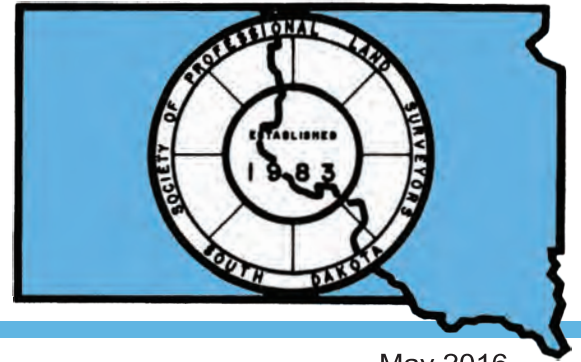


# BACKSIGHTS & FORESIGHTS



Volume #26 Number 2

May 2016

## IN THIS ISSUE:

NSPS Directors Report

.....

Second to None

.....

Managing Business Credit

.....

Distracted Driving

.....

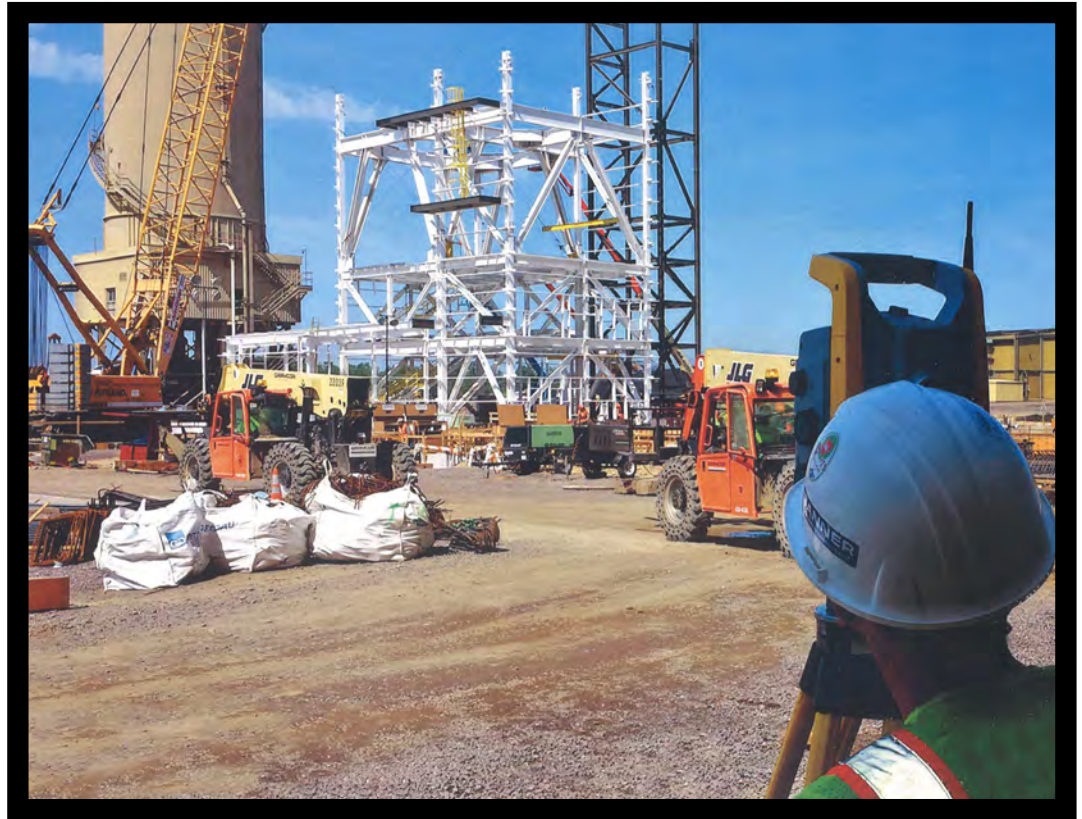
Active Mentoring

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South Dakota's  
Official State Animal

.....

The Land Surveyors  
Guide to the  
Supreme Court of SD  
Part 14



**Construction season is in full swing -  
be safe out there!**

*Photo courtesy of Banner Associates*

*"We judge ourselves by what we feel capable of doing, while  
others judge us by what we have already done."*

*Henry Wadsworth Longfellow*

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Louis O'Donnell  
Clark Engineering Co  
P.O. Box 20  
Aberdeen, SO 57402-0200  
605-225-3494  
lodonnell@clark-eng.com

## PAST PRESIDENT

Ben Lamke  
213 East Liberty Street  
Rapid City, SD 57701  
(605) 716-6116  
benlamke@rushmore.com

## PRESIDENT-ELECT

Fred Leetch  
112 Black & Yellow Trail  
Ft. Pierre, SD 57532  
(605) 280-5150  
fred.leetch@state.sd.us

## SECRETARY

Eric Howard  
Renner & Associates  
616 Sixth Street  
Rapid City, SD 57701  
(605) 721-7310  
eric@rennerassoc.com

## TREASURER

Steve Thingelstad  
Britton Engineering  
& Land Surveying  
PO Box 649  
Black Hawk, SD 57718  
(605) 716-7988  
stevet\_be@rushmore.com

## NSPS DIRECTOR

Tom Berkland  
City of Sioux Falls  
224 West 9th Street  
Sioux Falls, SD 57104-6407  
(605) 367-8611  
tberkland@siouxfalls.org

## WEST RIVER CHAPTER

Chad Dodds  
Fisk Land Surveying & CE  
P.O. Box 8154  
Rapid City, SD 57709  
(605) 348-1538  
cdodds@live.com

## BIG SIOUX CHAPTER

Wade Lunders  
Clark Engineering  
1410 West Russell Street  
Sioux Falls, SD 57103  
(605) 331-2505  
wlunders@clark-eng.com

## MISSOURI RIVER CHAPTER

Dana Edwards  
506 Country Drive  
Pierre, SD 57501  
(605) 945-0769  
dbebeemer@yahoo.com

# 2016 COMMITTEE CHAIRPERSONS

## **EDUCATION**

Kristi Goehring  
27172 421st Avenue  
Parkston, SD 57366  
(605) 928-7653  
teropes@hotmail.com

## **LEGISLATION**

Gary Andersh  
Schmitz, Kalda & Associates  
320 North Main Ave.  
Sioux Falls, SD 57104-6043  
(605) 332-8241  
gandersh@schmitzkalda.com

## **MEMBERSHIP**

Ron Fisk  
Fisk Land Surveying & CE  
PO Box 8154  
Rapid City, SD 57709  
(605) 348-1538  
ron@fisklandsurveying.com

## **PUBLIC INFORMATION**

Mark Lippincott  
4116 Hall Street  
Rapid City, SD 57702  
(605) 341-0809  
mlippin@yahoo.com

## **STANDARDS**

Dean Scott  
DC Scott Surveyors Inc.  
3153 Anderson Road  
Rapid City, SD 57703  
(605) 393-2400  
surveyor@enetis.net

## **DPC REPRESENTATIVE**

Donald Jacobson  
111 West Park Ave.  
Fort Pierre, SD 57532  
(605) 222-4041  
mbsdd1@aol.com

## **TRIG-STAR**

Steve Thingelstad  
Britton Engineering  
& Land Surveying  
PO Box 649  
Black Hawk, SD 57718  
(605) 716-7988  
stevet\_be@rushmore.com

## **EXEC. DIRECTOR**

Janelle Finck  
Fisk Land Surveying & CE  
PO Box 8154  
Rapid City, SD 57709  
(605) 348-1538  
janelle@fisklandsurveying.com

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3 1/2" x 5"	\$25 per issue
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7 1/2" x 10"	\$90 per issue

*Backsights and Foresights* accepts advertising from equipment suppliers and others offering surveying related services. There is no charge for help wanted or positions wanted, employment ads or equipment for sale by practitioners whose main business is not equipment sales or rental.

## **PUBLICATION DEADLINES**

<i>Material Cutoff</i>	<i>Publication</i>
January 15	February 1
April 15	May 1
July 15	August 1
October 15	November 1

### **Backsights and Foresights**

Backsights and Foresights is the official publication of the South Dakota Society of Professional Land Surveyors. It is published quarterly. Material published is not copyrighted and may be reprinted without written permission as long as credit is given. All material must be submitted by the middle of the month preceding the issue date, and should be directed to: The Executive Director.

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:**

Hope this report finds everyone well and busy with work now that spring has arrived.

On April 22, we had our Board meeting with many topics being discussed. One of the topics discussed was the "Corner Perpetuation And Filing Act" found in South Dakota Codified Laws 43:20:1-14. These laws state that corner records will be filed when a corner is set or reestablished and give guidance on how to fill out forms and file with the county Register of Deeds. The county Register of Deeds is to keep a book with all corner records of the county filed by Section, Township, and Range.

The SD Board of Technical Professions gives a clearer explanation of this process in Chapter 20:38:37:05 of the administrative Rules of South Dakota. Also we as a society have adopted the Second Edition of the Guidelines for the Practice of Land Surveying in South Dakota. Section 10-4 of these guidelines addresses the preparation of Certified Land Corner Records.

The Board of Technical Profession has asked for guidance on what should be done with Land Surveyors who are not adhering to these laws and rules. Should we as a society start policing our members and hold everyone accountable for filing corner records, or rewrite the laws so that corner records can be filed on plats or

on a record of survey and filed as a miscellaneous record, or just cancel the statues and not file corner records.

In my personal opinion I believe the laws and the rule are easy enough for everyone to understand, and that everyone should be filing corner records or be held accountable. I think it is unfair for the Registered Land Surveyors who are filing corner records and are at a disadvantage for time and price compared to the Registered Land Surveyors who do not file. We all should be able to pass the cost of preparing these records onto are clients.

We all want to be called Professional (Registered) Land Surveyors, but along with that title comes responsibilities to do what the laws require, and one of those responsibilities is to file CORNER RECORDS.

We also decided to check with every county in South Dakota to see if there are counties that don't have corner record books, and if not see if there is some way we can prod them along to get their book set up and in order.

Have a busy and prosperous summer, but don't forget to have some fun!!

Louis O'Donnell  
SDSPLS 2016 President

# INITIAL POINT OF THE 6<sup>TH</sup> P.M.



An informal gathering of surveyors and interested people will gather at the Initial Point of the 6<sup>th</sup> P.M. on the Kansas/Nebraska border on Saturday, June 11, 2016, to commemorate the 160th Anniversary of the placement of this important monument.



We will discuss ideas and plans for the future of the Initial Point Park. Make this an opportunity to meet your fellow surveyors from other states. Bring your own food and beverages. Begin arriving around 9:00 a.m. and stay as long as the day keeps us there.





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# NSPS Board of Directors

Spring, 2016  
Meeting Report

Thomas Berkland, LS-PE  
March, 2016

As the NSPS South Dakota Director, I attended the NSPS Spring Meeting in Cristal City, VA. Various NSPS meetings were held on Tuesday, Wednesday, Thursday and Friday, March 15<sup>th</sup> through the 18<sup>th</sup>. I attended Lobby Day prep meeting on Tuesday and Lobby Day on Wednesday, Subcommittee for Policy Review and Great Lakes States Regional Council on Thursday, and the NSPS Annual Meeting as well as the Board of Directors meeting on Friday.

Starting with lobbying, we are seeing some very good results from our efforts to discuss surveying issues with our senators and representatives. We have been influential in securing additional funding for 3SEP mapping, increased acquisition of LiDAR data, and FEMA's flood mapping. Progress has been made in our efforts to have the Department of Labor remove surveyors from Davis-Bacon. DoL has narrowed the application and exempt more surveying activities than previously required. NSPS will be looking closely at the full government's clarifications, and will develop a reply to the DoL and our members. For more information and specifics regarding Government Affairs, please go to [NSPS.US.com](http://NSPS.US.com), click on the "Advocacy" drop down and then to "Government Affairs" and "JGAC Reports." At this site you can get full reports from the Governmental Affairs Committee for our biannual meetings. You will have to log in as an NSPS member to get to this.

Lobby Day began with the Washington Metro subway being shut down. This caused a significant impact to our ability to get to Capitol Hill, and more so for many of the workers in the DC area with their ability to get to work. We were able to get to the hill, and I was able to meet with Sen. John Thune's, Sen. Mike Round's and Rep. Kristi Noem's key staff members. The two main issues I discussed were the Flood Insurance Reform & Modernization Act and Private Sector Utilization (Freedom from Government Competition Act). Both of these issues can be important to surveyors in South Dakota doing elevation certificates for FEMA or desiring to do work for the Federal Government.

Action taken at the meeting included adoption of several motions. A synopsis follows:

- Geospatial Workforce Development – a motion asking congress to fund the promotion of educating new people to teach geospatial programs in our colleges and universities. Our country is not producing enough people with advanced degrees in surveying and other geospatial programs.
- Submittal of a letter to the Secretary of Education asking that the geospatial/geomatics field be properly classified as a STEM discipline by the Department of Education.
- Approval of MOU for Group Affiliation with NSPS Young Surveyors Network. The NSPS Young Surveyors Network has formally organized and wanted to be classified as an affiliated group to NSPS.

Other motions which were more or less housekeeping measures were also adopted. Of all that we, as NSPS, does in the DC meeting, lobbying is probably the most important. If anyone desires, I would strongly recommend attending our lobby day meetings. It is a great chance to present issues important to our profession to our delegation. I have found that it is very easy to access Senators Thune's and Rounds', and Representative Noem's offices to present our concerns and recommendations.

Respectfully submitted,  
Thomas O. Berkland  
South Dakota Director to NSPS

## SDSPLS – Board of Directors Meeting

Friday – April 22, 2016

Missouri Winds Room – Cedar Shores – Chamberlain, SD

(This report subject to Board approval)

Participants: President Louis O'Donnell, Past-President M. Ben Lamke, President-Elect Fred Leetch, NSPS Director Tom Berkland, West River Chapter President Chad Dodds; Missouri River Chapter President Dana Edwards; Standards Committee Chair Dean Scott, Education Committee Chair Kristi Goehring, Executive Director Janelle Finck

1. Call to order at 12:5 (central) by President O'Donnell.
2. Acceptance of Agenda: + Motion by Lamke to accept the agenda as presented, 2<sup>nd</sup> by Dodds. Motion approved.
3. Secretary's Report – Eric Howard: Meeting minutes for the January 7, 2016 Board of Director's Meeting and the January 8, 2016 Annual Meeting presented for review. Request by Leetch to amend item 6 d) from "removed" to "reduced". ++Motion by Lamke to approve with correction, 2<sup>nd</sup> by Dodds. Motion approved.
4. Treasurer's Report – Steve Thingelstad: Copy of the Treasurer's Report provided for review. Finck indicates that the convention expenses tracked fairly well and that there are some scholarship donations yet to come in. ++Motion by Dodds to approve the report as presented, 2<sup>nd</sup> by Lamke. Motion approved.
5. President's Report – Louis O'Donnell: O'Donnell indicated that he attended the ND convention in Minot in January and the MN convention in February. Both events were very nice with good programs, speakers and pleasant company. Finck commented that we did not receive an invitation to the Iowa convention this year.
6. Committee Reports
  - a) Education Committee – Kristi Goehring: Working on a scholarship application for incoming freshman and possibly non-traditional students. Non-Tradition would require a definition as many of the current STI students are coming to the program after other degrees or experience.
  - b) Legislation Committee – Gary Andersh: No report. Quiet legislative session this year for us.
  - c) DPC Report – Don Jacobson: No report. Finck indicates that DPC dues were paid again this year but that there was no meeting or report for 2015. ++Motion by Lamke to require a DPC End of Year Summary for 2016, 2<sup>nd</sup> by Berkland. Motion approved.
  - d) Standards Committee – Dean Scott: Scott provided the current version of Guidelines for the Professional Practice of Land Surveying in South Dakota". Edits are still in progress. Dean provided the document to Knud Hermansen for his review and comment. Hermansen comments centered on standardization and consistency of language. There are still sections that need work/completion. Finck suggests adding the SDCL definition of Land Surveyor to the document. Discussion regarding By-Law amendment to merge the Standards Committee (currently active) and Ethics and

By-Laws Committee (not active) into a "Professionalism and Practice" Committee.

- e) Public Information Committee – Mark Lippincott: No report. Finck working on updating the "It's Your Land" flyer into an electronic format. The initial draft (picture and setup) look good so far, but wording needs work. Finck to bring back revisions to the July meeting.
  - f) Membership Committee – Ron Fisk: Summary chart provided. Finck indicates that membership has dropped below 300 and that we have lost Trimble and Leica as Sustaining Members. However, RDO Integrated Controls did pick up a Sustaining Membership for this year.
  - g) NSPS Director – Tom Berkland: Written report provided. Berkland recently attended the spring meeting in Virginia. NSPS will be providing each state with an NSPS banner (either hanging, desk or podium) to be used at conventions and meetings. Discussion of SDSPLS providing banners for Sustaining Members to display at convention. Discussion regarding the CST program and the need to support. Lobbying Day was a success this year despite problems with the metro system. Berkland was able to meet with representatives from the SD delegates. Berkland was elected as Committee Chair of the Policies and Procedures Committee. Finck commented that she participated in the Executive Directors meeting by conference call and that they are working on improving networking abilities and that there is the potential for great benefit in improved communication and sharing of information.
  - h) Trig Star – Steve Thingelstad: No report. Finck indicates that the contest will be held on May 9<sup>th</sup> and in conjunction with the West River Math Contest. West River Chapter members to assist.
7. Chapter Reports
    - a) West River Chapter – Chad Dodds: No report
    - b) Big Sioux Chapter – Wade Lunders: No report
    - c) Missouri River Chapter – Dana Edwards: Written report provided. Edwards indicated that the Chapter provided mapping and staking assistance for the Pierre Izaak Walton League for new trap houses and shooting walkways. High School Trap Shooting is now a club sport and they have 211 members in their first year and there were 65 students that participated in the state tournament. Minnesota had 8,000 +/- kids in their Trap Shooting League in their first 7-8 years, with 5,200 kids participating in their state tournament. This sport is expected to grow in South Dakota as well.
  8. Old Business
    - a) 2016 Convention Recap: Finck asks for comments and input but little feedback. Things seemed to generally run well again this year. The "Heads or Tails" 50/50 drawing drew some interest which we hope will grow. Change in menu at the Exhibitor's Icebreaker and additions at breakfast were well received.
    - b) Fundraising Recommendations: Goehring to work on modifying the Grant Application for the "Special Use"





- grant. Brief discussion on details of the new grant – cap on amounts, deadlines for application, awards etc.
- c) Strategic Planning: Finck reviews discussion on the newsletter distribution – hard copies for the January and November issues and electronic distribution for the May and August issues. Continue that same format for 2017.
- d) Recommended Guidelines: Discussed and addressed in the Standards Committee report.
9. New Business
- a) 2017 Convention: Finck looking for input on speakers and topics. Provided information on Michael Pallamary from CA. Discussion of his topics and depending on costs using him as a feature speaker. We have a couple of options on shorter historical presentations. Goehring liked having Josh Reisetter and we could consider having him return and expand on some of the title issues. We haven't had anything on Mineral Surveys for a while. Goehring suggests contacting Dan Fisher in ND for possible presentation on Mineral surveys in the oil fields. Finck indicates that Dave Zenk is interested in returning and presenting the OPUS Projects class again for a limited group. We could have NSPS representative (Sumner or other) talk to us about the CST program again. Additional discussion regarding possibly having the Register of Deeds return for another 1 hour Q&A forum. Decision to forgo the binders and provide a limited link to the power-point material. Print the schedule and Annual Meeting information in just a spiral or comb bind format – or possibly individual folder. It is also time for another questionnaire – Finck to work on content.
- b) By-Law Amendments – Technician Membership: Finck has noted that the SDSPLS definition is only extended to members having completed any level of the CST program and students having completed their Associates degree still only qualify for Associate Membership. Discussion regarding having Dean Scott and Finck bringing back suggested amendments to include individuals with Associates Degrees in Land Surveying as Technician members, amending the document to remove NSPS “Governor” in lieu of the current “Director” designation. To also clarify that the Board of Directors can function as the Nominating Committee and consider merging the Standards and Ethics Committees into a single “Professionalism and Practice Committee”
- c) Corner Records: Steve Peters of the SDBOTP has been contacted by individual land surveyors with concerns regarding compliance issues with the requirement to file Certified Land Corner Records. Steve would like to have the SDSPLS BOD consider options and address the issues. There are essentially 4 options available to consider (at this point):
1. Leave the law as is and continue to monitor and enforce as we have been doing;
  - 2) repeal the statute since there appears to be only random compliance and no enforcement;
  - 3) Modify the statute to be more inclusionary of documents that could fulfill this requirement – plats, records of surveys, etc. and then

provide some standard of sanctions for non-compliance (warning for 1<sup>st</sup> offense, fine for 2<sup>nd</sup> offense, suspension for 3<sup>rd</sup> offense, etc.); or 4) adopt a Recording Law which would require recording of a document for all surveys completed – not just public land corners. Much discussion following regarding inconsistency in compliance, the use of a single document for multiple corners, the inconsistency of filing practices amongst the Register of Deeds that makes use of the records problematic. Berkland suggests that an Ad Hoc Committee be formed consisting of 2 representatives from each Chapter that will take input and consider options. Goehring to collect information in regard to the recording practices of the various Register of Deeds offices. Reports to be brought back to the July meeting.

10. Next Meeting – July 2016 TBD

11. Meeting adjourned at 3:35 pm

Respectfully Submitted by Janelle Finck for  
SDSPLS Secretary Eric Howard

## **DATES TO REMEMBER**

### **2017 SDSPLS Annual Convention**

January 11, 12 & 13, 2017

**(Wednesday, Thursday & Friday)**

Cedar Shore Resort – Chamberlain, SD

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or assuredly  
we shall all hang separately.”*

*- Benjamin Franklin-*

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March 31, 2016

Mr. Douglas A. McIntyre  
Editor-in-Chief & CEO  
24/7 Wall St., LLC  
P. O. Box 287437  
New York, NY 10128

RE: *Will your job disappear?*  
Samuel Stebbins and Michael B. Sauter  
10:29 AM EST March 6, 2016

Dear Mr. McIntyre:

I am writing to you in reference to the article entitled "Will your job disappear", authored by Samuel Stebbins and Michael B. Sauter, which appeared in the March 6, 2016 edition of *24/7 Wall St.*

The article addresses what are referred to therein as "17 disappearing middle class jobs." Statistics are provided from the U. S. Department of Labor, Bureau of Labor Statistics webpages, <http://www.bls.gov/oes/current/oes173031.htm> and <http://www.bls.gov/ooh/architecture-and-engineering/surveying-and-mapping-technicians.htm>, along with some commentary about each job.

On behalf of the members of the National Society of Professional Surveyors (NSPS) and of the respective independent state surveying societies (listed below) which are affiliated with NSPS, I wish to point out to you some misleading language in the article regarding job number 15 on the list, "Surveying and mapping technicians". This category is referenced as 17-3031 in the aforementioned BOL statistics.

While the information shown for 17-3031 is correct, the article goes on to incorrectly identify the workers in the category as "surveyors and mapping technicians". In that same BOL statistical information, the category for "surveyors" is shown in 17-1022 which clearly identifies the category as a "professional" occupation requiring a bachelor's degree as the typical entry-level education and a licensure requirement within all states in which one wishes to practice before being allowed to certify legal documents associated with ownership and development of land within those respective states. Such surveyor's license is also required for the practice of a variety of other geospatial activities.

Additionally, the projected employment change in the 2014-2024 statistics for “surveyor” is quite a bit more optimistic than that for the “surveying and mapping technician”. In fact, with the average age of the surveyor nationwide being in the mid-50s, and an ever-increasing demand for geospatial information, the need for surveyors’ services is very likely to be on the increase.

On behalf of the surveyors throughout the country, we the undersigned appreciate the opportunity to point out the misconception created by the language in the “17 disappearing middle class jobs” article, and request that a clarification be printed in an upcoming edition of *24/7 Wall St.*

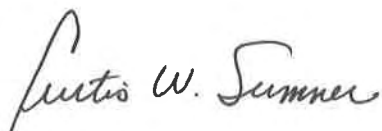
We are pleased to provide the following information which can be incorporated into the requested clarification that will assist your readers in better understanding the roles of professional surveyors, and the surveying and mapping technicians who work under their guidance, in their commitment to protect the health, safety, and welfare of their fellow citizens:

*Professional Surveyors, with the assistance of surveying and mapping technicians, bridge the gap between the past and the future, utilizing highly specialized skills and technology to build solutions to spatial problems locally, regionally, and nationally. Whether retracing property boundaries that were established centuries ago, modeling terrain characteristics using aerial LiDAR equipped UAV’s, or providing sea bottom surveys using the latest high precision sonar systems, today’s Professional Surveyors provide the foundation for better decision making in our nation’s rapidly evolving physical landscape. With industry demand for these highly skilled professionals at an all-time high, the rewards for choosing a career in the surveying and mapping field are better than you might think.*

*Careers in the surveying and mapping profession offer tremendous opportunities for young people who are interested in exploring their world.*

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Respectfully,



Curtis W. Sumner, LS  
Executive Director

Attachment



State surveying societies endorsing this letter include:

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Alaska Society of Professional Land Surveyors  
Arizona Professional Land Surveyors  
Arkansas Society of Professional Surveyors  
California Land Surveyors Association  
Professional Land Surveyors of Colorado  
Connecticut Association of Land Surveyors  
Delaware Association of Surveyors  
Florida Surveying and Mapping Society  
Surveying and Mapping Society of Georgia  
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Rhode Island Society of Professional Land Surveyors  
South Carolina Society of Professional Land Surveyors  
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Texas Society of Professional Surveyors  
Utah Council of Land Surveyors  
Vermont Association of Surveyors  
Virginia Association of Surveyors  
Land Surveyors Association of Washington  
West Virginia Society of Professional Surveyors  
Wisconsin Society of Land Surveyors  
Professional Land Surveyors of Wyoming





# It Pays to Belong

## How NSPS benefits members/ the profession:

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- 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

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store\\_name=NSPSINC&store\\_type=3](http://ocs.landsend.com/cd/frontdoor?store_name=NSPSINC&store_type=3)

### Insurance

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### Other Insurance programs available

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2 Wisconsin Circle, Chevy Chase, MD 20815-7003

301-951-9746

[http://www.schinnerer.com/product\\_info/design\\_firms/land-surv.html](http://www.schinnerer.com/product_info/design_firms/land-surv.html)

#### Individual Life and Health Insurance

Marsh Affinity Group Services

1255 23rd Street, NW

Washington, DC 20037

800-424-9883

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# Managing Your Business Credit

## 5 simple steps you should take to manage your business credit

1. **Determine whether or not you already have a business credit file.** Small business owners should first know if they have a business credit file with D&B. You can find this out by calling D&B Customer Service at 1-866-785-0430 or visiting <http://iupdate.dnb.com/iUpdate/mainlaunchpage.htm> If you don't have a business credit file, establish one by applying for a D-U-N-S® number. Small businesses should apply for a D-U-N-S® number, a unique business identification number, as soon as they start their enterprise to start the process of creating a business credit file. If, when you call or visit the D&B web site, you determine that you already have a business credit file, review it completely to understand what information it contains. Add or modify the information as necessary to ensure that those looking at your business credit (such as vendors, suppliers and financial institutions) are making decisions based on complete and accurate information.
2. **Establish a business credit history.** When they are starting up, many small businesses use their personal credit and finances to get their business going. But they should establish a credit history by putting expenses (such as a business phone line) in their business name and using a commercial bank account to pay their bills.
3. **Pay bills on time – and understand other factors that influence your credit rating.** In order to improve your commercial credit scores and build a positive payment history, the most important thing to do is pay your bills on time. Be very careful not to overextend your business, and use any line of credit judiciously. While payment behavior is important, credit ratings are based on multiple factors. D&B, for example, maintains 150 factors that go into a credit rating, such as industry, revenues and number of employees.
4. **Monitor your business credit file and keep it up to date.** According to D&B, the credit score of about one in three businesses declines over just a three-month period. By monitoring your business credit file, you will be aware of any change in your ratings before it affects your relationships with customers, suppliers and financial institutions. You should keep your credit file current and accurate, reflecting changes such as location, number of employees, outstanding suits/liens and revenue – all of which impact your credit rating.
5. **Monitor your customers' and vendors' credit.** Monitoring credit reports that provide a clear and

complete picture of the credit standing of your customers can help you to determine how much credit, and on what terms, you should extend.

## Why small businesses should manage their business credit

Small business owners are entrepreneurs. They are successful because of their ideas, their passion, and their drive. But they generally aren't accountants, and as a result they are often unaware of just how important actively managing business credit is to their success.

Small business owners agree that cash flow management is one of their top concerns.

Actively managing their business credit can help small business ensure positive cash flow by:

- **Securing more financing at better terms.** Good credit can ensure that small businesses get financing when they need it. According to the SBA, insufficient or delayed financing is the second most common reason for business failure. And, since most loan decisions below \$100k are automated, the business credit file will often dictate the amount and terms of a loan. For businesses with poor credit ratings, top national banks may increase credit card interest rates on average from 9% to 18% and loan interest rates on average from 8% to 12%.
- **Ensuring you get needed supplies at affordable terms.** Suppliers evaluate your credit and make decisions about how much credit to extend to you – perhaps a \$30k credit line could have been \$60k with a stronger business credit file. Good business credit can ensure that you get the supplies you need under the best possible terms, freeing up more money for your business.
- **Making smarter credit decisions on your customers.** Knowing the credit of customers enables small businesses to provide better terms to creditworthy customers and avoid doing business with customers who pay slowly – both of which can lead to improved cash flow.
- **Protecting yourself against business identity theft.** Actively managing your business credit file helps you ensure that fraudulent or incorrect information is not in the file. 15 – 30% of all commercial credit losses are due to fraudulent activity. It's important that your business credit file truly reflects how good your credit is, and that you are aware of any inaccuracies and missing data so you can address them promptly.

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US Small Business Administration

As seen in *TBM – The NHLSA Newsletter* – Volume 18 Issue 5 May 2016

# Distracted Driving

## Safety Committee

By: **Joe Breaux, RPLS,**  
**TSPS Safety Committee Chair**

April was National Distracted Driving Awareness Month. This year's campaign was "One Call Can Change Everything." The campaign is conducted annually and promoted by the National Safety Council (NSC)<sup>1</sup> to draw attention to the epidemic of the thousands of deaths that occur each year as a result of distracted driving resulting from cell phone use.

*Distracted driving* – driving while doing anything that keeps a driver from paying full attention to driving, has become a serious problem and the problem grows larger each day. Distractions include daydreaming, eating, talking to a passenger, grooming, looking at GPS, use of a cell phone, adjusting music and anything that takes your eyes off of the road or hands off of the steering wheel. Drivers have even been seen reading a book or newspaper while driving, and more! Cell phone use while driving is not just talking, it includes hands-free talking, texting by typing or dictating, checking the map or using any of the many functions of a cell phone. Any form of cell phone use affects a driver's attention to driving. Twenty-six percent of all car crashes involve a form of cell phone use, including hands-free. Hands-free is not Risk Free.

According to the Centers for Disease Control and Prevention (CDC)<sup>2</sup> more than eight people are killed and 1,161 are reported as injured daily in car crashes in the United States due to distracted drivers. That comes to more than 2900 deaths per year. The number one cause of unintentional deaths in the US is car crashes, and cell phone use increases the odds of crashing. Driving 55 miles per hour, the time to type the average text message takes a driver's eyes off the road long enough to cover a football field (100 yards!).

TxDOT has an ongoing campaign to raise awareness of the dangers of distracted driving and especially cell phone use called "Talk/Text CRASH<sup>3</sup>." According to TxDOT, 1 in 5 crashes involves driver distraction.

Texas does not yet have a statewide ban on texting while driving, but there are a number of local ordinances that limit or ban cell phone or hand-held device use. Here are some general conditions of those cell phone prohibitions:

- Drivers with learners permits are prohibited from using hand held cell phones in the first six months of driving.
- Drivers under the age of 18 are prohibited from using wireless communications devices

- School bus operators are prohibited from using cell phones while driving if children are present.
- In school zones, all drivers are prohibited from texting and using handheld devices while driving.

This is a general list so be certain about additional conditions, one should check on this occasionally.

The TxDOT web page has a listing of cities and towns with ordinances banning or restricting the use of hand-held devices or cell phones. I recently checked on it and counted 40 municipalities. I suggest that this be checked occasionally due to changes or additions that could take place.

Three types of ordinances exist in the cities and towns listed:

- Ban on all uses of wireless communication devices while driving.
- Ban on texting while driving.
- Ban on Texting and other manual uses of wireless communication devices while driving.

Some ordinances even include a ban while riding a bicycle or motorcycle as in Austin. Obviously, and uninformed traveler could pass through one of these municipalities and experience receiving a very unpleasant citation with fines between \$200 to \$500. Ignorance of the law is no excuse and may not carry any weight with the local law enforcement officer who might pull us over.

Going a step further, does your company have a policy restricting use of a cell phone or hand-held device while driving a company vehicle? TxDOT has such a policy restricting all drivers of state vehicles from using any hand-held device. TxDOT drivers must pull over in a safe location to take or make a cell phone call. A safe place is in a parking lot or otherwise off of the highway right of way, not along the shoulder of the road or even nearby. Yes, this is sometimes an inconvenience, but it's far safer. I suggest that each company consider such a policy, and certainly each of us should do so when driving our personal vehicles, especially when with our loved ones.

I'd like to note that just because it may no longer be April, there are 11 other months that the Distracted Driving problem still exists. So please keep this information in mind and remember that we should continue to refrain from using hand-held devices or doing anything that would distract us from paying full attention to driving.

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1 National Safety Council (NSC), at <http://www.nsc.org>  
2 <http://www.cdc.gov>  
3 Texas Department of Transportation (TxDOT) at <http://www.txdot.gov>

As seen in *The Texas Surveyor*, May 2016





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# Second to None

By: Gregory Clark, PLS Pennsylvania

Land Surveying has long proven to be an essential element in the progress of civilization. Evidence of our profession dates back at least to the pyramids of ancient Egypt. Look at most any major man-made structure on the earth's surface and odds are a surveyor participated in creating that improvement. Land Surveyors have been players in the planning and developing of the earth's surface and the resources beneath. Surveyors measure and map coast lines and the earth surface between the oceans. Surveyors define, describe and perpetuate boundaries separating nations, states, counties, and lands of individual ownership.

Where is the value in land ownership without land location? Laws are written specifically linking land ownership with land boundaries as etched on the ground by the original surveyor. Out actions are attached to both history and law.

The longer I practice land surveying the more I see the uniqueness and necessity of our contribution to the welfare of society. As we can see evidence of surveyors' footsteps from centuries ago, so it will be in future decades and centuries of our footsteps today.

From the ancient Greek mathematicians and astronomers through modern times, surveyors have been creatively applying science and technology for the benefit of society. We may arguably be one of the oldest professions in the world. But we shouldn't let it go to our heads.

*"More the Knowledge Lesser the Ego,  
Lesser the Knowledge More the Ego"*

*-Albert Einstein-*

What we do keeps both feet firmly planted on the earth. What we do sometimes puts us ankle deep in mud, knee deep in snow, or wading streams. Maybe this is what keeps us so humble. And maybe this is partly what keeps others from recognizing what we are all about. Seeing one person walking through mud, and another in clean suit and tie, there may easily be some wrong assumptions.

*"A man should look for what is,  
And not for what he thinks should be."*

*-Albert Einstein-*

Land Surveying demands many years of education and experience before licensing, then continuing years of refinement as we practice our profession. Still, surveying is too often wrongly perceived as a "lesser

profession" by others, and surveyors need to take partial responsibility. Along with being good at what we do, we must also recognize the importance of effective communication. Body language, spoken words, and evidence of respect for profession, self, and others send vital messages.

*"The biggest communication problem is  
we do not listen to understand. We listen to reply."*

*- Author Unknown-*

Those of us fortunate to be counted as land surveyors have an inherent obligation to maintain and enhance our profession. This includes conferring among ourselves in ways that support the common goal. Just as importantly, we should interact with others in ways that show evidence of our dedication, character, and abilities. And from time to time we must address "the state of our profession".

*"Whatever you are, be a good one."*

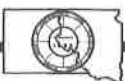
*- Abraham Lincoln-*

Allow me to semi-randomly pluck a question out of the air. Why are there only a handful of counties across the entire nation that still have a "County Surveyor" when it was so much more common in the past? Why have we been displaced? Surveyors are intimately familiar with the land. We touch the slopes and streams and ridges. As new boundaries are constantly being drawn and resources developed it seems the expertise of land surveyors should be among the first invited to the table when deciding issues related to planning and management of lands within a community. Why are Township Surveyors not as common as Township Engineers or Township Solicitors?

Technology is evolving so fast it takes our breath away. Land surveying has played a major role laying foundation for developing of GPS and GIS. We should be flattered so much value is given to what surveyors have been doing for centuries. But, without adequate realization of limitations, technologies so readily available to so many can soon become a source of harm and chaos; one more reason land surveyors belong in the mix of these growing technologies, especially at the county level.

History shows us countless examples of the contributions of land surveyors. We will continue to be an element in the advancement of society. Whether our role becomes greater of lesser hinges largely on continuous evaluation of "the state of the profession". Effective communication among ourselves and with those outside the surveying community is vital to the health of the profession and welfare of those we serve.

*Continued on Page 19*



## FS PASS RATES

The Fundamentals of Surveying (FS) exam is designed for recent graduates and students who are close to completing an undergraduate degree in surveying. Passing it is an important first step in the surveying licensure process.

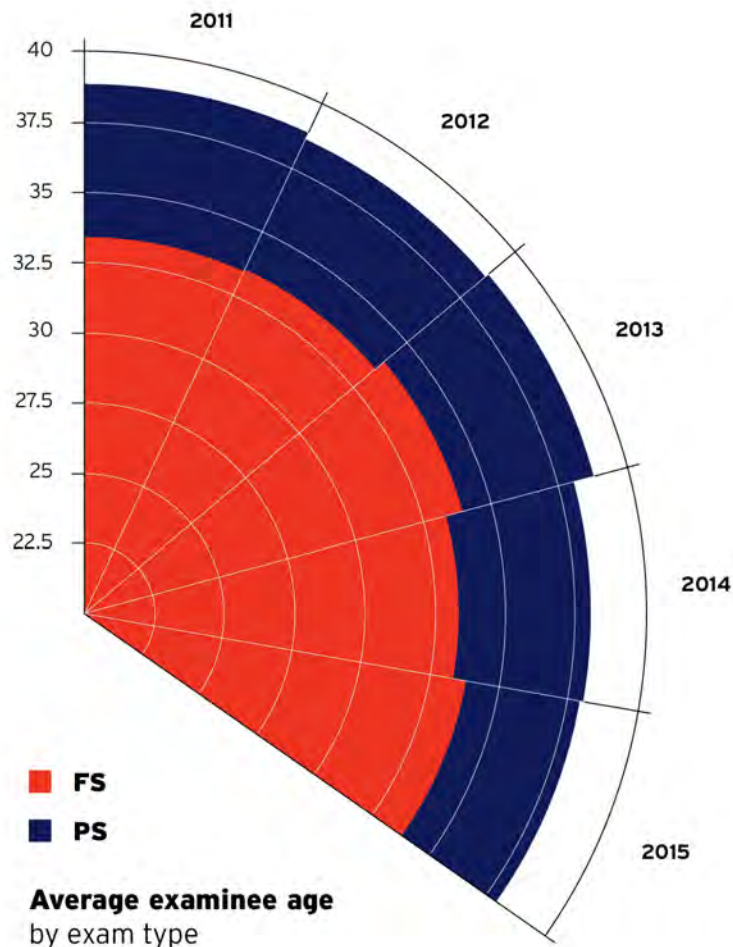
OVERALL TAKERS				TAKERS WITH EAC/ETAC/ ASAC-ABET BACHELOR'S DEGREE				OTHER TAKERS			
FIRST TIME		REPEAT TAKERS		FIRST TIME		REPEAT TAKERS		FIRST TIME		REPEAT TAKERS	
VOLUME	PASS RATE	VOLUME	PASS RATE	VOLUME	PASS RATE	VOLUME	PASS RATE	VOLUME	PASS RATE	VOLUME	PASS RATE
604	51%	296	24%	177	68%	51	39%	427	44%	245	21%

## PS PASS RATES

The Principals and Practice of Surveying (PS) exam is designed for surveyors who have gained at least four years of work experience in their respective field.

OVERALL TAKERS				TAKERS WITH EAC/ETAC/ ASAC-ABET BACHELOR'S DEGREE				OTHER TAKERS			
FIRST TIME		REPEAT TAKERS		FIRST TIME		REPEAT TAKERS		FIRST TIME		REPEAT TAKERS	
VOLUME	PASS RATE	VOLUME	PASS RATE	VOLUME	PASS RATE	VOLUME	PASS RATE	VOLUME	PASS RATE	VOLUME	PASS RATE
557	75%	291	45%	173	77%	65	38%	384	73%	226	46%

OTHER TAKERS INCLUDE EXAMINEES WHO DID NOT HOLD A BACHELOR'S DEGREE FROM AN EAC/ETAC/ASAC-ABET-ACCREDITED PROGRAM OR WHO DID NOT PROVIDE BACHELOR'S EDUCATION INFORMATION DURING EXAM REGISTRATION.





# Active Mentoring

## *It's Influencing – Not Just Observing*

By Heather Sides, RPLS, PLS, CFedS

In my industry, every applicant must complete a type of apprenticeship before obtaining their professional license. In Texas, this is a minimum of 2 years that a Surveyor-In-Training (SIT) must work with a Registered Professional Land Surveyor (RPLS) to obtain the necessary skills to be able to practice our craft on their own. We have a specific number of hours that the SIT must spend doing specific tasks. It is up to the RPLS (the mentor) to monitor those hours, make sure that the SIT is performing those tasks sufficiently, and ultimately, sign off on the application that the hours are valid.

I believe that we have given out RPLSs the best tools (qualitative and quantitative benchmarks) to adequately examine an applicant's abilities and produce professionals that do our community proud. So, why isn't it working? Why are our passing rates so low? Why are there so many potential applicants that don't even try? And why are the ones that are passing not involved in furthering this profession, appear to suffer from extreme apathy, and are unable or unwilling to see themselves as contributing members of our professional society?

I believe that it is due to passive, rather than active, mentorship. Mentorship is not an act of simply observing. It is an act of influencing. Not only "do what I say," but also "do as I do," and sometimes "do as I didn't do." As we move through our careers, we gain experience and knowledge. Some of these are times that we've failed, but others are those moments when we've succeeded. But, regardless of the outcome, we come out on the other side with more information than we went in. Isn't it our responsibility to pass that knowledge, those experiences, struggles, and rejoices to those who are coming behind us?

I've heard some in our profession say that they are relying on the test to weed out those who are not prepared. But, the test is simply one tool in the arsenal we have to properly vet those who aspire to obtain licensure. Our test does not measure applicant's ethics or morals. It can't determine the level of responsibility to which an applicant is willing to aspire. It doesn't take into effect the myriad of experiences that ultimately enable an intelligent person's ability to solve problems and balance all of the factors involved in being a responsible professional.

### Mentoring Professional Development

This is the most obvious type of mentoring. When most people imagine mentoring, this is the primary focus. But what are we, as surveyors, missing? I believe there are a few aspects that a RPLS should focus on when mentoring a person's professional development.

#### **Knowledge**

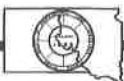
This is the actual hands-on work. This is the "learn how I do what I do" and why. This is the working a problem out together. This is the marking up of redlines, the production of drawings, and the continuous constant questioning of techniques and the discussion of technical terms, law, and history. In my practice, I have a variety of projects which allow me to give a rookie a relatively simple project to break his teeth on, versus a complex, multi-tiered project that I can have my veterans dive deep into boundary reconstruction. In addition, we have weekly classes to discuss a particular problem. This class enables all of the participants, rookies and veterans, to express their thoughts and be able to learn from each other. In doing this particular exercise each week, I push myself to not only understand the concepts, but know them well enough to be able to explain them. Teaching is the best teacher.

#### **Communication**

It really doesn't matter how intelligent you are, if you are unable to express your thoughts in a manner that others can understand. We create reports, and drawings, but also emails, make phone calls and presentations. We speak to clients and colleagues. How we present ourselves through the written word, our voice, and our body language is just as important as the information we hope to impart. The survey profession has an image problem and the cause of that problem is us. When arriving late to a meeting with clients, engineers, and lawyers, wearing holey pants, a wrinkled jacket (maybe) and a pair of mud-caked work boots, we present ourselves as uneducated, uncouth, and unreliable. It doesn't matter if we just came from an emergency on their project. If, however, we have a quick change of clothes, or better yet, invite them to our "office" on their job site, they can appreciate our dedication and involvement on their project and give them a sense of the effort involved. It is up to us, to mentor those who are coming behind us the importance of speech, presentation, and general acceptable behavior.

#### **Community**

As a Gen-Xer, I am cynical. I don't believe in politics for the sake of politics. I do, however, believe in community. The combined effort of many is where lasting change resides. I believe in the furthering of knowledge and education. I believe that it takes a village. So, I believe that every professional should belong, be involved, and be a leader in their community.



My peers are fellow surveyors, and we combine to form the Texas Society of Professional Surveyors (TSPS). As we mature in our careers, it's easy to stop learning; to get comfortable, and to stop striving for more knowledge. TSPS forces me away from this tendency. I believe that as we mentor, we must stress, nay must require, the involvement in our community. I require that my SITs are members of TSPS and that they attend at least one event per year. That is above and beyond what is required for their application for licensure, but I feel without that, they could fall off into the abyss of menial professional development

## Personal Professional Development

### *Life Balance*

Through mentoring, we are able to show the struggles of balancing home and professional life. We share our experiences in relying on family in times that we need to work more hours to get that big project out the door. Alternately, how we rely on coworkers when a family member is sick or dying. Not only showing that there are times that we work sixty plus hour weeks, but also taking a week of vacation to spend time to reconnect with our spouse or children. We know that our obituaries will be written not only with what careers we held, but also how we loved those and were loved back. We have to model that behavior if we expect to have happy, healthy employees and coworkers. We spend more waking hours during the week with those we work with than those we call family. Therefore, we must learn to foster these relationships at work. And as mentors, we must create an environment that is safe, friendly, and respectful. Our mentoring rarely stops at the office door. We may also provide guidance with parenting, relationships, home purchases, or any other personal item that your mentor feels comfortable enough to ask your advice. Therefore, it is necessary to not only be ethical in our professional lives, but also in our personal lives.

### *Value*

Yes, as a mentor, you are probably responsible for determining the pay of those you are mentoring. But value is much deeper than that. Many surveyors don't recognize their importance. We don't see how our profession fits into society. However, history shows that surveying is one of the first ideas man deemed important. Wars are fought over lines drawn on maps. Taxes are assessed by the quantities we determine. Neighbors are "good" or "bad" based on the accuracy of fences. And yet, we as modern surveyors negate our value. I have personally told one applicant that I wasn't going to sign off on his application until he determined his own self-worth. I don't need one more surveyor out there that will do a project for less than his cost. I have no concern about supply and demand in our profession. I believe there will always be someone that will underbid

me, but I refuse to create another surveyor that doesn't value his license because of his own personal issues.

### *Vulnerabilities*

I've yet to meet a perfect person. And yet, I've met plenty of people who are more concerned about hiding their mistakes, than admitting them and moving on. When mentoring, you have to walk a line between being too lax with errors and creating a culture of hiding mistakes. It takes courage to admit when you're wrong. It's also easy to criticize and blame others when push comes to shove. I've found that the best way to model acceptable behavior is to demonstrate it. Be vulnerable and shameless. Realize that exposing your errors will allow others to admit to theirs. Challenge your own knowledge and freely discuss your struggles as you learn. Our weekly class has been a great challenge for me. I rarely even read the question prior to class. My group knows this. They watch as I work through the question, see me make incorrect assumptions, and then they challenge my decisions as we go. What I've found is that they are more willing to address their own insecurities because I've created an open culture where the path to the answer isn't as important as the final destination. I don't care how many wrong turns you take, as long as you get the correct answer at the end.

So, where are you? Are you ready to step up, be a coach, a mentor, and be vulnerable? Are you ready to actively mentor your people? I think it's worth it. I know I've become a better surveyor, wife, and mom because of it. I've broken out of the status quo of passive mentorship. I love the challenge and the intentionality of inspiring others. And finally, I love to see this legacy continue. I now have one of my guys mentoring others in our group. And as "Survey Momma," I couldn't be more proud.

*As seen in The Texas Surveyor, May 2016*

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### *Second to None – continued from Page 16*

The boundaries of our profession can be patrolled, but not fenced. Others may encroach or we may expand. Disputes will arise. The less effort we put into controlling our own destiny the more others will do it for us. Fortunately there is a fair amount of tenacity within us.

Our profession has been, and can be, second to none.

*"Every man owes some of his time to the up-building of the profession to which he belongs"*

*-Theodore Roosevelt"*

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*As seen in The Pennsylvania Surveyor, Winter 2016*

# Land Surveyors Insurance Program

## Land Surveying is no easy task.

It takes a crew of dedicated, hard-working specialists to turn points into boundaries. A faulty instrument, calibration error, a lapse of concentration, or even uncooperative weather can turn the task at hand into a liability nightmare.

We at NSPS have joined forces with Assurance Risk Managers Inc. dba ARM Multi Insurance Services to provide you with a great multi-carrier program that offers competitive rates, be of service attitude with state-of-the-art on-line risk management, and loss control services finally causing one to say, "It Pays to Belong". Our program will tailor a land surveyor's insurance policy to protect you and your crew from those exposures that you face everyday.

Even the most well run business can face disaster. Despite your hard work and successful management, the unexpected can occur. Whether you have a crew or work on your own, focus on residential jobs, commercial work or both, boundary surveys or construction staking, your specific operations come with a set of exposures and challenges that require the experience and expertise of a firm that specializes in protecting the land surveyor for over 20 years. That firm is Assurance Risk Managers dba ARM Multi Insurance Services and the NSPS Insurance Program.

Our program can cover you for injuries and damages caused to your customer or employees; damage to your equipment in the event of a loss; damage or loss to your trucks, trailers and other vehicles; error & omission; and much more.

We also understand the importance of Professional Liability (Errors & Omissions) coverage to secure that contract, defending your work performance, or in proving that you operate your business in compliance with state and local government rules and regulations. As a Design Professional specialist, and through our multi-carrier approach with A- or better insurance companies, we can provide you with the Professional Liability policy you need at affordable pricing.

But, we go even further. Providing land surveying services may be just the beginning of what you may offer and understanding all the services you make available is critical at Assurance Risk Managers and the NSPS Insurance Program. We will review your operation in detail to make sure you have the right coverage and adequate limits for the services you are providing as your ONE STOP SHOPPING experience.

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# South Dakota's Official State Animal

No bull.

In 1949, the South Dakota Legislature designated the coyote as the state animal, despite a legislator who recommended the bull instead.

The word "coyote" has been traced back to Mexican Spanish, around 1759. Coyotes can be found in almost all the North American continent, from Alaska to Central America.

The coyote has a long history in South Dakota.

In American Indian folklore, the coyote is often cast as a trickster and deceiver.

"American Indian Myths and Legends" contains a story about a coyote from Jeremy Leading Cloud of the Rosebud Indian Reservation. The coyote took off the thick blanket he was wearing and put it on the rock, Iya, to keep the rock from freezing. Coyote soon grew cold and wanted the coat back, but Iya would not give it to him, saying, "What is given is given." Iya became a big rock, crashing upon the coyote and flattening him. The story has a moral, and it is: Always be generous in heart. If you have something to give, give it forever.

Those in the Lewis and Clark Expedition referred to coyotes as "prairie wolves." On Sept. 18, 1804, near the White River in what is now South Dakota, William Clark wrote, "I killed a Prairie Wolf, about the Size of a Gray fox, bushy tail, head and ears like a Wolf, Some fur, Burrows in the ground and barks like a Small Dog. What has been taken heretofore for a Fox was those Wolves ..."

The name coyote has even been applied to the people of South Dakota. This originated in the fall of 1863, when a horse owned by members of Co. A. Dakota Cavalry beat a horse owned by a major in the 6<sup>th</sup> Iowa Cavalry in a race at Fort Randall. It was said the Dakota horse ran like a coyote, and its owners at once gave the horse that name, which almost immediately afterward was applied to the entire Dakota Company.

In 1924, a coyote standing on a wreath was approved for the crest of the South Dakota Army National Guard. The Guard's training exercises are called the Golden Coyote. The South Dakota Air National Guard is nicknamed the "Lobos." "Lobo" is Spanish for wolf. The wolf, coyote, fox and domestic dog are all members of the biological family Canidae.

The mascot of the University of South Dakota is Charlie Coyote. When the school's first yearbook was published in 1902, the editors had already dubbed its athletic

teams "the Coyotes." A bronze statue of a coyote is located on the USD campus.

Among current South Dakota high school sports teams, coyotes are the mascots of Jones County and Waverly-South Shore high schools. Kimball High School uses the spelling Kiotes.

The coyote has been called the most vocal of North American wild mammals. A coyote known for her singing skills was Tootsie. Fred Borsch, who owned a liquor store in Deadwood, was given a coyote pup in 1947. He named the pup Tootsie and taught her to howl as he sang. The two cut a record called "South Dakota Tootsie." The duo often appeared in parades and events in Deadwood. On Aug. 6, 1949, Gov. George T. Mickelson declared Tootsie South Dakota's Official Animal at the Days of '76. At the height of their fame, Borsch and Tootsie took a 10-day tour that included a visit to the White House. Tootsie died in 1959, but she still lives on in Deadwood. A giant neon sign of a howling coyote is located on historic Main Street near the original location of Freddie's Spot Liquor Store and a display about Tootsie can be seen at the Adams Museum.

Not all coyotes are as fortunate as Tootsie. Although honored as the state animal, a bounty has often been placed on coyotes' heads. The coyote has been blamed for many dead calves or lambs on the prairie, and for missing dogs and cats. Efforts to reduce the coyote population in western states through poisoning, trapping and bounty hunting have not had much effect, as wildlife officials found that 70 percent of the entire population had to be killed every year to make a dent in the numbers. Coyotes have a biological mechanism that triggers larger litters whenever their numbers drop.

The coyote's ability to adapt is one of its greatest skills. The coyote can change its breeding habits, diet and social dynamics to survive in a wide variety of habitats.

That resilience is why the coyote was adopted as South Dakota's official state animal.

"The coyote has managed to get along in the face of civilization that is encroaching upon him," State Sen. Alfred Roesler told his colleagues in 1949. "Again, you might say his spirit to survive is a lot like the citizens of South Dakota who have gone through adverse conditions."

*This moment in South Dakota history is provided by the South Dakota Historical Society Foundation, the nonprofit fundraising partner of the South Dakota State Historical Society at the Cultural Heritage Center in Pierre. Find us on the web at [www.sdhsf.org](http://www.sdhsf.org). Contact us at [info@sdhsf.org](mailto:info@sdhsf.org) to submit a story idea.*

*Photo courtesy of the South Dakota State Historical Society – State Archives*





**FRED G. BORSCH and "TOOTSIE"**  
**South Dakota's Official State Animal**  
**Deadwood, South Dakota**



Source: <http://www.surveyhistory.org/images/snoopycartoon.jpg>







# Caption This!

- 1) Brought to you by Rural Rodent Limited Liability Co., anonymity guaranteed or your money back
- 2) The unfortunate consequence of using recycled soy and fry grease for your survey caps
- 3) Mmmmm – tastes like chicken
- 4) Hoping that went down better than it will come out
- 5) The flagging was light and tasty but the cap needs salt
- 6) Delightfully chewy on the outside but a little tough on the inside
- 7) Pairs well with a full bodied merlot
- 8) Someone is going to need a big dinner mint to get that taste out of their mouth

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# The Land Surveyor's Guide to the Supreme Court of South Dakota Part 14 – 1916

*This article represents the fourteenth 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 factors establish riparian boundaries?

### Anderson v Ray (1916)

The second decade of the twentieth century proved to be a period of great significance in the history of the Court, as many important precedents that established the future direction of land rights adjudication in South Dakota were put into place by the Court at this time, such as the proper location of riparian boundaries along navigable waterways, which play the essential role of segregating public land rights from private land rights. The conflict between public and private rights relating to shallow and highly variable lakes takes center stage in the case we are about to review, as a group of private land owners attempt to shut down a proposed public project that threatens to minimize the amount of land available to them for agricultural purposes. While the core issues of this case are exactly the same as those which appeared in the Flisrand case, that we have just previously reviewed, this decision of the Court clarifies and emphasizes the extent to which the Court focuses on balancing public and private land rights, and again shows the Court turning distinctly toward a view of navigability that strongly favors the protection of public interests in all bodies of water, in recognition of the fact that water is a precious commodity on the high plains. Here we observe the Court looking to the future, and taking note of the potential benefit to the public of a lake stabilization project, as justification for classifying an extremely volatile lake as navigable, thereby restricting the land rights of private riparian land owners, rather than basing the determination of the navigability status of the lake on historic use. Although this forward looking policy represented a bold and daring departure from the historical navigability determination procedure, it was destined to become entrenched as an accepted factor in navigability rulings throughout the west over the ensuing decades. Here we also find the Court reinforcing the positions that it had taken on meander lines and reliction in the Flisrand case, which was decided less than a year prior to this case, again rejecting meander lines as

anything more than presumptive boundaries, and maintaining that reliction cannot be conclusively shown where fluctuating water levels keep even an apparently moribund lake alive and viable as such. In addition, the dominance of the right of the public to the shore zone along any bodies of water that regularly recede and recover in a cyclical pattern is implicit in the Court's decision here, even when the public use of that area of mutual rights has the effect of keeping the ground perpetually inundated, rendering an otherwise frequently dry area virtually useless to any private land owners. Perhaps of most direct relevance to land surveyors, on this occasion we watch as the Court provides definitive guidance on the manner in which the location of the ordinary high water line of any body of water is to be determined, governing the location of the crucial terminus of both exclusive private land rights, and the area of public interest represented by all navigable waterways.

**Prior to 1913** - Red Lake, which is located in Brule County, covered approximately 3700 acres, to a maximum depth of only about 4 feet, at the time when the vicinity in which the lake is situated was originally surveyed by the GLO and the settlement of the land surrounding the lake began. It soon became apparent however, to the settlers who acquired land lying around the lake, that it was highly variable in character, undergoing short term cycles during which the lake sometimes completely disappeared, only to refill once again, up to its typical maximum level, which was the level at which the lake had evidently stood when it was meandered by the GLO. This lake was fed by several creeks, and it had no visible outlet, yet its behavior suggested that an underground outlet of some kind was likely to exist in an unknown location, since it had never been known to rise above the meander line, even in times of serious precipitation and flooding. For at least 3 decades subsequent to the initial settlement of the area, this lake went through its natural cyclical changes, dictated by both seasonal factors and weather conditions, drying up either partially or completely during each summer, then refilling either partially or completely each winter, depending on the extent of the snowfall. The owners of the riparian properties around the lake adapted their use of their lands to these recurring cycles, often using portions of the lakebed for upland purposes for extended periods of time, whenever conditions made such use possible. At an unspecified date, Anderson became the owner of an unknown amount of the riparian land in an unspecified location adjoining the lake. Just as many others presumably did, he evidently made significant use of some portion of the lakebed, lying below the meander line and directly adjoining the upland property owned by him, for profitable agricultural purposes, on a regular basis, as the ever changing water level of the lake allowed, and there is no indication that any disputes over any such use of the lakebed ever broke out between any of the



riparian land owners around the lake.

**1913** - A state law was passed, evidently motivated by the existence of many lakes demonstrating the same highly variable characteristics, and by a desire to attempt to control the volatility of the water levels in such lakes, which approved the use of artesian wells by county officials as a tool with which to maintain lake levels at or near their typical maximum levels, the apparent objective being to improve the stability of such lakes, in the belief that this would render such bodies of water more practical and useful. At this time, Ray, who was apparently a county commissioner, and who presumably owned no land in the vicinity of the lake himself, acting on behalf of the county, proposed the construction of 4 artesian wells to support and stabilize Red Lake. Where these wells were to be located is unknown, but Anderson and at least some, if not all, of his fellow riparian land owners situated around the lake objected to Ray's plan, so they filed an action seeking to prevent the wells from being dug, on the basis that such an application of the new law would represent a violation of their land rights.

Anderson and his fellow upland owners argued that the body of water in question could not be deemed navigable, due to the fact that it periodically disappeared completely, therefore their lands extended to the center of the lake and they were the true owners of the lakebed, so control over the use of the whole lakebed rightfully belonged entirely to them, and not to the county, or the state, or the public at large. They further argued that even if the lake were to be deemed navigable, the fact that it dried up completely on a regular basis made all of the land comprising the lakebed relicted land, thereby essentially suggesting that the dry condition was just as natural and normal to the lakebed as was the wet condition. They also maintained that allowing any artificial support for the wet condition to be put in place, such as the construction of the proposed wells, amounted to unjustifiable interference with their right to use their land below the meander line in it's normal condition, which they asserted was typically the dry condition. Ray and his legal team, which was comprised of representatives of the state's attorney's office, arguing on behalf of the public, responded simply that the lake at issue was indeed navigable, regardless of the extent of it's volatile behavior, and regardless of the fact that substantial portions of the lakebed were exposed as dry land most of the time, since the lake was only rarely full up to the meander line, but no portion of the lakebed could be correctly classified as relicted land. Ray also maintained that the land rights of Anderson, and any other riparian owners around the lake, were effectively limited to the meander line, as the nominal high water mark, and the rights of the public to the whole of the lakebed below the meander line were superior to any rights to that area held by the riparian owners, so the artesian well project should be allowed to proceed, because it would result in a more stable water level, at or near the meander line. The trial

court found the new law to be applicable to the situation, giving Ray the green light to proceed with the artesian well project, and rejecting the claim of Anderson and his co-plaintiffs that the project violated their rights as riparian land owners.

Its important to keep in mind that at the time this case was tried in the lower court, the outcome of the Flisrand case, just previously reviewed herein, was not yet known, so Anderson and the others who were aligned with him going into this battle did not have the benefit of the lessons that came out of that case, which had illustrated the position of the Court on the very same issues that would be critical to the result in this case. Anderson no doubt, much like Flisrand, had based his position on the Court's ruling in the Olson case, which took place during the 1890s, and the circumstances at Red Lake came closer to matching those of the Olson case than did the circumstances of the Flisrand case, but in fact Anderson was in virtually the same legal position as Flisrand, so he really never had a prayer of succeeding, particularly since he was up against a more formidable opponent than the one faced by Flisrand. Unlike either the Olson or Flisrand cases, the public had a direct and present interest in this case, as a participant, which clearly framed the issues that were before the Court in a stark manner, pitting the public interest in the lake directly against the private interests of the riparian plaintiffs, thereby making the decisions of the Court in this case especially meaningful in that context. As in all riparian rights conflicts that take place in any location where the navigability status of the waters involved is unknown, navigability here again was the most fundamental and overarching matter in play, forming a threshold issue that had to be addressed before proceeding to any other issues, due to the impact it has on all subsequent questions. The key factor here, distinguishing this scenario from the Olson case, and aligning this controversy more closely with the Flisrand case in the eyes of the Court, was the actual behavior and the evident physical characteristics of the lake in question. The nameless lake involved in the Olson case had receded never to rise again, disappearing permanently, leaving truly dry land to be fought over, but that was not the case with either Lake Albert, the scene of Flisrand's defeat, or with Red Lake, which both presented distinctly cyclical behavior, and it was this evidence that swung the judicial pendulum toward navigability, in the view taken by the Court. Although there appeared to be even less historic evidence of actual public use of the waters of Red Lake than there had been relating to Lake Albert in the Flisrand case, the Court looked to the future public value that could be expected to result from stabilizing Red Lake, and decided the issues accordingly. Emphasizing the importance of the degree of permanence required to legally alter the location of existing natural boundaries, particularly where precious public rights were at stake, the Court reiterated that temporary changes are insufficient to either eliminate

*Continued on Page 28*

navigability, or convert an exposed lakebed into genuinely relicted land, again demonstrating just how intensely focused the Court was on protecting and preserving all potentially valuable public rights, finding that:

*"In this case no reliction is shown ... the water recedes ... but this is not a permanent condition. There has been no permanent diminution of the quantity of water that flows into the lake ... temporary subsidence of the waters occasioned by the seasons, or by periods of drought, does not constitute reliction ... Where water periodically rises ... there is no reliction ... it is the low water line, and not the meander line, that limits the plaintiff's ownership ... a riparian proprietor takes title, not to the meander line of a navigable lake, but to the low water mark ... being limited and subject to the rights of the public ... the state may use the strip between high and low water mark ... the state may not only use it ... but may prevent it from being put to any use that would interfere with navigation ... the adjoining owner may occupy ... the land for any private purpose not inconsistent with the rights of the public ... high water mark ... is to be determined by examining ... the banks, in respect to vegetation, as well as in respect to the nature of the soil itself ... vegetation must be the principal test in determining the location of high water mark ... the state has the right to raise the water ... by either natural or artificial means ... such damage, if any, as may result to the appellants as riparian owners, is a damage for which they are not entitled to recover."*

Having declared the lake at issue to be navigable, despite its dramatic fluctuations, and having denied that any portion of the lakebed could be successfully claimed by any of the plaintiffs as relicted land, the Court again turned to the boundary implications of these findings, which had been left somewhat unclear in the wake of the Flisrand case. In approving the lower court's treatment of the Flisrand case, the Court had accepted the shore zone concept, for purposes of defining riparian boundaries, but since the lower court had erroneously implied that its decision was based on the notion that a meander line could represent a riparian boundary, the approval of the Court had left the lingering impression that meander lines could function as riparian boundaries. In this case however, the Court went into greater detail, to further clarify exactly how riparian boundaries are to be defined, while again agreeing that meander lines are presumed to correctly represent the high water line in the absence of evidence to the contrary, indicating that a meander line can stand as a presumptive indication of a boundary location, but only to that extent, and that presumption was relevant to both of these cases, in which no specific evidence showing any other boundary location was

presented by any of the litigants. Upon confirming that meander lines do not typically represent boundaries, regardless of whether the body of water involved is navigable or not, and verifying that their presence does not positively indicate navigability, the Court had effectively stipulated that meander lines should be regarded merely as evidence of the normal or historical high water level of any given body of water, until the contrary is shown, through proof that either erosion, submergence, accretion or reliction have relocated the boundary in question to either a higher or lower position. Lastly, in laying out the parameters for the interaction of the existing private rights held by riparian owners such as Anderson and the public rights being presently upheld, the Court sought to better illustrate its vision of how specific riparian boundary locations should be defined on the ground. The Court again stated that the shore zone was an area of mutually held public and private rights, with the high water level marking the maximum possible extent of any public rights, making the process of defining that location in any given case a matter of significance to all parties. Just as in the Flisrand case, here the Court had no basis upon which to specify any deviation in the location of the high water line from the existing GLO meander line in terms of any dimensions, since no evidence of either a higher or lower water line location had been brought forth by any of the litigants. Nevertheless, resolving to provide appropriate guidance on this crucial topic as a matter of principle, the Court formally adopted the widely honored vegetation test as the prime component in assessing riparian boundary locations from a physical perspective in the field, mandating that the public rights in question extended no higher than the level at which the growth of typical upland vegetation was limited by the presence of the water under ordinary conditions, wherever that level might be found. In the end, Anderson had quite predictably learned the same lesson that Flisrand had learned, which is that even the most volatile waters do not bar navigability, under the public trust doctrine, which had been firmly embraced by the Court. Whether the proposed artesian well project was ever actually carried out is unknown, from recent aerial photos it appears that even today Red Lake remains little more than a puddle dappled quagmire.

On the same day that the Court issued its decision in the Anderson case, it also produced its first decision focusing upon the shifting Missouri River, in the case of *Maw v Bruneau*. Both *Maw* and *Bruneau* held title to riparian lands lying along a portion of the river that formed the boundary between South Dakota and Nebraska. At the time of the GLO surveys of this vicinity, the land of *Maw* had been north of the river and the land of *Bruneau* had been south of the river, but the river had apparently moved back and forth through the area in question over many decades, and as a result neither *Maw* nor *Bruneau* evidently understood where their boundaries were located. How long the litigants had owned their respective lands is unknown, but *Maw* filed an action against *Bruneau*, apparently seeking to silence



a claim made by Bruneau that he owned some unspecified amount of land lying north of the river, which was also claimed by Maw at the time of the litigation. The basis for Bruneau's claim was evidently his belief that the river had gradually migrated northward for a substantial distance over a period of several decades prior to 1900, thereby washing away some, if not all, of the land claimed by Maw, and extending Bruneau's property an unspecified distance to the north, by means of accretion. Bruneau conceded that the river was actually located south of its platted location at the time of the litigation, but he alleged that the river's current location had resulted from an avulsive southward change in the river channel that had occurred in 1900, which therefore could not alter the northerly boundary location that had been established prior to 1900 by several decades of accretion. Maw acknowledged the operation and the legal effects of both accretion and avulsion, thus Maw did not dispute the claim made by Bruneau on principle, asserting instead that Bruneau's version of the facts was flawed and mistaken. The river had not migrated northward gradually, Maw alleged, instead its northward movement had been avulsive in nature, with the result that Maw still owned land lying south of the river after its northward move, so Bruneau had never gained any land north of the platted location of the river through accretion. The trial court decided the controversy in favor of Bruneau, holding that Maw's property had been completely eroded away, as claimed by Bruneau, but the Court reversed that outcome, and quieted title to all of the land north of the river location at the time of the litigation in Maw. In so ruling, the Court pointed out that the evidence revealed that many trees, and stumps of trees that had been up to 50 years old when they were cut down, existed in the area north of the river that Bruneau claimed to have been formed by accretion within the previous 50 years, and this proved to be fatal to Bruneau's case in the eyes of the Court. The presence of old trees and stumps represented positive proof, the Court observed, that Bruneau was either lying or mistaken in his belief that the river had moved north by means of an accretive process, because if the river had done so, it would have scoured the landscape clean of all such items, so the physical evidence demonstrated, to the Court's satisfaction, that the Maw property had never been fully submerged or eroded away, and none of it had accreted to the land of Bruneau.

### **What effect do lakes have on the section line right-of-way?**

#### **Sample v Harter (1916)**

Just 12 days after the resolution of the Anderson and Maw cases, just previously reviewed, the Court once again addressed a scenario in which the presence of lakes was an instrumental factor, this time however in the context of the law relating to the section line right-of-way. The case we are about to review includes a very interesting and highly unusual mixture of land rights

issues, involving both fee ownership rights and easement rights, presenting a situation in which navigability also plays a peripheral but essential role, and it also serves to illustrate the significance of appreciating the potential value of evidence relating to the origins of land ownership, which can often become obscure and be overlooked, once such facts have faded into the distant past. Perhaps the most vital lesson to be learned from this case is the importance of understanding that no easement can ever be created through a conveyance made by any party, on land that is not owned by that party, even when the party in question is the federal government. Another case that was centered upon easement and dedication issues arising from a simplistic early subdivision plat, the 1912 case of *Atlas Lumber v Quirk*, may be worthy of note at this point. In that case, Atlas acquired two lots in a platted subdivision and used those lots as a lumber yard, since they were situated in close proximity to a railroad track that passed through the subdivision. In preparing the plat however, a blank space 45 feet in width had been left between the lots owned by Atlas and the railroad right-of-way, which Atlas needed direct access to, in order to ship out lumber. Quirk acquired a quitclaim deed from the party who had platted the subdivision, allegedly conveying all of the areas lying in between the platted blocks to Quirk, and he apparently informed Atlas that he planned to erect a building on the 45 strip, directly in between the platted lots that were owned by Atlas and the railroad right-of-way, which would effectively block Atlas from accessing the railroad right-of-way for purposes of making lumber shipments. Therefore, Atlas filed an action against Quirk, claiming that the 45 foot strip in question was in fact a dedicated public street, even though that strip was not labeled or otherwise expressly identified as being a street on the subdivision plat, appearing only as a blank space thereupon, so Quirk had no right to erect a building on the disputed strip. The Court reversed a lower court decision in favor of Quirk, agreeing with Atlas that the unlabeled strip was a dedicated public street, which was covered by the dedication statement that appeared on the face of the plat, because that strip could not logically be understood to represent anything other than a public street, since the plat showed other public streets and alleys opening onto it. The Court therefore rejected Quirk's claim that he had the right to build on the strip, thereby rendering the quitclaim deed to Quirk essentially worthless, and upholding the powerful rule that a grantor owns nothing that he failed to expressly reserve when platting and conveying his land.

**1857** - The Winona & St. Peter Railroad was created, and through an Act of Congress the railroad was granted all of the odd numbered sections in a certain group of townships that had yet to be surveyed by the GLO.

**1858 to 1879** - During this period, all of the townships containing the aforementioned railroad land were

*Continued on page 30*



apparently surveyed and platted by the GLO, and the settlement of those townships located in the Dakota Territory commenced. Altamont Township in Deuel County was among those included in this group, and it contained several bodies of water known as the Coteau Lakes, which were situated in Sections 20, 21, 28 & 29.

**1880 to 1902** - Altamont Township apparently grew in the normal fashion, and the Coteau Lakes came into typical use by the public. Whether or not any of the land near the lakes in Sections 20 & 28 was occupied or patented during this period is unknown, but the railroad land in Sections 21 & 29 was evidently never put to any use by the railroad and remained vacant. At an unspecified date, a section line road was built and put into public use, running along the south side of Sections 28 & 29, and the public began accessing the south end of the southernmost lake, which was about a quarter mile north of the southeast corner of Section 29, by turning off the section line road near that point and travelling northward to reach the water. Another section line road was built running along the north side of Section 20 & 21 at an unspecified time, but there was no indication that anyone ever accessed the lakes from this road, since the north end of the northernmost lake lay more than half a mile south of this road and the intervening terrain was more rugged than the terrain south of the lakes. No other portions of the section line right-of-way were used for purposes of travel to these lakes, and no other public roads existed anywhere in the two mile wide area lying between these two public roads.

**1903 to 1915** - At an unspecified date, Sample acquired the land lying in the south half of Sections 28 & 29, between the southerly section line road and the lakes. He also acquired the land in the southwest quarter of Section 21 that lay directly north of the northernmost lake, but he never acquired any land in Section 20, which apparently remained unoccupied and undeveloped. Whether or not the public continued to access the lakes from some other direction after Sample acquired the lands over which the public had been travelling to reach them is unknown, but there is no indication that anyone ever trespassed on his land, and there were no conflicts over access to the lakes during this period. At an unspecified date, presumably near the end of this period, Harter, who was a township supervisor, proposed the construction of two section line roads crossing the lands owned by Sample. One of these roads was proposed to run south from the northeast corner of Section 20, along the east line of that section, to the north edge of the north lake, and the other road was proposed to run north from the southeast corner of Section 29, along the east line of that section, to the south edge of the south lake. Sample objected to this proposal, so he filed an

action against Harter, seeking to prevent these public roads from being built across his lands.

Sample argued that the proposed roads were unnecessary, impractical, and would be of no value to the public, since it was impossible to build one continuous road along the section lines in question, that would serve to connect the two existing section line roads, due to the presence of the water. He asserted that no dead end road could be considered practical or beneficial enough to the public to justify opening and improving a section line right-of-way for that purpose, and the public had no right to cross his land solely for the purpose of reaching the lakes, so Harter's proposal should be denied. He further argued that he had terminated any previous public access to the lakes that may have taken place on his land, prior to his acquisition of it, and that even when that access had been made prior to his arrival, the public had never followed any one specific route to reach the lakes, they had used many constantly varying paths, so no right-of-way had ever been created anywhere on his lands by means of prescription. Harter argued that Sample had no right to prevent public use of any portion of the section line right-of-way crossing his lands, and he asserted that rather than making the section line right-of-way less valuable, or useless to the public, as Sample maintained, the presence of the lakes actually made the use of the proposed routes more valuable to the public, because the public had the right to free access to the lakes, so the construction of both of the proposed roads was completely justified and entirely legal. The trial court found that the lakes were of value to the public, and public access to them was a legitimate basis for the road construction that had been proposed by Harter, so the roads in question could be built and put into use as proposed, and Sample had no right to block their construction or their use.

Interestingly, just 6 years earlier in 1910, in the Troeh case, previously reviewed herein, the Court had commented that a public road should never be presumed to have been intended to form a dead end or cul-de-sac, unless such an intention was clearly manifested, and the Court had taken that position as a means of justifying or explaining its decision in that case that the alley in question was one continuous public thoroughfare, despite being ambiguously described in fragments. Sample or the members of his legal team appear to have taken note of the Court's position stated in the Troeh case, which seemed to hint or suggest that the Court might not approve the creation of a public road that did not serve to connect any existing roads, and Sample chose to make that notion a feature of his effort to prevent the section line roads that were proposed here from being built on his land. Not surprisingly however, the Court found this position entirely unacceptable and swept it aside with little consideration, based on the fact that there is nothing anywhere in the law pertaining to section line roadways which stipulates that a section line right-of-way running along a fragmentary section line cannot be put into use



as a public road. Unquestionably, the Court observed, the proposed roadways would serve a legitimate public purpose, increasing the accessibility of the lakes in question, the public value of which had already been amply demonstrated by the fact that the public had been making use of them on a consistent basis for well over 3 decades by the time this case was tried. Presumably having noted the results of the Flisrand and Anderson cases, concerning the issue of navigability, Sample and his legal team evidently recognized that the Court would undoubtedly deem the group of lakes involved in this matter to be navigable, under the broad umbrella of navigability that had been established by the Court, based on the historic use of the lakes by the public, so they never even attempted to argue that the lakes at issue here were non-navigable or private in character. Having accepted the concept that the lakes represented a source of value to the public, the Court concluded that the idea of accessing them by means of the section line right-of-way, as had been proposed by Harter, was perfectly valid in principle, the only potential obstacle being the terrain itself, and the topography, the Court decided from the evidence, was not so severe or impassable as to prevent the construction of useful roadways following the section lines in question all the way to the shores of these lakes, from both the north and the south. Just as in the Flisrand case however, each of the litigants had initially come into this battle apparently unaware of at least one important factor, and this would lead to another outcome with which neither party would be fully satisfied. Like Anderson, in the case just previously reviewed, Sample only learned of the Court's stance strongly favoring navigability, which effectively eviscerated his position, well after his legal assault on these proposed roads had been launched, but Harter also had a surprise coming, since he had apparently just assumed that literally every section line represents a right-of-way, evidently not realizing the significance of the railroad grant, which did not escape the Court:

*"Upon the question of practicability, it was shown that ... these section lines are practicable for public uses. This brings us to the second and more difficult branch of the case ... after sections 21 and 29 had been granted to the said railroad company, these two sections were not public lands ... The government had already divested itself of title to these two sections, and it could not burden them with a right-of-way for highways ... it follows that defendants were not authorized ... to appropriate any portion of these two sections for highway purposes ... an attempt was made to show the establishment of a road by prescription ... travel appears to have turned off from the east and west road at or about the section corner, it does not appear to have followed any defined roadway from that point to the south side of the lake ... and it does not appear that anyone ... followed the section line to the lake ... people traveling back and forth ... followed the route that was most convenient at the particular time ... the evidence is not sufficient*

*to show the establishment of a highway ... but ... the railroad grant above referred to does not affect sections 20 or 28 ... a strip of land 33 feet in width ... on the east side of section 20 and ... on the west side of section 28 ... may be opened by respondents for that purpose."*

Although Sample had been utterly vanquished in his futile effort to convince the Court that access to the lakes at issue was not an appropriate use for a section line right-of-way, he did greatly benefit from the fact that part of his land had been granted away by the United States in 1857, prior to the formulation of the section line right-of-way concept, and even prior to the origination of the concept of a public right-of-way over the public domain, which had been set forth by RS 2477 in 1866. All of Sample's land in Sections 21 and 29, the Court acknowledged, was free of any public burden, under the section line right-of-way statutes, because no grantor, even including the United States, can ever place the burden of an easement on any land that is no longer owned by that grantor, so the laws of 1866 and 1871, relating to the section line right-of-way, had no impact on these two sections, since they had already been removed from the control of the United States in 1857. The fact that the sections that had been disposed by the United States in 1857 did not yet exist at that point in time, having not yet been surveyed on the ground or platted by the GLO, was irrelevant in the eyes of the Court, because the railroad grant necessarily carried the legal implication that the GLO would subsequently subdivide and plat all of the relevant townships, and the railroad would become the owner of all of the odd numbered sections therein at the moment those sections came into legal existence. Had Section 28 also been conveyed by the United States prior to 1866, no public right-of-way would have existed anywhere on Sample's lands at all, and he would have been fully victorious in this controversy, but Section 28, the Court held, was subject to the section line right-of-way, since it had evidently not been patented until after 1866. This situation obviously raised a subsequent question, which was to what extent the land in Section 28 was burdened by the section line right-of-way, so the Court had to determine whether the full statutory 66 foot width of the section line right-of-way should be maintained in such situations, by shifting all of it onto the even numbered section, or whether the section line right-of-way should simply be reduced to half of its intended width under such circumstances. To that end, the Court gave serious consideration to the fact that 66 feet had clearly been the intended width of all section line right-of-way under the law, but decided that width was merely a secondary factor, which was controlled by the primary intention to set the boundaries of the section line right-of-way 33 feet from every section line that was qualified to support such public rights, thereby confirming the existence of a public right-of-way over only the west 33 feet of Sample's land in Section 28. The Court therefore

*Continued on Page 32*

proceeded to uphold the ruling of the lower court on its merits in all respects, while clarifying however, that in terms of actual location, this decision was applicable only to the existing section line right-of-way in Section 28, so if the proposed roadway required a right-of-way 66 feet in width, then Sample would have to be compensated for any land beyond the west 33 feet of Section 28, in either direction, that was needed for that purpose. Its also worthy of note that the Court, as quoted above, here took the position that the creation of a prescriptive right-of-way or easement cannot be accomplished by the mere crossing of vacant land, over a multitude of varying paths, trails or tracks, since such use is inherently transient in character, leaving little or no trace, therefore failing to present or support the critical element of notice of ongoing use of the land, and thereby creating no permanent rights to maintain such use.

Later in 1916, another case in which the principle of notice proved to be decisive was ruled upon by the Court, in *Caldwell v Pierson*. In that case, South Dakota issued a contract for deed in 1901, covering a quarter quarter that was situated in a state school section, and Caldwell became the assignee of that contract in 1907. Caldwell occupied and farmed the quarter quarter at issue, but unknown to him delinquent taxes were owed on the property, and as a result the quarter quarter was conveyed to Foster in 1908 at a tax sale. A state patent was subsequently issued to Foster, covering the quarter quarter, and he then conveyed it to Pierson in 1912. When Caldwell discovered what had happened, he filed an action against Pierson, claiming that both the tax deed and the patent represented unauthorized violations of his prior rights to the quarter quarter, and those documents had been wrongly issued in derogation of his rights, so they should be deemed to be legally void. Pierson countered with the argument that Caldwell had never recorded his contract for deed, claiming to be an innocent purchaser of the quarter quarter, without any means of notice that Caldwell had any prior right to the land in question. The trial court held that the patent was indeed void, because the statute enabling the state to issue such a patent, on the basis of a tax deed, was unconstitutional. The Court agreed that the statute providing for the patenting of state school land that had been acquired through tax proceedings was unconstitutional, because it foreclosed and failed to protect the rights of parties such as Caldwell, who may have been victimized by deficient tax delinquency proceedings, during which parties such as Caldwell may not have been given adequate notice, thereby illegally depriving them of their land without due process of law. In addition, the Court observed, citing the *Betts* case of 1890 and the *Huffman* case of 1912, both previously referenced herein, the fact that Caldwell had been physically present on the land in controversy since 1907, and both he and his tenant had openly and consistently utilized the quarter quarter, was fully sufficient to dispose of the claim made by Pierson that he

was a bona fide purchaser without notice. The occupation and use of the disputed property by Caldwell and his tenant, the Court stated, supplied Pierson and all others allegedly having any interest in the quarter quarter with notice of the existence of Caldwell's rights to that property, just as completely as if Caldwell had recorded the document assigning the contract for deed to him. The Court thus demonstrated once again that the concept of inquiry notice has the power to utterly negate the value of any land acquisition, if the evidence indicates that the grantee relied solely upon documentation of record, and voluntarily closed his eyes to the visible existing physical circumstances involving the land being acquired.

The following information is taken from meeting minutes of the **South Dakota Board of Technical Professions** complete meeting minutes can be found at: <http://dlr.sd.gov/btp>

**January 15, 2016**

Approve the following examinee for passing the Principles of Surveying (PS) Exam:

Brandon James Huppler – LS 12755

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

Beau David Daale  
Rafe Eric Jacobsen  
Micah Peters  
Nathan Allen Renner

---

Approve the following examinee to take the Principles of Surveying (PS) Exam:

Jesse Paul Paulsen

---

Denial of examinee to that the PS Exam based on not having 2 years of experience after enrollment as a land surveying intern:

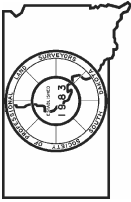
Chadwick Martinson

---

Approve the following Land Surveyor (LS) Comity Applications:

Anthony Leonard Bruckner (LS 12782) NE  
Jason Duane Janes (LS 12783) MO  
Jason Edward Main (LS 12784) ND  
Jack Rosenthal (LS 12785) MN





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- 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.

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### Associate:

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### \*Student:

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

### Sustaining:

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### Signature of Applicant

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

Date

\*Signature of Faculty Member (required for students)

Date

Institution

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

Send complete application & payment to: SDSPLS - PO Box 8154 - Rapid City, SD 57709  
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