

HOOSIER SURVEYOR

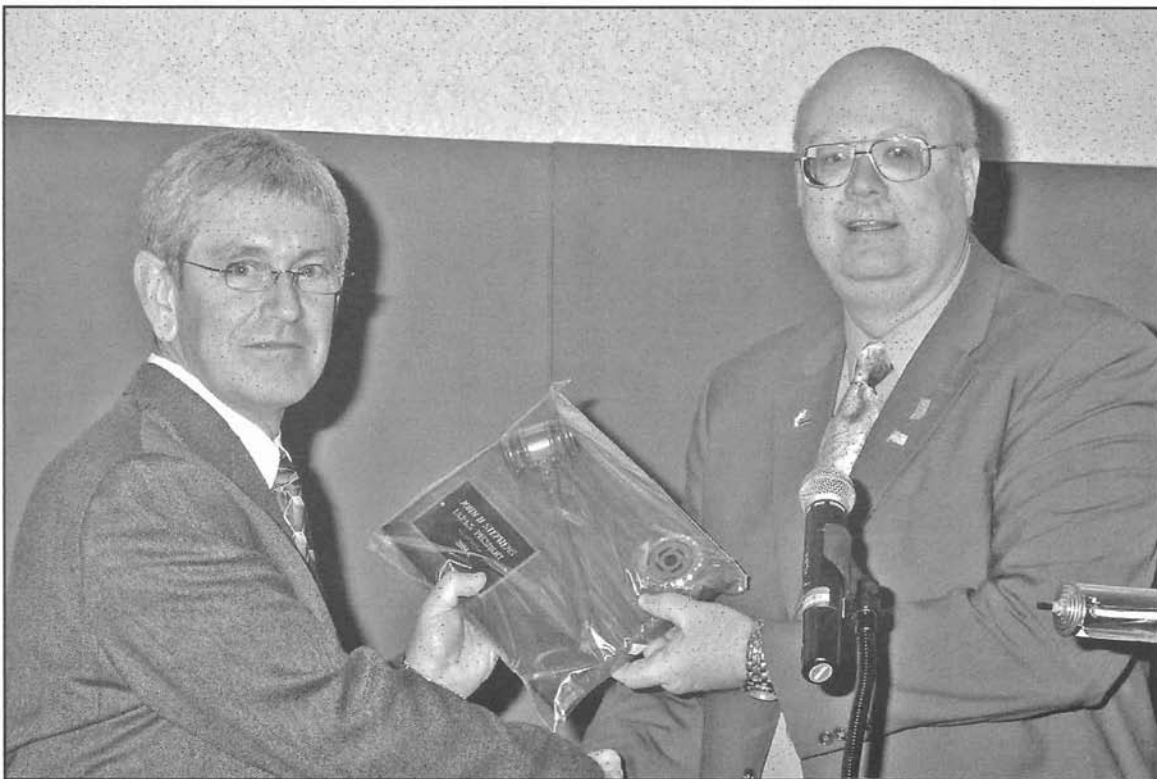
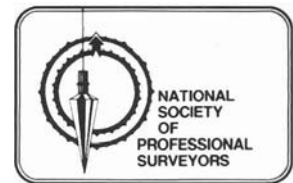


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AFFILIATED WITH THE
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SURVEYING & MAPPING



2005 SOCIETY OFFICERS INDUCTED

Ron Wharry, right Frankfort, new incoming president of ISPLS, presents the past president's gavel and plaque to outgoing president, John Stephens, Wabash, at the recent January 2005 annual ISPLS convention held at Marriott East Hotel in Indianapolis.

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Editor's Comments

As promised in the last issue, we needed to postpone photo coverage of the January Convention to this Spring issue. We hope to have pictures of this year's scholarship winners in the upcoming Summer issue. This Spring issue has no less than five articles by Knud Hermansen whom I described in the last issue as a well-known PLS, PE, and attorney at law who teaches in the surveying program at the University of Maine and is a prolific speaker and writer. We again appeal to our local Hoosier surveyors to submit some timely articles for our future newsletters. Surely there are many interesting surveys and experiences that could be shared with other Indiana surveyors.

The January 2005 state convention was probably only the second one that I have missed in the last 55 plus years. I underwent major invasive surgery in Indianapolis this spring for a abdominal aortic aneurysm (AAA) repair and am recovering nicely with some curtailed activities for awhile. Everything went well and I am thankful for the local doctor who first found the aneurysm and those specialist who successfully performed the repair surgery. There are no symptoms and periodic abdominal ultra sounding is encouraged to detect this problem. Please be fore-warned! Ken Curtis, editor

HOOSIER SURVEYOR

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EDITORS NOTE

Deadlines for copy for various planned issues of the Hoosier Surveyor are as follows: Winter - December 31; Spring - March 31; Summer - June 30; Fall - September 30.

The Hoosier Surveyor is published quarterly by the Indiana Society of Professional Land Surveyors, to inform land surveyors and related professions, government officials, educational institutions, libraries, contractors, suppliers and associated businesses and industries about land surveying affairs.

Articles and columns appearing in this publication do not necessarily reflect the viewpoints of ISPLS or the Hoosier Surveyor staff, 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 as to its contents.

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ISPLS BOARD OF DIRECTORS (2005)

l to r, first row: Anthony Gregory, Highland; Ed Sweetland, Greenfield; John Stephens, Wabash; Frank Ballintyn, Sellersburg; Mark Isaacs, Brownstown; Second row: Harold Hart, Charlestown; John Updike, Fort Wayne; Ron Wharry, Frankford; Don Bengel, Valparaiso; Perry Cloyd, Columbus; and Richard Hudson, Valparaiso. Not pictured: Steven Murray, Battle Ground.

PRESIDENT'S THOUGHTS

by Ronald Wharry, PLS, Frankfort, Indiana



I am writing this letter within one of the few “windows of opportunity” I have had this year to just sit down and “smell the roses.” This year has started off with the excitement of a horse race, and I know some of you are experiencing that feeling, too! The 53rd State Convention has come and gone with the memory still lingering. I met several new people at this year’s

festivities and renewed many friendships from across the state. We do not get to see many often enough. I want to express my thanks to everyone who introduced themselves and offered their services to me this year. Our organization is made up of excellent volunteers and your help is greatly appreciated. The programs were again, top-notch events and I am sure most of you will agree. There was something for everyone who attended and much to expand our base of knowledge. We welcomed the exhibitors again this year and were glad to have them show off their supplies. They certainly have the tools to help us do our jobs more professionally. I want to thank all of them, as we could not be who we are without them. Everyone should continue supporting those companies by taking advantage of the help they offer. Much thanks goes out to the Tecumseh Chapter for hosting this year’s convention. Next year, the Northeast Chapter will have the honor of hosting the 2006 convention. Other Chapters, as they have the opportunity, would be welcomed in hosting future conventions. Many long hours go into planning and making a convention come together. If everyone can come together and take advantage of the opportunity, we will be able to continue making these events such a success. Next year, we will also try a new process in accumulating attendees’ records of being at each workshop. It should make their attendance less disruptive with the use of scanning machines and bar coding placed on the name badges. By using this method, we hope attendees can come into the class quicker and be allowed more freedom to enjoy the session.

State legislators gave us a challenge when they proposed one bill that could be perceived to be contrary to the wishes of surveyors across the State. A few of the committees had to act fast with their charges as the legislators were in session. I would like to thank Rick Miller and everyone who attended these committee hearings and expressed their feelings to the lawmakers by showing them the reason why these bills would become a detriment to the public welfare. Many people came from a long way off to testify at the hearings and to explain why the bill would be wrong for the citizens of Indiana. The legislators listened to us and then voted down the bill. Other bills that we wanted went through with as little fanfare. But politics came into play and all bills were discarded when certain individuals wanted to have their way and decided to let the public fend for themselves. It seemed that our efforts went for nothing on these bills. Now they are scrambling to bring at least a third of the bills back. We will continue working with our earnest desire to try to accomplish what should be right.

The Public Information and Marketing committee has met and is reviewing the information that the National Society of Professional Surveyors has provided to us. They have included programs on public relations for high school career days and other organizational presentations that we could make. The last career day being attended was at the Northwest High School in Indianapolis. My additional request to all Land Surveyors in this State is to try to attend a career day at one of your local schools. It’s not hard to give a surveying presentation showing students what we do and the rewards they would receive if they chose to work in the field of surveying. Information and handouts are available from Greg Garrison or at Headquarters. The Trig Star program we are hosting is an excellent way to get a practical example of surveying into the hands of students with little effort on your part. This year’s testing needed to be done by the end of April to get certified to National; but you can make a difference next year by getting at least one school started for next year. Contact Tony Gregory to get more information and see what a difference you could make. If anyone has some old instruments they would like to donate to a high school for a tax credit, please give David Best a call.

The Standards committee has discussed and responded to a Board of Registration request on a proposed rule change. The committee will also be working on other directives made by me.

Several meetings with the GIS committee have been accomplished and they have announced that they have bought the new laptop and scanner and are proceeding around the Counties copying all of the Geodetic/Section corner ties, starting with Bartholomew. The State-wide Orthophotography project is underway and will be very useful at all County Surveyors’ offices around the State.

We are making progress on the location of the Indiana-Michigan border. Several County Surveyor from both Michigan and Indiana are looking and finding several corners along the line.

I would like to be the first to let everyone know that your Board of Directors has discussed the existing space we now have at headquarters and has decided to lease a new, bigger office on the 7th floor in our building. Our new lease will start in July so you will be invited to see the areas that we are dedicating for the library and the antique surveying instruments. The July Board meeting will be at Vincennes University for the Advisory review, so my first Board meeting in our new office will be held on September 10th.

Last of all, I want to let you know I have been at some of your Chapter meetings and that I am going to attempt to attend all of the your meetings sometime this year. If anything needs to be brought to my attention, please let me know when I come to your area, or give me a call, and I will get you the answer as best I can. I hope everyone will enjoy their spring season and please remember that you are not alone. If you need any help, call. If called upon, please help. What we leave behind should be for the better quality of the public and for the benefit of life for generations to come. Be proud of the monuments you have set. Don’t feel that they are just buried to be hid.

ISPLS BOARD OF DIRECTORS MEETING HIGHLIGHTS

by Dianne Bennett, Executive Director

January 19, 2005

The ISPLS Board of Directors held a meeting on Wednesday, January 19, 2005 at the Marriott Hotel East, Indianapolis. President Stephens called the meeting to order at 8:17 a.m. The minutes and treasurers reports were reviewed and approved with revisions.

Staff Activity Report - A written report was submitted for board review. The report is stated under individual topics listed below.

Officers's Activity Report - An update on the GIS grant was presented by John Stephens. The committee is in process of purchasing two computers to be used for the project. Bartholomew county will be the first county to have its section corner ties scanned.

Communication - There was discussion about the membership review process. After discussion the following memberships were approved: Professional Member - Jay Schwandt, Sam Winemiller, Scott Koch, Curt Candler; Firm - Falk PLI Engineering. There were questions regarding the remainder of the applications, so those memberships were tabled.

Hoosier Surveyor - Articles for the winter issue needs to be in by January 25, 2005.

Professional Development - Education - The ISPLS Fall seminar will be September 30, 2005 at McCormick's Creek State Park.

Scholarship - Discussion about the scholarship presentation during the convention's banquet.

Trig-Star - Tony Gregory reported that he is currently distributing the 2005 exam. We need a representative from the Northeast Chapter for the program. Frank Ballintyn is in the process of writing a letter for Trig Star for the members of the Initial Point Chapter.

Licensing Exam Review - The next LS/SIT review seminar is scheduled for March 18 and 19th at Vincennes University.

Government Affairs - Board of Registration - On July 1, 2005 the following board of registration member's terms will expire and will not ask for reappointment: David Blankenbeker, E.R. Gray and Christine Arnold. On January 14th the BOR elected Mike Falk as the board's new president. ISPLS needs to provide the BOR with names to fill these open positions.

ACEC and ISPLS needs to start working together to aid the BOR and Engineering Board in their common fight of policing the surveying and engineering professions.

The board of registration is reviewing Rule 12. The BOR is in the process of reviewing license applications. They are also in the process of auditing the CEU's of 110 registrants.

HARN/GIS - The board received GIS standards to review.

Internal Affairs - Budget & Finance - We still do not have a lease for our office at Monument Circle. We are leasing on a month to month basis.

Nominations - Perry Cloyd, Stephen Murray and Harold Hart were the three placed on the board of directors from the past election.

Chapters - Northeast Chapter has not had a meeting since December 2004.

Tecumseh Chapter - They hold their meetings on the first Tuesday of each month. The Purdue University Student Chapter has asked for a donation to help fund their annual trip to the ACSM Convention in Las Vegas. The BOD tabled this discussion and would like for a member of the student chapter to attend the next BOD meeting to

discuss their request.

Initial Point Chapter - Their next meeting will be February 24, 2005.

New Business - John Stephens made a motion to have the Honors and Awards committee and Planning & Goals committee disbanded. The motion was passed.

Tony Gregory reported that his on-line surveying course is a success. He has 32 students reviewing his lecture from his classroom located on the Purdue University Calumet campus.

The BOD revisited the membership applications for review and approval. The following memberships were reviewed and approved: Professional Member - Gary Ahleberg, Louise Rinehart, Robert Griffin, Clarence Embury, Larry Long, Greg Buckel and William McCarty. Associate - Willie Elliott, Steve Gillespie, Ken Cline, Jimmie Ellison, John Haley, Jamison Cullen, Tracie Belongia and Patrick Williams. Affiliate - James Niemeyer and Alvin Paul. Student - Nichole Goodrich.

After discussion it was decided that the membership committee should have all applications pre-approved before the BOD makes their review. A motion was made and passed to have the ISPLS staff review applications then send the applications to the membership committee for a second approval and then finally the applications would be reviewed by the BOD.

Legislative Review - Rick Miller reviewed the current legislation to the board of directors.

February 19, 2005

The ISPLS Board of Directors held a meeting on Saturday, February 19, 2005 at headquarters. President Wharry called the meeting to order at 10:15 a.m. The minutes and treasurers reports were reviewed and approved with revisions.

Staff Activity Report - A written report was submitted for board review. The report is stated under individual topics listed below.

Adjustment to Agenda - Convention - Doug Herendeen reported on the opinion poll taken at the convention.

Doug presented a contract from "Having a Ball Productions" to have in place a scanning system for the 2006 Convention. A motion was made and passed to sign the contract.

Doug presented three comparisons for the 2007 convention. The Marriott East, Marriott Downtown and the Adams Mark. A motion was made and passed to have the 2007 ISPLS convention at the Adams Mark Hotel.

Doug reported the committee is still looking for a location for the headquarters. They will report back to the BOD at the April meeting.

Communication - Membership - A motion was made and passed to approve the following members: Professional Member - Michael Gerberick; Associate - Ty Evans and Jonathon Derwinski.

The committee is working on contacting members about advertising in the ISPLS Roster business card section. Mark also had questions about reviewing the membership applications. The bylaws state that the membership committee must approve new members.

Intersociety Relations - Perry Cloyd reported that he talked to

...continued Page 5



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Minutes

...continued from Page 3

Mike Fink, ISPE President, about interacting with other professional organizations.

Publications - The committee is working on updating the law manual.

Hoosier Surveyor - The winter issue went to print this week.

Public Information and Marketing - A proclamation for the National Surveyors Week is being put together. It will be from March 13th through March 18th.

Professional Development - Education - The spring seminars will be April 8th (Plymouth), April 22nd (Indianapolis) and April 29th (Jasper).

Convention - The BOD reviewed requests for partial credit for courses taken at the convention.

Scholarship - There is another revision pending for Purdue University scholarship agreement. There will be further information at the April 2nd meeting.

Government Affairs - John Stephens gave an overview. Senate Bill 139 is still pending - status unknown. Senate Bill 435 was defeated and was well represented by ISPLS. There were several people that testified in the committee hearings - great job! There is still concern about Senate Bill 324 - Geologist. Ron Wharry reported on House Bill 417 and House Bill 1188. These bills are under the watch of the committee.

Board of Registration - Perry Cloyd/Ed Sweetland attended the last meeting and will send written reports to all board members via email in the future.

HARN/GIS/Monumentation - Phase 3 information has been published.

County Surveyors - Steve Murray reported that the annual business meeting at Road School is March 30th.

NSPS Governor/Great Lakes Council - Don Bengel reported the convention will be in Las Vegas on March 18th to March 23rd. Don will be a judge in the national plat contest at NSPS.

Standards - Norm Hiselman will have a meeting on February 25th. Also presented to the board was the minutes from the City of Indianapolis regarding the the City of Indianapolis Sanitary District Standards Revision.

Internal Affairs - Lease Renewal - A lease was reviewed from the Circle Tower Building. Also, a Tenant Estoppel Certificate was presented for signature. The new owners of the building are in the process of obtaining a mortgage loan for the building.

Chapters - Northwest Chapter - The February meeting was held and a local planner talked about open space ordinance and how it affects site plans. The next meeting will be the second Thursday of March. A local attorney will discuss the condominium statute and copy rights for surveyors.

Northeast Chapter - Their next meeting is March 1st.

Wabash Valley Chapter - They held a meeting on Feb. 9th. Dan Minor is their new president.

Tecumseh - Their next meeting is February 23rd.

Central Indiana Chapter - Their BOD met Feb. 11th. The chapter's meetings are held the third Tuesday of each month. They will have discussions on "Theory of Surveying Procedures". Their golf outing will be in September.

Board of Registration News

submitted by Gary Kent, PLS

The Professional Licensing Agency has added very helpful content to the Land Surveyor Board of Registration's web site. The new information includes agendas and minutes of Board meetings, recent disciplinary actions, and a listing of the Board Rules and related Statutes (now in an MS Word format). Registrants should visit <http://www.in.gov/pla/bandc/surveyors/> periodically to stay abreast of the activities of their Board.

For those who have never visited the Board's web site, you can also find a listing of firm numbers, information on the complaint process, a license verification search and list of continuing education providers, along with other helpful information.

The Board liaison is working with the licensing agency on the recent audit of continuing education. As every registrant knows, they were asked, upon renewal, to fill out a form briefly listing the continuing education that they received over the last renewal cycle. This process was intended to give the Board a broad sense of how registrants were complying with the Rule. The licensing agency then randomly selected 10 percent of the registrants for a full, official audit. Those selected received their notice a few weeks ago and were to have responded by now. Those found to be potentially non-complaint will be receiving a request for more information.

The Board is busy working with a number of interested parties on a draft of revisions to the Administrative Rules of the Board. The official notice of this work will be posted in the Indiana Register shortly, followed by a hearing for public input which will probably take place in June or July. Among other revisions, the unofficial draft currently contains a number of significant changes including a rule regarding the exchange of electronic files, changes to the measurement standards, changes to the education and experience requirements required for licensure, and an allowance to carry-over 4 hours of elective continuing education to the next renewal cycle. Those interested should watch the Indiana Register - which is on-line at www.in.gov/legislative/register - for notice of the proposed rule.

Minutes continued

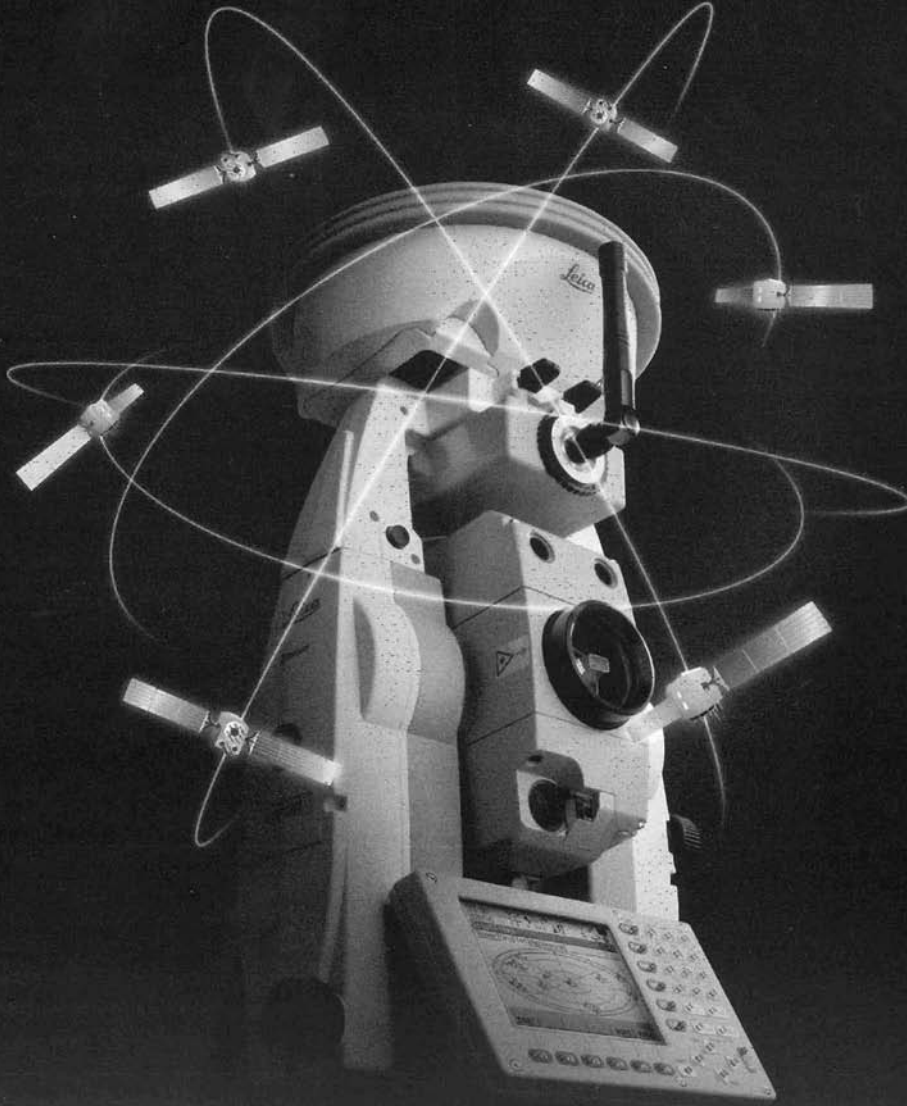
Hoosier Hills - Their next meeting is March 1st.

Initial Point - Their next meeting is February 24th.

Purdue Student Chapter - They meet the first Tuesday of March.

Old Business - Rich Hudson attended the Illinois convention in Springfield at the Crown Plaza. The surveyors brought in old equipment to be auctioned off. It was a good convention.

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2005 General Assembly Legislative Report

by Rick Miller, Indianapolis

Chairman, Government Affairs Committee

2005 proved to be another exciting and controversial year in the Indiana legislature with many things such as funding for a new Colts stadium and daylight savings time occupying much of the attention.

Several issues of critical importance to land surveyors came up early in the legislature which demanded our attention and immediate action. The first to catch our eye was Senate Bill 435 sponsored by Senator Kenley which would have eliminated the current minimum education experience required to sit for the land surveyor's examination. The proposed bill would allow a person with simply ten years of field experience under a licensed land surveyor or twenty years under a licensed engineer to meet the requirements for examination for licensure. This proposed bill was specifically crafted for the benefit of one individual but obviously was not exclusive enough because it would have thrown open the doors to licensure to many unqualified persons, seriously undermining the progress that our profession has made over that past twenty years, and could have jeopardized the welfare of the public. Through the grass roots effort of the many surveyors who contacted their legislators and convincing arguments made at the Senate committee hearing we were successful in defeating this bill.

Two separate bills, House Bill 1188 and Senate Bill 625, were introduced at the behest of the governor which would have seriously impacted all appointed boards and commissions in Indiana. One bill called for all boards (including the land surveyors board of registration) to cease operations while a commission appointed by the governor studied whether the boards had a significant purpose and should be continued while the other bill allowed the boards to continue but only for 12 months while their purpose and efficiency was studied by a commission appointed by the leadership of the legislature. ISPLS testified at the committee hearings that the professional licensure boards served a vital role in protecting the public and that those boards need to continue to function as they currently are. Fortunately, as a result of intense opposition by many groups and the pressure put on the legislative agenda as a result of the aforementioned walk out neither of these bills has progressed through either chamber. We must however remain vigilant this summer because the matter is very likely to be the subject of a special summer study committee in preparation of introducing similar legislation next year.

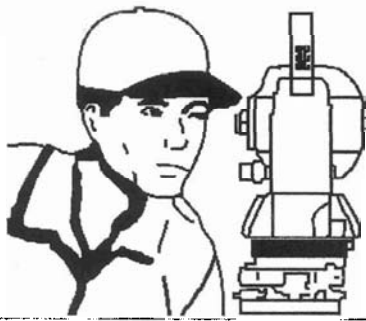
Senate Bill 0417 is legislation which allows the Department of Correction to dispose of certain surplus real estate. The initial language in the bill called for surveys of the real estate to be performed by DOC staff or agents prior to sell but did not specify that the surveys are to be performed by surveyors licensed under IC 25-21.5. ISPLS was successful in getting the bill amended to add that stipulation and the bill was passed by both chambers and awaits the governor's signature.

Senate Bill 324 is another piece of proposed legislation which impacts both the land surveying and engineering professions. This bill was put forth last year by geologists who are attempting to define the professional practice of geology in Indiana. As with last years version there were significant areas of overlap (or encroachment) into land surveying and engineering which we both objected to.

Following several negations with the geologists we were able to achieve language in the bill that land surveyors could live with but several issues of significant concern to engineers still remain. During testimony at the Senate committee hearing all sides put forth their arguments and further amendments were introduced and adopted at that hearing. It was obvious at the hearing that the legislators saw this matter as a turf battle between professions and not as a matter of who is professionally competent to render certain services. The legislators made it perfectly clear that they did not appreciate being in the middle of this perceived turf battle and publicly chastised the engineer's representative on this point during the hearing. Although this bill was passed out of the Senate it did not progress in the House due to the restricted agenda that resulted following the walk out of the House Democrats over other legislative issues and power wrangling moves and it was from all appearances a dead bill. As they say however, it's not over till it's over, and the contents of Senate Bill 324 later popped up as an amendment to Senate Bill 139.

Senate Bill 139 is proposed legislation which deals with the Professional Licensing Agency and affects many of the boards, including land surveyors and engineers, which operate under the umbrella of that agency. This bill is supported and promoted by ISPLS and the engineers and has several components which have been on our mutual agendas for several years. The bill was essentially the same legislation that was introduced last year which made it thought both houses before dying with many others when House Republicans walked out in 2004. One major difference in SB 139 this year however is the inclusion of an additional \$20 in license renewal fees for land surveyors, engineers and architects which will go to fund the investigative activities of the Attorney General's office and the Professional Licensing Agency. This bill has made it through both houses again this year although a last minute amendment attached new legislation for interior designer and massage therapy licensure which caused it to be sent back to a joint Senate and House conference committee for discussion and compromise. The interior designer and massage therapy licensure provisions in the bill were tossed out by the committee but unfortunately as mentioned above the language of the geologist's bill was inserted for further consideration. This is something that the engineers will not allow and they are currently working behind the scene to encourage the removal of the geologist language from 139. If that doesn't happen it is assured that the conference committee report will not be adopted and Senate Bill 139 would be a dead bill. As of this writing there remains only three days in the regular session of the legislature and it is doubtful that this bill will succeed this year. If it does not we will push for similar investigative measures along with civil penalty authority for the board of registration in the next legislature.

The Government Affairs Committee wishes to thank all those surveyors who have lent their support and called or emailed their legislators again this year when we needed you. Your continued interest and active participation in these important matters means the difference between progress or regression and success or failure.



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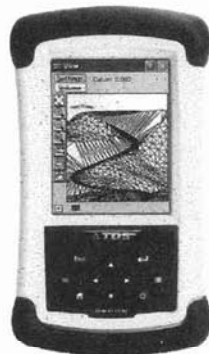
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The Professional Seal

by Knud E. Hermansen PLS, PE, PhD., Esq.

ABSTRACT

Almost all states require a surveyor, upon licensing, to obtain a professional seal of a design and size prescribed by the licensing board. Unfortunately, many licensing boards fail to explain why, when, and where a seal is used. This article explains why, when and where along with some guidelines for the proper use of the professional seal.

INTRODUCTION

Most surveyors when they are initially licensed in a jurisdiction are required to obtain a professional seal. Normally, the same letter congratulating the surveyor on passing the exam also directs the surveyor to obtain a professional seal of a design and size specified by the licensing board. Unfortunately, the letter and subsequent documents from the licensing board fail to tell the surveyor why the seal is necessary, when it is to be used, and where it should be used. The surveyor is forced to learn why, when, and where from reading the licensing statute, observing those previously licensed, relying on his or her own intuition, or, in some cases, hoping the document or form will direct when and were to use the seal. This article has been written to address why, when, and where a professional seal should be used.

WHY

Why the professional seal is required is frequently explained in one or more sections found in the licensing act. Most of the time the explanation is vague, confusing, or incomplete. A review of some case law on the subject reveals there are generally five common reasons for requiring the surveyor to obtain and use a seal.

First, the seal signifies that the person whose name appears on the seal is qualified to practice surveying within the jurisdiction shown on the seal. Documents prepared by the surveyor pass from his or her hands and are used by the public, lending institutions, title companies, or successive landowners. The imprint of the seal on the document acts as an attestation or, in part, an affidavit of the surveyor's competence and authorization to practice the profession of surveying. To the layperson who sees the seal on a document, the emboss or stamp raises the inference of official authority (perhaps incorrectly) and, at the very least, the person is authorized and competent to practice surveying. The seal's design and size; the prominent display of the jurisdiction, profession, and name of the licensee; and the professional's unique license number all combine to connote a vesting of State trust and responsibility on the licensee.

Second, the seal attests to the genuineness of the surveyor's signature and in many cases stands in the same stead as the surveyor's signature. The seal is personal and considered to be in the possession or under the control of the surveyor at all times. As such, the appearance of the seal on a document is prima facie evidence that the signature on the document is the genuine signature of the surveyor. While a signature may be forged, it is extremely difficult to forge the embossed relief or produce an undetectable and realistic facsimile of the surveyor's seal short of ordering a duplicate

seal or taking possession of the original seal.

Third, the seal signifies that the person has prepared, supervised, or reviewed the document that the seal has been affixed on. The seal, as a symbol of achievement, competency, trust, and responsibility, carries with it a duty for the surveyor to use the seal in a competent, trustworthy, responsible, and professional manner. Signing and embossing the seal onto a document is meant to impress on the surveyor a sense of solemnity, respect, and responsibility for his or her actions. While a signature may be scrawled in a few seconds, the act of locating and legibly embossing or imprinting a seal's facsimile on the document cannot be done in haste. This is one reason many jurisdictions did or continue to outlaw the use of rubber stamps and require the embossing seal.

In conjunction with the third reason, the fourth reason for the seal is to attest to the surveyor's willingness to assume responsibility for the information or work the document represents. While many people may work on the project and several may be responsible for portions of the project, the person that takes ultimate responsibility is the individual or corporation whose seal is affixed to the document. With the responsibility to review and supervise the project (as the seal signifies) comes the liability for mistakes, errors, and omissions.

Fifth and finally, as a result of the previous reasons, the seal may be required before an agency or person approves, reviews, accepts, pays for, or records a document. By requiring a professional seal, an agency or person makes known its desire and is reasonably assured that the work was performed, supervised, or reviewed by someone that has achieved the minimum standard of competency necessary to enter the profession and who is also willing and can be held liable for the information found in the document or represented by the document.

WHEN

Knowing why the professional seal is used or required helps determine when and where the seal should be used in the course of professional service. As a general statement, surveyors should use their seal when they have performed, supervised, or reviewed the work and they are willing to assume responsibility (and ultimately liability) for the work. In this regard, the possession of a seal is different from the use of the seal. As a general rule, a surveyor is said to be "competent" when they are allowed to obtain a seal while the surveyor is said to be a "professional" if they know when to properly use the seal.

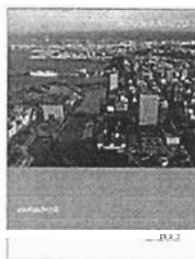
WHERE

Where to use the professional seal is generally intertwined with the question on when to use the seal. As a general rule, a seal can be used on any document prepared, supervised, or reviewed by the surveyor. Therefore, the seal should be used on all plans, plats, reports, designs, opinions, and official letters that relate to the surveyor's professional practice, so long as the document has been prepared, supervised, or reviewed by the surveyor.

...continued Page 15

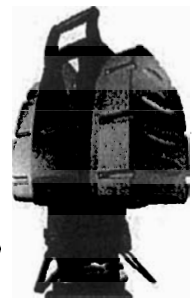


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Surveyor Immunity

by Knud E. Hermansen

Knud is a licensed professional land surveyor, professional engineer and attorney at law. He teaches at the University of Maine in the surveying engineering technology program and has a consulting practice specializing in boundary disputes, title, land development, liability and easements. <http://www.umaine.edu/set/svt/articles/>

The surveyor's skills are in great demand by a sophisticated society that requires order, clarity and technical expertise. At the beginning of each survey, the surveyor steps off into the unknown-attempting to bring clarity to confused and often disputed boundaries. The surveyor is entrusted with performing a service that often lacks a clear and unimpeachable solution. Surveying, as in other professions, is not an exact science.

Advertisements on television and other mass media communications make it clear that if you choose the law firm featured in the advertisement, then for every perceived harm there will be a remedy (i.e. "the money you deserve"). Vindictive neighbors often view litigation like armies wage warfare—a surveyor is either a friend or enemy. The anger of the neighbor is often focused on the surveyor as the source of their boundary problem, the reason for the expenses they incurred in litigation, or the reason for their loss in litigation. It is not uncommon for surveyors to be sued or threatened to be sued by the neighbor. Fortunately for the surveyor, the law balances the neighbor's need for a remedy with the needs of society and the courtroom.

Public policy requires that witnesses not be intimidated or fear vexatious litigation when testifying or preparing to testify. Circumstances often arise where a surveyor is unable to prove beyond a reasonable doubt the basis for their opinions; yet, this should not stand in the way of offering the opinion when required to fairly try a boundary dispute where only a preponderance of evidence is needed. Surveying according to ancient landmarks and the old deeds among vexatious neighbors is like sailing on the ocean, charting a path through unknown winds and tides. Surveying practice requires some privilege and immunity under such conditions or no surveyor would sail except upon the calmest seas and would run in fear of the slightest storm.

In such cases, there arises the sound public policy that where a cause of action would ordinarily lie, there shall be a privilege when communicating statements prior to or during a judicial proceeding. The common law had been codified in the RESTATEMENT (SECOND) OF TORTS 588 (b) (1976). Accordingly, allegations, opinions, and statements made by a surveyor in good faith and relevant to a disputed boundary involved or likely to be involved in litigation shall enjoy an absolute privilege. The protection is afforded in both criminal and civil proceedings. This privilege applies to arbitration manners as well.

A witness is absolutely privileged to publish defamatory matter concerning another in communications preliminary to a proposed judicial proceeding or as a part of a judicial proceeding in which he is testifying, if it has some relation to the proceeding. RESTATEMENT (SECOND) OF TORTS § 588 (1976).

The privilege encompasses all statements made prior to or during the judicial proceedings. It is not necessary that the opinion be under oath or during an official proceeding. The protection is afforded when litigation is proposed or otherwise likely to occur (though more than a slight chance is required). Where a

communication occurred prior to a proposed judicial proceeding, the privilege extends to those matters made in good faith and under serious consideration by a witness or possible party to the judicial proceedings.

The privilege is absolute. The exceptions are few and narrowly construed. It is immaterial that the testimony is irrelevant, incorrect, malicious, or spiteful so long as the information has some reference to the litigation or was prompted by counsel or needs of counsel, even if later judged to be inadmissible or incorrect. Redress lies only in contempt or perjury brought before the court.

Accordingly, while the surveyor should always tread cautiously when providing an opinion, where litigation appears imminent or is ongoing, the surveyor should not be intimidated into changing their opinions or avoid giving it under threat of a lawsuit by the opposing party.

From June 2003 issue of the TBM and author Knud E. Hermansen

National Spatial Reference System Readjustment

This is a second in a series of articles describing various aspects of the readjustment of the position and ellipsoidal heights of the National Spatial Reference System (NSRS) by NOAA's National Geodetic Survey.

A new way of defining the accuracy of coordinates will be implemented with the publication of the National Readjustment. For each point, both a local and a network accuracy value will replace the current order of the mark, i.e. A-order, B-order, first-order, etc. Local and network accuracies are two measures which express to what accuracy the coordinates of a point are known.

Network accuracies define how well the coordinates are known in an absolute sense. The network accuracy is the value that represents the uncertainty of coordinates with respect to the datum at the 95% confidence level. The datum is considered to be best expressed by the CORS coordinates which will serve as fixed control in the adjustment.

The local accuracy defines how well coordinates are known relative to other points in the network. The local accuracy of a coordinate is a value which represents the uncertainty of the coordinates relative to other directly connected, adjacent points at the 95% confidence level. This value represents the relative positional error surveyors can expect between marks in a locality.

Since local and network accuracies will be defined in a graphical sense (i.e. error ellipses), point accuracies may best be expressed through graphical interface systems (GIS). Analytical programs, utilizing error ellipses, can then be developed.

Neither of these accuracy values can be calculated without the covariance matrix for the observations; this matrix can only be calculated from a simultaneous adjustment of all the observational data.

When the National Readjustment is completed, not only will new coordinates become available for each point, the local and the network accuracy of each coordinate will also be published.

For more information, contact maralyn.vorhauer@noaa.gov or visit the NGS web site www.ngs.noaa.gov

ISPLS 53rd - Annual Convention Highlights

Marriott East Indianapolis, Indianapolis (January 19-21, 2005)



Ed Sweetland, right, receives the Polaris Award from ISPLS President John Stephens, Wabash.

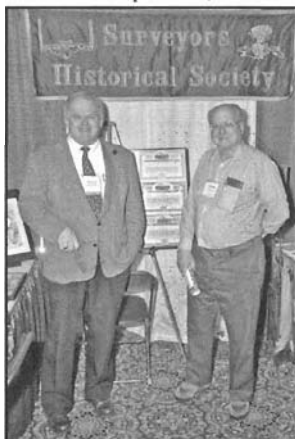
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Frank Ballintyn, right, Sellersburg, receives President's Award from ISPLS President John Stephens, Wabash.



ISPLS Registration Desk



Roger Woodfill and Orwic Johnson at the Historical Society booth.



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William Stine



Don Bengel



Bryan Catlin



Ross Holloway



Donna Gardner



Tom Hagensee

Program Highlights



"Ethics for Surveyors", "Restoration of Lost Corners", "To Accept or Not to Accept..." Speaker: Dennis Mouland



"Rule 12 & Theory of Location in Simultaneously Created Boundaries", "ALTA Survey Update". Speaker: Gary Kent



"Hands on Construction Site Erosion & Sediment Control" Speaker: David McCormick



"Theory of Location & Surveyors Reports" Speaker: Anthony "Tony" Gregory



"TR55-Hydrologic Computer Modeling for Small Watersheds" Speaker: Tom Burke



"Surveying Reference Frames and Datums" Speaker: Steve Johnson



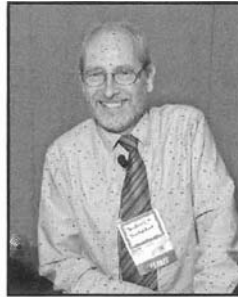
"BIM Evaluation of Corner Evidence" Speaker: Stan French



"Roadway Safety for Surveyors" Speaker: Ron Koons



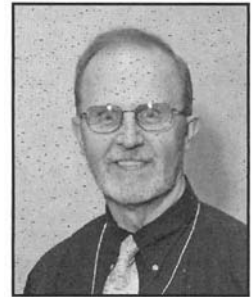
"BLM's New Manual of Surveying Instructions" Speaker: Robert Dahl



"Online Positioning User Service" Speaker: Boudewijn van Gelder



"Fundamentals & Update of High-Definition Surveying/3D Laser Scanning" Speaker: Geoff Jacobs



"G.I.S. and the Surveyor" Speaker: Milton Denny



"Rule 12" Speaker: Mike Falk and Randall Miller



"The Treatment of Section Corners, Sixteenth Corners & Original Corners" Speaker: Pat Cunningham & Tim Beyer



"Indiana Boundary Case Study" Speaker: Mike DeBoy and Steve Lee

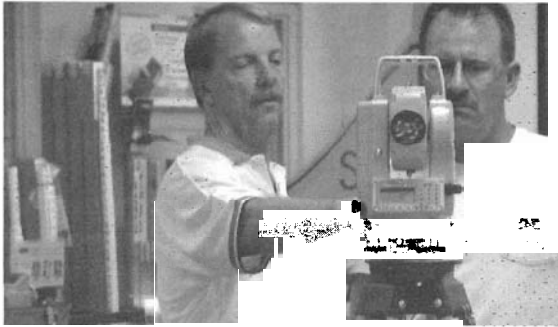


(L) Purdue University Students in Attendance



(R) Vincennes Students in Attendance

Allen Precision Equipment



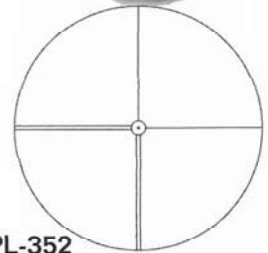
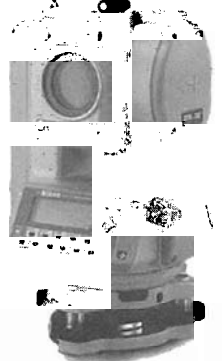
Terry Nutt, Training Specialist

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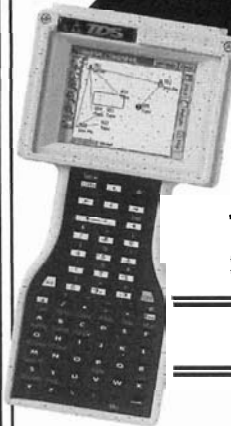


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The Professional Seal

...continued from Page 9

The professional seal should be placed or located on the document so that the seal is noticeable, the extent of the surveyor's responsibility is obvious, and it is near or on the surveyor's signature, certificate, or other important or critical information. The first criterion is important when a seal is required before the document can be accepted or recorded. By placing the seal where it will be easily noticed, it gives the document an aura of professionalism and fitness. Surveyors, other professionals, recorder of deeds, and others have become so accustomed to seeing a seal on some documents that the absence of a seal immediately raises questions and draws a more critical examination of the work. A professional seal noticeably displayed on a document also helps give the document an authoritative and official flavor.

The second criterion; that is, placing the seal on certain documents or a particular position on the document, helps infer the extent of the surveyor's responsibility. For example, the seal on the cover sheet of a binder containing five drawings denotes complete responsibility for all the drawings rather than one of the drawings which would occur if the seal were only found on one of the drawings within the binder. Similarly, placing the seal at the end or on the cover of a report or field book is more suggestive of complete responsibility for the contents than would be inferred by placing the seal on an intermediate chapter or field book page that may only contain one-day's work.

Finally, addressing the last criterion, the seal should be placed near or on the surveyor's signature and other important information. Not only does this help prevent fraudulent additions or changes but it helps draw the reader's attention to the importance of the information and reinforces the authenticity of the signature.

GUIDELINES

In light of the discussion on why, when, and where seals should be used, the following are some guidelines that should be followed after obtaining but before using a professional seal. First, make sure these persons that assume responsibility for the survey are the ones that seal the document(s). If the jurisdiction permits it, and most do, obtain and use a corporate surveying seal rather than a personal seal on work that has been supervised and reviewed by a surveyor employed by a corporation. The general saying that "where go the profits (money) should go the responsibility" is appropriate here. In partnerships and sole proprietorships, two or more seals appearing on one document may be appropriate depending on the situation. In other words, if more than one licensed surveyor performed, supervised, or reviewed the work and should or can be held responsible for the work (e.g. other partners) then more than one surveyor should affix their seal to the document. While this may not necessarily reduce the liability for any one surveyor, it should and usually does impress on other surveyors the seriousness and responsibility (also liability) that is expected from them in performing their work or managing the business. In certain cases, where a surveyor may only have limited responsibility, say for example supervision of the fieldwork, the surveyor (i.e. party chief) should affix their seal to the field book.

The second suggestion is to avoid using a rubber/ink stamp. If at all possible emboss the seal on the document. One way to make an embossment anywhere on the drawing is to emboss on gold, metal, mylar, or paper "leaf" and firmly affix the leaf to the document so it cannot be removed without destroying the leaf or the document. In the past, a process similar to this was accomplished by dropping hot wax on the document, then immediately pressing a seal into the wax while the wax was still warm and pliable.

Embossing rather than stamping addresses three important concerns. First, it clearly identifies the original or master copies. In these days of fast, easy, crisp, and clear copies, copies are difficult to tell from an original that contains an ink stamp facsimile of the surveyor's seal. Hence, unauthorized changes can easily be made and remain undetected. (In fact, it is not inconceivable that an entirely fraudulent drawing could be produced and contain a "seal" copied from an ink stamped seal taken from another plat.) On the other hand, a copy of a document with an embossed seal will usually show enough detail of the seal to authenticate the document but will not contain the raised relief found on the original. Second, since embossing tends to be slower and take more effort in order to provide legible relief, it forces the surveyor to take more time and reflect on the seriousness and responsibility of their action. Third, embossing paper makes it extremely difficult to write over the embossed area without destroying the relief. Similarly, embossing an area that contains writing or graphics allows the writing or graphics to remain legible while preventing unauthorized copying or alterations since these actions would normally destroy the raised relief. This characteristic may be used by the surveyor to prevent alteration or removal of a copyright, caveat, name, signature, or so on that was placed on the document and must remain unaltered on the document.

Third, the seal should go at the end or bottom of the document. As a general rule of construction, any information following a signature that is surplus, repugnant, or in contrast to the information above or preceding the signature, can be ignored or rejected. This is not a hard and fast rule and may be applied or ignored according to the circumstances. However, if the surveyor has reason to believe that a document may be altered or additional information inserted without the surveyor's review, the surveyor would be wise to affix the seal as near as possible to the end of the information.

In conclusion, the professional seal and use of the professional seal should not be dismissed or thought of lightly. The surveyor should review the licensing act and regulations to see why, when and where the seal should be used. It may also prove beneficial to sit down at some point near the beginning of a surveyor's career and explain why, when and where the professional seal is used.

REFERENCES

1. Duncan v Missouri Bd for Architects, Mo.App., 744 S. W.2d 524, 535 (1988)
2. Hamilton Ent., Ltd. v South Park Land & Livestock Co., Inc., Colo.App., 527 P.2d 886, 889 (1974)
3. South Park Land & Livestock Co., Inc., v Hamilton Ent., Ltd., Colo., 538 P.2d 444 (1974)

Brandt v. Johnson-Reiland Construction, Inc.

By: Knud Hermansen, PLS, PE, PhD, Esq.

Unreported, (Minn.App. 001)

In early 1994, Johnson-Reiland Construction, Inc. hired Brandt, a surveyor and civil engineer, as a project engineer for a multi-family housing development. Brandt was responsible for surveying and platting the lots as well as engineering design work. Johnson-Reiland gave Brandt various floor plans for the housing development. Johnson-Reiland asserts that Brandt received all floor plans prior to platting. Brandt claims he did not receive the largest floor plan until after he finished platting. As a consequence, part of the development had to be replatted. Johnson-Reiland asserted the replatting was required because Brandt did not use the correct building setback requirements.

By mid-1998 the dispute had spoiled the working relationship. Subsequently, Johnson-Reiland hired James R. Hill, Inc. to continue with the platting. James R. Hill replatted more of the original plats for the stated reason that Brandt did not correctly establish the ordinary high water mark for the lake next to the development and the plats were improperly drawn.

Johnson-Reiland refused to pay Brandt for replatting. As a consequence, in early 1999, Brandt foreclosed his mechanic's lien against the development seeking \$3,368.24. Johnson-Reiland counterclaimed that Brandt negligently performed engineering and surveying work. In early 2000, a bench trial was conducted. At its conclusion, the court awarded Brandt \$3,368.24 (his fee), \$369.58 in interest, \$522.98 in costs and disbursements, and \$5,317.55 in attorney fees. The court dismissed Johnson-Reiland's counterclaim. The decision was upheld on appeal.

Several important points can be drawn from this case.

Litigation Costs Exceed Damages Sought:

As is so often the case with litigation, the costs incurred as part of the litigation exceeded the amount sought. In this case, the attorney fees were \$5,317.55. The amount of damages were \$3,368.24. The attorney fees exceeded the amount that was sought. (As a result, Johnson-Reiland probably paid in excess of \$10,000 in order to avoid paying \$3,368.24.) Furthermore, experience suggests that the court awarded Brandt far less than the actual attorney fees. No fees were awarded for appeal. As a result, both sides found that justice is often obscured by the weight of the money used to obtain it. Also, it took over six years to obtain payment for the services completed.

Mechanics Lien:

This case shows the power and usefulness of a mechanics lien in forcing payment. The mechanic's lien made the surveyor a secured creditor. The security was the property. Many developers do not have assets in their corporate names other than the property that is being developed. Without the ability to secure the property, the surveyor would be without recourse to obtain the money owed from a developer.

Time Sheets

The trial court was impressed with the detailed time sheets that Brandt kept and presented as evidence to support the fee he

sought. Johnson-Reiland attempted to show that \$1,250 was a more appropriate and reasonable fee. This was rejected with the court finding that \$85 per hour to be reasonable. This case illustrates the usefulness of keeping detailed and complete records of the time and cost required for the services rendered.

INDIANA UNIVERSITY- PURDUE UNIVERSITY INDIANAPOLIS (IUPUI) Fall Surveying Classes

Three surveying courses will be offered in the fall at Indiana University-Purdue University Indianapolis. The classes, which start the week of August 22 and end the week of December 12, include:

--Surveying Law, CET 402 (3 credits), 5:45 to 8:35 p.m. Tuesday (Aug. 23 - Dec. 13).

Instructor: Gary Kent

--Control Surveying, CET 305 (3 credits), 5:45 to 8:35 p.m. Wednesday (Aug. 24-Dec. 14).

Instructor: Gary Kent

--Construction and Route Surveying, CET 312 (3credits) 1 to 6 p.m. Friday (Aug. 26 - Dec. 16).

Instructor Brian Kinsey.

For more information on registration, contact the Department of Construction Technology by phone at (317)274-2413, by fax at (317) 278-3669, or by e-mail at et_cnt@iupui.edu.

Surveying Law (CET 402) defines the role and duties of a surveyor and discusses rights and interests in land, the ownership and transfer of real property, land descriptions, statute law and common laws, sequential and simultaneous conveyances, easements and reversions, riparian rights, the public land system and Rule 13.

Control Surveying (CET 305) discusses theoretical fundamental and practical applications of establishing survey control networks, including open and closed traverse, route surveying networks, using GPS and EDM in control surveying, differential leveling and industry surveying standards.

Construction and Route Surveying (CET 312) shows field procedures for construction and route surveying, including highway, street, sewer, and bridge layout. It also discusses vertical and horizontal curves, curve design, survey for streets and subdivisions, earthwork, profiles/sections using both theodolite and electronic distance measuring (EDM) equipment, computation of errors and coordinates and use of appropriate software.

Contract Clauses – Limitation of Liability

By Knud E. Hermansen

When surveyor liability occurs, the liability is often unexpected and the amount of the damages sought can be shocking.

There are several contract clauses that will help reduce or eliminate surveyor liability. One contract clause often employed in written contracts is the limitation of liability clause.

The limitation of liability clause is a clear and unequivocal expression of the intent by the client to cap or limit the surveyor's liability. The clause pegs the limit of damages that the client can collect in the event the surveyor is found liable to the client in a civil action.

Limitation of Liability: The Client agrees to limit the Surveyor's liability for damages to the client to the sum of \$_____ or the fee charged for the surveying services, whichever is greater. This limitation of liability shall apply regardless of the cause of action or legal theory pled or asserted by the Client. Should this limitation be unacceptable to the Client, the Client will notify the Surveyor in writing and pay the Surveyor an additional \$_____ for every \$1,000 increase in liability. The written notice increasing the limitation must be sent to the Surveyor before services start and the additional money must be paid to the Surveyor before completion of the services.

The willingness of courts to enforce the limitation of liability clause varies from state to state. Generally, limiting liability is not favored by the courts. Accordingly, the limitation of liability contract clause must be relied upon with some trepidation that the court will void the clause.

The validity of the clause will depend upon whether the client has a clear understanding of the burdens imposed by the clause. The clause should be discussed during "arms length" negotiation. Arms length negotiation requires the clause be brought to the party's attention and the client have the option to agree or reject the clause (not a contract of adhesion). When dealing with a business or sophisticated businessperson, arms length negotiation is generally presumed.

The courts tend to reject the clause where there is a severe imbalance between the amount of the limitation and the foreseeable amount of liability (e.g., limit of \$200 mortgage survey fee for a home purchase that cost in excess of \$200,000). The courts surmise that if the surveyor is allowed to reduce their risk to nothing or next to nothing, there will be no incentive to exercise due care. Accordingly, the amount of the limitation must appear reasonable given the potential liability arising from the services performed. Ordinarily, placing a limitation on liability equal to the limit of an errors and omission insurance policy appears both logical and reasonable and allows the court to give credence to the clause. Furthermore, pegging the limit of the liability to the amount of insurance coverage gives the surveyor some relief that their personal assets will have some protection under the clause.

In some states enforcement of the clause hinges upon the client deriving some benefit. Consequently, enforcing the clause requires the clause strike a reasonable balance between a benefit and burden. In other words, the client that assumes a greater share of the risk should expect to have a lower fee, be served sooner, or have faster service.

Limitation of Liability. The Client agrees to limit the Surveyor's liability for damages to the client to the sum of \$_____ or the fee charged for the surveying services, whichever is greater. This limitation of liability was agreed upon after discussing the risks of the surveying services and the difficulty of providing services within both the limitations imposed by the Client and the price cap sought by the Client. Client's initials indicate the Client has read and agrees to this clause _____.

Surveyors that employ the clause should not believe they have prevented all possibility of excessive damages in the event of liability. Even if the clause is enforceable against the client, the clause does not protect the surveyor from other sources of liability. The clause derives its authority from the contract. Therefore, only the parties to the contract are bound by the terms of the clause. As a result, the clause offers no protection where the source of liability is from a person not a party to the contract. Accordingly, neighbors, successors-in-title, and others are not bound by the clause and may seek damages that exceed the limit set by the clause.

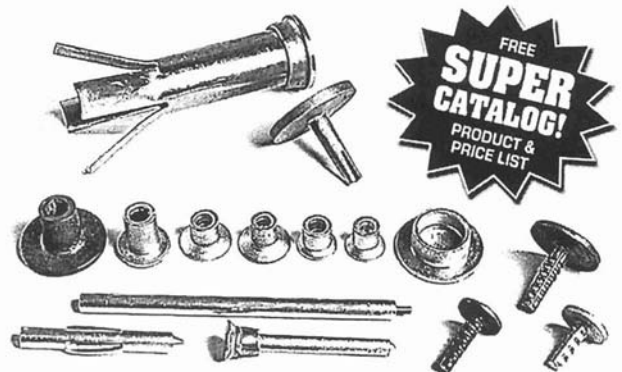
Knud is a professional land surveyor, professional engineer, and attorney at law licensed in several states. He teaches in the surveying program at the University of Maine and operates a consulting firm specializing in professional liability, boundary disputes, land development, and title issues.

Reprinted from Bearings, Spring 2004 Maine

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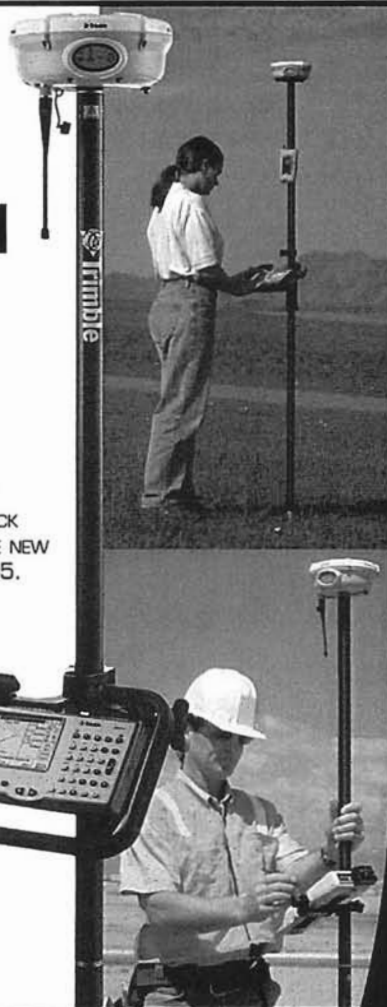


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CLOSING THE DEAL

**From the perspective of a Homebuyer/Surveyor
by Curt Sumner, LS ACSM Executive Director**

The scenario is a familiar one. Someone is purchasing a new home, or buying a parcel of property.

The multitude of hoops one must pass through seems to be never-ending. First of all, there is the trauma of finding the "right" property. Then making contact with the realtor, possibly the seller, the lender, and ultimately the closing agent (usually an attorney or title insurance agent).

The simple act of filling out the loan application can be extremely intimidating. It seem that just getting an approved loan is tantamount to winning the lottery, but this is just where the "fun" begins. Throughout the entire ordeal, one is so eager to close the deal and get into the house most of us never stop to think about who is protecting our interests. Or for that matter, whether our interests even need protecting.

There are so many professionals involved in this transaction we tend to believe that everyone is looking out for us. This may not be true, and most buyers do not even think about hiring someone to specifically protect their interests. They are just happy to close the deal.

The realtor is typically being paid by, and working on behalf of, the seller. The lender is interested in providing funding for the purchase in a way that protects the lender's investment. The title insurer is interested in providing protection against faults in matters of title to the property in a way that creates the least amount of risk of claims that may be brought to the title insurance provider. The closing agent (who may be one of the above) is interested in closing the deal and getting everyone paid for their services.

While all of the people mentioned above are typically conscientious and well-meaning, there is no real incentive to inform the purchaser of potential problems that are typically referred to as "matters of survey".

These "matters of survey" relate to anything that could negatively affect the use of the property being purchased, and can be disclosed by having a current field survey of the property performed. Some examples of such matters include encroachments across property lines or building restriction lines (on to or from the property) of buildings, fences/walls, landscaping features, wells, swimming pool decks, etc. Other matters may include the location of utilities, access ways, etc. relative to easements, property lines, or buildings.

While it is possible that "matters of survey" are covered items in title insurance policies, such coverage that protects purchaser/homebuyer interests is not likely to be included unless a survey is performed prior to issuance of the policy. Policies known as "lenders' policies" may cover "matters of survey" without the requirement for a current survey, but these policies do not protect the purchaser/homebuyer. The risk associated with this type of policy is often acceptable to the title insurer because claims from a lender are not likely to occur until the purchase/homebuyer defaults on the loan.

In recent years, it has become popular to either have the seller sign an affidavit, effectively guaranteeing that no matters of survey negatively affect the property, or to utilize a survey document from a previously performed survey. In the former case, the seller may be unwittingly accepting some unwarranted risks or liability. In the latter case, the use of previous survey documents without the consent

of the surveyor who provided them may be in violation of copyright laws. In either case, the purchaser/homebuyer still may not be protected from the expense of resolving matters that could have been uncovered by a current survey.

In today's environment of instant gratification and expedited closure of deals, it is becoming less and less commonplace for a purchaser/homebuyer to be informed about the benefits a current survey can provide. In fact, many times they are led away from having a survey performed by the "logic" that doing so would slow down the closing process. This does not have to be so.

The primary reason that having a current survey performed can slow down the closing process is that it is not ordered from the surveyor until closure of the deal is assured. At this point, the incentive is to close immediately, thus leaving the implication that having a survey performed is impractical. However, if the purchaser/homebuyer is in control of deciding whether or not a current survey is desired, it can be ordered early enough so as not to negatively affect the closing date.

The key is that purchasers/homebuyers must be informed of the benefits a current survey can provide, and of the fact that the purchase of title insurance may not fully protect them. This notification must take place when the potential purchaser/homebuyer first contacts the realtor, or applies for a loan. Using this scenario, the purchaser/homebuyer can decide whether having a current survey is good "insurance" against matters that otherwise are not likely to surface before closing.

There is a school of thought that current surveys are not necessary for the real estate closing process. That concept is based on the aforementioned perception that surveys slow down closing, and the argument that there is no evidence that the incidence of problems created due to the absence of a current survey is commonplace. This argument is supported by the statistics related to title claims payments. An article in the Wall Street Journal in 2003 revealed that only \$0.47 of every \$10.00 paid in title insurance premiums is paid out for claims. While this may be true, the raw statistics ignore the fact that many of the problems related to "matters of survey" are not covered by the title insurance policy, thus are not likely to be considered in developing the statistics. It is the purchaser/homebuyer that is left to pay the cost of resolving the problems.

The many letter to advise columnists, anecdotal accounts, and outright "horror stories" of incidents where the purchaser/homebuyer has been left to resolve and pay for discrepancies demonstrate the need for a better informed consumer of real estate with regard to "matters of survey".

Representative of the American Congress on Surveying and Mapping (ACSM) have discussed this issue with the Department of Housing and Urban Development (HUD) during its recent hearings on the Real Estate Settlement Procedures Act. Interestingly, several HUD representative related anecdotal accounts of their own related to "matters of survey" for property they, or relatives and acquaintances, have purchased.

ACSM has provided to HUD a form explaining to the purchaser/homebuyer the benefits of a current survey in the settlement process.

...continued Page 21

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NEW REGISTERED LAND SURVEYORS IN INDIANA

The Indiana State Board of Registration for Land Surveyors held the certificate presentation for new professional land surveyors on Friday, May 13, 2005. The ceremonies were held at 1:30 p.m. at the Indiana Supreme Court Chambers, 3rd Floor State House, Room 317, Indianapolis. The following land surveyors were awarded certificates. Not all were present.

<u>Name</u>	<u>City</u>	<u>LS #</u>
Matther Badger	Evansville	20500011
Dustin Ballard	Indianapolis	20500004
Jason Brown	Fort Wayne	20500013
Kelly Ferguson	Odon	20500002
James Foster	Indianapolis	20500003
Don Hanft	Bloomington	20500015
Rodney Kelly	Tipton	20500006
Brady Kuhn	Indianapolis	20500007
Tracy McGill	Denver, CO	20500009
Jason Miller	Marion	20500005
Bryan Moll	Indianapolis	20500012
Darren Norrington	Lafayette	20500008
Steven Parsons	Constantine, MI	20500016
Michael Rozycki	Walkerton	20500010
Chad Salzbrenner	New Haven	20400060

"EVERYTHING IS SOMEWHERE"

Press Release:

Boundary Line Books is pleased to announce the publication of Angus W. Stocking's first collection of essays, *Everything is Somewhere: essays for land surveyors*.

Mr. Stocking has practiced land surveying since 1990, and has worked in 13 states. Along the way he has contributed essays to California Surveyor and Professional Surveyor, and is a regular columnist for the American Surveyor.

Everything is Somewhere collects 16 of Mr. Stocking's essays, including all of his published work and several unpublished pieces. These are not about surveying, they are for surveyors - - engaging writing on subjects sure to appeal to the independent, spatially talented intellects that are attracted to land surveying. Any surveyor who tries them will see why the editors at *The American Surveyor* says, "This is a book you'll want to read again and again."

Everything is Somewhere is available at berntsen.com and sample chapters may be read at the author's website, everythingissomewhere.com. All copies sold through Berntsen are signed, and copies ordered through the author's site will be inscribed as requested.

Closing The Deal

...continued from Page 16

The form is similar in size to the one currently provided to loan applicants with regard to termite inspection. ACSM has also provided to HUD language that can easily be included in the homebuyer's manual that is given to those who apply for loans regulated by HUD. HUD representative have expressed a willingness to seriously consider the inclusion of this information in homebuyer packages. The ACSM documents also provide information about the difference between the benefits provide by what is commonly known as a "mortgage inspection survey" and those provided by a full survey of property.

ACSM representatives have expressed appreciation for the notion of expediting the settlement process; however, they have also stated that expediency should not come at the expense of protection of consumers and the public welfare. After all, protection of the public welfare is among the duties assigned to surveyors when they are granted a license to perform surveys for their fellow citizens.

For information regarding the positions taken by ACSM on the issue of "closing the deal", contact Executive Director Curt Sumner, LS at csumner@acsm.net

NCEES Calculator Policy

At its 2004 Annual Meeting, NCEES voted to revise the examination policy concerning materials permitted in the examination room so that only models of calculators specified by NCEES are allowed.

NCEES policy prohibits calculators that communicate or that may compromise the security of the examination. Beginning with the April 2004 exam administration, NCEES began strictly enforcing this policy by banning calculators with text-editing and communication abilities. Of great concern is the ability to type in text, store it in memory, and then communicate via wireless or cable connections to another calculator, personal computer, printer, or other electronic device. NCEES published a list of banned calculators for the April 2004 examinations as well as a list of some of the calculators that were acceptable.

NCEES is now extending the ban to all calculators not on the [approved list](#) to reduce confusion among candidates and proctors. Each year, an NCEES subcommittee on calculators will review and revise the approved calculator list. It will provide an updated list by November 15.

NCEES has listed the calculators that will be allowed for examinations in 2005. According to the November news release, only the following calculators will be allowed for the April and October 2005 exams:

Hewlett Packard - HP33

Hewlett Packard - HP9

Casio- 115 MS and 115 MS Plus

Texas Instruments - TI 30X II S and TI 30 X IIB

Texas Instruments - TI 36X

"NCEES is now extending the ban to all calculators not on the above list to reduce confusion among candidates and proctors. Each year, an NCEES subcommittee on calculators will review and revise the approved calculator list. It will provide an updated list by November 15."

For information about the Calculator Policy check the NCEES website, www.ncees.org, or call NCEES at 864-654-6824.

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Rules for Land Surveyors

by W.G. Robillard, Atlanta, Georgia

Rule One

To avoid liability the surveyor should err on the side of safety. Always try to do a little more than an ordinarily prudent surveyor would do under the circumstances.

Rule Two

It is the land surveyor's duty to correctly locate and mark property lines as described in a deed furnished to him and to relate lines of possession to title lines. The surveyor cannot and does not assume the responsibility of proving that a given deed is correct and legal; that is a function of an attorney or court of law.

Rule Three

Search and search well! If it is there, find it. If it isn't, be able to say with certainty that it isn't there.

Rule Four

Liability results when the surveyor fails to do correctly the thing that he purports to do.

Rule Five

The surveyor is a fact finder. He goes upon the land armed with all the documentary evidence that is available and searches for markers, monuments and other facts. After all the evidence, facts, measurements and observations are assembled, the surveyor must come to a conclusion from the facts.

Rule Six

Never set a corner in disagreement with improvements without first satisfying yourself that you are not only right, but that your "right" will prevail in court if necessary.

Rule Seven

Discovery of a County Surveyor's monument does not relieve the surveyor of the obligation to look further. The County monument is only proof in the event that superior evidence cannot be discovered. Therefore, the surveyor must seek all other evidence and use the official monuments as though they were the last resort.

Rule Eight

The conclusions that flow from the evidence may produce proof. Evidence in itself is not proof of a fact; a conclusion or inference that may be drawn from evidence is the proof. In coming to conclusions from evidence, the most important need of the surveyor is the ability to recognize and know what is the best evidence.

Rule Nine

The best evidence of a monument's original position is a continuous chain of history by acceptable records, usually written and dating back to the time of the original monumentation. A found monument without a background history is of little value as evidence; and, a set monument is worthless if unidentifiable in the future.

Rule Ten

In civil cases having to do with land surveying and real property, it is only necessary to prove a "preponderance of evidence"; it is not necessary to prove "beyond a reasonable doubt" as in criminal cases.

Rule Eleven

It is of the utmost importance that a surveyor seek and find all of the evidence at the time of the initial survey, and this must be done irrespective of costs, the major cause of disagreement.

Rule Twelve

A surveyor may be able to compute, make drawings, use instruments and stake engineering projects, but, until he understands property line law and the law of evidence, he is not qualified to make property locations.

Reprinted from the Florida Surveyor

A GOOD PARTY CHIEF

1. **Make every effort** to be at work every day and arrive at work soon enough to get your materials and people ready to leave the office for field work by work time.
2. **Be always a little suspicious** of using the controls set by others. Always check them out. Always have a way to check your work to make sure it is correct.
3. **Try to put yourself** in the person's place that is going to use the notes. Can your notes be plotted? Is the sketch properly oriented? Have you gotten enough information such as roads (names of roads), houses, poles, trees, etc.? If you are not sure about picking up an item, go ahead and get it anyway. It is better to have too much information than not enough.
4. **Always remember that the company** you work for must make a profit to survive. For you to survive, the company has to make a profit. The type, kind, and amount of services you perform determine your status with the company.
5. **Do everything you can** to improve yourself. Take the attitude that someone is just about to pass you on the road-to-success.
6. **Do not take for granted** that others have gotten permission for you to survey on private property. In each case, assume that it has not been done, contact the owner, state your business, and ask for permission to survey.
7. **After you have gotten permission** to survey, be extremely careful about cutting line in the owner's backyard. It will be more noticeable in the summer than in the winter.
8. **Do not be afraid to tackle a job** that is tough or requires more experience than you have. If you are not sure how to do the job or what is wanted, ask questions. Remember that others have been in the same position you are in, and they got the job done by getting a few pointers along the way.
9. **If you will, take the attitude** of always giving more than 100 percent on any job. There is a great demand for dependable, aggressive, and hard workers. This type of person will always have a job, and will have very little difficulty finding one if the need arises.

Reprinted from the Ohio Surveying News. Author unknown.

Unspoken Words - The Conversation with the Client

by Knud Hermanson, PLS, PE, PhD, JD

The following comments have been printed in numerous land surveying newsletters including the *Ohio Surveying News*, *Mississippi Surveyors*, *Bearings Newsletters*, *the New Hampshire Newsletter*, *the Treasurer State Newsletter* and *the Oregon Surveyor*.

Over the years I've heard a lot of expressions that have a different or additional meaning on subsequent investigation. What follows is a small sample.

"Just a small lot" - Hell's half acre.

"It's pretty property; you'll enjoy surveying it" - With the gorges, rock outcrops, tall trees, lush vegetation, swift streams.

"Place is wide open" - Brush has recently been cleared and put on the boundary line.

"I know where all the corners are" - Marked them last week.

"The last surveyor didn't know what he was doing" - Surveyor refused to place the corners where I wanted them.

"I just need the one Corner set" - you can find and set the other ones later.

"I have a good description of my property" - My great grandfather personally knew all the people the deed describes as bonding my land.

"It's a good title, bought from the government by my grandfather" - Parcel was bought at a sheriff's sale.

"I know where every pin is" - Out back of the garage, but don't worry. I replaced them all with posts back when I bought the property 15 years ago.

"No one has ever moved that pipe" - I've had my dog tied to it for the past 10 years.

"That's the boundary" - Why else would they put a fence up there?

"You don't have to do a lot of work" - Just go over and tell my neighbor he's on my side of the line; then maybe he'll believe me.

"I'd sneak by my one neighbor if I were you. He's mean" - I don't want you to talk to my neighbor, he's the reason I am getting this survey.

"How much will it be?" - Will it be over \$50?

"How soon can you survey my property?" I need it by tomorrow to close. Don't express my payment as fast.

"Gee, I wonder what happened to that corner?" - After I knocked it over with my plow.

"I just want what is mine and I don't want what is not mine" - I know what land is mine and you'd better mark it that way if you want to get paid.

"Price is not important" - I'm really mad at my neighbor and the attorney said a surveyor shouldn't cost more than \$400 tops.

"You say the deed calls for a stone? Try looking one more time tomorrow" - I'll take care of that tonight.

"That bill is a little higher than I expected" - I am not going to pay that much money.

"The corner was right over there" - Or perhaps over there, or maybe over there.

"I remember a witness tree being right here" - I cut it down myself for firewood.

"I just want the survey done for peace of mind" - I am having a terrible fight with my neighbor and I'll get a lot of peace of mind as soon as you show him where the boundary line is.

"You wouldn't mind if I helped you" - I'd like to keep my eyes on you. Since I make up one-third of your crew, my bill should be reduced by one third.

"I've got a good title" - You don't need to spend all that time in the courthouse.

"Could you give me an idea of what the survey will cost" - So I can tell another surveyor and compare prices.

"Are you the surveyor surveying the Jones place?" - Have I got a bone to pick with you.

"I wouldn't put that stake there. The kids will pull it out" - And I am going to encourage them to do so.

"Those old surveyors worked hard and were good." - They were fast and cheap.

It Only Takes a Second

by Ronald E. Koons, RoSaKo Safety

As I finish this article we are out of state involved in a fatality investigation. We are in the southeastern part of the country and our television news is concentrating on a news story about two young children who were just found in a sewage pond. It is believed they both drowned after unlocking the front door to their home while their mother was in another room. They then made a fatal escape. It only takes a second.

Over the past twelve years I have been told countless stories about how a normal task turned bad and either a serious injury or fatality occurred. A framer who had been in carpentry for over 20 years was performing a routine task that he had completed hundreds if not thousands of times. For some reason that no one understands he just lost his footing. He fell three stories to his death. It only takes a second.

An electrician is working on a 3 phase panel. He has to change some breakers while the panel is hot because the facility doesn't want to be shut down and lose production. Whatever happened there was some type of a slip and his tool came into contact with two phases at once. He was not fatally electrocuted, but received severe arc flash burns and died within 48 hours. It only takes a second.

A surveying field crew has to gain information from a manhole in a new subdivision. First one employee goes in and when he gets into trouble another employee enters. Both were found dead by emergency workers a short time later due to lack of sufficient oxygen. It only takes a second.

An employee was working in the vicinity of an excavator. The excavator was lifting a container that had fill material to bed the pipe. A hydraulic line broke and the worker was struck in the head when the bucket and entire assembly came crashing to the ground. The employee was fatally injured. It only takes a second.

A female traffic flagger had traffic stopped for a roadway project. Several cars were in line when a semi truck rear ended the last car creating a chain reaction accident that caused the first car to strike the worker. She was fatally injured. It only takes a second.

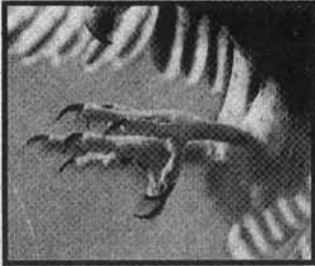
Some people might say that sometimes things just happen. While working on a fatality several years ago an Amish worker made the statement "It was God's will and we just don't understand now, but maybe someday we will." The common thread in all of the above situations is that something could have been done to prevent a person from losing their life. Maybe it wasn't evident to those involved at the time because they just weren't aware of what should be done, but I am certain the survivors in each case wish that extra precautions had been taken. In some of the accidents it may have been up to the person killed to take those precautions and in other cases it may have been another person's

responsibility. I know the owner of one of the companies involved and he is constantly questioning why he didn't do something to prevent the accident.


The first step in protecting your employees is to have rules and procedures so they have guidelines to follow (a Written Safety Program). The next step is to train, train, and train your employees so there is no doubt what they should do to protect themselves in both common and unusual situations. The third step is to constantly inspect your jobsites to make certain everyone is working safely. The fourth step is to offer discipline when needed. To round out the procedures you need to reinforce your safety efforts by having safety meetings that remind your employees about how to work safely. This is a constant work in progress and you must never let down your guard.

I really don't want to be involved in a fatality investigation for your company and I know you don't want to lose an employee that way. Remember, to do a job correctly takes a constant effort. To lose your life while working only takes a second!


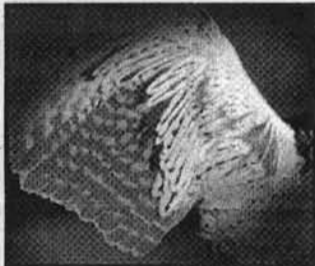
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CALENDAR

June 10, 2005

State Board of Registration for Land Surveyors, Conference
Center Room 12, Indiana Government Center, Indianapolis

June 18-25, 2005

FIG Commission & Annual Meeting & Symposium, Cadaster &
Land Management, Madison, WI www.fig.net

July 8, 2005

State Board of Registration for Land Surveyors, Conference
Center Room 12, Indiana Government Center, Indianapolis

July 23-26, 2005

ESRI Survey and GIS Summit 2005 - Bridging the Gap and
ESRI International User Conference, San Diego Convention
Center, www.esri.com/surveysummit

August 12, 2005

State Board of Registration for Land Surveyors, Conference
Center Room 12, Indiana Government Center, Indianapolis

September 30, 2005

ISPLS Fall Seminar, Topic to be announced, McCormicks Creek
State Park, Spencer, Indiana

January 18-20, 2006

54th Annual ISPLS Convention, (sponsored by Northeast
Chapter) Indianapolis Marriott East Hotel, Indianapolis, Indiana

April 21-26, 2006

ACSM Spring Conference, Caribe Royale Resort, Orlando, FL,
www.acsm.net

WELCOME NEW ISPLS MEMBERS

January 19, 2005

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Greg Buckel - Member
Jamison Cullen - Associate
Curt Candler - Member
Ken Cline - Associate
Willie Elliott - Associate
Jimmie Ellison - Associate
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Nichole Goodrich - Student
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John Haley - Associate
Scott Koch - Member
Larry Long - Member
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February 19, 2005

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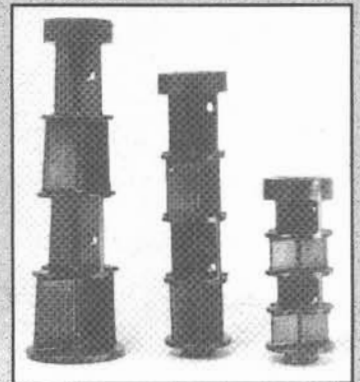
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