

August 2019

BACKSIGHTS & FORESIGHTS



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-Benjamin Franklin

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<i>Size</i>	<i>Rates</i>
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

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

Backsights and Foresights

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

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

FROM THE EDITOR:

Welcome to the August Issue of Backsights & Foresights. In this issue you will find much of what you expect here alongside a few new items, including the next article in the “The Land Surveyor's Guide to the Supreme Court of South Dakota” series. The review continues with interesting cases, including surveys as evidence related to description and conveyance issues, courtesy of Brian Portwood. Reading “The Saga of William Gay” contributed by the South Dakota Historical Society for this issue will take you back to Dakota Territory days in the Black Hills for more than one surprising twist of events! Additionally, this time of year is when we announce 2019 National Trig-Star results. Steve Thingelstad, Trig-Star Committee Chair, proctored the national exam taken by Logan Langenfeld of Spearfish. Contact Steve if you are interested in bringing awareness to the profession by being a part of this rewarding event!

Licensing standards and policy continue to be in the news this summer. The Alliance for Responsible Professional Licensing (ARPL) is a new alliance formed in response to the recent steps taken by lawmakers involving occupational licensing laws. The governing members include the National Council of Examiners for Engineering and Surveying (NCEES) and others who seek to educate policy makers and the public, offering individual state organizations tools to face these issues. As discussed at the SDSPLS Annual Meeting as well as the Board of Director Meetings, there is a sense of urgency in being at the table as lawmakers consider bills affecting the surveying profession. The NSPS is a reliable source for the latest legislative developments, which you can access online at nsps.us.com/news.

I would like to invite you to read a new page in this issue summarizing recent announcements and activities of the NSPS. The NSPS website is host to a wealth of information including opportunity for further training, involvement, and interesting articles on a variety of topics. Events and professional development opportunities can be found on our “Dates to Remember” page. Chapters and individual members can submit events to be included at any time to be included in the next quarterly edition. I hope you will save January 8-10, 2020 to join your fellow surveyors at convention. You can now book your room online at Arrowwood Cedar Shore Resort with the code 1031OG or by calling 1-888-697-6363.

Business development and safety articles are included in this issue with members in mind. Look over the NSPS member benefits guide for opportunities for involvement, perks, and where to go for the latest news and networking. Most importantly, take a few moments to eat your lunch, take a deep breath of South Dakota air, hydrate, and consider the value in what you bring to your communities.

Respectfully, Rebecca Dodds – Executive Director



NSPS Announcements and Activities Summary

Nominations are still being sought for the National Geospatial Advisory Committee (NGAC). The next committee meeting is September 4-5, 2019. More information can be found by visiting the Federal Geographic Data Committee website at <https://www.fgdc.gov/ngac>. If you are a full member and are interested, contact NSPS Executive Director Curt Sumner, curtis.sumner@nspss.us.com

NSPS is now on Instagram! Links on their page include Trig-Star, Get Kids Into Survey, and Be a Surveyor. Currently, NSPS has 688 followers!

NSPS is creating a list of all surveyors with an augmented reality sandbox. The NSPS is getting many requests from many states to bring an augmented sandbox to career day events. If you are interested in helping out, please send your contact information including address to Trish Milburn at trisha.milburn@nspss.us.com. NSPS will supply a banner and plenty of giveaways!

NSPS Radio Hour is ending after 8 1/2 years. You can listen to archived shows at <https://americaswebradio.com/nspss-radio-hour/>. The NSPS is looking into creating Podcasts in the future.

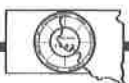
On June 6, the Additional Supplemental Appropriations for Disaster Relief Act, 2019, became Public Law 116-20. The National Flood Insurance Program (NFIP) was reauthorized through September 30, 2019. NOAA received \$31,570,000 for mapping, charting, and geodesy services.

Trig-Star has a new website with the slogan, “Your Future Starts Now!” The site is easily navigated with history, resources, contest information, coordinator contact info, and award photos. Check it out at <https://trig-star.com/>

NSPS Results of 2019 Journalism, Map/Plat, and Public Relations Competitions were announced in late June. There were 55 entries in the Map/Plat competition. The Vermont Society of Land Surveyors was presented with the Public Relations Award for a video explaining what surveyors do and is shared at career fairs. View the video here: <https://www.vsls.org/watch-us-at-work/>.

NSPS had a booth at the American School Counselors Association Conference in Boston, MA June 29-July 1. Hundreds of attendees were on hand to learn about surveying careers while checking out the augmented sandbox and posters.

The National Geodetic Survey website has online resources, training and conference listings, technical assistance and more. You can visit the website at <https://www.ngs.noaa.gov/>





National Trig-Star Committee Selects Winners of the Richard E. Lomax National Trig-Star and Teaching Excellence Awards

The National Society of Professional Surveyors (NSPS) is pleased to announce the recipients of the 2019 Richard E. Lomax National Trig-Star Awards. The Trig-Star committee met on July 12-13, 2019 to determine the three top high school students from the national examinations submitted by state winners. This year there were thirty-six state winners submitted. A past president of NSPS, Richard Lomax was the driving force behind the elevation of the local Trig-Star program to the national level. In October 1994, Board action named this high school trigonometry skill award in his honor.

The Richard E. Lomax National Trig-Star Awards are as follows:

FIRST PLACE



\$2,000 Qingfeng Li
Laramie High School
Laramie, Wyoming

SECOND PLACE



\$1,000 Austin Mazenko
Cherry Creek High School
Greenwood Village, Colorado

THIRD PLACE



\$500 Henry Hein
Scholars Academy
Myrtle Beach, South Carolina

The Richard E. Lomax National Teaching Excellence Awards are as follows:

\$1,000 Paul Street
Laramie High School
Laramie, Wyoming

\$500 Jim Padavic
Cherry Creek High School
Greenwood Village, Colorado

\$250 Jennifer Zhang
Scholars Academy
Myrtle Beach, South Carolina

The following is a list of the remaining participants:

Colin Bamford, Alabama
Taryn Trigler, Alaska
Karoline Stein, Germany
Alexander Zera, California
Junzhao Jiang, Connecticut
Aatig Vann, Delaware
Ian McLendon, Georgia
Isaac Speirs, Idaho
Shariq Zaman, Illinois
Neal Hollinden, Indiana
Michael Han, Iowa

Lindsey Vande Velde, Kansas
Damian Schwarber, Kentucky
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Ava Jovell, New Hampshire

Aditya Agashe, New Jersey
Kendall Scott, North Carolina
Rohit Dasanoor, Ohio
Andy Carter, Oregon
Jacob Johnston, Pennsylvania
Logan Langenfeld, S Dakota
Matthew Chang, Texas
Logan Tischler, Utah
Yifei Zhao, Virginia
Chloe Chapman, Washington
Matthew Becker, Wisconsin

For more information about the NSPS awards and scholarship programs, please contact NSPS, 5119 Pegasus Court, Frederick, MD 21704, (240) 439-4615, e-mail: Trisha Milburn at trisha.milburn@nsps.us.com, or visit the NSPS web site at www.nsps.us.com.



NCEES Joins New Alliance to Ensure Public Protection

By David Cox, NCEES Chief Executive Officer

WE ARE PLEASED TO ANNOUNCE THAT NCEES IS one of the founding members of the Alliance for Responsible Professional Licensing (ARPL)—a coalition of national associations that represents highly complex, technical professions and their national licensing boards.

ARPL has been created to ensure that a unified voice for the advanced professions is present and heard in the growing debate around the appropriate level of licensure for professions and occupations. As many of you know, lawmakers around the country are taking steps to weaken or even eliminate occupational licensing laws. While these laws may not intentionally target our profession, we are at risk of being swept up in overly broad legislation.

This is why it is critical that advanced professions like ours band together to make sure we are effectively communicating the importance of professional licensing and what's at risk if licensing is weakened. Our professions impact public health, safety, and welfare. Our licensing is rigorous for a reason.

What will ARPL do?

ARPL's overarching goal is to educate policy makers and the public on the importance of—and the need to maintain—clear, responsible licensing standards within our professions.

Specifically, ARPL will drive a coordinated, national communications and engagement strategy to do the following:

- Inject our perspective into media coverage concerning the issue
- Ensure the advanced professions are at the table in forums where the issue is being discussed
- Provide messages, tools, and materials to help individual state organizations and to complement their own activities on the issue

More information will be coming in the following weeks, including communications tools and ideas to help member boards organize and communicate around the issue in their state.

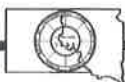
In the meantime, I urge you to visit the new ARPL website at ResponsibleLicensing.org. Please contact me if you have any questions or would like additional information.

ARPL members

The following are the founders and governing members of ARPL.

- American Institute of Architects
- American Institute of Certified Public Accountants
- American Society of Civil Engineers
- Council of Landscape Architectural Registration Boards
- National Council of Architectural Registration Boards
- National Society of Professional Engineers
- National Association of State Boards of Accountancy
- National Council of Examiners for Engineering and Surveying

As seen in
Licensure Exchange, Volume 23, Issue 4



The Saga of William Gay

Prospector, pioneer, killer.

All those words could be used to describe William Gay.

Gay and his brother, Alfred, were among the first prospectors in the Black Hills in 1875. The first mining camp in the northern Black Hills was named Gayville after the brothers. At one time, Gayville contained about 250 houses, 30 businesses, extensive quartz and sawmills, an assay office and a brewery. In the 1870s and 1880s, Gayville, Central City and several other mining camps formed an almost continuous settlement of about 10,000 miners, according to "South Dakota Geographic Names" edited by Virginia Driving Hawk Sneve.

Gay operated a saloon and gambling hall in Gayville, according to the "Bad Boys of the Black Hills" by Barbara Fifer. He was also an original stockholder of the townsite company that founded Spearfish in 1876.

Jack Crawford, a professional scout and entertainer hired by the Omaha Daily Bee in January 1876 as its official Black Hills correspondent, frequently mentioned Gay in dispatches to the newspaper. Crawford wrote in different dispatches about receiving a letter from Gay which contained a specimen of quartz which contained gold, of being shown \$150 in gold dust by the Gay brothers, and of the hospitality William showed him in Gayville.

Gay also achieved notoriety in 1877 when he killed Lloyd Forbes. According to some sources, Forbes sent Mrs. Gay a note asking her to meet him one evening. It wasn't Mrs. Gay who met Forbes, but William, who shot him. Other sources state that Forbes was just the messenger of the note to Mrs. Gay from an admirer. Either way, Forbes was dead.

Gay was tried and convicted of second-degree manslaughter and sent to a house of correction in Detroit, Mich. Prisoners were sent to Detroit to serve their sentences before a penitentiary was built in Dakota Territory. Mrs. Gay visited her husband in prison, according to an article in the Yankton Daily Press and Dakotian.

Gay served one year before being pardoned by Dakota Territory Gov. Nehemiah Ordway.

"Petitions bearing the names of nearly every business man and attorney in Deadwood and vicinity were laid before Gov. Ordway by a committee of thirty leading citizens, who went personally to plead for Gay's release. During a public hearing at Deadwood, lasting several days, while many persons called upon the governor to plead Gay's cause, not one person appeared to oppose the prayer of the petitioners. The officers who prosecuted Gay, and the judge who sentenced him, all joined in the request that he be pardoned," stated an article in the Yankton Press and Daily Dakotian.

Music played and a carriage conducted him to a hotel when Gay returned from prison.

Not everyone rejoiced at the welcome Gay received.

"Of all the disgraceful proceedings which have gone out to the rest of the United States, casting a dark blot on the fair name of Deadwood's civilization, the serenade last night in honor of Bill Gay was, and will prove to be the worst," stated an article in the Deadwood Press.

Gay filed on a homestead in the Spearfish area in 1882. Gay and his family, along with his brother-in-law Harry Gross, moved to Castle, Mont., five years later, according to Fifer.

Both Gay and Gross had run-ins with the law in Montana.

A deputy sheriff was shot when a posse went to arrest the two men. The deputy claimed before dying that Gay shot him. Gay maintained that Gross shot the deputy. Eventually, Gay was sentenced to death for the murder.

Gay wrote to Jack Crawford while in jail in Helena, Mont., "It does seem hard, after all I have done for the early pioneers and Black Hillers, that they would sooner see me hang than put up a dollar to save me."

Crawford, in turn, wrote a letter to the editor of the Anaconda Standard asking for financial aid and that petitions be sent to the governor to help Gay.

"I knew this man Gay 22 years ago as a pioneer in the Black Hills, as brave, true and generous ... I know that his cabin in Gayville was a retreat and a haven of rest for many a weary and footsore traveler and none



were ever refused the ever open and generous hospitality ... It would be safe I think to assert that not one of his persecutors are possessed of any of these traits of character that belonged in those days to Bill Gay.”

Montana Gov. John E. Rickards did receive petitions and letters urging leniency, but to no avail. Even though Gay proclaimed his innocence – practically to the moment of his death – he was hanged in Helena on June 9, 1896.

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.



CALL FOR ARTICLES BACKSIGHTS & FORESIGHTS

Share your experiences and expertise with your peers in our newsletter!

Do you have writing experience? Expand your professional resume and author an article for our newsletter.

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

If you would like to share your story, case study, field experiences or a photo, please email SDSPLS.RebeccaDodds@outlook.com

Deadlines for Submissions:

October 1, 2019 for November 2019 Newsletter

January 1, 2020 for February 2020 Newsletter

April 1, 2020 for May 2020 Newsletter

July 1, 2020 for August 2020 Newsletter

Please include a headshot, if you have one as a separate JPG file. Include your byline. Please send photos in JPG format. Not all submissions will be used.

To say it was a beautiful day, would not begin to explain it.
It was that day when the end of summer intersects
perfectly with the start of fall.

-Anne Patchett



Sales, Marketing, and Business Development

Joe Paiva, PhD, PS, PE

So, what is SMBD? Sales is the activity of selling products or services. To be blunt, it consists of techniques for separating cash from the customer in exchange for your product or service. Marketing involves promoting and selling products and services including research and advertising. Business development is a bit like sales but is longer term, broader view and often strategic.

All three are interrelated, and function best when the other two activities are being done too. In small businesses there may not be a single person whose solve focus is SMBD. But it may be a part time activity that is shared across several people in the organization. It is possible that every person in the company may be involved in carrying out certain parts of SMBD, and thus may need to be clued in to what those are, perhaps trained in them, and told why those activities are important to the company.

Sales

Sales is the specific set of activities for telling potential clients about what the company does and why they should select the company to do the work. This means providing actionable information that is transmitted in a conversation and/ or with written information such an introduction letter or brochure. The collection of information that is conveyed to the potential client is prepared by marketing activities.

Marketing

It's the marketing activities that figure out how to breakout the various products or product groups that your company offers (boundary surveys, ALTA surveys, oil well plats, construction stakeout, monitoring and Q/A, etc.). The marketing function also provides the support to the sales function with well thought-out, concise and yet comprehensive-enough descriptions of the work that emphasize your company's attributes. These attributes may be things like the ability for the client to have predictable schedules for the delivery of your work output, excellent communications with the client, good working relationships with allied professionals and industries such as lawyers, realtors, title insurance companies and lenders, adherence to specifications and budget, etc. There is always a feedback loop between sales and marketing so that the needs of sales are being supported by the marketing function.

The 4 Ps

Depending on the textbook, marketers often talk about the "4 Ps." There may be more or less. But most commonly the four that are considered as the bread and butter activities of

marketing are Product, Pricing, Place and Promotion.

Product refers to a conscious effort by your organization to define and identify your discrete products that you bring your customers. Many clients order surveys, but really don't know what the value of what they are getting. Many times they are only interested in "checking the box." The P of product may also refer to development of new products or rehabilitation of ideas associated with an existing product that allows you to relaunch it in a way that attracts attention of clients and potential clients.

Price refers to your pricing of the product. Many surveyors don't see what marketing has to do with it. But coupling how you price with the features and attributes of the product is important. For example, when you price, if it is a boundary survey, do you say anything about complying with standards, and why that is important. Or that you set monuments when there are unmonumented corners, and why that is important, etc.

Place refers to the channel you use or design to communicate with your client base. It used to be the yellow pages and that was it. Today you have numerous options including your website, emails and social media. Place can also refer to an aggressive campaign of public speaking about the benefits of surveys (not necessarily your company's surveys). When this is done, it also becomes part of the business development activities.

Promotion is the fourth P and we've talked about it already somewhat. But it means a concerted effort at implementation of your ideas with respect to sales and the other three Ps.

Business Development

Business development is concentrated on cultivating business opportunities with everything and everyone, wherever possible. It involves pursuing strategic goals, but to do that it means you need to have developed a coherent set of goals. Business development can also relate to developing partnerships with others such as businesses in allied fields. It can also relate to identifying new markets because of changes in technology, the business environment or success at developing some of those other business development ideas such as partnerships and accomplishing strategic goals.

In Conclusion

Many small surveying businesses don't consider the activities of sales, marketing and business development (SMBD) to be highly important. Instead, they concentrate on getting the job done surveying-wise. Other aspects of the business: speaking with clients, determining their needs (not just a boundary survey, but why they need



it), tracking job costs, invoicing, requesting payment, even delivery of finished products are all not directly related to the task of getting the survey done. But they are done, because it is part of “doing” a surveying business. With all these activities, SMBD often doesn't get the deserved attention. It depends on what you think your business's purpose is from a financial point of view. The ability to weather business climate shifts can cause unneeded stress. This stress can be from changes in rules from government and non-government entities. There can also be other issues such as the need to invest in more technology, or to hire in more skill sets. Most commonly the stress occurs when there are shifts in the economy that cause your source of business to decline or dry up. The unneeded stress can seem financial, but rarely does it stop there; mental and psychological stress goes with it. Considering SMBD as important-enough activities to justify time on the part of management and staff can help make the business more robust, improve the firm's reputation and credibility, improve employee morale, and a host of other benefits. The time to think about investing in creating the ability for your business to perform in the area of SMBD is now, before business stress. If you wait, it could be too late.

Joe Paiva, PhD, PS, PE Joe Paiva, PhD, PS, PE is CEO of GeoLearn an online continuing education company; he is one of the faculty and teaches courses on state plane coordinates, errors analysis and unmanned airborne systems or drones (his favorite). Joe Paiva is President of Surveying and Geomatics Educators Society (SaGES) and recently presented four classes at the 67th Annual Convention & Tech Expo.

As seen in The Texas Surveyor November 2018

“A fallen leaf is nothing more than a summer's wave goodbye.”
- *Unknown*



NSPS Membership Benefits Guide

It Pays to Belong

Benefiting Members and the Surveying Profession

The National Society of Professional Surveyors has an active government affairs program that protects the interests of the surveying and mapping professions in the federal legislative and regulatory arenas. Working with a government affairs consultant, NSPS monitors federal government activities that may be of interest and concern to our members. The consultant works closely with members of the NSPS Government Affairs Committee and our Executive Director to represent members' interests before Congress and Executive Branch Agencies.

Plus, we offer members these professional benefits:

Advocacy Programs

- Political Action Committee Jefferson Club (*contact NSPS to learn more*)
- Assistance on state-specific matters
- Other geospatial organizations, such as the International Federation of Surveyors (FIG) and the Coalition of Geospatial Organizations (COGO)

Education

- ABET-Lead Society for surveying/geomatics program evaluation for accreditation
- Scholarship Program: 15 annual awards

Licensing / Standards

- NCEES – Participating Organizations Liaisons Council
- ALTA/NSPS Land Title Survey Requirements
- NSPS Model Standards





Outreach Opportunities

- Trig-Star
- Boy Scouts Surveying Merit Badge
- National Surveyors Week
- Getkidsintosurvey.com
- Beasurveyor.com

Certification Programs

- Certified Survey Technician Program
- Hydrographic Certification opportunities
- Certified Floodplain Surveyor
- Certified Federal Surveyor

News and Networking

- Sign up for the NSPS weekly email newsletter: multibriefs.com/briefs/NSPS
- Listen to NSPS Radio Hour, Mondays at 11 a.m. EST: americaswebradio.com
- Search for the "National Society of Professional Surveyors" on all of the major social media outlets:    

Member Discount Programs



Apparel

Buy a wide range of NSPS apparel through Lands' End, including tops, bottoms, outerwear and accessories.

- business.landsend.com/store/nspsinc

Insurance

NSPS Endorsed Program

Assurance Risk Managers
888-454-9562
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ARM is a full service agency that can meet all your insurance needs.

Learn more about Assurance Risk Managers



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Marsh Affinity Group Services
• 800-424-9883
• personal-plans.com/nsps

Group Health

Mass Marketing Insurance Consultants
• 800-349-1039
• mmicinsurance.com/NSPS

Travel Discounts

NSPS members qualify for a Member Travel Discount Program through Localhospitality, which applies to hotels and car rentals.

- Go to www.nsp.us.com
- Click "Membership"
- Click "Member Travel Discounts"
- You must sign in to search

PerksConnect Program

The PerksConnect program saves you money on the things you use every day. You'll find businesses right in your area offering savings on dining, retail, auto and home services, pet needs, health, fitness, recreation, entertainment and much more.

To sign up for PerksConnect, go to:

- Discounts.perksconnection.com
- Click "Activate your account now"
- Use group code: NSPS

Tire Discounts

Save 10% on your order! Go to tirebuyer.com/nsps and apply the NSPS coupon code that appears in the pop-up window.



New benefits on page 2!



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For more information:  membercare@savingcenter.net  888.868.4030

First Aid - Acting in an Emergency

Joe Breaux, RPLS

You are driving to work early one morning and see a vehicle that just ran off the road. You are the first on the scene. What do you do? You and your survey crew are in the field, cutting line to reach the location of a record boundary monument. The crew member ahead of you swings his machete and it glances off the tree, cutting into his leg. What do you do?

In either scenario you are the first one on the scene of the accident. What actions do you take? Whether you are on the road, at the office, on the field or at home, your quick and effective response could be the difference between life and death for the victim or victims of an accident. Knowing what to do could save the victim's life. Knowing what to do can protect your own life, too.

My life? Yes, knowing the right things to do could also save your own life when responding to an emergency. For example, if the vehicle above ran off the road and downed an electric power line, the vehicle could be energized and dangerous for you and the victim. Attempting to render aid and not assessing the situation to recognizing other danger such as the downed, live power line could also endanger your life. Your first response and situational awareness is critical to the victim or victims and to your own life.

Knowing that first aid is a critical skill that could potentially save a victim's life, my employer requires that every employee in our workplace, both office and field staff, take a first aid class that includes training in how to respond in an emergency, basic first aid measures, CPR and application of an Automated External Defibrillator (AED) device. I am glad that I took the class as it makes me confident that if I come upon an emergency such as a car wreck or someone down and injured in the office or in the field, I could do more than just be a bystander. Although calling 911 is a critical step that just about anyone could do, emergency response personnel could be a few minutes or even hours away depending on your location. The first few minutes are almost certainly the most important time to act. And as accustomed to our modern technology as we are, we often forget that we are sometimes in locations in work or recreation where cell phone coverage is sparse to non-existent.

This article is not intended to be a course in first aid, though it is intended to outline some of the basics of first aid, first response steps and to plant the seed in everyone's mind that first aid training is important. I encourage every reader to consider getting this life saving training. It is my hope that each employer considers requiring their employees to become educated in basic first aid and CPR training.

Acting in an emergency. What does one do when you encounter an emergency where someone is injured or in need of help? Most people say that it all happened so fast that they didn't have time to think. That's where first aid training comes into play, allowing the responder to act quickly and effectively. There are four basic goals to remember when responding and offering first aid to a victim in an emergency:

First: keep the person alive. Do what it takes to get the person in a place or position where you can safely render aid.

Second: prevent the condition from getting worse. Do what you can to stop the condition from worsening.

Third: give first aid until help arrives. That means to offer aid that will stop the bleeding, give CPR to resuscitate the victim, possibly use an AED to restart the victim's heart if they are unconscious and unresponsive, make the victim more comfortable by easing the strain on them. That means monitoring the victim and modifying what is done if conditions change.

Lastly: ensure that the person receives needed medical care. First aid is the initial response to enable the victim to seek professional medical care once the emergency is under control and they can be safely moved.

There are 6 basic steps to follow when responding. These steps apply in any emergency. Knowing them is imperative.

1. Recognize the emergency. View the incident and understand what has happened so that you can quickly formulate an effective plan to respond.

2. Check the scene for safety to ensure that there is no danger to you or anyone else. Never enter an unsafe scene. Remove dangerous conditions if possible.



Turn off an injury causing tool or remove the victim if they can be moved safely. Ensure that there is no additional danger by scanning the scene for exposed electrical power, fire, flammable liquids leaking from fuel leaks, or other dangers. Do this before responding to the victim. As the responder, overlooking dangerous conditions could have you become an additional victim.

3. Check the victim. After ensuring that the scene is safe, check the victim for responsiveness. If they are responsive, ask what happened and ask for information about their condition. Have someone call 911. Continue to monitor the victim and provide care. If you are alone, check the victim immediately for life threatening bleeding or other conditions. Correct these conditions and call 911.4. If the person is not breathing normally, begin CPR and use an AED (as soon as available). If you have no cell phone and must leave to call 911, correct any life-threatening conditions such as clearing the airway or stopping bleeding before leaving.

5. Call 911. Make sure that emergency response personnel are on the way as quickly as possible by immediately calling 911. While emergency responders are in route to your scene, the 911 operator can also provide the first aide responder with additional guidance if conditions are beyond their knowledge and skills level.

When calling 911, be ready to answer questions that will provide essential information to the dispatcher. This will include questions such as:

- Your name
- The phone number from which you are calling
- The location and number of victims
- Approximate age, sex and condition of each victim (is the victim breathing? Responsive? Bleeding?)
- What happened - to the victim and are there any special circumstances or medical history of the victim that responders need to know?
- What is being done for the victim? If the victim has injuries or needs for which you are not adequately trained, inform the dispatcher so that they may give

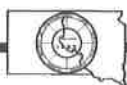
additional instructions on what to do and how to help the victim. Be prepared to stay on the line until the dispatcher says it is ok to hang up.

Obtain consent from the person and provide care to the victim. If the victim is conscious ask their permission before administering aid. If you have first aid training, tell them. Provide aid only to the extent that you have been trained. If the victim is unconscious and unresponsive, then performing CPR or using an AED (if available) may be appropriate.

6. Have the person seek medical care. If the victim was not attended to and transported by emergency responders, recommend that they seek professional medical care. Further diagnosis and treatment by trained medical professionals in a medical facility is always recommended as follow up. First aid is intended to control the emergency and keep a victim alive until more appropriate medical care can be obtained.

So, what about any concerns we may have about offering aid to a victim. Is there any protection for a good samaritan? As a matter of fact, there is. Most states do have some form of a good samaritan law. Texas Good Samaritan Law - Texas has a Good Samaritan Law that protects citizens when they administer emergency medical assistance. This law is meant to protect people from civil liability when acting in good faith and in their best efforts and to create incentive for people to help in the event of an emergency. The law applies to common situations such as a car wreck. The law also applies to the use of Automated External Defibrillators (AED). The law is found in the Texas Civil Practice and Remedies Code, Title 4, Liability in Tort, Chapter 74, Medical Liability, Subchapter D., Emergency Care, Sec. 74.151, Liability for Emergency Care. The Texas law states "a person who in good faith administers emergency care is not liable in civil damages for an act performed during the emergency unless the act is willfully or wantonly negligent."

Limitations to this law do apply and include willful or wanton conduct such as acting in a negligent manner; someone expecting monetary compensation for their actions; one soliciting business or a type of service; an individual who regularly administers care, such as someone who works in an emergency room or hospital, an admitting physician or treating physician. The law does not extend to the person who caused the



emergency, such as the driver who caused a wreck situation. So, we can rest assured that if we stop to aid someone who is the victim of an accident, we do have protection under Texas law.

Other important considerations. When administering first aid to an accident victim, a major consideration is the prevention of disease transmission. Many serious diseases may be transmitted by body fluids - blood, saliva, or any other fluid, that could be present. Personal protective equipment (PPE) is vitally important to protect against exposure to these fluids. If medical exam gloves are not available, place hands inside of plastic bags or have the victim dress their wounds, if possible. Other precautions are to wash your hands (if possible) both before and after treating the victim. Use an alcohol-based sanitizer gel if soap and water are not available. While administering first aid don't touch your own mouth, nose or eyes, and certainly don't drink, eat or smoke during this time. If you are exposed to body fluids of another, wash immediately with soap and water and contact your own health care provider.

Knowledge of first aid is good for everyone to have. The need for life saving skills could arise at any time - at work, at home, while commuting, shopping or during recreational activities. I'm confident that just about any of us could, and most likely would stop and attempt to render aid to someone in need. Having basic first aid, CPR, emergency response skills are a benefit to both the recipient of the first aid as well as to the one who administers the aid. They are possibly life-saving. The preceding text is only a brief summary of what is involved in first aid. I encourage each reader of this message to seek training in first aid, CPR and use of an AED. I especially encourage employers to consider requiring all, or at least some employees to be trained. Look at this as an investment, not an expense. These skills and knowledge could save the life of a co-worker, a family member, a total stranger or even yours.

As seen in The Texas Surveyor, January 2019

Editors Note: South Dakota does have a good Samaritan law, 20-9-4.1. Immunity from liability for emergency care--Exception. No peace officer, conservation officer, member of any fire department,

police department and their first aid, rescue or emergency squad, or any citizen acting as such as a volunteer, or any other person is liable for any civil damages as a result of their acts of commission or omission arising out of and in the course of their rendering in good faith, any emergency care and services during an emergency which is in their judgment indicated and necessary at the time. Such relief from liability for civil damages extends to the operation of any motor vehicle in connection with any such care or services. Nothing in this section grants any relief to any person causing any damage by his willful, wanton or reckless act of commission or omission.



Attitude is a little thing that
makes a big difference.
-Winston Churchill



The Land Surveyor's Guide to the Supreme Court of South Dakota – Part 27 – 1952 to 1954

This article represents the twenty-seventh in a series of excerpts from a book prepared by South Dakota licensee Brian Portwood. The complete book can be obtained in PDF form 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.

Under what conditions does acreage control a conveyance?

Andal v Osthus (1952)

Although it does not involve boundary resolution, our next case returns us to the topic of survey evidence, and well illustrates how the Court views and treats recent surveys of existing tracts that were originally defined under PLSS rules by the GLO. While all of the survey details that a surveyor would like to see are not provided by the Court in its published opinion, as is typically true, it is nevertheless possible to extract some valuable lessons concerning the use of surveys as evidence from the case we are about to review. A few earlier decisions of the Court relating to survey evidence, in the context of description and conveyance issues, may also be worthy of being briefly noted at this point. The 1909 case of Ernster v Christianson resulted from a conveyance in which a certain tract was described as containing 152 acres, but was found to actually contain only 108 acres by the county surveyor. While no information was provided by the Court as to either the origin or the nature of the tract in question, nor any details of the resurvey, the subject property was presumably a PLSS tract, the boundaries and acreage of which had been originally established by the GLO. In that case, the Court upheld a lower court ruling that although the acreage did not control the boundaries of the tract at issue, the stated acreage figure was intended to serve as the basis for the payments to be made to the grantor, so acreage was a legally controlling element of the conveyance, requiring the grantor to accept a reduction in the agreed purchase price, due to the proven acreage shortage, having adopted the acreage figure provided by the county surveyor as

presumptively correct. In *Smith v Johnson*, which came before the Court twice, in 1912 and 1915, Smith conveyed several parts of a certain Section 30 to Johnson, describing the conveyed area as containing "480 acres, more or less" apparently unaware of the fact that 3 lots in the west tier of that section, which were included in the conveyance, had been platted as containing less than 40 acres. No resurveys were done, so the GLO plat represented the sole source of survey evidence relating to the land at issue, and it evidently indicated that the 3 lots were each about 10 acres short of 40 acres. The trial court held that Smith was not liable to Johnson for any shortage of acreage, due to the presence of the phrase "more or less", but the Court reversed that decision, on the basis that as an innocent grantee, Johnson was not required to know or to learn the acreage figures that were stated on the relevant GLO plat, nor was he responsible for obtaining a survey to verify the acreage figure used by Smith, because a grantee is entitled to fully rely upon the information provided to him by his grantor, leaving Smith liable to Johnson for failing to convey a full 480 acres. *Bunkers v Guernsey* was another case involving a controversy between a grantor and grantee, centered upon an apparent acreage discrepancy, which came to the Court 3 times, in 1915, 1916 and 1919. In that case Guernsey deeded "206 acres, more or less" to Bunkers, who paid Guernsey for the tract by the acre, but 12 years later Bunkers alleged that the tract contained only 177 acres, apparently on the basis of a resurvey done for him at that time. Once again, although there was no evidence indicating that the acreage issue had any connection to the boundaries of the subject property, the Court ultimately upheld the significance of the stated acreage figure as a controlling aspect of the conveyance, while also noting that the passage of 12 years since the deed had been executed was of no consequence, because the only relevant date was the date upon which the acreage error was discovered. Emphasizing the description burden that rests upon all typical grantors, and reiterating that a typical grantee has the right to rely fully upon any description provided by his grantor, the Court confirmed that a grantee cannot be required to order a survey to verify an acreage figure stated by his grantor, thus Guernsey was liable to Bunkers for the missing acreage.

Prior to 1952 - Ole Andal was a widower with 9 adult children, and he owned two quarter sections in separate locations, one of which was



being farmed by Melvin, who was one of Ole's sons, while the other one was being farmed by Walter, who was the husband of one of Ole's daughters. Where Ole and his other 7 children lived is unknown, but when he died, all 9 of his children held a meeting, to decide what should be done with their late father's land, in which they each held an equal ownership interest as his heirs. Melvin and Walter both wanted to acquire sole ownership of their respective quarter sections, and all of the heirs agreed that they should be allowed to do so, except for 2 of Ole's daughters, Emma Osthus and Mable Osthus, who wanted both of the quarters to be auctioned off to the highest bidder, in order for all of the heirs to get the maximum possible amount of money for the land. The other 7 children prevailed over their 2 sisters in this disagreement however, so Emma and Mable agreed to allow the quarters to be sold to Melvin and Walter at a bargain price per acre, but in order to obtain the agreement of their 2 sisters to their plan, each of the other 7 children agreed to pay an additional amount, to be determined by the total acreage of the quarters, to Emma and Mable. An attorney was present at this meeting, and he reduced the intentions of all of the heirs to writing, to their mutual satisfaction, and they all signed the agreement, so all of them understood what was to be done. The agreement did not expressly state that the quarters were to be surveyed, but it indicated that the total acreage of the Andal land was unknown, implying that the acreage would need to be determined in some manner. Following this meeting, Oscar, who was the administrator of his late father's estate, apparently ordered surveys to be done, in order to determine the exact current acreage of each of the 2 quarters, which had been originally platted and patented as containing 160 acres and 153 acres respectively. Why Oscar or any of the others suspected that the originally platted acreage of these quarters might be seriously inaccurate is unknown, since there is no indication that either of these quarters was bounded by any body of water, but it appears that they were correct in their suspicions regarding the original acreage figures, because the surveys ordered by Oscar indicated that the quarters actually contained only 143 acres and

122 acres respectively. Upon obtaining this information, all of the heirs carried out their respective roles under the agreement, all of the appointed payments were made, based on the surveyed acreage, and deeds were prepared, which when signed and delivered would convey the 2 quarters to Melvin and Walter as agreed and conclude the matter. Emma and Mable however, refused to sign the deeds, on the basis that they had been cheated, as a result of the reduction in the acreage of their late father's land, so Oscar filed an action against them, seeking to have them compelled to accept the reduced acreage payments and deed their interests in the 2 quarters to Melvin and Walter per the agreement.

The 7 Andal siblings, represented by Oscar as the administrator in charge of the estate proceedings, argued that a legitimate agreement had been reached, and a valid contract had been created between all of the heirs, concerning the disposal of all of the lands of their late father, so all of the heirs, including Emma and Mable, were legally bound to fully carry out the terms of the contract, which stipulated that the lands in dispute were to be conveyed to Melvin and Walter, on the basis of the actual current acreage of those lands. Oscar further argued that although no surveys were specifically referenced in the contract, the surveys that had been done were necessary to determine the true current acreage of the lands, and the surveyed acreage was an accurate representation of the true current extent of those lands, therefore Emma and Mable were bound to accept the payments that had been made to them based on the surveyed acreage, and they had no right to insist upon the use of the original acreage figures. Emma and Mable argued that they had the right to rely upon the original acreage figures, for purposes of the compensation that was to be made to them, in exchange for their agreement to relinquish all of their interests in the lands of their late father, so they were not bound to convey their interests to Melvin and Walter until they had been fully compensated, based on the true original acreage of the lands in controversy. They further argued that the original acreage of their late father's lands, as those lands had been patented, was presumptively correct, and there was no basis upon which to accept the recently surveyed acreage figures as being correct, so they had no obligation to concede that the recent surveys were part of the contract that they had entered

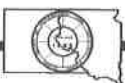


with their brothers and sisters, and no obligation to honor the results of those surveys as accurate or binding. The trial court held that the recently surveyed acreage was presumptively accurate, and the surveys had been contemplated as part of the agreement that had been made by all of the parties, so Emma and Mable were legally bound to deed all of their interests in the lands of their late father to Melvin and Walter, since they had been fully compensated, on the basis of the current acreage of the lands at issue, under the terms of the contract that had been entered by all of the heirs.

Experienced surveyors know of course that although acreage figures appearing on GLO plats can play a role in defining certain platted boundaries, under some circumstances, acreage as a rule does not control monumented PLSS boundaries, and satisfying a call for acreage is typically among the lowest priorities in the realm of boundary resolution, ranking below several other forms of boundary evidence, because typically an acreage value is merely a calculated resultant product, as opposed to a controlling value. Acreage can be elevated to a position of higher importance however, specifically with respect to boundaries, when it is treated by parties who are dealing as grantor and grantee with any given amount of land as a definitive element in a conveyance, and acreage can even rise to become the controlling element in boundary resolution, either when it represents the best available boundary evidence, or when it is adopted as the essence of the contract by the parties. No boundary issues were evidently in play in this case however, and no new boundaries were being created by the parties, so the acreage issue fought out by the litigants here had no potential impact on any boundary locations, the boundaries of the quarter sections at issue were apparently all well established, and none of the parties ever suggested that the acreage discrepancy resulted from any uncertainty in the location of any of the boundaries of the Andal lands. Nevertheless, no details pertaining to the surveys that were done for the Andals are known, so there is no indication of how well or how poorly those surveys may have been executed, no indication of whether or not any monuments were found, and no indication of how the new acreage figures were computed, so the possibility exists that meander lines, highways, railroads, or some other such factors may have had an adverse impact on the acreage figures, or the new figures may simply have been incorrectly computed.

But be that as it may, the Court recognized, the parties had forged a valid agreement, to the execution of which a proper determination of acreage was essential, and there could be no dispute that any survey performed by a licensed professional land surveyor should result in an accurate and fully reliable acreage figure relating to the subject property, so the decision to order the surveys, rather than rely upon the GLO acreage figures, which were never intended to operate as a controlling aspect of the original transaction, was a rational decision, implicitly necessitated by their contract. The 2 sisters therefore, the Court decided, had no right to assume that the originally platted acreage figures were still applicable to the lands of their late father, so the patented acreage figures could not be reasonably accepted or treated as controlling without verification, fully approving the relevance of the Andal surveys. It obviously would have been much smarter, the Court realized, to survey the properties first, and then reference those specific surveys in the contract, which would have eliminated this whole controversy, by making these survey documents expressly identifiable elements of the contract, but the magnitude of the acreage difference had apparently been unexpected by some, if not all of the parties, effectively blindsiding them, creating the need for the Court to expound upon the rules that are employed in the evaluation of surveys as evidence:

“Emma and Mable ... take the position that the contract did not contemplate a survey of the land, and that they are not bound by any survey made ... appellants contend that ... there was in reality no meeting of the minds of the parties upon any contract for an acreage as small as that shown by the survey ... Diligent search has disclosed no case where a contract ... has been rescinded ... on account of a mutual mistake, in that the land sold contained a smaller area than contemplated by the parties ... the contract contemplated that the land be surveyed ... the payments to be made were not definitely fixed by the contract ... the sale was on an acre basis and was not a sale in gross ... it was necessary to determine the exact acreage ... Under such a contract, the purchaser does not take the risk of any deficiency, and the vendor does not take the risk of any excess ... The plats bear the certificate and official seal of Nelson, a licensed surveyor ... There was ... no attempt by appellants to attack the accuracy of the plats ...



the appellants stated when the plats were offered that ... they were not admitting their accuracy. But there was no objection to the plats and certificates being received in evidence ... By not objecting, appellants admitted that the plats were exactly what they purported to be ... surveys made by a licensed surveyor who certifies to the number of acres in each tract ... Had objection been made, these certificates and plats no doubt should have been excluded, because no foundation was laid for their introduction ... appellants waived the necessity of establishing the foundation ... appellants, no doubt, preserved their right to question the plats and the surveyor's certificate, but this they did not do ... the trial court was fully justified in accepting this evidence ... until evidence to the contrary was presented."

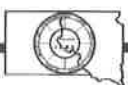
Moving beyond the initial threshold issue of whether or not the surveys that had been done for the Andals were necessary or justified, having concluded that those surveys were effectively incorporated into the agreement between the litigants, despite not having been expressly mentioned in their contract, the Court embarked upon a discussion that sheds light on the great potential significance of surveys as evidence, the manner in which differing or competing surveys interact, and how resurveys can become legally binding. Since the proposed sale to Melvin and Walter was agreed to be completed by the acre, as opposed to a sale in gross, the importance of the acreage figures shown on the recent surveys was elevated to a controlling value, for purposes of the transaction in question, so the 2 sisters had a perfect right to question or challenge the validity of those numbers, and to attempt to prove them to be wrong, by whatever means they might choose to do so, and the Court acknowledged that they had initially preserved their right to do that. When the Andal surveys were presented as evidence however, instead of objecting to those surveys as incompetent evidence and presenting evidence of their own that was sufficient to prove the surveys wrong, the 2 sisters had merely stated that they rejected the surveys, they offered nothing to prove that any specific errors were made in conducting those surveys, in the apparent belief that they could simply rely entirely upon the GLO acreage figures, on the basis that original surveys always control. What the 2 sisters failed to realize is that any survey that has been completed by a licensed

professional land surveyor bears a basic presumption of correctness, which applies to all factual matters that are stated or illustrated on the face of the survey, that were within the scope or purpose of the survey, so by presenting his surveys, the Court observed, Oscar had already met his burden of proof, that the original acreage figures were either wrong or no longer accurate, shifting the burden to prove the contrary onto Emma and Mable. The 2 sisters had made 2 key mistakes, first they failed to understand that original surveys do not always control, and resurveys can control over original surveys in some instances, second they failed to appreciate the importance of obtaining a survey of their own, to compete with the Andal surveys. In this scenario, the Court viewed the Andal surveys as legitimate corrections of data that appeared on the original plats, but which was never intended to be controlling data, leaving it subject to such correction during subsequent surveys. The 2 sisters obviously should have ordered a competing survey of their own, if they really believed that the Andal surveys were erroneous, because having a surveyor of their own would have given them a witness with the knowledge to point out the errors, if any existed, in those surveys, but in an apparent effort to save money they neglected to take that step, and thereby they essentially guaranteed their own defeat. By signing the agreement, Emma and Mable had implicitly agreed that the existing acreage figures were potentially inaccurate or variable, the Court concluded, thereby sacrificing their right to insist that the original figures were correct and must be used, so from that moment forward the agreement had become subject to the updated acreage figures, which were later produced by the surveys in question, and since the 2 sisters had failed to carry their burden of proving that the recent survey figures were wrong, the Court fully upheld the ruling against them.

Does estoppel overcome the statute of frauds?

Crawford v Carter (1952)

Continuing our review of land rights cases in which the presence of surveys, boundaries and descriptions are instrumental, here we encounter a case which highlights the unfortunate consequences that can befall those who proceed with a conveyance without properly documenting their intentions, even though in this case a valid survey has been done, the relevant boundaries are known, and a legitimate description of the subject property already exists. Here one of the



Court's highest land rights objectives, giving legal effect to all legitimate conveyance agreements, whenever the true intentions of the parties can be ascertained and the relevant components defining the intended conveyance are present, is on display, as the Court approves an entirely undocumented conveyance on equitable grounds, by means of estoppel. Two additional cases from this time period, which feature comparable controversies, also serve to illuminate the Court's perspective on the binding nature of all proven agreements and intended conveyances. In the 1949 case of *Kelly v Gram*, Kelly was a young divorced man with two children, while Gram was his married older sister. In 1929 their elderly father deeded all of his land to Gram, and personally gave her the deeds, in anticipation of his own passing, in order to prevent his son's ex-wife from gaining any legal access to the land, but the elder Kelly verbally instructed his daughter to split the land with her brother after his own passing, and she verbally agreed to do so. After their father died in 1934, the litigants discussed the land many times in conversations and in correspondence, and Kelly was aware that he was entitled to half of the land that had been deeded to Gram, but no action was taken for several years, until in 1941 Gram denied that she was legally required to split the land with Kelly. Kelly then filed an action against his sister to compel her to split their late father's land with him, but the trial court awarded Gram sole ownership of all of the property at issue, because no written conveyance agreement between Kelly and Gram existed, holding that the statute of frauds barred Kelly's claim. The Court reversed that lower court decision however, on the basis that a combination of correspondence and testimonial evidence provided sufficient proof that Gram had openly acknowledged Kelly's right to half of his late father's land, invoking an estoppel against Gram, which effectively negated the operation of the statute of frauds, demonstrating that estoppel can apply even between family members. In 1951, in *Butte County v Gaver*, Butte County owned a gravel pit, which had been part of a ranch owned by Mitchell, and the land comprising the pit had been properly acquired from him many years earlier. In 1944 the county needed to expand the gravel pit however, so a verbal agreement to extend the gravel pit over an additional 3.5 acres of the ranch was struck with Mitchell's heirs, since Mitchell had died, whereupon the county paid the Mitchell estate for the land, and proceeded to enlarge the pit to include the full agreed area, but no deed covering the additional 3.5 acres was

ever executed. In 1947, the Mitchell heirs sold the remainder of the ranch to Gaver, who then claimed to be the owner of the 3.5 acre area, charging that the county's gravel operation was encroaching upon his land, so Butte County was compelled to file an action against Gaver, to quiet title to that area. By a 3 to 2 majority, the Court upheld a lower court ruling that Gaver had no valid claim to the 3.5 acres, even though it was not excepted from his deed, quieting title to the disputed ground in the county. In so deciding, the majority held that any visible use of land renders the statute of frauds inapplicable, since the actual use of the land by the prior grantee gives rise to inquiry notice, so Gaver, as the subsequent grantee, had no right to assume that the area in question was being used illegally or without justification by the county, and his failure to carry his burden of inquiry deprived him of the status of an innocent grantee.

Prior to 1946 - Crawford and his wife lived on their homestead, which consisted of 100 acres lying along the west side of the highway running north out of Huron, about a mile from town, and they operated a large hog farm on their property. One acre of their property, apparently fronting on the highway, had been used as the site of a radio tower for an unspecified number of years, but the tower had been removed, and that acre had once again become part of the hog farm. The former radio site had been surveyed however, so the location of the boundaries of this particular acre within the surrounding property were marked and were still readily identifiable. For several years, Crawford had been doing business with Carter, who operated a gas station and repair shop in town, frequently buying gas from Carter, and often getting his vehicles repaired in Carter's shop. Whether the two men ever became personal friends or not is unknown, but they established a trusting and mutually beneficial business relationship, seeing each other on a regular basis, if not a daily basis, for many years.

1946 - Carter did not own the land upon which his business was situated, and he was informed by the owner of that land that it was going to be put to another use, so Carter would need to vacate the premises and find another location, if he wanted to continue to pursue his current line of business. Carter mentioned this



development to Crawford, and Crawford offered to allow Carter to relocate his business to the one acre site formerly occupied by the radio tower on Crawford's property. Carter apparently had little or no money however, and therefore could not buy the land from Crawford, so Crawford proposed to deed the land to Carter in exchange for free repair service for all of Crawford's vehicles and farm equipment. Carter agreed to this proposal and promptly began the construction of a repair shop on the one acre parcel, relocating all of the equipment related to his business to the new site, surrounded though it was on 3 sides by Crawford's hog farm, but none of the aspects or details of this verbal agreement were ever written down in any form by either of the parties, and there is no indication that any steps toward preparing the intended deed were ever taken.

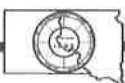
1947 to 1948 - At an unspecified time during this period, having completed the construction of a repair shop with gas pumps on the old tower site, and put his business into operation in this new location, Carter asked Crawford to deed him the acre in question. Crawford denied that he had ever agreed to deed the site to Carter however, and after engaging in an argument over the matter, Crawford ordered Carter off the land, but Carter refused to leave, so Crawford filed an action against Carter, seeking to quiet his title to the acre in dispute, and to have Carter judicially compelled to vacate the premises. The matter went to trial and Carter prevailed, as the trial court held that a valid conveyance agreement existed between the two men, so Crawford was obligated to deed the acre to Carter.

1949 - On appeal by Crawford, the case came before the Court for the first time, but the Court pointed out that no conclusive resolution of the controversy was possible, because Crawford had failed to include his wife in the litigation, and it was impossible to fully or properly adjudicate her rights, as an owner in part of the Crawford homestead, in her absence, so the case was remanded to the trial court, to give Crawford's wife an opportunity to protect her rights to the land at issue.

1950 to 1951 - At an unspecified time during this period, the matter was once again addressed at the trial court level, this time with the participation of Crawford's wife.

Crawford did not deny that any agreement had ever been made between Carter and himself, but he argued that the conveyance agreement alleged by Carter had never been sufficiently complete in its terms, because the alleged agreement was unwritten, because the land that was allegedly the subject of the agreement was never described, and because no agreement had ever been reached regarding the amount of money to be paid by Carter for the land in question, so the agreement could not be enforced. For her part, Crawford's wife argued that she had never intended to convey any portion of her homestead to anyone, and she had never approved any decision or plan made by her husband to convey any portion of it to anyone, and she corroborated the testimony of her husband regarding the existence of a high level of uncertainty relating to the alleged agreement, making it impossible to enforce, and rendering it void. Carter argued that the essential terms of the alleged oral conveyance agreement had been fully and properly defined, although it had never been reduced to writing, and he had fully performed all of his obligations under the agreement, so Crawford was bound to perform his part of the agreement by deeding the one acre parcel to Carter. Carter further argued that Crawford's wife had either complete knowledge or full notice of the existence of the agreement, and she had never voiced any objection to it, so she had lost her rights to the area in dispute, and she should be estopped from successfully maintaining that she was not a party to the agreement and had no obligation to honor it. The trial court once again ruled in favor of Carter, on the basis that a conveyance agreement, which was clear and complete in all of its essential terms, had been orally made, and had been adequately performed by Carter, so he was entitled to a deed from Crawford, while awarding Crawford \$50 for the land in controversy, and agreeing with Carter that the rights of Crawford's wife were subject to termination by means of estoppel, effectively eliminating her testimony from consideration.

Just as in the 1907 Stewart case and the 1929 Rogers case, both reviewed herein, the parties here made the elementary mistake of failing to realize the importance of properly documenting a conveyance



agreement, but in both of those previous cases that mistake had been made primarily due to haste, under conditions of great urgency, while in this situation there appears to have been no such urgency, leaving the failure to spell out their intentions in writing attributable to either carelessness or ignorance on the part of both parties. Yet while the Court is certainly never inclined to reward such deficient behavior, it remains always focused primarily upon protecting all land rights innocently acquired, and in this case there appeared the same kind of trusting relationship between the litigants, prior to the outbreak of the controversy between them, that had existed between Stewart and Tomlinson in their case, making the Court cognizant that this had undoubtedly been a factor leading each of them to feel comfortable relying solely on the statements of the other. Though Crawford never invoked the statute of frauds, the subject matter of this dispute was clearly within its parameters, being centered upon the question of whether or not an unwritten conveyance agreement should be treated as binding, so the Court's analysis of the evidence proceeded down the same track that it would have followed if the statute of frauds had been expressly brought into play, leading the Court to examine all that had taken place, and to note the presence of each of the essential elements of a binding conveyance agreement. There was obviously no conflict over who the parties were, or what their roles were, Crawford being the grantor and Carter being the grantee, but the fact that Crawford's property was a homestead, and Crawford was married, introduced the need to assess the land rights of Crawford's wife, which had apparently been either overlooked or deliberately ignored by the two men, when making the alleged agreement. The second vital element, which was the description of the land that was intended to be conveyed, could have been a serious obstacle to Carter's chances of prevailing, had the agreement not related to any specific portion of Crawford's property, leaving the boundaries of the intended area vague and indeterminate, and that could easily have constituted sufficient grounds upon which to find the agreement incomplete and therefore non-binding, as Crawford had suggested. However, the fact that the boundaries of the former radio site were well defined, and Carter had occupied and improved only the area lying within that unique parcel, provided the requisite level of certainty concerning the intended location and extent of the conveyance, satisfying the description requirement through Carter's physical use of that area, and making the absence of a written description of the

intended area irrelevant, in the eyes of the Court. Having found these first two key elements of the conveyance to be satisfied, only the question of payment, and the involvement of Crawford's wife, remained to be addressed, and the Court went on to resolve those issues as follows:

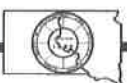
“Crawford promised ... to convey the acre to Carter ... Carter went into possession and ... erected a concrete block garage ... an office building, gasoline pumps on a concrete island, a house, water pipes, and driveways ... In order that a court of equity shall exercise its power to decree ... performance, the contract itself must be clear, certain and unambiguous in its terms and ... proved with a reasonable degree of certainty ... Crawfords argue that ... if an agreement as a whole was established, all of its terms were not sufficiently ... ascertainable ... a promise to convey was exchanged for a promise to locate the Carter business on the Crawford property ... plaintiff put defendant in possession of a plot of ground, and the infirmity in the contract to which plaintiff points was thereby cured ... A court of equity does not look with favor on objections raised on grounds of uncertainty after the matter has been advanced ... in reliance on the contract ... a contract ... fully performed ... will be specifically enforced without an inquiry into the adequacy of the consideration ... The consideration ... was the establishment of the Carter business on the radio tower acre ... The parties were placed in their current unfortunate plight by the wrongdoing of Crawford ... Mrs. Crawford acquiesced in the verbal contract, intended to abandon her homestead rights in the acre, and by her conduct in encouraging the improvements installed by Carter is estopped to assert a homestead right in the premises.”

The physical acts of construction by Carter, invited and unimpeded as they were by either of the Crawfords, formed the most critical factor in making this verbal conveyance binding, because as Crawford and his wife silently watched Carter busily making clearly permanent improvements to their land, they were in reality watching their land rights to that area disappear, and their belief that they could rely upon the fact that Carter had been given no deed to the acre



in question, as a basis upon which to later eject him from it, proved to be entirely misplaced. Regarding the issue of the consideration to be paid by Carter to Crawford for the acre in controversy, the Court held that such consideration need not be in the form of money and need not be financial in nature at all, it can be represented equally well by anything that constitutes a benefit to the grantor, and which is envisioned as taking the place of payment by the parties. Crawford's claim that Carter should be required to pay him for the acre was therefore of no merit, the Court observed, because Crawford had already gotten exactly what he had bargained for, which was the presence of Carter's business directly adjacent to Crawford's own business operation, and that represented a location for Carter's business that was distinctly convenient for Crawford, making gas and repairs much easier for Crawford to obtain. In its first review of this case in 1949, the Court had agreed in principle that Carter's rights to the acre were superior to those of Crawford, but the Court had declined to resolve the matter, noting that the interests of Crawford's wife had been neglected, so her status in this affair was crucial, because she had the power to block any transaction, to preserve her homestead rights, if she could show that she was an innocent victim of her husband's deal with Carter, and only if she should be deemed not to be an innocent victim could Carter prevail. Once Crawford's wife became a participant however, and the Court was able to review her testimony, the Court concluded that by joining her husband in allowing Carter to improve the parcel in question, she had forfeited her rights to that acre just as her husband had, highlighting the fact that although the Court is often reluctant to allow silence alone to give rise to estoppel, silence in the face of a clear opportunity and responsibility to speak definitely can create an estoppel, and in the view of the Court that was what had transpired here. Ironically, at the end of this sad and bitter legal battle between former long time friends, Carter voluntarily agreed to pay Crawford a nominal sum for the disputed acre, in a gesture of good faith on his part, and the trial Court had approved that offer, in commenting upon which the Court stated that it viewed the trial court's decision to approve Carter's offer as "a commendable effort to shape its decree so as to do justice", nonetheless fully upholding the ruling in Carter's favor even without the offer, discounting the payment as legally unnecessary. In addition, it may be noteworthy that the Court characterized the conduct of Crawford's wife as acquiescence, which illustrates the fact that

acquiescence can be an important factor in land rights conflicts of many types, supporting estoppel in this instance, demonstrating that the relevance of acquiescence is not limited solely to adverse possession cases. Also worthy of note, from the standpoint of location issues, this outcome demonstrates that physical possession of a clearly defined area can serve essentially as an equitable substitute for a legal description of property being conveyed, because in the eyes of the Court, a written description is just one way of delineating boundaries, which can equally well become binding boundaries of ownership based upon the physical occupation and improvement of a given parcel.



SDSPLS – Board of Directors Meeting

Friday, April 26, 2019

Arrowwood (Cedar Shore) Resort (River Run) Oacoma, SD

(This report subject to Board approval)

In Attendance: President Linda Foster, Past President Nathan Nielson, President Elect Travis Jacobson, Secretary Jon Nelson, Treasurer Travis Kropuenske, Legislation Chair Gary Andersh, DPC Chair Don Jacobson, NSPS Director Tom Berkland, Education Chair Kristi Goehring, Public Information Chair Ruthie Wetzel, West River Chapter President Brad Limbo and Executive Director Rebecca Dodds

1. Meeting called to order at 11:52 am by President Foster.
 2. Acceptance of Agenda: Dodds requests item 9f – Executive Director Credit Card be added to the agenda. ++Motion by Berkland to approve the agenda as amended, 2nd by Nielson. Motion approved.
 3. Secretary’s Report – Jon Nelson: Written report submitted for review. Approval of the minutes for the January 09, 2019 Board of Director’s Meeting as submitted. ++Motion by Nielson to approve the minutes as submitted, 2nd by Kropuenske. Motion approved.
 4. Treasurer’s Report – Travis Kropuenske: Written report submitted for review. Kropuenske indicated revenue totals are down a bit possibly due to a decrease in membership. Foster indicated she would like to see a category for Technicians in the membership report. General discussion on membership number and historic trend. ++Motion by Limbo to approve the Treasurer’s Report as presented, 2nd by Travis Jacobson. Motion approved.
 5. President’s Report – Linda Foster: No written report submitted.
 6. Committee Reports:
 - a) Education – Kristi Goehring: No written report submitted. Goehring indicated she and Foster attended the Woman and Science in Education Conference. Goehring suggested a trailer for hauling augmented sand box also looking into highlighters and rulers for handouts at events.
 - b) Legislation – Gary Andersh: No written report submitted. Andersh reported military licensing bill passed. Sunset bill died in committee. Every 5 years practice will have to review their licensure process.
 - c) Design Professionals’ Coalition – Don Jacobson: No written report. Jacobson indicated South Dakota Engineering Society are possibly pulling out of the DPC. General discussion on Design Professionals Coalition and possible breakup of group and effects on the South Dakota Society of Professional Land Surveyors.
 - d) Professionalism & Practice – Dean Scott: No report.
 - e) Public Information – Ruthie Wetzel: No report. Wetzel reported the public information Facebook page has been launched and is active. More involvement from membership is needed. Post comments and possibly reports and information to pass along to membership. Limbo indicated West River Chapter is looking into setting up a public information page as well.
 - f) Membership – Jon Collins: No report. Foster presented finding on membership trends. One-third licensed members live in state and two-thirds of the membership live out of state. Twenty-one licensed surveyors living in South Dakota are not members of the SDSPLS. General discussion on membership trends.
 - g) NSPS and Young Surveyors – Tom Berkland: Written report submitted for review. Berkland indicated USGS funding the 3D elevation program every 7 years to keep elevations updated. NSPS pushing to get younger people into the surveying profession. Berkland suggested getting students involved in the Society and conventions. Keep Legislators educated in why surveying is important and the importance of educated surveyors.
 - h) Trig Star – Steve Thingelstad: No report. Next Trig Star competition will be held in May at the School of Mines. Thingelstad is looking for volunteers to help with keeping time and logistics of the event.
7. Chapter Reports
- a) Chapter History/Organization - General discussion on Chapter bylaws and history of individual chapters and functions within the State’s society
 - b) West River – Brad Limbo: No report. Limbo indicated a Chapter meeting was held and discussions on WISE event and participation in schools to introduce students to the land surveying profession.
 - c) Big Sioux – Aaron Norman: No report. Andersh indicated the need to get Trig Star setup in East River.
 - d) Missouri River – Keith Howe: No report
8. Old Business
- a) 2019 Executive Director Update – Rebecca Dodds: General discussion on emails & data contained on website. Foster would like site photos to be updated.
 - a) Website Changes - Dodds reported there is interest in online registration for conventions and payments. General discussion on online registration and payments. Dodds will investigate options and report back to board.
 - b) Database Updates – Data methods continue to be updated.
 - c) Accounting Method Changes – Dodds requests Accounting Software to replace the paper Accounting. General discussion on Accounting Software’s.
 - d) Archive Files – Dodds indicated she is concerned about the paper files and would like to scan files and dispose of paper copies. Foster indicated other organizations are doing digital storage. Paper files need to be reduced, digitized and archived.
 - b) Corner Records/On-line Records System – Foster gave update on On-line records system. General discussion on corner records. Nielson to meet with Register of Deeds and Convention in Pierre May 14 or 15.
 - c) SDBOTP – Licensure Applicant Evaluation Form – Peters indicated committee has no activity. Foster suggested sunseting of committee. Peters will continue working on evaluation form.
 - d) Young Surveyors Virtual Committee & Social Media – Dana Huewe: No report



- e) Augmented Sandboxes – General discussion on insurance and trailer for transporting sandbox. Goehring will check on funds and availability of Southeast Technical Institute sandbox.
 - f) NSPS Dues – No fee structure changes at this time.
 - g) Hardship Grants – Goehring provided Tuition reimbursement program guidelines handout and Hardship application guidelines handout. General discussion on handouts.
 - h) Southeast Technical Institute – Breitling Retirement: Nielson reported Southeast revised their retirement base allowing Rod to continue at Southeast for a couple more years.
9. New Business
- a) Legislative Season Summary and planning: Foster indicated a meeting with local representatives to educate them on the surveying profession. General discussion on DPC and lobbying fees. Nielson indicated the need to propose legislation defining profession and occupation. Nielson to work on draft talking points.
 - b) Low Distortion Projection (LDP) and Upcoming 2022 Datum changes: General discussion on new adjustment and forming group to start looking at LDP for South Dakota. Foster will compile list of interested parties and hold meeting by Memorial Day.
 - c) 2020 Convention: Dodds would like input on speakers. Dodds indicated proposals from other host sites are coming in and costs do not seem to differ much. Deadwood could match current room rates and free facility; food costs would be a bit higher. Dodds will email all proposals to board as soon as they all come back.
 - d) Survey of Members: General discussion pertaining to the need for a survey. No survey needed at this time.
 - e) Governor’s History Awards & Conference: Dodds indicated no action needed. They were contacting the board about sponsorship.
 - f) Credit Card for Executive Director: General discussion. ++Motion by Goehring to approve credit card, 2nd by Limbo. Motion approved.
10. Next Meeting: Tentatively set for Friday, July 26, 2019 location and time TBD.
11. Meeting adjourned at 4:31 pm

Respectfully Submitted
 By: Jon Nelson – SDSPLS Secretary

DATES TO REMEMBER

2020 SDSPLS Annual Convention

January 8, 9, & 10

(Wednesday, Thursday & Friday)

Arrowwood Cedar Shore Resort Chamberlain, SD

For reservations, visit their website:

arrowwoodcedarshore.com

Online Reservation Code: 1031OG

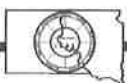
or call:

1-888-697-6363



Knowledge comes, but
 wisdom lingers. It may not
 be difficult to store up in the
 mind a vast quantity of facts
 within a comparatively short
 time, but the ability to form
 judgments requires the
 severe discipline of hard
 work and the tempering heat
 of experience and maturity.

- Calvin Coolidge



SDSPLS – Board of Directors Conference Call
Friday, July 26, 2019

(This report subject to Board approval)

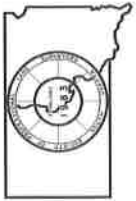
Participating: President Linda Foster, President Elect Travis Jacobson, Secretary Jon Nelson, Treasurer Travis Kropuenske, Legislation Chair Gary Andersh, DPC Chair Don Jacobson, NSPS Director Tom Berkland, Public Information Chair Ruthie Wetzel, West River Chapter President Brad Limbo, Big Sioux Chapter President Aaron Norman and Executive Director Rebecca Dodds

1. Meeting called to order at 11:38 CST am by President Foster.
2. Acceptance of Agenda: Foster asked if there were any additions to the agenda. ++Motion by Travis Jacobson to approve the agenda, 2nd by Nielson. Motion approved.
3. Secretary's Report – Jon Nelson: Written report submitted for review. Approval of the minutes for the April 26, 2019 Board of Director's Meeting as submitted. ++Motion by Norman to approve the minutes as submitted, 2nd by Kropuenske. Motion approved.
4. Treasurer's Report – Travis Kropuenske: Request to table this item to approve at a later date via email. General discussion on additional income received from 2nd notice membership renewals.
5. President's Report – Linda Foster: Written report submitted including updates related to NGS and continuing to reach out to youth, and convention venues. General discussion on these items.
6. Committee Reports:
 - a) Education – Kristi Goehring: No written report submitted.
 - b) Legislation – Gary Andersh: No written report submitted. General discussion on new legislation nationwide regarding licensure.
 - c) Design Professionals' Coalition – Don Jacobson: No written report. Jacobson reports there has been no meeting since last spring. Jacobson announced he will be stepping down as chair of the committee. General discussion on Design Professional's Coalition and future legislative season.
 - d) Professionalism & Practice – Dean Scott: No report.
 - e) Public Information – Ruthie Wetzel: Written report submitted. Wetzel reported the public information Facebook page has 82 followers. Interactions increased with announcement email sent to members and linking the newsletter. Wetzel encourages interactions and photo submissions. General discussion on new merchandising.
 - f) Membership – Jon Collins: No report. Discussion on sending a congratulatory letter to those who achieve licensure, etc. General discussion on levels of membership in regards to Tech and Associate. Collins offered to rewrite the definition and bring to the next meeting for review.
 - g) NSPS and Young Surveyors – Tom Berkland: Written report submitted for review. Berkland shared

information from the NSPS meeting. General discussion on FEMA and certification as a flood plain surveyor.

- h) Trig Star – No written report. Dodds reported 40 applicants for the examination this year and 4 students receiving awards due to a tie for 3rd and 4th place. The national exam was proctored by Thingelstad. General discussion on expansion to East River, with delegation to local chapters.
 9. Chapter Reports
 - a) West River Chapter – No written report. General discussion on offering PDH during October.
 - b) Big Sioux Chapter – Written report submitted for review. Officers announced. Vacant position announced for NSPS Young Surveyor Representative. General discussion on progress on Sioux Falls Monument Recovery project with Southeast Technical Institute. House staking was provided for Habitat for Humanity this year as an ongoing service.
 - c) Missouri River Chapter – No written report.
 10. Old Business
 - a) Executive Director Updates
 - a. Liability insurance - investigated by Dodds. General discussion on found estimated cost and benefits. ++Motion by Berkland to make applications to get quote from 3 companies. ++2nd by T. Jacobson. Motion approved.
 - b. Accounting methods continue to be updated to electronic records. Dodds reports a credit card processing machine has been received and is portable.
 - c. Membership App/Website– General discussion related to costs and benefits utilizing Wild Apricot app for membership. ++Motion by T. Jacobson to launch the Wild Apricot app. ++2nd by Berkland. Motion approved. ++Motion by T. Kropuenske to amend, transitioning website hosting to 1st year. ++2nd by Berkland. Motion approved.
 - d. Convention proposals – general discussion with presentation of approximate cost comparison for 2021 for new venues based on 2020 inquiry.
 11. New Business
 - a) Low Distortion Projection (LDP) and Upcoming 2022 Datum changes: General discussion. Group being formed.
 - b) 2020 Convention: Contract signed for Arrowwood Resort in Chamberlain. Announcement of speakers to include Van Sickle and Penry. Dodds asked for more input on acquiring additional speakers and subject matter. General discussion on increasing numbers of LSIT participants, and entertainment expanding on last year's games.
 12. Next Meeting: November at Al's Oasis in Chamberlain, date and time TBD.
 13. Meeting adjourned at 12:58 pm CST
- Respectfully Submitted By: Rebecca Dodds, Executive Director for Jon Nelson, SDSPLS Secretary





SOUTH DAKOTA SOCIETY OF PROFESSIONAL LAND SURVEYORS

Affiliate of the National Society of Professional Surveyors
APPLICATION FOR MEMBERSHIP

Complete the following

Name:

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Business or Home

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State: Zip:

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Member (In-State w/NSPS):	\$175	Technician:	\$75	Life Member (In-State w/NSPS):	\$65
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. Fees for In-State Members (\$175) include NSPS membership. Fees for Out-of-State Member (\$125) do not include NSPS membership. In-State Life Members have the option of selecting NSPS membership (\$65)

Member:

- a) Any person licensed to practice the profession of surveying, according to state or provincial 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 provincial statutes.

Technician:

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

Associate:

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

Institution

Send complete application & payment to: SDSPLS - PO Box 9625 - Rapid City, SD 57709
(phone) - 605-545-7884 • (email) - SDSPLS.RebeccaDodds@outlook.com

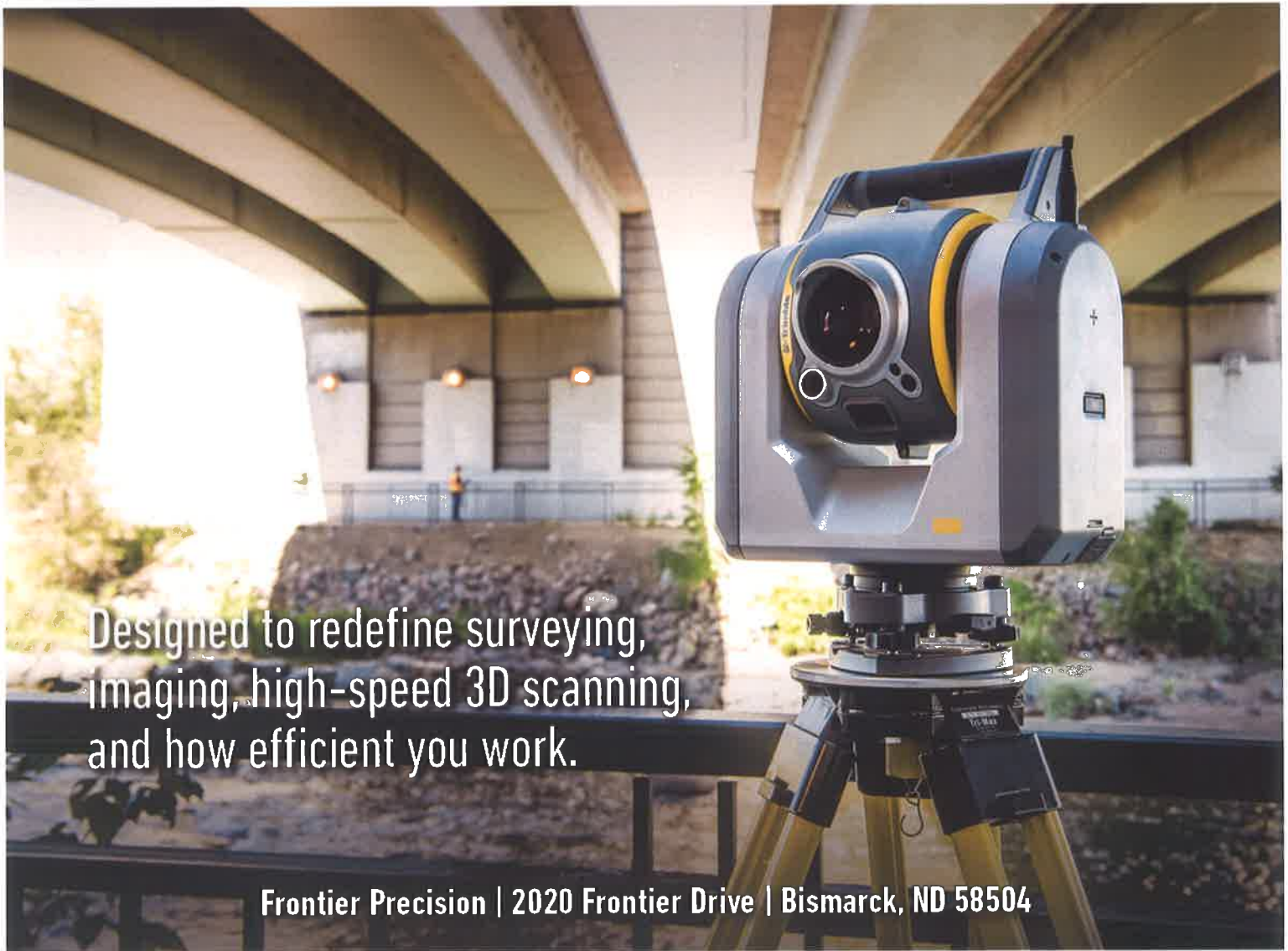


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