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BACKSIGHTS & FORESIGHTS

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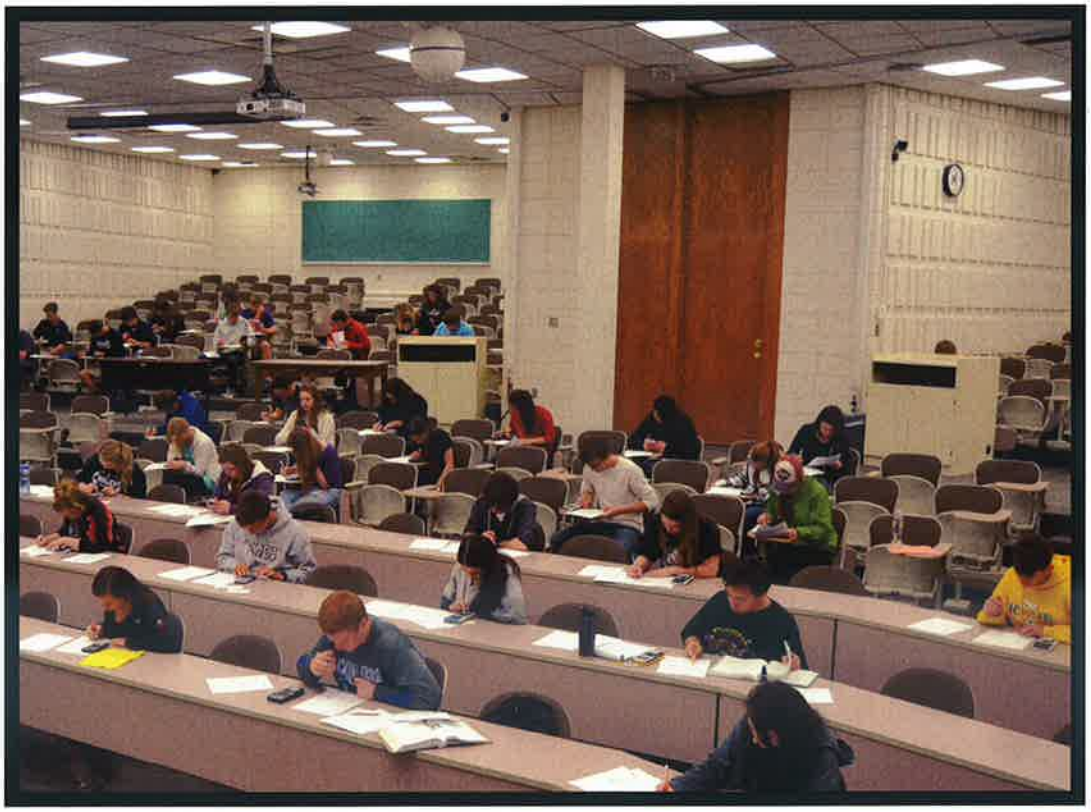

2014 Trig Star Contest

(See Page 3 for this year's winners)

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www.sdspls.org

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Size	*Rates*
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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

Material Cutoff	*Publication*
January 15	February 1
April 15	May 1
July 15	August 1
October 15	November 1

Backsights and Foresights
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From the President:

With a foot in the past and an eye to the future there was much discussion at the April Board of Directors meeting regarding the future of our society and the ways we can improve our society for our members. The first item addressed to this end was the newsletter publication/distribution and it has been decided to begin moving to an online version. Beginning in 2015 we will print the February and November issues and the other 2 issues will be on the web site. This format will be for 2 years and then all issues will become electronic. We will always have the option as a Board to print out issues for special events such as we did on the 25th Anniversary of SDSPLS. This is a move many other state societies have made as well as NSPS.

We are also checking into the costs of receiving payments online for dues and convention registration and what will be required to manage this data. This is in the research and planning stages only at this time. Much more information is required before that decision can be made.

A lot of discussion has been given over the years to Convention format such as which days of the week, where it is held, and activities done such as the scholarship auction. The Board for the most part agreed that the Thursday thru Saturday format has worked well and the half days have allowed for travel during daylight hours to and from convention for the membership. Many of our members have long drives to get to Chamberlain and the safety of driving in the day time in winter is important. We also discussed the possibility of doing a smaller auction and possibly adding some other type of program such as Texas Hold-em, or other type of fundraising activity. As usual, all comments and suggestions you may have are welcome by the Board members.

We also talked about creating another fund to provide for the costs of special projects that would be a benefit to the society or of historic significance to the survey community.

Public information was addressed and the possibility of printing "Sorry We Missed You" cards/door hangers was discussed. The hangers would be a way to let owners know that we had been, or intend to be, on their property. They can list our right-of-entry law and have a place to insert your business cards. The cards/hangers could be purchased through SDSPLS.

As we go forward as a society the Board has many responsibilities and does not take them lightly. We welcome your opinions as well and hope that the decisions we make for our future benefit all of our members.

Dean Scott has done an extraordinary job in beginning the rewriting the Recommended Guidelines. The Board is now going through all these changes and making our comments. We hope to have something ready for review of the membership at the end of the year.

With summer right around the corner, lots of projects to be completed, 2 graduations & 2 weddings to attend I will be very busy this year. I hope all of you have plenty of work, but remember that you still need to take time for family and friends. Have a good summer.

Diane Aas

2014 SDSLPS President

DATES TO REMEMBER

2015 SDSPLS Annual Convention

January 8, 9 and 10, 2015

Cedar Shore Resort – Chamberlain, SD

For reservations call: 1-888-697-6363

2014 Trig-Star

Students gathered on Monday, May 12th at the South Dakota School of Mines & Technology campus for the annual West River Math Competition. Trig-Star was featured again this year and hosted by members of the West River Chapter. There were 67 students registered from 7 schools - Douglas, Hill City, Lead/Deadwood, Rapid City Stevens, Spearfish, St. Thomas More and Sturgis. Each student taking the exam received a Trig-Star t-shirt from the SDSPLS West River Chapter and a brochure on surveying as a career from NSPS. Taking top honors and prizes this year were:

1st - Matt Wingers – St. Thomas More ($500)
2nd – Chandler Casey – St. Thomas More ($250)
3rd Joseph Barnes – Spearfish ($125)
4th – Ashley Peterson – St. Thomas More ($125)

Prizes are typically awarded to the top 3 placing students, but the scores for Joseph and Ashley were tied. Third place was awarded based on finishing time and an additional award was granted for the matching score.

SDSPLS – Board of Directors Meeting
Friday, April 25, 2014
Missouri Winds – Cedar Shores Resort – Chamberlain, SD

(This report subject to BOD approval)

Participants: President Diane Aas, Past-President Eric Meyer, President-Elect Ben Lamke, Secretary Eric Howard, Treasurer Steve Thingelstad, NSPS Governor Tom Berkland, Big Sioux Chapter President Wade Lunders, Missouri River Chapter President Fred Leetch, West River Chapter President Chad Dodds, Legislative Committee Chair Gary Andersh, Standards Committee Chair Dean Scott, Executive Director Janelle Finck, Andy Scott.

1. Call to order at 12:29 (central) by President Aas.
2. Acceptance of Agenda: Dean Scott requests the addition of Mortgage Survey correspondence under New Business item c). ++Motion by Berkland to approve Agenda as amended, 2nd by Meyer. Motion approved.
3. Secretary's Report – Eric Howard. Approval of minutes for the January 9, 2014 BOD Meeting and the, January 10, 2014 Annual Meeting. ++Motion by Lamke to approve minutes, 2nd by Thingelstad. Motion approved.
4. Treasurer's Report – Steve Thinglestad: Written report submitted for review. Finck we lost about 20 members mostly Technicians and Associates, There was approximately $7500 from convention income, there remains almost $22,000 after January's distribution in the Scholarship Fund, and the Mutual Funds contains $102,000. ++Motion by Berkland to approve the report, 2nd by Dodds. Motion approved.
5. President's Report – Aas: No Report.
6. Committee Reports:
   a) Education Committee – Kristi Goehring: No Report.
   b) Legislative Committee – Gary Andersh: Written report submitted for review. Discussion followed on the possibility of electronic submission of documents and the accessibility of these documents.
   c) DPC Report – Don Jacobson: Gail sent written report. Finck states momentum is hard to keep when things are slow but need to keep it going for the times needed.
   d) Standards Committee – Dean Scott: First draft of the Recommended Guidelines handed out and Dean is open for suggestions. Discussion follows: The layout is on the lines of start to finish of surveying. Meyer states it is very good and addresses problems that need to be corrected and also likes it cites SDCL in the recommendations. Dean states there are chapters yet to be completed, the last revision was from 1998 and adopted in 2003. Part of the guidelines is to correct GPS Standards. Dean will have something significant by the end of the year. Board members are directed to review and make comments. Would like to get this approved by the board and bring to the Convention.
   e) Public Information Committee – Mark Lippincott: No report.
   f) Membership Committee – Ron Fisk: Written report of membership summary. Clarification of the columns is: FM with no NSPS is out of state members. We are down from 306 members to 282. Life membership is growing.
   g) NSPS - Tom Berkland: Tom reports there are 3 unsigned MOU's. CA is asking for an additional board member. NSPS is doing away with the Area Directors and there will be cost savings without these meetings. Discussion was also had on NCEES Model Law regarding "Engineering Surveying" being a survey performed by and engineer, signed off by an engineer. This would eliminate the surveying company out of projects, and engineers are then practicing out of their area of expertise. NSPS is discussing with NCEES to attempt to change / update the Model Law. SD received a Certificate of Appreciation for becoming a 100% member of NSPS.
   h) Trig Star –Dan Britton: No Report. Thingelstad states the test will be held on May 12 with the West River Math Contest. Finck states the West River Math Contest is in danger of losing SDSM&T.
7. Chapter Reports
   a) West River Chapter – Chad Dodds: Held a meeting on March 18 and discussed holding biannual seminars to gain additional PDH's. Finck states that this would also give the chapter an opportunity to fund raise. The chapter has agreed to purchase the t-shirts for Trig Star.
   b) Big Sioux Chapter – Wade Lunders – Wade reports rotating the locations of their meetings has been working. There were 25 people at the meeting in Brookings, there are currently 44 members. Discussion has been had to create a Northeast Chapter.
   c) Missouri River Chapter – Fred Leetch. Fred reports Keith Howe brought 2 Lake Area students to the mentoring program. Next year should work with STI to get his students there. Fred asks if the society should discuss with secondary education schools how to keep programs, with education requirements to be licensed, within the state and should the survey program be moved from engineering to GIS or the geological department. Rod Breiting has 80 job openings and 2 students. Finck suggests discussion with the SDES about the surveyors need in their work.
8. Old Business
   a) 2014 Convention Review – Finck ask for suggestions on ways to evaluate the convention. Questionnaires can be included in binders. Berkland states NSPS is working on a ranking system for speakers.
   b) SDBOTP Recommendation – Nothing has been heard about any appointment. Personal letters of recommendations are encouraged. Finck can send out a sample letter.
   c) NCEES – Young Professional Award/Focus Group – 2014Convention has been postponed to 2015.
   d) Recommend Guidelines Update – previously covered.
9. New Business
   a) 2015Convention – Speaker & Topic Selection. Discussion follows. ++Motion by Chad Dodds to have Gary Kent give a 6 hour session on Easements and Right of Ways, and 4 hours on Ethics. 2nd by Thingelstad. Motion approved.
   b) Strategic Planning
      1) Newsletter Publication / Distribution. - Finck states if we fall below 100 mailings we will lose the bulk rate. Discussion follows. ++Motion by Berkland to have mailings for February and November

(Continued on Page 22)

It Pays to Belong

How NSPS benefits members/ the profession:

Advocacy Program
- Political Action Committee (PAC)
- US Congress
- Federal Agencies
- Assistance on state specific matters (if requested)
- Other geospatial organizations
  - International Federation of Surveyors (FIG)
  - 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 (POLC)
- ALTA/ACSM Land Title Survey Requirements
- NSPS Model Standards

Outreach Opportunities
- Trig-Star
- Boys Scouts Surveying Merit Badge
- National Surveyors Week

Certification Programs
- Reduced rates for Certified Survey Technician Program
- Hydrographic Certification opportunities

Media

NSPS News and Views weekly newsletter – Sign up by visiting http://multibriefs.com/optin.php?nsps

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5. Head to the installer and have the tires/wheels installed on your vehicle

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If You Don't Mentor Anymore, Does That Make You Demented?

A Commentary

By: Carl C. de Baca, PLS

Aldous Huxley famously said, "Most human beings have an almost infinite capacity for taking things for granted." So it is with us surveyors. The economy takes a downward turn so we lay off some staff and keep going. Some of these former employees start their own companies and undercut our fees, so we lower our fees and keep going. The equipment manufacturers continually refine their equipment toward one-person use. We reluctantly purchase these instruments, lay off even more staff and keep going. Each new generation of equipment and software requires less knowledge and experience to operate than before. But that's okay because fewer of us are doing the work these days so those that are left are far too busy to linger on the finer points. You can now do things akin to geodesy and photogrammetry at your desk with the push of a button (and perhaps without really knowing what you are doing). The vendors that sell us these instruments and software find our particular market to be quite small; it really makes more sense to them to sell this equipment beyond the limits of our profession. We grumble and accept the imposition as we continue to adapt and we take it for granted that this is how it must be. It all looks remarkably like a race to the bottom.

In the last decade, we have watched the advance of technology decimate our numbers (not really the right word - 'decimate' means to eliminate one in ten and our ranks have diminished by more like five in ten ... or greater still) by creating tools that allow a single individual to do the work once done by three or four or five. This is not, in itself, a bad thing and it is happening concurrently in many other industries and professions. But surveying has always relied on recruiting our future practitioners from off the street then training them for professional responsibility through a long multi-tiered apprenticeship. That was fine when there were three and four man crews, but when a crew is now made up of a single individual in complete command of an impressive array of tools like the robotic total station, laser scanners and GPS, where do the apprentices fit in? And what happens when that single individual becomes too valuable in his or her current role to bring into the office anyway? I ask you: is anyone out there actively mentoring anyone else anymore? If so, I'm guessing it's the exception rather than the rule.

I acknowledge that this is an old argument, effectively shoved aside years ago by the assertion that we will recruit our future professionals from the survey programs offered at colleges and universities across the nation... Duh. Such a change in recruiting will allow us to keep our ranks full while upgrading our status among fellow professionals by truly becoming a learned profession. I do not disagree except to ask, have you looked at the state of surveying education in the United States these days? We suffer from a shortage of instructors, and colleges are downsizing, reorganizing, losing their accreditation and even eliminating their survey programs. The most fundamental reason these programs are struggling is lack of students. How many total students reside in the Cal Poly Pomona and CSU Fresno programs combined? How many are there at O.I.T.? How many at Idaho State or Great Basin College? I doubt there are 150 full time students altogether at the schools I just mentioned. And one, GBC is placing their program on hiatus, a first step in eliminating the program entirely. Another, Fresno, is down to one full time professor, two part-time retired professors, and faces real challenges within the university, or so I am given to believe. Why?

Why indeed. We have utterly failed at public outreach. Surveying is an honest and forthright profession and our practitioners are as skilled and dedicated as any other profession but no one knows that and therefore, no one cares. No one knows exactly what we do, only that it should cost less and take less time. Machine control advertising typically asserts: "No more waiting on surveyors ..." or words to that effect.

Most importantly, we have failed at youth outreach, not just partially, but thoroughly. We aren't filling those seats at Fresno, OIT, and GBC, even though it is incumbent upon us to do so. Some of us participate in high school TrigStar programs and a few of us are involved in Scouting but it is not enough, it never was, but we never bothered to think about it very deeply and now we are facing nothing less than extinction in our lifetime. Is that an exaggeration? If it is, then only slightly. Our survey programs lack both students and professors and that is no recipe for success.

I doubt Trimble, ESRI, Leica or Topcon are going to sit around and bemoan the loss of surveyors as long as some other demographic is still buying and using their products. They are more than happy to sell the tools we use to our potential clients, thereby eliminating the middle man – us. Other semi-related professions are encroaching more every day on our measurement turf. If one more geologist tells me the map projection that his GIS consultant set up doesn't match my coordinate system (so I must be wrong), I am going to go "Seven Psychopaths," and the next commentary I produce will have to be approved by a warden.

We need to wake up and take responsibility for public outreach. We are all ambassadors for our profession. If we would like to see Land Surveying continue to exist; if

we want to pass on the soul-satisfying work that we do to another generation, we'd better take action now. Don't wait for your state or national organization to come up with a plan. Go to high school career fairs, get involved with TrigStar, start looking into how you could help with Skills USA, petition your city council to issue a proclamation recognizing National Surveyors Week, participate in GPS Day. Stand up for your profession.

Let me go back for a moment to the subject of mentoring. Consider something that Terry McHenry said to me in conversation recently: "Yes, we are a technical profession in the one sense, and a legal one in another sense. But just like other professions that require in part an 'art' element as well, land surveying has lost sight of this in recent years, with the emphasis on formal education and degree requirements."

"The medical profession imparts the 'art' through rotations and internships, the legal profession through law clerking. You can provide the book learning and theory in connection with today's land surveying needs, and the grasp of all the technology and its tools, but the 'art' of Land Surveying still largely requires hands-on oversight and training under actual field experience with the one-on-one coaching and example from an experienced professional. A mentor is someone who loves his or her profession so much that he or she is willing to pass along that experience to preserve the profession – no other motive."

So while you are thinking about how you can contribute to saving land Surveying, also give some thought to how we can develop an effective replacement for the mentoring we don't do anymore.

As seen in The Nevada Traverse, Vol. 41, No. 1, 2014

Carl Gunderson
Surveyor, Governor, and SDSPLS Project?

By: Warren L. Fisk, PE, LS

Carl Gunderson (1864 – 1933) served as the 11th Governor of South Dakota from 1925 - 1927. Some of you may also know that Gunderson was a surveyor, trained by and working under one of South Dakota's most notable surveyors, Horace J. Austin.

General sources tell us that Gunderson was born near Vermillion, in Clay County, Dakota Territory. He attended the University of South Dakota (1886 – 1890) and Cornell University (1892). Public records describe him as an engineer, surveyor, farmer and politician. He was married to Gertrude Bertleson (also born in Clay County) and together they had four children.

Gunderson is most notably known as a political figure in South Dakota. He was a Republican from Mitchell and served five terms in the South Dakota state senate. He was elected to the senate in 1892, 1896, 1898, 1900 and 1916. He was president pro tempore of the senate during the 1899 session and then served as the 13th Lieutenant Governor from 1921 to 1925. Running against and defeating William J. Bulow by a wide margin, he was elected Governor in 1924. However, the fates were not as kind during his bid for re-election in 1926 and he lost the rematch against Bulow by a comparatively small margin. During his tenure as Governor, the Standard Cooperative Law was enacted, the State Department of Agriculture was established and legislation provided for an Executive Budget.

Following his political career, he returned to Mitchell where he lived and farmed until his passing in 1933. He was buried on a homestead in Clay County that he had filed claim on in his earlier years.

Of particular interest to surveyors would be his relationship with surveying. There doesn't appear to be much published information on his surveying career, but through records of original surveys and my own general survey history research, I have pieced together some of his story.

I believe that Carl Gunderson was trained through the ranks of a survey crew by Horace J. Austin. Austin, in my opinion, was one of the best surveyors in Dakota Territory. His records attest that he went far out of his way to use durable stone monuments where others would more readily resort to charred stakes or pits and mounds. I believe that he taught Gunderson in the same manner because I have retraced both men on several occasions. I also have a small ledger of Austin's that contains a time sheet for Carl Gunderson. That record indicates that for four months and eleven days, Carl was paid $111.59 or $25.00 per month (a full 30 days). The $25 per month was the going wage for chainmen, flagmen and mound builders at that time and records indicate that Austin worked seven days a week. It is also noted that Gunderson's pay was "docked" $0.35 for some "soft cartridges", $2.50 for overalls and $4.00 for a ½ robe (blanket).

I have often wondered about the closeness between Austin and Gunderson – in spite of their age difference of 27 years. I know that Austin had been a territorial legislator and I suspect that he may have had some political ties in achieving that position. I found that Carl's father, Hans Gunderson, had served with Austin during the 6th and 7th Territorial Sessions (1866-1867). It appears that Carl boarded with Austin in 1887 while attending the University of South Dakota. I expect that these political ties also came in handy when Carl sought his first contract as a Deputy Surveyor.

Survey records indicate that Carl surveyed in the field for six seasons (1886, 1889, 1890, 1892, 1893 and 1894). During the early years this would likely have coincided with summer breaks at the University. I have seen records of his work in Tripp, Gregory, Custer, Fall River, Jones, Stanley, Lyman, Todd, Mellete, Jackson, Bennet and Shannon counties. The total sum of his chained miles (for which I have records) is 2,838. He may have surveyed many more miles as an "engineer" on the western reservations – extending the original surveys into allotments. Public records indicate that he served as an Alloting Agent for three Indian Reservations from 1904 to 1911.

During what I refer to as "the great expansion" in 1890, Horace Austin's first job was to extend the Black Hills Base Line east from the Cheyenne River to the terminal at the 5th PM. He then ran the Guide Meridians northward from that base every four townships. This work took two sets of chainmen and Carl Gunderson was Austin's compassman. When that work was completed, they broke into two crews and finished the season running township lines and subdivisions.

During Gunderson's term as Governor he had the honor of appointing the first Licensing Board for Architects, Engineers and Land Surveyors (1925). He named Frank Peck (noted Mineral and GLO Surveyor in western, SD) as Registrant No. 2. I believe that Carl always considered himself as a farmer, but he was also a businessman, surveyor and statesman.

So, how does Carl Gunderson potentially become a project for SDSPLS? To begin with, our good friend Bob Thielen recently stopped at our office with some information and an idea. An organization called The "Trail of Governors Foundation" has created and undertaken a project to celebrate a portion of South Dakota history through the placement of statues

(Continued on Page 15)

Surveying's Hidden Dangers

By: Robert Fredricks, PLS

On the afternoon of May 18, 2011, my phone rang. A strained voice said, "Neal has been electrocuted! He is conscious and seems OK, but he paramedics are getting ready to 'Life Flight' him as a precaution... he's fighting with them, he doesn't want to be put in the helicopter." The call was from Chris Bateman, Neal Dickey's Party Chief. What I was told in the next few minutes was the call you hope you never get. The 25-foot sectional Hixson rod Neal was using had come into contact with a 12KV power line, he had been electrocuted, burned and was disoriented. Neal asked that his wife be contacted.

Chris had called our Department Safety Officer and Neal's wife, Yvette, before calling me. I asked Chris to get Yvette at home and drive her to the hospital. Chris was in Prunedale, Yvette was in Marina, and the hospital was in Santa Clara. It would take some time to get to the hospital but I knew Chris was the best person to drive her; he could talk with he about Neal's condition, since he was one of the two first responders.

Caltrans surveyors in District 5 go through First Aid and CPR training annually. We train for the worst and hope it never happens. Most will have to call on that training at some time in their career. When you work on the highway, you see a lot of accidents. Most are minor, but a few of our people have had to deal with very serious situations. The training just "kicks-in", there is not time to think about it.

Chris and the instrument person, Tim Hughes, were on the opposite side of the highway when they heard screaming. From their instrument set-up point they could not see the heavy oak-covered area Neal was working in. They keyed the microphones on their hand held radios and called to Neal. They weren't even sure who was screaming. The voice that came back on the radio could not be understood. Neal had been able to key his mic while lying on the ground. It was clear he needed help. Tim was the first to get to Neal and immediately saw he was in bad shape. Tim took off his coat and best and covered Neal and began to look for signs of shock. He checked for injuries and saw burns on Neal's arm. Chris called 911. Later Neal would tell us that Tim's confident, assuring voice had a strong calming effect. Neal had been electrocuted and then thrown down a hill. The paramedics arrived within minutes of Chris; call.

That night I was sent pictures of the area one of the other survey crews had taken that afternoon. I saw a heavy oak canopy of trees completely hiding the power lines above. Ironically, the crew was staking a location for a new power pole. Hundreds of poles were being relocated for a very large construction project. New interchanges are part of that project and Chris' crew was finishing the last of 18 months of utility relocation.

In the morning I called Yvette to see how Neal was doing. I was driving to the hospital in Santa Clara. She said, he had a good night and was being discharged that morning. I asked about the extent of the injuries. I understood his arm had been burned. What I didn't know and was told, his leg had burns and the electricity had blown a hole in his toe exiting his body. She was positive and sounded relieved Neal was coming home.

Because of his early release, I changed direction and went to Watsonville to sit down with the crew and see how they were doing. The whole way while driving to Watsonville I looked at the power lines, they were everywhere. Hidden and standing out, a mixture of so many lines, something you just stop noticing. They camouflage in life's scenery to where they almost don't exist. We called for a "stand down" that day. I looked at all the pictures again and we talked about what we could have done differently. It was clear what had happened. Neal had raised the rod through the heavy brush so it could be seen from the instrument. Something a lot of us have done hundreds of times. This time the rod came into contact with a 12KV power line. The rod stayed in contact and RG&E has to cut power to get the rod off the line. Neal was lucky to be alive.

All this has lead to a new way we approach our work. We now reconnoiter every project. We look for overhead electric and phone lines, vaults and cabinets, underground utilities, poison oak, steep and slippery terrain, animals, traffic hazards, and construction equipment among other things. We have a hazard checklist we complete as part of a Tailgate Safety Meeting each crew conducts. High speed highway traffic is still the biggest danger to our surveyors. But, we also have to be conscious of the hidden dangers our surveyors face every day.

Neal Dicky returned to work three weeks after his accident. A fellow surveyor gave him a t-shirt with a big number "12KV" and the name "Sparky" on the back. At an "All Hands Meeting," Neal showed our roughly forty surveyors his burned shirt, sweatshirt, and jacket. He talked about what it is like to be electrocuted. He described is as "a million bees inside you, all going off at once." Nobody in that room will ever forget his descriptions of the day.

As seen in Missouri Surveyor, September 2012
Reprinted from California Surveyors, Spring 2012

Rattlesnakes That Can't Rattle Being Found In The Black Hills

By: Gary Ellenbolt

South Dakota is home to only one venomous snake – the Prairie Rattlesnake. They can be spotted in every county in the state west of the Missouri River, and in a spot or two along the river in the east. A growing number of these snakes appear to have lost their ability to rattle, and that concerns some scientists who think the abnormality may lead to that very obvious warning of danger eventually going away.

On a nice day during her senior year of high school, Bonny Fleming decided to take a walk in the Black Hills. "I had left school for lunch, and I was all by myself, and I went to a remote place that I like to go in the Black Hills. And I had traveled up a trail, and there was a rock outcropping, and I went to sit on that rock, but I just kinda hopped over it," Fleming says. "And there was a rattle snake right under my legs. And it rattled, and I was able to spook it, and it just went back into its little hole." It was Fleming's first encounter with a rattlesnake, which left her alone once it fired its warning rattle.

The sound made by *Crotalus Viridis*, or the prairie rattlesnake, is one of the most chilling sounds heard in nature. There's a specific purpose to the rattle: to keep larger animals and humans away. But Terry Phillipp, naturalist at Reptile Gardens in Rapid City, says that signal usually means the snake's demise.

"Every rattlesnake that gets discovered generally gets killed. And the snakes that are discovered generally have a really strong muscle next to their rattles, so that they actually function the way they're supposed to." Phillipp says. "So people will be out walking or gardening or whatever, and the rattlesnake gets to rattling – well, it gets the end of the shovel or the .22 pistol or whatever."

Over the past couple of years, Phillipp has noticed many rattlesnakes with what he calls "curly-Q" tails. Imagine the tail on a pig, and you'll get the idea. Phillipp says the tail muscles on these snakes have atrophied, and accordingly, can't move the rattle. Rattlesnakes can camouflage themselves well, and, if they're not heard, they're likely not killed. "And so the snakes that have that genetic defect – it is a genetic defect – those are the ones that are surviving." Phillipp says. "They then reproduce, and they pass along that genetic defect to their offspring."

Phillipp's theory is that if the rattlesnakes that announce themselves are spotted and killed, those with the defective tails are breeding and creating more snakes that can't rattle.

Bonny Fleming, the hiker who encountered a prairie rattlesnake in high school, says she understands what a dangerous situation that could be for those exploring the Black Hills. "I think that's terrifying," Fleming says. "Every encounter I've had, I've been able to avoid them because of that warning. So it's really helpful, and I think it's helpful for them, too, because it keeps the people that are scared of them away."

Like all snakes, rattlesnakes only bite humans as a last resort; they'd rather not waste venom on something that's too big to eat. Todd Magnuson, who co-hosts the cable TV outdoor show "Nature Adventures," says the snakes have other ways to avoid detection before resorting to a strike. "The first thing they do is, they really try to flatten themselves out, and try to use camouflage, and not – and *not* strike, and not rattle their tails, and really suppressing that and not make any noise so you don't know you're there," Magnuson says.

Magnuson isn't quite in line with Terry Phillipp's theory on a genetic defect in the snakes. In a cage in his garage in the small town of Trent, Magnuson has a prairie rattlesnake he found south of the Badlands about three years ago. The snake's tail was curled when Magnuson found it, but, in captivity, the tail has straightened and rattles the way it's meant to. That tells Magnuson the curled tail may be a process of evolution.

"And I don't have anything scientifically to back this up," Magnuson says. "But I really think just from observing that the rattlesnakes are developing this behavior, because 200 years ago, the Native Americans were the only people in South Dakota. And a rattlesnake would rattle and they would respect it and leave it alone. Well, the white settlers moved in, and when a rattlesnake rattles, it gets them instantly killed."

Black Hills State University professor Brian Smith has made a career out of researching rattlesnakes; he has about 15 to 20 prairie rattlers behind a locked door on the Spearfish, South Dakota campus. While being careful with any confirmation, Smith says there's no reason not to think some snakes just can't rattle. "I haven't seen that film or anything, so it's impossible for me to say. But snakes do get abnormalities; they do get their tails broken during failed predation attempts," Smith says. "It's hard to say without seeing the film or photo of what's going on." This is not to say a snake *has* to rattle before biting. It's also not to say you shouldn't be aware of your surroundings when rattlesnakes may be present. Smith, who himself has never been bitten by a venomous snake, says it's something no one wants to go through.

"There's been a few fatalities recorded in South Dakota over the decades, but deaths from prairie rattlers are pretty rare. You might get a little bit more than a dozen

deaths from venomous snakes in the United States in a year, so it's really unlikely people are going to die from rattlesnake bites," Smith says.

When someone is bitten by a rattlesnake, the old wives tales about having someone suck out the poison, drinking alcohol, and other methods many believe will work won't. Brian Kenner is Chief of Science and Natural Resources at Badlands National Park. "The best thing is to get help right away and get taken to a hospital and get antivenin, which is what happened to a snake bite victim this summer. They got her to a hospital and got her antivenin as quick as possible, and she'll make a full recovery." Kenner says.

Herpetologists say the rattlesnakes are more than happy to leave you alone if you return the favor. And with common sense, careful observation and watching where one puts their hands and feet, the chances of being bitten by a rattlesnake are really pretty small.

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State seal: symbolizing life in South Dakota

The great seal of South Dakota does more than authenticate official documents. It serves as a symbol of life in South Dakota. Within the circle of the great seal of South Dakota are representations of commerce, industry and natural resources. South Dakota became a state on November 2, 1889. A look back at the history of the state's emblems and symbols is a fitting way to commemorate the 125th anniversary of South Dakota's statehood.

The history of the great seal goes back to the days of Dakota Territory. As constitutions were drawn and steps toward statehood were taken, the description of official seals to authenticate official documents had to be addressed. Committees were created at constitutional conventions for that purpose.

State historian Doane Robinson, in his Encyclopedia of South Dakota, stated, "The great seal of South Dakota was devised by a committee of the Constitutional Convention of 1885, of which Dr. Joseph Ward was chairman and the device and motto are his suggestion."

Ward came to Yankton is 1868. He was the first minister called to the first Congregational Church established in Dakota Territory. In addition to being a religious leader, Ward was a leader in many civic and educational enterprises and in the movement for statehood. He was a member of constitutional conventions in 1883 and 1885.

Ward and his committee offered a description of the state seal at the 1885 constitutional convention. With a few changes, such as changing the word Dakota to "State of South Dakota" and adding the actual year of statehood, this description was approved when South Dakota's constitution was ratified on Oct. 1, 1899.

The state seal as described in the South Dakota Constitution article 21, is "The design of the great seal of South Dakota shall be as follows: A circle within which shall appear in the left foreground a smelting furnace and other features of mining work. In the left background a range of hills. In the right foreground a farmer at his plow. In the right background a herd of cattle and a field of corn. Between the two parts thus described shall appear a river bearing a steamboat. Properly divided between the upper and lower edges of the circle shall appear the legend, Under God the People Rule' which shall be the motto of the state of South Dakota. Exterior to this circle and within a circumscribed circle shall appear, in the upper part, the words 'State of South Dakota,' in the lower part the words, 'Great Seal,' and the date in Arabic numerals of the year in which the state shall be admitted to the union."

Thus, the smelting furnace represents the mining industry. The plowman and the field of corn symbolize farming, and the cattle feeding on the plain portray ranching and dairying, all representing agriculture. The trees indicate lumbering. The sky and hills represent the Black Hills and the state's scenic beauty. The steamboat stands for transportation and commerce, and the river is the Missouri River that winds through the state.

The state Legislature authorized Richard Cropp of Mitchell to design an official colored reproduction of the great seal in 1961, and it is stored in the South Dakota State Historical Society – State Archives at the Cultural Heritage Center in Pierre. In 1986, Governor Bill Janklow commissioned John Moisan of Fort Pierre to create a painted version of the state seal. Current color reproductions are based on this version of the state seal.

The Secretary of State is designated by law as the "keeper of the seal." Anyone who wishes to use the state seal in publications or other purposes has to ask for and receive permission from the secretary of state's office in order to do so. This protects the image of the state seal and ensures its tasteful and respectful use. Instead of the seal being an embossed image, a foil seal is now placed on documents filed with the Secretary of State's office. About 30,000 documents a year receive the foil seal.

South Dakotans do not need to look at the official documents to see the great seal. The state seal, and all that it symbolizes, is incorporated into the design of the state flag.

Printed courtesy of the South Dakota Historical Society Foundation

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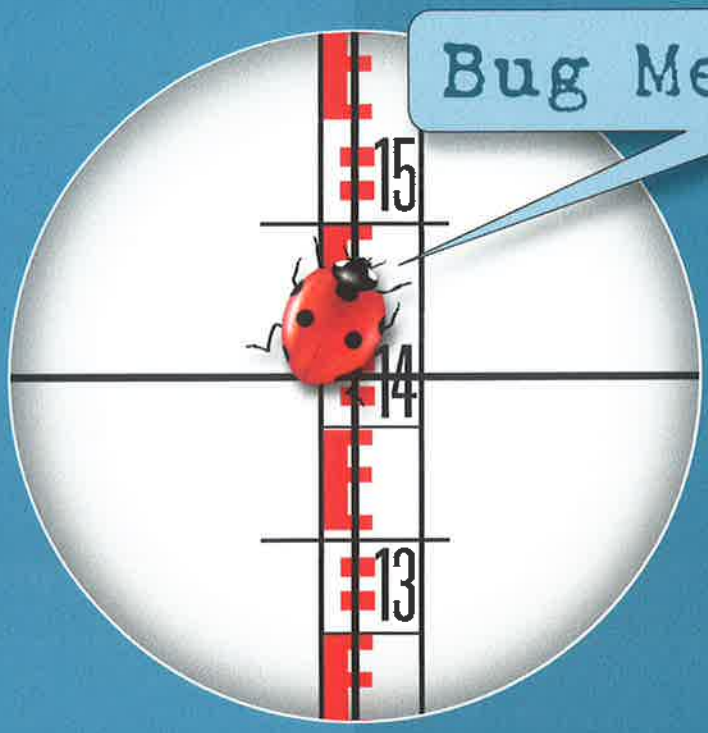

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AVOIDING BOUNDARY PROBLEMS
(by not *being* the problem)

By: Gary Kent, LS

Although surveyors are often named in lawsuits simply because it is the nature of the work they get involved in, they sometimes unwittingly bring the problems on themselves. Surveyors need to understand that the client is going to 'go the bank' with their monuments - or with the line on a drawing - and if there is 'more to the story than meets the eye' with respect to what the survey revealed, that story must be told in clear and unambiguous language. In order to do that effectively, surveyors have to understand the ramifications of what they do and, just as importantly, they have to be able to communicate in something besides 'survey-speak.'

A few months back, I wrote and facilitated a mock trial in another state and when the program was over, I asked the judge to offer her observations on the trial. Her main comment was that surveyors are hired as expert witnesses because the issue at trail is too complicated for the normal person to understand on their own. She emphasized that *it is not helpful* for surveyors to "Wow" everyone with their knowledge about surveying and boundaries if what they have to say is not comprehensible to the judge or jury. An expert is brought in to testify in order to help the judge or jury understand the issues, and thereby impart a fair decision. But if all an expert does is offer 'techno-speak' or give rote answers with no context or explanation, the court's time has been wasted and, worse yet, the surveyor could be an unwitting party to a bad decision based on misunderstood concepts. Admittedly, when on the stand the expert is mostly, although not entirely, at the mercy of the attorneys – especially the one asking the questions. The chance to expound on or explain an answer may be limited. But outside the courtroom, when simply dealing with clients, contractors or neighbors, there are no such constraints or limitations. It is inexcusable if a party is left with a wrong impression and stumbles into a lawsuit because the surveyor did not fully explain the situation and the context of what he or she did.

Take the example of a boundary survey commissioned by a client who is already in a boundary dispute with her neighbor. The survey results in one line of the property falling 10 feet over the neighbor's fence. The surveyor – believing he or she *must* set those corners[1] – proceeds to set a capped rebar in the next door neighbor's garden with a lath next to it marked "Property Corner." The plat of survey will show the fence with the surveyed line (drawn, of course, in a heavy line width) 10 feet beyond.

If the plat (assuming one is even prepared) is merely mailed to the client and no other explanation is offered, what is the client going to do with the information provided? Wait, let's back up: What information has been provided? Until or unless the plat is received in the mail, the only *obvious* information imparted to the client is the lath marked "Property Corner." Remembering that she is already in a material disagreement with her neighbor (which should have raised a red flag to the surveyor in the first place), she will, *at best*, go tell him that his fence is 10 feet over onto her property and that he needs to move it. At worst, she will forego the niceties of a conversation and simply tear the fence down and plow up his garden.

Perhaps the plat included – as is required by Board rules - a note or report that would have provided some guidance regarding the circumstance of the fence (*"note that some unwritten rights may have accrued to the east adjoiner based on the fence lying 10 feet west of the east line."*) But, (1) the rebar and lath were set on Friday, (2) the surveyor has not gotten around to drawing the plat (assuming there will even be one at all) until the next Wednesday (it will put it in the mail that afternoon), (3) the client will receive it on Friday (a week after she got home from work and saw the lath), and (4) she won't read the note - or if she does read it, she won't understand its ramifications. The surveyor has, in fairly short order, and not surprisingly given the situation on the ground, become part of the problem rather than part of the solution.

What *should* have been done? Aside from the fact that the surveyor already knew there was bad blood between the neighbors, he or she needed to make sure that nothing was done - or not done – that could be misinterpreted or acted on in haste or out of ignorance.

Maybe the corner should not have been set in the first place! After all, there is a problem when a corner falls 10 feet over a neighbor's fence. Maybe it's not indicative of a 'boundary problem,' but certainly there are potential unwritten rights associated with the location of the fence – adverse possession, acquiescence, estoppel or parol agreement. And that being the case, it would seem logical to perhaps hold off setting the corner until the client and neighbor have a chance to vet their differences and/or consult attorneys if they are inclined. Additionally, while surveyors cannot give legal advice, as professionals knowledgeable about these types of issues, they can offer some perspective based on their education and training, and experience in similar situations. The situation may offer the surveyor an opportunity to help the neighbors settle their differences the easy way – by agreement – rather than the hard way – by litigation.

When it comes to agreements, surveyors do; however, need to know the limits of their authority and not get in over their heads. They can make sure the parties

understand the situation from a surveyor's perspective, and what their options are from a survey standpoint. Of course, they need to be fully aware of ordinances that may regulate the creation of new parcels or 'lot line adjustments.' They can conduct surveys and/or write descriptions that will – preferably and hopefully – be used in an exchange of quit claim deeds fixing a new line. But surveyors should not prepare those deeds; and the parties need to consult attorneys to address issues like outstanding mortgages before any agreement is concluded.

In summary, it behooves surveyors to understand that there are only two parties who can settle a boundary dispute, and they are the two affected owners. They can settle it the easy way – by agreement (or perhaps simply agreeing to disagree) – or they can do it in the hard way – by litigation. The surveyor's job does not end with the completion of the survey or even with the delivery of the plat. He or she must make sure all of the information the client needs to make an informed decision is clearly presented in a timely manner and in an understandable form. If the client makes a poor decision because he or she was not adequately informed of the ramifications and possibilities (in contrast to the client who makes a poor decision *despite* being adequately apprised), it does not matter how good the survey was – what started as a potential 'boundary problem' has become, definitively, a 'surveyor problem.'

[1]TAC 22-29-663B (Rule SS663.17) "When delineating a property or boundary line as an integral portion of a survey (survey being defined in the Act, SS1071.002(6) or)8)), the land surveyor shall set, or leave as found, sufficient, stable and reasonably permanent survey markers to represent or reference the property or boundary corners, angle points, and points of curvature or tangency."

As seen in The Texas Surveyor, July 2013

An aging man lived all alone on a small farm plot in Ireland. His only son was a guest at Long Kesh Prison. When spring came, the old man didn't know anyone who would spade up his potato garden for him and he was unable to do it for himself. So he wrote to his son about his dilemma and received this reply, "For HEAVENS SAKE dad, don't dig up that garden, that's where I buried the GUNS!!!"

At 4:00 am the next morning, a dozen British soldiers showed up and dug up the entire garden searching for the guns. Nay, not a gun to be found. Confused, the old man wrote to his son telling him what had just happened and asking his what to do next.

His son's reply "Plant your potatoes."

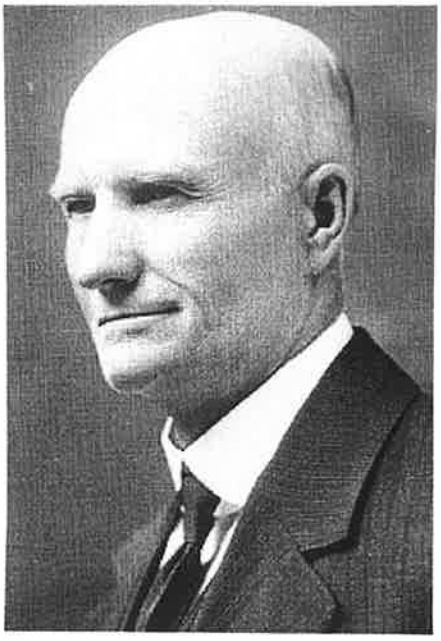
*(**Carl Gunderson** – continued from Page 8)*

throughout our capital city in honor of each of our governors. The statues are funded by donations but are donated to the City of Pierre and will be placed on City property from the Missouri River-front area, through downtown and then to and around the Capitol. The statues are life-sized bronzes created by South Dakota artists John Lopez, Lee Leuing, Sherry Treeby and James Michael Maher. The Foundation plans to place three, or more, statues per year. The timeline/order for each year includes an early, recent (but having left office) and mid-timeline governor. The foundation will print and distribute walking trail maps which will include biographies for each governor.

Each statue has a $68,000 sponsorship fee which covers most of the costs associated with creating the sculpture and then placing the statue and plaque. Sponsorships are available in the following amounts: ¼ statue $17,000, ½ statue $34,000, ¾ statue $51,000 and 1 full statue $68,000. Sponsors can fund their pledges over time and before the statue is actually completed. The sponsors will be recognized on the plaque which will be affixed to the respective statue. The plaques will have four lines (one line per ¼ sponsor) with up to 50 characters per line. It is indicated that corporate logos cannot be placed on the sculptures. More information regarding the project can be found at:

www.trailofgovernors.com

So, with Carl Gunderson being our one (and possibly only) governor with a tie to our profession, do we as a society want to step forward and put at least a portion of our collective resources towards ensuring his relationship to surveying is remembered? Bob and I think so. The SDSPLS Board of Directors was alerted to the project at their April meeting and I hope that as discussions continue and are brought forward to the general membership that you will consider lending your support.



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

Part 6 – 1898 to 1900

This article represents the sixth in a series of excerpts from a book prepared by South Dakota licensee Brian Portwood. The complete book is available for review in PDF form on the SDSPLS website and 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 a valid right-of-way description?

Yankton County v Klemisch (1898)

Returning to the subject of easements, we will next review a case that provides insight into the historic process through which county roads outside the section line right-of-way were created, and beyond that, also displays the manner in which the Court protects such valuable public assets. Most surveyors are already cognizant of the familiar judicial maxim which makes the ability of a surveyor to properly or effectively utilize any given legal description the ultimate measure of the usefulness, and thereby the validity for location purposes, of the given description. Here we will look on as the Court applies that standard to a highly indefinite description, in combination with two other crucial factors that must also be considered in determining the overall validity of the right-of-way that was established pursuant to the objective for which the description in contention was created. The first of those two additional factors requiring consideration, beyond the technical content of any legal description, is the purpose for which it was created. While the Court has always required a high degree of correctness, completeness and clarity in descriptions created to facilitate fee conveyances of land, as we have already observed, the Court has also always recognized that there is no need or reason to demand that the same high level of accuracy must appear in descriptions created for all other purposes, such as a description intended only to outline a route for purposes of construction of a roadway by a county through private land. Description standards are much higher today than they were over 100 years ago of course, and roads are no longer created through the petition process that is on exhibit here, yet all of the description principles presented and exercised by the Court in this case remain fully valid. The second major factor influencing the Court's decision to support the very minimally acceptable description at issue in this case, is the plain fact that the intended roadway was actually built, which introduces the important concept of subsequent acts of the parties to a conveyance, as potentially controlling elements of that transaction. In this instance, as always, its worth noting that the Court prefers to approach the resolution of land rights controversies from the perspective of common sense, which rarely conflicts with the letter of the law, and the Court's attitude toward the description being challenged in this case follows that typical pattern of analysis. In the view of the Court, the allegedly deficient description was put into actual use for it's intended purpose, and at no point when doing so was the description found to be so worthless or useless as to prevent the objective from being accomplished, so the fact that a road that accords in terms of location with the disputed description was subsequently built and put into public use, without objection, proves to be the ultimate verification, in the eyes of the Court, of the validity of the questionable description itself.

1879 - Klemisch was the owner of a tract of unspecified size, presumably either a quarter section or a quarter quarter, in an unspecified rural area in Yankton County. The county road system was in it's infancy at this time, and public roads were being created as needed, typically at the request of groups of land owners. About 50 land owners filed a petition with the county, requesting that a public road about 15 miles in length be created, along a proposed route, which for the most part did not follow section lines, and instead ran diagonally through the lands of an unspecified number of parties, apparently along a path dictated by topography, or quite possibly just following a sequence of existing trails. This proposed route was approved and surveyed by the county, and a roadway was created and put into public use, with a right-of-way one chain in width centered upon the roadbed, to the apparent satisfaction of all parties, including Klemisch, whose property was traversed by a portion of the road. Whether Klemisch was among the parties who had requested the road is unknown, but he was certainly aware of the circumstances surrounding it's creation, and he made no objection to it, in fact he was among those who participated in the actual construction of the road.

1880 to 1887 - This road was used by the public without incident and it became a regularly used and well travelled portion of the county road system.

1888 to 1895 - During this period Klemisch occasionally plowed up portions of the road located on his property, making travel across his land difficult or impossible, and at other times he apparently placed or erected obstructions of unspecified other kinds within the right-of-way, that also served as impediments to travel, thereby creating a frequent nuisance to the travelling public. Whether these actions on his part represented a deliberate effort to physically block the route of travel and force it to be relocated off his property, or merely represented

carelessness and disregard for the road on his part, is unknown, and to what extent the route of travel varied, or was partially relocated as result of his actions, is also unknown, but public travel over the Klemisch property, by one path or another, evidently never ceased for any meaningful length of time. The county eventually grew tired of repeatedly dealing with the public nuisance that Klemisch was continually creating however, and therefore decided to file an action to compel him to respect the right of the public to use the original right-of-way location, by allowing it to remain open and unimpeded at all times.

Yankton County argued that the right-of-way in question had been legitimately created in all respects, having been properly requested, approved, surveyed, built and utilized by the public for many years, without any timely or specific objections arising, regarding either it's existence or it's location, so a valid public right-of-way had been definitely and permanently established in the location originally used by the public, which no land owner had any right to obstruct in any manner. Klemisch argued that the intended road location had not been adequately defined in the original petition, so it was impossible for the county or anyone else to prove that the subsequently surveyed location actually represented the originally intended location, therefore no properly defined road location had ever been legally established, and no definite right-of-way location existed. He further argued that he had never forsaken or relinquished the right to reclaim and utilize all of his land as he pleased at any time, so he was not legally bound to honor the existence of any public right-of-way on his land, nor could he be forced to accept the surveyed location of the road through his property as legally binding upon him. The trial court held that the road and the accompanying public right-of-way had been properly created, and the roadway location that had been surveyed and used by the public was binding upon all of the owners of the various lands lying beneath it, so Klemisch was legally bound to honor the existence of the public right-of-way, in the location where the road had originally been built.

Descriptions can serve many purposes of course, some of which require great precision, while others do not. The most basic objective of any legal description is to define a unique location on the surface of the earth, in a manner that is both legally supportable and readily understandable to all those who will need to read the description and use it in the future. Not every description however, requires the precise delineation of a rigid and inflexible location, all that is required in that regard is an appropriate level of certainty, tailored to suit the purpose for which the description is being created. For example, a description can legitimately call out a natural monument, such as river, as a boundary, even though the location of the river is fully understood to be constantly variable and perpetually subject to change, because calling out the river as a boundary best accomplishes the true intent of the parties, by providing the requisite level of certainty, as to the boundary location at any given time in the future, leaving the boundary inherently flexible in terms of location, yet very clearly defined. The description created by the original road petitioners in this case was in fact highly indefinite, and entirely lacking in precision, just as Klemisch maintained, yet it was very well suited to the purpose that it was intended to accomplish, which was to point out the best general route for the desired roadway. It was understood by the authors of the original description that the execution of a survey was part of the typical official road establishment proceedings, so they realized that there was no need or reason for them to attempt to pin down their intended route in any precise or absolute terms, because that task was best left to the road surveyor. As the Court very wisely observed, one of the most essential principles of description analysis is "That is certain which can be made certain", meaning that every description must be construed in the light of the circumstances surrounding it's creation, and with due consideration to the subsequent acts of the parties, both which can provide highly valuable evidence of their true original intentions, and make the meaning that the original words held for the parties certain for all to see. In this case, both the subsequent survey and the construction of a roadway, following the course that had been outlined in the petition description, supplied the essential element of certainty, effectively ratifying the validity of the original description, to the evident satisfaction of all of the road users and land owners alike, with the exception of Klemisch. There was no evidence suggesting that the roadway location that was actually built and used varied in any material way from the surveyed route, so Klemisch could not successfully maintain that the right-of-way in actual use was not in agreement with the right-of way location of record, as defined by the survey, yet the Court focused primarily upon the actual construction and use of the roadway at issue, as supplying the strongest evidence of it's intended and legally controlling location. Citing comparable cases that had been resolved by applying similar description principles in Indiana and New Jersey, the Court took the position that the description in controversy was fully sufficient for it's intended purpose, despite it's employment of very loose and imprecise language:

> *"The petition ... stated ... commencing at the township corner to townships 93 and 94 N., of range 55 and 56 W.; thence northerly on or near the township line to the neighborhood of the quarter section corner between sections 13 and 18, township 94 N., of ranges 55 and 56; thence in a northwesterly direction to the bridge now built across Beaver Creek ... thence in a northwesterly direction to what is known as the Ellerman Bridge ... thence northeasterly to the north and south section line running through the corner to sections 20, 21, 28 and 29, township 96 N.,*

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> *range 56 W.; thence northerly on or near the north boundary of Yankton County ... It is insisted that this ... renders the petition insufficient ... a description of a proposed highway which is sufficiently definite to enable a surveyor to locate the highway is all that the law requires ... While, technically speaking, the description ... may be in some particulars objectionable ... there is no merit in the contention that the proceedings were null and void."*

There was no evidence that Klemisch or any other land owners had ever been financially compensated for the use of a portion of their land as a public roadway, which of course had the effect of burdening the land of each party whose property was crossed by the road with an easement for that purpose. This was not a factor in the outcome however, since the existence of the public right-of-way operated as a distinct benefit to all of the parties whose land it served, as well as a burden, and it had come into existence through a process that was motivated by an invitation from the land owners themselves, or their predecessors, who had thereby implicitly approved and accepted it's creation, without any stipulation of any further compensation being due to them. The Court poignantly emphasized the fact that the acquiescence of all the parties having any direct interest in the road, over a period of many years, was an important factor in this scenario, substantiating and validating both the existence of the public right-of-way and it's location, through their mutually beneficial use of it, and their mutual tolerance of it's presence within their private boundaries. If Klemisch ever had any legitimate objection to either the existence or the location of the public roadway, he had missed his chance to protest it, any opportunity he might have had to eradicate it, or to insist that it be relocated off his land, had been foreclosed by his own acknowledgement of it's existence, and his use of it for his own benefit, so the Court fully upheld the lower court decision against him. Since there was evidently no perceptible difference between the surveyed location of the road and the location in which it had been built, and the only variation in it's location over time, if any, had resulted from the acts of Klemisch himself, he had no valid basis upon which to assert that the right-of-way was not in the originally intended location, as defined in effect by the road itself. It was very clear to the Court that Klemisch was simply attempting to utilize the presence of some degree of ambiguity in the original petition description as a device, by which to eliminate the public easement crossing his land, which he had once welcomed and accepted along with his neighbors, but which had evidently come to be a source of aggravation to him, presumably because traffic on the road had increased to a level which he had not anticipated. Once exposed in this light, his effort was doomed, since his personal reversal of his own original acceptance of the road on his land, deprived his argument of the crucial element of good faith, leading the Court to dispose of his attack on the validity of the petition description in the same way it deals with all those who seek to prevail by falsely elevating the importance of minor technicalities of any kind. The right-of-way location in question had been initially created by means of a legitimately executed survey, and had been legally cemented in place by the principle of establishment through usage, which represents the embodiment of the concept that the strongest evidence of the controlling intentions of the parties is typically found in the location that was actually put into use on the ground, leaving no question, in the view of the Court, that the existing roadway was in the location that had been originally described and originally intended.

Also in 1898, the Court extended it's protection of the section line right-of-way to school sections, with it's decision in the case of Riverside Township v Newton, marking the first occasion upon which the Court had to contend with an allegation that attempted to fundamentally limit the section line right-of-way. Newton owned land in Sections 9 & 16 in Riverside Township in Clay County, and he asserted that the township had no right or authority to build or open a public road running through his land, along the line common to those sections, since Section 16 was a school section. The township commenced an action against Newton, to compel him to cease his resistance to the proposed roadway, but the trial court held that Newton was right, because the section line right-of-way emanates from RS 2477, previously discussed herein, which expressly stipulates that it does not apply to any land reserved for public purposes, and school sections constitute such land, so no section line right-of-way had ever existed in Section 16. The Court disagreed however, declaring that school sections were never intended to represent public land in the fullest sense, because they were devoted only to use for the benefit of the public, and they had not been reserved for perpetual use by the public alone. Pointing out that the school sections had always been intended to be conveyed into private ownership, for the purpose of funding the public school system, the Court concluded that the land in those sections was in no sense reserved, and therefore reversed the decision of the lower court, enabling the township to utilize the full one chain section line right-of-way, centered upon the section line at issue, without compensating Newton for doing so. Another controversy, quite comparable to the Klemisch case, was also developing at this time, although it was destined not to be adjudicated until 1925, in the case of Duxbury v McCook County. In 1894 Duxbury owned a quarter section in Pearl Township, and for unknown reasons, along with a group of adjoining land owners, he requested that an existing section line road be relocated to an area outside the section line right-of-way. The township approved this request, and relocated the road, and it was used by the public for the next 30 years, crossing Duxbury's land in the very location which Duxbury himself had proposed and agreed to in 1894.

Duxbury maintained that he had never fully agreed to the road location on a permanent basis, and that he had reserved the right to insist that it be relocated or adjusted again in the future, in accord with his own needs or desires in making use of his land. The Court upheld a lower court decision against Duxbury, verifying that regardless of any details pertaining to any surveys of the road in question, or to the manner in which the relocated portion of the road had been described, the location that had been used for well over 20 years by the public conclusively represented a permanent public right-of-way, that was legally binding upon all parties, including Duxbury. Interestingly, the Court chose not to base this result upon prescription however, basing it instead upon estoppel, holding that Duxbury had implicitly consented to the location that had long been used by the public, making his belief that he still had the right to demand that the road be moved back to the section line or otherwise shifted, simply irrelevant, and thereby silencing his protest, requiring him to honor the existing road location as a valid public right-of-way.

What is common law dedication?

Whittaker v City of Deadwood (1900)

While the topic of dedication has already been briefly mentioned, in the context of the section line right-of-way, which represented one extremely large dedication, made by the federal government by statutory means in 1866, this case marks our first detailed examination of dedication in a more typical context, pertaining to roadways that are unrelated to the section line right-of-way. Like the 1891 Wells case however, this controversy involves RS 2477, because the conflict that plays out here is centered upon the creation of the earliest streets in Deadwood, which is a very historic location, that came into existence under a very unusual set of circumstances, so although this case involves what may appear to be typical city streets today, it actually represents a rather unique application of the principles that support the concept of dedication. A truly typical dedication, in the modern sense, can be well understood by reviewing any subdivision plat that was prepared for the purpose of creating new lots intended for private use, along with new streets intended for public use, connecting to existing public streets in any city or town. Such plats are prepared, checked and approved today, with the objective of achieving compliance with detailed modern standards applicable to platting and dedication, and when properly prepared and finalized they provide great clarity, insuring that the public status of all of the areas intended to be devoted in perpetuity to public use are well documented. Such dedications, when made through the use of a properly prepared and approved plat, represent statutory dedications, that are fully in accord with all of the parameters for dedication that have been codified into law, but even today not all dedications are statutory in nature, and at the time of the case we are about to review the standards pertaining to dedication were still poorly developed and relatively primitive, so the need for a legal means of recognition of other forms of dedication existed. The type of dedication on exhibit in this case has it's origin in the principles of equity that comprise the common law, and it was therefore originally known as common law dedication, one good example of which is a dedication that resulted from a plat which was improperly executed in some respect. Because a dedication of this variety is founded upon an intention that clearly existed, but was improperly carried out, thereby running afoul of the law and failing to qualify as a statutory dedication, the underlying concept has come to be popularly known as implied dedication, or more formally, dedication by implication. Here we will observe a scenario that leads the Court to conclude that a legally binding dedication of city streets has taken place, although it was never specified or explicitly described as a dedication in any existing documents or records, and we learn that the presence of only a few very basic equitable ingredients can result in a complete and entirely valid dedication, making the importance of recognizing evidence that supports implied dedication quite apparent.

Prior to 1876 - At an unspecified time, settlers began to arrive and populate the locality that would later become Deadwood. The land that would eventually comprise the city was situated within a Sioux Reservation at this time, so the settlers were actually illegally encroaching on the land, nevertheless they continued to pour in and settle in close proximity to each other, forming the nucleus of a city. At an unspecified date during this period, the first map or plat of the city was produced by an unknown party or parties, showing that some lots, blocks and streets were already in unofficial use as such.

1876 - Early, who was a miner, filed a mineral location claim that embraced an unspecified portion of the city. Although Early, like all of the other settlers, was also an encroacher, and his claim was illegal to that extent, he apparently did make use of some portion of the land within his claim, and he acknowledged and treated the existence of the claims of his fellow settlers, and the existence of the city itself, as valid. Early then conveyed some, if not all, of the platted lots lying within his mineral claim to various settlers.

1877 - The portion of the Sioux Reservation occupied by Deadwood was officially relinquished by the native people, and became part of the public domain, open to legal settlement. The claims of all the various settlers, which had formerly been technically illegal, became valid land claims at this time. Shortly thereafter, Whittaker acquired some of the lots that had been previously conveyed to others by Early, and began erecting buildings on some of the lots, some of which may have encroached upon some of

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the adjoining streets, but these buildings were apparently insubstantial and they later burned down.

1880 - Early obtained a patent, granting him ownership of the land lying within the boundaries of his mineral claim, which covered a portion of Deadwood that had previously been platted, including portions of Deadwood Street, Sherman Street and Seiver Street, along with some lots fronting upon those streets. Early recognized the land rights of all the settlers, such as Whittaker, who were occupying those portions of his land that he had already conveyed, so the issuance of this patent served to legitimize their acquisitions and ownership of their respective portions of his mineral location.

1881 - Deadwood was officially incorporated as a city, and the existing lots, blocks and streets were officially recognized as legitimate.

1884 - Whittaker erected a building that apparently encroached upon Seiver Street by about 5 feet. He may not have known or cared about this encroachment, since Deadwood evidently raised no objection to the location of the building at this time, and how or when the existence of the encroachment was actually determined is unknown.

1893 - By this time, Whittaker owned an unspecified number of buildings which were situated on his lots fronting upon Deadwood Street, Sherman Street and Seiver Street. Deadwood announced a plan to improve some of the city streets, including those bordering the lots owned by Whittaker. Whittaker however, was apparently not convinced that these streets had any valid legal existence as such, so he decided to challenge the right of Deadwood to make the planned improvements. He wrote a letter to the mayor, indicating that he would formally protest and oppose any attempt to improve these streets, stating that the city's plan to change the grade of the streets in certain areas would have an adverse impact on the use of his buildings and his lots.

1894 - Deadwood elected to proceed with the planned improvements, over Whittaker's objections, demanding that his encroaching building be removed from Seiver Street. Whittaker refused to move the building however, and he filed an action against Deadwood, seeking to prevent the city from completing the street improvement project. Deadwood responded by filing a countering action against Whittaker, to compel him to relinquish his claim relating to the control of the use of the streets in question, and insisting that he acknowledge the right of the city to control the use of all of those platted streets.

Whittaker argued that none of the streets in question had ever been formally dedicated to public use, and they could not have been formally dedicated by means of the original plat of Deadwood, because the land was being illegally occupied at the time the original plat was created, so it could have no legal effect. He further argued that nothing that had been done in the city prior to 1877 could be considered an act of dedication to the public, because the land itself was not part of the public domain at that time, so all of the actions taken by the settlers prior to 1877 were illegal, and could therefore have no legal effect. Since he had acquired his land in 1877, he asserted, neither he nor anyone else had done anything that could constitute a valid dedication of any of the streets at issue to the city, so he was still the owner of the land underneath those streets, and he was therefore under no obligation to move his building. Deadwood argued that although the original plat was not legal or binding at the time it was created, it had been respected and relied upon as if it were legal by all of the people in the area, including all those, such as Early and Whittaker, who had gone on to legally acquire land in the city at a later time. Furthermore, the city maintained, the actions of both the land owners and the public in general, both before and after 1877, clearly indicated the intention of all parties to allow public use of all of the streets in dispute, so all of the requisite elements of a complete legal dedication, in accord with the original plat, were in place, and Deadwood was therefore authorized to exercise full control over those streets, including ordering the removal of any encroachments, such as Whittaker's building. The trial court found that a valid dedication of the streets in controversy had taken place, by means of implication, so Whittaker had no right to exert any control over any of the platted streets, or encroach upon them, and they were all under the exclusive control of Deadwood.

These two legal actions were addressed by the Court as separate cases, but they were effectively merged and decided together on the same day, since the dedication status of the 3 streets in dispute was the sole issue to be decided, and the resolution of that question would fully dispose of both actions, once conclusively answered. The Court began by agreeing with the litigants that all of the occupation and use of the land that would later become Deadwood, by the original settlers, which took place on the Sioux Reservation prior to the formal termination of the ownership of that land by the native people in 1877, was definitely illegal, and since the plat in question originated from that period, it could not be upheld as a valid source of a formal dedication. Since the creation of the original plat was dubious and shrouded in mystery, the Court viewed it as fundamentally illegitimate, and treated it as merely equivalent to a street map, with no binding legal effect. Yet this conclusion concerning the plat did not completely deprive it of all value, since it still represented a reasonably accurate representation of the intentions of the parties during the period of initial settlement, which had eventually been legitimized by subsequent events. Most importantly, the Court observed that although the original settlers of the area, in occupying portions of the Sioux Reservation, could

acquire no private rights as individuals, they could establish valid patterns of land use as a public body, which could subsequently become legally binding. Under RS 2477, previously discussed in reviewing the Wells case of 1891 herein, the Court held that the use of the original roads, that would later become the city streets in question, by the public, even prior to 1877, did legally operate to create legitimate public roadways, which formed a subsisting encumbrance upon the land, predating any of the subsequent land acquisitions made by any of the settlers, such as Whittaker, or any miners, such as Early. So by the time the land at issue became part of the public domain in 1877, it was already impressed with a public right-of-way, protecting each and every roadway that had come into existence through use by the settlers, and every individual who subsequently acquired any of the land traversed by the existing roads, took the land subject to any such existing public right-of-way that crossed anywhere through the land acquired. Both Early and Whittaker therefore, along with all of their fellow immigrants to the area had, by taking ownership of their lands under the observable existing conditions, had implicitly accepted the existence of the public roads, in all of the locations that were being utilized by the public for that purpose at that time, which evidently corresponded well to the road locations indicated on the original plat. Quoting in part from the seminal Mason case of 1892, previously cited herein as having established the precedent for dedication beyond statutory parameters, the Court defined the concept of implied common law dedication, and the circumstances that can lead to it, as follows:

> *"One of the methods of acquiring the right to the use of land for a street is that of the implied dedication of the same by the owner of the fee. In an implied common law dedication, the use of such land by the public as a street, with the knowledge of, and without objection by, the owner of the fee, for a number of years, is evidence of such dedication ... his (Whittaker's) conduct was inconsistent with his present contention. It is not consistent with any notion of fair dealing for him to now assert ownership in this ground after acquiescing in its use by the public for so many years ... Where one (Early) consented to a platting and laying out of lots and streets ... and he subsequently conveyed such claim, describing it according to the plat, there was a dedication ... under RS 2477 ... they (the city and the public) acquired a valid title by such dedication, of which no subsequent acts of the patentee or his grantees could deprive them."*

The position taken by the Court in deciding these two corresponding cases clearly illustrates the fact that even unofficial or unrecorded plats or maps can hold significant value, whenever it can be shown that such a document, however crude, simplistic or ambiguous, has been relied upon in the creation or transfer of land rights. In this instance, the Court acknowledged the original plat as being an unofficial and even illegal document, yet recognized that it had obviously served an important purpose to the people of the community, since many conveyances had been made with reference to it, including those made by Early, demonstrating that he had personally accepted it, and made use of it as a grantor, as if it were entirely valid. The fact that the pattern of roads actually used by the public matched the platted road locations very well, indicated that the public had relied upon the plat, and the public use of the streets in controversy here, the Court noted, also signified the acceptance of the RS 2477 dedication, in those locations defined on the plat, by the public, so the Court upheld the lower court rulings in both cases, in favor of Deadwood and against Whittaker. The letter written by Whittaker to the mayor of Deadwood in 1893, protesting the city's claim that the 3 streets in controversy were public, and expressing his own position to the contrary, actually worked strongly against him, in the eyes of the Court, because it revealed that he had long recognized the streets as being public himself, since he had allowed public use and repair of those streets to go on routinely for nearly 20 years by that time. Whittaker's behavior, in attempting to challenge the rights of the city and the public to improve the streets, when viewed in the light of his failure to ever raise such an issue previously, made it clear that he was attempting to take advantage of the unclear dedication status of the streets merely for his own personal gain, and hoping to successfully demand payment from the city for agreement on his part to allow the improvements to go forward. The Court was determined to silence Whittaker's claim, and appropriately turned to the concept of dedication by implication in order to do so, since he had been a grantee with definite physical notice of the existence of the streets, and that tool of equity is founded upon the basic premise of justice that no grantee with knowledge of existing conditions can simply choose to close his eyes to them. In addition, as quoted above, the Court deemed Whittaker's acquiescence in the long standing public use of the relevant streets to be an important factor supporting the concept of implied dedication, and as we will see in later cases, the Court would go on to uphold that concept as a product of estoppel based on such acquiescence, in it's drive to support all beneficial public rights. Although the Court clearly defined the title that had been acquired in the streets by the city as an easement, leaving Whittaker as the fee owner of the land beneath them, the outcome of these twin cases represents an outstanding example of the arrival of the modern judicial trend toward an increasing emphasis on the protection and enforcement of valuable public land rights, which we shall see further evidence of, as we proceed through our review of the most notable South Dakota cases of the twentieth century.

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A few additional cases, signaling the rising judicial recognition of the value of public rights to our society that was underway at this time, as well as the rising significance of easement and right-of-way law, are worthy of note at this point, beginning with the 1903 case of Kirby v Citizens Telephone Company of Sioux Falls. Kirby was the owner of several typical platted lots in Sioux Falls, and he objected when telephone poles were installed in the public right-of-way, claiming that the right-of-way was intended only for travel, so the telephone company was legally required to pay him for the use of his portion of the right-of-way. The Court upheld a lower court decision against Kirby, formally adopting the position that any dedicated right-of-way is subject to use for communication purposes as well as transportation purposes, which was a position that had already been taken by Minnesota and Montana, but rejected by North Dakota. In 1905, in Larson v Chicago, Minneapolis & St. Paul Railway, the Court was confronted with another precedent setting conflict, between a town and a railroad company. The company built a roadway that crossed it's own tracks in the town of Summit, evidently to expedite traffic coming and going from the company's depot and railyard, where both passengers and cargo often disembarked. This roadway came to be used by the general public, both to access the railway facilities and for other travel, since it was the only roadway crossing over the tracks within the boundaries of the townsite, but the company decided to close the crossing. Larson, acting on behalf of the townsfolk, filed an action against the company, seeking to keep the crossing open, maintaining that the roadway had been dedicated under the common law, so the company now had no right to close it. The Court upheld a lower court ruling in Larson's favor, holding that the company was estopped from claiming that it had intended the crossing to be only temporary or that the company had reserved the right to close it, with the memorable words "estoppel gives triumph to right and justice, where nothing else could save them". This case thus marks the first application of estoppel to dedication by the Court, and the Court would frequently reference the Larson case when invoking estoppel in support of implied dedication in the future. In Lawrence v Ewert in 1908, the Court issued what may be it's strongest and most absolute decision ever regarding the section line right-of-way. Sully County had ordered Ewert and several other land owners to remove their fences from the portions of the section line right-of-way that crossed their properties, but they refused, and they repeatedly rebuilt fences within the public right-of-way that had been taken down by the county, making it unavailable for unrestricted travel. Lawrence filed an action against the Ewert group, on behalf of the county, seeking to have the land owners judicially compelled to keep the section line right-of-way clear, and the Court agreed that the right of any county to mandate that the section line right-of-way be kept open to public travel at all times was absolute, placing the burden of proof upon any such resistant land owner to show that such a county order was unreasonable, before obstructing the public right-of-way in any manner. Describing the creation of the section line right-of-way as "one of the most important and beneficial acts that was ever enacted", the Court made it quite clear that the rights of the public to every useful portion of the section line right-of-way would be most ardently defended.

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*(**4-25-14 BOD Meeting Minutes** - continued from page 4)*

newsletters and electronic on the website for May and August starting 2015. 2nd by Meyer. Motion approved.

2) On-Line Membership Payments & Convention Registration. – Discussion follows. Finck will talk to other executive directors to see how they do their registration, and will also need to talk to the bank for on-line payment options.

3) Convention Format. – Discussion to shift convention to start on Wednesday rather than Thursday and to move the Trimble training to Wednesday morning. Also, discussion is had on removing the binders and moving to electronic curriculum. The board agrees not to change the format at this time.

4) Scholarship/Fundraising Format(s) – Discussion is had to change up the scholarship auction possibly to a Texas Hold-em tournament and move the scholarship auction to after the banquet. Other fund raising ideas were a possible bean bag or poker tournament. The Scholarship Fund has grown to a point it is self sustaining. Discussion was held on creating a "Project Fund" to fund projects as an ITRN Network. The board will revisit the discussion in July.

5) Member Communications (Mailings/Email). Discussion in possible changes from mailings to electronic transmittal would be justified by cost. Place new information on the SDSPLS website and send an email to the members with a link attached.

6) Public Information – Ideas were presented such as door knockers if doing work on adjacent properties. Revise the pamphlets for consumer on why to have a survey. Currently the governor is pushing for groups to participate in the 125th anniversary of SD.

c) Governor Carl Gunderson – Pierre Statue Project. Bob Theilen requests assistance in supporting funds for the Carl Gunderson Pierre statue project. Berkland asks how the statue will look, would be more prone to contribute if he looked like a surveyor.

d) Realtor Correspondence. – Dean Scott presented a letter he received from a realtor/client regarding the cost of a mortgage survey. Discussion followed.

10. Next Meeting -- July, to be announced.

11. Meeting adjourned at 3:00 pm. (central)

Respectfully Submitted

Eric Howard
SDSPLS Secretary

SOUTH DAKOTA SOCIETY of PROFESSIONAL LAND SURVEYORS

Affiliate of the National Society of Professional Surveyors

APPLICATION FOR MEMBERSHIP

Complete the following

Name:

Last: _____

First: _____

Preferred Mailing Address:
Business _____ or Home _____

Business:

Name: _____

Address: _____

City: _____

State: _____ Zip: _____

Phone: _____

Cell: _____

Email: _____

Home: (Required)

Address: _____

City: _____

State: _____ Zip: _____

Phone: _____

Email: _____

Check one and sign below

Member *(In-State w/NSPS):*	___ $160	**Technician:**	___$60	**Life Member** *(In-State w/NSPS):*	___ $65
Member *(Out of State):*	___ $125	**Associate:**	___$50	**Life Member**	___ $25
LSI:	___ $90	***Student:**	___$25	**Sustaining:**	___ $250

In-State classifications are determined by the home mailing address.
Fees for In-State Members ($160) 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 statues;
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.

LSI (Land Surveying Intern)
Any person who has successfully completed the LSI 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, LSI, or Technician.

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

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

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

_____
Signature of Applicant **Date**
I certify that I qualify for the class of membership I have applied for as outlined below.

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

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