC might experience great difficulty, if required to justify the acquisitions it had made nearly 40 years before, since all of the parties who had taken part in the acquisitions made by SCBC, as both grantors and grantees, were presumably dead, and therefore unavailable to testify to the intent of the deeds that were issued to SCBC by the Shay heirs.

Although the factual history associated with this case is greatly lengthened by the operation of the river upon the land in controversy, and the river definitely did have an obviously major impact on the way that land was used and treated, the fact that the land being fought over by these litigants was formed as accretion or reliction was actually irrelevant to the outcome of this case. As will be recalled by those who have

already read the riparian cases previously discussed herein, the doctrine of re-emergence, first adopted by the Court in deciding the Allard case of 1918, mandates that land can be completely submerged, and then re-emerge as dry land in the same ownership, so land is not necessarily lost with finality even when completely when submerged beneath a navigable body of water. Had Shay and the others who settled along the Missouri known that the Court was going to take the position that PLSS tracts cannot be completely eradicated merely by the action of water, since PLSS boundaries are always capable of being restored, they may have been more inclined to attempt to preserve their land rights when the river inundated their lands, rather than simply abandoning those lands, or selling them off cheap, in the belief that those lands would never be of any use or value to them again. But since no one around during the 1800s could imagine or foresee what the Court would subsequently hold, untold numbers of riparian tracts were forsaken and abandoned, due to the meandering motion of the great wandering river, creating potential land rights conflicts such as this one, often not to be resolved until the land became valuable once again, many decades later, long after vital evidence of what had really happened had become unascertainable. The Court readily dismissed Mulhall's assertion that the Court lacked jurisdiction over the matter, concluding after reviewing the relevant plats, that although the exact location at which the 1905 compact boundary ran through the land at issue was unknown, it was reasonably clear that at least most of the SCBC land was on the South Dakota side of that line, giving the Court jurisdiction over at least the majority of the land in dispute. Having placed Mulhall's first argument in repose, the Court then set out to explain and distinguish the legal requirements of the 2 adverse possession statutes under which SCBC sought protection, and in so doing the Court established a set of elegantly concise standards that succinctly capture the modern concept of possession originating in good faith:

“warranty deeds from the Shay heirs to plaintiff were executed and recorded ... Under the ten year limitation statute, the elements and requisites of title are color of title to the real property, possession under claim and color of title made in good faith for the required time, and payment of all taxes for ten successive years ... If these requisites exist at the end of the statutory period, title is acquired ... the



warranty deeds ... were sufficient to show color of title ... color of title, as used in statutes of limitation, may be defined as that which is title in appearance, but not in reality ... it will be presumed that the grantee, in the absence of evidence to the contrary, entered into and retained possession in good faith ... There is no evidence in the present case tending to charge plaintiff with bad faith ... possession of one entering land under color of title is presumed to extend to the boundaries described in his deed ... with the exception of payment of the 1941 taxes ... Taxes for all subsequent years ... were paid by plaintiff ... possession must be of such hostile, visible and continuous nature as to give the true owner notice of actual possession and to put him on inquiry as to the invasion of his rights ... if he acquiesces ... he will be barred ... and the title of the adverse occupant will be complete ... Plaintiff exercised actual, visible and continuous dominion over the property under claim of ownership, and the adverse character of the possession was sufficient to satisfy the requirements of the ten year statute of limitation."

The warranty deeds executed by the heirs of Shay were in fact worthless, as a means of conveying legal title, the Court recognized, as did all of the litigants themselves, because the heirs were operating under the false impression that they owned the land listed in their late father's will, when in fact he had either abandoned or sold most if not all of that land, and had carelessly or forgetfully neglected to update his will after doing so. Had SCBC learned the truth of the situation sooner, it could have successfully charged the heirs of Shay with breach of warranty, and resolved the matter in that manner, but the opportunity to proceed in that direction had died with the heirs, leaving adverse possession as the only recourse available to SCBC. Nevertheless, the warranty deeds actually held great value to SCBC as legitimate color of title, since the liability implicitly associated with a warranty deed stands as ample evidence that the party who issued such a deed was acting in good faith in so doing, and just as importantly, the recipient of such a deed has the legal right to rely fully upon its validity without question, so SCBC had not merely adequate color of title, but especially strong color of title. In addition, every party who holds land under color of title, the Court pointed out, is presumed to be in possession of every bit of the land described in the

document providing that color, regardless of how much or how little of that land the adverse claimant has actually put into physical use, so the evidence that SCBC had leased some of the land in question to a tenant farmer, who had cultivated a modest portion of it, represented satisfactory evidence of physical possession, that was essentially equivalent to proof of actual use of all of the land at issue. Since the property taxes had been paid exclusively by SCBC since 1942, negating any potential impact of the lone tax payment made in 1941 by Mulhall, the only remaining potential hurdle was the issue of good faith on the part of SCBC, as an innocent grantee victimized by ineffective deeds, and it was this element upon which Mulhall very likely expected to prevail, given the fact that SCBC could have discovered that the Shay heirs owned little or none of the land that they had offered to SCBC. The Court very neatly eliminated this potential obstacle however, by reminding Mulhall that the burden of proof always rests upon any party who elects to maintain that a transaction was made in bad faith, because neither fraud nor bad faith can ever be presumed, they must be affirmatively proven, and with that the Court fully upheld the lower court ruling in favor of SCBC, on the basis of the 10 year statute, stating that consideration of the 20 year period was therefore unnecessary. It should be noted as well that here once again the Court linked the concept of acquiescence to adverse possession, further reinforcing the view that passive or inactive acquiescence represents fatal submission by the owner of record to the land ownership rights of the adverse claimant, as opposed to the contrary view of acquiescence, as being an indicator of the presence of contentment on the part of both parties, resulting from a positive state of agreement between them, stemming from actions taken mutually by them. In addition, the cunning demonstrated by Mulhall, not only in hunting down a scenario that provided him with an apparent opportunity to acquire a substantial amount of land for next to nothing, but also in his decision to wait for SCBC to elevate the value of the land that he was after, before springing his trap, illustrates why courts typically deem it necessary and appropriate to adhere to the presumption at law that holders of tax deeds are not bona fide purchasers.

How is the legal status of highway right-of-way determined?

Cuka v State (1963)



On certain relatively rare occasions, the Court may deem it necessary, or may be called upon, to directly address matters of particular importance, when it appears that the Court itself represents the most appropriate venue for the immediate resolution of such matters, and the case we are about to review presents one such situation concerning land rights, in which the Court itself performed the initial adjudication of the arguments made by the opposing parties. The judicial treatment of certain aspects of this legal action are therefore unique, and those items may have been treated somewhat differently in a typical contest between private parties, as noted in the review presented below, but the relevant and controlling legal principles discussed herein, pertaining to deeds and conveyances, are all equally applicable to more typical scenarios, involving land rights of the same kind. The core issue set forth in this case actually relates to the operation of the legal principles pertaining to the well known doctrine of eminent domain, which authorizes and enables government entities to make acquisitions of land or land rights for legitimately public purposes. Since eminent domain is a federal policy, that applies to all such governmental acquisitions nationwide, it remains always subject to constitutional provisions for its implementation, and of course the element of that policy which most frequently becomes a source of controversy is financial compensation. In most such conflicts, the principal focus is upon the amount of such compensation, if any, that is legally required and justified for a given acquisition, but in this unusual case the amount of money at stake is not in dispute, instead it proves to be the cancellation of the acquisition that triggers the contention. Perhaps the most poignant lesson demonstrated here is the potential insignificance of the manner in which documents of conveyance are entitled, in relation to the language forming the actual contents of such documents, as this case illustrates that the titular form of a deed equates only to the quality of the title being conveyed, and has no impact whatsoever upon the nature of the rights that are being thereby conveyed, clarifying that a warranty deed does not always represent a fee conveyance. This case also stands as an ideal example of an abandonment of land rights, resulting from evidence clearly showing the genuine intent of the holder of those rights to permanently forsake them, in this instance through the deliberate negation of valid acquisitions of land rights, which were made for a specific purpose, upon the demise of that purpose itself, leading to a result that is equivalent

in legal effect to a formal vacation of such rights. One essential distinction highlighted here is that although the final outcome is an extinction of the rights at issue, which is the same outcome that occurs when land rights are extinguished through adverse or prescriptive means, the principle of abandonment operates on an entirely different legal track than prescription, and therefore accomplishes the termination of land rights on the basis of intent, without any need for the passage of any prescribed time period. In addition, the proceedings here emphasize the importance of understanding the legal relationship and interaction between fee ownership of land and land rights of a lesser magnitude, properly classified as an easement or right-of-way, which although permanent in character, signify an intention only to enable and protect a specific use or uses of the described land, and not to possess or fully control the land itself.

1960 - Cuka was the owner of a tract of unspecified size and location, that was apparently situated in fairly close proximity to Highway 50, but which was not actually crossed by that highway or any portion of the highway right-of-way. The State Highway Commission determined however, that it would be necessary to relocate a portion of Highway 50, and it devised a plan to do so, under which a segment of the proposed route crossed the Cuka property. When Cuka was informed that the Commission intended to acquire a new right-of-way, for the relocation of the highway, running through his land, he had no objection to that idea, and he freely conveyed the right-of-way, by means of a warranty deed, as requested and described by the Commission. The terms of the contract between Cuka and the Commission called for payment of the agreed value of the right-of-way to Cuka, and he was fully satisfied with the agreed price, so upon signing the warranty deed conveying the right-of-way, he believed that the matter had been concluded, and that he would soon receive the payment that was due to him.

1961 - The State Auditor issued a warrant payable to Cuka, and it was delivered to the office of the Commission, but rather than being delivered to Cuka by the Commission, the warrant was promptly returned to the Auditor, with instructions to cancel it, because the plan



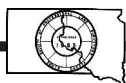
to relocate the highway had been deemed unnecessary and withdrawn, so the Commission had no need for any of Cuka's land. The Commission then returned the warranty deed that Cuka had signed to him, explaining to him that his land would not be needed for highway purposes, so no payment would be forthcoming. Cuka insisted however, that the right-of-way conveyance agreement had been legally completed and was legally binding, so he sent the deed back to the Commission, along with a demand for the payment that was due to him, but this action apparently drew no response from the Commission.

1962 - The Commission informed Cuka that it had formally vacated and abandoned any claim to the right-of-way across his property, so the right-of-way no longer existed and for that reason no payment would be made to him, but Cuka declined to accept this result, and sought to present his case directly to the Court. Since Cuka was actually just one of 47 land owners who had experienced this same treatment by the Commission, and the Court felt that this matter was worthy of it's attention, the Court agreed to directly adjudicate the conflict, in order to promptly clarify the rights of Cuka and the 46 other highly disgruntled land owners.

Cuka argued that an absolute and fully binding conveyance agreement had been entered, between South Dakota and himself, and he had executed and delivered a warranty deed, as expressly requested by the state, so the state was bound to pay him the agreed amount, regardless of whether or not the right-of-way was ever needed, or ever actually used for any purpose, by the state. South Dakota argued that although a valid conveyance agreement had been made, and a valid deed delivery had taken place, which would have been legally binding in the context of any comparable transaction between private parties, the cancellation of the highway relocation project had effectively rendered all of the prior proceedings related to that project null and void, including the land acquisition proceedings involving Cuka and all of the other land owners, so none of them were entitled to any payment. The facts related to the dispute were gathered and relayed to the Court by a Referee who had been appointed for that purpose, and whose conclusions were unfavorable to Cuka.

An interesting paradigm was in play in this case, when viewed in the context of the perpetual tug-of-war between public and private land rights, because resolving this controversy would require the Court to balance the starkly opposing interests presented here on both sides of that equation, and pour from the crucible of justice a decision that was likely to be strongly criticized by all of the forces aligned with the losing side, but as usual the Court was up to that task. Like the Supreme Court of the United States, on the federal level, the Court has the authority to directly resolve any high priority issues that fundamentally involve the rights or obligations of South Dakota as a state, and can therefore choose to directly address precedent setting matters, such as items upon which a lower court would have no guidance to follow, where no controlling statute or directly relevant case law exists. So in this scenario, the Court was not reviewing the results of a complete trial, as it typically does, upon the decision of the losing party to file and pursue an appeal, but was directly assessing the competing claims of the litigants at face value, in what is known as an original proceeding, with the additional aid of a report provided by a Referee, along with his conclusions which amount only to recommendations to the Court. Although the Court has adjudicated a great many cases involving condemnation and inverse condemnation claims, this case presented the contrary situation in which the land owner welcomes the proposed right-of-way crossing his land, rather than fighting the imposition of it upon his property, and insists upon the completion of the conveyance, instead of maintaining that the proposed route represents an unjust intrusion upon his land and should be designed elsewhere, which is the typical argument that is far more often made by the private party. While its quite possible that Cuka was simply content to sacrifice part of his property for highway purposes, and he really wanted the money offered by the state more than the land, Cuka may well have taken his adamant position, the Court certainly realized, only upon learning that no road would actually be built through his land, which spelled an opportunity for him to obtain public funds in exchange for no physical burden upon his land,

which he would therefore be free to go on using just as he always had. Cuka's legal position was actually a very strong one, which undoubtedly would have prevailed in a comparable controversy with another private party, since it was undisputed that the conveyance in question had been fully executed, and the deed in question had been duly delivered, so the



real question for the Court was whether or not the presence of any rights held by South Dakota effectively altered the circumstances in a manner that was sufficient to overcome the position held by Cuka. Citing the Sweatman case of 1903 and the Henle case of 1928, both of which are among the cases on the topic of dedication that we have reviewed, after resolving the payment dispute on strictly financial grounds, the Court took the opportunity that this case offered to remind all of the parties of the true legal status and character of the rights that are created by virtue of an acquisition made by a government entity on behalf of the public, such as this one made in support of a public highway:

“Plaintiff contends this is simply an action at law to recover the contract price of land ... and the fact that the state is a party to the contract and the nature and purpose of the land purchase are immaterial factors ... In effect, plaintiff is asking for damages for breach of contract ... The essential question presented here is whether or not there are appropriated funds available ... his claim must be denied as there are no appropriated highway funds available ... The State Highway Commission is charged with ... restricted authority ... when the state acquires private property for highway right-of-way it merely acquires an easement and the fee title remains in the abutting land owner ... Upon abandonment or vacation of an established or proposed highway the land is relieved from the servitude created by the public way or proposed public way and possession reverts to the abutting owner ... the purpose of acquiring plaintiff's property was to secure necessary right-of-way for highway purposes only. An easement was all the state could acquire, regardless of the form of the instrument of conveyance ... The state has never taken possession of the property. It's use by plaintiff has never been disturbed ... Any right, title or interest ... reverted to plaintiff by operation of law, upon abandonment of the project ... plaintiff ... does not have a vested right to payment.”

The involvement of South Dakota, the Court decided, did in fact place this dispute concerning the rights of the parties, even though they were delineated in a deed that had been delivered with the full intention of being binding upon all parties, in a different context, governed by the fact that no payments can be made by a government entity unless or until the necessary funds have been appropriated for the intended purpose. So Cuka's claim was dead on arrival, in the view of the Court, because no money had ever been set aside to pay him, which had the effect of making all of the steps that had been taken by the

Commission, in moving forward with the land rights acquisition process prior to such an appropriation, premature and ineffectual. The Court could have stopped at that point, having silenced Cuka's claim as being financially impossible to satisfy, but the Court chose instead to proceed to point out the limitations that are inherent upon all acquisitions made for purposes of public benefit. Intent upon minimizing the intrusion represented by public use of land upon its private owners, while upholding the viability of legitimately necessary public land rights, the Court recognized the validity of the widely accepted principle that the public cannot acquire any land rights beyond those which are minimally necessary to meet a particular public need, so fee ownership can never be acquired for public purposes, where an easement is all that is truly required. Since a right-of-way is presumed to be an easement, the creation of a right-of-way leaves the ownership of the underlying land unchanged, a burden is merely placed upon the specified portion of the land, which is subject to potential future removal, either by means of a formal vacation of such rights, or as the result of an intentional abandonment of the use of the designated area. In addition, the Court observed, the form or title of the instrument used in making an acquisition on behalf of the public is not indicative of the rights acquired, the sole controlling factor in such acquisitions made for public purposes is the language contained in the body of the document relating expressly to the purpose for which the acquisition is being made. So the fact that Cuka had conveyed the proposed right-of-way to the Commission by means of a warranty deed was of no consequence whatsoever, with regard to determining whether fee or easement rights were thereby conveyed, an easement was necessarily conveyed, because the conveyance was expressly described as being "for highway purposes" and an easement is entirely legally sufficient to build and maintain a highway. Since the Commission had fully negated the conveyance from Cuka, by issuing an official declaration of its intention to abandon any rights it had acquired over his land, the Court found, any easement that might have been created on his property had been eliminated, with no damage having been done to Cuka or any of his land, and no benefit having been secured on behalf of the public, so in the eyes of the Court, Cuka's property had been unburdened, leaving his demand for compensation baseless and without merit. Although a private party occupying the position of the state in this instance would no doubt have been required by the Court to compensate Cuka, since no private party can simply decline to honor a valid deed on the mere grounds that they changed their mind about making an acquisition, as the state essentially did here, the fact that no physical use was ever made of Cuka's land by the state convinced the Court that no taking had ever occurred, since no damage could be deemed to have been done to his land, in the absence of any such evidence of actual use.



Land Surveyor Position



Job Description:

Land Surveyor, LS (preferred) or LSIT – JSA Consulting Engineers/Land

Surveyors has an opening for a Land Surveying position. Responsibilities include:

- Conduct research in courthouses for boundary/legal surveys.
- Act as survey crew chief for legal, topographic and construction staking survey work.
- Complete ALTA surveys.
- Locate property lines and reference permanent markers.
- Prepare plats, easement exhibits and record drawings.
- Establish right-of-way baselines, center lines and topographic features.
- Provide construction staking for streets, curb and gutter, sewers, water mains, building sites and related facilities for construction projects.
- Quality control in the field such as checking profiles for proper grades, verify existing conditions, etc.
- Prepare and maintain necessary records and reports.

Experienced and efficient use of Civil 3D required.

Bachelor's degree in Surveying or related field preferred. Ability to obtain LS in South Dakota within a year.

Must have a valid driver's license and be able to operate motorized vehicles.

Paid vacation, paid holidays, investment plan with company match.

Send resume to nate@jsaengineers.biz or to

Nate Jibben, LS

JSA Engineers/Land Surveyors

6810 S. Lyncrest Ave, Suite 101

Sioux Falls, SD 57108

Executive Director's Note

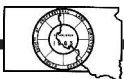
Greetings, SDSPLS Members.

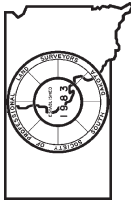
Inside this issue you will find awesome photos from the 2020 Annual Convention, a great read from the SD Historical Society, the next in the Supreme Court Series, and validation of the quality work you do every working day. Please offer thanks to our sustaining members when you can, as listed on the back cover.

We have fully launched the new web page at sdspls.wildapricot.org. You have been receiving email from this new online software we are now using for membership renewal and event registration. You may create your own profile with your email address provided on your membership application or renewal form. You can now apply or renew your membership online with a credit card as well. Please send feedback via email to let me know your thoughts on this new software. You can also download the app on your mobile device.

Post convention legislative season has kept us busy. The SDSPLS has been paying close attention to the bills brought to the legislature. Please make sure your email from the SDSPLS is not going to your junk mail. You may need to adjust your settings as we are now using Wild Apricot instead of Mail Chimp to send out membership wide emails and renewal notices. Please let me know if you have any questions and thank you for your patience as we go through this transition.

Respectfully,
Rebecca Dodds, Executive Director





SOUTH DAKOTA SOCIETY OF PROFESSIONAL LAND SURVEYORS

Affiliate of the National Society of Professional Surveyors

APPLICATION FOR MEMBERSHIP

Complete the following

Name: Last:
 First:

Preferred Mailing Address:
 Business _____ or Home _____

Business: Name:
 Address:
 City:
 State: Zip:
 Phone:
 Cell:
 Email:

Home: (Required) Address:
 City:
 State: Zip:
 Phone:
 Email:

Check one and sign below

Member (In-State w/NSPS):	___ \$175	Technician:	___ \$75	Life Member (In-State w/NSPS):	___ \$65
Member (Out of State):	___ \$125	Associate:	___ \$50	Life Member	___ \$25
LSIT:	___ \$100	*Student:	___ \$25	Sustaining:	___ \$250

*In-State classifications are determined by the home mailing address.
 Fees for In-State Members (\$175) include NSPS membership.
 Fees for Out-of-State Member (\$125) do not include NSPS membership.
 In-State Life Members have the option of selecting NSPS membership (\$65)*

Member:

- a) Any person licensed to practice the profession of surveying, according to state or provincial statutes;
- b) A GS-1373 employee classified as a Land Surveyor or Supervisory Land Surveyor;
- c) An academician holding a bachelor's or higher degree and the rank of assistant professor or higher rank and teaching in an ABET accredited or a state land surveying registration board surveying program;
- d) A practicing surveyor or surveying teacher who has attained a minimum of six years experience in responsible charge of surveying activities or four years of education and two years of experience may submit credentials for consideration.

LSIT:

Any person who has successfully completed the LSIT examination according to state or provincial statutes.

Technician:

Any person who has successfully completed any level of the Certified Surveying Technician program as administered by and through the National Society of Professional Surveyors.

Associate:

a) Pre-Professional: Any person who by their employment is actively engaged in a program leading to a career in the profession of surveying;

b) Subscriber: Any person with an associative interest in Surveying whose qualifications do not meet the requirements of Member, LSIT, or Technician.

*Student:

Any person who is a full-time student studying surveying or related fields.

Sustaining:

Any person or organization, either individuals, partnerships or corporations, who or which are engaged either in the manufacture or distribution of surveying instruments, equipment or supplies, or in the compilation or reproduction of maps, or in the performance of services for land surveyors.

Life Members:

Any person who has attained 60 years of age and has retired from active practice as a land surveyor and who has paid dues for each of the nine years preceding and also in the year which he or she attained such age or so retired, whichever is later.

Signature of Applicant

I certify that I qualify for the class of membership I have applied for as outlined below.

 *Signature of Faculty Member (required for students)

I certify that the applicant is a full-time student. (12hrs or more)

 Date

 Institution

Send complete application & payment to: SDSPLS - PO Box 9625 - Rapid City, SD 57709
 (phone) - 605-545-7884 • (email) - SDSPLS.RebeccaDodds@outlook.com

Frontier Precision and Trimble deliver the high-tech solutions you need, with the Trimble X7 – an easy-to-use 3D laser scanning system.

The X7 is your integrated solution to capture millions of data points in the fraction of the time it would take using traditional survey methods.



Game-changing 3D scanning technology, backed by the people who keep you in the lead.

Powering your productivity by offering:

Simple.

The X7's Perspective software provides an intuitive workflow in a compact design.

Smart.

Automatic calibration and Trimble Registration Assist means you're confident in your data.

Professional.

The X7 is the perfect blend of innovation and performance with survey grade self-leveling and an IP55 rating.

Frontier Precision is ready to show you how to break through with 3D laser scanning.

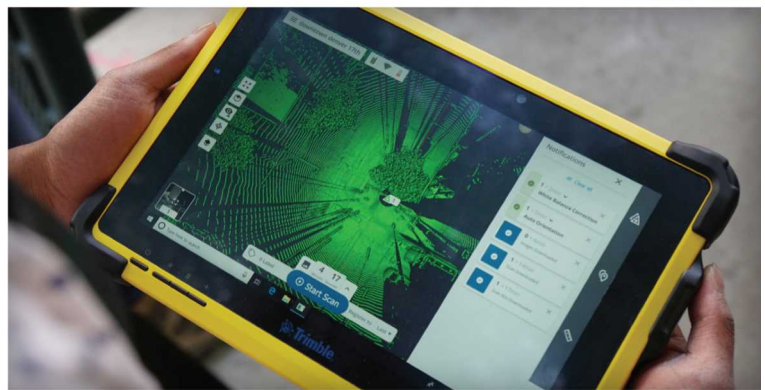
To learn more, visit: www.frontierprecision.com/X7scan

Frontier Precision | 2020 Frontier Drive, Bismarck, ND 58504



WANT MORE INFORMATION? CONTACT:
Nathan Kupfer, Geospatial Sales Representative
nathank@frontierprecision.com
701.222.2030 or 800.359.3703 [Toll Free]

The TRIMBLE® X7
Intuitive Workflows
Automatic Calibration
Self-leveling and IP55 Rated



South Dakota Society of Professional Land Surveyors
PO BOX 9625
Rapid City, SD 57709

STANDARD
US POSTAGE
PAID
PERMIT #618
RAPID CITY SD

CHANGE SERVICE REQUESTED

SUSTAINING MEMBERS

These 2020 Sustaining Members support YOUR Society.
Show your appreciation and call a Sustaining Member first!

Frontier Precision

2020 Frontier Drive
Bismark, ND 58504
1-800-359-3703

RDO Integrated Controls

700 7th Street S
Fargo, ND 58103
701-239-8726
lstachon@rdoequipment.com

SURV-KAP, Inc.

PO Box 27367
Tucson, AZ 85713-5220
520-622-6011

BACKSIGHTS & FORESIGHTS

