

November 2018

BACKSIGHTS & FORESIGHTS



SDSPLS 36th ANNUAL CONVENTION
January 9, 10 and 11, 2019
Arrowwood (Cedar Shore) Resort
Chamberlain, SD

Photo by Lundee Stadler

“How wonderful it is that nobody need wait a single moment before starting to improve the world.”

- Anne Frank

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Size	Rates
3 1/2" x 5"	\$25 per issue
7 1/2" x 5"	\$50 per issue
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

Material Cutoff	Publication
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 EDITOR:

The old cliché "Where does the time go?" seems to ring truer every year. It is hard to believe that it is November already and that 2018 is drawing to a close. The days are getting shorter, temperatures and wind chills are dropping, snow has found most of us, some of our farmers are still working to get the last of their harvests out of the fields, contractors are hustling to finish projects before deep frost sets in and the asphalt plants shut down for the season. The witches and goblins are gone for another year and the mid-term elections are behind us. Thanksgiving is just around the corner and holiday decorations are already up in our stores and towns. I watched our Parks Department bed the roses down last week and then string Christmas lights up this week in the park across from my office.

It has been a busy year for SDSPLS. We started the year with an active legislative session and success in defeating the governor's proposed Temporary Licensing Compact. DPC provided effective leadership in that effort and we will be looking to them again in the coming year to help keep us informed and to provide guidance and direction. DPC went through some changes as well and Diane Aas will be the Executive Director during 2019 with the expectation that the new SDES/ACEC Director (Nancy Hoines) will assume that position in 2020. We expect to see the movement for deregulation of licensing to continue to work its way through other states in various formats. It is anticipated that we will see some version of this legislation again in South Dakota and we need to remain watchful.

We have put together an interesting convention program for January 2019. John Matonich will be our feature speaker, addressing the topics of deeds and descriptions, easements, and being an expert witness. Bob Dahl and Ryan Lorenzen with the BLM will have a session on the rectangular survey system and subdividing fractional sections. You can look for an update on the Corner Records project as well as 12 hours of LSIT sessions available. There is definitely a good variety of topics and something for everyone.

There are also a few changes and new things to look forward to this year. The SDSPLS Chapters have purchased a limited edition American Surveyor Rifle and will have the number 15 rifle out of 50 Surveyor Legacy rifles. It is a fully functional Henry Big Boy .44 Magnum and will come with a carrying case. See the enclosed flyer for the engraving details. Tickets will be \$5 for 1 ticket or \$20 for 5 tickets with proceeds going to the SDSPLS Special Use Fund.

SDSPLS will support entries for the NSPS Plat Map Contest again this year. See the enclosed flyer for details. The SDSPLS Board of Directors will choose (or select a group to choose) a winning entry from the various categories. To have your entry considered

please bring a full sized copy of your drawing (mounted if you prefer but not required) to convention for display on Thursday. SDSPLS will select the winning entries on Friday morning and provide the sponsorship and entry fee for the winning drawings.

We also have a few changes for the Thursday evening banquet. You will have a choice of prime rib or chicken florentine for your meal. Please be sure to check the appropriate blank on your convention registration form.

The after-dinner program will have a new look as well. There will be desert (cake and ice cream) for everyone and Chapter sponsored activities/contests for those that want to try their hand at some of the more traditional surveying skills. There will be contests for pacing, chain throwing, and a transit set and angle turn, as well as an individual corn-hole tossing contest. Brush up on your skills as prizes will be awarded to the top 3 contestants in each event. If you don't want to participate, you can watch your friends compete or take some time and enjoy coffee, cake and ice cream and the company of your colleagues and friends.

The Young Surveyors group is going to provide the opportunity for corn-hole tossing in our exhibit area and we hope to have an example of an augmented sandbox on hand. The sandboxes are really fun and interesting tools that could be a great enhancement for our contact with student groups, scout troops, etc.

I hope that it has been a good year for all of you. It is a little bittersweet here as I work on what will be my last newsletter and convention. Your new Executive Director (Rebecca Dodds) has been hired and working with me for the past month. There is a lot of ground to cover in getting ready for her to transition into this position. I will let Rebecca introduce herself in more detail in your next newsletter, but she is currently from Rapid City and is married to a surveyor (Chad Dodds). The location certainly makes the transition and training easier on both of us and being married to a surveyor means that she already is acquainted with the profession and understands what surveyors do. She has an interesting background that includes skills in management, working with people and the hospitality industry. I have really enjoyed getting to know her and know that she will do a wonderful job for SDSPLS and will bring a fresh perspective and some new ideas. We will both be working together at convention this year and I know that she is looking forward to meeting you. I hope that you will be able to join us in January and that you will make her feel as welcome as you have made me feel these past 20 years. I am truly blessed to have been a part of this organization and have always felt like I have 300 friends scattered across the state. I will truly miss all of the wonderful people of SDSPLS.

Janelle L. Finck
SDSPLS Executive Director



SDSPLS 2019 Annual Convention

January 9, 10 & 11
Arrowwood (Cedar Shore) Resort, Chamberlain, SD

Agenda:

The Rectangular Survey System

Robert (Bob) Dahl & Ryan Lorenzen

Easements

The Land Surveyor as an Expert Witness

Deeds and Descriptions

John Matonich

LSIT Sessions:

Plan Reading & Construction Staking

Aaron Norman & Joshua Vanderwerf

Introduction to the Rectangular Survey System

Robert (Bob) Dahl & Ryan Lorenzen

Geographic Information Systems

Linda Foster

Easements

Rod Breitling

Exhibits

Scholarship / Fundraising Live Auction

Photo Contest

(Cabela's gift cards for the top 3 photos)

NSPS Plat/Map Contest

Traditional Skills Contests – including:

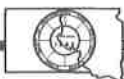
Pacing, Chain Throwing, Transit Set & Angle Turn

(Cabela's gift cards for the top 3 places in each event)

Corn Hole Toss

American Surveyor Legacy Rifle Raffle

See the enclosed convention flyer and registration forms for more information.



SDSPLS – Board of Directors Meeting

Tuesday, October 16, 2018

Al's Oasis – Oacoma, SD

(This report subject to Board approval)

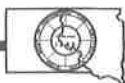
In Attendance: President Nathan Nielson, President-Elect Todd Schlunsen, Past President Fred Leetch, Secretary Jon Nelson, Treasurer Travis Kropuenske, NSPS Director Beau Koopal, Big Sioux Chapter Aaron Norman, West River Chapter President Linda Foster, DPC Representative Don Jacobson, Education Committee Kristi Goehring, NSPS Young Surveyors Dani Huewe, South Dakota Board of Technical Professionals John (Steve) Peters, Executive Director Janelle Finck and Rebecca Dodds

1. Meeting called to order at 11:44 am by President Nielson.
 2. Acceptance of Agenda: ++Motion by Koopal to approve the agenda as submitted, 2nd by Schlunsen. Motion approved.
 3. Secretary's Report – Jon Nelson: Written report submitted for review. Approval of the minutes for the July 16, 2018 Board of Director's Meeting (Conference Call) as submitted. ++Motion by Schlunsen to approve the minutes as submitted, 2nd by Koopal. Motion approved.
 4. Treasurer's Report – Travis Kropuenske: Written report submitted for review. General discussion and review of registration fees and scholarships fund balance. ++Motion by Leetch to approve the Treasurer's Report as presented, 2nd by Foster. Motion approved.
 5. President's Report – Nathan Nielson: Nielson indicated the Executive Director contract documents have been signed and Rebecca Dodds started training on October 1, 2018.
 6. Committee Reports:
 - a) Education – Kristi Goehring: No written report submitted. Goehring reported St. Cloud State University has funded the Land Surveying/Mapping Sciences program for another year. General discussion on SDSPLS Scholarships. Koopal requests school program instructors not rank student scholarship applications before submitting to BOD. Nielson indicated school program instructors could provide additional background information on the scholarship applicants instead of ranking students. General discussion on past scholarship amounts and ideas for new scholarships and raising scholarship totals. Goehring recommends increasing scholarship total from \$7000 to \$10,000. The scholarship amounts would increase to \$4000, \$3000, \$2000 and \$1000. ++Motion by Nielson to approve the increased scholarship amounts as requested by Goehring, 2nd by Leetch. Motion approved.
 - b) Legislation – Gary Andersh: No report.
 - c) Design Professionals' Coalition – Don Jacobson: Jacobson indicated he is acting Chairman, Derek McTighe is Vice Chairman and Diane Aas is Executive Director of the DPC. DPC is looking for an additional Surveyor to serve on the board. General discussion on DPC role and history of DPC (handout). Request by Steve Peters to publish the article in the newsletter.
 - d) Professionalism & Practice – Dean Scott: No report.
 - e) Public Information – Mark Lippincott: No report. Finck indicated Mark has taken a position with RDO in Montana. General discussion on committee chair replacement. Todd Schlunsen to follow up with the recommendation for new chair.
 - f) Membership – Vacant: Still searching for a new Committee chair. Finck gave a brief description of duties. General discussion on committee chair replacement.
 - g) NSPS and Young Surveyors – Beau Koopal: Koopal indicated he would be attending the NSPS meeting in Washington DC October 17, 2018. NSPS dues are expected to increase by \$10. SDSPLS approved a \$5 increased for NSPS dues for 2019 (out of an overall general membership increase of \$15). If NSPS goes with the \$10 increase, SD would not be able to implement until 2020 as our annual renewals will be mailed out in November. Koopal to propose amending the SD/NSPS MOU to the additional \$10 for 2020. Koopal notes the plumb bob card holders to be offered for purchase along with shirts at the convention would cost \$50-\$65 each. Koopal also notes that Tom Berkland continued to Chair the By-Laws Committee and has been supporting his own travel and expenses. General discussion regarding providing at least some reimbursement for his expenses. Finck request to increase NSPS travel budget \$1000 and send Berkland re-imburement for Spring NSPS meeting airfare. ++Motion by Schlunsen to increase NSPS travel budget and re-imburement Berkland for Spring meeting as requested by Finck, 2nd by Koopal. Motion approved. Dani Huewe indicated that SD NSPS Young Surveyors have 5 new members. A corn hole tournament was discussed as a good group activity for convention. General discussion on Young Surveyors group and activities for the convention. Nielson suggested the BOD could fund prizes for the tournament. Huewe will coordinate tournament and prizes with Finck. General discussion on Chapters funding the purchase of the American Surveyor Henry rifle for the convention raffle. Discussion on past raffle profits and setting raffle ticket prices at 1 ticket for \$5 or 5 tickets for \$20 for this collector's item.
 - h) Trig Star – Steve Thingelstad: No report. General discussion on replacement Chair for 2020.
7. Chapter Reports
 - a) West River – Linda Foster: Foster reports good participation by Chapter members on the National Geodetic Survey GPS on Bench Marks campaign to improve GEOID18 and Improve the 2022 transformation.
 - b) Big Sioux – Aaron Norman: Norman reports the Chapter had a meeting in Brookings with about 25 in attendance. They had interesting presentations from student interns at Southeast Tech.
 - c) Missouri River – Keith Howe: No report.
 8. Old Business



- a) 2019 Executive Director Introduction – Rebecca Dodds: General discussion on BOD taking a more active role and assisting with some Executive Director duties – particularly those items that require more direct knowledge of SDSPLS and/or the members. Membership committee to take on duties of updating and maintaining a BOD candidate list. Nielson, Schlunsen, Foster, Dean Scott and Kristi Goehring to assist as an informal transition committee. Discussion of decision on archiving and storage of Society documents. A new email address, PO Box and phone number will need to be established by Dodds.
- b) Corner Records/On-Line Records System – Linda Foster: Foster continues developing the concept of digital corner records. Because SDSPLS is not a traditional 501(c)3 the organization does not qualify for non-profit status with ESRI. General discussion on how the system would work. She has also been in contact with Board of Technical Professions about administering and maintenance of the program. BOTP indicates that administrative rules would have to be changed to administer and maintain the system. General discussion on how the BOTP would function as Digital Corner Records Administrator.
- c) SDBOTP – Licensure Applicant Evaluation Form: No report or activity as this time. General discussion on getting feedback and new committee members. Finck to ensure that samples and request for feedback are distributed to the informal committee members (Aaron Norman, Rod Breitling, Eric Meyer & Bob Kummer)
- d) Young Surveyors Virtual Committee & Social Media – Dani Huewe: No report. General discussion on progress. Dodds indicated she would help setup the Social Media accounts.
- e) Augmented Sandboxes: Discussion regarding progress. Southeast Technical School has built a sandbox but is having some technical difficulties. STI is working on resolving the problems and it is hoped that the students will be able to bring the sandbox to convention for display.
- f) NSPS Dues: NSPS is expected to propose a \$10 dues increase for 2019. SDSPLS has already increased approved a \$5 dues increase for 2019 but will need to wait until 2020 to made the adjustment to \$10.
- g) 2019 Convention: Preliminary Agenda handout. General convention format and speakers with John Matonich as the feature speaker with Easements (4 hours), Expert Witness (2 hours), and Deeds & Descriptions (4 hours). Bob Dahl (BLM) will provide 4 hours on Rectangular Survey System – State or Federal Subdividing Fractional Sections. Finck noted 2 menu options will be offered – prime rib and chicken Florentine for the banquet. After-Dinner Activities Hour will include: Chain Throwing Contest sponsored by the West River Chapter; Pacing Contest sponsored by Big Sioux Chapter; Instrument Set/Level/Angle Contest sponsored by the West River and Missouri River Chapters; and Corn Hole Sponsored by Big Sioux Chapter/NSPS Young Surveyors. Prizes (gift cards) will be awarded for the winners or top placers.
- h) 6th PM Monument Plaque: Jacobson indicated he represented SDSPLS at the monument ceremony. Andersh forwarded Penry’s email to the Board of Directors requesting SDSPLS donate \$400 for the plaque. ++Motion by Kropuenske to approve the \$400 donation, 2nd by Norman. Motion approved.
9. New Business
- a) SDBOTB – Steve Peters: General discussion pertaining to NCEES additional module for PLS states and the need for more PLS exam related questions. Peters indicated SDSPLS needs to be involved in South Dakota Board of Technical Professions and NCEES. Our 3-year, 3-term limits can make it difficult to serve on the national level. Peters spent a day at STI with Rod Breitling. Peters was impressed with the program and expressed concerns about the future of the program with Breitling’s pending retirement (1-2 years). Concerns also expressed regarding the ability to find a suitable replacement with the salary that would likely offered. Peters strongly urges the BOD to get involved at some level on Rod’s replacement. SDSPLS has members on the STI Advisory Board (Nielson, Norman, Fowlds & Meyer) and should become active in that search and decision.
- b) Southeast Tech Grant: Handout provided with summary of costs. It was noted the weather did not cooperate for the initial point hike. A trip to Wind Cave was scheduled instead to cover the time. Additional expense of \$200 over the \$3000 requested. ++Motion by Nielson to revise amount requested to \$3200 to cover the additional expense, 2nd by Kropuenske. Motion approved.
- c) 2019 Officers (President-Elect, Treasurer & NSPS Director): General discussion on filling BOD positions. NSPS Director Koopal and Treasurer Kropuenske will server another term. Foster willing to serve as President-Elect.
- d) NSPS Disaster Relief Fund (Hurricane Florence/Michael): General discussion on past contributions to the fund. ++Motion by Koopal to donate \$5000 to the fund, 2nd by Nelson. Motion approved.
- e) NE – Three Corner monument access: Jerry Penry requested a letter of support to replace a culvert on Indian Creek to gain access to the 3 Corners monument from Nebraska. ++Motion by Schlunsen to provide a letter of support, 2nd by Koopal. Motion approved.
- f) New Mexico – Governor’s Licensing Executive Order: Handout of New Mexico Executive Order. General discussion pertaining to how this might affect SD. Discussion regarding preparing an editorial on the possible effects of de-regulation. No action taken at this time.
10. Next Meeting: Wednesday, January 9, 2019 at 9:00 am at Arrowwood Resort (Cedar Shore).
11. Meeting adjourned at 4:02 pm.

Respectfully Submitted
By: Jon Nelson - Secretary



ANNUAL
SDSPLS
SURVEY *Photo* CONTEST

Bring a print of your favorite survey project photograph to the convention with your name and a short description of the photo or project.

(8" x 10" maximum please)

Winner to receive a
**\$100 CABELA'S
GIFT CARD!**

SDSPLS reserves the right to post entries on the SDSPLS website and/or print in Backsights & Foresights (with appropriate credit).

Holiday Helping Hands

By: Donald Martin

Do you know where the best helping hand in the world is? As my grandfather used to say, it is at the end of your own sleeve. I believe that; I believe I live that. Indeed, isn't that the story of many of the successful people we all know? Through your own hard work self-reliance, smarts and ingenuity, you have *it made*. One Christmas season I had a wonderful example of this truth. It occurred 10 years ago ...

I had taken up my own call to service through a few endeavors in my town. I was active in a community organization sponsoring a number of drives and campaigns on behalf of good causes and worthy efforts in helping those needing help. I also became a literacy tutor helping adults learn the essential ability to read and comprehend the written word. But my favorite act of service was a weekly shift as a helper at our local food pantry.

As my shift approached, my family and I reported for duty on a Thursday afternoon at the Center. That's the grocery day there – folks needing a little help to get by come to get a little food to stock their empty cupboards. My wife and daughter went to work in the back room gathering and sorting the grocery allotments. It was a natural fit for these two shopping pro's. They would read the order tickets filled out by the clients and then move about the shelves filling carts much like is done for their own marketing. Being recognized as the genius I am and possessed of a multitude of talents, I was accorded a job suitable of my intellect and skills – I was assigned “bagboy” duty. Actually, that is what I like to do there – offer whatever help I can give, doing whatever duty is needed.

Well, that afternoon was not just any day. It was the last grocery day the Center was going to have before Christmas. That was just how the calendar fell that year. A few too many days between distribution day and Christmas Day. And the lines of those *in need*, were lines too long indeed. Hundreds of people awaiting what may be their Christmas dinner and all that would be their sustenance for the next week.

Near the front of the pantry where we distributed the groceries gathered the over-the-hill bagboys, some younger volunteers and a couple of students assigned to community service for delinquencies. Our small number gathered to await the on-rush of a much greater number. We gathered to help those *in need* get their needed food out to their car, the bus drop-off, or in some cases the curb where they waited for a ride or sometimes a cart to roll home. Before the rush really started, a man from those *in need* came forward, introduced himself as “Devin” and asked to help carry groceries for others until

the food for his own family was to be given. He was the only one from the crowd to come forward that day. That's not a judgment – I say it merely to illustrate the uniqueness of Devin's deeds that day.

The counter opened and we began to work. As the line slowly advanced to the service window, sorters pushed the fare they had gathered from shelves forward as we baggers filled our arms and followed the recipients out. Being so near the winter solstice, the early draw of the night made our sense of hurry more intense. It was also made intense by the small number of helpers, and the large number of needers. We were doing the best we could, and none did better, worked harder or carried more than Devin.

Finally near the end of the night, the call came out for Devin's groceries. He wasn't there to pick them up because he was outside helping someone else. Instead, other volunteers gathered his foods and carried them out to an old car ... guided there by his mother and young sister. You see, if you hadn't guessed, that man that came forward, Devin; he was a young man. A young man?

He was a boy ... a boy of about 11 or 12 years old.

He and his family needed help; so did hundreds of others. And because of the helping hands at the ends of that young man's sleeves, hundreds were served ... served even before him, his mother and his little sister.

That boy knocked me right back on my self-righteous ass. He proved the best helping hand is at the end of your own sleeve – but it needs to be met by other hands. Hands extended to receive it, to hand help to it, maybe just to shake it or to take it. Yes, so many among us have made our way with the hands at the ends of our own sleeves. But those hands need not serve only ourselves. They are good for so much more, so many more. Yes I am to take of myself and mine but once I have done so I should offer what I could, for what is needed.

I am not so young anymore but as Christmas approaches I recall those helping hands of that little man, that young man. When I grow up, I want to be as good a man as Devin. Maybe I can do part of that by being a helper in helping. I've got two good hands at the ends of these sleeves. They are the best helping hands in the world.

Merry Christmas!

As seen in *Missouri Surveyor*, December 2017



DPC 101

Design Professionals' Coalition ... WHAT is it? WHY is it? WHO is it?

*By Raye Jeanne Blundell
(Former) DPC Executive Director*

HISTORY

After getting beat up by special interest groups and being told, "Go home and don't come back until you get your act together" by legislative committees, the engineers, architects and land surveyors in South Dakota realized that they could not affect legislative change in the statutes governing their professional licensing until they ironed out their differences in private and presented a united front.

In the early 1980's, an informal working group known as the Registration Law Task Force began working on the licensing law. Consulting Engineers Council of South Dakota (CEC/SD), South Dakota Engineering Society (SDES), South Dakota Society of Professional Land Surveyors (SDSPLS) and South Dakota Chapter of American Institute of Architects (SDAIA) each named two representatives who were empowered to speak for their respective associations.

The first project of the Task Force was to get rid of a provision in statute that specified that no project with a cost of less than \$200,000 required the services of a licensed design professional. Although this was basically an "architectural" issue, the Task Force worked long and hard, engineers and land surveyors included, and contributed time, expertise and money. This effort took three years, but the resulting legislation has proven its value. As time passed, the participating associations realized the value of such cooperation. They maximized their political clout, minimized confusion and improved the image of the professions, because architects, engineers and land surveyors no longer battled out their differences before legislative committees. They renamed their group the Design Professionals Coalition to better represent their purpose.

In 1992, the South Dakota legislature passed a statute enabling the South Dakota Commission of Engineering, Architectural and Land Surveying Examiners (as of July 1, 1999 the "SD Board of Technical Professions") to adopt "rules for procedures and standards of practice of certification to perform environmental technical services." Representatives of the Commission, State agencies, environmental professionals and professional engineering community worked collaboratively to develop rules and procedures acceptable to all parties.

The South Dakota Association of environmental Professionals joined the Design Professionals Coalition

in time for the 1994 Legislative Session. They withdrew following the 2000 Legislative Session.

HOW IS THE COALITION ORGANIZED?

Each member organization of the Coalition names two representatives who are empowered to speak for their organization. Each year, these ten people elect a chair, a co-chair and a treasurer, contract with an Executive Director and a Legislative Watchdog and set dues. The Coalition meets several times during the year, evaluates emerging issues, prioritizes concerns and analyzes and debates issues with a goal of reaching consensus. The representative teams take issues to their respective organizations and bring back comments and direction from those organizations. DPC is the pivotal action team during session.

LEGISLATIVE WATCHDOG

The Legislative Watchdog is hired for the purpose described by the title ... to watch for legislation and emerging issues which may affect any of the member organizations. He will carry testimony to committees upon direction, but he is not hired to carry bills for DPC nor to actively lobby. If those services are required, separate compensation is negotiated.

The Legislative Watchdog communicates directly with the Chair and Executive Director of DPC, or, in special situations, with one of the affected organization's DPC representatives. It is not humanly possible, nor is it good management, for him to communicate directly with members of the member organizations. It is not possible to pursue a cohesive legislative agenda with potentially several hundred people requesting information and/or issuing instructions. The DPC representatives are the contact people for their members.

PHILOSOPHY

DPC is conservative on the matter of introducing legislation. Seasoned (battle-scarred) veterans of the political arena are acutely aware that each time a statute is opened, there is no predicting the result. Therefore, DPC carefully adheres to the caution, "Pick your fights." The members objectively weigh the potential risks against the potential benefits of each legislative proposal.

Many factors are taken into consideration: history of the issue, is it likely to be a short-term or long-term problem, what is the current political climate relating to the issue, who can be identified as an opponent/proponent of our position, what are the relative strengths of the opposition/supporters, etc. Basically, (1) What are our chances of prevailing? (2) What is the probable/possible outcome if we don't (e.g. What do we stand to lose?)

This philosophy has occasionally been misunderstood as timidity. The Coalition members view it as pragmatic.



And they are comfortable that their members and their professions are very well-served by their conservatism. Actually, DPC has done wonderful duty by defeating potentially harmful legislation. Each session, amazing bills are introduced which give meaning to the Coalition motto, "Lucky we were here."

DPC faces three choices on each issue - (1) support, (2) oppose, or (3) remain neutral. If the member organizations find themselves at odds on an issue, DPC remains neutral. The individual member organizations then pursue their respective interests with the legislature. Either of the other two options require consensus.

BENEFITS

The Design Professionals Coalition has proven to be an impressively effective tool for the member organizations. The general public, and this includes elected and appointed officials, really doesn't understand the differences among engineers, architects, land surveyors, scientists and construction contractors. When members of these professions come before committees at odds over issues, the committee members are not only frustrated, they are angry. They don't understand the nuances of these professions, and they don't feel that they should have to. We can now hammer out our differences behind closed doors which has led to a much

better public image for all of us and a much higher success rate when we do need something done.

This is also an extremely economical way for each member organization to get a lot of expert service. The dues buy 12 months of attention to the political climate, watchdog services on potential issues by both the representatives and the Executive Director, communications to assure that current information is available, a central contact point for legislators, agencies, citizens, members – all of the players in the political process, and an on-site Legislative Watchdog during session.

The success of our Coalition has attracted favorable attention nation-wide. I have furnished the model to many states and organizations. It is such a common-sense approach that, as usual, South Dakota has led the way!

Editor's Note: The origination date of this article is not known, but is estimated to be circa 1996 +/- . While some of the information is not current the article does provide a history of the organization and its benefits – much of which is still relevant today. The article appeared in this publication several years ago and is being reprinted at the request of the BOD for the benefit of those members that may have not seen it in the original printing.

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The advertisement features a surveyor in a hard hat and safety vest using a surveying instrument on a tripod. To the right, there are several surveying markers: a circular metal marker with text "U.S. DEPARTMENT OF THE INTERIOR BUREAU OF LAND MANAGEMENT" and "UNLAWFUL TO DISURB", a smaller circular marker with "STANDARD EASE MARKER", two square metal markers with crosshairs, and a vertical witness post with a sign that reads "WITNESS POST PLEASE DO NOT DISTURB NEARBY" and "SURVEY". A long metal nail is also shown.

Make Sure That Prospective Client Is A Good Fit For Your Land Surveying Organization

It Only Takes 3 Minutes

By: Landon Blake

I got a couple of phone calls last month from prospective clients. (I suspect as the economy has picked up pace that your phone has been ringing more frequently as well.) Both of these calls stood out to me as examples of how we need to make sure the clients we pursue and engage are a good fit for our land surveying organization. (In this message I refer to land surveying organizations, but the principles apply to many engineering organizations as well.) Let me tell you a bit about both phone calls. Then consider if the potential clients on the phone would have been good fits for your organization.

The First Phone Call

The first call came from a real estate agent. She informed me that she needed an elevation certificate. She told me that she only had a budget of \$300 and she needed the elevation certificate completed the very next morning for a deal that needed to close the afternoon the same day as the survey. She was frustrated that none of the other land surveyors she had left messages for had called her back.

The Second Phone Call

The second call was from a general contractor in Arizona. He was calling to follow-up on a "request for bid" that his company had sent to my office a couple of weeks before. The bid was for the work to provide construction staking for a new bank being built in Santa Cruz, California. I patiently explained that my company was located almost a three-hour drive from Santa Cruz and that I wasn't going to be the cheapest surveyor he would find to perform this work. He responded to my explanation by saying: "So you are telling me you don't want to give us a bid."

Both of these phone calls were short. They lasted no more than five minutes. Yet in that short period of time I learned a great deal about these two potential clients, and quickly identified that neither were a good fit for my land surveying organization. What client characteristics did you glean from my description of the phone calls?

What We Learn From The Real Estate Agent

Let's think about what we learned from the phone call with the real estate agent that indicates she was a poor choice of a client for my land surveying organization:

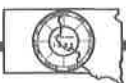
1. She was trying to obtain a survey the night before her closing. This indicated she was very inexperienced or was very bad at her job. In either case, it meant she was disorganized and not a good planner.
2. She already had a set price for the cost of the elevation certificate, which she obviously hadn't gotten from a surveyor working any time after the arrival of the steam engine. This indicated she was using bad information that she hadn't verified.
3. She had no idea how long it took, or how much it might reasonably cost to perform an elevation certificate. She also had no idea how this cost could vary from parcel to parcel. Both of these factors means she had no appreciation for the value a land surveyor brought to this part of a real estate transaction, and no concern for the quality of the survey product she received.
4. Our real estate agent wasn't the one paying for the survey, and was clearly viewing the need for a survey as an obstacle she needed to remove so she could check a box on one of her forms, close her deal, and collect her commission.

What We Learn From The Call With The General Contractor

Let's think about what we learned from the phone call with the contractor that indicates he was a poor choice of a client for my land surveying organization:

1. He was calling from Arizona for a job in Santa Cruz, California. I'm not sure what this company was doing on a pursuit of work so far from home, but it indicated that they were likely competing at a disadvantage because of travel costs, didn't likely have strong relationships in the city, and probably weren't worried about their long term reputation among the local business community.
2. He didn't know how far it was from Santa Cruz to my office in Manteca, or he didn't care. This likely means he had sprayed out a "bid" from every surveyor within 300 miles of the project location. This indicated he didn't care about quality or local relationships, he only cared about one thing: finding the lowest price. ("I'll note he didn't ask at all about my scope-of-services or ability to perform the work. He was only worried about my fee.")
3. This contractor had no desire to learn about me or about my company. He had no desire in building a long-term business partnership. In his mind, one land surveyor was like any other. He probably spent more time deciding where to eat lunch that

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The End of the Great War

"Everyone says the war is over but it is hard to believe," Leo Alvin Ihli wrote in his diary on Nov. 12, 1918.

The Great War had been raging since 1914. The Central Powers of Germany, Austria-Hungary and the Ottoman Empire were pitted against the Allied Powers of Great Britain, France, Russia, Italy and Japan.

On April 6, 1917, the U.S. Congress passed a resolution declaring a state of war to exist between the United States and the German Empire.

Ihli from Pierre and Ernest Roth from Columbia both served in the U.S. Army during the First World War. Their war diaries, contained in the South Dakota State Historical Society – State Archives, provide insights into war. To read the diaries online, visit the South Dakota Digital Archives.

The two South Dakotans arrived in France in January 1918.

World War I saw an introduction of modern weaponry such as machine guns, tanks and chemical weapons. Roth wrote of another of the horrors of war: trench warfare, in which opposing armed forces dug deep trenches in the ground as a defense against the enemy. Roth reached the trenches on the front line on March 16. His diary entry for that day reads, "Our 5th and 6th squads occupy the same dugout ... The enemy trenches are about one kilometer away, (.62 mile) but can be seen."

In a later diary entry, Roth describes how he and another soldier placed sticks and other debris in the bottom four inches of their foxhole to keep from lying in water that seeped in from rain. Standing in cold water for long periods of time could cause trench foot. Many trenches also had pests such as rats and lice living in them.

Roth's company fought in the front lines in one of the major battles of the war, at Chateau-Thierry.

"Our ammunition supply ran short at 7 a.m. and I was sent back to find and bring up the ammunition carts. This proved to be a great game of alternately running and ducking into shell holes to avoid being hit by the buzzing enemy bullets. Have had no food for three days and only water from contaminated creeks to drink," Roth wrote about the late July battle.

Roth encountered a gas attack and was sent to a field hospital. He rejoined his company on Sept. 1.

Many of Ihli's diary entries focused on taking care of horses. At the start of the war, horses were used for cavalry. A mounted cavalry proved impractical because of trenches, barbed wire and machine gun and artillery fire. Armies on both sides relied on horses and mules to

move ammunition, supplies, ambulances, weapons carts, artillery pieces and for riding.

In August, Ihli and another soldier were given jobs as mounted messengers. Ihli rode to and from gun positions, battalion headquarters and guided ration wagons. Cognac, the horse assigned to him, was wounded twice while hauling ammunition and had to be put down by the veterinary doctor.

It was as difficult to get rations for horses as it was for soldiers.

On Nov. 3, Ihli wrote in his diary, "We have just about half as many horses as we started out with and they are not much more than skeletons."

By the end of October, there were rumors of peace. Roth wrote that Turkey surrendered to the Allies on Oct. 31, followed by Austria-Hungary's unconditional surrender on Nov. 4.

"The French in this vicinity are ringing bells and blowing horns to celebrate the occasion," he wrote on Nov. 4. On Nov. 11, Roth wrote, "The armistice terms were accepted by the Germans. Hostilities ceased at 11 a.m. This means -- The war is officially over."

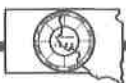
Ihli wrote, "Walked to Jubecourt. Had a little celebration on the way home for an armistice is supposed to be signed this morning at eleven o'clock. Also had some champagne in honor of the event."

World War I took the lives of more than 9 million soldiers; 21 million more were wounded. Civilian casualties caused indirectly by the war numbered nearly 10 million. One account states that more than 8 million horses died on all sides on the Western Front.

According to the South Dakota Department of Veterans Affairs, 32,791 soldiers, sailors and Marines served in World War I. A total of 554 South Dakotans died overseas from wounds, disease and other causes.

A digital display called "The World Remembers" is in the lobby of the Cultural Heritage Center in Pierre through Nov. 11, showing the names of World War I soldiers from all countries killed in 1918 and official war-related deaths from 1919-1922. The display also includes a list of South Dakota soldiers killed in the war. The Cultural Heritage Center's education room contains a display of photographs from World War I from the photo collection of the South Dakota State Historical Society – State Archives.

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. Contact us at info@sdhsf.org to submit a story idea.



Reminisce of an Old Surveyor (Part II)

Measuring Angles and Directions

By Knud E. Hermansen, P.L.S., P.E., Ph.D., Esq.

I have been surveying for around half a century. When I started surveying, the equipment used was a little different from the equipment used by surveyors for over 200 years. In fact, many surveyors used the equipment left to them by their grandfathers and fathers. In these present times, I believe most surveyors replace their equipment every ten years or less.

This is the second article on surveying equipment and procedures that are now relegated to history. I believe I am the last generation of surveyors to have practiced the profession using what is now historical equipment and procedures. I believe it helpful for the modern surveyor, when retracing boundaries, to know what the previous surveyor used. Perhaps it will provide a better explanation for the precision of the record measurements and how far to look 'afield' for the monuments after applying the record measurements to the site.

I will say that my first experience measuring directions and angles was as a Marine with the 2nd Topographic Platoon. We used Wild T-2s and even T-3s most of the time. Occasionally, we had to use Wild T16s or transits when doing some construction layout. Once I departed from the Marines and went into private practice, my employers mostly used compasses and transits. One employer did have a theodolite.

Wild T-2s and T-3s were very rare among private surveyors so I will not take up much space on paper discussing these remarkable instruments. The T-2s could measure an angle to the nearest second of arc using a micrometer. The T-3 could measure to the nearest tenth of a second of arc. With the T-3s I have sighted targets almost 30 miles distant. While the T-2s had optical plummets, the T-3s that we used did not. The T-3s required a plumb bob suspended under the instrument in order to put the instrument over the control station. Many of these instruments had an inverted image. What I mean is that the object viewed was upside down when looking through the scope optics. Setting the zero on the instrument required some finesse that I will not describe for the reason I have previously stated.

The common instrument to measure angles and directions at the time I began surveying in private practice was the transit. All surveyors, even the modern

surveyor, have probably seen a transit - usually on the table at the historical equipment booth found at the annual professional meeting. Transits can be very handsome with their shined brass or the black and brass contrast.

I did use the compass often, though not the large compass employed by Washington, Lincoln, Jefferson, and the other surveyors in the 1700s and 1800s. The compass I employed in years past was a smaller version compass. They were known as the Sipe's compass named after F. Henry Sipe. Henry was licensed surveyor #1 in West Virginia. He was a fine gentlemen that I had the pleasure to know and had many conversations with before his departure from the living.

The compass was used during my early years to perform a reconnaissance to set up the boundary survey and look for evidence in the field. At the time it was thought the best way to follow in the footsteps of the original surveyor is to use the equipment employed by the original surveyor. I still think this to be true but time constraints of the modern survey practice have curtailed or eliminated much of the reconnaissance practiced in the past using the compass. Of course, using a compass for reconnaissance work was often coupled with a tape that was dragged along making no effort to correct for slope and such. I suppose many of the original surveyors did not concern themselves with slope corrections either. It is through this effort that original corner monuments were found along with old blazes and wire remnants on the ground and in trees. Resting stones for split rail fences could often be found by the diligent surveyor. These objects and discoveries were all marked for inclusion in the traverse that followed the reconnaissance.

The compass I used was mounted on a wooden pole known as a Jacob's staff. The end of the pole was metal. This end was pushed into the ground. The vanes or pointing columns of the compass were raised to reveal the face of the compass. The top of the Jacob's staff was swayed until the bubbles on the compass indicated the compass was level. At this point the needle was released to float and point toward the magnetic north or the machete, tape, pocket pen, or other metal held too close to the compass needle as so often occurred.

Speaking of local attractions to the compass needle, I will state that more than a few times, I used the compass to locate a buried pin under the ground by slowly moving the compass across the ground surface and looking for a twitch in the compass needle. I will remind my younger colleagues that metal detectors were not available when I first began practicing surveying. I will elucidate in some later article on the dip needle that preceded the metal detector.

Having released the compass needle from its mechanical constraints, the surveyor would wait for the needle to settle down. The compass needle was a



contrary pointer much like a five year old with too much energy. I often voiced my thoughts to the needle in order to hurry the needle toward a decision. The needle always ignored my advice.

Once the needle decided to rest without skittering, the compass could then be rotated to read the bearing that was desired. At some point during a survey-apprentice's first acquaintance with a surveyor's compass the user realizes that east and west are reversed on the face of the compass - the east mark being to the left of north and west being to the right of north. This is not a design flaw. This allows the compass reading to be made directly off the pointing of the compass. I suppose I can try to explain how this works but I believe an explanation would be better understood if left to the person that is at the historical survey equipment display to explain this layout by actually showing the results using an actual compass.

The direction was then set on the compass. The vanes of the compass were sighted through in order to spy some object to align with and the measurements made with the tape to reach the object selected. Once the far object was reached, the compass was uprooted from the ground and the surveyor headed for the object to repeat the process. Woe be to the compass operator who did not collapse the vanes and did not fasten down the needle or brake the needle before uprooting the compass. Failure to fasten the needle would cause the pivot or spindle to be bent and the compass to err in its next pointing or perhaps not to point at all.

It is my experience and observation to state that the very best compass could measure the arc to the nearest quarter of a degree. The compass I used for reconnaissance would measure to the nearest degree. I will speak no more on the vagaries of the compass and the magnetic needle since those probably deserve their own article. It is worth mentioning that many compasses had a personality of their own such that two compasses placed over the same point and pointed toward the same object could vary in their direction by as much as a degree or so. In early texts explaining the subject of surveying with the compass, the surveyor was cautioned to know the temperament of their compass. Many states had laws requiring the surveyor to set their compass over a designated stone and point to another stone in order to check the peculiarity of their compass.

Switching to the transit, I must first introduce the tripod the transit set upon. It was wooden, made from heavy wood such as oak. The legs of the transit tripod could not be adjusted in length. It was using great skill that a transit was placed over a point upon a hillside and still be leveled. The fastening ring for the transit upon the tripod was large and often as not gave me some difficulty in getting the threads to start. My difficulty oftentimes being caused by the small chain and hook that hung from the bottom of the transit upon which the plumb bob was hung. It seems this chain was always in

the way of the thread when first placing the transit upon the tripod.

Without adjustable legs, a good deal of pushing and prodding of the legs into the ground took place in order to position the suspended plumb bob over the point. Having been a Marine, a few cuss words were used as well to gain some cooperation from the tripod legs. Numerous minutes of time were lost during the work day on this endeavor. A little grace was provided in this procedure by loosening one leveling screw in each of the two directions thereby allowing the transit to be shifted around an inch or so without wrestling with the tripod.

Having positioned the transit over the point, the next task was to level the transit. Some of the last transits commercially produced had three leveling to balance opposing screws during the process of leveling the transit. Failure to exert the care required would leave one screw too loose resulting in the instrument wobbling along the axis. Too tight and there was a torque introduced or the brass threads were stripped. As I was often told, the screws had to be snug when the leveling process was complete. The transits I used had two plate bubbles, their axis perpendicular to the other, revealing the level of the transit in perpendicular directions.

Once the transit was leveled, the instrument plates had to be set to zero. This involved releasing the upper and lower motions of the transit and spinning the plate around using the fingers until a zero was approximately reached on the plates. The upper motion was then locked and the upper slow motion used to set the zero to a tolerance possible with the instrument. The lower motion remained loose until the instrument was sighted on the backsight target. The lower motion was used to put the cross-hairs on the target since the lower motion did not affect the reading on the plates.

In mentioning the upper and lower motions, I have introduced a common mechanism that has disappeared from the modern instrument that I do not wish to explore to a great extent. Both the upper motion and lower motion had a release knob and a slow motion knob. Both knobs control the horizontal rotation of the transit. The lower knobs would do so without changing the reading on the plates. The upper knobs would change the reading of the plates. The lower knobs were used to point to a target without changing the angle reading. No one who used the transit can say they did not use the wrong knob from time to time. The problem arises because the person is looking through the optics while wishing to move the cross-hairs on to the target. Their hands grasp for a knob while they look through the scope. Of course either slow-motion knob will move the scope. The mistake is realized when they have aligned the cross-hairs on the target and look at the plates. The mistake is usually discovered at this time and some cuss words often escaped from the lips. This mistake always

Continued on Page 18



What is an ALTA/NSPS Title Survey?

By: Gary R. Kent, PS

In order to really understand what a Land title Survey is about, one needs to understand the land tenure system in the United States and the role of title insurance. In that regard, the singular most important fact is that in the United States, there is no guarantee of ownership of real property. A deed is, in face, *not proof* of your ownership of real property, it is only *evidence* that you might own it.

Overcoming this problem and being able to confidently buy real property, or to obtain a loan to buy or develop real property, requires some sort of assurance that one's investment is not at risk. That is accomplished in the United States with title insurance.

There is virtually no lender in the United States that will lend money to purchase or develop real property unless it is provided a title policy in order to ensure that its investment (the real property collateral) is protected. In addition, lenders universally require that one of the standard exceptions to the coverage afforded by a title insurance policy – the “standard survey exception” – be deleted from their policy.

The exact wording of the standard survey exception varies, but an example is: an exception for any *“Rights and claims of parties in possession, boundary line disputes, overlaps, encroachments and any other matters not shown by the public records which would be disclosed by an accurate survey and inspection of the property.”*

This is a standard exception to title insurance coverage because of the myriad of potential problems that could be detrimental to the efficacy of a property's title, and that will otherwise remain completely unknown unless a Land Title Survey is performed.

When the title company is provided with an acceptable Land Title Survey, it will remove that “blanket” standard survey exception and write individual exceptions for any specific conditions shown on the Land Title Survey that the title company identifies as possible title defects. Those exceptions will then appear in the title commitment which puts the buyer and lender on notice as to the fact that the title company will not provide coverage over those issues.

In order for all of this to work seamlessly, the title industry must be confident that surveyors will provide a survey that will disclose all of those potential title problems (to the extent that they can be observed by the surveyor). Hence, the Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys were developed (first in 1962 and revised 8 times since –

most recently effective February 23, 2016). The standards are jointly developed and adopted by the American Land Title Association (ALTA) and the National Society of Professional Surveyors (NSPS). This joint effort is required to assure that the needs of the title industry are addressed while necessarily taking into account what it is possible to accomplish – at a reasonable cost and in an acceptable time frame – by surveying professionals.

A Land Title Survey is *first and foremost* a **boundary survey**. *A plot of the deeds is not a Land Title Survey*. In addition, there are many other requirements above and beyond just simply surveying the boundary. This is because of the need to identify all of those potential title problems otherwise excepted by virtue of the standard survey exception.

The ALTA/NSPS requirements are therefore almost all aimed at having the surveyor collect and document data from the records and on the ground in order to support the needs of title companies when they are asked to insure title without the standard survey exception.

Achieving that end is, from the survey standpoint, a multi-part, multi-dimensional exercise.

First there must be extensive research both into the public records and into relevant private and quasi-public records.

If the survey is of an existing parcel, it is a *“retracement”* and the surveyor's job with respect to the boundary is to *“follow in the footsteps”* of the original survey or of the parcel. Often, that original survey was decades or more in the past, and finding the relevant records may entail a lengthy search through public and quasi-public records, and what is sometimes a fruitless attempt to find information from other private surveyors relating to that original survey.

Once the necessary records have been located – or not – the survey process moves to the field investigation. A diligent search for original or subsequent survey markers is made including the controlling or reference corners and lines upon which the boundary lines and corners are dependent.

Except when the property is a lot in a platted subdivision (and even often in that case also) those reference corners and lines are typically some distance from the property. In many cases, they may be up to, or even more than, a mile away. In addition, those reference corners are very frequently buried anywhere from a few inches to several feet beneath roadway pavement or under or around trees, fences, walls or buildings. The relevant evidence may be very difficult to find and ascertain, like long-abandoned roads, railroads or canals (upon which the corners and lines of the boundary are dependent).



Finding the necessary evidence so the surveyor can develop a defensible opinion as to the boundary's location is typically the most difficult and time-consuming part of the survey.

Once the essential field evidence is located and documented, the analysis of that evidence begins. Almost never is the evidence perfectly consistent with what the records say, and the surveyor must then run through an extensive and iterative process of sorting through the evidence, weighing it, conducting calculations to test it, and finally applying the appropriate boundary law principles in order to arrive at what he or she believes best represents the boundary as established by the original surveyor.

In the process of collecting the field evidence for boundary, the surveyor will also locate the many other features required by the ALTA/NSPS standards including, but not limited to, building locations, access points, evidence of use of the property by others, possible encroachments, fences, drives, utility features, water features, and parking lots and spaces.

All of that fieldwork is conducted using a wide variety of tools at the disposal of the modern surveyor. Field conditions and other factors, like the size of the property, the amount and density of improvements, and extent of vegetation, will typically dictate the appropriate tools. They may include electronic total stations, robotic total stations, magnetic locators, GPS, ground-penetrating radar, utility locate technologies, aerial mapping, aerial photography, remote sensing, laser scanners and unmanned aerial vehicles (aka "drones"). More mundane tools like shovels and pick axes are usually required because the evidence that needs to be found and located is frequently, if not usually, beneath the surface.

After the boundary corners and lines have been retraced to the satisfaction of the surveyor, he or she will return to the field to set or reset any missing corner markers.

Then the plat/map of the survey is prepared to document those boundaries and all of the located features. The plat/map is prepared using any of a number of computer-aided drafting (CAD) programs or applications that are popular with surveyors. The drafting process can be automated to a great extent with metadata on field-collected features being used to automatically create line work, connect up the related points into lines, place the appropriate symbols, label boundary lines and even draw contour lines. Of course, presenting all of that data in a legible, readily understood form necessarily takes some manual adjustments of features like labelling locations, line types and text sizes.

The plat/map must also show any gaps or overlaps with adjoining properties as revealed in the records, and the location and extent of any easements identified in the title commitment. This provides the title company, the

lender and the buyer with additional information on possible title conflicts or problems.

There are many notes required on a land Title Survey such as those related to the depicted easements (e.g., recording information, whether shown, and, if not, why). Other notes include, but are not limited to, those identifying problems or ambiguities relating to the boundary, areas that were inaccessible, and water boundaries.

If the surveyor deems it appropriate to prepare a new property description based on the results of the survey, that effort must be undertaken with great care to not inadvertently create new title problems or confusion as to the boundaries and corners that did not exist before.

A new description may be written to indicate new corner markers that were set or to reflect higher precision in measurements and dimensioning that the old description (which may have been prepared decades or even over one hundred years earlier). It should be noted, however, that just because there are differences between measured and record dimensions, does not necessarily mean the old description is bad and needs to be rewritten. Like boundary locations, legal description interpretation is a function of legal principles, not mathematics.

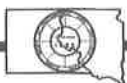
Once the plat/map has been completed, and any and all issues related to boundaries and easements resolved (to the extent possible) it is sent out for review and comment by the interested parties (title company, lender and client/buyer). Any comments received will be reviewed and addressed if necessary, and the final plat/map then signed and sealed by the professional surveyor and sent to the interested parties.

It behooves surveyors and users of surveys alike to be intimately familiar with the purpose, requirements and contents of an ALTA/NSPS Land Title Survey. That way, there will be fewer surprises – which translates to happy clients, lenders, title companies ... and surveyors.

As seen in *The Texas Surveyor*, May 2018

*"An inconvenience is only
an adventure wrongly considered;
an adventure is an inconvenience
rightly considered."*

- G. K. Chesterton -



(Reminisce – continued from Page 15)

seemed to occur when attempting to double the angle, requiring the instrument operator to begin the tedious process of measuring the angle all over again.

The angle on the transit was read using one of two windows found around the ring of the transit. One was known as the A Vernier and the second known as the B Vernier. The windows were 180 degrees opposite or should be if the instrument was in good temper - the letters A or B being found in the window at the Vernier scale. Looking into the window, two rings of etched lines and numbers could be viewed. There was an inner ring and outer ring. The outer ring was the Vernier.

I will avoid attempting to describe the process of reading the transit plates and Vernier. I do not believe I could do the process any justice unless the reader was looking in the window of the transit while an explanation is made. The process involved remembering in which direction the instrument is rotated and finding where a line on the inner plate coincides with a line on the outer plate.

Lines and spaces are counted. The reading from the inner plate is added to the outer plate to arrive at an angle. The lines and spaces had different values depending on the 'least count' of the instrument.

If a surveyor spent their entire career reading the transit, I expect one eye would be bigger than the other eye given the strain on the eye spent finding a coincident line between the primary and Vernier plates. Even in my younger days when my eyes were in the peak of fitness, I often employed the magnifying glass that was tied by a string to the transit standard.

One employer was very proud of the fact his transit could read to the nearest 15 seconds. I think it is easier to follow a spider's tracks than determine which of the numerous lines on a 15 second transit coincides. Needless to say the effort spent obtaining an angle took considerably more time than current practice with modern instruments.

Many modern instruments will not give a reading if the instrument is not leveled. I can say without hesitation, from numerous testings that I have partaken, that there was no impediment in reading a transit that was not level. I will not admit to making that mistake but I have observed numerous instrument persons do so.

I should also mention that the transits I used had a compass within the center of the transit that could be very helpful when retracing old boundaries or giving a magnetic direction to start a traverse.

I will close my reminisce about the transit by saying it also had a direct and vernier plate allowing the instrument to read a vertical angle. For the surveyor who wished to use their transit as a level, there was a large plate level parallel with the scope. Once this was leveled, the scope was level, assuming there was no

instrument deficiency.

I wish to point out that contrary to measuring a zenith angle, the vertical angle required the instrument operator to include a plus or minus sign to be associated with the angle. The plus or minus sign would indicate if the scope was pointing up (+) or down (-) from the horizontal when the vertical angle was read.

I remember expressing my surprise to a survey crew chief after he returned from a topographic survey. My surprise came about when I presumed that he had managed to find the lowest spot to set up the instrument on that particular day since every vertical angle that was recorded in the field book was positive. Unfortunately, the instrument was not at the lowest spot. It was a day wasted since his memory was not sufficient to differentiate the negative angles from the entire list of positive angles that were recorded in the field book.

I will close this reminisce without delving into procedures that were employed to double the angle that should have been done but was often omitted in an effort to hurry the completion of the survey.

As seen in The TBM Newsletter of the NHLSA, August 2018 and reprinted with the permission of the author

(Prospective Client - continued from page 12)

day than he did on choosing which professional would provide a key service on his project.

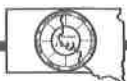
I don't regret passing on these two people as clients. It puzzles me that I get these calls in the first place. That wouldn't happen if other land surveyors weren't taking these people on as clients. Perhaps people like this may be a good fit for other land surveying organizations. It is more likely that they are a poor fit for every land surveying organization, and that land surveyors aren't skilled enough at business to recognize this.

It Only Takes Three Minutes

It is amazing what you can learn in three minutes on a phone call with a potential client. Be on the lookout for words like "bid" and "tomorrow". They are signs of trouble.

Think about who you want to work for, and what type of clients are a good fit. Teach your business development staff to do the same thing. Work for people you know, or people from your local community that care about their reputation and the quality of the services you provide. Take care of business partners that want more than a one-night stand.

As seen in California Surveyor, Summer 2018



The Land Surveyor's Guide to the Supreme Court of South Dakota Part 24 – 1944 to 1947

This article represents the twenty-fourth in a series of excerpts from a book prepared by South Dakota licensee Brian Portwood. The complete book can be obtained in PDF form by double clicking on the link in the lower left portion of the SDSPLS Homepage. It covers 120 years of historic South Dakota cases, answering fundamental land rights questions of potential interest to land surveyors, which are being presented in chronological order here in Backsights & Foresights.

Can land that was once in another state be held adversely? Dailey v Ryan (1945)

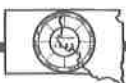
Here we encounter a highly unusual case in which a boundary agreement between two states proves to have a controlling influence over the subsequent application of riparian boundary principles, which would otherwise have controlled the state boundary. The Missouri River, along with being a principal artery of commerce traversing the upper Midwest, was also a source of trouble and consternation for those whose land holdings were at its mercy, so its not surprising that many efforts of various kinds were made to reduce the impact of the river's activity upon adjacent lands. The consequences of one such effort, not to physically control the river's movement, but to eliminate its ability to relocate boundaries, are well illustrated in the case we are about to review, which concludes with a very interesting twist, brought into play by the diverging opinions of two adjoining states on the concept of re-emergence of land that has once been devoured by a navigable river. In this instance, applying the perspective of another state to the issue of re-emergence, since the land at issue originated in that state, the Court in effect temporarily sets aside its own previously stated perception of re-emergence, which would have produced a contrary outcome. Vaulting 6 decades ahead to another riparian case, this time centered upon the issue of navigability, we find the Court once again demonstrating flexibility, in recognition of diverging views on that riparian topic, in the 2004 case of Parks v Cooper. Parks and a large number of others were the owners of land surrounding 3 bodies of water situated in Day County, alternately known as lakes or sloughs, which they felt were clearly non-navigable waters, leaving the land beneath those waters in their ownership, but the Game, Fish and Parks Department, represented by Cooper, chose to assert that those waters were public, and evidently set forth plans to facilitate use of those areas by the public. Both the

definition and the relevance of navigability were thus at the core of this controversy, and as has been noted herein, the Court had repeatedly and consistently maintained that navigability is to be determined liberally, in order to maximize the benefit of all waters to the public. The Parks group filed an action against Cooper and several other state officials, seeking to halt their plans to put the areas in question into public use, on the grounds that the private land owners had the right to control all use of any such waters resting upon private land, and the submerged land must all be deemed to be private, because none of the bodies of water at issue had ever been meandered. A circuit court decided the matter in favor of the land owners, agreeing that the waters were certainly non-navigable, and the submerged land was therefore private in character, but the Court elected to take this opportunity to adjust its position on navigability, while yet upholding public use of all waters. Mitigating its long established stance on the validity of recreational use, as a test of title navigability, the Court effectively conceded that unmeandered waters cannot be deemed navigable, and thus confirmed the ownership of all of the land beneath the disputed waters by the members of the Parks group. This proved to be a very hollow victory for the land owners however, as the Court then went on to declare that the public trust doctrine pertaining to the use of all water must prevail over navigability, reversing the lower court decision, on the basis that private ownership of the underlying land cannot be allowed to block the use of such waters for public purposes. The Court had thus modified its own long standing definition of navigability for purposes of title, to better align it with federal standards, but had simultaneously rendered navigability essentially irrelevant to conflicts over proposed public uses of water itself.

1900 - The Missouri River formed a portion of the boundary between Nebraska and South Dakota, with Dakota County being on the Nebraska side and Union County being on the South Dakota side, and that portion of the state boundary was subject to constant change, as the river ceaselessly moved in accord with the will of nature. Section 36 in a certain township had been located entirely on the Nebraska side, when it was surveyed and platted by the GLO, but by this time the southward migration of the river had begun to submerge an unspecified amount of Section 36, apparently located in the northerly part of that section. Since Section 36 was a school section, it had been owned by Nebraska from the date of its creation, and it had never been conveyed by Nebraska to anyone.

1905 - Evidently concerned about the ongoing movement of the river in this area, Nebraska and South Dakota reached an agreement making the 1905 location of the river the permanent boundary

Continued on Page 20



between those two states, and the river location that was the focus of this agreement was apparently surveyed and documented to the satisfaction of the United States Congress, which approved this agreement. By this time the river had evidently moved further south, and about 30 acres of Section 36 had emerged from the river on the South Dakota side. Whether or not any use was being made of that 30 acres by anyone at this time is unknown, and it's specific location within Section 36 is also unknown, but presumably it was situated somewhere along the north line of that section, as it had been originally platted.

1911 - By this time, the river had moved still further south, exposing an unspecified additional amount of land in Section 36 on the South Dakota side, adjoining the 30 acres previously referenced. Stevens apparently took possession of all of Section 36 that was north of the river at this time, which may have embraced scores or even hundreds of acres, by placing all of it under cultivation. Presumably Stevens was the owner of the adjoining land in Section 25 directly to the north, which had originally been bounded on the south by the platted location of the river, and he simply extended his area of cultivation farther and farther south, year after year, as the river continually exposed more land, but nothing more is known regarding the origin, size or location of his land holdings.

1915 - Union County began taxing all of the lands that had accreted to the north bank of the river, including all of the land that was being utilized by Stevens, along with that of numerous other owners of land situated in several nearby sections, who had also gained acreage as the river continued on it's southward journey. A school district also began treating the accreted lands as part of South Dakota at this time, by accepting the children of the families occupying such lands into the local school or schools.

1916 to 1937 - Stevens apparently continued to make use of all of Section 36 lying north of the river throughout this period, without any objection to his use of it as cropland. Whether or not the river's southerly movement continued for most of this period is unknown, but at some point in time it appears to have stabilized.

1938 - Ryan arrived on the scene, asserting the right to take possession of the entire portion of Section 36 lying on the South Dakota side of the river, as the holder of a lease that had been issued by Nebraska, covering that portion of the section, and Stevens evidently turned over possession of the area

demanded by Ryan to him, enabling Ryan to begin using it as cropland just as Stevens had.

1939 to 1944 - At an unspecified time during this period, Stevens evidently sold all of his land to Dailey, who then decided to challenge the presence of Ryan, by filing an action against him, seeking to have Ryan compelled to vacate all of the land that Ryan was using north of the river, and to have title to all of Section 36 lying north of the river quieted in Dailey. There is no indication of how the locations of the boundaries of Section 36 were known, or how much total acreage was being claimed by the opposing parties, since the portion of that section that had emerged north of the river had apparently never been surveyed since becoming exposed, but none of the parties ever expressly made the location of any of the boundaries of that section an issue.

Dailey argued that because Nebraska had never asserted any rights to any portion of Section 36 lying on the South Dakota side of the river, from 1905 to 1938, while Union County had taken official steps that effectively treated that portion of Section 36 as part of South Dakota, Nebraska had relinquished any land rights it may have once had in that area, making the lease held by Ryan worthless, so the land at issue had been properly treated by Stevens as accretion to the land that he had owned, which had been conveyed to Dailey. Dailey argued alternatively, that even if Nebraska had not legally abandoned any portion of Section 36, Nebraska had nonetheless acquiesced to the complete control that had been exerted over all of the land lying north of the river by individual citizens of South Dakota, such as Stevens, so Stevens had acquired title to all of the land that he had put into use, by virtue of adverse possession, predicated upon the acquiescence of Nebraska, and all of the land owned by Stevens had been conveyed to Dailey. Ryan argued simply that Nebraska was the original owner of Section 36, and Nebraska had never conveyed or lost any portion of that section by any means, so he was entitled to possession of all of Section 36 north of the river by virtue of his lease, and Dailey had no right to any of it. The trial court ruled that Stevens had acquired all of the land in controversy by adverse possession, and he had conveyed all of it to Dailey, so Ryan had acquired no rights under his lease, requiring him to turn over possession of all of the land at issue to Dailey.

The first key point to be noted in discussing this case is of course the fact that the rights of two states, and not just the rights of the two opposing private parties, were potentially involved, and the Court was certainly fully cognizant of the implications that this situation carried for that reason. Cases in which two or more states are positioned in an adversarial manner toward one another cannot simply be adjudicated with finality in one state or the other, and many such cases resulting from boundary disputes or other conflicts over land rights have been argued before the Supreme Court



of the United States, which has the jurisdiction and authority to conclusively resolve such matters that involve the interests of adjoining states. The primary issue in this case therefore, in the eyes of Court, was the question of jurisdiction, which amounted to a critical threshold issue, because if it were to prove to be legally necessary to conclusively adjudicate rights held by Nebraska or South Dakota, in order to settle the matter being contested by the litigants, then nothing could be accomplished, in which event the Court would be obligated to dismiss the current litigation, leaving the issues unresolved. So the first line of reasoning developed by the Court was intended to establish whether or not any rights of the two states were necessarily at stake, and it was with that objective at the forefront that the Court examined the respective positions taken by the parties. No rights of South Dakota conflicting directly with any rights of Nebraska were brought into play by either of the litigants, but the rights being asserted by Ryan emanated directly from a lease issued by Nebraska, which amounted to an assertion of ownership and control over Section 36 by Nebraska, while the rights claimed by Dailey, who believed that he had acquired part of Section 36 from Stevens, amounted to a direct challenge to Nebraska's stance on the ownership of the area in controversy. Although no one appeared to testify as an official representative of Nebraska, it was clear that the ownership position under which Nebraska had issued the lease that was held by Ryan was founded upon the 1905 boundary agreement, and Nebraska considered Section 36 to be entirely on it's side of the boundary thereby established. It may therefore appear at first glance that the rights of Nebraska definitely needed to be adjudicated to resolve the ownership issue, making it necessary for Nebraska to participate in the case, in the view of the matter taken by the Court however, the rights of Dailey and Ryan could be appropriately resolved without the involvement of either Nebraska or South Dakota, and the Court proceeded to demonstrate why that was the case. Quoting in part from two decisions of the Supreme Court of the United States, which had been rendered in riparian boundary cases that had pitted Arkansas against Tennessee, and Michigan against Wisconsin, the Court pointed out the controlling significance of the 1905 boundary agreement between Nebraska and South Dakota, and also expounded upon the concept that acquiescence can play a role in legal actions between states, that is directly analogous to it's role in actions between private parties:

"The first question for consideration involves the territorial jurisdiction ... Nebraska and South Dakota entered into a compact ... the compact established a fixed boundary line, which remained unaffected by subsequent changes in the channel of the river ... an unambiguous boundary ... long acquiescence by one state in the assertion of a particular boundary, or in the possession and exercise of dominion and sovereignty over territory by another state, is

conclusive of the rightful authority of the latter state ... It is very probable that Nebraska has neglected to attend to either it's proprietary or sovereign interests ... South Dakota was reaching it's sovereign fingers across the boundary so solemnly fixed in 1905 ... acquiescence ... has long since become generally accepted and recognized ... No human transactions are unaffected by time. Its influence is seen on all things ... For the security of rights, whether of states or individuals, long possession under a claim of title is protected. And there is no controversy in which this great principle may be involved with greater justice and propriety than in a case of disputed boundary ... That rights of the character here claimed may be acquired on the one hand and lost on the other ... is a doctrine not confined to individuals, but applicable to sovereign nations as well ... The meager evidence adduced by plaintiffs fails to convince us that South Dakota has ... fastened itself upon that territory ... the trial court was without jurisdiction of the land located south of the line described in the compact of 1905 ... thirty acres to which the jurisdiction of the court extended must ... receive consideration ... It is the settled law of Nebraska that ... an adjoining owner ... may not reassert his title if the river thereafter reverses it's transverse wanderings and new land is formed ... this rule applies to riparian lands held by the State ... Nebraska had lost it's title to the thirty acres in question before that parcel became a part of the State of South Dakota."

The 1905 boundary agreement, the Court concluded, without addressing the wisdom, or lack of wisdom, that may have been embodied in such an effort to wrest control of a boundary that had originally been very well defined by a natural monument away from nature itself, had affirmatively locked down the boundary between the states and counties on either side of it in perpetuity, thereby making the further migration of the river irrelevant to the rights of the two states, with respect to each other. South Dakota had proven to be the loser in that deal, since the river had continued to move southward for several years subsequent to the agreement, with no benefit whatsoever for South Dakota, as Nebraska had gained an ever increasing footprint on the South Dakota side of the river, along with complete control over the use of, and access to, the valuable resource represented by that section of the river itself, during the time period following the ratification of the compact. So although the concept of acquiescence is applicable to boundary disputes between states, as Dailey had maintained, and as the Court observed, that principle was of no use to Dailey, because the evidence of genuine acquiescence in this instance by Nebraska was insufficient, and even South

(Continued on page 22)



Dakota itself could not successfully make any case based on acquiescence against Nebraska, since such a charge would stand in direct contravention of a solemn mutual compact that had been forged between the states. The compact was fully binding and absolute, so no challenge to the rights of Nebraska, south of the 1905 boundary, could hope to prevail upon any grounds, the adverse possession claim made by Dailey was utterly futile, because the ownership of the relevant portion of Section 36 by Nebraska, being public land, was obviously not susceptible to attack by means of any theories or principles relating to adverse rights, while Dailey's accretion claim was necessarily precluded by the very nature and intent of the compact. Having determined that the decision of the lower court in Dailey's favor must be reversed, with regard to any land south of the 1905 boundary, since no South Dakota court could have any jurisdiction over any land situated in Nebraska, the Court turned to the sole remaining issue, which brought into play the specific location of the 1905 line. Presumably, the Court had been correctly apprised of the exact location of the line created in 1905, in relation to the north boundary of Section 36, by surveys or descriptions associated with the compact that had been introduced as evidence, and the Court took notice of the fact that the documentation indicated that 30 acres of Section 36 had already emerged on the north side of the river prior to the 1905 compact. Though South Dakota honored the doctrine of re-emergence, as we have seen in our review of several earlier riparian cases, Nebraska had taken the position of most other states, denying the validity of that concept, so Nebraska, the Court noted, had no valid basis upon which to claim the 30 acres of Section 36 that was north of the 1905 line, because it had already lost that area to the encroachment of the river into Section 36, prior to the existence of the compact. Since the compact boundary had cut those 30 acres off from Nebraska, they were part of South Dakota, over which the Court had jurisdiction, therefore Ryan had no valid claim to that area, which left nothing to prevent the Court from agreeing with the lower court that Dailey was fully entitled to that 30 acres, which constituted accretion that was appurtenant to the land that Dailey had acquired from Stevens, so the Court remanded the case to the trial court, with directions to modify the judgment to that effect.

**Does a legal description always control
boundary location?
Thomas v Johnson (1947)**

At this point we examine a case focused upon grantor and grantee relations, much like the 1943 Graff case that we have recently reviewed, demonstrating the Court's protection of the rights of innocent grantees, this time in the context of a boundary dispute that takes place in an urban setting. This case marks the Court's adoption of the common grantor doctrine, which

supports innocent reliance upon specified boundaries and makes the personal acts of a grantor crucial to boundary determination. Here we observe the consequences when parties create a new boundary line, but fail to order a survey to verify its location, creating a scenario which clearly illustrates the potential danger, in terms of liability, that may befall a subsequent land surveyor, should that surveyor misinform a land owner as to what he or she owns or does not own, based solely upon deed dimensions, even when those dimensions are unambiguously documented. The primary lesson here is the value of physical evidence, as valid grounds for the application of the powerful principle of notice, which was also a major factor in *Phillis v Gross*, a case that came before the Court twice, in 1913 and 1917. In that case, Chamblin was the patentee of a typical quarter section, and he contracted to convey it to Edgerton in 1898, at which time Edgerton took possession of it, but Edgerton never made any payments to Chamblin, so Chamblin sold the same quarter to another party in 1902, and it was then deeded to Gross in 1905. Edgerton owned an adjoining quarter, upon which he lived, and from 1898 to 1908, when he died, Edgerton farmed 15 acres of the Chamblin quarter, while using the rest of it only as a pasture for his sheep. Phillis was the heir of Edgerton, and she claimed to own the Chamblin quarter based upon the fact that Edgerton had willed it to her, but Gross argued that Edgerton had never acquired the quarter, and had abandoned any interest he ever had in it, by failing to pay for it, leaving Gross as the true owner of the Chamblin quarter. The Court reversed a lower court decision in favor of Gross in 1913, and then vacated a subsequent lower court decision in favor of Phillis in 1917, holding that neither party had established ownership of the quarter at issue. In so doing, the Court denied the validity of the deed held by Gross, upon which he would otherwise have prevailed, on the basis that the use being made of the Chamblin quarter by Edgerton, at the time it was deeded to Gross, although quite minimal, proved that Edgerton had never abandoned the disputed quarter, and was therefore sufficient to charge Gross with notice of Edgerton's equitable rights to that quarter, thereby invalidating the deed to Gross. Quite similarly, in the 1921 case of *Whitford v Dodson*, Whitford owned a tract located in South Dakota, while Dodson owned a tract located in Nebraska, and they agreed to swap their properties, whereupon Dodson immediately conveyed the Whitford tract to Stevens, while the Whitfords were still occupying that tract. Whitford subsequently withdrew from the land swap agreement with Dodson, because Dodson had fraudulently misrepresented the value of the Nebraska tract, but Stevens claimed that his deed to the Whitford tract was nonetheless valid and legally binding, because he was an innocent purchaser, who had no way of knowing that Dodson had not actually acquired the Whitford tract, forcing Whitford to file an action to quiet his title to that tract. Pointing out that the Whitfords had never physically vacated their tract, the Court fully upheld a lower court ruling that Stevens had acquired



nothing, because he had never personally addressed Whitford about Whitford's rights, so Stevens had failed to carry his burden of inquiry, and he was therefore not an innocent grantee, poignantly stating that "a purchaser has no right to give controlling prominence to the legal effect of the deed, in disregard of possession".

1915 - Johnson's husband acquired two typical rectangular platted lots in Sioux Falls. As platted, Lot 1 had frontage of 152 feet on 3rd Street, which bounded that lot on the north, and frontage of 44 feet on Indiana Avenue, which bounded it on the east, Lot 2 situated directly south of Lot 1 had the same dimensions, and both lots were bounded on the west by a 10 foot alley. Two houses stood on these lots, one occupied the east half of both lots and faced eastward toward Indiana Avenue, while the other one occupied the west half of both lots and faced north, with a concrete walk running from the southeast corner of the house, northward along the whole east side of the house, and continuing straight north to 3rd Street. The east edge of the concrete walk was 90 feet from the west right-of-way line of Indiana Avenue. There is no indication that the Johnsons ever lived in either house, presumably these houses were occupied by tenants.

1925 - Thomas and his family moved into the west house, as tenants of Johnson and her husband. Who was occupying the east house at this time is unknown. When the Johnsons showed the property to the Thomases, they indicated that the Thomases would have the use of the west house and all of the improvements connected to it, including of course, the walkway leading to that house from 3rd Street.

1934 - Johnson acquired sole ownership of the two lots from her husband, who subsequently died.

1938 - Thomas wanted to acquire the west house and the improvements associated with it, and Johnson agreed to sell the house and the improved area associated with it to him, so Thomas and Johnson entered a contract for deed. Johnson intended to convey the full area that Thomas had been using to him, yet for unknown reasons, the legal description included in this contract indicated that Thomas was acquiring only the west 52 feet of the two lots.

1940 - In fulfillment of their contract, Johnson deeded the west 52 feet of both lots to Thomas. A sketch of the area, which was included in the title package that was presented to Thomas, incorrectly showed that the two lots were only 140 feet in total length, 12 feet less than their actual platted length. Thomas and his family went on using the west 62 feet of the lots, which included the walkway to their house, just as they always had, never questioning the lot dimensions and never attempting to verify the

location of the house or any other improvements in relation to the east boundary described in their deed.

1943 - Johnson conveyed the east 100 feet of both lots to Schumacher and Arne. Once again, no survey was done at the time of this conveyance, and no attempt was made by the parties to verify the location of any existing improvements on the ground.

1945 - A survey of the two lots was done, which revealed that the dividing line that had been created by Johnson's conveyances ran through the west house. For what purpose the survey was done, whether any lot corner monuments were found, and who ordered the survey, are all unknown. When Thomas learned of this situation, he filed an action against Johnson, Schumacher and Arne, seeking to have the description errors corrected and to have title to the west 62 feet of both lots quieted in himself.

Thomas argued that in 1925 Johnson had indicated to him that the dividing line in question would be located at the east edge of the concrete walk leading to his house, which would embrace the entire house and all of the improvements that served it, and that was the true location of the line Johnson had intended to describe in her conveyance to him, so he was entitled to the full intended area, despite the erroneous 52 foot dimension in his deed. Johnson and Schumacher did not respond at all to the assertions of Thomas, nor did they participate in the litigation in any way, leaving Arne as the only defendant, and Arne argued that he had no knowledge of any mistake such as the one being suggested by Thomas, therefore he was entitled to the full 100 feet stated in his deed, maintaining that he was an innocent grantee, and no mistake had been made in preparing his description, so any mistake that had been made in preparing the description held by Thomas could have no effect upon the rights of Arne. The trial court found that Johnson had owned 152 feet, and she had conveyed 152 feet, so Thomas had failed to prove that any mistake had been made, therefore the dividing line created by the dimensions that were specified in the deeds controlled, quieting the titles of the parties accordingly, thus leaving Thomas to attempt to acquire the additional 10 feet beneath his house and walkway from Arne.

The circumstances of this case, being especially well documented by the testimony of Thomas, which was based on his own personal knowledge and experience gained from many years of dealing with Johnson, and which stood entirely uncontradicted in her absence, provided the Court with an ideal opportunity to once again demonstrate that boundary and description issues can be effectively detached from title and ownership issues. The trial court, the Court clearly realized, had

(Continued on Page 24)



made two fundamental errors in analyzing the evidence, first by failing to recognize that the absence of any title conflict between the deeds did not mean that no mistake had been made in terms of location when describing the land at issue, and second, by failing to properly apply the powerful principle of physical notice, which in fact would prove to be dispositive of the outcome. The Court observed that the 3 grantees all had a common grantor, which meant that their rights all stemmed from the same party, so they were all equally bound to honor the intentions of Johnson, as their mutual grantor, and the grantee who was able to successfully present the strongest evidence of Johnson's true intent would necessarily prevail. A deed is valid evidence of title and ownership of land, while a description appearing in a deed is legitimate evidence of boundary locations, and all presumptions at law stand in favor of such documentary evidence, the Court understood, so all unambiguous descriptions are presumed to be correct, and all such descriptions are presumed to represent the highest evidence of the intentions of the parties to a given conveyance. The Court also understood however, that no deed represents conclusive evidence of ownership, nor does any description represent conclusive evidence of a given boundary location, and a deed can successfully convey good title and ownership, yet contain an erroneous representation of the boundaries of that title, and that was precisely what had transpired during the poorly executed conveyances made by Johnson, effectively turning her grantees into victims, as a result of their trust in her. Unlike many grantees who find themselves in such a predicament, Thomas very wisely attacked his grantor directly, rather than foolishly attacking only the adjoining land owners, who were victims of Johnson's bogus descriptions, just like himself, and his very astute decision to challenge Johnson, brought both her intentions and her culpability directly into play, to the distinct benefit of Thomas. The absence of Johnson herself, and particularly her failure to testify at all, though she was still alive, was highly persuasive evidence that she realized that she had created the problem which had resulted in the present litigation, and that she would be held responsible for it, should she appear and testify truthfully. She naturally had no inclination to perjure herself, so she evidently chose to simply abstain and remain silent, raising no contradictions to the scenario that she knew would be painted by Thomas, and which she must have realized would be quite convincing and influential, given the Court's intense desire to resolve all land rights issues in the most equitable manner. Focusing exclusively on the intent of the original parties, Johnson and Thomas, the Court very thoughtfully explained why the reliance of Arne upon the description in his deed was misplaced and unjustified:

"The decisive question ... is whether the designation of the eastern line of plaintiff's property by Johnson was thereafter binding

upon the contesting defendants ... Plaintiffs contend that they are entitled ... by virtue of the line designation to them by the Johnsons, and ... that the deed from Johnson was intended to convey to plaintiffs that part of the area long used as a unit for dwelling purposes, and that ... defendants having purchased with notice ... cannot be heard to assert ownership of the area in dispute. Defendants contend that the calls of the several deeds determine the rights of all parties ... In 1925 the defendant Johnson pointed to the line of the property and placed plaintiffs in possession thereof ... Thirteen years later these parties entered into a contract ... having in mind the exact area ... plaintiffs had for that period enjoyed as their home ... The purpose of the deed to plaintiffs was to convey to them that same area ... Johnson had no thought of doing anything less or different ... She intended to convey, and plaintiffs rightly expected to receive, that which had been the subject of their common dealing ... The minds of the parties had met, but through mistake the contract and deed ... failed to embrace that which the parties intended ... plaintiffs are to be regarded as the equitable owners of the area ... defendants stand before the Court upon the calls of the deeds to them and nothing more ... they purchased ... with full notice ... of said home, and of the appurtenances thereto ... defendants should not be heard to say now that they bought, and have title to, parts of lots 1 and 2 other than the areas of said lots lying east of the easterly edge of the walk."

In the view of these events taken by the Court, the fact that the deed to Thomas specified a certain distance in numerical terms was insufficient to overcome the force and effect of the visible physical conditions on the ground, so neither Arne nor Schumacher had any right to rely solely on the fact that the deed to Thomas stated that he had acquired only 52 feet. Moreover, the fact that the 100 feet recited in Johnson's deeds to her subsequent grantees clearly intruded into the area occupied by the Thomas family, her senior grantees, raised an alarm that no subsequent grantee is entitled to ignore on the basis of stated lot dimensions alone. What Arne failed to comprehend was that it was not Thomas who had created the description problem, and in fact as a prior grantee of Johnson, the land rights of Thomas were entitled to a higher level of protection than those of Arne, so Arne was bound to honor the ownership rights of Thomas as senior to his own, and the Court was not about to allow a mere description error to render the rights of Thomas inferior to those of Arne. Like all subsequent grantees, Arne stood in the shoes of Johnson herself, which meant that he had inherited the consequences of her mistakes, and particularly so in this instance, since he had a full opportunity, the Court noted, to observe and acknowledge the presence of a significant description error on her part in his deed at the



time of his acquisition. Recognizing the contentions of Arne as purely opportunistic in nature, the Court saw his suggestion that he had a right to rely solely upon the dimensions in his deed, in defiance of the consequences for an innocent prior grantee such as Thomas, as a brazen attempt to upset the harmonious existing conditions, most certainly unworthy of any support or reward from the Court, and therefore declined to uphold the lower court ruling in his favor, instead reversing the decision of the lower court, and quieting the title of Thomas as requested by him. It can be fairly said that Thomas was certainly negligent to some extent, particularly in failing to ever have his property surveyed, which obviously would have revealed the problem, and ideally he should have thought about that, and had a survey done, prior to acquiring his property, but this result well illustrates the fact that in the eyes of the Court, the notion that an innocent grantee should be penalized for respecting and trusting information provided by his grantor is an illegitimate one. In the absence of a positive legal obligation, requiring grantees to obtain surveys before acquiring any property, courts typically hold grantees accountable for failing to order surveys only under the most extremely egregious conditions, such as situations in which no physical boundaries are visible at all, so failing to order a survey, unlike failing to honor visible improvements, typically does not deprive a grantee of his status as a purchaser in good faith. Its also important to note that this decision was not simply based upon possession, to the contrary, since Thomas made no possession based claims, the Court's decision was expressly based upon intent, with physical evidence serving to support that intent, by making it plain that no other intent could be logically attributed to either of the original parties, and with notice as the essential element making all of the prior acts of Johnson and Thomas binding upon all subsequent parties, as Arne like many before and after him, learned the hard way.

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>

July 20 18, 2018

Approve the following Land Surveyor (LS) Comity applications:

Ryan Robert Lorenzen – LS 13910
 Joshua Allen McGinn – LS 13911
 Randy Zerr – LS 13711

Deny the following Land Surveyor (LS) Comity application due to lack of qualifying experience

Peter Scott Geissler

September 21, 2018

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

James A. Pond – S-12575
 Trenton Walters – S-12580

Approve the following Land Surveyor (LS) Comity applications:

Andres E. Estrada – LS 13990
 Christopher Michaud – LS 13991
 Charles NETtleman III – LS 13922

Deny the following Land Surveyor (LS) Comity application based on lack of qualifying experience:

James Keith Barnett

DATES TO REMEMBER

2019 SDSPLS Annual Convention

January 9, 10 & 11, 2019

(Wednesday, Thursday & Friday)

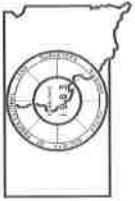
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Affiliate of the National Society of Professional Surveyors

APPLICATION FOR MEMBERSHIP

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Member (Out of State):	\$125	Associate:	\$50	Life Member	\$25
LSIT:	\$100	*Student:	\$25	Sustaining:	\$250

In-State classifications are determined by the home mailing address.
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Fees for Out-of-State Member (\$125) do not include NSPS membership.
In-State Life Members have the option of selecting NSPS membership (\$65)

Member:

- a) Any person licensed to practice the profession of surveying, according to state or provincial statutes;
- b) A GS-1373 employee classified as a Land Surveyor or Supervisory Land Surveyor;
- c) An academician holding a bachelor's or higher degree and the rank of assistant professor or higher rank and teaching in an ABET accredited or a state land surveying registration board surveying program;
- d) A practicing surveyor or surveying teacher who has attained a minimum of six years experience in responsible charge of surveying activities or four years of education and two years of experience may submit credentials for consideration.

LSIT:

Any person who has successfully completed the LSIT examination according to state or pro-vincial statutes.

Technician:

Any person who has successfully completed any level of the Certified Surveying Technician program as administered by and through the National Society of Professional Surveyors.

Associate:

- a) Pre-Professional: Any person who by their employment is actively engaged in a program leading to a career in the profession of surveying;
- b) Subscriber: Any person with an associative interest in Surveying whose qualifications do not meet the requirements of Member, LSIT, or Technician.

***Student:**

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

Sustaining:

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

Life Members:

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

Signature of Applicant

Date

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

*Signature of Faculty Member (required for students)

Date

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

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