

May 2020

BACKSIGHTS & FORESIGHTS



**N62 Disk in Old Culvert Headwall on Old SD Hwy 10
3.3 Miles E of Lake City, SD**

Photo Credit: Lundee Stadtler, Holton Engineering

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Website Gets a New Look!

COVID-19 Updates

NSPS Scholarship Winners

Tom Sweeney Wants to See You!

**The Land Surveyor's Guide to the
Supreme Court of SD Part 30**



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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

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

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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.

President's Message



Greetings, SDSPLS Members.

I hope times have been good for everyone. Hopefully the pandemic has not affected our membership or their families and loved ones to any great extent. I believe we have transitioned from winter to spring, maybe back to winter for a bit, and finally into summer...typical South Dakota weather.

As I mentioned before, the goals for the Board this year would be improving our social media and website, which I am proud to report as coming together nicely. I encourage you all to visit the website and check out the updates and progress made with our social media accounts. These will keep you more in touch with information that we will all need to deal with: the Datum changes coming in 2022, the zones NGS will set, the possible Low Distortion Projections established by stakeholders for South Dakota, the removal of the US Survey foot and many more exciting changes. This should help get information out to the public and help surveyors explain changes to clients, if necessary.

As always, 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.

Everyone be careful and stay safe.

Travis Jacobson, RPLS

2020 SDSPLS President

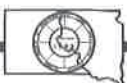
2021 SDSPLS ANNUAL CONVENTION

JANUARY 6, 7, & 8

ARROWWOOD CEDAR SHORE RESORT

CHAMBERLAIN, SD

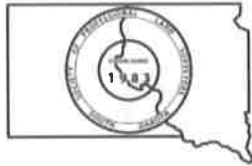
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Public Information - Message from Committee Chair Ruthie Wetzel, LSI

sdspls.wildapricot.org
Apps DSM-5 Experiences azHR Contacts Etc 4.02.1 ROBERT explains the Anger Management Release Original List Breaths Origin Videos Agencies Directory - South



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SDSPLS News

2020 COVID-19 Response for South Dakota Counties:

Pennington County

Other News

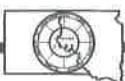
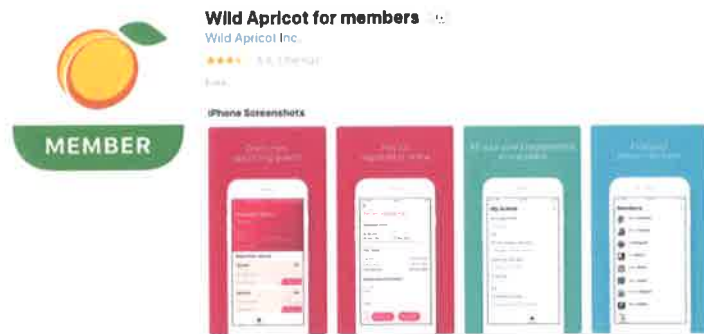
SDSPLS and the Public Information Committee are proud to announce the complete transition to our new website. The new site can be found at sdspls.org. We are excited to continue providing up to date surveying information to the public with the addition of secure online registration and payment options. We encourage the use of our site for related job postings and advertisements. Please feel free to check in periodically to view new legislation, annual convention information, and our quarterly newsletter.

Wishing all a safe and happy summer.

Ruthie Wetzel
Public Information Committee Chair

Stay connected and LOG IN as a user using your email on the new website or DOWNLOAD the Wild Apricot APP and update your membership information, pay dues, register for events, and more!

Email SDSPLS.RebeccaDodds@outlook.com for assistance!



SDSPLS – Board of Directors Meeting
(Zoom Meeting)
Friday, April 17, 2020

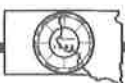
(This report subject to Board approval)

In Attendance: President Travis Jacobson, Past President Linda Foster, President-Elect, Jon Collins, Secretary Jon Nelson, NSPS Director Tom Berkland, Young Surveyors Chair David Feilmeier, Public Information Committee Chair Ruthie Wetzel and Executive Director Rebecca Dodds

1. Meeting called to order at 12:00 p.m. (Central) by President T. Jacobson.
2. Acceptance of Agenda: No new business added. ++Motion by Berkland to approve the agenda as presented, 2nd by Collins - Motion approved.
3. Secretary's Report – Jon Nelson: Written minutes submitted for review and approval.
 - a) January 08, 2020 Board of Directors meeting minutes
 - b) January 09, 2020 Annual Membership meeting
General discussion pertaining to meeting minutes.
++Motion by Berkland to approve meeting minutes as submitted, 2nd by Collins - Motion approved.
4. Treasurer's Report – Travis Kropuenske: Written report submitted. Dodds reported Kropuenske submitted a preliminary report for review and approval. Dodds presented and reviewed convention expenses and income. Dodds and Kropuenske are working together to modify the reports produced by the QuickBooks software to enable the Treasure's report to be produced by QuickBooks. Dodds indicated QuickBooks exports a profit and loss report that could be utilized for the Treasures Report with a few modifications. Berkland suggested adding an additional user to the QuickBooks software to enable Kropuenske to run the Treasurer report directly from QuickBooks. Dodds stated adding an additional person would cost an additional \$50 per month. General discussion pertaining to collection of outstanding payment for auction items. Dodds indicated most of the auction items have been paid for, but there are a few outstanding payments that need to be collected. ++Motion by Berkland to approve Treasurer's Report as submitted. Foster suggested a meeting involving President T. Jacobson, President-Elect Collins, Treasurer Kropuenske and Executive Director Dodds to iron out access for Kropuenske to access QuickBooks and run the Treasure's report directly from the software. Berkland retracted his original motion to approve the preliminary Treasure's report. ++ Motion by Foster to have a meeting between T. Jacobson, Collins, Kropuenske, and Dodds to

discuss financial structure, modify QuickBooks reports and submit a Treasure's report for approval by May 15th, 2nd by Berkland - Motion approved.

5. President's Report – Travis Jacobson: No written report submitted. Jacobson stated not much activity going on since convention. Acknowledgement of David Feilmeier for taking over Young Surveyors Chair vacated by Dani Huewe and acknowledgement of Adam Thompson for taking over Membership Chair vacated by President-Elect Jon Collins. Jacobson reported DPC was successful in identifying and acting on relevant bills during the Legislative Session. Jacobson thanked Dodds for alerting the membership to bills that affected the SDSPLS and the survey profession. Jacobson suggested a report summery should be put together and made available to the membership. Jacobson thanked Foster for submitting the applications to NGS for the 2020 State Plane Coordinate System. Jacobson thanked Wetzel for getting the new webpage up and the addition of new items.
6. Committee Reports:
 - a) Education – Kristi Goehring: No report.
Dodds indicated there is not a lot of activity going on with the educational institutions at this time due to the COVID-19 shutdown.
 - b) Legislation – Gary Andersh: No report.
 - c) Design Professionals' Coalition – Don Jacobson: No report. T. Jacobson indicated a report summarizing Legislative action relating to surveying should be made available to the membership.
 - d) Professionalism & Practice – Dean Scott: No report. General discussion pertaining to Dodds response letter to Steve Oberg of Lynn Jackson Law Firm in Sioux Falls, inquiring if a copy of the 2003 Guidelines for the Professional Practice of Land Surveying in South Dakota is available. No activity pertaining to this inquiry since Dodds response letter.
 - e) Public Information – Ruthie Wetzel: Written report submitted. Highlights of the report include Facebook, Instagram and Twitter are now up and going. Website updates are finished but Wetzel would like to include the scholarship application and hardship grant applications to the website. Dodd to provide scholarship and hardship grant applications to Wetzel for posting to the website. Wetzel confirmed readiness to point the domain name to new website now that the old website is not needed anymore. Jacobson approved pointing the domain to the new website. Find a Surveyor link to be made available on the new website. Dodds indicated surveyors and survey companies pay \$50 annually to be included on the find a



surveyor link. Dodds to forward the list of surveyors and survey companies that have paid to date to Wetzel to make available on the new website. Wetzel would like to include a listing of all past Presidents with years of service to the website. Foster to provide list of past Presidents and award winners to Wetzel to be added to the new website. Wetzel inquired about allowing sustaining members and others to advertise on the new website to help offset the cost of website hosting. Dodds indicated the new website cost is included in the management of the membership database with Wild Apricot of \$90 per month and the domain name is about \$40 per year to maintain with Humanear, who hosted the former website. Dodds stated the cost of database management and website together would be the same as last year. General discussion on number of sustaining members advertising in Backsights & Foresights newsletter. Dodds indicated RDO is still a sustaining member, but recently pulled their add from the newsletter for the May edition. Berkland suggested giving Sustaining Members and other interested advertisers free ad space on the new website this year and to come up with a cost for next year per advertisement. Travis Jacobson instructed Wetzel to allow advertisements on the new website and for the board to come up with a cost per advertisement for next year. Wetzel also inquired about job postings to the new website. Dodds indicated job listings are free of charge and a reminder will be posted in the upcoming newsletter. Wetzel to include job postings on the new website. Wetzel to work with Foster to post information on the 2022 datum change.

- f) Membership – Adam Thompson: No report.
- g) NSPS – Tom Berkland: No written report submitted. Berkland reported NSPS canceled the Spring meeting due to the COVID-19 pandemic. An online executive meeting was scheduled at the time of this board meeting. Berkland recently participated in NSPS test of new web-based meeting source. Fall meeting still scheduled and has not been cancel to date. Berkland also reported Ligado Networks formally known as LightSquared LLC is seeking FCC approval to provide a nationwide wireless broadband network integrated with satellite coverage. LightSquared intended to combine its existing satellite communications services with a ground-based 5G-network that transmits on the same radio band as its satellites. The band is right next to the primary GPS frequency (L1) and is so close to the GPS signals that many GPS devices could pick up the stronger LightSquared signals and become overloaded. The

saturation of the GPS frequency could force existing GPS users to upgrade their devices and/or accept GPS performance losses. The FCC recently approved Ligado’s proposed changes that address the GPS community’s concerns and protect the GPS frequency from harmful interference. Ligado offered to relinquish its frequency adjacent to GPS in return for authority to operate at another band.

Young Surveyors – David Feilmeier: No written report submitted. Feilmeier reported no activity due to the COVID-19 pandemic. Feilmeier inquired about information on where Huewe left off and what she was working on. Jacobson instructed Feilmeier to contact the Young Surveyors group for more information.

- h) Trig Star – Chad Dodds: Written report submitted. Trig-Star competition Scheduled for May was canceled due to the COVID-19 pandemic. The national competition was also canceled by NSPS.

7. Chapter Reports

- b) West River – Brad Limbo: No report. Foster indicated no activity since January meeting.
- c) Big Sioux – Aaron Norman: No report. Feilmeier indicated no activity to report or meeting since convention.
- d) Missouri River – Don Jacobson: No report. T. Jacobson indicated no activity since convention.

8. Old Business

- a) Corner Records/On-line Records System – Foster, Nielson, Peters and Jacobson: Foster reported a meeting was held. Based on the meeting, Peters suggested the committee move forward and go through codified law and administrative rules and draft changes to be reviewed by Department of Labor Attorney on behalf of the South Dakota Board of Technical Professions. Foster to get draft to board for review before July BOD meeting. Foster indicated the committee is working with the State GIS coordinator in the Bureau of Information and Telecommunications (BIT) on licensing options to enable posting of corner records. General discussion pertaining to fee structure for new records system.
- c) SDBOTP – Licensure Applicant Evaluation Form – Peters, Norman, Breitling and Meyer: Foster indicated this was an issue Peters brought forward concerning application evaluations and approvals. Collins indicated the administrative rule was updated this Legislative Session addressing requirements for comity licensure. January 8th BOD meeting - 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 BOD meeting.
- d) Social Media (removed from agenda)



- e) Augmented Sand Box (removed from agenda)
 - f) (Error in outline - removed from agenda)
 - g) Legislative Planning – T. Jacobson indicated DPC will put together background information and summary of Legislative Session to be provided to membership. General discussion pertaining to DPC funding.
 - h) Low Distortion Projection (LDP's) and 2022 Datum Change: Nelson indicated SDDOT's Legal Office is currently looking into necessary legislative changes. Foster reported she submitted, on behalf of the SDSPLS and other Stakeholders, a proposal for a ± 50 ppm multiple-zone layer with approximately 6 zones providing statewide coverage to be designed by NGS. Foster also reported she submitted a proposal for a ± 20 ppm Low Distortion Projection (LDP) with approximately 14 zones providing statewide coverage on March 30th to be designed by the Stakeholders. The Stakeholder design will take the place of the NGS-designed ± 50 ppm but will remain a fallback design if a Stakeholder design is not reached. Foster indicated stakeholder designed LDP's need to be submitted to NGS by March 3rd, 2021.
 - k) Executive Director Updates: No written report submitted.
Dodds indicated an updated budget was sent out prior to this meeting. Kropuenske helped with changes to the budget discussed at the January meeting.
 - l) Southeast Technical Institute – Breittling Retirement: No additional information. Berkland indicated, based on previous discussion, SDSPLS does not have much say pertaining to Rod's replacement.
 - m) Website and Webpage/Wild Apricot Merge: All content from the old website has been moved to the new website and it has been approved to point the domain to the new webpage. No further action needed at this time.
9. New Business
- a) COVID-19 Impacts: Continue following CDC guidelines and social distancing and take care of immediate family members. Dodds inquired about incoming hardship grant applications and how the Board of Directors would like to receive them for review and approval. T. Jacobson instructed Dodds to e-mail hardship grant applications to the Board of Directors as they are received and to not wait until the July BOD meeting to review and approve.
 - b) 2021 Convention Contingency Plan: General discussion pertaining to setting up speakers and setting up convention. Board advised to continue scheduling convention and speakers until further

notice. T. Jacobson indicated a survey was conducted several years ago pertaining to speakers and that information could be utilized for Speaker and speaker topics. BOD instructed Dodds to gather information pertaining to venue change options for July meeting. T. Jacobson indicated things to consider are room availability, sister hotel next door or transportation between hotels and meeting room size. The better itemized the quote the better we can present to the membership.

- 10. Next Board of Directors Meeting: TBD.
- 11. Meeting adjourned at 1:50 pm (Central) by President T. Jacobson

Respectfully Submitted
By: Jon Nelson – SDSPLS Secretary



“Hold yourself responsible for a higher standard than anybody else expects of you. Never excuse yourself. Never pity yourself. Be a hard master to yourself-and be lenient to everybody else.”

— *Henry Ward Beecher*



COVID-19 UPDATES from the Executive Director

As the last newsletter was going to press, the world was beginning to change as it responded to what is now a pandemic. Schools and universities were closed as well as many businesses. Surveyors have continued to provide essential services throughout our state with precautions of PPE and social distancing (which isn't too difficult for most). Stimulus checks and payroll protection and small business loans gained attention.

The NSPS signed on letters to the president and other government officials to ask for increased federal infrastructure investment as well as urging appropriated funding of at least the FY 2020 level (\$262.5 million) for FEMA's Flood Hazard Mapping and Risk Analysis Program.

Trig-Star was cancelled for this year due to the location and venue being cancelled. The NSPS also cancelled the national competition, with special awards to be given to those winners from the few states who took the test before the announcement. Opportunities to share the profession with students this spring in person disappeared. As we move to meeting with others more frequently online, perhaps there will be an opportunity to reach out in that way.

The SDSPLS quarterly board meeting was held via ZOOM conference online, and will do so again in July. Please review the minutes in this newsletter to stay informed.

Parents found themselves working and sometimes in the role of teacher and daycare while continuing to work. Trainings and events across the country were cancelled or postponed, including the Young Surveyors and NSPS Directors events. Planning continues for the annual convention, while the SDSPLS Board of Directors continues to keep safety in mind.

CDC.gov is the site for the most up to date guidelines in regards to safety during this pandemic. Currently, hand washing, staying home when sick, social distancing, and wearing a face covering in public are all recommended.

Please visit [NSPS.org](https://www.nsp.org) for additional guidelines in regards to where to purchase personal protective equipment and other information you may find useful and informative. Though they are working from home, they are doing great work!

Be safe and well.

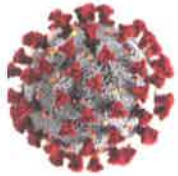
Rebecca Dodds, SDSPLS Executive Director

“Although the world is full of suffering, it is also full of the overcoming of it.”

— Helen Keller



What you should know about COVID-19 to protect yourself and others



Know about COVID-19

- Coronavirus (COVID-19) is an illness caused by a virus that can spread from person to person.
- The virus that causes COVID-19 is a new coronavirus that has spread throughout the world.
- COVID-19 symptoms can range from mild (or no symptoms) to severe illness.



Know how COVID-19 is spread

- You can become infected by coming into close contact (about 6 feet or two arm lengths) with a person who has COVID-19. COVID-19 is primarily spread from person to person.
- You can become infected from respiratory droplets when an infected person coughs, sneezes, or talks.
- You may also be able to get it by touching a surface or object that has the virus on it, and then by touching your mouth, nose, or eyes.



Protect yourself and others from COVID-19

- There is currently no vaccine to protect against COVID-19. The best way to protect yourself is to avoid being exposed to the virus that causes COVID-19.
- Stay home as much as possible and avoid close contact with others.
- Wear a cloth face covering that covers your nose and mouth in public settings.
- Clean and disinfect frequently touched surfaces.
- Wash your hands often with soap and water for at least 20 seconds, or use an alcohol-based hand sanitizer that contains at least 60% alcohol.



Practice social distancing

- Buy groceries and medicine, go to the doctor, and complete banking activities online when possible.
- If you must go in person, stay at least 6 feet away from others and disinfect items you must touch.
- Get deliveries and takeout, and limit in-person contact as much as possible.



Prevent the spread of COVID-19 if you are sick

- Stay home if you are sick, except to get medical care.
- Avoid public transportation, ride-sharing, or taxis.
- Separate yourself from other people and pets in your home.
- There is no specific treatment for COVID-19, but you can seek medical care to help relieve your symptoms.
- If you need medical attention, call ahead.



Know your risk for severe illness

- Everyone is at risk of getting COVID-19.
- Older adults and people of any age who have serious underlying medical conditions may be at higher risk for more severe illness.



Tom Sweeney: Rapid City's Best Friend

"Tom Sweeney wants to see you."

This slogan wasn't just advertising for Sweeney's well-known Rapid City hardware store. It also reflected Sweeney's genuine desire to befriend people.

"One man in Rapid City was always ready to meet the stranger within the gates with a smile of welcome and a hearty handshake," stated an article in the Rapid City Daily Journal upon Sweeney's death in 1917. "Many a stranger in the city has found his first friend to be Tom Sweeney. Many a visitor to the city has been led to better acquaintance with this man by the sign, 'Tom Sweeney wants to see you.' And Tom did. He wanted to see all of the people who came to this section of the state because he was so full of the satisfaction of his home."

Sweeney was born on Oct. 20, 1856, in Boonville, N.Y. He came to the Black Hills in 1878 and had a number of jobs before starting his hardware business in 1879 or 1880 in the 500 block of St. Joseph Street in Rapid City.

In 1886, Sweeney built a three-story brick building with 42,000 feet of floor space on the southwest corner of Main and Seventh streets to house Tom Sweeney Hardware Company. The business, of which Sweeney was president, treasurer and general manager, had the most extensive and varied stock of merchandise in western South Dakota. It had expanded from a business that sold new and second-hand hardware into a department store that carried almost every kind of commodity the community needed.

Among the items sold was the roundup stove. This was a portable stove invented by Sweeney that was sold throughout the West. It was considered the most complete and convenient stove of its kind on the market.

Sweeney had extensive interests in the livestock industry in South Dakota and Wyoming, being among the largest cattle men in the Black Hills, according to "History of South Dakota" by state historian Doane Robinson.

By 1904, the Sweeney Hardware Co. employed 14 men, including plumbers, saddlers, harness makers, blacksmiths and wagon makers, according to Robinson.

"All through the Hills you used to see his slogan: Tom Sweeney Wants to See You. And, for one reason or another, he really meant it," wrote Robert J. Casey in the book "The Black Hills."

Sweeney had the ability to make the customer feel important, Casey wrote. Casey's own experience in entering the store for the first time was being greeted by Sweeney, who conveyed the impression that Casey had made the whole day brighter just by coming through the door.

Sweeney's personal touch extended beyond handshakes and friendliness in the store. He also wrote letters to customers, thanking them for their past business and calling their attention to certain merchandise.

Like other business owners of early Rapid City, Sweeney offered liberal credit. An advertisement for the hardware store stated, "We are after the man with the moderate income. The more limited your means, the more reason why you should buy your merchandise here, for then you are sure of longest service and best satisfaction."

Sweeney never held public office, but he was known as a one-man chamber of commerce.

One of the first companies of the Rapid City Fire Department was named the Sweeney Hook and Ladder Company in honor of the merchant, and a baseball team also bore the hardware store's name.

Sweeney married Mary Wells in 1883 in Rapid City, and they lived in a house at the corner of Quincy and 11th streets. A card group known as the Razer's Club often met at the Sweeneys' home on Saturday nights.

It was on a trip to Rapid Valley to sell liberty bonds in support of the Allied cause in World War I that Sweeney was fatally injured. The vehicle in which he was a passenger was struck by a freight train engine while crossing railroad tracks in Rapid City. Sweeney was thrown from the vehicle and died of his injuries a day later, on Oct. 25, 1917.



“His death came in such a way that was typical of his whole life. He was even then engaged in a mission for this city, his state and his nation,” stated the Rapid City Daily Journal in reporting remarks made by the four speakers at the memorial service at the Elks Theater.

Burial was in Mountain View Cemetery in Rapid City.

The hardware store was later sold. The building stood for more than 100 years, until destroyed by a fire in 1997. The owners of the property rebuilt on the site.

The pioneer businessman has not been forgotten, as the Minnilusa Pioneer Museum in Rapid City contains a display window dedicated to his store, a replica of the wagon wheel hub that stood outside the front door of the store, and a chair that was bought at the hardware store.

“There will never be another like him, for they are not made. He was a type unto himself, and in his death Rapid City loses one of her very best friends,” stated the Rapid City Daily Journal.

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.



Tom Sweeney, Hardware store

SOUTH DAKOTA

HISTORY & HERITAGE

“On the other side of a storm is the strength that comes from having navigated through it. Raise your sail and begin.”

— Gregory S. Williams



NSPS FOUNDATION
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NJSPLS SCHOLARSHIP

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NJ Institute of Technology



**NETTIE DRACUP
SCHOLARSHIP AND GLIS
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LOVING SCHOLARSHIP

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**CONGRATULATIONS
TO ALL OF THE
SCHOLARSHIP
WINNERS**

2021 Scholarship
information will be posted
on the NSPS website in the
Fall 2020



**PLSSF 4-YEAR
SCHOLARSHIP**

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The Land Surveyor's Guide to the Supreme Court of

South Dakota – Part 30 – 1964 to 1967

This article represents the thirtieth 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 a survey control the division of accretion or reliction?

Feight v Hansen (1964)

Our last case on the topic of riparian rights focuses squarely on the establishment of boundaries, much like the Karterud case of 1923, previously reviewed herein, although that case involved the division of land situated on a lake, while land lying along the Missouri River forms the setting in which this controversy plays out. Here once again the Court is required to evaluate the principles that relate to the division of land that was formed or appeared as a consequence of natural long term variations or fluctuations in bodies of water that constitute natural boundaries, either through accretion or reliction, and while striving as always to prevent inequitable results, the Court also acknowledges that such situations are necessarily subject to resolution by differing means and methods. Just like the Karterud case, this one presents a scenario in which lot lines cannot simply be projected across the accreted or relicted land without coming into serious conflict, but unlike that earlier case, this legal struggle is replete with evidence of the historic use of the land at issue, and the ultimate outcome clearly reflects the potential significance of established land use and relevant acts of the parties and their predecessors, whenever the proper means of division of such land is in contention. By this point in time, all of the fundamental concepts pertaining to major riparian issues such as navigability and re-emergence had been addressed by the Court, as well as the proper treatment of water boundaries formed by lakes and rivers, including title and boundary issues relating to islands, so judicial precedents were in place to guide the resolution of future riparian disputes, the presence of which would have the effect of minimizing the number of such cases that would reach the Court going forward. Another controversy over accretion

came before the Court in 2001 however, In the Matter of the Estate of Rosenbaum, which featured a disagreement between siblings, who were heirs of Rosenbaum, over the ownership of an unspecified amount of the land that their late father had held an interest in. In that case, Rosenbaum and one of his sons were the co-owners of two riparian lots, while Rosenbaum was the sole owner of a substantial amount of adjoining riparian land along the Missouri River. Accretion had enlarged all of the lots in which Rosenbaum held an interest, and the son quitclaimed all of his interest to his father, whereupon title to all of the land at issue was quieted in Rosenbaum. The father and son had made a reconveyance agreement however, and Rosenbaum carried out that agreement by conveying an identically described interest back to his son, but only after the quiet title action had been completed, using descriptions that referenced a plat which had evidently segregated the accretion from the original lots, thereby treating the accreted area as a separate tract of land. After Rosenbaum died, the son claimed the portion of the accretion attached to his lots, but his siblings contested his claim, maintaining that the accretion had been legally detached from the original riparian lots. The Court reversed a lower court decision in favor of the son, holding that the accreted area in question had been legally attached to the adjoining lots when the son quitclaimed his interest in the land, and it had therefore passed to the father, without being recited in that deed, but the same accreted land had not passed back to the son under the reconveyance, because by that time it had been identified as a separate tract, so the son had reacquired only the described lots, and not the accretion that had once been legally part of those lots. This ruling of the Court indicates that the very same legal description which includes accretion at one point in time, may not include it at a later point in time, if an intention to separate the accretion can be shown, and the act of platting accretion as a distinct tract is evidence of intent to isolate it from any described tract to which it had been attached.

1861 - A certain township through which a particularly winding stretch of the Missouri River ran was subdivided and platted by the GLO. The river ran northeasterly as it entered the west side of the township, but in the south half of Section 16 it entered a severe bend to the south, so 4 riparian government lots were platted along the northern extremity of the bend, in the south half of Section 16, with Lot 1 being in the southwest corner and Lot 4 being in the southeast corner of that section. A total of 8 lots were also platted all along the west side of Sections



22 & 27, since the north bank of the river sliced into those sections as well, as it arced sharply to the south, after having passed through Section 16, before resuming its generally easterly course. No land was platted in Section 21 at all, and only one small lot was platted in Section 28, in the extreme southeast corner of that section, due to the presence of this broad northerly bulge in the river.

1862 to 1941 - During the early part of this period, all of the aforementioned lots lying along the north and east sides of this river bend were apparently patented into private ownership, but no names, dates or other acquisition or conveyance details from this time period are known. Throughout this period, the river evidently receded southward from this bend in a steady and gradual manner, and the owners of the 4 lots in Section 16 continually extended their occupation, farther and farther to the south, deriving the full benefit of the river's retreat. At an unspecified time during this period, a Cottonwood tree took root along the north bank of the river and it grew to become a dominant feature of the landscape. This tree was located near the point where the center of Section 21 would have been, about 3000 feet south of the 1861 location of the north bank of the river, and directly south of the platted boundary between Lots 2 & 3 in Section 16. The owner of Lot 2 built a fence along the east line of that lot extending all the way to the tree, and used the land west of that fence as a pasture, while the owner of Lot 3 used the land east of the fence, presumably in the same manner. The owners of Lots 1 & 4 also extended their use of the exposed land all the way south to the river, but the owners of the lots in Section 22 never used any land west of the west line of that section, so one by one they all gradually became completely cut off from the water. The north bank of the river continued to march steadily south however, until finally stabilizing near the south line of Section 28 by the end of this period, having moved about 2 miles to the south over these 8 decades. Therefore, during the latter portion of this time period, the owners of the lots that had been platted in Section 16 were each using strips of land that were over 2 miles long, stretching due south from Section

16, across all of Section 21 & most of Section 28, reaching all the way to the river. The fence running to the Cottonwood tree had been projected on the same alignment about a mile and a half further south from the tree, all the way to the river, at an unknown time, but by the end of this period that portion of the fence had been removed, and only the portion of the fence running north from the tree was still in existence. The owners of the lots in Section 27, like those in Section 22, never used any land west of their section line, so by the end of this period they had also been completely cut off from the water by the owners of the lots in Section 16, who had monopolized the use of all of the exposed land.

1942 - Kapp, who had become the owner of Lot 2 at an unspecified time, filed an action against Hansen, who had become the owner of Lot 3 at an unspecified time, and also against another party who owned Lot 1, seeking to quiet her title to all of Lot 2, including the portion of the exposed riverbed that had been fenced in by her family or their predecessors for an unknown length of time. The area claimed by Kapp was a quarter mile wide, corresponding with the platted width of her lot, but it ran due south for approximately 2 miles, all the way to the north bank of the river, the location of which had apparently stabilized by this time, in the southerly portion of the south half of Section 28.

1943 to 1960 - For unknown reasons, the legal action begun by Kapp in 1942 stalled and did not go to trial until an unspecified date near the end of this period. When the Kapp v Hansen trial was finally held, Kapp prevailed, but Hansen filed an appeal, sending the matter to the Court for review for the first time.

1961 - The Court declined to uphold the lower court decision in favor of Kapp, on the grounds that it was impossible to resolve the competing claims of Kapp and Hansen, the Court stated, without the participation of the owners of the riparian lots that had been platted along the west edge of Sections 22 & 27, because those parties had a legal interest in the exposed riverbed as well, so the Court remanded the case back to the trial court, pending the inclusion of those additional parties.



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1962 to 1963 - Instead of including the owners of any of the adjoining lots in their legal action however, as instructed by the Court, Kapp and Hansen each apparently set out to eliminate the land rights of those other parties, so that it would be unnecessary for them to take any part in this litigation. In order to accomplish this, they hired a civil engineer who proceeded to create a drawing based on the GLO plat, upon which he divided the exposed riverbed between the owners of the lots in Section 16, characterizing the entire area in dispute as accretion. Using the drawing created by the engineer, Kapp then obtained the agreement of the land owners situated to the west, that they claimed no interest in the accretion, and Hansen likewise obtained the agreement of the land owners situated to the east, that they claimed no interest in the accretion, which eliminated the need for any other parties to take any part in the litigation between Kapp and Hansen. Feight then acquired Lot 2 from Kapp, and Lot 1 as well from its owner, and Hansen acquired Lot 4, so the only boundary in controversy that remained unresolved was the one between Lots 2 & 3 across the whole 2 mile accreted area. Feight then filed his own action against Hansen, replacing Kapp as the plaintiff, seeking to quiet his title to Lots 1 and 2, which was essentially identical to the action that had been filed by Kapp over 20 years earlier, since Feight was still claiming, just as Kapp had, that the old fence line running due south through the big cottonwood tree, for the full 2 miles all the way to the river, represented the east boundary of the accretion that had attached to Lot 2.

Feight argued that the fence that had been built by an unknown predecessor of his, several decades earlier, running south from the southeast corner of Lot 2 in Section 16 all the way to the river represented an agreed boundary, effectively dividing all of the accretion between the lots lying to the east and to the west of that line, and that line still marked the boundary all the way to the north river bank, even though only the portion of the fence north of the tree still remained in place. Feight alternatively argued that he or his predecessors had acquired ownership of all of the accretion west of that line, marked by the tree and the fence, projected all the way down to the river, upon the basis of adverse possession. Hansen argued that the line marked by the tree and the fence did not represent a legitimate division

of the accretion, and it had never been settled or agreed upon by any of the prior owners of the lots in question as a valid line of division, so he was entitled to the ownership of all of the accretion lying to the east of the lot line that had been drawn by the engineer, which ran well to the west of the fence and tree, since only that line represented a correct method of dividing the accretion area. Hansen further argued that the historic use of the land in question by Feight and his predecessors as a pasture, although long continued, was insufficient to support Feight's claim of adverse possession up to the old fence line. The trial court ruled that the accretion division line that had been drawn by the engineer was acceptable, and it therefore represented the legal location of the lot line between Lots 2 & 3 through the entire accretion area, but also ruled that the predecessors of Feight had successfully adversely possessed all of the accretion lying west of the existing fence and north of the tree, although they had not successfully shown possession of any of the accretion south of the tree, so the engineer's line controlled the location of the boundary, but only south of the tree.

Upon finding this same conflict on its agenda for a second time, 3 years after it had first come to the Court, the first point to be addressed was of course the decision of the former litigants, Kapp and Hansen, not to follow the path that had been pointed out to them by the Court at that time. The Court is always open to alternative solutions that may be formulated by the parties themselves, when such solutions are reasonable and are not inequitable, and it recognized that difficulties are inherent in including a large number of parties in litigation, so the Court acknowledged that its prior instructions had amounted only to a recommendation, and the litigants were free to find another means of dealing with the land rights of their neighbors, as they had done. Since all of the surrounding land owners who could have made legitimate claims of ownership to some portion of the accretion at issue had voluntarily forsaken any such claims they might have made, the field of battle had been properly cleared, the Court held, allowing the contest between Feight and Hansen to proceed to a genuinely conclusive resolution, that would be legally binding upon all parties. Whether the land in dispute was really composed entirely of accretion, as opposed to avulsion, had never been positively established by evidentiary means, the Court noted, but the litigants each believed that it was all accretion, agreeing to that as a binding stipulation, and there was no evidence suggesting that a flood or any other avulsive event had caused the shift in the river's position, so the Court indicated that it was comfortable adjudicating the outcome on the basis that the land at issue had all been formed accretively. Both the magnitude of the change in



the river's location, and the lack of evidence identifying the river's location at any specific point in time between the 1860s and the 1940s, appear to leave a real possibility that some substantial portion of the river's movement, if not all of it, was in fact attributable to avulsion, yet since avulsion, like fraud or any other extreme or non-typical condition, can never be presumed to have occurred, and must be proven, the treatment of this land as accretion was both logical and fully in accord with the law. Having addressed these preliminary matters, before considering accretion division, the Court turned to the adverse possession aspect of the case, and found itself in complete agreement with the manner in which the lower court had applied it to this dispute. The Court agreed that the use of the accreted land north of the tree by the predecessors of Feight was sufficient to support adverse possession of that area, even though it had been used only as a pasture, because it had always been enclosed by the fence, but by the same token, the use of the land south of the tree was insufficient, since that area had been fenced only for a modest period of time, and when it was unfenced, the animals owned by the various parties had intermingled and ranged over the entire area. After confirming Feight's partial victory on his adverse possession claim, the Court went on to assess the larger issue that was presented for its review, which was the validity of the accretion division method that had been put into effect by the engineer hired by Kapp and Hansen, and quoting in part from Iowa decisions on this subject, the Court again expressed its approval and support for what had been done on the ground:

“By agreement between the plaintiff's predecessors and owners of lots to the west ... the boundary was established ... By agreement between defendants and the owners of lots in Sections 22 and 27 ... the boundary was established ... boundaries across the accretion to Lots 1, 2, 3 and 4 having been thus established, and the only dispute being as to the boundary line across the accretion to Lots 2 and 3 ... there are no other parties to the action ... plaintiff did not acquire by adverse possession any part of the accretion south of the big cottonwood tree ... In apportioning accretion, a principal object to be attained is the retention, as nearly as possible, of the former means and right of access to the water ... The direction of the original side lines between contiguous riparian tracts has no relation to the direction of the side lines of the respective accretion tracts ... A rule or mode

approved in many cases, unless ... inequitable, is to give the several riparian owners a frontage on the new shore proportional to their frontage on the old one ... the lines by which the new frontage is reached will be parallel, or converge or diverge, according as the new water line is equal to and parallel with, or is longer or shorter than, the original shore line.”

The engineer, to his credit, had come up with a valid solution that had proven to be entirely satisfactory to the Court, which therefore controlled the location of that portion of the line between Lots 2 and 3 that had not been rendered moot by adverse possession, and in fact the engineer's lines controlled the majority of the land in controversy. His solution was really a very simple one, which applied the basic riparian principle previously espoused by the Court, that lines of accretion or reliction division should always begin from each property corner on the meander line, and run either perpendicular or radially, as appropriate, in relation to the body of water in question. The engineer had simply observed that the course of the river in 1942 was about South 70 degrees East, so he ran his lines South 20 degrees West, perpendicular to the mean course of the river through the relevant area, ignoring all other factors, including the tree, the fence and the section lines, on the basis that none of those items had any control over the division of the accretion, and the Court viewed his method as perfectly equitable, since no buildings existed within the accretion area, so treating all of it as virgin ground was detrimental to no one. The most fundamental principle involved in accretion or reliction division, in the view of the Court, is the principle of shoreline proportion, because it is rarely equitable to merely project existing boundaries beyond meander lines, so creating a point of deflection at each property line, where it strikes the meander line, represents an objective and equitable means of pivoting each of the division lines into position, in relation to the relevant body of water. In addition, the Court reiterated the judicial concept that accretion cannot be divided without the participation of all parties holding any land rights to the area being divided, and no owner of any originally riparian land can be cut off from the water, unless that occurs by virtue of his own acquiescence to that condition, as was the case here. The right to claim a share of accretion during a proper division thereof can be lost through adverse possession, or lost through acquiescence, operating as a voluntary sacrifice of land rights that is equivalent in effect to adverse possession, in the eyes of the Court, and it is possible for both adverse possession and legal



accretion division to both apply at the same time to adjoining portions of the same property or properties, as is also illustrated by the outcome of this case. Being in complete accord with the evaluation and resolution of this situation that had emerged from the Court's decision to remand the case upon first encountering it, the Court upheld the lower court ruling in full, concluding that it admirably followed the spirit of the riparian principles that had been set forth by the Court for just such future purposes in the 1923 Karterud case. This outcome left both parties chagrined however, as Hansen was a loser north of the tree, while Feight was a loser south of the tree, but in reality both of them were lucky that they did not have to share any of the accretion with the Section 22 and Section 27 land owners, who wound up as the major losers, quite possibly because either they or their predecessors had been mistakenly informed that they could not claim to own any land lying outside of the section in which their lands were patented. Quite ironically, had Hansen not chosen to appeal the matter in 1961, this whole controversy would never have come to the attention of the Court, and the historic lines of division running due south to the river would have become permanent under the trial court's initial ruling, provided that the owners of the lots in Sections 22 and 27 had not elected to challenge that highly unorthodox configuration of the landscape.

Can land be added to a legal description by means of reformation?

Nicolaus v Deming (1966)

At this point we return to the topic of legal descriptions, and review a case that demonstrates the Court's approval of the concept of description reformation, in which the Court applies the same principles pertaining to the content of legal descriptions that we have previously discussed in reviewing the much earlier Novotny and Korte cases. Surveyors may well wonder why the Court does not treat every legal description as being absolute and simply decline to address any description corrections that may be suggested, but the answer lies in the Court's view of the role of descriptions in conveyances of land or land rights. While legal descriptions are certainly expected to properly outline the true extent of any described property, the law anticipates that description errors will necessarily occur, because descriptions are produced by people and people make mistakes, some of which result in valid grounds for a legal or equitable action, so to prevent injustice the law provides an avenue for the correction of such mistakes, when it can be shown that

such correction is the most appropriate remedy. In the perspective of the Court, a legal description serves as an essential vehicle for the expression of the crucial intentions of the parties, regarding the subject matter of any conveyance, but whether or not any given description truly captures and embodies that intent is always a valid question, which can be litigated and adjudicated, and once the correctness or completeness of a description is challenged, extrinsic evidence can be introduced to show that a description error exists, and if necessary, to identify it's origin. The most vital element of description reformation is evidence revealing the mutual nature of an alleged mistake, which can be either evidence indicating that all parties were genuinely ignorant that the mistake had been made, or evidence that the mistake produces a result which runs clearly contrary to the intentions of both parties to the conveyance. Of course the objective in studying description reformation is not to suggest that careless or sloppy description writing is acceptable and errors can just be corrected later, quite the contrary, inadequate descriptions can result in serious liability, for both the party who uses the erroneous description and the party who prepared it, the goal in studying the Court's treatment of description issues is to observe how the Court handles such matters, and most importantly to learn who bears the burden of mistakes of various kinds. While no land surveyor has ever been held liable for any description error by the Court, a professional abstractor was found to be liable for a description error that appeared in an abstract, in *DuPratt v Black Hills Land & Abstract*, which was decided by the Court less than a month after the case we are about to review. In the *DuPratt* case, *DuPratt* was a grantor who suffered financial damage as a result of liability that he incurred after using an erroneous description, which had been provided to him for his use by Black Hills, when *DuPratt* conveyed certain commercial property that he owned. In that case, the Court upheld a lower court decision reforming the mistaken description and requiring the abstractor to compensate *DuPratt* for his loss, since the company was the source of the description error. Interestingly, in so ruling the Court also approved the rejection of testimony provided by a surveyor who was engaged by Black Hills, stating that even uncontested testimony given by a surveyor serving as an expert witness can be treated as inconclusive and disregarded.

Prior to 1966 - Nicolaus was the owner of a ranch of unknown size, which was evidently situated along the Nebraska state line, in an unspecified location in Gregory County. Deming was the owner of a ranch containing

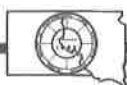


420 acres, which was apparently situated directly south of the Nicolaus ranch, on the Nebraska side of the state line. How either of these men had acquired their lands, and how long they had owned them, are both unknown, but Deming was over 80 years old, and both men were presumably highly familiar with the boundaries of their ranches. There is no indication of how their boundaries were known or marked, since no reference is made to any surveys, but presumably the lands were either fenced or marked in some way, and there had apparently never been any boundary dispute or any other issues of that kind in this location. There is no indication of how these properties were accessed, or whether or not they were bounded by any roads or other such visible boundaries, nevertheless the boundary locations were evidently reasonably clear and well understood, and no title or ownership issues appear to have ever been raised regarding either ranch. Nicolaus was the holder of a contract granting him an option to purchase the Deming Ranch. Who had composed the language of the contract, and how the land was described in it, are both unknown, but the legal description in this contract was presumably a typical listing of the aliquot parts that were believed to comprise the Deming Ranch, and either Deming or an agent operating on his behalf had been in responsible charge of the preparation of that document. Whether Nicolaus ever inspected Deming's land in person is unknown, so whether his notion of the size of the Deming property came from his own physical observation of the land, or solely from the acreage that was stated in the description, is also unknown, nonetheless it was his belief that he held the right to acquire the entire Deming Ranch, and Deming had never expressed any desire or intention to reserve any part of it. At an unspecified date, Nicolaus decided to exercise his purchase option and presumably he properly notified Deming of this decision, but for unknown reasons Deming had evidently decided not to sell his land and he refused to honor the contract. Nicolaus was intent upon acquiring Deming's land however, so he filed an action against Deming seeking to have Deming compelled to honor the contract. After filing his legal action, Nicolaus discovered, by

unknown means, that the legal description in the contract did not cover the entire Deming Ranch, an unspecified 80 acres of the land owned by Deming had been omitted from the that description, so Nicolaus amended his action to include a request for reformation of the description that had been used in the contract.

Nicolaus argued that there had never been any discussion or negotiations relating to the conveyance in question about dividing the Deming property in any way, or cutting out any part of it, or transferring only a portion of it, and he had the right to presume that the entire ranch was the subject of the conveyance, therefore the legal description was incomplete and erroneous, and it should be reformed by the addition of the missing acreage, to conform to the true intentions of the parties. Deming argued that he was under no obligation to sell any land to Nicolaus at all, but should he be required to do so, the description in question was correct and complete, and he had never expressly told Nicolaus that the entire ranch would be included in their transaction, so no description mistake had been made, and he was under no obligation to convey any additional acreage to Nicolaus, either by adding it to the existing contract at the agreed price, or even if Nicolaus were to pay him some additional amount for it. The trial court found that the evidence indicated that Deming had intended to sell his entire ranch, so the legal description in dispute represented a mistake, that could not be allowed to control the conveyance, and Deming was therefore legally obligated to convey his entire ranch to Nicolaus, including the missing 80 acres.

The primary conflict to be resolved in this case was the elementary disagreement over whether or not the option contract in question was legally binding, and such disputes are quite commonplace, so this case would not be noteworthy if it did not feature the additional issue presented by the incomplete legal description, bringing the issue of description reformation into play. Attempts to repudiate contracts of all varieties, for a wide variety of reasons, are frequently adjudicated by the Court, and the claim made here by Deming, that the contract at issue put him under no obligation to sell any land to Nicolaus, clearly had the appearance to the Court of yet another baseless claim, being made by a grantor who had simply changed his mind about selling his land, for personal reasons, after entering into a contractual obligation to do so. Therefore, the Court made very short work of this controversy, issuing a very brief opinion that disposed of all of Deming's objections to the trial court ruling against



him in a highly perfunctory manner, as the Court often does when it is especially unimpressed with the validity of the objections being made by an appellant. Although the lands of the litigants were situated in different states, and Deming was evidently a resident of Nebraska, he apparently raised no challenge to the jurisdiction of South Dakota over the matter at hand, so no jurisdictional issues needed to be addressed by the Court, and Deming was apparently content to put the fate of his ranch in the hands of the Court of another state. As we have observed in discussing the previous cases that we have reviewed on the topic of interactions and relations between grantors and their grantees, grantors typically have a general obligation to prepare and offer to their grantees a fundamentally problem free conveyance, and one highly important aspect of the grantor and grantee relationship is the responsibility for the creation or selection of a legal description for inclusion in the documents of conveyance. The grantor typically accepts this burden, and provides either a new or existing description, to serve as the basis for the intended conveyance, and that was the case here. While Nicolaus, for his part, bore the burden of vigilance that rests upon every typical grantee, to take notice of any apparent irregularities and fulfill the requirements of inquiry notice, Deming, as the grantor, was the party principally responsible for laying the foundation for a legally sound conveyance, in the eyes of the Court, and as his grantee, Nicolaus had the right to rely upon Deming to that extent. Supplying a correct and complete legal description was thus a duty that devolved upon Deming, the Court realized, and his apparent failure to provide such a description, whatever might have been the reason for this omission of land from his description, left him in a highly vulnerable position, since the Court is always loath to allow any grantor to benefit from his own mistakes. Noting the importance of the testimonial evidence in this matter, which involved a situation that was not susceptible to being resolved on the basis of physical evidence, the Court concluded that the description in question represented a clear example of a genuinely mutual mistake of the parties, leaving the erroneous description subject to reformation, since as it stood, the description that had been used by Deming did not accurately capture or embrace the full intended area:

“there was no misrepresentation unfair practice, or fraud worked upon the defendant ... he was not mistaken as to what he was signing, and understood the contract fully ... he had publicly stated he wanted to sell the land involved ... he was a man of a great deal of

business experience, though over 80 years old ... There was no serious claim that the land was worth more than the sale price ... the court permitted an amendment of the plaintiff's complaint at the trial to include the description of 80 acres in addition to that set forth ... the ranch operated as a unit ... defendant testified he was not interested in selling anything but the whole tract ... Defendants contend it was error to revise the contract and to include this added 80 acres ... a contract may be revised and specifically enforced in one proceeding.”

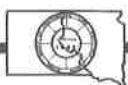
As we have previously seen, the Court observes the responsibility of a grantor to expressly reserve any land, or any land rights essential to it, that he does not intend to convey, in the language that he chooses to employ for purposes of outlining his intended conveyance to his grantee, and it was this basic principle that the Court applied in approving the judicial reformation of this particular description, to include undescribed land owned by the grantor as being part of his intended fee conveyance. It may be suggested that a grantor who neglects to include part of his land when describing it should be presumed to have intended to keep the undescribed area, but even if any such presumption were to be applied, it would typically be overcome, in cases such as this one, by superior evidence indicating an intention on the part of the grantor to convey his entire estate and retain nothing. While Deming was certainly at liberty to keep any part of his ranch that he wanted, at the time he entered the contract with Nicolaus, he was not at liberty to do so by providing a misleading description, that did not expressly state exactly what he intended to keep, in the form of a typical description exception. Since the evidence pointed distinctly toward inadvertent omission as the origin of the description problem, and no assertions of fraud had been made by either of the litigants, the Court had no difficulty in fully upholding the decision of the lower court in favor of Nicolaus, mandated that the entire Deming Ranch, as properly described, must be deeded to Nicolaus, for the agreed price. Its worthy of note that the Court acknowledged Deming as being an experienced businessman, highly familiar with land transactions, tacitly indicating the elevated legal burden that rests upon all those with professional knowledge regarding land rights, whenever they interact with others, such as Nicolaus, whose knowledge of land rights issues, such as description errors, is inferior to their own. In addition, since there was no indication that the intended sale was by the acre, the addition of the missing acreage had no impact on the price, because the description correction that was made



was not additive in nature, it served merely to bring the amount of land to be conveyed into compliance with the original intent of the parties, and thus it could not alter the agreed price for the entire ranch. Its also noteworthy that this outcome would have been no different even if the land had already been deeded, and the incomplete description had appeared in the deed, rather than in a contract creating a purchase option, because the principle of description reformation applies to all such documents, and it remains indefinitely available to rectify such all such description errors, until such time as the rights of other innocent parties, such as subsequent grantees or adjoiners, eventually intervene, preventing it from being equitably applied. Moreover, of particular significance to land surveyors, as frequent authors of legal descriptions, this case illustrates the importance not only of attention to detail when preparing descriptions, to avoid planting the seeds of costly litigation, but even more critically, the importance of focusing on insuring that the true intentions of all of the parties coincide, and that the description being created or used truly meets their mutual intentions in defining the actual area to be conveyed, regardless of the specific form that the description may take. Finally, Deming may have actually done Nicolaus a favor by repudiating the contract, since that resulted in the discovery of the incomplete description, if the error not been discovered until many years later it could potentially have become a serious liability problem for Nicolaus himself, were he to repeat the flawed description when conveying the land to some future grantee.

Description reformation does not always benefit the grantee however, and the 1908 case of *Tossini v Donahoe* provides an example of a scenario in which a grantor successfully maintained that description reformation was appropriate and derived the benefit thereof. In that case, Donahoe owned land lying along an unspecified portion of the Big Sioux River, which included the portion of the riverbed adjoining his property. Tossini and Donahoe entered a conveyance agreement, but Donahoe expressly informed Tossini that Donahoe intended to reserve the riverbed from the conveyance, yet through an omission by the scrivener the documents of conveyance failed to spell out that reservation. The Court upheld a lower court decision reforming the description in Tossini's deed, by adding the omitted riverbed reservation in favor of Donahoe, since Tossini had not denied that both parties had agreed to exclude the riverbed from the conveyance, holding that Tossini was not entitled to rely solely on the language of his deed, when doing so required him to ignore his own actual knowledge of what constituted the

intended extent of the conveyance. The 1926 case of *McBride v McBride* provides another example of misplaced reliance upon an erroneous description by a grantee. In that case, Keeler acquired a large tract in 1920 that had been owned and occupied by the McBride family since 1879, and the deed to Keeler contained an exception, purporting to except out a 3 acre parcel that was physically situated within the boundaries of the larger tract acquired by Keeler. The boundaries of the exception parcel were plainly visible on the ground, and those 3 acres had been occupied by one particular member of the McBride family as his sole property, ever since that parcel had been created as a distinct tract and deeded to him in 1913. The legal description of the 3 acre parcel contained an error however, which placed it outside the boundaries of the original McBride tract, and the description in Keeler's deed reiterated the erroneous description of that parcel when excepting it from the overall McBride tract. Keeler therefore claimed that the 3 acre parcel had not been excepted from the tract conveyed to her, so she owned the entire original McBride tract, including the 3 acres in controversy. The Court disagreed however, upholding a lower court ruling which amended the incorrect exception language, thereby placing the exception parcel in its intended location, within the boundaries of Keeler's property, on the grounds that the true location of the exception parcel was physically apparent for all to see, so Keeler was not an innocent grantee, declaring that Keeler had failed to carry her burden of inquiry notice. Later in 1926, in *Schlecht v Hinrich*, a case which involved a description that was used in a crop lease rather than a deed, the Court again found description reformation to be the appropriate tool with which to rectify an erroneous legal description. In that case, Schlecht owned the southwest quarter of Section 25 and the southeast quarter of Section 26, but the lease made reference to the southeast quarter of Section 25 and the southwest quarter of Section 26. Hinrich therefore claimed that he could not be required to account to Schlecht for the crops that he had raised on her land, because the crops had not been grown on the land that was described in the lease. The Court again upheld a lower court ruling that reformed the legal description in the lease to conform to the land that was actually owned by Schlecht, holding that Hinrich was not entitled to any benefit from the description error identifying the wrong quarter sections, because he was fully aware at all times that the lease was intended to cover the land actually owned by Schlecht.



In Remembrance

Boyd Poppen, age 61, Aberdeen formerly of Garden City, died at his home in Aberdeen after a brief battle with cancer. Funeral services were held on Thursday, January 16, 2020 at 11:00 AM in the Garden City United Methodist Church.

He was born Boyd Nolan Poppen on October 15, 1958 at Watertown, the son of DuWayne and Betty Ruth (Whitford) Poppen. Boyd attended Garden City Elementary and Clark High School graduating in 1976. While he was in high school he was active in sports activities. After high school he attended Dakota State University at Madison and then transferred to National American University in Rapid City graduating with a degree in surveying.

He began his employment with Chevron working in Texas, California, Wyoming, Montana and then in the mid 1990's moved to Rapid City working as a surveyor in the Black Hills area including surveying the face and arm of Crazy Horse Memorial. . In 2001 he moved to Aberdeen as a Regional Lead surveyor for the State of South Dakota, NE Region.

Boyd thoroughly loved the outdoors, hunting, fishing and being on the farm. He always was looking out for his Mom when he was around. Second to none though was his fun-loving attitude and following the nieces and nephews in their events, especially the nephews in their wrestling events. He loved watching professional sports of all sorts, being an avid fan of the Pittsburgh Steelers, and attending the Twins baseball games.

Preceding him in death were his grandparents and his father, DuWayne Poppen. Survivors include his mother, Betty Poppen of Garden City, his soulmate of 10 years and fiancé, Jeannie Sherrard of Aberdeen and her children, Tim (Lily) White, Danielle Sherrard and fiancé Tyre, Charmayne Sherrard and a grandson, Calvin White. He also leaves siblings, Colleen (David) Jensen of Huron, Kelvin Poppen of Garden City, Russell Poppen of San Antonio, TX and Dan (Jody) Poppen of Watertown.

Paul B. Lapham, age 90, of Clare, Michigan, passed away on Friday, May 8, 2020 at his home. Paul was elected President of the Michigan Society of Registered Land Surveyors (MSRLS) and was the Michigan Representative to the American Congress on Surveying and Mapping (ACSM). He took an active role in the Surveying Division of ACSM and was elected Member of the Board of Directors. As such, he was active in the re-organization of ACSM and became the founding president of the National Society of Professional Surveyors (NSPS). He was an active member and chair of the Council on Federal Procurement of Architectural and Civil Engineers (COFPACE). As chair of COFPACE, Paul served as head of the U.S. Delegation to the International Association of Surveyors (FIG). He attended FIG meetings in numerous countries beginning with Japan, followed by Germany, Norway, Finland, Poland, New Zealand, and others.



COVID-19 Guidance for the Construction Workforce

OSHA is committed to protecting the health and safety of America's workers and workplaces during these unprecedented times. The agency will be issuing a series of industry-specific alerts designed to keep workers safe.

When working in the construction industry, the following tips can help reduce the risk of exposure to the coronavirus:

- Encourage workers to stay home if they are sick.
- Allow workers to wear masks over their nose and mouth to prevent them from spreading the virus.
- Continue to use other normal control measures, including personal protective equipment (PPE), necessary to protect workers from other job hazards associated with construction activities.
- Advise workers to avoid physical contact with others and direct employees/contractors/visitors to increase personal space to at least six feet, where possible. Where work trailers are used, all workers should maintain social distancing while inside the trailers.
- Train workers how to properly put on, use/wear, and take off protective clothing and equipment.
- Encourage respiratory etiquette, including covering coughs and sneezes.
- Promote personal hygiene. If workers do not have immediate access to soap and water for handwashing, provide alcohol-based hand rubs containing at least 60 percent alcohol.
- Use Environmental Protection Agency-approved cleaning chemicals from [List N](#) or that have label claims against the coronavirus.
- To the extent tools or equipment must be shared, provide and instruct workers to use alcohol-based wipes to clean tools before and after use. When cleaning tools and equipment, workers should consult manufacturer recommendations for proper cleaning techniques and restrictions.
- Keep in-person meetings (including toolbox talks and safety meetings) as short as possible, limit the number of workers in attendance, and use social distancing practices.
- Clean and disinfect portable jobsite toilets regularly. Hand sanitizer dispensers should be filled regularly. Frequently-touched items (i.e., door pulls and toilet seats) should be disinfected.
- Encourage workers to report any safety and health concerns.

For more information, visit www.osha.gov/coronavirus or call 1-800-321-OSHA (6742).

*OSHA issues alerts to draw attention to
worker safety and health issues and solutions.*



SOUTH DAKOTA SOCIETY OF PROFESSIONAL LAND SURVEYORS

Affiliate of the National Society of Professional Surveyors

APPLICATION FOR MEMBERSHIP

Complete the following

Name:

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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 pro-vincial 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

Date

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

*Signature of Faculty Member (required for students)

Date

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

Institution

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

NSPS Membership Benefits Guide

It Pays to Belong

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 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/npsps.html



Individual Life & Health Insurance

Mercer Consumer

- 800-424-9883
- npsps.insurancetrustsite.com

Group Health

Mass Marketing Insurance Consultants

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

Dell Computers

Get 40% off computer products, electronics and accessories.

- npsps.us.com/page/Dell

Travel Discounts

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

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

PerksConnect Program

PerksConnect saves you money on dining, retail, auto and home services, pet needs, health, fitness, recreation, entertainment and more. To sign up, go to:

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

Tire Discounts

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



NSPS Career Center

Find qualified job applicants or search for a new position, free!

- careercenter.npsps.us.com



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BACKSIGHTS & FORESIGHTS

