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BACKSIGHTS & FORESIGHTS

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IN THIS ISSUE:

Staking at Deadwood Mountain Grand Casino & Hotel

Jason Dahlman (CETEC Engineering) monitoring piles for movement during excavation. In the background are excavation and soil remediation for location of the future hotel. Smart targets on pile caps were installed for accuracy and convenience.

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www.sdspls.org

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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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Articles and columns appearing in the publication do not necessarily reflect the viewpoint of SDSPLS but are published as a service to its members, the general public and for the betterment of the surveying profession. No responsibility is assumed for errors, misquotes or deletions.

FROM THE PRESIDENT:

Wow August already - what happened to summer!

Hopefully everyone is having a busy season. I was finally able to slow down a little last week but it didn't last long (didn't even get out to golf). While work has been busy during the summer months, unfortunately but not unusually activity with the society and the Board of Directors has been very quiet. We held our summer meeting with a conference call on the 23rd of July where we mostly took care of basic business. The item getting the most discussion was the Recommended Guidelines update. We will be meeting on Sept 8th as a board and with any interested parties to discuss and hopefully finalize those updates. As always your comments would be appreciated. I again want to thank Dean Scott for all his work on the Guidelines. He has done a great job at re-arranging them into a more useable format and has added references from SDCL where applicable.

Len Neugebauer has asked that we review the proposed changes to SDCL 36-18A and a draft of the new guide document. If it is not on the website already I will ask that it be posted for everyone to review. The Board of Directors will also be reviewing this item on Sept 8th. No time or place has been set for that meeting but if you are interested in attending please contact myself, Janelle or any board member. We also plan on having Chapter meetings prior to our Sept 8th meeting to discuss these two items.

I have been invited to attend the Association of Manitoba Land Surveyors Meeting in September, but have not decided yet if I will be able to attend. I have met their president several times so I think it would be very enjoyable.

With fall fast approaching and winter (Yelk) not far behind that, I hope everyone stays busy, but takes a little time to look at the reviews mentioned above and add your comments.

Diane Aas

2014 SDSPLS President

SDSPLS – Board of Directors Meeting
Wednesday, July 23, 2014
Conference Call

(This report subject to BOD approval)

Participants: President Diane Aas, Past-President Eric Meyer, Secretary Eric Howard, Treasurer Steve Thingelstad, NSPS Governor Tom Berkland, Missouri River Chapter President Fred Leetch, West River Chapter President Chad Dodds, Legislative Committee Chair Gary Andersh, Executive Director Janelle Finck.

1. Call to order at 8:02 (central) by President Aas.
2. Acceptance of Agenda: Finck requests the addition of SDBOTP Suggested Revisions to SDCL 36-18A under New Business item (a). ++Motion by Berkland to approve Agenda as amended, 2nd by Meyer. Motion approved.
3. Secretary's Report – Eric Howard. Approval of minutes for the April 25, 2014 BOD Meeting. ++Motion by Berkland to approve minutes, 2nd by Dodds. Motion approved.
4. Treasurer's Report – Steve Thinglestad: Written report submitted for review. Finck notes that expenses are tracking well for the year. ++Motion by Leetch to approve the report, 2nd by Berkland. Motion approved.
5. President's Report – Aas: No Report.
6. Committee Reports:
   a) Education Committee – Kristi Goehring: No Report.
   b) Legislative Committee – Gary Andersh: No Report. Andersh would like to see how the electronic submittal committee is doing writing the requirements.
   c) DPC Report – No Report.
   d) Standards Committee – Dean Scott: No Report.
   e) Public Information Committee – Mark Lippincott: No report.
   f) Membership Committee –Ron Fisk: No Report.
   g) NSPS - Tom Berkland: No Report.
   h) Trig Star –Dan Britton: No Report
7. Chapter Reports
   a) West River Chapter – Chad Dodds: No Report.
   b) Big Sioux Chapter – Wade Lunders: No Report.
   c) Missouri River Chapter – Fred Leetch. No Report.
8. Old Business
   a) SDBOTP Recommendation – Contact Updates: Discussion follows. The Board would like to have a recommendation in place by the January meeting.
   b) Recommended Guidelines Update – Workshop Meeting. A separate workshop meeting will be scheduled for Monday, September 8, 2014 in Chamberlain if available and Pierre as an alternate location. If possible, Chapters should meet in August and gather input prior to the workshop.
   c) Governor Carl Gunderson – Pierre Statue Project: Discussion follows: Aas states that the statue is still in planning and in discussion only at this time. Leetch states the donations do not give right to decide how it will look. Finck states if we donate, recommendations on it appearance could be given. Berkland suggests prior to a pledge being made then we would like to have information on the background. Berkland discusses the possibility of using the proceeds from the auction and raffle this year to be designated to this project. Finck understands that the statues will not be started until the full amount has been raised, therefore, if we donate a portion, it may sit until the full amount is raised. Finck states that the Board may make a recommendation regarding the use of designated funds (raffle items, or a portion of the auction proceeds) final approval will be needed from the membership. Finck to contact Robert Thielen and see if additional information can be provided regarding the funding process and statue input.
   d) 2015 Convention: Finck states everything is tracking well. Discussion follows on fundraising possibilities, such as a poker tournament or a casino event. Finck would like input from the membership before changing the format of the convention/fundraising layout. Aas suggests a questionnaire at the convention. Leetch suggests bringing up at Chapter Meetings. Andersh would like to have projections of funds being brought in with the possible changes. Berkland states that it would take a lot of work and we would have to have enough volunteers to manage a change or addition to fundraising activities.
9. New Business
   a) SDBOTP Suggested Revisions to SDCL 36-18A: Aas states there may be minor items that did not read very well, but in general the changes seem good. Discussion follows on the change that all plan sheets need to be signed and sealed. No action taken.
10. Next Meeting – Tentatively Monday, September 8, 2014, at Chamberlain or Pierre for workshop on Recommended Guidelines.
11. Meeting adjourned at 8:42 am. (central)

Respectfully Submitted

Eric Howard
SDSPLS Secretary

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

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

NSPS Radio Hour on www.americaswebradio.com 11:00 am Eastern every Monday

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Automotive

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2. Choose your tires and/or rims
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4. Choose one of our local professional installers – products will be delivered fast, in most cases, free to the TireBuyer installer
5. Head to the installer and have the tires/wheels installed on your vehicle

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www.nsps.us.com

Land Surveyor Position

Job Description:

Land Surveyor, LS (preferred) or LSIT – JSA Consulting Engineers/Land Surveyors has an opening for a Land Surveying position. Responsibilities include:

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

Experienced and efficient use of Civil 3D required.

Bachelor's degree in Surveying or related field preferred. Minimum of one to two years of experience in the land surveying field preferred.

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

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

To apply: Send resume and references by e-mail to natejibben.jsa@midconetwork.com or call 605-367-1036 with questions.

By Mail: Nate Jibben, PE/LS
JSA Consulting Engineers/Land Surveyors
6810 S. Lyncrest Avenue, Suite 101
Sioux Falls, SD 57108

2014 NCEES Central Zone Distinguished Service Award

2004 SDSPLS Past President Leonard C. Neugebauer, PE/LS is the 2014 National Council of Examiners for Engineering and Surveying (NCEES) Central Zone Distinguished Service Award recipient. Len has been a member of the South Dakota Board of Technical Professions (SDBOTP) since April of 2005 and has served as Secretary, Vice Chairman and Chairman. During his service on the SDBOTP he has been active in the National Council of Examiners for Engineering and Surveying including service on the Engineering Education and Alternate Licensure Pathway Task Forces and as a member of the Committee on Uniform Procedures and Legislative Guidelines. Len is a graduate of South Dakota School of Mines & Technology, receiving his BS of Civil Engineering in 1969 and Master of Science in Civil Engineering in 1971. He is a founding member of SDSPLS and received the SDSPLS Surveyor of the Year award in 2006.

The Race To The Bottom

By: Jason Caster, PLS

In the Mid 1980's, Major League Baseball owners were accused of collusion, of making a conspired effort to keep players' salaries down by refusing to offer free agents the perceived going rate for their services. I was in high school then, and I was rooting for the owners to prevail. I saw then how outrageous the players' salaries had become, and I could see how that had a direct effect on the prices of tickets, parking, concessions, merchandise, etc. The owners were trying to keep the game affordable for the average family (as well as their wallets), and they understood that the only way to offset the escalating costs of labor was to pass those costs off to the fans. If the cost of attending a game, buying a beer and a dog, and even a t-shirt or hat became too much for Joe Six-pack to afford, there would be no butts in those seats, and the industry as a whole would flounder. Arbitrators eventually ruled against the owners, and they were forced to pay the affected free agents millions in reparations.

Fast forward to present day, and the nightmare scenario of the fan has mostly become reality. The players union (thanks in no small part to the player agents) became strong enough to create an unfathomable pay scale for themselves, and some of the contracts seen now are laughable, the stuff of fantasy. The players were able to change the perception of their 'labor' from pastime folly to that of the entertainer, and have reaped endless bounty by changing the paradigm. The union reps and agents deserve all of the accolades and love that they received from the players they represent, for they have changed the industry forever, and set the players and their families (sometimes for generations) up with a lifestyle that was unthinkable a couple of decades ago.

Enough about baseball (although I could talk about it all day), let's talk about the surveying business, shall we? For years, I have heard complaints from colleagues about the 'Garage Surveyor', the guy who will cut all of his local competing Surveyors off at the knees with lump-sum fees and charge-out rates that are exponentially less than the typical local rates. As a Project Manager now myself, responsible for proposing on and procuring work for my firm and my guys, I am seeing first-hand the absolutely ridiculous amounts that some Surveyors are willing to sell their 'wares' for. To those who will offer their (and my) clients basically half-price Surveying, I have to ask the questions, what is your stamp worth? I have never seen a Mechanic, Plumber, or even a Carpet Cleaner go rogue with their fees and undercut everyone else in their area. Believe me, if I know of a mechanic doing that, I know which line I'd be in, (a nod to the great Richard Pryor here) I'd be in that long a** line!! Surveying in general suffers from a perception problem, in that there IS no perception of surveying by the general public. I recently saw an Army recruiting ad that showed 2 soldiers surveying in a far-away land, and I did a triple take. Besides Indiana Jones looking for the 'Well of Souls' in the original (best) movie, I cannot remember the last time I saw a surveyor in any form of media. We are not on the radar of the common man, not even a blip. This would explain the typical reaction of the Realtor or homeowner that cold calls us periodically and says something like "Yeah, uh, I have a big parcel of land, and I want to split it up and sell off some of it. How much would you charge to do the map, a couple hundred bucks?" Unfortunately, if their fingers walk to the right guy in the Yellow Pages (my daughter just said "what's a Yellow Page, Dad?) they *can* get their map for a couple hundred!

Recent conversations with the NALS State Board, Union Officials, and College Faculty have brought into sharp focus the challenges facing Surveyors in the near future. The proliferation of machine guidance controls and lack of enforcement of regulations have already squeezed the budgets of construction staking to a fraction of what they were even 10 years ago. The pre=licensees I know are beyond unoptimistic about the procession as a whole, and many are looking to other career fields rather than continuing their quest for licensure. I have been an exam proctor for the last 7 exam cycles, and I can speak to the fact that the numbers of examinees seeking licensure in Nevada has dwindled to near nil. This does not bode well for the future of our profession, or the future of NALS. I believe that the requirement of a 4 year degree in Surveying for licensure was a way to increase the profile and perception of the Land Surveyor in Nevada. One would think that an increase in profile would equate to a commensurate increase or at least a stabilization of compensation for the unique service that we provide the public.

As difficult as it is already to recruit young people to the surveying profession, you would have to be a real piece of Samsonite to think you can convince a kid to drop $50k-$75k on a 4 year degree, only to come out and make $12 an hour because their boss considers $500 for an ALTA survey to be a fair price. During the recent recession it was somewhat understandable that we as professionals would sometimes have to settle for a fee that was below market value. $500 is still better than $0, and a girl's gotta eat, I get that. But with the economy seemingly on the upswing, as a profession it would be a prudent move for *all* of the members of that profession to stand their ground and charge what is fair market value for their talents and services. With a typical construction staking budget coming in around 1 to 2 percent of the total project budget, I don't think I'm looking for miracles here to ask fellow surveyors to not charge half of that. A licensed Surveyor possesses a singularly unique skill set, one that is written into the laws of this state as necessary and mandatory for certain types of projects

(Continued on Page 9)

Tire Age and Simple Maintenance

By: Joe Breaux
(TSPS) Safety Committee Chair

Tires are an important part of our vehicles. They work really hard for us and we count on them. So much so that one could say that as drivers, our life depends on our tires. But we must take care of them so that they last, stay in good condition and can keep us moving safely.

Everything has a life expectancy, including tires. The life of a tire (or set of tires) does depend on how we care for them, but that is not all of the equation. How many years are tires expected to last and still be safe? The maximum recommended age for tires is 10 years. Longer than that and a tire can begin to dry, deteriorate and develop cracks, especially in the sidewalls. Either way, the tire becomes unsafe. This also applies to spare tires, too. So how do you determine the age of a tire? The National Highway Transportation Safety Administration (NHTSA) requires all tire manufacturers to place a Tire Identification Number (TIN) on one sidewall of every tire during manufacturing. If you look at the sidewall facing outside and don't see the TIN, it could be on the side that is mounted to the inside of the vehicle. This number begins with DOT., and then has 10 to 12 letters and numbers that identify the manufacturing location, tire size, manufacturer's code, and the week and year of manufacture. The part to emphasize is these last 4 digits that note the age of the tire. For the TIN code DOT 2LLLMLR5107, 51 is the 51st week of the year 2007. Tires manufactured prior to 2000 used a slightly different code. The most important thing to remember here is that tires older than 10 years should be replaced, even when they appear to be in good shape and still have tread remaining. For more information from Tire Rack, go to www.tirerack.com

There are simple but extremely important things we must and can do when it comes to tire care. The NHTSA has a simple checklist titled "Tire Safety. Everything rides on it." Just about anyone can easily perform these tasks and checks to make sure that their tires are in good, safe operation condition. The NHTSA recommends that we perform these checks at least once per month. For vehicles that regularly make long trips, work trucks, off road vehicles and others that are subjected to harsh conditions in addition to highway use, these checks probably should be done weekly.

Check tire air pressure regularly. Check at least once per month; weekly is better. This includes the spare, too. Tires normally lose a minor amount of air over time and with climate change, the pressure changes too. Cold weather causes a slight drop in the pressure, warm weather causes the pressure to rise. Waiting too long to check and add or remove air can be damaging to the tire. Or even worse, it can be dangerous. How much air should be in a tire (or a set of tires)? This information can be found on the driver's side door panel or frame. As long as the tires are the factory recommended size, it it important to maintain the recommended pressure that is posted. There are exceptions to the recommended air pressure, such as hauling extra weight or pulling a trailer. Maintaining the recommended air pressure allows the vehicle to operate at optimum rolling efficiency, it can increase gas mileage and also can extend tire life. Too much pressure can cause tires to wear unevenly in the center of the tread; too little or low pressure can cause the outsides of the tread to wear more quickly. Low tire pressure also generates excessive heat in the tire, which can create a dangerous condition and even cause tire failure.

Inspect tires for signs of wear, damage, uneven wear patterns, cracks, excessive tread wear, objects stuck into the tire (which will cause a flat), or any other unusual signs. Obviously, signs of trauma to sidewalls, objects stuck in the tire (not simply wedged between the treads) or other damage means that immediate attention is required to either prevent or repair an impending flat or replace a tire. When uneven tread wear is caught early, tires can be rotated to maintain even wearing. Speaking of rotation, most experts recommend rotating tires from front to back every 5,000 miles to maintain even wearing. Front end alignment may also be needed if front tires wear excessively. Tires have tread wear indicator bars in the tread grooves that are spaced evenly around the tire. When the tread has worn down to the tread wear bar, it is time for new tires. A penny can also be used as a guide to measure sufficient (safe) tread depth. The distance from the penny's edge to the top of President Lincoln's head is the minimum recommended tread depth; less than this amount and it is time for new tires. By performing frequent inspections, this can often catch a condition that may be remedied before damage becomes excessive and requires replacement of a tire or the set of tires.

Check valve stems to make sure they have valvel caps. This helps keep out dirt or objects that could jam or damage the air valve.

Check tire pressure before leaving on a long trip. This could help avoid a flat, tire damage or a dangerous situation during the trip and unnecessary grief, at the least.

Don't overload your vehicle. Each vehicle and all tires have load ratings. Tire load and pressure ratings are located on the tire sidewall. Overloading can cause an unsafe condition for the tires that could result in a blowout.

(Continued on Page 9)

HUD Multi-Family Acquiesces to ALTA/ACSM

By: Gary Kent, PLS
Chair of the NSPS Survey Committee

The 2011 ALTA/ACSM Standards mandate the use of only the unaltered Section 7 certification (except as may be required by a jurisdiction that regulates the practice of surveying (which, by the way, HUD is not)). Yet HUD attorneys often insist that the HUD certificate be placed on the face of an ALTA/ACSM Land Title Survey in conflict with the Section 7 requirement.

My suggestion has always been to place the Section 7 certification on the face of the plat/map in accordance with the standards, and offer the HUD certification on a separate sheet of paper (normally company letterhead) cross-referenced to the survey. Some attorneys would accept this, but many would not.

Well, I am pleased to report that we finally have a resolution ...

Effective February 23, 2011, the Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys mandated that *only* its *unaltered* Section 7 certification is to be used. This move was made in response to a seemingly endless supply of lender-mandated certifications that surveyors were told they 'had' to use on Land Title Surveys even though their use routinely caused surveys to make express guarantees and warranties that invalidated professional liability insurance and violated their state laws and Board rules.

The only allowable alteration to that certification is as may be required under Section 3.B of the 2011 ALTA/ACSM Standards - referencing requirements of jurisdictions and agencies that *regulate the practice* of surveying. This most commonly, if not exclusively refers to certification requirements mandated by a number of State Licensing Boards for surveyors practicing in their jurisdictions. Obviously, notwithstanding the 'only' and 'unaltered' wording of the ALTA/ACSM Section 7 certification, if state law mandates certain certification wording, surveyors working in those jurisdictions have to include such wording on their ALTA/ACSM Land Title Surveys. Although attorneys working for HUD Multi-family routinely invoke Section 3.B. as justification for telling surveyors they have to use the HUD certification, they are off-track on that issue since, while HUD has its own requirements, it most certainly does not regulate the practice of surveying in *any* jurisdiction.

Ever since the introduction of the 2011 ALTA/ACSM Standards, surveyors across the country have spent innumerable hours arguing with HUD attorneys over this issue. Under Section 7 of the standards, the only logical middle-ground on the certification conundrum was for the surveyor to provide the HUD certification on separate letterhead, cross-referenced to the survey. The survey plat itself would bear only the Section 7 certification, but HUD could still get its wording - albeit not on the face of the survey. Some HUD offices and attorneys would accept this compromise, while others would not, thus putting the survey or and the attorney on a collision course that usually wasted a lot of time and energy.

Recently, an alert surveyor in Alabama notified the NSPS ALTA/ACSM Survey Committee of a HUD website that he found which at long-last lays this issue to rest. The webpage – the link ot which surveyors should keep available for quick reference:

http://portal.hud.gov/hudportal/HUD?src=/programoffices/generalcounsel/mffaqs/surveys

is entitled **Multifamily Document Reform Implementation Frequently Asked Questions – Surveyor's Report and Instructions**. It states the following in response to an FAQ about the certification issue: "[HUD Multi-Family] Housing will accept the HUD Certification on a separate sheet of paper and cross referenced to the survey."

As seen in The Nevada Traverse, Vol. 40, No. 3, 2013

***(The Race To The Bottom** - continued from Page 7)*

and tasks. This is not something that should be discounted; this is something that is expected to be rewarded. So next time you start that proposal spreadsheet, remember this: I'm good enough, I'm smart enough, and doggone it, people need me!

As seen in The Nevada Traverse, Vol. 41, No. 2, 2014

*(**Tire Age & Maintenance** – continued from page 8)*

With the increase in speed limits on many highways around the state, having tires that are in good condition and within the recommended 10 year age becomes even more important. Regular inspection and maintaining correct air pressure is the least expensive thing we can do to keep our tires going. But even if replacement due to damage or age is called for, the cost of a new set of tires is a small price to pay to stay safe and give us the peace of mind that comes from knowing that we have done what is recommended by the experts to check, maintain and replace our tires, all to keep us and our families safely traveling the highways and byways.

National Highway Transportation Safety Administration (NHTSA), www.nhtsa.gov

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As seen in The Texas Surveyor, September 2013

South Dakota Firsts

South Dakota is celebrating its first 125 years of statehood, as North Dakota and South Dakota entered the union on Nov. 2, 1889.

In "Doane Robinson's Encyclopedia of South Dakota," the state historian compiled a list of some of the first things and first incidents in South Dakota history. This record reflects the times in which it was compiled, as Robinson primarily shows white people's accomplishments. Robinson's list, with additional information about subjects, includes:

First white men known to have been upon South Dakota soil: Francois and Louis-Joseph Verendrye, Louis la Londe and A. Miotte, 1742. The Verendryes were French-Canadian explorers searching for a water route to China. The lead plate they buried on March 30, 1743, on a hill in present-day Fort Pierre lay undisturbed for 170 years. The site where the plate was found is now a National Historic Landmark.

First white woman to come into the region: Pelagie LaBarge, wife of steamboat captain Joseph LaBarge. Captain LaBarge entered the service of the American Fur Company upon the Upper Missouri River when he was 17 years old, in approximately 1832. Pelagie came up the Missouri River with her husband upon his steamboat "Martha" in 1847, going to the Yellowstone River.

First homestead to be filed in Dakota Territory: right after midnight on Jan. 1, 1863, at Vermillion by Mahlon Gore. Gore was a Vermillion printer who filed on land in Union County by the Big Sioux River. Landing a job with the Sioux City Journal in 1864, he hired a family to care for his claim. They contested the claim and won it.

First recorded Christian prayer in South Dakota: by Jedediah S. Smith, near Mobridge, on June 2, 1823. Smith signed on with the Rocky Mountain Fur Company in 1822. The Arikara attacked the party of fur trappers. The survivors dragged the dead and dying men onto the deck of the keelboat Yellow Stone Packet on the Missouri River. Smith volunteered to go for help. Before leaving on this mission, he delivered what his companions called "a powerful prayer." A mural by Charles Holloway in the house chamber of South Dakota's Capitol depicts this first recorded act of Christian worship.

First permanent white settlement: Fort Pierre, in 1817, by Joseph La Framboise. La Framboise built a fur-trading post on the west bank of the Missouri River, north of the mouth of the Bad River. This driftwood shack would give Fort Pierre the distinction of being the oldest continuous settlement in South Dakota.

First steamboat to reach Fort Pierre: the Yellow Stone in 1831. Steamboats would revolutionize Missouri River commerce. When the Yellow Stone returned to Fort Pierre in 1832, it carried American Fur Company agent Pierre Chouteau, Jr. The company had moved the fur trading post to a location about three miles north of the mouth of the Bad River and christened it Fort Pierre Chouteau. The name was shortened to Fort Pierre.

First white woman in the Black Hills: Mrs. Annie E. Tallent in December 1874. The Fort Laramie Treaty of 1868 had closed the Black Hills to white exploration and settlement. Tallent, her husband and son were part of a group who came prospecting for gold. Her arrival symbolized that white men weren't only interested in the gold fields of the Black Hills -- they were looking for a home. Tallent wrote one of the first books on the settlement of the Black Hills and was superintendent of schools in the Deadwood area. Tallent is also a controversial figure because of her role in breaking the Fort Laramie Treaty and settling the Black Hills. In an introduction to Tallent's book "Black Hills, or Last Hunting Ground of the Dakotahs," reprinted in 1974, South Dakota author Virginia Driving Hawk Sneve wrote: "Annie Tallent's malicious, bigoted treatment of the Dakota or Sioux Indians would best serve mankind if it were burned rather than reprinted in this edition to perpetuate a distorted, untrue portrait of the American Indians."

Doane Robinson (above), who compiled the list of firsts, was himself a man of many firsts. He served as South Dakota's first state historian, from 1901 to 1926 and again from 1945-1946. It was Robinson's idea that notable figures be carved in granite in the Black Hills, and he was the first to invite sculptor Gutzon Borglum to the Black Hills to carve what became Mount Rushmore National Memorial. Robinson's son Will G. Robinson,

served as director of the South Dakota State Historical Society from 1946-1968. The Robinson family tradition of preserving the history of South Dakota continues as Doane Robinson's great-granddaughter, Vicki McLain of Rapid City, serves on the board of directors of the South Dakota Historical Society Foundation. The foundation is the nonprofit fundraising partner of the South Dakota State Historical Society.

North Dakota is usually considered the 39th state and South Dakota the 40th. At the moment of signing on Nov. 2, 1889, the secretary to President Benjamin Harrison handed both declarations to the president. The president took the declarations, had the secretary stand on the far side of the desk, shuffle the pages and then signed the declarations. The president also covered each paper so no one could see which page was signed first. After signing, he took the pages, hid them under his desk, shuffled them again, and then handed them to the secretary. No one knows which state was signed into statehood first. North Dakota is considered 39th and South Dakota 40th for alphabetical reasons.

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

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SCHOOL OF MINES & TECHNOLOGY

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7/16/14

Dear Ms. Finck,

On behalf of the civil and environmental engineering faculty and staff, we thank the SD Society of Professional land surveyors for the very generous donation of $1 2,585 that allowed us to purchase data collectors for the surveying lab. We one very fortunate to have your support.

Thanks again!

Sincerely yours,
Molly Gribb

South Dakota State University
SDSU

July 9, 2014

SD Society of Professional Land Surveyors
P. O. Box 8154
Rapid City, SD 57709-8154

Dear SD Society of Professional Land Surveyors,

On behalf of the Civil and Environmental Engineering Department at South Dakota State University, I would like to express my sincere thanks and gratitude for your generous gift which you recently designated for the Civil Engineering program. The donations of our friends are a key component in the continued success of our program. The support that we receive from you enhances the experience of our students through investments made to improve our laboratories and classrooms, keep our professors current in their field, and support our students' activities throughout the region and the country. The CEE faculty are highly motivated to continuously improve our program, and that gets me excited about the bright future of our department.

Please stop and see us if you are here on campus, and do not hesitate to contact me if you have any questions.

Sincerely,

Dr. Nadim I. Wehbe, PE, FACI, FSEI
John M. Hanson Professor and Department Head
Civil and Environmental Engineering

Dear SD Society of Professional Land Surveyors
I just wanted to say "THANK YOU!"
for your continued support of our program.
- Nadim

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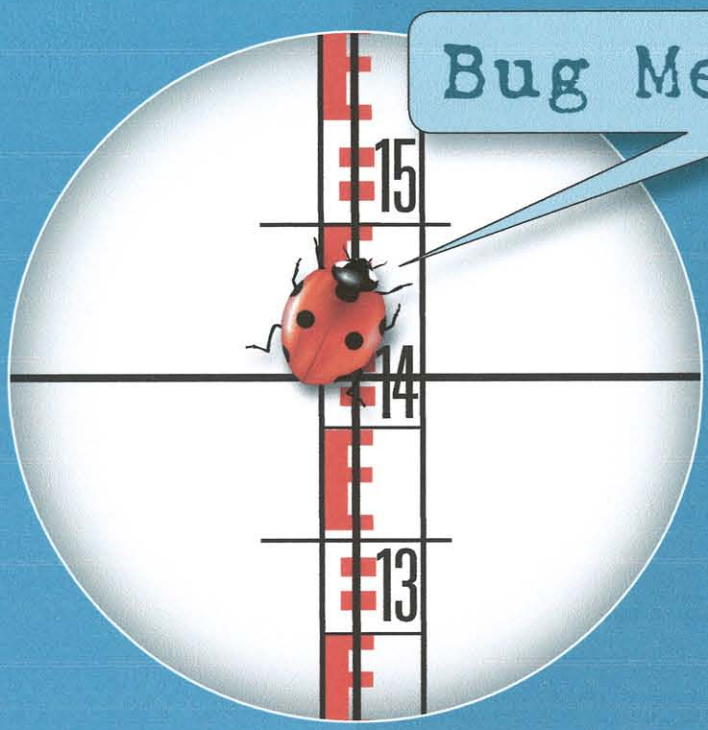

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The Land Surveyor's Guide to the Supreme Court of South Dakota – Part 7 – 1902 to 1903

This article represents the seventh 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.

How important is the basis for surveyor testimony?

McGray v Monarch Elevator (1902)

As was noted in discussing the Webster case of 1896, the issue of PLSS boundary control had become a matter of some contention among the Justices of the Court, despite the fact that the Court had initially taken a very wise and decisive course, in full support of the validity of the work of the original GLO surveyors, in ruling upon the PLSS boundary cases decided prior to that time. The one particular Justice who had dissented from the result of the Webster case was one of the most senior and most highly respected Justices on the Court, so his divergence from the strong position on original boundary evidence that had long been adhered to by the Court undoubtedly stimulated some discussion and debate among his learned colleagues. Its very likely that this disparity of opinion over the relative value of different forms of boundary evidence originated from external influences however, since the members of the Court do not deviate from established principles, unless some compelling reason to do so is placed before them. The Justice who dissented in the Webster case, and wrote the opinion of the Court in the Dowdle case shortly thereafter, emphasizing the significance of plats and field notes as PLSS evidence, presumably took that position after broadly educating himself upon PLSS principles, with the intention of providing an enlightened counterpoint to the Court's previously universal application of the principle of monument control. Measurement science was burgeoning at this time, amidst the many outstanding scientific advances that were being made in numerous fields of endeavor, inspiring great confidence throughout society in the application of scientific solutions to problems of all kinds, so it's not surprising that measurement evidence rose to challenge the venerable principle of monument control at this time. In the 5 years that had passed since the Dowdle decision had been confirmed by the Court in 1897 however, that same particular Justice had apparently further educated himself on the proper application of boundary control principles to ,and survey work, and by the time the case that we are about to review came to the attention of the Court, he was once again on board with the mainstream view favoring monument control over evidence of record. In fact, having at last come to terms with the legitimacy of monument control as a fundamental principle of both law and equity, forming the bedrock of boundary stability and land rights in general, he proceeded to take a leading role in addressing land rights issues until his departure from the Court, composing the decisions in the next two PLSS boundary cases noted below, as well as this one, those being the Tyler and Unzelmann cases, both in 1905. But as we will subsequently note, original boundary evidence in documentary form, typically GLO plats and field notes, would again rise to challenge physical and testimonial evidence, as such truly direct evidence of the original work of the GLO surveyors on the ground dwindled and diminished with the passage of time, compelling the Court to turn to alternative means, to preserve physically established boundaries.

1884 - Tyler was the owner of the northwest quarter of Section 10, and Haggert was the owner of the southwest quarter of Section 3, in a certain township in Roberts County, which had been platted by the GLO in 1874, and a section line road ran between these two sections. How long Tyler and Haggert had owned these quarters is unknown, presumably they were both original entrymen, and the validity of their titles to their respective quarters was never questioned. The origin of the road is also unknown, but it had apparently been recognized and treated as marking the section line by everyone in the vicinity since the time of it's construction. Tyler decided to create a townsite of unspecified size in the northwest corner of his quarter, so he had that area surveyed and platted as the town of White Rock. Whether or not any lots in this townsite were ever conveyed or occupied is unknown, but in the process of surveying and platting it, the existing road was adopted as marking the section line representing the north boundary of the townsite.

1896 - A land agent, representing Monarch Elevator arrived in the area, looking for a potential site for a

grain elevator that the company intended to build and operate. The agent met Tyler, and mentioned to him that he was interested in acquiring some of the land lying along the north side of the road, directly across the road from the townsite, and Tyler informed him that the land he was asking about was owned by Haggert. The agent then located Haggert, and negotiated the purchase of a 100 foot by 150 foot site in the southwest corner of Section 3 from him, and Haggert deeded the site, lying on the north side of the road, to Monarch, presumably describing it as being part of the southwest quarter of Section 3. The company then built a grain elevator and some related buildings on the site, and put the new facility into operation as a part of their business.

1899 - A resurvey of the area was performed, which indicated that the north line of Section 10 was actually 135 feet north of the centerline of the public road that had previously been accepted as representing the section line. Who ordered this resurvey, and for what purpose it was conducted, are unknown, but when Tyler was informed of the location of the north boundary of his quarter, as resurveyed, he apparently became convinced that he owned the site occupied by the Monarch facility, and he executed a deed conveying that site to Wilkes, presumably describing it as part of the northwest quarter of Section 10. Shortly thereafter, for unknown reasons, Wilkes agreed to allow McGray to acquire the site, rather than himself, so the name of Wilkes as the grantee was erased from the deed, and it was replaced with the name of McGray. McGray then apparently informed Monarch that he was the owner of their facility, to which Monarch evidently objected, so McGray proceeded to file an action against Monarch, seeking to have title to the elevator site quieted in himself.

McGray argued that the resurvey, revealing that the site previously conveyed by Haggert to Monarch was actually located in Section 10 and not in Section 3, was correct, so Haggert had never owned the site in question, and Tyler had always been the actual owner of it, making Haggert's conveyance of the site to Monarch ineffective and worthless, while Tyler's conveyance of the same site to McGray was valid, therefore McGray was entitled to a decree confirming his ownership of the site in question. Monarch argued just the contrary, maintaining that the resurvey was incorrect and worthless, because it failed to follow in the footsteps of the original GLO survey, by erroneously rejecting the existing road as the section line location, since the road represented the strongest evidence of the original section line location, therefore the site was actually located in Section 3, and Monarch had legitimately acquired it from Haggert, making the conveyance from Tyler to McGray null and void. The trial court agreed with Monarch, that the centerline of the existing road marked the true original section line location, holding that the deed to Monarch was valid, while the deed to McGray was of no value.

Once again here, just as in the earlier boundary cases that we have already reviewed, the Court was confronted with an obviously opportunistic effort, on the part of McGray in this case, to take advantage of a variance between the recorded measurements and the monumentation of an original GLO survey, discovered during a resurvey, that was executed by a survey party who either failed to recognize, or deliberately neglected to follow, plainly visible boundary evidence on the ground. The Court plainly realized that this situation made it once again necessary to clarify and emphasize the controlling nature of the concept that physical boundary evidence is always of primary importance in boundary determination. In this instance, just as in the landmark Arneson boundary case, decided 11 years before, a section line roadway constituted the decisive physical evidence, perpetuating the original section line location, yet it was not accepted as such during the resurvey in question, as the survey crew declined to acknowledge and accept it as legitimate evidence of the original location of the section line, instead allowing their measurements to cause them to neglect or reject the road as original boundary evidence. The strongest possible evidence of the course of the original survey, short of the original monuments themselves, was directly beneath their feet, every step of the way, until they departed from the roadway, electing instead to follow the measurements of record, even as the record data lead them away from the road, and onto ground bearing no evidence whatsoever that it had ever been trodden or marked as a section line by their GLO predecessors. Competing testimony was given by surveyors representing both sides in this case, presenting a very distinct dichotomy in their methodology for the Court to rule upon. The members of the survey crew that had conducted the resurvey testified on behalf of McGray, verifying that the northerly section line location placed upon the ground by them represented the location specified by the GLO plat and field notes, but the surveyor who had performed the townsite survey for Tyler testified that he had accepted the centerline of the

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section line road as marking the original section line location, on the basis that the road had been built at a time when the GLO monuments were still in existence. While the most recently performed survey, relied upon by McGray, was presumptively correct, the Court noted, and no one questioned the correctness of any of the measurements that had been made during that resurvey, any value that it might otherwise have had was eliminated by the testimony, in support of Monarch's position, that the road had been built based upon the original section and quarter corner monument locations. The testimony confirming that the road marked the original section line was dispositive, in the eyes of the Court, because it made the road itself valid boundary evidence, serving to perpetuate the original corners and lines, which controlled, the Court stated, over measurements from any source, including the GLO plat and field notes. Citing the Arneson case of 1891, previously reviewed herein, the Court took this opportunity to reiterate that evidence of original monumentation conclusively controls over measurements:

> *"It is contended ... that the premises in controversy are a part of the northwest quarter of Section 10 ... witnesses for both parties claim to have known the location of the original stake and mound, establishing the government corner ... The appellant relies largely upon the evidence of three surveyors, who claim to have recently made the survey of the section line ... following the plat and field notes ... appellant insists that the line as so established by the surveyors gives to the evidence a decided preponderance in favor of the appellant. But ... the evidence on the part of the respondent tended to establish the fact that the original mound was in the center of the highway."*

On that basis, the Court upheld the lower court's decision in favor of Monarch, supporting the validity of the original section line location, wisely protecting the long established boundary, and the section line right-of-way as well, while leaving McGray, quite predictably, unrewarded for his unscrupulous effort to disrupt the boundary stability provided by the long settled roadway location. It may well be imagined that Tyler was an innocent party in this whole affair, and that it was actually Wilkes and McGray who had motivated the scheme, by financially enticing Tyler to attempt to convey land to them that Tyler knew he had never owned, but that did not prove to be the case. Tyler evidently remained personally convinced that he could prevail in this matter, and seize the land at issue on the north side of the road from Haggert, and failing to learn any lesson from the outcome of the McGray case, he proceeded to file another action, in the foolhardy belief that he could force the Court to alter the position it had taken regarding the section line in question. Tyler filed his action against Haggert shortly after the conclusion of the McGray case, and it was argued before the same trial judge who had handled the McGray case. This judge ruled against Tyler, entirely consistent with his previous ruling against McGray, but he then retired, and he was replaced by a judge who proved to be more sympathetic to Tyler's position. This new judge threw out the decision of his predecessor and granted Tyler a new trial, but Tyler died before the new trial commenced, yet his widow opted to extend the legal battle, so she continued to pursue the matter, on behalf of both her late husband and herself. This same controversy thus returned to the Court in 1905, as Tyler v Haggert, on appeal by Haggert, who protested that the new judge had wrongly thrown out the decision of the retired judge, which had again confirmed the location of the original section line, following the centerline of the road, in Haggert's favor. Nearly 3 years after it's initial assessment of the relative value of the conflicting forms of evidence that had been presented by the various litigants, the Court fully adhered to it's previous stance, again declaring that both physical and testimonial evidence negate the value of measurements as boundary evidence, since measurements take on controlling value only in the absence of acceptable boundary evidence of a superior variety. Again citing the Arneson case, and the Randall case of 1893 as well, which we have also previously reviewed, the Court finally brought this bitter dispute to an end, reiterating that the testimony concerning the origin of the road, in relation to the originally monumented section line, effectively elevated the road itself to the status of a monument, making measurement evidence of any form irrelevant, and powerless to control the section line location:

> *"The question is ... as to where the corner mound was originally placed by the government survey ... the evidence of the surveyors on the part of the plaintiff was based upon the field notes of the original survey ... the evidence of the surveyors on the part of the defendant was based upon their observation and knowledge of the original mound ... their evidence was entitled to the greater weight ... the fact as stated in the McGray case, that the surveyor who laid out and platted the town site ... in 1884, adopted the center of the highway as the north line of the town*

site ... has a very material bearing as to the location of that corner ... such location must control, without regard to whether it was located with mathematical correctness ... the original mound ... was at the center of the highway ... notwithstanding such monument may not correspond fully with the calls in the field notes ... the original monument might not have been placed at the exact point indicated by the field notes ... field notes could not control."

Just 3 months after the conclusion of the saga that had played out between Tyler and Haggert, the Court had another opportunity to confirm the proper prioritization of PLSS boundary evidence, in the 1905 case of Unzelmann v Shelton. Unzelmann owned the southwest quarter of an unspecified section, while Shelton owned the southeast quarter, and for unknown reasons Unzelmann became unsatisfied with the apparent location of the south quarter corner of the section, so he obtained a survey which located that corner an unspecified distance further to the east, through the use of unspecified measurements of record, presumably made from one or both of the adjoining section corners. The Court however, upheld a lower court decision against Unzelmann, denying that the resurvey done for Unzelmann could control the corner location in question, even though Shelton had neither obtained a survey nor challenged the measurement precision manifested in Unzelmann's survey, because no retracement survey can control PLSS corners or boundaries on the basis of measurement refinement. Testimonial evidence had been presented, the Court observed, which had supported the quarter corner location espoused by Shelton as a valid original location, making it impossible for Unzelmann to prove, or for the Court to conclude, that the corner in question was utterly lost, thereby making the measured corner location set forth by Unzelmann irrelevant, regardless of how well measured it may have been. In so holding, the Court not only upheld the powerful principle that the burden of proof always falls upon the party asserting that an original corner is lost and can only be restored by means of measurements, it also again demonstrated that the right of reliance on evidence of an original survey can effectively nullify even a resurvey that is conceded to be materially free of measurement error. In the 1906 case of Lee v Dwyer, the dispute between the litigants was evidently over the location of both a certain section corner and an adjoining quarter corner, no further details of the controversy are known however, since the Court readily disposed of the matter with less than one page of text, having previously established all of the relevant principles necessary to do so. On this occasion, the Court deemed the survey evidence to be unworthy of detailed consideration, given that once again adequate testimonial evidence affirmed the original corner locations contended for by Lee, concurring with a lower court ruling in his favor, thereby reinforcing the value of testimony as controlling boundary evidence. At this point in time, the priorities of PLSS boundary control seemed to be well settled, but as we shall soon see that was not yet entirely so, the challenge for the Court was merely evolving, into a question of how to continue to protect original boundaries against relocation through the application of measurement science, in an age of increasingly scarce original physical and testimonial evidence, along with an ever increasing emphasis upon the employment of improved technological tools for boundary resolution.

What is the origin of centerline boundary control?

Sweatman v Bathrick (1903)

Here we arrive at one of the most significant land rights decisions in South Dakota history, which comes to us as the result of a case that serves to illustrate the connection between boundary issues and right-of-way or easement issues, and the interplay of those issues where they overlap, as a consequence of unclear or incomplete platting and description of lands and associated land rights. Both boundary and dedication principles factor heavily into the outcome here, demonstrating that proper recognition and resolution of easement and right-of-way issues can often be essential to proper boundary resolution. The location of this controversy is once again the streets of Deadwood, as this conflict takes place just a short distance from the site of the Whittaker case of 1900, and like that dispute, this litigation also stems from the rapid creation of private lots and public streets amidst frontier conditions, leaving the dedication status of those streets in a state of legal uncertainty. The Court here relies upon the concept of common law dedication, already adopted and implemented in the Whittaker case and others that we have noted, but goes on to expand the application of that concept to a situation in which the location of a particular public right-of-way was essentially treated as variable during several tumultuous years, before settling into it's final position. The Court's view of the creation and dedication status of the right-of-way in question therefore plays out in the context of a contest over the fee ownership of the right-of-way itself, with all the implications that carries for the location of the boundaries of the adjoining properties, which had also been treated as variable to some extent for a period of

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years in this scenario, having been repeatedly remapped, prior to finally being officially platted as city lots. The strong inclination of the Court to accept and validate existing conditions that have developed through honest and productive efforts to settle the frontier, in the interest of both equity and stability, is richly displayed here, as the Court focuses on both public and private rights created by the acts of the parties as citizens interacting in good faith, when conveying land with reference to existing documents of questionable origin. From this situation we also learn that fee boundaries may not always exist where one might logically think such a boundary would exist, since descriptions alone do not have the power to exclude areas from ownership, or transfer ownership, simply by neglecting to fully encompass the area being conveyed, because the function of a description is merely to identify the subject property, and that can be done without explicitly outlining or defining every bit of it. We also see strong evidence here indicating that the prevention of the creation of unnecessary strips in fee is the basic legal premise underlying the rule of centerline boundary control, as the Court points out that no boundary of ownership is necessarily created by a right-of-way, because there is no need for a right-of-way to represent an ownership interest in land, and nothing that unnecessarily deprives a private land owner of fee ownership finds favor with the Court.

1882 - Suessenbach was the owner of a mineral location claim, which covered a portion of the city of Deadwood that had been unofficially mapped, but had never been officially platted. Suessenbach authorized the creation of a new map or plat, which showed the area along Lee Street, a fairly short street that connects Main Street and Sherman Street, which are two prominent thoroughfares that run substantially north and south. The drawing was completed and recorded, and Suessenbach and others made use of it, but it was never duly signed or legally approved, so it did not represent an official or legally binding plat, it amounted only to another map of a certain portion of the city, like several other such unofficial maps that already existed.

1883 - A flood struck Deadwood, which apparently devastated the area around Lee Street, with the result that the existing roadway was substantially wiped out, and had to be rebuilt. After being reconstructed, Lee Street was found to be in about the same position at it's west end, but it's east end, where it connected with Sherman Street, was about 90 feet south of it's former location, which had been shown on the Suessenbach map. Evidently no one objected to this street relocation, so the public simply resumed use of Lee Street in it's new location.

1886 - The city engineer began work on a new drawing of the city, which instituted a number of significant changes in relation to the previously existing maps of the area, such as renumbering lots and blocks, and updating the streets to reflect the locations then in actual use.

1887 - The revised drawing of the city that had been begun the previous year was completed, and people immediately began making use of it, by referencing it in documents conveying land in the area, although it had not yet been approved or recorded. Suessenbach made several conveyances, selling off most, if not all, of his land in the vicinity, to various parties, with reference to the new drawing that had just been produced by the city engineer. One of the conveyances he made at this time described a small triangular parcel, situated on the northwest corner of Lee and Sherman, in the area that been part of Lee Street before it was relocated to the south, and this fragmentary conveyance would become the focus of the controversy that was to be resolved in this case.

1888 - The drawing of the city that had been completed the previous year was formally approved and recorded, and was subsequently treated as the official plat of Deadwood. Several months thereafter, Miller, who had acquired most if not all of the land lying along both sides of Lee Street at an unspecified time, had a new plat made of the land in the Lee Street area that he owned, and on this plat the east end of Lee Street was relocated once again, another 23 feet to the south, placing it about 113 feet south of it's original location, as mapped 6 years before. Miller's plat was approved, this second relocation of Lee Street was completed, and the public continued to make normal use of the street, in it's newly altered location.

1891 - The city engineer revised the official plat of the city to match the plat that had been produced for Miller, confirming the new location of Lee Street as permanent.

1892 to 1902 - During this period, the public use of Lee Street continued, and the ownership of the various properties situated on both sides of the street presumably changed hands an unknown number of times. At unspecified times, Sweatman acquired various properties lying in the block that was located

on the north side of the relocated street, including the area that had formerly been occupied by Lee Street itself, and Bathrick acquired land lying in the block to the south of that street, Bathrick's property evidently being located directly south of Sweatman's property, where Lee Street reaches the west side of Sherman Street. Sweatman evidently believed that he had acquired all of the land north of the centerline of Lee Street, as it had existed since being last relocated in 1888, but Bathrick did not agree and he contested the extent of Sweatman's ownership. The contents of the description used in Bathrick's deed or deeds is unknown, but he took the position that his deed or deeds had included the entire right-of-way of Lee Street itself, so Sweatman filed an action to quiet his title, extending south to the relocated centerline of Lee Street.

Sweatman argued that the right-of-way of Lee Street had been originally dedicated by implication by Suessenbach in 1882, regardless of the fact that the plat or map that had been created for Suessenbach was unofficial, due to being legally incomplete, and both of the subsequent relocations of Lee Street had been accepted and treated as valid, so the dedicated public right-of-way associated with that street had moved along with it, each time it was relocated. Therefore, Sweatman maintained, he owned the land north of the Lee Street right-of-way, as it was shown on the official plat that was revised in 1891, by virtue of his acquisitions of property in his block, free of the burden of the original Lee Street right-of-way location, as it had been mapped or platted in 1882, although that original right-of-way location had never been formally vacated. Sweatman further argued that his property did not extend only to the northerly right-of-way line of Lee Street, as depicted in 1891, it extended south to the center of the right-of-way, since the right-of-way represented only a dedicated public easement, and the land within the right-of-way was not owned in fee by the city, although it had been dedicated to the city, as a steward or guardian on behalf of the public. Bathrick argued that the right-of-way of Lee Street had never been legally dedicated, and no portion of the right-of-way centered on the roadway location that was currently in use had ever been acquired by Sweatman, so Bathrick was free to acquire it himself, as he had done, therefore Sweatman could not successfully claim, or show evidence of ownership of, any land south of the northerly right-of-way line, as shown on the 1891 plat. The trial court concluded that no legal or binding dedication of Lee Street had ever taken place, and Bathrick had legitimately acquired the land lying directly south of Sweatman's property, in the right-of-way location shown on the 1891 plat, so Sweatman could not successfully claim ownership of any property south of the northerly right-of-way line of Lee Street, dismissing his case.

As can readily be seen, the Court had a wealth of historical information to deal with in this case, and a number of very basic and highly important principles would play into the Court's resolution of the situation. As a preliminary matter, the Court addressed the issue presented by the two relocations of the roadway in question, and the related issue created by the existence of multiple maps or plats of the area in conflict, since these factors had created confusion regarding which plat, and which right-of-way location, could or should be relied upon as controlling. The Court took notice of the fact that the mapping and platting done in the Deadwood area during the early years was to some extent redundant, overlapping or conflicting, and some maps that had evidently been intended to serve as plats, were not 'egally binding, as created, due to various failures to comply with certain legal technicalities. Yet, the Court clearly realized, the early maps and plats had been genuinely relied upon by numerous innocent parties, and they had frequently been referenced in conveyances for description purposes, making the idea of wholly rejecting or disregarding those documents practically nonsensical. The popular use of those maps and plats itself supplied an element of validity to those documents, in the eyes of the Court, and once having been accepted as valid in this sense, their relevance to the key dedication issue came into play. The Court agreed with the concept very wisely and astutely set forth by Sweatman and his legal team, that the acts of the land owners who created and used the maps or plats for conveyance purposes made them binding upon all those parties who bought or sold land with reference to them, making the legal status of those documents, as determined through technical compliance with the law, in their preparation or recording, irrelevant. In addition, since the maps and plats had been treated as controlling for conveyance purposes, they could also logically serve to support the concept of dedication, in the view taken by the Court. Therefore, the Court determined, Sweatman was correct that Lee Street had been dedicated by implication, as early as 1882, and each relocation of it had carried the existing public right-of-way along, to each new location, because the acts of the public, and all of the private parties involved, revealed that each relocation was fully accepted, and never rejected or objected to. The many conveyances, all implicitly recognizing the existence and legitimacy of all of

(Continued on Page 20)

(**Supreme Court Guide** – *continued from page 19)*

the platted streets, including Lee Street as it migrated in location, painted a scenario of binding dedication and acceptance, which had resulted in the creation of an easement in favor of the public, since a dedication by implication does not represent a conveyance in fee, as stated by the Court in the Whittaker case, reviewed herein, just 3 years before. Following decisions from Pennsylvania and New York, and noting that the relevant South Dakota law had been derived from the statutes of New York, the Court set out what it found to be the most reasonable and equitable position, with respect to the interpretation of the description that appeared in the deed to Sweatman, which had been specifically attacked by Bathrick, as being insufficient to convey any portion of the right-of-way at issue to Sweatman:

> *"It is insisted by the respondent that the description ... was intended to convey that portion of the premises described lying northerly of the north line of Lee street only. The description is as follows: That certain fraction of ground commencing at the northwest corner of Sherman and Lee streets, thence northerly along Sherman street 17 feet more or less, thence southwesterly along the southeast line of the present Starr and Bullock lot 30 feet more or less to Lee street, thence in an easterly direction to the place of beginning ... it cannot be presumed that this conveyance limited ... the grantees to the northerly line of Lee street ... purchasers of lots bounded on streets acquire title ... unless there be a very express limitation of their grants to the margin of the street. The law with respect to public highways and unnavigable streams is the same, in respect to the presumptions that arise from grants bounded thereon ... Deeds may expressly exclude the streets, but unless they do, the implication is ... that half the street is included ... Terms of description such as these may be regarded ... as importing a grant to the middle of the street ... The idea of an intention in a grantor to withhold his interest in a road to the middle of it, after parting with all his right and title to the adjoining land, is never to be presumed ... the law has carried out the real intention of the party, by holding that the title passed to the center of the street ... conveyances of property fronting on a street or highway shall be presumed to carry the title to the center of the street or highway, unless the fee in the street is expressly reserved in the conveyance ... The contention of the respondent ... that the description ... limits the title conveyed to the lines of the street, cannot be sustained."*

The position taken here by the Court, with respect to the legal effect of any description that calls out a road or street right-of-way as a monument, would go on to be cited as an influential force in a number of future cases involving right-of-way and boundary issues, making this decision an important landmark in South Dakota land rights law. Those either preparing or reading and using legal descriptions should be aware of the fact that a call to an object, such as a road or street, is a monument call, which makes the legal presumption that any call to a monument goes to the center of the called object applicable. As several other courts have done, the Court here adopted the concept that a roadway or right-of-way is equivalent in essence to a stream, so just as calls to a creek presumptively go to the center thereof, calls to a right-of-way do as well. This important concept was already expressed in two statutes by the time of this decision, which stipulated that ownership of land is always presumed to extend to the center of any object cited as bounding the land, and that title to land is always presumed to pass to a grantee, extending to the center of such an object, representing codification of the well known principle of monument control. Focusing upon these existing laws and fundamental principles relating to description interpretation, the Court thus rejected Bathrick's suggestion that the calls for the right-of-way of Sherman and Lee, that appeared in Sweatman's challenged deed, could control the extent of the title thereby acquired by Sweatman, and limit his boundary to the edge of each right-of-way. The very clear and decisive answer of the Court was that numerical calls alone cannot overcome the operation of the principle of monument control, so Sweatman's deed had carried his title to the centerline of the Lee Street right-of-way, as depicted on the 1891 plat, because the deed to him had failed to expressly reserve any portion of that right-of-way from his grant, which was what the Court deemed necessary, to successfully express an intention on the part of a grantor to retain such a strip of land. The description bar for grantors was thus set very high here by the Court, quite justifiably requiring them to squarely and forthrightly communicate any intention that they may have to retain any land, when preparing legal descriptions, in order to properly inform the grantee of exactly what is being retained, and thereby overcome the centerline control presumption, rather than relying on mere description calls to serve that purpose. This specific position of the Court aligns perfectly with the larger principle, expressly approved here by the Court, that grantors must never be presumed to intend to retain

ownership of any land consisting of useless strips, since such a presumption would invite and precipitate extensive litigation, and the Court has adhered to this principle quite consistently ever since this time. For these reasons, the Court reversed the lower court's ruling, holding that in fact all of the lots and parcels owned by both Sweatman and Bathrick extended to the centerline of Lee Street, as finally relocated, so any deed or deeds held by Bathrick, allegedly conveying that whole right-of way to him, were invalid, since his northerly boundary could extend no farther north than the centerline of the Lee Street right-of-way, as it had been platted since 1891. Also notably, this case stands for the vital propositions that the concept of estoppel represents the foundation of dedication, that public use made without objection is valid evidence of dedication and acceptance, and that the physical relocation or substitution of an easement location is legally possible and acceptable, all of which we will again see in operation, as important factors in future cases.

Some may question the validity or applicability today of concepts and principles set forth in a case that took place in a frontier setting, such as the case just reviewed, but in fact, like all such rules founded upon timeless principles, the rule of centerline boundary control is not only still alive and well, it has been reinforced both by statute and by many historic decisions of the Court, some of which we will later discuss in detail, and one of which provides a far more modern example of a comparable scenario. In the 2005 case of Tibbitts v Anthem Holdings, a portion of a certain state highway right-of-way was officially abandoned by South Dakota, leading to a controversy over who held ownership of the abandoned right-of-way, Tibbitts, who owned the land to the north of it, or Anthem, which owned the land to the south of it. The right-of-way in question had been created by deed in 1933, at which time the relevant land, that would later be acquired in part by both Tibbitts and Anthem, through which the proposed right-of-way then passed, was all owned by one party, so the portion of the right-of-way at issue originally represented a strip crossing a single estate. In 1937, the estate owner who had deeded the right-of-way to South Dakota conveyed the property that would later be acquired by Tibbitts, after passing through the hands of an unspecified number of other parties, and that 1937 grantor chose to describe the future Tibbitts tract by metes and bounds, which clearly followed the north side of the right-of-way. Anthem eventually acquired the remainder of the estate in question, and upon discovering that the legal description of the Tibbitts property did not extend to the centerline of the abandoned highway, Anthem evidently became convinced that Tibbitts had no valid claim to any land within the former right-of-way, ordering him to remove improvements that he had made within that area, but Tibbitts responded by filing an action against Anthem to quiet his title to the centerline of the former right-of-way. A lower court held that the right-of-way had been created in fee, but Tibbitts had acquired the north half of it through reversion. The Court struck down the lower court's decision regarding the fee status of the right-of-way, noting that a right-of-way is always presumed to represent an easement, and not a conveyance in fee, yet upheld the ruling of the lower court that Tibbitts owned the portion of the right-of-way lying north of the centerline, on the basis that his ownership had always extended to the centerline, regardless of the metes and bounds in his deed, because the grantor who created the Tibbitts tract in 1937 had not reserved the right-of-way, so it had passed with each conveyance of that tract, eventually descending to Tibbitts. The Court thus upheld the principle that the legal burden to explicitly express any intended reservation always rests upon the grantor, while highlighting the fact that a typical abandonment or vacation of a right-of-way merely extinguishes the existence of the right-of-way, it does not represent a fee transfer of any land, emphasizing the need to properly determine the ownership status of any given right-of-way, as an elementary part of the process of evaluating boundary locations.

Far and away the best prize
that life offers
is the chance to work hard
at work worth doing

Theodore Roosevelt

The following information is taken from the meeting minutes of the **South Dakota Board of Technical Professions**

complete meeting minutes can be found at: **http://dlr.sd.gov/btp/**

September 13, 2013

Denial of the following LS Comity Application:

James D. Taylor – Williston, ND

November 22, 2013

Approve the following LS Comity Applications:

Kurt Orban – LS # 11878 – NV
Christopher Robinson – LS #11879 – ND
Nathaniel Stadler – LS #11880 – MN

Denial of the following LS Comity Application:

David Karl – Sioux Falls, SD

January 24, 2014

Approve the following FS examinees who passed the Fundamentals of Surveying (FS) exam on October 26, 2013

Brandon Huppler
Daniel Johnson
Andrew Nielson
Leif Redinger

Approve the following PS examinees who passed the Principles & Practice of Surveying (PS) exam on October 25, 2013

Tanya Anderson
Jeffrey Howe
Bradley Limbo

Approve the following FS examinees to take the Fundamentals of Surveying (FS) exam:

Mathew Braun
Jenifer Brooks
Michael Chase
James Cohoon
Dillon Dede
Joseph Galpin
Nicholas Gerritson
Johnny Menning
Derek Sachtjen
Jason Schutz
Andrew Soland
Lundee Stadtler
Cole Van Liere
Dylan Voge

Approval of the following PS examinee to take the Principles and Practice of Surveying (PS) exam:

Gregory Frear
Wesley Tschetter

Approve the following LS Comity Applications:

Brian Benson – LS #11950 – SD
Rodric Reese - LS #11951 – TX
Michael Small – LS11952 – KS
Daniel Wagner – LS #11953 - ND

Denial of the following LS Comity Application:

Wesley Hunter – Sealy, TX

March 28, 2014

Approve the following FS examinee to take the Fundamentals of Surveying (FS) Exam:

Chadwick Martinson

Approval of the following LS Comity Applications:

Gary Anderson – LS #12000 – WY
Paul Heintz – LS #12001 – WY
KC Homiston – LS #12002 – ND
Jarrett Leas – LS #12003 – MN
Jonathan Pittmann – LS #12004 – IA

Denial of the following LS Comity Applications:

Victor Armenta – Houston, TX
Juergen Brunkhorst – Alexandria, MN
Jeremy Lawson – Russellville, AR

May 28, 2014

Approve the following examinee who passed the Fundamentals of Surveying (FS) exam:

Derek Sachtjen

Approve the following LS Comity Applications:

James Couts – LS #12089 – UT
Dave Hobbs – LS #12090 – TN
William Lyon – LS #12091 – CO
Michael McFarlane – LS #12092 – MN
Timothy Patch – LS #12093 – ME

Deny the following LS Comity application:

Beth Braun – Canonsburg, PA

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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.

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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.

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*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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