

February 2022

BACKSIGHTS & FORESIGHTS



Left to right: Rod Breitling presenting awards to the 2022 Scholarship Recipients at the 39th Annual Convention – Zachary Bauer & Samantha Siler
– Not pictured – Cody Huisman & Seth Telford

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SDSPLS President

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Annual Meeting

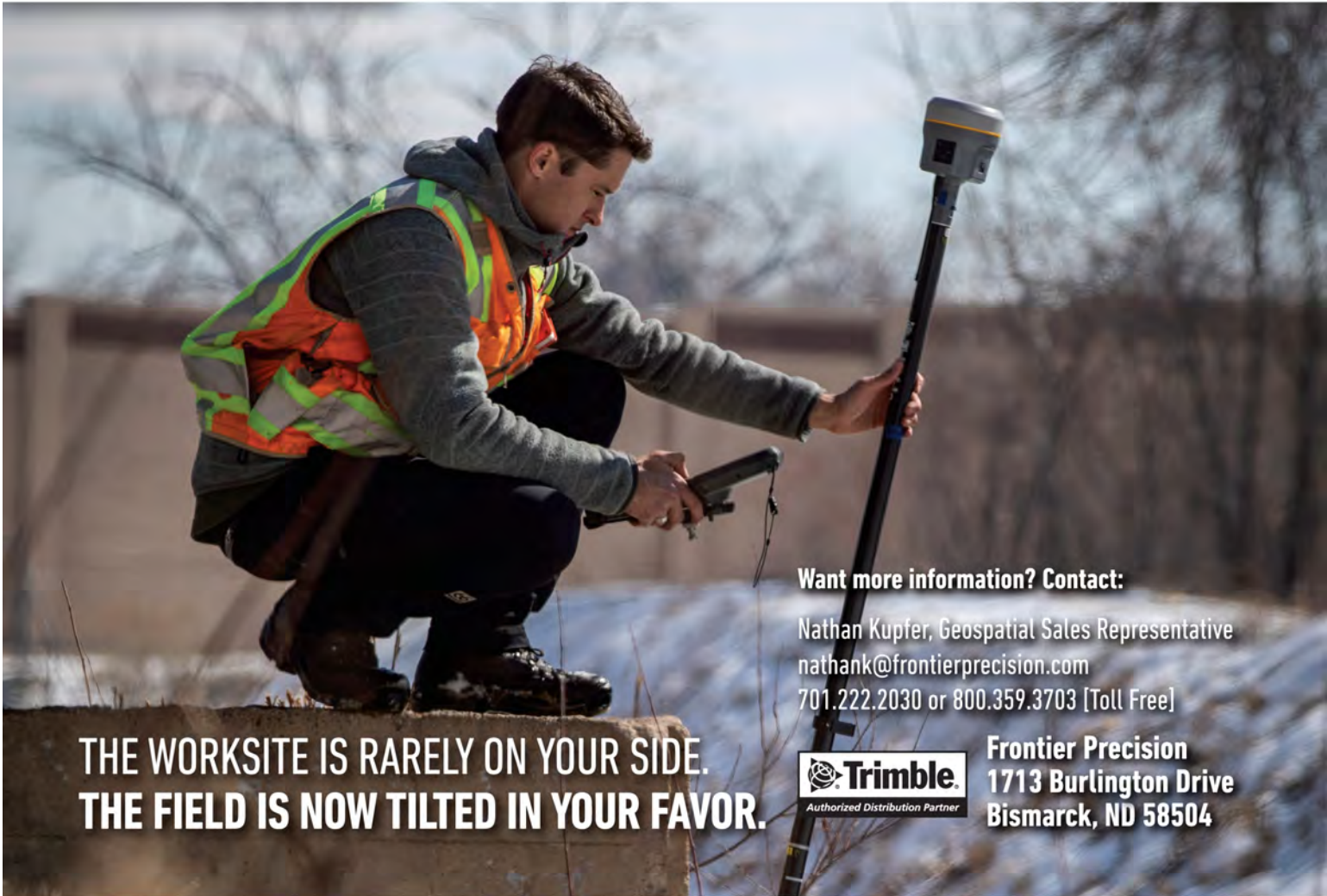
National Surveyor's Week

The Land Surveyor's Guide
to the Supreme Court of
South Dakota Part 37

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Sioux Falls, SD 57108
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2022 COMMITTEE CHAIRPERSONS

EDUCATION

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

MEMBERSHIP

Andy Scott
D.C. Scott Surveyors
607 Westwind Rd.
Box Elder, SD 57719
605-484-8627

PUBLIC INFORMATION

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

LEGISLATION

Jonathan Nelson
South Dakota DOT
700 E Broadway Ave
Pierre, SD 57501
605-773-4427

STANDARDS

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

DPC REPRESENTATIVE

Randy Deibert
Professional Mapping
& Surveying, LLC
1715 Scott Ave
Spearfish, SD 57783
605-645-1680

TRIG-STAR

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

EXECUTIVE DIRECTOR

Alesha Limbo
444 Saint Joe Street
Spearfish, SD 57783
DirectorSDSPLS@hotmail.com
605-645-5128

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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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Greetings everyone!!

I hope this letter finds you all well and thriving since our convention in Deadwood just a few weeks ago. First off, I'd like to commend Alesha and the West River Chapter for organizing and putting on a great convention. With the challenge of an entirely new venue and trying to include virtual options, we should have had all sorts of problems, but we didn't. I was very impressed. If you were unable to make the trip, we missed you and you missed a good time. I am hoping that we can get back to Deadwood in the near future, I think it worked out great and the facilities of the Lodge at Deadwood are perfect for our group.

Since the convention, we've had a few items that have been taking some of my time as well as the board member's time. First and foremost was SB87, the "Survey Bill". SB87 is the Senate Bill more specifically known as "An Act to update the South Dakota Coordinate System to conform to national standard". This bill was written to amend Statue 43 "Property" and specifically Chapter 22 "South Dakota Coordinate System". The SDDOT played a major role in the draft language of the bill with a lot of help from our current Past President Jon Collins, the DPC, and the entire SDSPLS board. The changes to the chapter were necessary to accommodate the change to the definition of the foot (scheduled to happen at the end of this year) as well as the changes coming with NATRF2022. Basically, the chapter was streamlined, removing quite a few sections and adding the new definition of the foot. The bill was first read in the Senate on Jan 18th and passed each step of the process without a single Nay vote, finally being signed by the Speaker of the House on February 14th. Having zero opponents to the bill is a testament to excellent preparedness and the language of the bill itself. At the time of this writing, the bill is currently on Governor Noem's desk and should be signed shortly. Everyone involved in the process should be proud of the success of the bill. Having zero opponents to the bill is a testament to excellent preparedness and the language of the bill itself.

Other than SB87, legislation has been mostly uneventful to this point. We have good people continually watching the process and I am confident that if anything requires our attention, they will be on top of it.

With that being said, I would like to welcome our newest committee chairs. Randy Deibert has accepted the role of DPC Representative. Jonathan Nelson has accepted the Legislation Chair and Andy Scott will now

be our Membership Chair. 3 excellent additions to the leadership in SDSPLS!

Our next big challenge and my current top priority is helping to fill the position of Program Instructor for Land Survey Science at Southeast Technical College. As I'm sure most of you are aware, Rod Breitling will be retiring at the end of this school year as the instructor for Land Survey Science at Southeast. Filling Rod's shoes is impossible, just filling the position with a qualified candidate is a challenge, especially for the pay that is being offered. We had a lengthy discussion at the annual meeting which resulted in a vote to allow the board to offer additional compensation for a candidate to help make the position more attractive. At this point, I have had multiple phone calls with the stakeholders involved. I have not spoken directly with Southeast Technical College's administration as of yet but we are working on a meeting soon. A group of representatives from interested parties is being established and we will be brainstorming ideas of the best plan of action. This is a challenging and complex situation, not as easy as just throwing some money at it. We want to do this the right way, a long-term solution, not just a band-aid that we have to revisit in a year or two. I will keep everyone posted as to where this stands as we progress over the coming weeks/months.

Finally, take some time to encourage someone to look into the field of surveying as a career. Explain to them what it means to be a Land Surveyor. Encourage them to shadow for a day. Show them how important surveying is to everything around them. We need our profession to be on the minds of those middle school and high school kids when they are deciding on a career. Surveying isn't going away, no computer can replace what we do, there need to be actual boots on the ground to do our jobs. The numbers coming into the profession aren't where we want them to be for the future, let's work on that so we can continue to serve South Dakota's land surveying needs.

Take care and be safe.

Kary Gregoire

2022 SDSPLS President

SDSPLS – Board of Directors Meeting

(The Lodge – Deadwood, SD)

Wednesday, January 5, 2022 – 9:00 A.M. (MST)

In Attendance: President Jon Collins, Past President Travis Jacobson, President-Elect Kary Gregoire, NSPS Director Linda Foster, Treasurer Cory Biegler, Secretary Andrew Kangas, West River Chapter President Brad Limbo, Big Sioux Chapter President Beau Koopal, Executive Director Alesha Limbo, SD Board of Technical Professions Representative Steve Peters, Public Information Committee Ruthie Wetzel, Professionalism & Practice Committee Dean Scott, and Membership Committee Adam Thompson

1. Meeting called to order at 9:05 A.M. (Mountain) by Jon Collins.
2. Acceptance of Agenda: No new business added. Motion by Foster to approve the agenda as presented, 2nd by Biegler - Motion approved.
3. Secretary's Report – presented by Andrew Kangas: Written minutes from the Board of Directors Meeting on October 8, 2021. Addition Board of Director action items were acted upon on November 24 and December 1 of 2021. The items are submitted with the annual report. Motion by Brad Limbo to approve meeting minutes, 2nd by Gregoire - Motion approved. Minutes are attached.
4. Treasurer's Report – presented by Biegler: Written report submitted. Motion by Brad Limbo to approve treasurer's report, 2nd by Kangas - Motion approved.
5. President's Report – Jon Collins: No written report submitted.
6. Committee Reports:
 - a) Education – Kristi Goehring (absent): Report was submitted with annual report. There was discussion on finding a replacement for Rod Brietling. Bob Kummer, Aaron Norman, Brian Folds are on Southeast Advisory Board. Brad Limbo made a motion to form a Southeast Technical College action Committee to coordinate hiring Rods replacement and that committee to report back at the April meeting. 2nd by Biegler – Motion Approved.
 - b) Legislation – Gary Andersh (absent): Report was submitted with the annual report. Gary is stepping down so the position is open.

- c) Design Professionals' Coalition – Don Jacobson (absent): No report submitted. It was mentioned that Don is stepping down from the position. Dana Edwards is also on the committee. Dana could move up as chair and another representative needs to be appointed to DPC.
 - d) Professionalism & Practice – Dean Scott: No report submitted.
 - e) Public Information – Ruthie Wetzel: Report was submitted with the Annual Report.
 - f) Membership – Adam Thompson: Report was submitted with the Annual Report.
 - g) NSPS – Linda Foster: Written report submitted. Foster gave a summary of the written report. Linda explained CST Certification through NSPS. Linda commented there are a lot of good things happening at the national level.
 - h) Young Surveyors – David Feilmeier: Report was submitted with the Annual Report. There was discussion on the Youth in Science in the Black Hills student conference in March
 - i) Trig Star – Chad Dodds (absent): No report submitted. Hoping to start back up this year.
7. Chapter Reports
- a) West River – Brad Limbo: Report was submitted with the Annual Report. Brad is stepping down and Adam Thompson will fill the position.
 - b) Big Sioux – Beau Koopal: Report was submitted with the Annual Report.
 - c) Missouri River – Don Jacobson (absent): No report submitted.
8. Old Business
- a) Corner Records/On-line Records System – Linda Foster: Linda is working with ESRI to figure out the technical side of licensing and publishing the system. South Dakota is working on an agreement with ESRI. This may help licensing and reduce rates.
 - b) Legislative Planning: Collins mentioned that the legislative bill to adjust legislation was submitted to Representative Duvall last week.
 - c) Low Distortion Projection (LDP's) and 2022 Datum Change: Model was submitted in March of 2021. There has been no response from NGS.



d) 2022 Convention – Alesha Limbo there are over 180 registered and everything is lined up and ready to go. She also reported that the Big Sioux Chapter has made good progress with the 2023 Convention and already working on the venue and speakers.

e) Proposed By-law changes: Collins summarized proposed changes which will be presented at the Annual meeting.

f) GPS on Bench Marks: Collins gave an update.

9. New Business:

a) Nominations for President-Elect, Treasurer, West River Chapter President, & Membership & Legislative Committees

President-Elect: Todd Schlunsen

Treasurer: Cory Biegler

West River Chapter President: Adam Thompson

Membership Committee: A representative from each Chapter will be nominated and a chair appointed.

DPC Committee: Ask for nominations at annual meeting

Legislative Committee: Ask for nominations at annual meeting

b) SDBOT Update: Peters gave an update on responsibility of the Board. The Board meets six times a year. Peters term is up next year. Steven Thingelstad's term is up in two years. Its in the Boards best interest to nominate candidates for the Governor to assign to fill both positions at the appropriate time.

b) Executive Director Position: Alesha is stepping down and the Board needs to fill the position. Foster has a candidate in mind. President Collins will form a hiring committee.

c) 2021 Budget review: Alesha summarized the budget.

10. Next Board of Directors Meeting will be in April. Time, date and location TBD.

11. Annual Meeting is January 6, 2022 at 4:00 P.M. at the convention at The Lodge in Deadwood, SD.

12. Meeting adjourned at 11:52 A.M. (MST) by Jon Collins

Respectfully Submitted

By: Andrew Kangas, Secretary

SDSPLS 40th Annual Convention 2023

January 11, 12, & 13
(Wednesday, Thursday, Friday)

Holiday Inn
Sioux Falls City Centre
Sioux Falls, SD

For reservations call:
1-605-339-2000
Group Booking:
2023 SD Society of
Professional Land Surveyors
Group



SDSPLS – Annual Meeting

(The Lodge – Deadwood, SD)

Thursday, January 6, 2022 – 3:30 P.M. (MST)

1. Meeting called to order at 3:50 P.M. (Mountain) by Jon Collins.
 2. Acceptance of Agenda: No new business added. Motion by Steve Peters to approve the agenda with two items added under new business, 2nd by James Karrels - Motion approved. The two agenda items added under new business are 1) Options for retaining young people and students in the profession and encouraging them to stay in South Dakota. 2) Rod Breitling's retirement from Southeast Technical College and the Societies role of helping fill Rod's position.
 3. Secretary's Report – presented by Andrew Kangas: Written minutes are submitted with the Annual Report. Motion by Randy Deibert to approve meeting minutes, 2nd by Rod Breitling – Motion approved.
 4. Treasurer's Report – presented by Cory Biegler: Written report is submitted with the Annual Report. Motion by James Karrels to approve treasurer's report, 2nd by Mark Turner - Motion approved.
 5. President's Report – presented by Jon Collins: Written report is submitted with the Annual Report.
 6. Committee Reports:
 - a) Education – Kristi Goehring (absent): Report is submitted with annual report.
 - b) Legislation – Gary Andersh (absent): Report is submitted with the annual report. Gary is stepping down so the position is open. Dean Scott talked about the role of the Legislation Committee.
 - c) Design Professionals' Coalition – Don Jacobson (absent): No report submitted. Don is stepping down.
 - d) Professionalism & Practice – Dean Scott: No report submitted.
 - e) Public Information – Ruthie Wetzel: Report is submitted with the Annual Report.
 - f) Membership – Adam Thompson: Report is submitted with the Annual Report.
 - g) NSPS – Linda Foster: Written report submitted.
 - g) Young Surveyors – David Feilmeier: Report was submitted with the Annual Report.
 - h) Trig Star – Chad Dodds (absent): No report submitted. Trig Star is planning to start back up this year.
7. Chapter Reports
 - a) West River – Brad Limbo: Report is submitted with the Annual Report. Brad is stepping down and Adam Thompson will fill the position.
 - b) Big Sioux – Beau Koopal: Report is submitted with the Annual Report. Big Sioux Chapter is helping plan the 2023 Convention.
 - c) Missouri River – Don Jacobson (absent): No report submitted.
 8. Old Business
 9. New Business:
 - a) 2022 Proposed Operating Budget: Motion by Deibert to approve the budget, 2nd by Dean Scott – Motion Approved.
 - b) Proposed By-law Changes
 - i) Change fiscal year from January - December to October – September: Dean Scott made a motion, 2nd by Deibert - Motion Approved.
 - ii) Remove 9-year requirement from Life Membership. Deibert made a motion to remove the 9-year requirement but the applicant must be a full member for the year prior to becoming a life member. 2nd by Dean Scott – Motion Approved.
 - c) Scholarship Recipients:

\$2000: Samantha Siler, Sioux Falls, SD
\$1500: Cody Huisman, Rock Rapids, IA
\$1000: Zachary Bauer, Sioux Falls, SD
\$1000: Seth Telford, Rock Rapids, IA
 - d) Future of Missouri River Chapter: Discussion on moving the Chapter to the Northeast portion of the State. Deibert made a motion for the board to address, 2nd by Peters
 - e) Election of Officers: 2 positions are up for nominations or re-election – President-Elect (nominations) & Treasurer (re-election). Gregoire nominated Todd Schlunsen for President Elect. Deibert nominated Biegler for Treasurer.



Nominations ceased and unanimous ballots were cast for Schlunsen and Biegler.

11. Meeting adjourned at 5:30 P.M. (MST) by Jon Collins

f) Committee openings: Legislation, Design Professionals Coalition & Membership. President shall appoint Chairs for the committees.

Respectfully Submitted

By: Andrew Kangas, Secretary

g) Options for retaining young people and students in the profession and encouraging them to stay in South Dakota. Randy Deibert commented and summarized the methods that the nursing and attorney professions use for retaining young people in South Dakota and there was discussion on how the surveying professions could follow similar methods.

h) Rod Breitlings retirement from Southeast Technical College: Rod talked about his retirement and about the Land Surveying program. The College is governed by the Technical Board. The Land Surveying Science program is part of a group of 4 programs in one Department. He summarized the requirements that are posted for the job position and where the postings are listed. If the program closes, it will never come back. MR Hanson mentioned trying to subcontract the program through the school in St. Cloud, MN. Rod mentioned that Iowa had similar programs that couldn't fill positions and the programs closed. Jon Collins mentioned that the Board discussed setting up a committee to address the situation. Steve Peters suggested that the Board prepare a letter that can be shared with Society Members for them to send to necessary individuals at Southeast Tech to convey our concerns about the need to fill the position. A suggestion was made to get the Engineering and Architecture Professions involved and join forces to help address this situation. Kim McLaury suggested that the Society donate money to support the salary to fill the position. Randy Deibert suggested that the Presidents from the various organizations need to meet with the College and the group at the State level. Peters made a motion to give the Board of Directors discretion to immediately fund the need to help fill the position at Southeast Technical College from the education fund with the minimum allowable principle in the education fund be set at \$100,000. 2nd by MR Hanson – Motion Approved.

10. Next Annual Meeting: Thursday, January 12, 2023 at Holiday Inn Sioux Falls City Center, Sioux Falls, SD



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Share your experiences and expertise with your peers in our newsletter! Let us share your stories!

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

If you would like to share your story, case study, field experiences or a photo, please email Alesha Limbo at DirectorSDSPLS@hotmail.com



2022 National Surveyors Week

March 20-26

Global Surveyors' Day March 21



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Distribute Brochures and Stickers

For a supply of surveying brochures and stickers, please email info@nsp.us.com

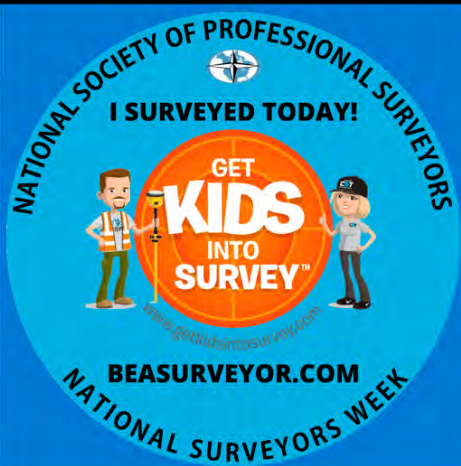


Try This in Your Region

- 1) Have a Survey Day at the Mall
- 2) Sponsor a Trig-Star Test
- 3) Conduct a Boy Scouts Merit Badge event
- 4) Obtain a proclamation from your state or local government
- 5) Organize Geocaching or Benchmark Hunting:
<https://geochaching.com/mark>
- 6) Try Surveying Mark Recon:
oceanservice@noaa.gov/education/for_fun/SurveyMarkHunting.pdf
- 7) Plan GPS Benchmarks:
<https://geodesy.noaa.gov/GPSonBM/>



Global Surveyor of the Year 2022
Benjamin Banneker



Talk About Surveying

- Local civic clubs (American Legion, Elks, Grange, Kiwanis, Lions, Rotary, Ruritan, VFW, etc.)
- Professional organizations (realtors, attorneys, bankers, title agents, etc.)
- Teachers and School Counselors



NSPS

2022 SDSPLS 39th Annual Convention Report

Attendance

We had 189 people register

147 Attended in person

42 attended virtually – reason, weather, covid and ease

0 No-shows

3 People requested CFED credit

We had 18 presenters scheduled, 4 presented virtually and 14 presented in person. We also had Mayor of Deadwood, David Ruth, give the opening welcome. Mark Sargent's was not able to attend due to flight cancellations, so Linda Foster was able to fill in for him. Paul Horsted was the scheduled entertainment and a week before the event had to cancel due to health issues. We were able to line up Gordy Pratt, a local entertainer, to provide entertainment at the banquet. Gary Renner, and wife, Janeen Larson provided the music during the dinner meal at the banquet.

Scholarship Auction & Raffle

Scholarship Awards were given to recipients at the beginning of auction. Rod Breitling shared a little bit about each student. Two students were able to attend the convention.

We gave away four scholarships, \$2000, \$1500, \$1000, & \$1000.

We received 43 items to auction off, some from SDSPLS (last years merchandise and a

Paul Horsted book). Forty items were auctioned off live and 3 were silent auction items. The live auction raised \$4967.50 and the silent raised \$170 for a total of \$5137.50!

The Big Sioux Chapter donated another gun for raffle. Tickets were sold throughout Wednesday and Thursday and then 3 Big Sioux members went around at the beginning of the banquet and sold more tickets. The raffle raised \$1850 for the scholarship fund!

Special Activities

Slot tournament – Cadillac Jacks – Thursday night at 8:30 pm – 11 attended

Poker tournament – Saloon #10 – Thursday night at 8:30 pm – 9 signed up, Saloon #10 had to cancel to due to lack of staff.

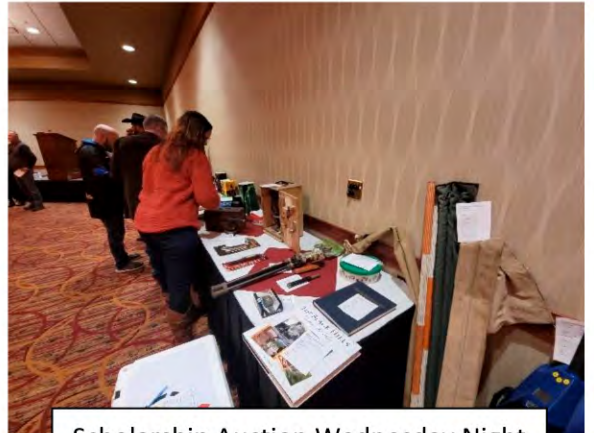
Spouses Day

We had 5 spouses attend the Spouses Day. Due to the cold, we started at 10 am, instead of 9 am. The gals did the Brothel Museum tour and the Beer Pairing at Jacob's Brewhouse. We received great feedback and they encouraged us to continue the Spouse's Day events next year! We charged \$65 for the event, which covered the beer pairing, Brothel Museum and banquet meal.





Main Meeting Hall

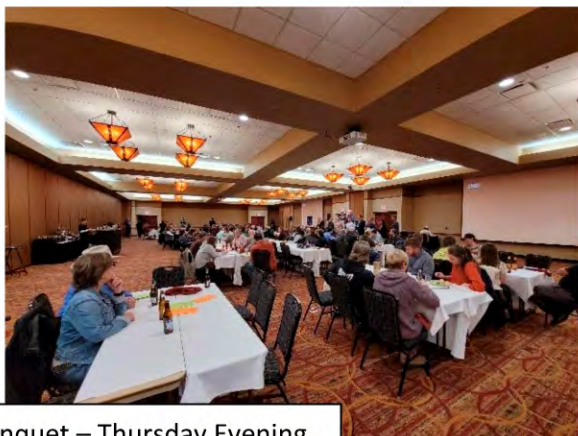


Scholarship Auction Wednesday Night
Thank you for the donations!



Welcome our 2022 SDSPLS Board Members!

Kary Gregiore, Todd Schlunsen, Jon Collins, Andrew Kangas, Cory Biegler, Linda Foster, Adam Thompson, Beau Koopal (not pictured)



Banquet – Thursday Evening



Mike Headley – Sanford Underground Research Facility

2022 SDSPLS President – Kary Gregoire



Amazing entertainment provided by Gordy Pratt & Dalyce Sellers



Kary Gregoire & Jon Collins, Past President

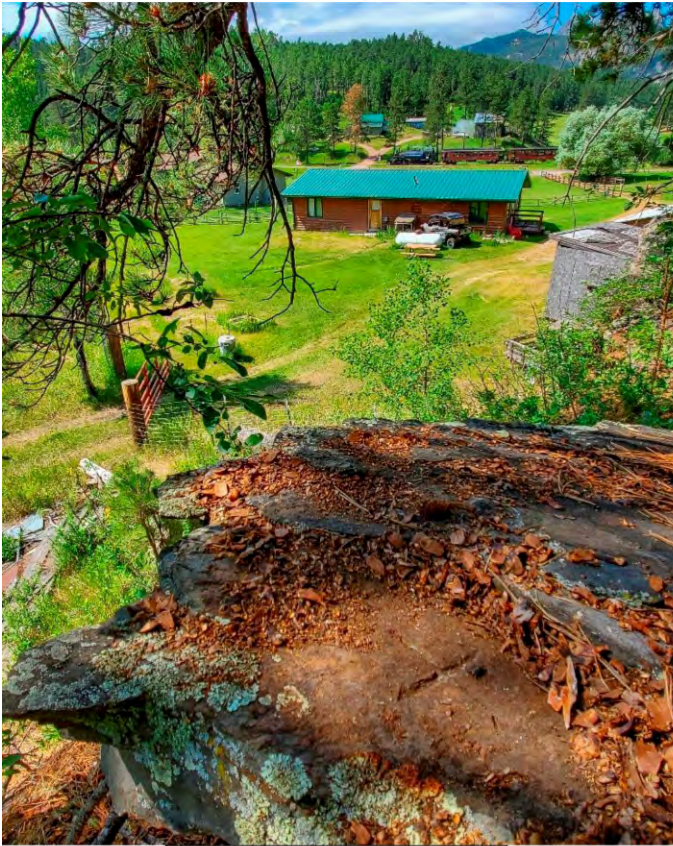


LSIT Sessions taught by members of the Big Sioux Chapter



Check out some of this year's awesome merchandise!

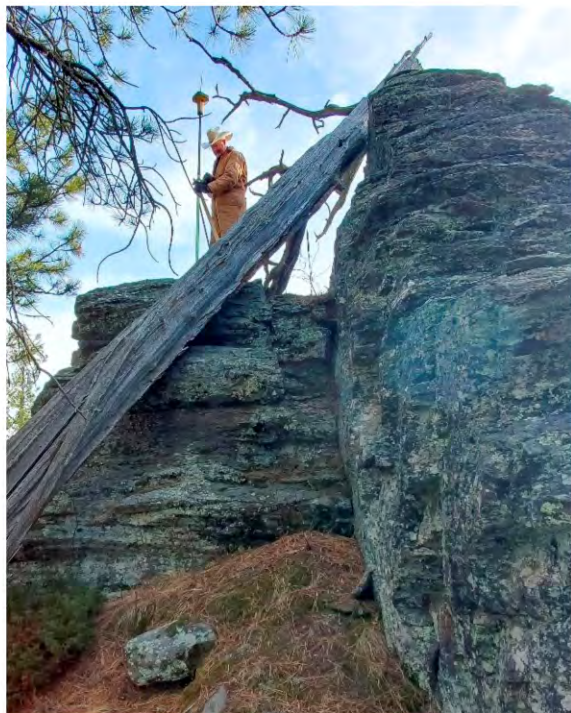
SDSPLS 39TH ANNUAL CONVENTION PHOTO CONTEST WINNERS



First Place – Chad Dodds



Second Place – Emmett Kotrba



Third Place – Chad Dodds



Honorable Mention – Linda Foster

Downgrading licensing will weaken consumer protections

BY DAVID COX, OPINION CONTRIBUTOR — 01/18/22 06:30 PM EST 135

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© Getty Images

With the recent enactment of the Infrastructure Investment and Jobs Act, engineers and surveyors will be called upon to work with similar professionals to improve the physical infrastructure in our country. They will work to improve the safety of the roads we drive, the bridges we cross, the water we drink, and countless other areas that impact our daily lives. The public can have confidence in the safety and integrity of the work engineers and surveyors will provide thanks to our current licensing system, which was first established in the U.S. more than 100 years ago.

However, it is imperative that state lawmakers recognize the importance and value that the existing licensure requirements and processes provide in protecting the public.

With so many large and extraordinary projects on the horizon that will impact the health, safety, and welfare of the public, state lawmakers must resist calls to weaken or eliminate the consumer protections

afforded by rigorous professional licensing standards.

In many states, lawmakers are proposing to downgrade licensing for professions with high public impact such as architects, CPAs, engineers, landscape architects and surveyors with the hope of boosting the economy. Lost in many of those proposals are the unintended consequences on the same consumers the anti-licensing movement purports to help.

In most cases, consumers can choose a service provider based on recommendations and decide whether to continue using them based on their level of satisfaction.

However, in the case of some highly-technical professions, such as engineering and surveying, consumers do not get to choose who builds the bridges and roads they drive on every day. They must rely on lawmakers to ensure their safety through licensing standards that require engineers and surveyors to demonstrate a minimum level of competence through education, examinations, and experience.

The steady weakening — or in the most extreme cases, the proposed wholesale elimination — of licensure standards for engineers, surveyors, and other highly technical professions will put the public at an increased level of risk.

Since the first engineering and surveying licensure laws were established, lawmakers in every state have taken seriously their responsibility to protect the health, safety, and welfare of the public in situations where the public is unable to do so for themselves. This commitment to public protection must continue.

Public protection will be impacted if the long-standing requirements for engineering



and surveying licensure are swept-up and swept-out as part of broad-brush efforts to remove barriers to entry for some occupations.

Too often, licensing critics conflate occupations with professions to make their case. There is a critical difference between occupations and highly complex, technical professions that are responsible for the integrity of our physical and financial infrastructure.

Any attempt to change state licensing requirements should reflect this important distinction. Engineering and surveying rightly require necessary standards for education and experience and the ability to demonstrate a minimum level of competence through examinations. If any of what we call the “3 Es” — education, examinations, and experience — are downgraded in one or two states, the ripple effect throughout the country would have a devastating impact on consumer protection due to existing interstate cooperative licensing processes that allow engineers and surveyors to become quickly and easily licensed in additional states.

Consumers intuitively know that downgrading licensure requirements is an unreasonable and unacceptable risk. This instinct was reflected in a [poll commissioned last year by the Alliance for Responsible Professional Licensing \(ARPL\)](#) which found that 71 percent of voters believe professional licensing should be required unless it can be proven that eliminating licensing will not have a negative impact on public health and safety. The same poll also found that 67 percent of voters believe that consumers are best protected by a system that regulates education, examination, and experience standards — all of which are overseen by a

state licensing board.

As Benjamin Franklin once observed, “an ounce of prevention is worth a pound of cure.” When it comes to building our critical physical and financial infrastructure, responsible professional licensing overseen by state licensing boards is the best method of prevention.

State lawmakers, licensing boards, engineers, surveyors, and others practicing within other highly technical professions must never lose sight of their shared obligation to protect the public. And the best way to honor that commitment is to provide effective licensing models that are designed for public protection. Downgrading the long-standing licensure requirements for highly technical professions will ultimately cheapen our investment in infrastructure and our investment in the health, safety, and welfare of the public.

David Cox is the CEO of the National Council of Examiners for Engineering and Surveying (NCEES).



Why Networking?

While it's possible to make strong connections online, the easiest connections are still made face-to-face. This means the chamber is in a great position to offer incredibly effective networking - or shall we say the opportunity to cultivate customer relationships.

Body language, handshakes, and other personal interaction can help solidify relationships quicker than those made online. After all, 90% of communication is non-verbal.

The 55/38/7 Formula: The 90% figure wasn't plucked out of thin air. It was Albert Mehrabian, a researcher of body language, who first broke down the components of a face-to-face conversation. He found that communication is 55% nonverbal, 38% vocal, and 7% words only.

Get to know people beyond what they do. It's possible to bond over a shared industry but the deepest connections will come from the other things that aren't work-related.

Referrals. It might not be who you're meeting but who those people know that can help.

Expansion. Meeting someone new can help a business owner figure out areas for joint ventures and expansion that they might not have otherwise thought of.

Staying current. An intellectual or practical knowledge/tactic exchange can help the business person see new ways of tackling a challenge. An introduction may also help them gain a new skill or meet someone who can help them hone it.

Plugging into a network of professionals. Need an attorney, tax preparer, office cleaner, or any other person to help? Networking can help business owners find a solid team to work with.

Hiring. Finding a perfect job candidate may be just a networking event away.

Becoming a thought leader. Establishing oneself as a thought leader these days can do wonders for a career, business, and word of mouth marketing. Networking can help establish a professional as someone who knows the industry well.

Boosting confidence. Many of us see ourselves in the eyes of others. When around other community members, it is possible to begin viewing oneself in a new way with more confidence and assurance.

Networking is incredibly valuable to every career and business stage. And remember, a smile is literally infectious. Research has shown that it takes a conscious effort for a person to frown when looking at someone smiling 😊



Current Job Postings

WBI Energy Transmission, Inc. Department

Survey Technician I, II, III

Company: Location: Glendive, MT

Full-Time Position is eligible for Employee Referral Program.

Job Summary: Responsible for placing safety as #1 priority in day to day work routine for self and others. Responsible for performing technical duties in the areas of surveying and mapping in support of supervisors, land surveyors, project engineers, and Geographic Information System (GIS) personnel.

Minimum Qualifications:

Survey Technician I: • Must possess a working knowledge of land surveying/mapping at a level normally acquired through the completion of a two-year degree in surveying, civil technology or geomatics or related technical discipline; or equivalent experience. • AutoCad, Public Land Survey System (PLSS) and/or Global Positioning System (GPS) education or experience.

Survey Technician II: • Must possess a working knowledge of land surveying/mapping at a level normally acquired through the completion of a two-year degree in surveying, civil technology or geomatics or related technical discipline; or equivalent experience. • Three years related technical experience. • AutoCad, Public Land Survey System (PLSS) and/or Global Positioning System (GPS) education or experience.

Survey Technician III: • Must possess a working knowledge of land surveying/mapping at a level normally acquired through the completion of a four-year degree in surveying, civil technology or geomatics or related technical discipline; or equivalent experience. • Five years related technical experience. • AutoCad, Public Land Survey System (PLSS) and/or Global Positioning System (GPS) education or experience.

Key Skills & Competencies • Effective interpersonal and communication skills in dealing with internal and external customers. • Must be self-motivated, detail-oriented and able to handle multiple priorities and meet deadlines. • Proficient in the use of personal computers and commercially available software. • Strong analytical and problem-solving skills. • Proven time management and organizational skills.

Survey Technician II in addition to above: • Recognize matters needing attention and take initiative to act. • Ability to work with minimum supervision.

Survey Technician III in addition to above: • Ability to work at an advanced level.

• Requires extensive travel (50% +). • Required to maintain a valid driver's license. MDU Resources Group, Inc. is an Equal Opportunity Employer/Affirmative Action employer. All qualified applicants will receive consideration for employment without regard to race, color, religion, gender, sexual orientation, gender identity, national origin, disability or protected Veteran status.

Survey Technician I, II, III Additional Requirements

Survey Technician I/II: • Associate degree in surveying, civil technology, or geomatics. • Pipeline/route surveying experience.

Survey Technician III: • Bachelor's degree in surveying, civil technology, or geomatics. • Pipeline/route surveying experience. • Land Survey Intern (LSI) certification in Montana, North Dakota, South Dakota, or Wyoming. • Must be legally authorized to work in the United States, no sponsorships considered. • Subject to pre-employment drug testing and background checks.

Apply online at jobs.mdu.com

Civil Engineers and Constructors LLC

OUR SURVEYING SERVICES

- Construction staking
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- 3D mapping
- In-house data processing
- Before and after site images

BENEFITS

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These are full-time, salaried-exempt positions with competitive pay based on experience. Successful candidates must meet the following requirements: Fleet Management Program, Substance Abuse Policy,



Background and Reference Checks. Submit resume, cover letter, and salary expectations for consideration. Only qualified candidates with acceptable employment eligibility verification (I-9) will be considered. Our firm is an EEO employer and does not discriminate against any applicant for employment, or any employee because of race, color, religion, national origin, age, sex, sexual orientation, gender, gender identity, disability, age, military status or other legally protected status.

Professional Surveyor (LS)

Leading Civil Engineering Firm seeking a Professional Surveyor with at least 10 years of professional land surveying experience. This position will be tasked with managing and overseeing a variety of in-office and field tasks associated directly with land surveying and civil engineering projects. Tasks will include directing survey plan preparation, conducting land survey and topographic surveys, researching survey records, preparing, and reviewing survey maps and drawings, performing quality control reviews, assisting with RFP responses and proposal development, and serving as a Project Manager by managing project cost estimates, schedules, and financials. In addition, this position may determine right of way boundary lines, property lines and perform plat retracement & PLS retracement surveys along with producing technically precise data and documents consistent with the firm's high standards and internal policies, as well as in accordance with State and Federal Laws.

REQUIREMENTS

- Bachelor's Degree in Land Surveying from an accredited college/university.
- Minimum of ten (10) years previous boundary and topographic surveying experience.
- Current professional registration as a Professional Surveyor (PS, PLS, RPLS, RLS, LS, PSM) with the ability to obtain registration in multiple states.
- Strong knowledge of industry terminology and procedures, modern survey methods and survey devices, such as total stations, Global Positioning System (GPS), and data collectors.
- Strong knowledge of legal aspects of boundary surveying, including laws, statutes, and ordinances.
- Ability to perform field work for land surveying scopes of work including construction staking, boundary location, ALTA and topography for various project types.
- Exercise sound judgment in assessing common surveying and research-related situations, and use of effective approaches for choosing a course of action for developing appropriate solutions.
- Ability to accurately prepare fee estimates for services.
- Proficiency with Microsoft Office applications, including Excel, Word, and Outlook.

- Strong interpersonal skills and effective verbal and written communication skills.
- Ability to lead and/or participate in discussions during client consultations and project team meetings.
- Ability to work in a variety of weather conditions.
- Ability to stand or walk for long periods.
- Ability to carry 50-75 pounds of surveying equipment over rough, steep and uneven terrain.
- Ability to travel as needed.
- Valid United States Driver's License.
- Ability to perform all work in a safe manner.
- Ability to independently perform QA/QC on all phases of survey production from field to finish.
- Valid United States Driver's License

PREFERRED QUALIFICATIONS

- Previous experience or training with AutoCAD, Total Station, RTK GPS.
- Previous experience with Trimble GPS and Trimble Robotics.

Surveyor in Training (LSIT)

Leading Civil Engineering Firm seeking Land Surveyor in Training. The Land Surveyor in Training completes work related to survey and engineering and works closely with the Land Surveyor, Department VP, and Survey Crew Chief to complete tasks related to researching, surveying, data collection and reporting. Position may be asked to complete courthouse and property description research, support topographic mapping, and collect data needed to complete the requested survey objectives. Works daily with clients and their representatives. We love to prompt from within and this position is intended to eventually progress into a Land Surveyor position.

SAMPLE JOB TASKS

- Completing surveys tasks associated with residential, commercial and farms
- Researching property descriptions and legal documents
- Mapping land topography
- Construction staking
- Collecting and formatting data
- Reading and calculating from property and plan documents
- Enforce all OSHA and RPC/CEC safety policies

REQUIREMENTS

- Minimum of four (4) years surveying experience.
- Associates degree in Civil Engineering, Technology, Surveying, or related degree.
- Ability to pass the SIT (Surveyor in Training) exam (Preferred)



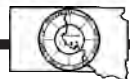
- Good knowledge of industry terminology and procedures, modern survey methods and survey devices, such as total stations, Global Positioning System (GPS), and data collectors.
- Basic knowledge and understanding of field staking procedures for land surveying, construction staking, and existing conditions surveying
- Ability to perform a variety of field work related to land surveying.
- Proficiency with Microsoft Office applications, including Excel, Word, and Outlook.
- Strong interpersonal skills and effective verbal and written communication skills.
- Ability to work in a variety of weather conditions.
- Ability to stand or walk for long periods.
- Ability to carry 50-75 pounds of surveying equipment over rough, steep and uneven terrain.
- Ability to travel as needed.
- Valid United States Driver's License.
- Ability to perform all work in a safe manner.
- Ability to independently perform QA/QC on all phases of survey production from field to finish.

SKILLS & EXPERIENCE

- Basic knowledge and understanding of field staking procedures for land surveying, construction staking, and existing conditions surveying.
- Basic knowledge in all aspects of earthwork, foundation construction, wall construction, site utilities and paving
- Proficient use of Auto-CAD
- General understand of office calculations for construction layout
- Knowledge in use of RTK GPS
- General engineering/technical skills associated with surveying
- Understanding and knowledge of field survey data processing and can complete basic engineering calculations

ABOUT US

CEC is a leading consulting engineering and surveying firm located in the tri-state area of Iowa, Nebraska and South Dakota that completes work throughout the Midwest. Our client profile includes both private and public clients which we service with our in-house staff of professional engineers and land surveyors. We offer training programs and opportunities that assist in career advancement along with a full benefits array. By joining our team, you will work with the latest industry technology in a team-based environment where you are treated like family.



CONTACT US

Civil Engineers and Constructors LLC
 1270 S Derby Lane, North Sioux City, SD 57049
 E: jaredz@rpconstructors.com
 P: (712) 222-1452

Interstate Engineering

JOB DESCRIPTION

Interstate Engineering is seeking a motivated and self-starting Survey Party Crew Chief to expand our Black Hills Survey team in Spearfish, South Dakota. The position will include leading crews for land surveying related work including construction staking, cadastral, boundary location, ALTA, and topography. This position also uses the latest in technology as well as conventional survey methods including GPS/GNSS, Robotic Total Stations, UAS/Drone, and Ground Based Scanning. This is an opportunity to work with a wide variety of survey projects throughout the region while expanding technical skills and experience in a strong regionally based firm.

Responsibilities:

- Managing land surveying projects within several industries.
- knowledge of the PLSS system
- knowledge of the BLM Manual
- Familiar with GLO field notes and plats
- Understanding of construction staking, cadastral, boundary location, ALTA, and topography.
- Ability to operate as a one-person team and manage field assistant, as necessary.
- Familiarity with Trimble GPS, and Robotic Total Stations is a preferred but not required.
- Complete and maintain accurate data files and field notes.
- Maintain productive working relationships with all clients and co-workers.
- Communication and interpersonal skills and the ability to work in a team atmosphere are vital.
- Excellent verbal and written communication skills.

JOB REQUIREMENTS

Basic Qualifications:

- Basic knowledge in AutoCAD Civil 3D and Trimble equipment and Software is desired but not required.
- Associates degree in Land Surveying or equivalent years of experience.
- Ability to work independently.
- Proficient in written documentation.
- Willingness to travel and work outside.
- Valid driver's license.

Physical Demands:

- Ability to work in adverse weather conditions
- Ability to walk on rugged terrain
- Ability to lift up to 50 pounds
- Some travel required
- Some overtime required
- Some overnight or long-term lodging required

This position will allow you to gain experience while working towards professional licensure as a Land Surveyor if desired.

All inquiries about the position can be sent to:
Adam Thompson, PLS, CFedS
Professional Land Surveyor, Certified Federal Surveyor
Interstate Engineering, Inc.
120 Industrial Drive, Suite 2
PO Box 226
Spearfish, SD 57783
Phone: 605.642.4772
Cell: 406.939.3494

Southeast Technical College

Sioux Falls, South Dakota Campus

Department: Academic Affairs/Engineering Technology Division

Position: Program Instructor-Land Survey Science

Status: Full-Time

FLSA Type: Exempt Instructor

Salary-186 Day Annual Work Schedule:

- Associate's Degree: \$43,147-\$56,904
- Bachelor's Degree: \$46,466-\$61,121 Annual;
- Master's Degree: \$49,785-\$67,443 Annual

Southeast Tech is a technical college located in Sioux Falls, South Dakota. For over 50 years, we have provided a cost-effective, career relevant education that prepares our students for employment in 24 months or less with some of the area's best employers. We offer more than 70 associate degree, diploma, and certificate programs in today's most innovative fields.

This faculty position provides instruction, student advising, and academic program responsibilities for Southeast Tech's Land Survey Science Program. Responsibilities include:

- develop and teach competency-based curriculum to provide classroom theory and application to prepare students for entry-level positions in their field of study.
- responsible for the operation of the program, including budget, industry relations, periodic review

and evaluation, and effectiveness of program assessment and curriculum development.

- work with industry and advisory boards to create and facilitate student learning opportunities.
- continually assess and enhance the program to meet Southeast Tech's educational requirements, the rules and regulations of its accrediting bodies, and the most current federal and industry standards.
- meet the needs of our changing organization through student centered instruction, professional development, technology and innovation, internal collaboration, and outreach to our communities and industries.
- support the mission of Southeast Tech by preparing students for employment in a dynamic, changing work environment.

JOB REQUIREMENTS:

- Bachelor's Degree in Applied Science, Civil Engineering Technology, Surveying Technology, or related field preferred. Associate's degree in Applied Science, Civil Engineering Technology, Surveying Technology, or related field required.
- Professional Land Surveyor (PLS) License required.
- Minimum of two years of full-time industry experience is required.
- Three years post-secondary teaching and applied curriculum development experience preferred.
- Prior online teaching experience and knowledge of Learning Management Systems preferred.
- Above average proficiency in project management and processes, and Auto CAD dimensional programs that are relative to current industry standards.
- Fully functional with Microsoft Office Suite and online communication tools.
- Ability to design and deliver courses through online/blended instruction utilizing the campus learning management systems.
- Post-hire requirement to obtain South Dakota post-secondary teacher credential.
- Post-hire criminal background check required.

Join our team and be a part of our campus community that is committed to providing educational excellence for tomorrow's workforce. We offer an excellent salary and benefits package. Position available for onboarding and training activities in March, 2022, for the 2022-23 school year. Position open until filled. EOE.



**The Land Surveyor's Guide to the Supreme Court of
South Dakota – Part 37 – 1981**

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

What constitutes abandonment of a prescriptive easement?

Shippy v Hollopeter (1981)

As has been previously noted herein, the Court has long maintained a judicial posture that effectively minimizes the creation of easements by prescriptive means in South Dakota, favoring implied dedication in cases involving public access, while the statewide presence of the section line right-of-way greatly reduces the overall frequency of private access issues. Easements can certainly come into existence through prescription however, and the Court is fully prepared to protect such easements, as the case we are about to review clearly demonstrates. Several important principles relevant to such rights that can develop from land use of long duration are presented here, including the fact that abandonment of an access easement of prescriptive origin is not proven merely by the use of another route by the easement holder, the acts of a tenant are equivalent to acts of the tenant's landlord for purposes of prescriptive or adverse use of land, and the presence of a gate on a private access route is not presumed to be indicative of permissive use of that route. To the same general effect, 2 other cases from this period which also involved easements created by prescription are worthy of note at this point. The 1978 case of Oppold v Erickson presents a classic private prescriptive easement scenario, in the context of drainage of farmland. Oppold's father had installed a drain tile running across the adjoining land of Fritz, draining Oppold's field, and the tile remained in operation for over 20 years, before Fritz sold his land to Erickson, whose deed made no reference to any drainage easement. Erickson then broke and plugged the tile, in the belief that his land bore no drainage easement, forcing Oppold to file an action against him, seeking to have Oppold's right to maintain the tile in its historic location judicially confirmed. At the trial, a son of Fritz testified that his father had never liked the fact that the tile crossed his land, and on that basis the trial court held that the existence of the tile for over 20 years had resulted in the creation of an easement by prescription upon the estate acquired by Erickson for the benefit of the Oppold estate. The Court fully upheld this ruling, agreeing that the fact that Fritz had objected to the presence of the tile proved that he had never granted Oppold permission to maintain the tile, so the presence of the tile on the land of Fritz was genuinely adverse to the Fritz estate, resulting in the formation of a prescriptive easement prior to Erickson's arrival. Erickson thus learned the hard lesson that a grantee cannot rely upon his deed as the sole source of information concerning potential legal burdens upon the land he is acquiring, the grantee must also take notice of all perceptible or detectable physical objects and conditions upon the land being acquired, and must realize that the mere transfer of the land to him does not terminate any established permanent rights of others associated with that land. The 1990 case of Miiller v County of Davison was also centered upon the use of a drainage tile, with a similar result. In that case, Miiller owned land lying directly south of a slough that was located just outside the westerly city limits of Mitchell, and a drain tile had been installed around 1900 allowing the slough to drain out onto Miiller's land. In 1984 Miiller plugged the tile, then in 1987 Davison County dug several drainage channels, causing the slough to flood Miiller's property. Miiller filed an action for damages against the county and the city, and a trial court ruled in his favor, holding that the county and the city had no right to drain any water onto Miiller's land. The Court reversed that decision however, finding that the drain tile represented a prescriptive drainage easement, therefore Miiller had no right to block the drain tile and he had wrongly done so, thereby authorizing the county to restore the drain tile to operation.

1913 - The southwest quarter of a certain section was acquired by an unspecified party, and this party also acquired the southwest quarter of the northeast quarter of the same section at this time. Whether or not this



party was the original patentee of these parts of the section is unknown, but the northwest and southeast quarters of this section were already owned by other unspecified parties at this time. Whether or not any fences existed within this section at this time is also unknown, but there is no indication that any boundary issues ever arose between the owners of the land within this section, so the location of the quarter section lines was presumably clear and well known to all of the land owners in this section.

1913 to 1958 - Early in this period, the relations between the 3 land owners then occupying this section were evidently good, so the owners of the northwest and southeast quarters allowed the owner of the southwest quarter to pass back and forth over the center of the section, as necessary to access his additional acreage lying in the southwest quarter of the northeast quarter, which he apparently farmed along with the southwest quarter, even though this involved repeatedly passing over a small amount of the lands of his 2 neighbors. At an unknown date, the quarter section lines were fenced, but a gated passageway was created between the fences, at the center of the section, where the fences would have intersected, to enable the owner of the southwest quarter to reach the northeast quarter directly, without having to pass completely around the lands of his neighbors, by following the section lines, and there is no indication that the gate across this short diagonal corridor was ever locked. The exact size of this space left between the fences is unknown, but it was large enough for typical farming equipment to pass through it, and with regular use a short trail developed in this location, connecting the southwest and northeast quarters, passing over a small triangular portion of each of the other 2 quarters. How often the lands in this section were conveyed, and when they were conveyed, are both unknown, but the southwest quarter and the southwest quarter of the northeast quarter always remained in the same ownership, while the adjoining quarters always remained in the ownership of others. Once this use of the center passage route began, it apparently continued during every year for the rest of this period.

1959 to 1965 - At an unspecified date during this period Teel acquired the southwest quarter and the southwest quarter of the northeast quarter. Whether or not Teel ever lived on her land in this section is unknown, but she apparently never farmed the southwest quarter of the northeast quarter, and she may not have farmed the southwest quarter either, so during this period the use of the center passage ceased. Who owned the northwest and southeast quarters during this period is unknown, but the fences around those quarters were evidently not extended to close the center passage, so it remained open at all times, even though it was no longer in actual use.

1966 to 1973 - The center passage remained open but unused during this period. By the end of this period, Hollopeter had acquired the northwest quarter, and Miller had acquired the southeast quarter, and they were both regularly farming their lands in the typical manner, while the southwest quarter of the northeast quarter evidently remained unused.

1974 - Teel leased her lands to a tenant farmer who evidently farmed all of her land, and in so doing he resumed the use of the center passage. Hollopeter and Miller made no objection to this resumption of the use of the trail crossing their lands, and the fences forming the center passage remained in the same location where they had been for several decades. This renewed use of the center passage apparently lasted for only one year however.

1978 - Teel decided to sell all of her property, and Hollopeter offered to buy it from her, but she declined his offer and sold it to Shippy instead. Hollopeter responded to this development by removing the gate that had been located at the center passage and extending his quarter line fences to the center of the section, and Miller then did the same thing, completely closing off the diagonal center passage route, which Shippy had planned to utilize. Shippy responded by filing an action against both Hollopeter and Miller, seeking to have them compelled to return their fences to their historic locations, and acknowledge the existence of an access easement over their lands, enabling Shippy to resume the former use of the center passage.



Shippy argued that he was legally entitled to use the center passage, because the use of it by all of the previous owners of his property for well over 20 years had resulted in the creation of a prescriptive easement, which was appurtenant to his property, over the small portions of the northwest and southeast quarters that were crossed by the short trail leading from the southwest quarter to the northeast quarter. Hollopeter and Miller conceded that a prescriptive access easement in favor of Shippy's property had been created decades earlier, and had once existed in the location at issue, but they argued that it no longer existed, because the center passage had been effectively abandoned, having gone completely unused for a period of well over 10 years, between 1958 and 1974. The trial court held that the access easement in question had been legitimately created, long before the arrival of any of the litigants on the scene, and it had never been either abandoned or extinguished, since it had been used within the last 10 years, requiring Hollopeter and Miller to relocate their fences to their former locations and keep the historic route permanently open, while also awarding damages to Shippy, for the loss of the use of part of his land, which he had suffered as a result of the closure of the center passage.

As can readily be seen from the facts presented above, the issue in this case was not the creation of a private prescriptive easement, the real controversy was centered upon the alleged termination of an easement that had been acknowledged by all of the parties. It may well be wondered why Hollopeter and Miller chose not to fight the existence of the easement, since there were some factors that could have worked in their favor if they had done so, such as the possibility that the original use of the center passage had been the result of permission, and the fact that the route had always been gated. Any use of land that is genuinely permissive never becomes adverse in character, as long as the permission remains in effect, and the nature of the use remains within the scope of the permission, and in addition, the presence of a gate can represent an intention on the part of the party maintaining the gate to retain complete control over his land, which can also effectively prevent adverse use, when properly proven. The problem faced by the defendants however, was both historical and evidentiary in nature, they simply could not prove that any express permission had ever been granted to any of the users of the center passage, nor could they prove that the gate had been intended as anything more than a livestock barrier, so they opted not to challenge the creation of the easement, knowing that the presumptions at law that apply to both permissive use and to gates, would not operate in their favor. Conceding the validity of the legal presumption that the early use of the center passage had been adverse for decades, since they had no way to effectively combat that presumption, they chose instead to try to eliminate the easement based upon the absence of any use of it for well over 10 years, during the ownership of Teel. Hollopeter and Miller could not claim that the easement had been destroyed through any adverse physical actions of their own, or through any acts of blockage by their predecessors, since the route had never been physically blocked for even a short time until 1979, so they had to rely on non-use alone, which can never terminate an easement created by an express grant, but which can destroy an easement that was created through usage alone, such as the one in question. The easement had gone unused for as long as 16 years, from the time Teel had acquired her land until her tenant had used it in 1974, and if either of the defendants had prevented Teel's tenant from using it, they could have prevailed, but since he had successfully used it, the statutory clock had been reset in 1974, fully renewing the easement, because an easement that was created under the 20 year statute requires another 20 years to extinguish. In order to escape the consequences of the statutory time period applicable to extinguishment, the defendants also charged that the easement had been abandoned, which is solely dependent upon the intent of the user, rather than the passage of time, but this line of attack was destined to fail as well, since there was no evidence that the lack of use of the center passage by Teel represented any such intent on her part, on the contrary, she simply had no need to use it, since she chose not to farm all of her land. Quoting in part from the relevant statutes pertaining to the creation and termination of prescriptive easements, the Court concluded that the access easement had survived the period of non-use, while also indicating that the acts of Hollopeter and Miller did not merit punitive damages:

“A servitude acquired by enjoyment is extinguished by disuse ... for the period prescribed for acquiring title by enjoyment ... an easement by prescription requires continuous enjoyment for ... twenty years ... the prescriptive easement in this case ripened within a substantial enclosure ... It



follows that the period of non-use necessary to extinguish was also twenty years ... defendants urge that an abandonment of the right-of-way was established because plaintiffs used alternate means of moving hay stacks and farm machinery ... use of a substituted way may be evidence of abandonment of the original way ... however ... The mere use of a new right-of-way will not extinguish the old. There must also be an abandonment ... plaintiffs were prevented ... from cropping the forty acres in 1979 ... The trial court applied treble damages ... The trial court was justified in finding ... wrongful occupation of the servitude ... and interruption of plaintiffs right to plant and harvest crops on the isolated tract ... however ... a valid and unsettled issue existed ... the treble damages statute does not apply."

Although it had never been proven that the early use of the location in controversy had been genuinely adverse in character, the Court was fully comfortable with the legal presumption that the historic use had been adverse, in part because the passageway in dispute had been fenced, fulfilling the statutory vision of a substantial enclosure, and defining the specific locus of the use itself as well. The fences that formed the center passage had remained in place throughout the great length of time spanned by numerous owners of all of the properties involved, which was another strong indication, the Court realized, that the short corridor and trail had been intended to be permanent, and its use would have continued indefinitely, if not for the spiteful acts of the defendants. Its worthy of note that the historic ownership of the various parts of the section at issue was a particularly important aspect of this case, because if the ownership of either the Hollopeter quarter or the Miller quarter had ever become merged with the ownership of Shippy's lands, the easement would have immediately ceased to exist to that extent, and if all the land in the section had been acquired by one party, the easement would have been thereby fully extinguished, regardless of any facts relating to its prior use. In that same line of reasoning however, if the whole section had come into sole ownership, and the use of the center passage had continued, and then the section had again become divided in ownership, the easement would have returned to existence in the same location, not as a prescriptive easement, but as an easement by implication, resulting from the existing use that had taken place during the period of sole ownership. Shippy was not in a position to benefit from the statutes or prior rulings of the Court pertaining to implied easements however, because the several relevant quarters had never been in the same ownership, since being patented into private ownership by the United States, so no implication that the passageway he saw would be kept open for his use existed, as that route was not located entirely on land owned by his grantor, which is why he had to turn to prescription to secure his right to use that route. Shippy was on notice, as a grantee, at the time he acquired his land, that the fenced corridor consisted of two triangles that were part of Teel's land, and two triangles that were owned by others, so if he had failed in his quest to secure the easement through prescription, he would have had no legal recourse against Teel, as his grantor. The bizarre configuration of the easement itself, in the shape of a bow tie, with each half being located on a different adjoining property, is also noteworthy, demonstrating that an easement or right-of-way can come in any shape, and in some instances can even be comprised of a series of disconnected fragments, spread out over the lands of multiple parties. As stated above, the Court determined that the punitive effect of the treble damage statute was excessive in this case, and reversed the decision of the lower court on that account, but the Court fully upheld the ruling of the lower court in all other respects, including the award of actual damages for the loss of the productive use of 40 acres for one year, which Shippy had experienced at the hands of the defendants. In the end, it was clear that Hollopeter and Miller would have been better advised to simply allow the passageway to remain intact, but instead they had learned the hard way that spiteful acts are never beneficial to anyone.

What conditions create notice of an unrecorded document?

Steele v Pfeifer (1981)

Just one year after deciding the Wiege case, which we have recently reviewed, the Court was once again called upon to adjudicate a very similar controversy, also resulting from the use of a well by multiple parties, but on this



occasion the history and conditions relating to the disputed use were substantially different, and the evidence would therefore lead the Court to support the use of the well involved here through the application of another set of equally cogent legal principles. This case represents a classic illustration of the fact that an easement need not be created in a manner that is location specific to be legally valid, easements can come into legal existence through the use of very minimal language, simply expressing an intention to place a legal burden of unspecified physical extent upon one property for the benefit of one or more other properties, resulting in a permanent and legally binding land right, which is appurtenant to every property that it was intended to benefit. The outcome of this conflict also very well demonstrates that inadequate descriptive language appearing in any legal document will typically be held against the author of that language, since that party had the opportunity to spell out any intended limitations and failed to do so, eventually creating a potentially serious burden upon the successors of that party, which proves to be decisive here. The case we are about to review also clarifies and emphasizes the fact that a right is presumed to be permanent in nature, and is not presumed to represent a license, which is merely a revocable privilege, and not a true right, while providing important additional lessons concerning the topics of recordation and notice, that are particularly relevant to the work of land surveyors. The same basic principles of easement law that are on display here were again applied by the Court in the 2008 case of *Johnson v Radle*, to clarify poorly created access rights, providing a fine example of the fact that much like boundary principles, the same legal concepts that support the creation of an easement to protect a land use of one kind can serve equally well to protect land uses of other kinds, and in fact many such fundamental judicial positions are equally relevant to both boundary and easement issues. In that case, the owners of a large tract had subdivided it into several smaller tracts, but they had done so through a sequence of plats produced between 1979 and 1984, rather than creating one plat of the entire area, and the various plats contained conflicting information regarding the intended access routes to the various tracts. In 2001, Johnson acquired one tract that had been platted in 1979, relying upon that plat, as opposed to the subsequent plats, and upon the fact that there was no visible evidence of any use of any portion of his lot for access to any of the other tracts. However, Radle and the other owners of the surrounding tracts claimed to have access rights upon two routes crossing Johnson's tract, which were depicted upon their subsequent plats, so Johnson filed an action against them seeking to quiet his title, free of the two alleged access easements. A trial court awarded summary judgment to the defendants, dismissing Johnson's arguments that his plat alone controlled the rights associated with his tract, and that he no legal duty to look beyond his own plat. Strongly emphasizing the controlling value of the powerful principle of notice, the Court came to a different conclusion, finding that Johnson had sufficient constructive notice in 2001 of the existence of a 1990 easement agreement pertaining to one of the two alleged routes, putting him on inquiry notice of any rights relating to that route, so his tract was subject to an access easement in that location, but also holding that Johnson had no means of notice regarding the other alleged route, since no definitive agreement pertaining to that route had existed at that time, thereby freeing his tract of the legal burden imposed by the second route.

1958 - Ahrendt and Pfeifer acquired adjoining residential properties, which were situated a short distance outside the city limits of Sioux Falls, and therefore were without city water service. The properties purchased by these two families each consisted of several lots in a subdivision which contained an unspecified number of lots of unspecified size and shape. No details regarding the creation of this subdivision are known, but it appears to have been a new subdivision, since the lots were apparently all still vacant. The Ahrendts acquired a group of 4 lots, one of which bore a well, while the Pfeifers acquired 6 surrounding lots. Pfeifer and her husband acquired 2 of the lots adjoining those acquired by the Ahrendts, while her husband's brother and his wife acquired 4 other lots that also adjoined those acquired by the Ahrendts, and all 3 families planned to build homes on their respective properties.

1959 - These 3 couples entered a written easement agreement, which provided all of the Pfeifers with the right to use the well, but this easement document was not recorded. The next day the same parties entered a second written agreement, addressing the details of the construction and use of a water distribution system, but this document also went unrecorded. Each of the 3 families then proceeded to build homes on their



respective properties, the water system was constructed as planned, and it was put into mutual use by all of the parties.

1960 to 1964 - The water system was used by all of the parties as anticipated during this period, and no problems or conflicts relating to it arose.

1965 - Steele acquired the Ahrendt property. The Pfeifers verbally explained the existing agreements pertaining to the use of the well to Steele, so she was aware that the well was being utilized by the Pfeifers, but Steele was not given copies of the documents that had been created in 1959, so she may not have been aware of all of the details of those two agreements.

1966 to 1969 - The amicable use of the well continued during this period and no conflicts arose between these neighbors.

1970 - Steele asked Pfeifer for further details about the agreement concerning the use of the well, and Pfeifer showed Steele her copy of the second agreement that had been made in 1959, but Pfeifer did not show Steele the original easement document, presumably because it was very general in nature, and it did not contain any details relating to the water system, which Pfeifer apparently thought Steele was interested in. Since Steele had not seen the easement agreement however, even after talking with Pfeifer, Steele still did not realize that any permanent land rights associated with the well existed, so she believed that the use of the well by the Pfeifers was merely permissive in nature. Shortly thereafter, Pfeifer's brother-in-law conveyed his property to Nelson, and Nelson began using water from the well. Nelson was fully informed about the well easement, so he correctly understood that an easement agreement existed relating to the use of the well, and Steele made no objection to Nelson's use of his share of the water coming from the well, but Nelson apparently never said anything to Steele about the easement either, presumably assuming that she was already aware of it, so Steele was unaware that Nelson had acquired a permanent right to use water from the well.

November 1973 - The properties owned by all of the parties were incorporated into Sioux Falls, the city water system was extended through this area, and all of these properties were hooked up to the city water system. Steele then told Pfeifer and Nelson that she did not want them to use the well any longer. Pfeifer agreed to comply with Steele's wishes and stopped using the well, but Nelson insisted that he had the right to continue using it.

December 1973 - Nelson obtained a copy of the unrecorded 1959 well easement document and recorded it.

1974 - Batcheller acquired an interest in the Steele property, under a contract for deed. Batcheller was aware that Nelson was using the well, and that Nelson claimed to have the legal right to continue using it, but Batcheller decided to proceed with his acquisition of the Steele property anyway, without making any effort to verify the validity or legality of Nelson's easement claim.

1975 to 1979 - Nelson continued to use water from the well, and neither Steele nor Batcheller ever physically stopped him or blocked him from using it, although they openly objected to his use of it and repeatedly warned him to stop doing so. Steele and Batcheller eventually became exasperated with Nelson's refusal to cease his use of the well, so they filed an action against both Pfeifer and Nelson, seeking to have the 1959 easement document declared to be invalid or no longer operative.

Steele and Batcheller argued that Steele had been unaware of the existence of the well easement, because she had never been properly informed that it existed, and the fact that Nelson had recorded the easement document was of no benefit to him, because Steele's deed to her property had already been recorded several years before, so the easement was not legally binding upon her personally, nor upon her property. They also asserted that the water usage agreement, which was documented the day after the easement was created in 1959, had the legal effect of superseding the easement and converting the easement into a license, making it relevant only to the specific parties



who had actually signed those documents, so it had no legal impact on Steele, and she was free to terminate all aspects of the agreement at her own discretion. In addition, the plaintiffs maintained that the easement was originally intended to terminate at the point in time when water supplied by the city became available to the lot owners in the subject area, so any easement that may have ever existed had been effectively nullified by the extension of the city water system into the subdivision in question. Pfeifer and Nelson argued that the easement had been legitimately created, and it had been put into open and visible use, so Steele had full notice of its existence, even though the easement document had remained unrecorded for many years, therefore it was fully binding upon Steele, and upon Batcheller as her grantee. The defendants further argued that the easement document contained no language pertaining to either termination or limitation, and they denied that it was originally intended to expire when water from another source became available, so it had never expired and remained in effect on a permanent basis. The trial court decided that the easement was valid, Steele had an adequate opportunity to discover its existence, Batcheller had actual knowledge of its existence, and it had never been abandoned or extinguished, so all of the successors of the Ahrendts and the Pfeifers still held a legal right to use water from the well.

To clarify the roles of the various parties, it's worthwhile to note that Steele was the essential plaintiff, because she was the grantor of Batcheller, and Pfeifer was the essential defendant, because she was the only remaining party who had been involved in the making of the original agreement over 20 years earlier. Pfeifer's husband had died, and her brother-in-law and sister-in-law had moved away after selling their property to Nelson, so Pfeifer was the only remaining party with direct personal knowledge of everything that had happened, dating back to the creation of the easement. The involvement of Batcheller and Nelson was not truly essential, and it made no difference to the outcome, because they were both grantees, who could therefore do nothing more than stand in the shoes of the prior owners of their respective properties, so the only real controversy centered upon the acquisition that had been made by Steele, and the rights of Batcheller were no different from those of Steele, while the rights of Nelson were identical to those of Pfeifer. The 1959 easement document was highly general in its language, and it contained no description whatsoever of the location of either the well or any of the other components of the water system, it simply indicated that an easement was being created upon Lot 20, which was the lot bearing the well, and was one of the 4 lots that had originally been acquired by Ahrendt, for the benefit of the lots that were acquired by the Pfeifers. In pertinent part, the Court stated in a footnote, the easement provided that "Ahrendt ... does hereby grant to ... Pfeifer, their successors or assigns, the right to lay, maintain, operate or replace at any time a pipeline or pipelines for the transportation of water ... on a portion of Lot 20 ... and to run said water lines beneath the surface ... Ahrendt, as grantors, hereby grant unto the grantees ... full and free right and authority to enter upon said property for the purpose of making connections, to lay and keep in repair said pipe or water lines to their property.". As will be immediately observed by any surveyor, Ahrendt had utterly failed to limit the area covered by the easement grant through the use of any specific locative terms, so initially the easement potentially covered all of Lot 20, or at least as much of it as the Pfeifers needed to use to convey the water from the well to any or all their properties. The locative shortcomings of the easement document had never become a source of conflict however, because the Pfeifers had evidently not burdened an excessive amount of the Ahrendts property when installing their water lines, so no argument was ever made that the easement document should be ruled void due to the absence of a precise or complete legal description of the specific physical area that was actually occupied by the components of the water system. Had such an assertion been made, it would undoubtedly have been unsuccessful, since the Court was fully cognizant that an easement requires no defined location to validate its existence, because once the intended use is made of the servient property by the easement holder or holders, the location of the easement becomes fully and legally defined on the ground. Therefore, focusing not on the content or details of the easement document, but on the circumstances that were in place at the time when Steele acquired the Ahrendt property, the Court expounded on the reasons why each of Steele's arguments was of no avail to her:

"Steele contends that ... the warranty deed transferring the property in question to her was recorded before the easement ... however ... 43-28-14 states "An unrecorded instrument is valid as between the parties thereto and those who have notice thereof" ... it must be determined whether Steele was in



fact a good faith purchaser without knowledge of the existence of the easement ... Steele ... had knowledge of facts that would have put a prudent person on inquiry ... want of diligence in making such inquiry is equivalent to a want of good faith ... Appellants also contend ... that the agreement was a license, personal to the parties denominated therein, not assignable, and revocable ... we do not consider the agreement to be a license, but rather to be an addendum to, and part of, the easement ... There is no limitation set out in the terms of the easement ... When no limitation is set out ... the easement is permanent in nature and will continue in operation forever, unless abandoned ... There is no indication that the easement was granted for a particular purpose which had expired. Appellants argue that the history of the use of the well could indicate that the easement should expire when city water was available. We cannot read such a limitation into an agreement."

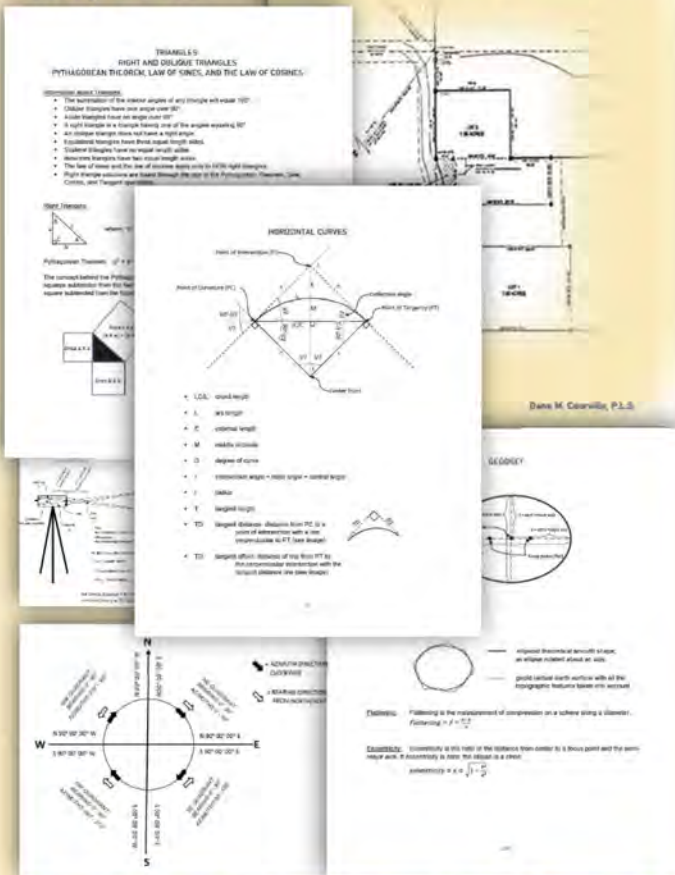
The key factor in the outcome of this dispute was the Court's application of the principle of inquiry notice, which represents the most fundamental burden of every typical grantee, and just as Batcheller stood in the shoes of Steele, since she was his grantor, Steele herself had taken on the position of Ahrendt, and in so doing, the Court informed her, she had voluntarily taken on the burden of any and all commitments concerning land rights that Ahrendt had made. Steele's first argument, that an easement can have no legitimacy if unrecorded, stood no better chance of success than the notion that an easement requires a precise legal description, and was therefore readily disposed of by the Court, since it had long been statutorily recognized that unrecorded land rights are just as valid and controlling as recorded land rights, because it is the element of notice that makes such rights legally binding, and not the act of recordation. While recordation provides additional protection of existing land rights, it was never intended to function as a tool with which to either create or destroy any such rights, and the Court has always very vigilantly adhered to that position, dating back to territorial times, consistently requiring all litigants to bear the consequences of their own failures to take notice of any existing rights of others. The Court was equally unreceptive to Steele's second argument, that the easement document and the subsequent water agreement, when merged or viewed together, formed only a revocable license, since the easement had clearly bestowed a right of a fundamentally permanent nature upon the Pfeifers, and such a land right, which stands as a valuable and vital benefit to the land it serves, is always legally presumed to have been intended to be appurtenant to the land served, rather than to have been granted only to a certain individual party or specific parties. Having established that the easement in question had been properly created, and that Steele had been remiss in failing to take notice of its existence, and failing to recognize it as a valid land right, at the time she acquired her property, regardless of whether or not she had been told about it by anyone, all that remained to address was her contention that the easement had been terminated by the action of Sioux Falls, in extending water service to the subject properties. While ongoing necessity can be relevant to easements that were created through necessity, the Court indicated, an easement that was created in express terms, such as the one at issue, without any direct or specific reference to necessity or termination, never expires, it endures in perpetuity, and it cannot be presumed that any event was intended to terminate the easement, unless clear evidence of that proposition can be found in the document by which the easement was created. Finding that all of Steele's assertions had been correctly put to rest by the lower court, a majority of the Court upheld the ruling in favor of Pfeifer and Nelson, confirming the existence of the well easement, as an appurtenance to all 6 of the lots that had originally been owned by the Pfeifers, over the dissent of 2 justices. The dissenters felt that the easement was probably intended to expire when city water service became available, but the majority elected to hold Steele, as the grantee of Ahrendt, accountable for the omission by Ahrendt of any language limiting the duration of the servitude from the easement document, and even more critically, the majority deemed it appropriate to hold Steele to her own legal burden of diligent inquiry. Ironically, the inordinate delay of Steele and Batcheller in prosecuting their case until 1979, a full 20 years after the use of the well had commenced, had put them in potential jeopardy of being stuck with a prescriptive well easement in Nelson's favor, even if they had prevailed on the issues that they had brought before the Court, since if they had successfully proven that the use of the well had not been the result of an agreement, that same use could then have been deemed to have been adverse in nature.



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