

August 2020

# BACKSIGHTS & FORESIGHTS

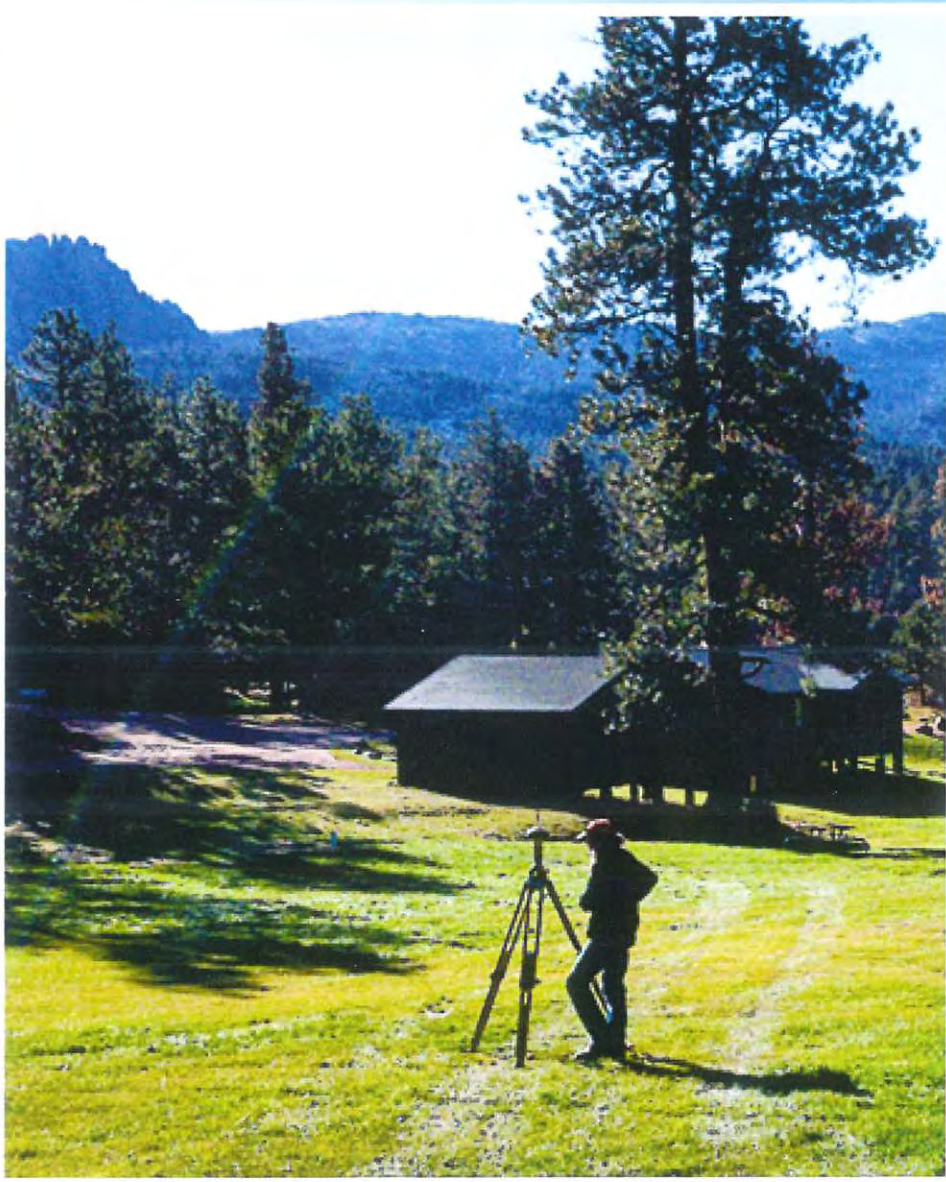


Photo Credit: Chad Dodds

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AND NSPS

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

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Adam Thompson  
Interstate Engineering  
120 Industrial Dr.  
Spearfish, SD 57783  
605-642-4772

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

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

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3 1/2" x 5"	\$25 per issue
7 1/2" x 5"	\$50 per issue
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**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.

## From the Executive Director

Summer is here and the rumble of motorcycles along with the excitement of summer activities give us some sense of normalcy in an unprecedented time. School starts soon, and some will continue to attend classes online. County offices have mostly reopened with precautions. With daily information and stats we receive on COVID-19, usual summer and early fall safety reminders are overshadowed. Working outdoors may help to disperse any infectious airborne particles, but there are other things to be mindful of in the warmer months.

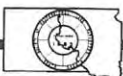
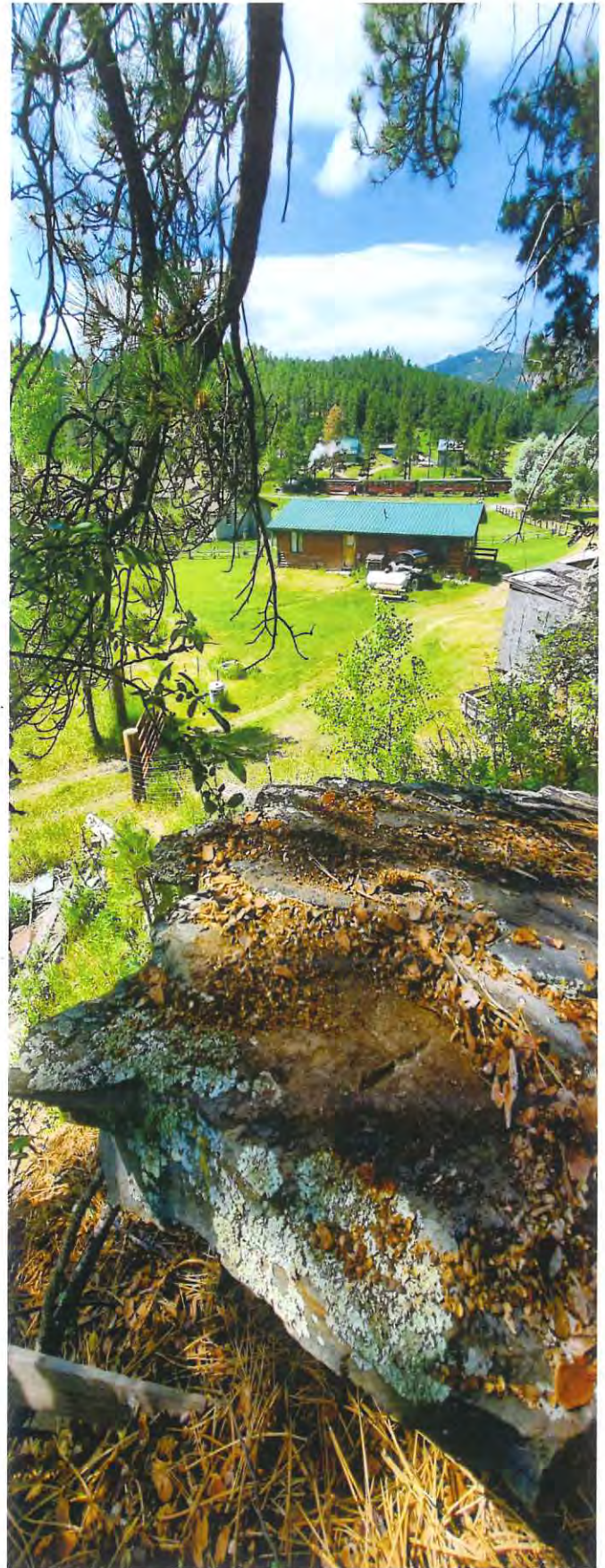
According to the CDC, Outdoor workers in agriculture, construction, and other industries are exposed to a great deal of exertional and environmental heat stress that may lead to severe illness or death. The CDC recommends to hydrate, take rest breaks, and self-monitor for any symptoms. Acclimation of new workers to working outdoors can take up to 14 days. Additional information can be found at [cdc.gov](https://www.cdc.gov). Don't forget your sun protection.

Mountain lions have been sighted both in the Yankton and Rapid City area this summer. The folks at the Outdoor Campus West recommend to never run if you encounter a lion or their kill, and to make a good amount of noise while making yourself appear bigger. They also said you have probably been seen by them more often than you know. Additionally, black bears have been sighted both east and west of the river. The same strategies work for encounters with bears.

In this issue, you will find an article about a surveyor's encounter with a bear, business management tips, an article from the SD State Historical Society and the continuation of the South Dakota Supreme Court series. It would be great to include a member's article in the November newsletter. Please email submissions to [SDSPLS.RebeccaDodds@outlook.com](mailto:SDSPLS.RebeccaDodds@outlook.com).

Be safe and well,

Rebecca Dodds  
SDSPLS Executive Director



## Your Business is Like a Bus by Mitch Duryea, PLS



The professional land surveyor is well trained, educated and experienced in the technical aspects of our profession. How to be a business owner is not included in his technical training or education. Running a business requires a different skill set that is usually learned through experience and typically not formal training or education. While most professional surveyors work in small organizations, the experience running a business is limited. Most learn through trial and error. This article reflects the on-going learning process of running a successful Land Surveying firm for over 25 years.

In his book *Good to Great*, Jim Collins used the analogy comparing a business to a bus. The focus of his analogy is having the right people on your bus and in the right seats (Collins, 2001). A business is more than just the staff. You need to know what type of bus you have, where the bus going, are the right people on the bus, are they in the right seats, and when is it time to get off of the bus.

### What Type of Bus?

#### Self-employed or owning a business

When starting or building a business, a philosophical question must be first addressed. Are you going to be self-employed/working for yourself or are you going to build a business. The difference is that for the self-employed person, income is the primary focus. All of the business revenues are the “paycheck” for the self-employed person. For the business owner, revenues are the resources for building the business. In her 2013 article, Joanne Hession further defined the difference between being self-employed versus owning a business:

*The self-employed are likely to be busy working to deliver products or services. The*

*business owner, by contrast, is focused on building an enterprise that can run without the owner – a business with structure, systems and processes, a concern with clients and customers who don't relate only to the owner. In short, the business owner is building something which is independent and ultimately saleable. (Hession, 2013)*

### Business Organizations

After the self-employed / running a business question is answered, the type of business organization must be addressed. There are a variety of business organizations, each with their own benefits, advantages and disadvantages, depending upon the goals of the owner. The options for business organizations include:

- Sole Proprietorship
- Partnership, limited (LP) or limited liability partnership (LLP)
- Limited Liability Company (LLC)
- C or S Corporations

Selecting the correct business organization is a personal choice and should be made with proper consultation with an attorney and accountant. The rules for these different types of organizations may differ between states.

### Where is your bus going?

When you get ready for a trip, you collect information about the destination, you decide how you are going to get there and what you are going to do after you get there. The same is with a business. Where do you want to go, how are you going to get there and what are you going to do when you get there.

#### Mission Statement

A mission statement is a short statement that describes your business and identifies your core beliefs and values. To design your Mission Statement, look at samples from Fortune 500 companies along with others in your industry. Their Mission Statements should be easy to find on the company websites.

The following is the Mission Statement for Duryea & Associates:



*Duryea & Associates strives to provide professional land surveying and mapping services throughout the western United States with the highest of professional and personal ethics.*

In these few words, it is clear to see what, where and how Duryea & Associates operates. Your mission statement defines how you want to do your business and tells the public, and your potential customers about you. It is critical that the staff knows and agrees to adhere to the company Mission Statement. This Mission Statement needs to be reviewed on a regular basis and revised as deemed necessary by the leadership of the company.

### **The Business Plan**

The Business Plan are the details of how you are going to execute your Mission Statement. The Business Plan should include the type of clients you want, the type of services you will provide, and the service area that you will provide these services.

*Types of Customers:* Identify the types of customers that your business will serve. For a survey company, this list could include: General Public, Contractors, Engineers & other design consultants, Developers, Public Agencies, etc. This list should also include a list of those clients that you do not want to work with.

*Types of Projects:* What services and products does your company provide, and maybe more importantly what types of services you do not provide. *Service Area:* Where do you provide your services? Your service area might be your city or county. Your service area may be a larger area: your state, region, or nationally. Your service area may be different for different types of services or clients.

As with the Mission Statement, the Business Plan needs to be revisited on a regular basis, and modified as necessary.

### **The Marketing Plan**

The Marketing Plan are the details for implementing your Business Plan. Your Business Plan has identified, in a general sense, the types of clients or customers you want to attract. In the marketing plan you develop specific targets for potential customers and projects. The Marketing Plan provides clarity in your Go-No Go Process. The Go-No Go Process is an evaluation of potential projects and clients. Does this opportunity fit your Mission Statement? Does

this opportunity fit your Business Plan? Do you have the resources to complete the project? Larry Burkett tells us in his book "Business by the Book" that we need to know the limitations of our businesses, and when in doubt say "No". (Burkett, 2006).

As with the Mission Statement and Business Plan, the Marketing Plan is to be reviewed and revised on a regular basis. Through these processes, you may determine you need to change the direction of your bus, and that is OK. You may find it in the best interest of your company to "fire" a client. A bad client can distract your staff from completing other projects for good clients.

### **Do you have the right people on the bus, and in the right seats?**

You cannot run any type of business entirely alone. You need a team, even if you don't have any other employees. To run a successful business, you need to have 1) The Bus Driver, 2) Advisors, 3) Consultants and 4) Employees

### **The Bus Driver**

Jim Collins defines the role of the bus driver as the leader, and it is the leader's job to get the bus going (Collins, 2001). In his book "EntreLeadership: 20 Years of Practical Business Wisdom From the Trenches", Dave Ramsey defines the characteristics of a Leader and those of an Entrepreneur (Ramsey 2011). Leader Character Qualities are:

- To have Integrity
- To be Passionate
- To be Humble
- To be a Visionary
- To be Influential, and
- To be Disciplined

Evaluate yourself and identify which of the traits you are good at and which you need to improve. Remember, "Your education, character, capacity, ability and vision are limiting your organization." (Ramsey, 2011).

### **Advisors**

As stated earlier, we are not trained or educated in all of the areas of running a business. All of us need assistance to be successful. Any successful business has and follows the advice of their counselors to supplement your own skill set and provide necessary expertise to be successful. Two organizations that



provide advisors through outside education and training for little cost are SCORE (Service Corps of Retired Executives) <https://www.score.org/> and the Small Business Administration [www.sba.gov](http://www.sba.gov).

### Consultants

The role of a consultant is to provide professional advice and services in areas outside your competency. Why does a client hire you? Because of your expertise as a Professional Land Surveyor. Why hire a consultant? Because they have their areas of expertise to make you successful. For a small to medium size firm, your consultants should include an Attorney familiar with your field, an Accountant / Payroll Service and Business Insurance Agents for Business Insurance and Employee Benefits.

### Employees

When I first started Duryea & Associates, someone told me “There is nothing better than a good employee, and nothing worse than a bad one.” It is the responsibility of the company leadership to recruit, train and retain good employees. This takes more effort to hire a good employee than getting a new client or customer. In her 2015 article, Wendy Maynard states, “Leaders must be rigorous in the selection process for getting new people on the bus. Invest substantial time in evaluating each candidate and make systematic use of at least three evaluation devices (e.g., interviews, references, background, testing, etc.)” (Maynard, 2015). If you do not find the right person, let the position go unfilled. As a business owner, you don’t need bodies, you need the right people to do the right tasks. A business has options for different types of employees including contract, part-time, interns, sub-consultants and permeant/full-time to meet staffing needs.

What do you do if you have the “wrong” person on the bus? You cannot enable or allow bad or inappropriate behavior in the organization without negatively impacting the entire bus. There are numerous books and articles on the subject of how to separate from an employee. In addition, you may want to consult your attorney regarding the state laws that impact your business. When a change is necessary, make the change.

With the right people on the bus, are they in the right seats? You need to know your staff, their individual gifts, talents and skill sets and make sure they are

working to their fullest potential. Having someone in the wrong seat (not a job or role that fits them) is frustrating to both the employee and the employer. This frustration can cause a good employee to leave the company, just because he is in the wrong seat.

### When is it time to get off the bus?

When does it become apparent that the bus driver is not the right person any longer? When are you the square peg in the round hole? Are you the one holding back the organization? To quote Dave Ramsey, “Organizations are never limited by their opportunity; they are limited by their leader” (Ramsey, 2011).

It is never too soon to develop and implement your succession/ exit strategy. Depending upon the type of organization you established, you have options when and how to get off the bus. Options can include 1) Simply close the doors, sell off the assets; 2) Fire everyone, go back to your home office, and do only what you want and can do yourself; 3) Sell the business to your employees; or 4) Sell the business to a third party.

To determine the best strategy for you, consult with a Tax Attorney, Investment Counselor and your Accountant. You will need to obtain an independent business valuation to help determine the best route to pursue.

### In Summary:

Owning and operating a business can be a very fulfilling and profitable adventure. It is not for the faint of heart, but if you design your bus with the proper type of bus, knowing where your bus is going, and having the right people on the bus, it will be a great trip, and you will know when it is time to get off.

*Mitch Duryea, PLS earned a Bachelor of Science in Surveying and Photogrammetry from California State University, Fresno and a Master of Science in Higher Education from Kaplan University and is the President of Duryea & Associates. Mr. Duryea has been licensed since 1986 and is currently licensed in California, Oregon, Washington, Idaho, Nevada, New Mexico, Oklahoma, South Dakota and Hawaii.*

(As seen in The Nevada Traverse – June 2020)



## Women's Rights and Susan B. Anthony

A woman's place was in the home.

Susan Brownell Anthony helped make it possible for a woman's place to be in the home, office, statehouses, military, outer space and other places she might want to be.



Anthony (1820–1906) was a pioneer in the women's suffrage movement in the United States. Her work helped pave the way for the 19<sup>th</sup> Amendment to the United States Constitution. Also known as the Susan B. Anthony Amendment, the 19<sup>th</sup> Amendment granted women in the United States the right to vote when it was adopted on Aug. 26, 1920.

"It is not easy to realize that when Miss Anthony, a young woman of 33, started out as a pioneer reformer, with Elizabeth Cady Stanton, woman's place was so definitely in the home that Miss Anthony was still in public disfavor for having dared to voice her opinion at a local temperance meeting. Only men were supposed to talk in meetings," stated an article in the Feb. 14, 1937, Washington, D.C. Evening Star for the 117<sup>th</sup> anniversary of Anthony's birth.

"At that time the statute books of the United States carried many old laws which had come from old English law of the middle ages regarding women. If a married woman worked it was not legal for her to receive her own wages from her employer for that right belonged to her husband.

"If the husband chose to apprentice the children to work and live in strangers' homes without her consent, the law was on his side. He might even will them away after his death. The woman who dared to earn her living in any other work beside keeping boarders or teaching school found it difficult to maintain her reputation for respectability. Inasmuch as young women were not provided with the same educational advantages as their brothers, there was little prospect for their success in any career requiring training. As a teacher young Susan B.

Anthony had worked for one-fourth of the salary given men occupying similar positions."

Other tributes to Anthony in the Evening Star stated that, "Unmarried women were 'spinsters,' usually dependent on family generosity ... Wives could not hold property in their own names and children, in case of divorce, belonged exclusively to the father."

"Today, due largely to Miss Anthony's efforts, such conditions seem unbelievable. Suffrage is universal. Women attend our greatest universities. There are more than 11,000,000 women employed in every conceivable occupation and hundreds of thousands of feminine lawyers, physicians and ministers. In the French cabinet, American Congress, English Parliament and council halls of Geneva women are steadily finding new opportunities for service," stated a 1936 article in the Evening Star.

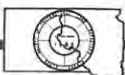
Anthony grew up in New York. Her father, Daniel, was a Quaker who raised his children in the belief that women were equal to men and encouraged his children to be self-supporting. After her family was financially ruined during an economic downturn, Susan obtained a teaching position to assist her family financially.

The Anthony family was involved in the most important reform movements of the times – antislavery, temperance and women's rights.

The prejudice Anthony met everywhere against feminine participation in antislavery and temperance movements convinced Anthony that women could work effectively against slavery and liquor abuses only when they had obtained political and economic rights, stated a 1936 article in the Evening Star about Anthony.

"Like every advocate of change she met bitter opposition. 'Hen' and 'unsexed monster' were her usual titles. Tomatoes and rotten eggs often greeted her speeches," according to the Evening Star.

In a telegram from Minneapolis in October 1889, Anthony stated, "The state (South Dakota) is bound by its constitution to submit the question of universal suffrage a year from this time, and we are going to concentrate all our forces in that state from this time on. All the best speakers all the best workers in the





woman's suffrage ranks in the United States are to be turned into the field in South Dakota."

This news resulted in the comment in the Wichita Eagle, "Heaven help Dakota and her people."

Despite this comment, people came to see and hear Anthony when she came to South Dakota.

"Everybody wants to see Miss Anthony, and every one does who gets to the meetings in time or can find standing room or gaze at her from the windows," a suffrage worker wrote to The Woman's Journal in June 1890.

Despite the efforts of Anthony and other suffrage leaders, the amendment that would have enabled South Dakota women to vote in all elections was defeated at the Nov. 4, 1890, election.

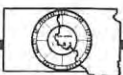
Anthony died at her home in Rochester, N.Y., on March 13, 1906. Fourteen years after her death the cause in which she had spent more than 50 years won its greatest victory when the 19<sup>th</sup> Amendment became the law of the land.

*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](http://www.sdhsf.org). Contact us at [info@sdhsf.org](mailto:info@sdhsf.org) to submit a story idea.*



**“Animals are such agreeable friends –  
they ask no questions, they pass no criticisms.”**

**— George Eliot**



## SDSPLS – Board of Directors Meeting

(Zoom Meeting)

Friday, July 24, 2020 – 12:00pm (CST)

(This report subject to Board approval)

In Attendance: President Travis Jacobson, Past President Linda Foster, President-Elect, Jon Collins, NSPS Director Tom Berkland, Treasurer Travis Kropuenske, Young Surveyors Chair David Feilmeier, West River Chapter President Brad Limbo, Big Sioux Chapter President Aaron Norman, and Executive Director Rebecca Dodds

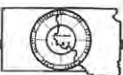
1. Meeting called to order at 12:09 p.m. (Central) by President T. Jacobson.
2. Acceptance of Agenda: No new business added. ++Motion by Foster to approve the agenda as presented, 2<sup>nd</sup> by Berkland - Motion approved.
3. Secretary's Report – Jon Nelson: Written minutes submitted for review and approval.
  - a) April 17, 2020 Board of Directors meeting minutes  
General discussion pertaining to meeting minutes.  
++Motion by Berkland to approve meeting minutes as submitted, 2<sup>nd</sup> by Collins - Motion approved.
4. Treasurer's Report – Travis Kropuenske: Written report submitted. Krouenske reports meeting was held with Dodds, Collins, and Jacobson and he was added as an additional user to the QuickBooks software to enable Kropuenske to run the Treasurer report directly from QuickBooks. Discussion regarding membership income being down and the budget was reviewed for clarity. Dodds will follow up with members who did not renew and gather information on moving to a fiscal year so the budget will align with budget and income. Collins suggested a meeting with Thompson and Collins to attend to membership. ++Motion by Berkland to approve Treasurer's Report as submitted. 2<sup>nd</sup> by Limbo - Motion approved.
5. President's Report – Travis Jacobson: No written report submitted. Jacobson reported on the meeting held regarding Treasurer's business and that it went well with an increase in cost of \$50 to add a user.

## 6. Committee Reports:

- a) Education – Kristi Goehring: No report.
- b) Legislation – Gary Andersh: No report.
- c) Design Professionals' Coalition – Don Jacobson: No report. T. Jacobson indicated DPC is behind due to the pandemic and a meeting is scheduled for July 28<sup>th</sup>. Dodds stated she planned to attend.
- d) Professionalism & Practice – Dean Scott: No report. Discussion on recommended guidelines and Jacobsen asked the final version of bylaws be put on the website.
- e) Public Information – Ruthie Wetzel: No report.
- f) Membership – Adam Thompson: No report. Viewed membership on Wild Apricot software. Discussion on Lifetime Membership requirements.
- 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 held online. The fall meeting is being planned and will be virtual only.  
  
Young Surveyors – David Feilmeier: No written report submitted. Feilmeier reported a spring meeting was held online, which he was unable to attend. Jacobson instructed Feilmeier to email board members regarding fall meeting.
- h) Trig Star – Chad Dodds: No written report submitted.

## 7. Chapter Reports

- b) West River – Brad Limbo: No report. An in person meeting was held in June with 5 members attending. Membership was discussed. Limbo reported on a Labor Day project being developed with 4 members interested in participating with a grant application submitted to reestablish USLM 1 & 2 in Deadwood which were the foundational markers for all mineral surveys in the area.
- c) Big Sioux – Aaron Norman: No report. Norman indicated no activity to report or meeting since convention. A meeting is scheduled for later this summer.
- 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 will be held to review for a possible vote in October. General discussion.
- b) SDBOTP – Licensure Applicant Evaluation Form – Peters, Norman, Breitling and Meyer: Discussion on the SDBOTP decision making related to carryover credits.
- c) Legislative Planning – General Discussion.
- d) Low Distortion Projection (LDP's) and 2022 Datum Change: Foster indicated a delay until 2024, but will still be called 2022 Datum Change. General discussion. Foster and Collins are following up on this.
- e) Executive Director Updates: No written report submitted.

Dodds submitted a resignation letter effective in one year to allow time to hire and train a new Executive Director. Collins, Foster, and Aaron will form a committee to seek someone for the position to begin October 1<sup>st</sup>.

- f) Southeast Technical Institute – Breitling Retirement: General discussion related to Breitling delaying retirement for an additional year.
- g) 2021 Convention: General discussion related to the COVID-19 pandemic and planning for possible online professional development hours if necessary. Jacobson instructed a survey be sent out within 2 weeks to members via email to estimate numbers of persons planning to attend in person or virtually if offered and report to the board weekly. Dodds reports other states are also surveying members and many states holding virtual conferences. Dodds will check into insurance and possible necessary liability waiver for in person attendance. Speakers have been contacted and are being scheduled with the possibility of speaking on a virtual platform or in person.

## 9. New Business

- a) COVID-19 Impacts: Nothing new to report.
- b) New Grant Application – West River Chapter: Application reviewed to restore 2 foundational markers in the Deadwood area. ++Motion by

Berkland to accept and approve application for materials in the estimated amount up to \$1,000. 2<sup>nd</sup> by Kropuenske. Foster abstained. - Motion approved.

10. Next Board of Directors Meeting: TBD.

11. Meeting adjourned at 2:02 pm (Central) by President T. Jacobson

Respectfully Submitted

By: Rebecca Dodds, Executive Director

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website at  
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**Questions?**

Email:  
SDSPLS.RebeccaDodds@outlook.com

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## The “What Am I Doing Here?” Corner!!!

Steve Staab PLS

Several years ago I needed to corner search for a couple of corners in preparation for a contract. I researched the original notes and acquired the corner recordation form for the beginning corner and headed to the field. On parking the truck at the closest point to the corner I put together everything I needed and started on a half mile hike to the closest corner which had been remonumented.

I finally reached the corner and quickly checked the monument and bearing trees and noticed a whooshing sound. Looking around and then up I saw three large ravens flying around in circles over my head. Having identified the sound I took out my compass and proceeded up the very brushy hill to the section corner, that I needed to search for, at the top of the ridge. I could hardly see 10 to 15 feet in front of me through the brush. Halfway up the hill I could still hear the whooshing sound of the bird's wings but couldn't see them anymore so I figured they were still down where I started. I continued up the hill all the time hearing the whooshing sound.

As I got close to the top of the ridge I could see that the brush was beginning to thin out and it looked pretty open. As I worked my way out of the brush I could still hear the whooshing sound and I also heard a popping sound. I looked up the hill and 60 feet away is a very large black bear standing on his hind legs, his teeth bared, and the hair on his back standing up. He was at least as tall as I am, over 6 feet, and looking at the large body had a lot of fat stored up. He definitely out weighed me. The whooshing sound I had been hearing was him woofing at me and the popping sound was him snapping his teeth together.

I froze where I was standing, in waist deep brush, and I thought this is where I was going to have the battle of my life. I had a sandvik, six-inch blade, in my hand and I thought I could get one good swing in before I had to wrestle with the bear. Then as my head cleared I thought I should bend over and kiss my rear goodbye.



The bear continued to woof and snap his teeth and the thought of dropping to the ground and getting into a ball came into my mind but as I looked down I decided the brush was too thick to reach the ground. I decided to move over to a tree and cut a few limbs off the lower end so I could climb it. I took a swing with the sandvik and took about 10 branches off. I then realized that this seemed like a challenge to the bear and I quickly looked to see if he was coming but to my surprise he hadn't

moved an inch. I then looked at the tree to see it was a six inch hemlock. No challenge for a 400 pound bear to push it over. I decided it was me and my sandvik against huge odds so I looked at the bear and it was his move. He woofed at me, snapped his teeth, and dropped to the ground with the fat on his body rolling downhill towards me. I said goodbye to myself. Suddenly he stood back up and was two feet further to his left on the hill side. Ok, fake charge, now for the real charge. He woofed, snapped his teeth, and dropped to the ground again and as before he moved two feet to his left. After what seemed to be hours and way too many fake charges he was approximately 100 feet to my right. Suddenly he woofed, snapped his teeth and dropped to the ground



running downhill into the brush. Before you could say “bye” I was out of the brush and standing about 100 feet up the hill. I listened to him breaking brush as he was heading downhill and I stood in silence as I tried to get my heart out of my throat.

After standing on the hillside, for what seemed to be 30 minutes and listening to make sure he wasn't coming back I turned to look for the section corner that should be within 100 feet of where I was standing. Suddenly I heard a noise that sounded like something walking towards me coming from the other side of the ridge so I stopped and listened. Within a few minutes I saw a bear coming over the ridge and coming straight at me. My heart was once again in my throat. As he came closer I could see that he was a small bear, probably 3 years old, and I knew I could out wrestle him. I noticed that he was going to pass within seven feet of me and if I took one step back there would be a large snag between us. As I stepped back my pants hit some brush and brought both me and the bear to a frozen position. He was looking straight at me, legs spread out with his head close to the ground, and after a couple of minutes he turned and ran back over the hill. Now I had a small bear on the other side of the ridge and a very large bear below me as my thoughts of finding the corner that day was no longer on my mind. Suddenly I heard a voice saying “what are you doing here?” I answered “I don't know” and the voice replied “do you want to fight one of these animals?” My only reply was “NO” and I turned 450 and headed for the truck while I could.

The mile back to the truck was the most nervous mile I ever walked. Every black stump I saw along the way made me jump into a defensive position with the sandvik raised above my head. When I got to the truck I sat in the seat for a very, very long time before I finally settled down enough to drive home without swerving if I saw something black along the road.

(As seen in the Gem State Surveyor, Spring 2020)

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## The Land Surveyor's Guide to the Supreme Court of

South Dakota – Part 31 – 1968 to 1969

*This article represents the thirty-first in a series of excerpts from a book prepared by South Dakota licensee Brian Portwood. The complete book can be obtained in PDF form 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.*

### Is inquiry notice applicable to easements?

#### **Dolan v Hudson (1968)**

From several earlier cases, including the Nicolaus case, just previously reviewed, we have learned that grantors generally bear a heavy burden, most notably they must accurately describe what is, or what is not, being conveyed, in a manner that is open, complete and clearly understandable to their grantees, and they must avoid the use of any ambiguous, misleading or otherwise inadequate language in any documents that are prepared either by or for the grantor and placed before the grantee. As we have also seen, in many cases the Court has strongly upheld the right of grantees to rely upon information communicated to them verbally, or in some other informal or unofficial form, by their grantors, but there are definite limits to the potential liability of a grantor in that regard, and this case provides an excellent example of the responsibility of the grantee to diligently inquire about any and all matters associated with the property being conveyed, which appear to be subject to question. The court invariably seeks to equitably balance the burdens borne by grantors and grantees, and the

duty of diligent inquiry that falls upon the grantee supplements the duties that typically devolve upon the grantor, but the main point of significance for land surveyors is the fact that all such cases, illustrating the responsibilities of both parties, present an opportunity for the surveyor to emphasize the value of the clarity that can be provided by a survey. Legal access is the central issue in the case we are about to review, but subsequent cases have highlighted other circumstances that can operate to put a grantee on notice, and thereby trigger his burden of inquiry. In the 1989 case of Lunstra v Century 21, Lunstra was a typical lot buyer who acquired a platted lot of irregular configuration which was situated on a cul-de-sac, without verifying the boundaries or the acreage of the lot. For unknown reasons, Century 21 had advertised the lot as containing approximately 3.5 acres, when in reality it contained only 2.2 acres. Upon discovering that error, about 2 years after purchasing the lot, Lunstra filed an action accusing the Century 21 personnel and the prior lot owners of fraudulent misrepresentation, but his charge was summarily dismissed by a trial court, on the grounds that Lunstra had an ample opportunity to discover that error prior to acquiring the lot. A majority of the Court upheld the dismissal of Lunstra's action, on the basis that the subdivision plat provided him with constructive notice of the true boundaries, dimensions and acreage of the lot, so he had no need to rely upon the approximate acreage figure stated by Century 21, placing the burden of properly verifying that figure upon Lunstra, although one dissenting justice found that Century 21 had been negligent, suggesting that Lunstra could have prevailed if his action had been for professional negligence rather than fraud. In 2009 in Schwartz v Morgan, Schwartz had acquired a typical platted lot from Morgan, relying upon a mortgage survey which did not indicate that any encroachment issues existed, when in fact Morgan's driveway substantially encroached upon an adjoining lot. Morgan had known about the driveway encroachment for many years, but said



nothing about it to Schwartz, who eventually learned of the matter, and 8 years after buying the lot he charged Morgan with both negligence and fraud, for having failed to fully inform him of the situation. While ultimately disposing of this controversy simply by ruling that all of the claims set forth by Schwartz were barred by the applicable statute of limitations, the Court concluded that Schwartz had no right to rely upon the mortgage survey, and Morgan had no duty to inform Schwartz about the driveway encroachment, holding that Schwartz had failed to carry his burden of inquiry, through his failure to obtain a proper boundary survey of the lot prior to acquiring it.

Prior to 1963 - A residential subdivision was platted and constructed in a certain section lying directly north of Highway 16, just a few miles northeast of Sioux Falls. This subdivision contained an unspecified number of single family homes situated on typical lots in the north half of the south half of this section, and a golf course was apparently built at about the same time in the south half of the south half of that section, lying in between the new homes and the highway, which evidently ran along the full length of the south section line. The new subdivision was evidently designed to be accessed by means of a gravel road running due east for half a mile, along the south sixteenth line of this section, from an existing section line road that ran along the west side of the section from the highway, but whether or not this intended access route was fully shown on the plat of the subdivision is unknown. It was possible to reach the entrance to the subdivision, which was apparently the only point of access to the new homes, and which was situated at the south end of the subdivision, by driving on the gravel roads that formed this three-quarter mile route from the highway, but the terrain was hilly, and these roads apparently

became dangerously muddy or icy at times, so this route was seldom used to access the subdivision. A power line ran directly north to the subdivision entrance, from a point along the highway near the south quarter corner of this section, and at an unspecified time people began accessing the subdivision from the highway by driving along a gravel road that ran along the power line, which also provided access to the golf course clubhouse, since this road was apparently flatter and easier to drive, and it provided a shorter connection to the highway. This road ran through private property however, it was not a public road, and the owner of the land lying south of the subdivision allowed the subdivision residents to use it only by virtue of his express permission, so it was subject to being gated, closed or relocated at any time, at the discretion of that land owner.

1963 - Dolan and his wife acquired one of the homes situated on a typical lot in the subdivision, and he subsequently used both of the routes described above to access his property at various times, but like the other homeowners, he most often used the private drive crossing the golf course, rather than the public road, since the private drive was much more convenient, and there is no indication that anyone ever objected to this use of the clubhouse drive by any of the homeowners.

1965 - Dolan was notified by his employer that he was being transferred to another state, so he put his home up for sale. Hudson visited Dolan's home as a prospective buyer and the two men discussed the home and the property. During their conversation, Dolan pointed out both access routes to Hudson, telling Hudson that he had used both routes, and he indicated that the shorter route was usually better and easier to use, but he did not mention that it was a private road. Just a



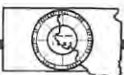
few days thereafter, Hudson and his wife agreed to buy Dolan's lot, a purchase agreement was signed, and a closing date was established.

1966 - Just a few days prior to the closing date, after Dolan had already moved out of his home and left South Dakota, a title attorney employed by Hudson's bank examined the abstract pertaining to the Dolan property and discovered that the road running along the power line was not a public road, and on that basis, apparently unaware of the existence of the other access route, the bank informed Hudson that it would not approve his loan. On the closing date, Dolan's attorney presented a warranty deed for the Dolan property to Hudson's attorney, but Hudson's attorney refused to accept it, indicating that Hudson had been advised not to buy the Dolan lot, and he demanded the return of Hudson's down payment, which was refused by Dolan's attorney. Dolan then filed an action against Hudson, seeking to have Hudson compelled to perform his part of their agreement by completing the intended acquisition at the agreed price, or to have Hudson held financially responsible for the collapse of their transaction.

Dolan argued that he had been completely open and honest with Hudson, about all matters relating to his property, including the access situation, and he had not misrepresented anything, or provided Hudson with any misleading information, so he had fulfilled his burden as a grantor, and his property had legal access, so Hudson had no valid basis upon which to demand that their agreement must be rescinded, and Hudson was legally obligated to complete the acquisition as agreed. Hudson argued that Dolan had not been completely honest with him, and had failed to properly inform him of the true legal status of the preferable access route, by failing to tell him that it could be closed at any time, which would

make access to Dolan's lot difficult and inconvenient, so Dolan was guilty of misrepresentation, and Hudson was therefore fully justified in declining to honor their agreement, by refusing to acquire the Dolan property. The trial court held that the purchase agreement was binding, and Dolan had done nothing to negate or nullify it, so Hudson was bound to perform his part of the agreement, but Hudson still refused to acquire the lot in question, so the court ordered it to be sold to the highest bidder by the sheriff on Dolan's behalf, and that was done, but it was sold for several thousand dollars less than the price that had been agreed upon by Dolan and Hudson, upon which the court ordered Hudson to pay Dolan the balance.

It will immediately be observed that the Court was here confronted with a classic conflict between a grantor and his grantee, which had resulted from the failure of either party to fully investigate and understand all of the land rights associated with the particular platted lot in question, but the outcome would depend upon which party bore the responsibility to do so. While platted lots situated in modern residential subdivisions are typically more likely to be trouble free than properties of older origin, due to the requirements of the modern subdivision approval process, many owners and buyers of such lots mistakenly take it for granted that no serious issues can exist involving such lots, and they are therefore often remiss in checking for problems, such as those presented by the access issues that appeared in this case. In this instance however, no mistakes had apparently been made in creating or platting the subdivision in question, and legal public access to all of the platted lots existed, so the developer of the subdivision was free from liability, and the responsibility to learn of the details concerning access to the subdivided property rested entirely upon the lot owners and lot buyers themselves. Like many people, when engaging in the purchase and sale of a house, Hudson and Dolan had naturally focused their attention and their conversation primarily upon the house itself, and





treated the access issue as an afterthought, which was spoken of only for a few seconds in passing, but this careless and unwise treatment of the access issue would eventually destroy their entire transaction, and result in a devastating financial loss for one of them. It may be wondered why Hudson, if he wanted the right to use the short route, did not simply proceed to acquire the lot in question, and use the private road along the power line for as long as it remained open, and then claim to be the owner of a prescriptive access easement over that road, or claim that it had been dedicated to the public, if the owner of the golf course should ever attempt to prevent him from using it. It is certainly true that Hudson could have done this, since no one was threatening to ever prevent him from using the clubhouse drive, but he was apparently aware that this would be a foolish decision on his part, since at best it would be very costly for him to successfully make any such claim, and in fact he was likely to be unsuccessful in doing so, provided that the golf course owner had properly protected his right to maintain control over the road in question, by documenting the permission that he had granted to use it. Had Hudson discovered the presence of this access issue sooner, he could have used it as a tool with which to force Dolan to reduce the agreed price for his lot, or alternatively he could have forced Dolan to acquire an access easement that would allow Hudson to permanently use the short route, but Hudson had foolishly signed the purchase agreement without ever inquiring with the owner of the golf course about the legal status of the road at issue, so he had lost that opportunity. The dispositive question for the Court was whether or not any form of negligence or malfeasance by Dolan had induced Hudson to agree to buy the Dolan lot at the particular price that Dolan and Hudson had agreed upon, which would serve to justify Hudson's decision to unilaterally terminate the otherwise legitimate contract that the litigants had made, but the Court determined that no such misconduct on Dolan's part could be found among the evidence:

“The bank had the abstract examined by an attorney. His opinion ... did not find the title to be unmerchantable in any particular ... Both Vice Presidents of the bank ... advised Hudson the bank was not in a position to make a loan on the property chiefly because of lack of direct access ... There was no defeating ambiguity in the purchase agreement ... It's terms were sufficiently certain to make the precise acts of the parties to be done clearly ascertainable ... The parties were knowledgeable experienced businessmen ... Contracts were their stock in trade. The meaning of this one was clearly understood by both ... There is no ... misrepresentation, concealment or unfair practice on the part of plaintiffs ... Defendants ... mistake involved the general access routes ... In signing, they relied upon an apparent right of access ... because it afforded a more direct access ... and had the appearance of a public way. This misunderstanding was not the result of any misrepresentation ... the legal access road was pointed out to defendants ... a unilateral mistake of a material fact is ground for rescinding a contract ... However ... the mistake had to be so fundamental in character that because of it the minds of the parties did not meet ... Defendants assumed the (private) road provided a legal means of access ... this would not justify rescission of the contract. This assumption, misunderstanding or mistake was self-induced. It was not the result of any unfair practice or misrepresentation on plaintiff's part ... Mere possibility or suspicion of a



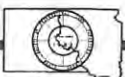
defect is not sufficient ... A marketable title is one free from reasonable doubt ... Plaintiffs complied ... tendering a policy of title insurance and a warranty deed."

Although Dolan may never have fully understood all the details of the access situation himself, the Court recognized, and he did not attempt to explain the scenario in detail to Hudson, he had adequately performed all of the basic duties that are minimally required of a grantor, because he had contracted to convey a properly described lot, which had legal access, to Hudson, and he had not misinformed Hudson about anything, he had simply left it up to Hudson to figure out all of the legal details of the access situation for himself. Dolan was free of blame, the Court indicated, regardless of what he knew, or did not know, about the two routes at issue, because he had said nothing misleading to Hudson, he had merely described his own use of the two roads to Hudson, leaving Hudson free to draw his own conclusions about those roads, or to investigate them, if Hudson should choose to do so, and Dolan had the right to make no definitive statements about the legal status of either route, just as he had done. The contract was not rendered ambiguous by the mere presence of two different roads on the ground, as had been suggested by Hudson, the Court observed, because the legal status of each of the roads was fully ascertainable through a normal investigation of the relevant land rights. As long as either route represented a valid access easement, the Court held, the contractual obligations of Dolan were satisfied, because only one legitimate route of access was required to supply the need for unambiguous legal access, validating the contract, so Hudson could not successfully assert that the contract was invalid due to the presence of any ambiguity concerning access. Since Dolan had made no affirmative statement, promise, or commitment to Hudson that the shorter route represented an easement that was available for Hudson's use, and Dolan had very frankly pointed

out to Hudson the problems that made the longer route difficult to use, Hudson had been duly alerted that access could be a problem, and having been so informed, he had failed to carry the most basic burden of every grantee, which is the burden to make diligent inquiry, upon being notified that a potential issue exists. Hudson was undoubtedly a victim of the haste, ignorance or bungling of the bank's attorney in assessing the access situation, the Court realized, and he was a victim of the bad advice that had been given to him by the bank officers as well, who were clearly mistaken in their conclusion that no legal access to the Dolan lot existed, but of course those mistakes were not attributable to Dolan, so Hudson would need to prove negligence on the part of the bank, in a separate action, if he were to recover any of his loss. Having fully upheld the lower court ruling in Dolan's favor, the Court concluded by reminding the parties that title need not be perfect to be marketable, it need only insure that reasonable value is being conveyed to the grantee, with a reasonable degree of certainty, and the mere fact that the only means of legal access to a given lot is inconvenient does not make that property unmarketable. As several of our earlier case have shown, a grantee must never make any assumptions about the existing conditions on the property being acquired, because a grantee bears the burden of diligent inquiry into all visible issues, which counterbalances the serious legal burdens that rest upon the grantor, in the eyes of the Court, and this case powerfully illustrates that it can be equally unwise for a grantee to make any assumptions about the legal status of any easements related to his intended acquisition, both those of others within the subject property, and those outside it's boundaries as well.

**Can an easement holder control the entire described area?**

**Salmon v Bradshaw (1969)**



Much like our previous case, this conflict demonstrates the potentially serious and costly consequences that can result when a problematic situation is created through a failure to give proper consideration to the need for access when subdividing land. Here we will observe what can happen when direct access to every lot in a subdivision is not provided, leaving it up to the land owners to attempt to resolve such problems themselves, in this instance by creating an access easement without professional assistance. In this case, the lack of access is initially successfully resolved, due to the existence of an amicable relationship between the adjoining lot owners, so no dispute ever occurs between the original parties and peaceful use of the easement persists for many years, but the successor of the grantor of the easement eventually suffers the consequences of the grantor's failure to use any adequate language limiting the extent of the easement to the specific area which the grantor actually intended to be used. Its worth noting that this controversy is set in motion by the provocative conduct of the grantor's successor, who apparently fails to recognize the potentially vulnerable position he occupies, due to the existence of the legal burden that was placed upon his property by his predecessor, leading to an act that brings the amicable relations between the adjoining parties to an end, showing that selfish, careless or unwise acts which adversely impact the land rights of others can have very unfortunate consequences. This case therefore stands as a fine example of the fact that blatantly disrespectful behavior, whether it be perpetrated by the holder of an easement, as the dominant party, or the owner of the land bearing the easement, as the servient party, certainly can, and very often does, have a strong influence on the perspective taken by the Justices of the Court with regard to the matter placed before them for adjudication, and thus upon the outcome of any such litigation over land rights. This case also highlights the fact that the Court is required to perpetually walk a virtual tightrope, always striving to balance the relative rights of dominant and

servient parties, whenever and wherever any easement is deemed to exist, and here we look on as the internal tensions that sometimes stress the Court are exposed, as 3 Justices support the dominant party, while 2 others favor the position set forth by the servient party, on the meaning and effect of an easement description. The result seen here reminds us that mere disuse of any portion of an adequately described easement area does not amount to an abandonment of the rights of the easement holder to use that area, because the easement holder, as the dominant party, is not required to make use of every bit of the area to which his grants entitles him, in order to keep his rights to that area alive. On the other side of the coin however, this case also illustrates that the burden of a loosely or poorly described easement location typically falls upon the servient land owner or his successor, emphasizing the importance of wisely choosing descriptive language that properly defines the intended physical extent of any easement being created, in order to minimize the chances that the true size or location of the easement will become a source of contention in the future, potentially requiring judicial interpretation.

Prior to 1956 - A residential subdivision was platted and developed in an unspecified location in Minnehaha County, and Austin was evidently the original owner of a lot of unspecified size and shape in a certain block of this subdivision. Austin's lot extended in a southeasterly direction to a platted public street, and it had 40 feet of frontage on that public street, but the adjoining lot to the northeast of the Austin lot was completely landlocked, having been platted with no frontage on any public street or alley, and no private access easement had ever been created to serve that adjoining lot.

1956 - The landlocked lot was acquired by Salmon and his wife, and naturally they immediately sought to acquire an access easement from Austin, to serve their lot,

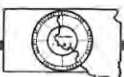


over the southeastern portion of the Austin lot, a portion of which Austin was already using as a driveway himself. Austin very generously cooperated with the Salmons by deeding an access easement of undescribed length and width to them, covering the entire southeastern portion of Austin's lot, without making any reference to the existing driveway, and without limiting the area that he intended them to make actual use of in any other way. Salmon then proceeded to build a house and a garage on his lot, with the garage facing the Austin lot, and he began using part of the southeasterly portion of Austin's lot as a driveway, as intended under the easement that had just been granted to him by Austin. Salmon's garage was situated about 140 feet from the public street and the southeastern portion of the Austin lot was about 40 feet wide, but Austin and Salmon used a strip of Austin's lot that was only about 16 feet in width, adjoining the platted boundary of their lots, as their mutual driveway, leaving the other 24 feet of the southeastern portion of Austin's lot, lying along the southwest side of the existing driveway, unused for access. That 24 foot wide portion of the Austin lot, adjoining the shared driveway, was occupied by trees, flower beds and other ornamental landscaping that was apparently of substantial value. No issues involving the driveway or the easement ever arose between these parties, out of apparent appreciation for Austin's cooperation in granting the requested easement, Salmon voluntarily took full responsibility for maintaining the shared driveway, and he kept it in good condition at all times.

1965 - Austin conveyed his lot to Bradshaw, who for unknown reasons promptly gated the driveway that was being used by Salmon at the public street, by erecting a chain

barrier across it, which he secured with a lock. Whether or not Bradshaw ever provided Salmon with a key to the lock on the chain is unknown, so whether Salmon was still able to use the driveway or whether he was forced to park on the street, is unknown, but Salmon was evidently highly upset with Bradshaw for needlessly impeding and physically encumbering Salmon's access to his garage, so he filed an action against Bradshaw, seeking to obtain free use of the entire southeasterly portion of Bradshaw's lot for access purposes.

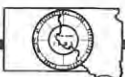
Salmon argued that the access easement in question had been legitimately created, and it had never been improperly used by anyone or otherwise terminated or extinguished, so he had the right to use the entire easement freely, and Bradshaw was legally bound to honor the easement, therefore Bradshaw had no right to prevent Salmon from using the driveway just as Salmon always had, nor did Bradshaw have any right to obstruct or impede Salmon's use of the full easement area in any way. Bradshaw argued that he had the primary right to control all use of his lot, since he was the owner of the lot, so he had the right to gate the easement or restrict Salmon's use of it in any other way that he might see fit. Bradshaw further argued that Salmon had never acquired the right to use any specific portion of Bradshaw's lot for access, since the language that had been used in Salmon's easement deed neither established nor defined any specific location for the access easement, nor did it provide any specific dimensions for that easement, maintaining that these omissions rendered the easement itself null and void. The trial court agreed with Salmon that the easement existed, and that it could not be blocked by Bradshaw, ordering Bradshaw to permanently remove the chain in question, but also holding that the width of the easement was limited to the 16 foot strip that had historically been used as a driveway.



At first glance, this may appear to have been a very simplistic easement case, in which a valid existing easement was simply upheld as being legal, just as one would expect it to be, but in fact this proved to be a highly controversial case between the members of the Court, resulting in a split decision and an unusually strong dissenting opinion. All 5 of the Justices agreed that the Salmon easement existed, so the claim made by Bradshaw that it was invalid was readily swept aside as nonsensical, but the members of the Court were deeply split on the interpretation of the easement's intended extent and boundaries. Since land surveyors are often instrumental in the process of creating easements, and they sometimes even play a vital role in designing subdivisions, it's important to note that this controversy was ultimately created by the very unwise manner in which this subdivision had been designed, with lots that had no legal means of access, which in effect created a booby trap that was sure to cause problems of the kind seen here for innocent lot buyers such as Salmon. After purchasing his lot, Salmon had simply acquired an easement enabling him to use his lot, and as an innocent lot owner, and the grantee of the easement, being entirely unfamiliar with land rights issues, he could not be held responsible for any of the details of the easement that had been granted to him by Austin, so the Court recognized Salmon as being a pure victim, the only question was to what physical extent his existing access rights should be protected by the Court. Salmon and Bradshaw both took the position that the easement language was unambiguous, and they stipulated their agreement to that effect, but in reality each of the litigants interpreted the language used by Austin very differently, each of them naturally viewing it in the manner most advantageous to himself. This is illustrated by the fact that both parties chose to appeal the result produced by the trial court, Bradshaw maintaining his right to control the whole southeastern portion of his lot, while Salmon maintained the right to use that whole area. There was a hint of revenge in Salmon's appeal, since he

had already won the right to resume free use of the existing driveway, but he apparently realized that Bradshaw was in a very weak position, being the successor of the party who had created the easement, and Bradshaw's grantor had in fact burdened a large portion of his own lot in so doing, so Salmon correctly recognized that an opportunity existed to make Bradshaw deeply regret his foolish decision to arbitrarily block Salmon's access. The majority of the Court saw the fact that the parties had agreed that the easement description was unambiguous as the key factor in resolving the conflict over the size of the easement, because acknowledging the deed language as clear and complete opened the door to a literal interpretation of the physical extent of the easement, while also precluding the efficacy of any evidence regarding the size of the area that had actually been historically used as a driveway, which would have had the effect of limiting its extent. Therefore, declaring that a deeded easement cannot be lost to plain disuse for any length of time, the majority held that the width of the easement must be defined by the full width of the applicable portion of Bradshaw's lot, in the absence of any specification of any lesser width in the easement document, regardless of where the existing driveway might be, or how wide it was:

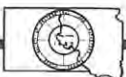
“Plaintiffs constructed ... a 16 foot wide concrete driveway extending from their garage southeasterly across a portion of the easement area ... both parties agree the easement granted to plaintiffs is clear, definite and unambiguous in its terms and provisions ... Plaintiffs contend ... they are entitled to the full use and enjoyment of the easement area ... the trial court erroneously reduced their easement rights ... The conveyance itself specifically grants a perpetual easement ... over, upon, and across an area ... of a definite



width and length ... Plaintiffs are accordingly entitled to the free and uninterrupted use and enjoyment of the entire easement area ... the last inch as well as the first inch ... It is immaterial whether or not plaintiffs made use of the full rights of the easement area in the past ... An easement created by an express grant is not lost by mere non-use or partial use ... the owner of the easement has the right, free of interference by the owner of the servient estate, to use the land to the limits of the defined width, even if the result is to give him a wider way than necessary."

In electing to treat the dimensions of the easement area as having been defined by the boundaries of the relevant portion of the servient lot itself, despite the fact that no dimensions were stated in the easement document, the majority declined to view the easement's location and size as having been described in only a general manner, which would have allowed it to be limited in extent, instead taking an absolute and literal position, thereby maximizing the burden that the easement represented upon Bradshaw's lot. Had Bradshaw not acted so imprudently, in blocking Salmon's access, the Court very likely would not have found it necessary or deemed it appropriate to bring down the consequences of the unwisely excessive language that had been used by Bradshaw's grantor upon him so sternly, but by choosing to provoke Salmon, Bradshaw had brought the heavy consequences of Austin's unlimited easement language down upon himself, as Austin's successor. The outcome here again amply demonstrates that the weakest legal position for any land owner to be in is to be the successor of a grantor, because a successor stands in the shoes of his predecessor, so he must bear the consequences of any and all legal burdens that were created by his predecessor, and it is important to realize that this factor applies to

easements just as well as it applies to boundary issues. Having concluded that Salmon's easement not only existed, and could not be blocked, but also that it covered the entire 40 foot width of the southeastern portion of Bradshaw's lot, the majority modified the decision of the lower court, as to the width issue only, by the narrowest possible majority of 3 to 2. Interestingly, one concurring Justice also noted that the entire area that was subject to the easement could never be blocked by the owner of either lot, so it could not be used for parking by anyone, since this would amount to an unauthorized blockage of the area in dispute by either party. The two dissenting Justices took the position that the result handed down by the majority was unduly harsh, and was contrary to the rights of servient land owners, correctly pointing out that in most other states "Where an easement in land is granted in general terms, without giving definite location and description to it ... the grantee does not thereby acquire a right to use the servient estate without limitation". The crucial point wisely made by the dissenters is that location is not the essence of an access easement, the right of passage that is created by an access easement is the essential aspect of it, and the location and extent of the subject area are merely secondary factors in its implementation, which should be defined in a manner that is limited by the reasonable exercise of the right, allowing the intent of the original parties, as to the location and extent of the intended area, to be evidenced by established historic use. One would hope that Salmon was kind and sensible enough to simply resume the use that he had formerly made of the existing 16 foot driveway, upon obtaining this judgment in his favor, and to voluntarily decline to use the legal leverage that the Court had given to him as justification for tearing out all of the landscaping that had been planted in the easement area and paving the entire 40 feet, but which course of action he chose is unknown. Regardless of whether or not Salmon actually chose to respond vindictively, by removing all of Bradshaw's ornamental plants, under the authority given to him



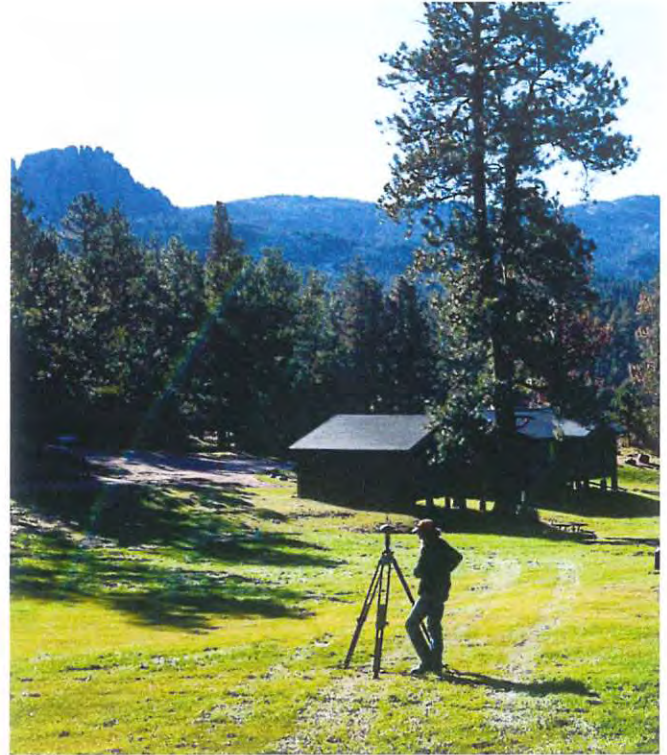
by the Court to do so, the importance of respecting all existing easements had been very strongly driven home to Bradshaw, and to all onlookers as well, and that was the message that the Court had clearly intended to send when announcing this especially severe land rights decision.

Photo (right): “Jack at Harney”

Chad Dodds

Fisk Land Surveying and Consulting Engineers

Summer 2019



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Affiliate of the National Society of Professional Surveyors

## APPLICATION FOR MEMBERSHIP

### Complete the following

**Name:** Last:   
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### Preferred Mailing Address: Business \_\_\_\_\_ or Home \_\_\_\_\_

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### Home: (Required)

### 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.

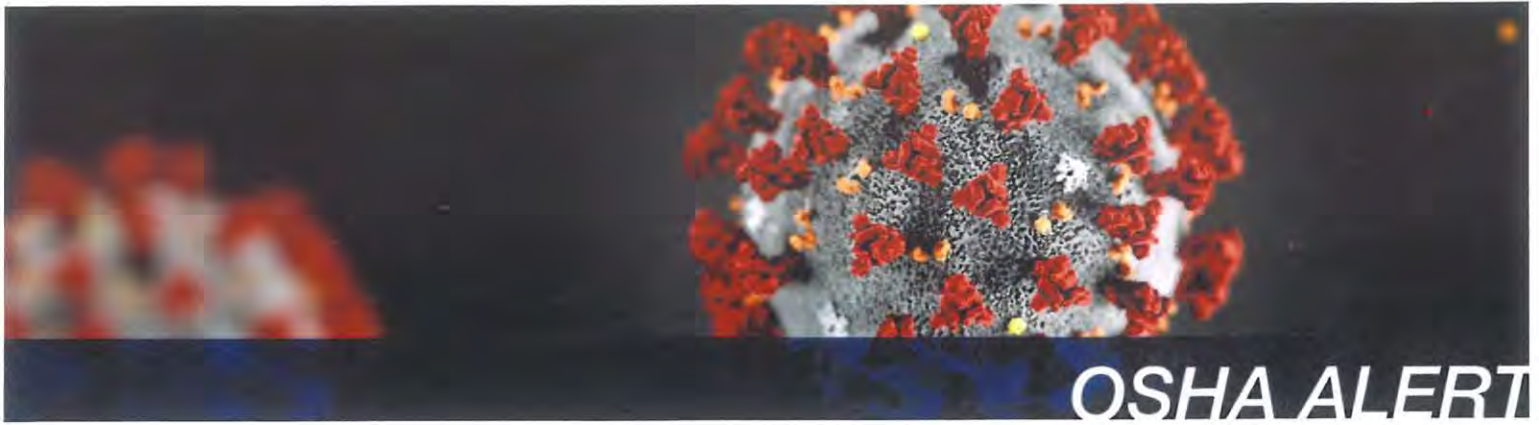
### Signature of Applicant

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

\*Signature of Faculty Member (required for students) \_\_\_\_\_ Date \_\_\_\_\_ Institution \_\_\_\_\_  
 I certify that the applicant is a full-time student. (12hrs or more)

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





## OSHA ALERT

### 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](http://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.*

### 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](http://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](http://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](http://business.landsend.com/store/npsinc)

#### Insurance

##### NSPS Endorsed Program

Assurance Risk Managers

- 888-454-9562
- [Arm-i.com/nps.html](http://Arm-i.com/nps.html)



##### Individual Life & Health Insurance

Mercer Consumer

- 800-424-9883
- [nps.insurancetrustsite.com](http://nps.insurancetrustsite.com)

##### Group Health

Mass Marketing Insurance Consultants

- 800-349-1039
- [mmicinsurance.com/NSPS](http://mmicinsurance.com/NSPS)

#### Dell Computers

Get 40% off computer products, electronics and accessories.

- [nps.us.com/page/Dell](http://nps.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: [nps.us.com](http://nps.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](http://Discounts.perksconnection.com)
- Click "Activate account now"
- Use group code: NSPS

#### Tire Discounts

Save 10% on your order! Go to [tirebuyer.com/nps](http://tirebuyer.com/nps) 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.nps.us.com](http://careercenter.nps.us.com)



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