

HOOSIER SURVEYOR

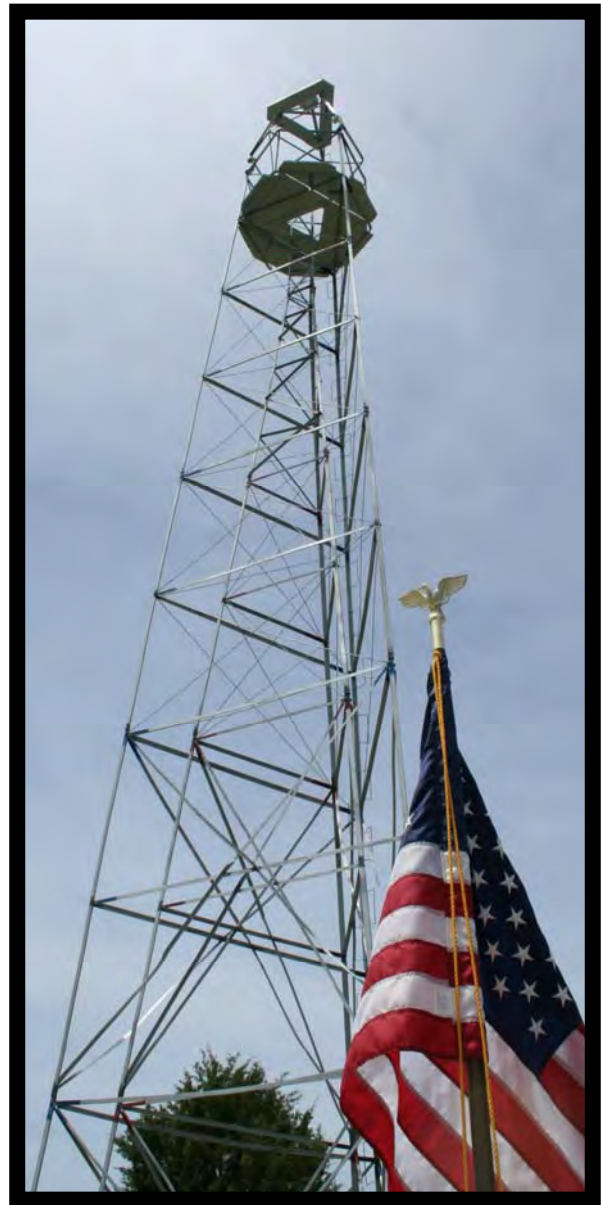
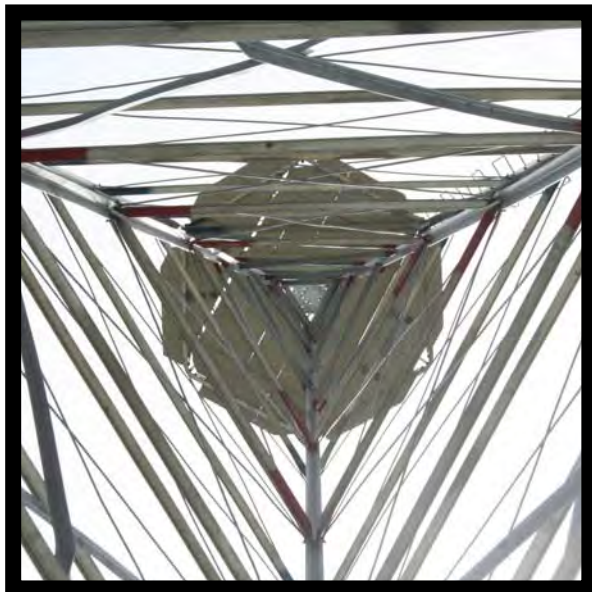
QUARTERLY PUBLICATION OF THE INDIANA SOCIETY OF PROFESSIONAL LAND SURVEYORS, INC.

AFFILIATED WITH THE NATIONAL SOCIETY OF PROFESSIONAL SURVEYORS, INC.

VOLUME 41 • NUMBER 1 • SUMMER 2014



ISPLS, INC.



Dedication of the Osgood Bilby Tower

June 14, 2014 at Osgood Trails Park - Osgood, Indiana

Photos taken by R. Jason Coyle, PS

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L to R: Don West, Carmel; Eric Banschbach, Indianapolis; Perry Cloyd, Hope; Bernie Guerrettaz, Bloomington; Chuck Coyle, Columbus; Ron Wharry, Frankfort; Dennis Grumpp, New Palestine; Bryan Catlin, Clayton; and Rich Hudson, Valparaiso. Not pictured: Todd Bauer, Leo; Sean Suttles, Chandler; and Don Williams, Crown Point. Photo provided by Henry Aldridge, Photographic Impressions

2014 COMMITTEES AND COMMITTEE CHAIRS

PROF. DEVELOPMENT
 Administrator:
 Chuck Coyle, Jr.

EDUCATION
 Chair: Brad Cramer

SCHOLARSHIPS
 Chair: Luke A. Jahn

GOVERNMENT AFFAIRS
 Administrator:
 Bernie Guerrettaz

**BOARD OF
 REGISTRATION LIAISON**
 Robert Jason Coyle

COUNTY SURVEYORS
 Liaison: Position Open

NSPS GOVERNOR/DIRECTOR
 Governor: Tony Gregory
 Alternate: Don Bengel

**GPS-GIS
 MONUMENTATION**
 Co-Chair: Eric Banschbach
 Co-Chair: Matt Healy

LEGISLATION
 Chair: Position Open

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 Administrator:
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 Chair: Dennis Grumpp

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MEMBERSHIP
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**PUBLIC INFORMATION
 & MARKETING**
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TRIG STAR
 State Coordinator:
 Tony Gregory

HOOSIER SURVEYOR

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EDITOR'S NOTES

Deadlines for copy for various planned issues of the Hoosier Surveyor are as follows:

- Winter - February 1
- Spring - May 1
- Summer - August 1
- Fall - November 1.

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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PRESIDENT'S MESSAGE

Don West, PS, 2014 ISPLS President



Change. It's a topic we have heard over and over – especially during the past few years. And regardless the subject for the alternative solution or direction, it nevertheless affects all of us. It also seems to be a subject to avoid – or at least delay (especially for me, and I have a suspicion that I'm not alone in leaning that direction) – simply because we just don't like it. In reality however, it is necessary in order to experience improvement, productivity, longevity and growth.

Consider the changes our profession has witnessed over the past couple of decades. Simply viewing the covers (or comparing recent ones with older ones) of our professional publications supports that evidence. Twenty years ago those issues were dominated with stories of the latest and greatest in total stations, which we were told were soon to be challenged with GPS, as the latter was becoming more affordable. Perhaps the adaptability to such change is a reason many of us seem to be witnessing a return to more profitable times. However, I believe a more likely reason we enjoy the benefits of the changes is the time given by others in order to provide the access – or at least the direction. While rummaging through a few items the other day (intending to organize, but just relocating them more or less) I ran across a publication of the Hoosier Surveyor from spring 1994 (and no, I am not a hoarder – I prefer to call it an appreciation for history). That particular publication also supported the aforementioned changes to technology, but what really caught my attention was the individuals mentioned – either by written article or achievement.

Chris Marbach, serving as ISPLS President that year, was bringing all up to date on the activities of the organization. Perry Cloyd had written an article on the Indiana HARN, providing the potential of the new platform, without mentioning the frustration that we (Indiana) were a little late in arriving to the game. And Bernie Guerrettaz was recognized with top honors by Purdue University as his student career closed with distinction. Obviously, several other members were mentioned in the publication, all of who have served – as most continue as credible examples to the profession of Surveying. What I found interesting is the fact that these individuals remain engaged in the welfare of the profession. Chris Marbach (former ISPLS President) now serves on the Indiana-Michigan State Line Commission and was instrumental in seeing that it moved through the legislatures in both states. Perry Cloyd (former ISPLS President and current member of the ISPLS Board of Directors) also serves on the Foundation BOD and is involved in legislative agendas such as the Indiana Dig Law. Bernie Guerrettaz currently serves as ISPLS President-Elect and will be handed the gavel as he accepts the office of President at the 2015 Convention. So while we discuss the effects of change – we can also see the need of our personal participation as well. I know that each of these individuals would appreciate the interest and willingness of others (especially newer members) to join them in the pursuit to serve the society.

As we speak of new (or younger) members, I am reminded of the request by the Young Professionals Committee for thoughts and ideas from the Board of Directors and especially the membership on help for the direction of the committee. They have plenty of items to consider, but would appreciate some help in condensing those into a less than overwhelming amount. From topics such as “education on the rapidly growing surveying tools” to the use of social media (i.e., Facebook, Twitter, LinkedIn) and volunteering efforts, and even the expandability of the ISPLS Website – they would appreciate your involvement. Frank Walsko serves as chair of this committee and would certainly welcome your input. Contact Frank at traverselandsurveying@hotmail.com to share your thoughts and ideas.

I'm sure all of us can agree that Jason (ISPLS Executive Director) is remaining steadfast in keeping all of us informed of the Society's activities, whether that be regarding the ISPLS Board or Chapter events, Foundation concerns, Board of Registration news, or legislative issues. There is a great deal of work going on in regards to the aforementioned items as well as others – requiring a great deal of time and preparation. And although progress is being made, much more would be observed with additional help. Be sure to take a few minutes to bring yourself up to date by reading the ISPLS News – and then upon discovery of the reminder to renew your membership, be sure to do so – and don't forget to update your profile. This is just another membership benefit, one that provides access to contact information of your fellow members.

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As I'm about to wrap up this message, the Northwest Chapter is underway with a public service project (ISPLS Northwest Chapter Highway Cleanup) along U.S. 30 from County Line to CR 500 West. What a great public relations event! If your chapter would like to host similar events – and need a few pointers on how to start – contact Rich Hudson or Frank Walsko from the Northwest Chapter with questions. By the way, the Legislative Committee is underway as well. Discussions have already taken place with our lobbyist, Michael O'Brien, on issues regarding the Statute of Repose and Indiana's Dig Law and how ISPLS will approach these matters in this session.

Remember, the ISPLS Website contains information regarding Chapter Meetings, ISPLS News, the Hoosier Surveyor (including past issues), and numerous other notices and reminders. Soon to take place will be a seminar this fall sponsored by the Hoosier Hills Chapter at Spring Mill State Park – October 24, 2014. Gary Kent will be presenting two 3-hour seminars. One will be a Mock Registration Board Hearing and the other will cover Surveyor Reports. Both are Mandatory CEH's and promise to be well attended, so register early. When we consider change, what better place than Spring Mill State Park in October!

Thanks to all of you for your time, effort and participation in ISPLS and hope to see you this fall!

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ISPLS BOARD OF DIRECTORS MEETING HIGHLIGHTS

By Robert “Jason” Coyle, PS, Executive Director

May 17, 2014

The ISPLS Board of Directors met on Saturday, May 17, 2014 at ISPLS Headquarters, Indianapolis, Indiana. President Don West called the meeting to order at 9:01 am EDT. All board members were in attendance with Don Williams attending the meeting via conference call. Jason Coyle, Executive Director of ISPLS, was also in attendance.

President West briefly reviewed the ISPLS Mission and Vision Statement and noted the “Rules of Order” for the meeting. There were no amendments to the agenda. A motion was made by Todd Bauer and seconded by Ron Wharry to accept the agenda as presented. The motion passed by a voice vote.

The minutes from the April 12, 2014 meeting were reviewed and accepted. A motion was made by Perry Cloyd and seconded by Todd Bauer to accept the Board of Directors’ meeting minutes as amended. The motion passed by a voice vote.

The Treasurer’s Reports were reviewed and narrated by Dennis Grumpp. Financial reports ending April 30, 2014 were presented for board review. Assets totaled \$249,015.95 as of April 30, 2014. Dennis also covered the income and expense report, investment report, budget, and the profit and loss report. A motion to accept the Financial Reports was made by Perry Cloyd and seconded by Ron Wharry. The motion passed by a voice vote.

Tony Gregory, Indiana’s NSPS Director, joined the meeting via conference call to give a report on the NSPS Spring Meetings. Tony Gregory presented a written report along with the following handouts: NSPS Government Affairs Update dated April 2014; the case for modifying “Engineering Surveys” in the current Model Law and Model Rules language; and FIG Young Surveyors North American Meeting note.

The Board heard and reviewed the Executive Director’s report. Executive Director Coyle presented a written report and discussed highlights with the board. There was Board questions and discussion on several items. The following information was discussed in addition to the report: notice about the Osgood Bilby Tower Dedication on June 14, 2014; notice about a seminar hosted by the County Surveyors Association and presented by Gary Kent on Ethics at Strike Force Lanes in Greenfield, Indiana; announcement of the ILTA 2014 Annual Convention to be held September 14, 15 and 16, 2014 in Indianapolis; notice of the Indiana-Michigan Boundary Line Commission’s Initial Meeting on May 21, 2014 in South Bend, Indiana; Texas Society of Professional Surveyors Public Awareness Commercial Offering; and a PLLS records / IndianaMap Demo.

Doug Herendeen, ISPLS Convention Coordinator, was not able to be in attendance. Therefore, Jason Coyle gave a report concerning the Group Sales Agreement with the Indianapolis Marriott East and the proposed budget for the 2015 convention.

ISPLS Committee reports: Executive Director Coyle gave a verbal report concerning the Publication and Media Committee. Executive Director Coyle presented Rich Hudson with a certificate of Life Membership. Tony Gregory gave a verbal report concerning Trig-Star Committee. He mentioned that the State Winners would be reported in the next two weeks. The Board of Registration Liaison, Jason Coyle, reported that Crystal Heard had given her resignation as Board Director. The Professional Licensing Agency will be searching for a replacement. The next Board of Registration meeting is scheduled for Friday, July 25, 2014.

Executive Director Coyle reported that the Education Committee had approved another one-hour seminar by Tom Peak. Executive Director Coyle included a written report prepared by Luke Jahn, Scholarship Committee Chair. The Peggy Archer Scholarship (\$3,300) was awarded to Clinton White. The McIntire Scholarship (\$5,000) was awarded to Easton French. The committee made a recommendation to the IPLSF to award Brian Murray and Andrew Wilkins each a \$750 scholarship. Rich Hudson, By-Laws Committee Chair, noted that electronic voting and the definition of “In Good Standing” will be reviewed by the committee – they are gathering additional information at this time. A written report was prepared by Frank Walsko, Young Professionals Committee Chair. Don Williams also commented on the Young Professionals Committee. Don West, Chair for the Facilities Committee, noted that the committee met on April 29, 2014 at Castleton Park to look at new office space for ISPLS. The current lease ends June of 2015. There was Board discussion.

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Finance and Planning Committee Chair Dennis Grumpp presented and reviewed the proposed 2014/2015 ISPLS Budget. There was board discussion. The committee will continue to review the budget and make changes as necessary and forwarded to the Board for their review. The budget will be voted on at the June Board of Directors meeting. Grumpp noted there is a projected \$14,200 shortfall for the 2013/2014 fiscal year. A motion was made by Dennis Grumpp and seconded by Rich Hudson to withdraw \$15,000 from investments to cover expenses through June 30, 2014. There was board discussion and the motion passed with a voice vote.

Chuck Coyle, IPLS Foundation Liaison to the Board, gave a verbal report concerning the Foundation. The foundation met on May 5, 2014. Chuck Coyle noted the total assets value of the foundation is \$256,767.14. The foundation sent an offer of \$91,500 to Clayton Hogston for his "original field note project."

Those directors and members in attendance gave verbal reports concerning their chapters.

Unfinished Business: Executive Director Coyle reported on the status of the Group Exemption Letter that is to be filed with the Internal Revenue Service. He passed out copies for review and discussion. A motion was made by Todd Bauer and seconded by Bryan Catlin to approve the Group Exemption Letter as amended. The motion passed with a voice vote.

Next ISPLS Board meeting will be June 28, 2014 at 9:00 am EDT at the ISPLS Office. The meeting adjourned at 2:07 pm EDT.

June 28, 2014

The ISPLS Board of Directors met on Saturday, June 28, 2014 at ISPLS Headquarters, Indianapolis, Indiana. President Don West called the meeting to order at 9:01 am EDT. All board members were in attendance with the exception of Don Williams, Eric Banschbach, and Tony Gregory, Indiana's NSPS Director. Sean Suttles attended the meeting via conference call. Others in attendance were Jason Coyle, Executive Director of ISPLS; and Dave Croft, ISPLS Member.

President West briefly reviewed the ISPLS Mission and Vision Statement and noted the "Rules of Order" for the meeting. A motion was made by Todd Bauer and seconded by Ron Wharry to accept the agenda as adjusted. The motion passed by a voice vote.

The minutes from the May 17, 2014 meeting were reviewed and accepted. A motion was made by Perry Cloyd and seconded by Todd Bauer to accept the Board of Directors' meeting minutes as amended. The motion passed by a voice vote.

The Treasurer's Reports were reviewed and narrated by Dennis Grumpp. Financial reports ending May 31, 2014 were presented for board review. Assets totaled \$229,601.95 as of May 31, 2014. Dennis also covered the income and expense report, investment report, budget, and the profit and loss report. There was board discussion regarding the Proposed 2014/2015 Budget. A motion to accept the Financial Reports was made by Chuck Coyle and seconded by Bryan Catlin. The motion passed by a voice vote.

The Board heard and reviewed the Executive Director's report. Executive Director Coyle presented a written report and discussed highlights with the board. There was Board discussion on several items. The following information was also discussed as a part of his report: The Bilby Tower Dedication and the Indiana Commercial Board of REALTORS Conference which Jason Coyle served on a "Real Estate Transaction" panel.

ISPLS Committee reports: Executive Director Coyle reported that he and Mike Davis, Chair of the Publications and Media Committee, completed the Spring Edition of the Hoosier Surveyor and published it on the ISPLS website on June 6, 2014. Ron Wharry, Chair of the Membership Committee, presented the following recommendations / motions from the Membership Committee. A motion was made by Ron Wharry and seconded by Perry Cloyd to accept the committee's recommendation of Life Membership for Carl Barnett. The motion passed by a voice vote. Jason Coyle reported for the Trig-Star Committee that the first, second, and third place State winners all came from Highland High School. The cash awards to the students and their teacher will go in the mail the week of June 30.

The Board of Registration Liaison, Jason Coyle, mentioned that the next Board of Registration meeting will be held Friday, July 25, 2014. There has been no report from the County Surveyors Liaison, but Dave Gaston has said that he is willing to serve. Executive Director Coyle gave a legislative update concerning the statute of repose legislation, the Indiana-Michigan State Line Commission and potential changes to the dig law during his Executive Director's report.

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Rich Hudson, By-Laws Committee Chair, noted that electronic voting and the definition of "In Good Standing" will be reviewed by the committee – they are gathering additional information at this time.

Dennis Grumpp, Chair of the Finance and Planning Committee, thanked the Board of Directors for their work on the 2014/2015 budget. The committee will meet to work on the "deficit" issue for past budgets. Perry Cloyd and Todd Bauer asked to join the committee. Don West, Chair for the Facilities Committee, noted that the committee continues to conduct online searches of potential office space.

Chuck Coyle, IPLS Foundation Liaison, stated the foundation met on June 9, 2014 at ISPLS Headquarters. Clayton Hogston was in attendance to discuss the "original survey notes and plats" project. Chuck Coyle noted the total assets value of the foundation is \$262,063.98. Scholarships were awarded to Brian Murray and Andrew Wilkins from Purdue University Calumet. There was a discussion regarding the original survey notes and plats project and possible funding sources/activities.

Those directors and members in attendance gave verbal reports concern their chapters.

Unfinished Business: Executive Director Coyle reported that the Group Exemption Letter with the Internal Revenue Service has been signed and will be mailed out within the week.

Dennis Grumpp, ISPLS Treasurer, presented the 2014/2015 Budget for review and discussion. A motion was made by Dennis Grumpp and seconded by Ron Wharry to approve the budget as presented. There was considerable discussion regarding the "deficit" issue from past years and the fact that the society has not worked with a balanced budget. It was agreed that the Finance and Planning Committee will immediately start working on the "deficit issue" so it can be addressed in the 2015/2016 budget prior to May of 2015. Following discussion, the motion passed by a voice vote with one "nay" vote by Perry Cloyd.

The meeting closed with a Board discussion concerning benefits to the membership, leadership guiding the society, and a look at the next 5 to 10 years as to where is the Profession going.

Next ISPLS Board meeting will be August 9, 2014 at 9:00 am EDT at the ISPLS Office. The meeting adjourned at 2:02 pm EDT.

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<http://www.berntsen.com/>

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Ph: 800-533-2280
<http://www.seilerinst.com/>

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Milwaukee, WI 53223
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Tucson, AZ 85726-6356
Ph: 520-622-6011
<http://www.surv-kap.com/>



It Pays to Belong

How NSPS benefits members/ the profession:

Advocacy Program

- Political Action Committee (PAC)
- US Congress
- Federal Agencies
- Assistance on state specific matters (if requested)
- Other geospatial organizations
 - International Federation of Surveyors (FIG)
 - Coalition of Geospatial Organizations (COGO)

Education

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

Licensing/Standards

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

Outreach Opportunities

- Trig-Star
- Boys Scouts Surveying Merit Badge
- National Surveyors Week

Certification Programs

- Reduced rates for Certified Survey Technician Program
- Hydrographic Certification opportunities

Media

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<http://multibriefs.com/optin.php?nsp>

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Insurance

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Other Insurance programs available

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301-951-9746
http://www.schinnerer.com/product_info/design_firms/land-surv.html

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BOARD OF REGISTRATION FOR LAND SURVEYORS

MEETING HIGHLIGHTS - JULY 25, 2014

By Robert "Jason" Coyle, PS, Executive Director

The Board of Registration for Professional Surveyors (Board) met Friday, July 25, 2014, at 8:00 am EDT. The meeting was held at Indiana Government Center South, 402 W. Washington Street, Room W064, Indianapolis, Indiana. The Board reviewed licensure applications from 8:00 am until 8:51 am then the meeting was officially called to order. All Board members were in attendance with the exception of Richard Hudson and Christine Arnold. Since Christine Arnold was absent, Ross Holloway chaired the meeting. Ross took a moment to introduce the new Board Director, Amy Hall, and Assistant Director, Keri Reed. Shortly thereafter, a motion was made by Mike DeBoy and seconded by John Stephens to adopt the agenda. The motion passed with a voice vote. Furthermore, a motion was made by Doug Lechner and seconded by Gary Kent to adopt the minutes from the April 4, 2014 meeting. The motion passed with a voice vote with John Stephens abstaining.

The Board heard a report from Natalie Stidd, Deputy Attorney General. Natalie Stidd supplied the Board with a report of Consumer Complaints and Litigation Cases. Below is a summation of that report:

Consumer Complaints			
Year	Consumer Complaints at Beginning of Year	Consumer Complaints Opened During Year	Consumer Complaints Closed During Year
2011	33	4	15
2012	22	13	25
2013	10	16	16
2014	10	7	4
Complaints Currently Open as of July 24, 2014			13
Average Age of Open Complaints: 6.18 months			
Date of Oldest Open Complaints: July 23, 2013			

Litigation Cases			
Year	Litigation Cases Open at Beginning of Year	Litigation Files Opened During Year	Litigation Files Closed During Year
2011	8	5	3
2012	10	2	4
2013	8	1	4
2014	5	1	4
Cases Currently Open as of July 24, 2014			2
Average Age of Open Cases: 7.3 months			

Action Taken	2011	2012	2013	2014
Admin Complaints Filed	0	5	1	0
Cease & Desist Orders Filed	0	1	0	0
Summary Suspensions Filed	0	0	0	0
Civil Litigation	0	0	0	0
Judicial Review	0	1	0	0

(Continued on page 11)

(Continued from page 10)

At 8:57 am EDT, the Board continued with the Personal Appearance of Steven Williams. Mr. Williams stated he had completed one large estate survey since the last meeting. Since the Board had not had a chance to review the survey prior to the meeting, they took a few minutes to review it and asked a few questions about the survey to Mr. Williams. The Board expressed a concern over the appearance of the survey and the size of the text. The Board also discussed the new land descriptions prepared by Mr. Williams. They expressed concern about including the words "found" and "set" when describing the monumentation. They suggested to not include these two words unless they also include a date to which they were found or set. The Board also discussed how Mr. Williams should be noting his uncertainties within his surveyor's reports. The Board asked Mr. Williams to continue with the personal appearance as long as he is completing surveys. If Mr. Williams performs no survey prior to the next meeting, then he can simply submit a note stating such and thus does not need to appear.

At 9:18 am EDT, the Board held an Administrative Hearing in the Matter of Registration for William Steele, Cause No.: SBRPS 13-04. The hearing was in regards to an Order to Show Cause. The State of Indiana was represented by Deputy Attorney General, Natalie Stidd. Mr. William Steele was not in attendance for the hearing. The Deputy Attorney General, Natalie Stidd, requested that the Board issue a notice of proposed default to Mr. Steele. Upon the closing of the hearing and Board discussion, a motion was made by Gary Kent and seconded by John Stephens to issue a Notice of Proposed Default to Mr. Steele. The motion passed with a voice vote. There was additional discussion amongst the Board members concerning Mr. Steele's license renewal.

(A note from the author: Documents pertaining to license litigation can be found at the following web address: [http://www.in.gov/ai/appfiles/pla-litigation/.](http://www.in.gov/ai/appfiles/pla-litigation/))

The Board continued with a Proposed Settlement / Dismissal in the Matter of the Application for Robert Hood at 9:40 am EDT. The Board had issued a Proposed Dismissal at their last meeting. Having had no response from Mr. Hood, a motion was made to dismiss the appeal. The motion passed with a voice vote.

The Board continued with Probationary Reports for J. Bernard Feeney, Michael Sadlon and Ronald Morrison. There was substantially nothing to report concerning these individuals since they had not prepared any surveys.

The Board discussed the applications that were reviewed and reported as to whether they were approved or denied.

The Board then turned their attention to the discussion items on the agenda. The Board had a discussion that was led by Gary Kent concerning the reference forms that accompany an application for registration as a Professional Surveyor. Gary noted that the current reference form is difficult to complete by most capable individuals. Gary and the Professional Licensing Agency staff worked together to restructure and reword the form for better clarity for those completing the form.

Gary Kent also led a discussion amongst the Board concern a "Rule Change" pertaining to the twenty-seven (27) semester credit hours in college level surveying courses. The change would not require any additional credits, but would rather redefine what topics would need to be included in the coursework. The proposed draft language included "Control surveying including GPS" and "Geographic information systems (GIS)." There was also a discussion about include hydrology.

The meeting adjourned at 10:44 am EDT. The next scheduled meeting is Friday, October 3, 2014 at 8:00 am EDT at Indiana Government Center South, 402 W. Washington Street, Room CC1, Indianapolis, Indiana 46204.

TRIG-STAR PROGRAM - 2014

Report from Tony Gregory, PS, NSPS Trig-Star Coordinator - Indiana

The Trig-Star program in Indiana in 2014 included the test being given at a total of 20 schools to 543 students. These numbers are considerably lower than past years, and the harsh winter weather had much to do with these decreases. Several schools that regularly participate indicated that they could not participate due to the number of lost class days. Chapter participation included the Wabash Valley Chapter (7 schools and 200 students), the Northwest Chapter (6 schools and 220 students), the Southwest Chapter (5 schools and 80 students), and the St. Joseph Chapter (2 schools and 43 students).

Local awards from ISPLS chapters to individual school winners totaled approximately \$1,350 in cash and gift cards. Nearly 15 land surveyors and technicians were involved in administering the test throughout the state.

For the first time, all three state winners came from the same high school, that being Highland High School in Highland, Indiana (Northwest Chapter). The first place winner in the state was Robert Ross who scored 94 points out of 100 points in 50 minutes 13 seconds. Robert received a first-place cash award of \$500 from ISPLS. The test was sponsored by Tony Gregory (Northwest Chapter). As the state winner, Robert participated in the National Test, the second testing phase of the program.

The second place winner was Blake Oliver, who scored 94 points out of 100 points in 50 minutes 43 seconds. The third place winner was Caitlin Scoville, who scored 94 points out of 100 points in 53 minutes 59 seconds. ISPLS awarded Blake a second-place cash award of \$300, and Caitlin a third-place cash award of \$150.

Mr. Jim Hus was the math teacher for all three state winners. ISPLS awarded Mr. Hus first-place, second-place, and third-place cash awards in the amounts of \$300, \$200, and \$100, respectively.

It is hoped that the Trig-Star program in Indiana will rebound in 2015. The long-standing goal is to have active participation by all ISPLS chapters in administering the test. Anyone interested in information on how to run a Trig-Star test can contact Tony Gregory at gregorylandsurveying@comcast.net.



Trig-Star winners for the State of Indiana, from left to right, Mr. Jim Hus (teacher), Caitlin Scoville (third place winner), Robert Ross (first place winner), and Blake Oliver (second place winner). Photo provided by Tony Gregory, PS.

INDIANA-MICHIGAN STATE LINE COMMISSION - MEETING HIGHLIGHTS

By Mike Davis

Minutes provided by Office of Land Survey and Remonumentation,
Department of Licensing and Regulatory Affairs, State of Michigan

The Indiana-Michigan Boundary Line Commission met Tuesday, June 10, at approximately 10:30 a.m. The meeting was held in the County Commissioners Meeting Room on the seventh floor of the County City Building, 227 W. Jefferson Blvd., South Bend, Ind. Commission members present were John McNamara, chairman, Indiana; David Mostrom, vice-chairman, Michigan; Brad Cramer, Anthony Hendricks, Rex Pranger and Michael Ruff, Indiana; and John Kamer and Chris Marbach, Michigan. Those not present were Michael Lodzinski and Edward Reed, Michigan. A motion was made by John Kamer and seconded by Michael Ruff to approve the meeting agenda, and it carried unanimously. Chris Marbach made a motion to approve minutes of the May 21 meeting, and the motion carried unanimously.

In a discussion of the draft request for qualification and proposals, Chris Beland, director of the State of Michigan's Office of Land Survey and Remonumentation, said he would draft amendments to the request for proposals and distribute the revisions before the July 8 meeting for final review and approval. A discussion followed concerning communication about the proposal outside of the group of commissioners, and Beland said no questions should be answered outside of the commission's meetings before the contract is done. He said individuals' inquiries can be referred to him so there is no conflict or perceived favoritism.

Chairman John McNamara adjourned the meeting at 12:40 p.m.

(Meetings of the Indiana-Michigan Boundary Line Commission are scheduled at 10:30 a.m. on the second Tuesday of the month in the County Commissioners Meeting Room on the seventh floor of the County City Building, 227 W. Jefferson Blvd., South Bend. Dates and notices of cancellations for future meetings are listed on the commission's home page at http://www.michigan.gov/lara/0,4601,7-154-35299_10575_45904_67798-324099--,00.html.)



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INDIANA PROFESSIONAL LAND SURVEYORS FOUNDATION, INC.

Report to the ISPLS Membership - August 22, 2014



The following is a recap of activities by the IPLS Foundation since last reporting:

- I. The Board is continuing to look at options for the development of a Foundation logo for use on correspondences and marketing. If you have any design suggestions, please forward them to the board.
- II. The Board completed actions to provide the necessary Festival Licensing for the 2015 convention activities. Discussions continue on options for raffle prizes.
- III. The Board discussed the apparent need/desire for creating additional NGS EDM1 Calibrated Baselines in other areas of the state for use by the surveying community. Currently, only one has been available located on the north side of the state, with only one other currently in development by the Southwest Chapter located in Vanderburgh County. The Foundation will encourage grant request submittals related to this effort.
- IV. The Board is currently pursuing opportunities with other non-profit foundations for collaborative fund raising and financial partnering. The organization "Wish for Our Heroes", a national 501(c)3 assisting our active duty and veterans, has a strong local presence and is one such foundation being considered.
- V. The Board has revisited the development of a Memorandum of Understanding between the Foundation and ISPLS Chapters related to providing the Chapters an opportunity to create endowments for the purposes of future scholarship awards. The progress had previously been tabled until all Chapters complied with IRS corporate requirements. The Board is currently trying to determine legal and accounting requirements prior to finalizing the MOU document for presentation to any interested Chapter.
- VI. As part of the state Height Modernization project, a potential opportunity was presented to the Foundation to be involved in financing activities to commemorate one of our historic surveyors, Abraham Lincoln, with the proposed construction of a "reset" monument located on a parcel in the Lincoln Boyhood National Memorial Park in Spencer County. Progress is awaiting final approval from the National Park Service.
- VII. Discussions continued regarding a grant request submitted by Clayton Hogston for the digitizing of the Federal set of archived Indiana PLSS Notes and Plats. Mr. Hogston responded to the Board's counter-offer of his original submittal to provide the requested information at a total cost of \$115,700. In order to assist the board in making a final decision to his counter-offer, the board commissioned a recent online survey to get a better feel from the overall membership on its support of this project, both in principle as well as financial. Unfortunately, based on the overall responses to the survey questions, together with the additional comments provided, the results gave the Board the impression that the membership did not wish to financially support the project, even though there was support of the project in principle.

Based on that information, the Board made the decision to not fund the project as submitted and informed Mr. Hogston of that determination. This was a difficult decision for the Board, as each member still feels this project has considerable merit. However, we just did not feel, based on the survey results, that the membership was fully on board with making the necessary commitment of marketing, fundraising, and overall costs.

As a result of the lengthy discussions related to this project, the Board has recognized that there appears to be a need for education related to the availability and use of the various sets of Notes and Plats of the PLSS. The Foundation plans to pursue opportunities to educate the membership and provide other forms of assistance to ensure the extensive work completed by Mr. Hogston and his commitment to this project has not been in vain.

(Continued on page 15)

(Continued from page 14)

VIII. The Board currently has no active grant requests for consideration. I would encourage any of our membership with worthwhile ideas that would promote the growth and development of the Surveying Profession in the State of Indiana to put your idea to paper and submit a request. The foundation is there to assist by providing scholarships, grants and/or financial partnering. Grant Application Forms are available upon request.

And remember, members or anyone for that matter can make tax-deductible contribution to the foundation at any time. Contributions can be made online through the ISPLS website with Visa, MasterCard, or Discover debit/credit card. Additionally, contributions can be made by check and sent directly to the foundation.

We would also welcome ideas for fundraising ideas and financial partnering opportunities. Feel free to contact any of the Board members for questions or additional information.

The next scheduled meeting of the Foundation is October 6.

Respectfully submitted,
Eric Banschbach, Board President

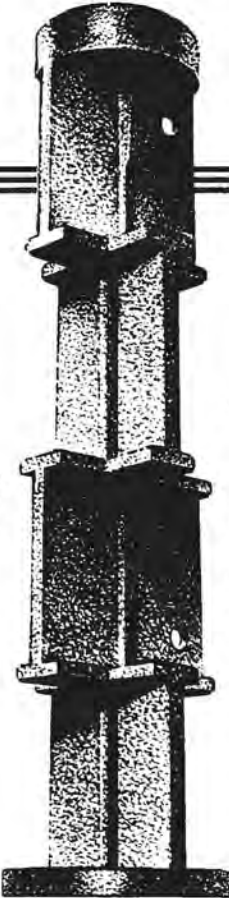
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MOCK REGISTRATION BOARD HEARING – STATE OF INDIANA V. BENSON AND SURVEYOR’S REPORTS – CONCEPTS AND APPLICATIONS

Presented by: Gary R. Kent, PS

Two 3-Hour Seminars sponsored by The Hoosier Hills Chapter of ISPLS, Inc.

October 24, 2014 at Spring Mill State Park, Mitchell, Indiana

Seminar Description: Two 3-Hour Continuing Education Courses – Indiana Mandatory Hours

Mock Registration Board Hearing – State of Indiana v. Benson

This program will take the audience through the filing of a complaint, its processing by the Attorney General’s Office, and the disposition of the eventual litigation file by virtue of a hearing before, and decision by, the Board of Registration. The complaint has made its way through the legal process resulting in a “Show Cause” hearing before the Board. To that end, a mock hearing will be held with an attorney representing the State of Indiana, and the respondent - who has been charged with “Professional Incompetence” related to a recent survey - representing him or herself. The audience – sitting in place of the Board of Registration - will be able to ask questions of the respondent and about the survey, and will then break into “juries” of 4-6 persons each groups to individually deliberate and render a decision with appropriate sanctions. The process, hearing and deliberations will all then be discussed in an open forum.

Surveyor’s Reports – Concepts and Applications

The importance of communicating with clients, title companies and attorneys about the results of a survey is an important and mandatory, but often overlooked, part of completing a boundary survey in Indiana. This program will present the concept of a Surveyor’s Report and discuss what information is relevant, desirable and required to include in such a report - and why. A number of laws, standards and articles dealing with Surveyor’s Reports will be reviewed so the audience can benefit from the ideas of others. Sample surveys will be used to generate an interactive dialogue with the audience on who will benefit from a surveyors report, what information it should and could include, and how it should be organized to best meet those objectives.

Location:

Spring Mill State Park
Spring Mill Inn
3333 Indiana 60
Mitchell, IN 47446
Ph.: 812-849-4508

Schedule:

Registration: 8:00 am – 8:45 am EDT
Seminar Begins: 8:45 am EDT
Lunch Break: 11:30 am - 12:30 pm EDT
Seminar Ends: 3:15 pm EDT
(Two 15-minute breaks)

October 24, 2014

Reservations: All fees include continental breakfast, lunch buffet, two breaks and all handout materials. Reservations and payments via Visa, MasterCard and Discover debit/credit cards can be made online at www.ispls.org or registration forms can be e-mailed to execdir@ispls.org or faxed to 317-888-4412. Additionally, registration forms can be mailed to Indiana Society of Professional Land Surveyors, Inc., 8325 S. Emerson Ave., Suite B-2, Indianapolis, IN 46237. Please make check payable to Indiana Society of Professional Land Surveyors, Inc. or ISPLS, Inc. All inquiries concerning this seminar should be directed to Jason Coyle at 317-888-4400 or execdir@ispls.org. **Seminar limited to the first 100 registrants.**

Cancellation Policy: Refund less \$25 processing fee if notified by October 17, 2014.

Please complete the attached registration form for mail in or faxed registrations.

MOCK REGISTRATION BOARD HEARING – STATE OF INDIANA V. BENSON AND SURVEYOR’S REPORTS – CONCEPTS AND APPLICATIONS

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_____ Home Address	_____ Work Address
_____ City/State/Zip	_____ City/State/Zip
_____ Home Phone	_____ Phone-Work
_____ E-mail	_____ LS Number

Registration Fees:	ISPLS, NSPS or other State Surveying Society Members:	\$180.00	_____
	ISPLS Firm Members:	\$144.00	_____
	Non-Members:	\$220.00	_____

My check numbered _____ is enclosed in the amount of \$ _____.

Please charge the above total to my: Visa ____ MasterCard ____ Discover ____

Account # _____ Exp. Date _____ 3-Digit CID # _____

Cardholder's Name (Print) Cardholder's Signature

Billing Address of Card: Street Address, City, State, Zip (if different than above)

RECONNAISSANCE: THE SURVEYOR'S ROLES & RESPONSIBILITIES

ENSURING THE AMERICAN DREAM, PART 1

By Gary R. Kent, PS



[In February], I appeared on NSPS Executive Director Curt Sumner's radio show (broadcast weekly on AmericasWebRadio.com) along with well-known author and speaker Jeff Lucas and noted New Jersey surveyor Bruce Blair. The theme of the program was to encourage professional surveyors to broaden their view and understanding of the role they can, and arguably should, play in helping resolve boundary and title problems between property owners.

In order to begin a conversation on this topic, we have to acknowledge two key points. First, is that there are only two persons who can truly resolve a disputed boundary or title problem. Those persons do not include attorneys, title companies or surveyors. And, in a sense, they do not even include judges and juries — at least not of their own volition.

No, the only persons who can resolve such conflicts are the two owners involved. And they can do it one of two ways: the painless, low-cost way — by agreement — or by the expensive, painful litigation path — which is when judges and juries get involved.

The second key point — one that I believe is completely indisputable and critically important that surveyors recognize — is that the average land owner believes what a surveyor does is “tell me what I own.”

Of course, surveyors know that in the United States, they do not have the legal authority to determine ownership; but there is a distinct and serious disconnection when property owners think they do.

So if surveyors cannot determine ownership or resolve boundary and title problems, why promote the idea that they should take a more active role in doing just that? Michigan Supreme Court Justice Thomas Cooley in his seminal 1881 treatise entitled *The Judicial Functions of Surveyors* addressed this issue head-on by stating: “It is always possible ... that the surveyor may usefully act as a mediator between parties, and assist in preventing legal controversies by settling doubtful lines.”

It is a well-known fact that surveyors, in the process of conducting boundary surveys, very frequently encounter and identify potential boundary and/or title conflicts. Such problems most frequently manifest themselves as deed overlaps, ambiguous descriptions, potential claims of unwritten rights (typically adverse possession, acquiescence and parol agreements, but also including estoppel), and simple boundary disputes.

When faced with these problems, many surveyors go ahead and — based on the best available evidence — set corners representing their interpretation of where the record title lines and corners belong. The impetus for setting those corners, in many cases, may have been a state's regulatory standards, although doing so is also an expression of the surveyor's historical role. But, most often, setting those corners also results in lines that are contrary to what the owners — before the surveyor showed up — had believed to be their boundaries, and had acquiesced to.

In any event, the result is that one owner is inevitably left happier (and likely confused) and the other is left upset and confused. Why? Because the two owners believe the surveyor has just told them that one “owns” to the line marked — which, as often as not, is 5 feet over the fence and includes half of the neighbor's driveway. One or both owners are now poised to spend tens of thousands of dollars litigating something that — until the surveyor showed up — was a boundary that had been mutually acquiesced in. And perhaps worst of all is that the surveyor's guidance is often limited to the rather cavalier “You need to contact an attorney.”

So, how do surveyors balance their responsibility to survey lines of written title, with the reality that in doing so they are often condemning owners to a litigation hell and neighborhood despair; all while keeping in mind that they themselves cannot determine ownership or resolve disputes? [In the next article] we will delve further into what Justice Cooley said, and explore how surveyors might apply “early intervention.”

This article appeared in the May 2014 issue of *The American Surveyor* and is reprinted here by permission of the magazine and the author.

RECONNAISSANCE: THE SURVEYOR'S ROLES & RESPONSIBILITIES

ENSURING THE AMERICAN DREAM, PART 2

By Gary R. Kent, PS

In Part One, I explained an initiative by a number of noted professional surveyors from across the country promoting the idea that surveyors should take an active role in the resolution and prevention of boundary disputes. In this column we will explore that idea in more detail.

There are at least two important issues that we need to study. The first is to understand how surveyors unwittingly and unintentionally encourage unrest and even litigation between neighbors. We will discuss that issue in this column. The second is to show surveyors that there are things they can lawfully do to help avoid the first; we will delve into that in my next column.

In addressing the first issue, I repeat the assertion made last time: the average land owner believes that surveyors have the responsibility and authority to determine ownership. We surveyors know this is not true, but we must recognize that clients think it is true! Thus, when we set corners based purely on written title, clients believe we have told them what they own.

I am not convinced that we surveyors need to clarify with clients what our authority regarding ownership actually is — at least at the front end — but we must recognize what they think because that should inform the decisions we make in the course of performing the survey. For example, if our work indicates that the corner will fall 5 feet over the neighbor's fence, I believe we should suspend our work right then. Why? Because it should be patently obvious that "something" is wrong. That "something" is generally one of four things.

The first is that we are simply in the wrong place because we did not find all of the appropriate evidence. In that case, we need to redouble our efforts to look for more and better evidence, and reanalyze our solution. If, however, we still end up with what appears to be a contrary boundary location, we should consider the next three scenarios.

The second possibility is that we are in the wrong place because — lacking good, solid, conclusive evidence—we concocted a purely mathematical solution based on our interpretation of the evidence. This is what some call mathematical "deed-staking." Such solutions are inevitably the result of one or more relatively arbitrary decisions. That's fine; it's what we surveyors do: form an opinion based on our interpretation of what we often know is imperfect and incomplete evidence. But when that interpretation and opinion results in a solution that is going to disturb what may be established rights, we should rethink the wisdom of continuing with it. Cooley addressed this, saying, "[I]t is known that surveyors sometimes ... disregard all evidences of occupation and claim of title, and plunge whole neighborhoods into quarrels and litigation by assuming to establish corners at points with which the previous occupation cannot harmonize."

The third possibility when a line or corner falls contrary to a line of possession or occupation (usually, but not always, a fence) is that one of the doctrines of unwritten title may have acted to move ownership from the written title line over to the fence. Adverse possession, acquiescence (called by a different name in some states), parol agreement, estoppel or practical location can operate to move an ownership line based on the actions of one or both of the owners.

Of course, surveyors do not have the legal authority to make boundary determinations based on unwritten rights, but they need to be well-versed enough in each of the doctrines to recognize the possibility — particularly when the respective owners have been peaceably occupying to the line of occupation. In this situation, as with the others, the surveyor has to consider alternatives to simply setting the corners, which will likely set the neighbors on the painful and expensive path to litigation. As Cooley said, "[The surveyor] would do mischief if he were to attempt to establish monuments which he knew would tend to disturb settled rights..."

The last possibility—one that is not entirely unrelated to the third—is that the fence does not, in the surveyor's opinion, seem to fit the criteria for one of the doctrines of unwritten title, yet the owners are happy with it.

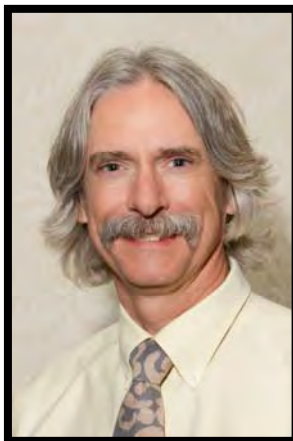
So, based on one of those scenarios, we have temporarily suspended our work. What alternatives should we now investigate? And what can we do without violating our state's standards of practice or practicing law? Quite a lot ... as we will find out next time.

This article appeared in the June 2014 issue of *The American Surveyor* and is reprinted here by permission of the magazine and the author.

RECONNAISSANCE: THE SURVEYOR'S ROLES & RESPONSIBILITIES

ENSURING THE AMERICAN DREAM, PART 3

By Gary R. Kent, PS



In the first two installments of this series, we looked at the background of the problem that boundary surveyors face and, more often than not, propagate. That misfortune is this: the irony of surveyors (1) ostensibly doing their job by retracing record descriptions and yet, in the process, (2) leaving clients and their adjoining — if not entire neighborhoods — in confusion and despair, if not litigation.

Interestingly, the way out of this conundrum is the same whether surveyors arrive at their boundary solutions by the unfortunate practice of “fence line” surveying, by the equally egregious practice of mathematical “deed-staking,” or by properly applying the applicable boundary law principles based on a thorough analysis of the facts and evidence.

Of course, we always hope and trust that surveyors resolve boundaries in consideration of proper training and experience, the local standard of care exercised by the prudent surveyor in the same circumstance, and any written standards that the jurisdiction has adopted, but the solution works regardless of the means that the surveyor employed.

The answer ties directly into the fact that only the two affected owners can resolve a boundary or title problem. And they have two choices: agreement or litigation. Hopefully, no one would suggest that litigation is the more desirable of the two, although if one or both of the affected landowners cannot, or will not, compromise, they will likely be destined for court.

Of course, sometimes the surveyor has been drawn into a situation by an owner or attorney long after the die to a dispute has been cast, in which case, it is likely too late to foster an agreement (although there is nothing to prevent that discussion with the attorney and owner). Also, if the boundary is part of an ALTA/ACSM Land Title Survey, there will be a title company and normally several attorneys who merely need the surveyor to clearly present the facts so they can determine the means they deem most appropriate to get the transaction closed.

Otherwise, when the surveyor is “first on the scene” why provoke owners by setting corners and drawing plats/maps/plans that show lines and corners contrary to what appear to be long-standing and/or accepted boundaries? By stopping short of setting the corners, the chances for a successful agreement will be tremendously increased.

One might ask though, “What about my state standards which require setting of corners?” Remember, if there is a boundary or title conflict (and corners set contrary to established lines of possession certainly carry with them the beginnings of a contentious title problem or boundary dispute) the only people who can resolve it are the two owners. Setting a corner when it conflicts with possession will take the hidden, make it blatantly obvious, and sow the seeds of a dispute.

So, rather than merely set the corners and figuratively walk away, the surveyor should recognize the desirability of engaging the two affected owners in a conversation about the situation on the ground, what the records say, and the fact that only they can resolve the issue. The conversation should include the possibilities — agreement or litigation — and the potentialities. In order to have a chance at successfully leading owners to agreement rather than litigation, surveyors need a number of tools.

The first is a contract that spells out what the surveyor will do: retrace the boundary to a final resolution unless a title or boundary problem is revealed, in which case, the contract is fulfilled, pending resolution of the problem. The surveyor could then use a second contract under which he or she would work with the affected parties to try to help them come to agreement. If agreement is reached, the third step would be to undertake an engagement to write the descriptions and prepare the necessary plats, maps or plans to bring that agreement to fruition.

Of course, different jurisdictions have different requirements, of which the surveyor must be fully informed. Some will allow the simple exchange of deeds, while others may require a survey, lot line adjustment, administrative plat or resubdivision, etc. Also, surveyors must make it very clear that they cannot offer legal advice and that, at some point, it will likely be desirable, if not necessary, to bring the owner’s attorneys to the table to address the legal necessities (i.e., mortgages, title insurance, taxes, judgments, exchange of consideration, and preparation of any legal documents if the owners are unable or unwilling).

(Continued on page 21)

(Continued from page 20)

The second tool surveyors will require is twofold: (1) an interest in, and the ability to, engage with the owners on this sort of level, and (2) the training to facilitate an effective agreement. The former is contrary to the nature of most surveyors and will therefore take some practice to overcome. The latter can be gained through attending a course on alternative dispute resolution (there are many sources of such training), and anyone interested in becoming, for example, a mediator, should also review their state's related rules and laws.

Lastly, surveyors need to be very well-versed in the legal aspects of boundaries and unwritten rights. While they cannot give legal advice, they should understand the requirements of each type of unwritten right for their state (e.g., adverse possession, [recognition and] acquiescence, parol agreements, estoppel, and, in some states, common grantor doctrine and practical location, etc.). This knowledge will greatly assist them as they try to guide the owners to an agreement.

To summarize, we are not talking about surveyors retracing boundaries based on unwritten rights (which they do not have the authority to do), forcing owners into ill-advised agreements, or hiding the facts from them. What we are talking about is surveyors recognizing conflicts or potential conflicts early on, not unnecessarily and prematurely finalizing surveys and setting points that exacerbate those problems, and encouraging surveyors to work with the only people that can actually solve the problems — the affected owners. Let's be the facilitator to solutions to the problems we find. As has been said many times, if all we find are problems, and if we offer no solutions, perhaps we are the problem!

Gary Kent is Director, Integrated Services at The Schneider Corporation in Indianapolis. He is past-president of ACSM and chairs the ALTA/ACSM Committee for NSPS and the Liaison Committee for ALTA. He is on the Indiana Board of Registration and lectures both locally and nationally.

This article appeared in the July 2014 issue of *The American Surveyor* and is reprinted here by permission of the magazine and the author.

COMPLETED CAREER

Justin W. VanWienen, 38, of Rensselaer, passed away at his home Monday, June 23, 2014. He was born in Hobart on March 3, 1976, the son of Jerry VanWienen and Connie (Freeman) VanWienen.

Jay had been a resident of Rensselaer since 1979, moving here from Gary. He attended the Rensselaer Schools. He was a crew chief for a Professional Land Surveyor. He also worked in construction. He enjoyed fishing with his girls, building things and spending time with his family and friends.

Jay is survived by his loving family: two daughters: Letitia VanWienen and Faith VanWienen, both at home; father Jerry VanWienen (wife: Cindy) of Medaryville; mother Connie Freeman of Michigan; and two brothers: Tom VanWienen (wife: Jonna) of Battle Creek, Michigan and Keith VanWienen of Greenfield, Indiana. He was preceded in death by: his paternal grandparents and maternal grandfather.

LEGAL SURVEYS

Bryan F. Catlin, PS

The goal of this column is to provide brief summaries of recent Indiana Court of Appeals and Supreme Court cases involving topics related to surveying practice, certainly not to provide legal advice. Information is gathered from the courts website at www.in.gov/judiciary. Comments or suggestions for future columns are welcome by email to: Bryan.Catlin@indy.gov.

Terry Weisheit Rental Properties, LLC vs. David Grace, LLC and Dance Central Academy, LLC, Indiana Court of Appeals Case No. 19A05-1310-PL-488, June 26, 2014

Here is a case from the Dubois Circuit Court which clarifies the nature of an easement and whether a covenant will “run with the land” even if its language does not expressly state that it does.

In 1981, Jerome Kerstein and a business he owned were the owners of Lots 20, 21a, 21b, 22 and 23 in a subdivision in Jasper. The dividing line between 21a and 21b was a firewall running east and west through a commercial building on the land and the prolongation of that line. Each lot had paved parking and driveway areas, and the driveway from the highway serving all of these lots was on lots 21a and 21b. In that year Kerstein sold the northern portion of the property, lots 20 and 21a, to Lawrence and Norma Steffen with the following provision in the deed:

“ALSO, the mutual use and maintenance of a drive whose centerline is 82 feet South of the Northwest corner of said Lot #20, the mutual use and maintenance of the parking areas, and the equal sharing of expenses of maintaining the party wall comprising the southerly side of the structure located on above-described tract and the northerly side of the structure located on grantors’ tract adjoining to the South of the above-described tract.”

In 1985 Kerstein sold lots 21b, 22 and 23 to Terry Weisheit who in 2003 transferred the property into his business name. Neither of these deeds contained anything like the provision in the Steffen deed. Weisheit and the Steffens operated businesses on their properties. In 2012, after the death of her husband, Norma Steffen sold lots 20 and 21a to David Grace by a deed containing a provision very similar to the original provision. Grace leased the property to Dance Central which began offering children’s dance lessons. Dance Central customers parked on lots 20 and 21a as well as parts of Weisheit’s lots. After conflicts over parking, Weisheit parked a box truck just south of the property line between lots 21 and 21b, creating difficulties for customers parking in front of Dance Central.

(Continued on page 23)

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(Continued from page 22)

David Grace and Dance Central, through counsel, sent a letter to Weisheit requesting he stop blocking access to the Dance Central parking spaces. Weisheit did not comply.

On January 24, 2014, Grace and Dance Central filed a complaint to quiet title and to determine the extent of a claimed easement, as well as a motion for a temporary restraining order to prevent Weisheit from interfering with use of the land. Weisheit filed an answer and counterclaim alleging the plaintiffs' conduct was a nuisance.

After a bench trial it was found that Grace's deed did not create an express easement on lots 21b, 22 and 23 but that a prescriptive easement did exist for mutual use of lots 21a and 21b. The counterclaim for nuisance was denied. Each side appealed the trial court's judgment.

Weisheit argues the finding of a prescriptive easement and that even it was proper, the scope was erroneously extended. Grace and Dance Central argue the court erred in not finding an easement permitting their use of drives and parking on lots 21b, 22 and 23 and Weisheit's and his tenants similar use of lots 20 and 21a.

The Appeals Court agreed the trial court erred in construing the deed provision but found a different error. The trial court found the provision was an express easement but that it was void due to vagueness. The Appeals Court found that it was not an easement since no dominant and servient estates were identified. However, in this case, since there are reciprocal duties and rights, this establishes an affirmative covenant. Moreover, both Kerstein and the Steffens had loading docks facing the common driving and parking area which routinely had deliveries from semis and other large trucks which had to traverse the others portions of the parking and driving areas to back up to the docks. This created an ongoing logical connection of the covenant to the use and enjoyment of the property which bound Weisheit. The judgment of the trial court was reversed.

Dennis Samples vs. Steve Wilson and Donald & Ingrid Bannon, husband and wife, and Ronald & Edna Bannon, husband and wife, Indiana Court of Appeals Case No. 60A01-1312-PL-518, June 30, 2014

Samples owns 10 acres in Poland, Indiana. From 1990 to 2006 Steven Wilson owned an adjoining property which sloped downward towards Samples. There was an elevation drop of about twelve feet near the property line so water flowed onto Samples from Wilson. In 1998 Wilson had an excavator, Benny Sowers, enlarge a pond and expand the existing dam. On May 2, 2003, Samples filed a "Verified Complaint [for] Trespass, Nuisance and Storm Water Run-off For Improperly Constructed Dam" against Wilson. In 2006, Wilson conveyed his property to the Bannons without notifying them of the pending lawsuit. Wilson also filed for bankruptcy and received a discharge of indebtedness. On October 26, 2007, Samples amended his complaint to include the Bannons as defendants and claim the following: the dam encroached on Samples' land; rocks rolled onto Samples' property from the encroachment; the dam was constructed without a keyway or emergency spillway; the overflow plug was improperly constructed; the water mark was within a few inches of the top of the dam; and overflow water ran onto Samples' property and created standing water. Samples also claimed he had lost the use of two acres of his land. He requested an injunction to the Bannons to cease any encroachment and install a proper overflow plug, spillway, and emergency spillway. Samples also requested monetary damages for the loss of use of two acres.

A bench trial was held in the Owen Circuit Court on April 10th and 11th, 2013 where Samples testified the dam protruded onto his land, that two acres of his ground became swampy after the dam expansion, and that the water seeped out of the bottom of the dam, "seem[ing] to come from the ground up". Wilson and Don Bannon testified that that portion of Samples ground had at least been periodically wet both before and after the dam expansion and that Samples used the area for storage and a burn area both before and after the expansion. Sowers testified the dam had been properly constructed with proper components including a keyway and spillway and that Samples land was wet before the expansion, and he denied that any part of the dam encroached on Samples. A surveyor also testified the dam was not encroaching onto Samples' property. A Department of Natural Resources inspection of the dam had been conducted, and no order for modifications was issued. The trial court entered judgment in favor of the Bannons and Samples filed a motion to correct error which the trial court denied stating "The Court found the defendants' version of the facts more credible and reliable". Samples appealed.

The Appeals Court found that Samples arguments, including that the trespass was by the casting of water onto his property which is an exception to the "common enemy" doctrine, were defective. At least some of the appeal was an invitation to reweigh evidence which the court rejected. Finding that the trial court judgment in the Bannons favor was not contrary to law, it was affirmed.

(Continued on page 24)

(Continued from page 23)

R & M Construction, Inc., and Lake County Trust Company, as Trustee under a Trust Agreement Dated May 17, 1989 and Known as Trust No. 1901 vs. Twin Lakes Utilities, Inc., Indiana Court of Appeals Case No. 64A03-1310-CC-422, May 23, 2014 - MEMORANDUM DECISION - not regarded as precedent

Rick Morin, a homebuilder for at least forty years, is the president of R & M and the beneficial owner of the Trust. He has lived in The Lake of the Four Seasons subdivision in Porter County for about fourteen years. The subdivision was started in 1966, and over the years Morin has built over one hundred houses in the subdivision.

This case concerns lot 218 where a house was destroyed by fire. Morin cleaned up the debris, visiting the site several times. The trust then negotiated the purchase of the vacant lot intending to build a new home. On or about June 24, 2008, the closing date for the lot, Morin visited the site and noticed a manhole. Opening the cover he saw a sewer line. He later learned the sewer ran through the middle of the lot to the manhole, split into two smaller lines and ran to the opposite side of the lot. Morin had never encountered a sewer in the subdivision outside of the platted easements. The Trust asked Twin Lakes, which currently maintains the sanitary sewers, to remove and relocate the sewer lines and manhole. Twin Lakes declined but installed a new sewer line in the platted easement and abandoned the manhole and old line through the lot. Twin Lakes acknowledged that not all of their smaller lines are in platted easements. R & M and the Trust's ability to build a new home has been impaired by the abandoned line and manhole, and the value of the lot is diminished by their presence.

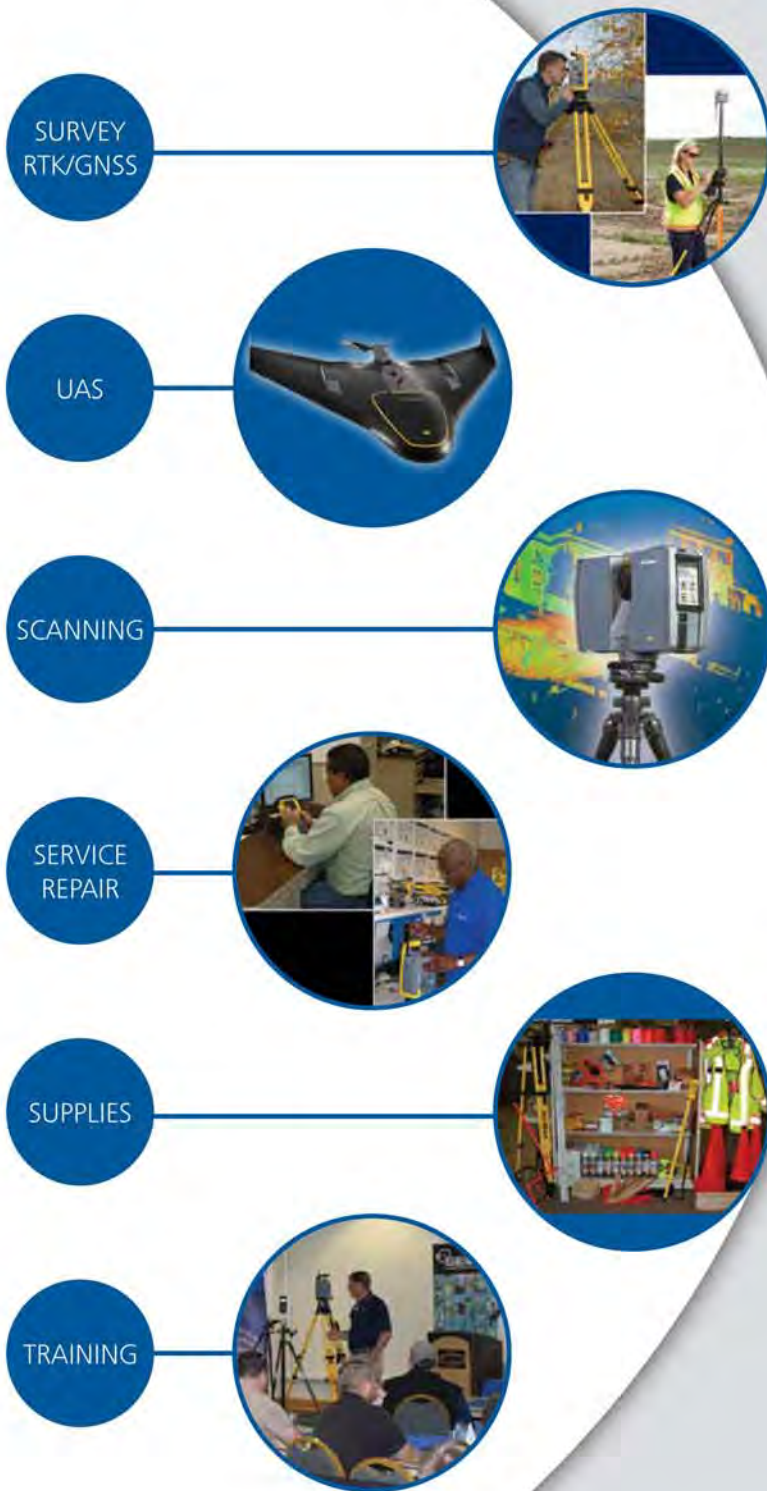
R & M and the Trust sued Twin Lakes in the Porter Superior Court alleging trespass, conversion and encroachment and asking for compensatory and punitive damages as well as injunctive relief by having Twin Lakes remove the abandoned sewer line and manhole. Twin Lakes filed a separate complaint requesting a declaration that it holds a fifteen foot easement over all lines and fixtures in the subdivision regardless of whether or not they are in the platted easements, or alternatively, condemnation by eminent domain to establish an easement over all sanitary sewer lines in the subdivision. The Trust raised counterclaims of trespass, unjust enrichment, taking of property, "cloud of title" and inverse condemnation. The trial court consolidated the two cases and Twin Lakes filed a motion for summary judgment on a claim of declaratory relief. R & M and the trust filed a cross-motion for partial summary judgment on the claim for trespass. The court determined R & M did not own the lot when the sewer was installed so they have no action for trespass and further did not issue the declaratory relief sought by Twin Lakes. After more maneuvering, the court issued a final order granting summary judgment to Twin Lakes on "all claims as to all parties". This appeal followed.

R & M and the Trust argue that the trial court did not address all of their claims which the Appeals Court disagreed with before considering the parties claims. The claim of trespass was dismissed as not all elements of trespass were established, and a new claim of trespass by the abandoned sewer and manhole failed as a matter of law. There was no fraudulent concealment of the manhole which might have altered the court's thinking. Twin Lakes argued at trial and on appeal that it holds an easement over all sewer lines regardless of whether they are within platted easements. The Appeals Court noted that the clear and unambiguous language of the plat and covenants limits it to the areas shown on the plat, reversing the trial court's grant of summary judgment. Since this was reversed the rest of R & M and the Trust claims were addressed. The claim of trespass and encroachment fail as a matter of law. Conversion concerns personal property, not land, so that claim fails. Unjust enrichment fails as R & M and/or the Trust did not provide any benefit which Twin Lakes could unjustly retain. Inverse Condemnation fails in this case as Twin Lakes did not install the sewers and damages can be waived through inactivity over the years since they were installed. R & M and the Trust, through Morin, are sophisticated in land purchases and development and could have discovered the manhole during clean-up, so Twin Lakes is entitled to summary judgment on inverse condemnation. The Cloud of Title claim fails as a matter of law since the existence of the sewer and manhole is not an unfounded claim of title or a semblance of title.

The trial court erred in granting summary judgment to Twin Lakes but did not err in granting summary judgment on R & M and the Trust claims. So the argument that Twin Lakes must remove the abandoned fixtures at its own cost must fail. The judgment of the trial court was affirmed in part, reversed in part, and remanded for further proceedings on Twin Lakes's claims.

Bryan F. Catlin, PS has been registered as a Land Surveyor in Indiana since 1991. He holds B.S. Land Surveying Engineering and M.S. Engineering (geodesy) degrees from Purdue University.

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Annual Dues

- Professional Member** - Any individual licensed as a *Professional Surveyor in the State of Indiana*. \$200.00
- Associate Member** - *Non-registered individuals who are engaged in support of the practice of surveying.* \$60.00
- Affiliate Member** - *Anyone affiliated with the surveying profession or any non-resident who is registered as a surveyor in another state other than Indiana.* \$65.00
- Chapter Membership** _____ \$20.00
(All Professional, Associate and Affiliate Member must designate a chapter in which they would like to belong to and pay the \$20 Chapter dues. Please state your chapter affiliation above or one will be assigned for you based upon your address.)
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TOTAL DUES \$ _____

The amount you pay for ISPLS membership is 76% deductible as a necessary business expense but is not deductible as a charitable contribution. The Lobbying allocation will be spent on Lobbying, and is Non-Deductible.

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Applicant's Signature: _____ Date: _____

MEMBERSHIP CATEGORIES

PROFESSIONAL MEMBER: A Professional Member of this Corporation shall be limited to Registered Land Surveyors in good standing with the Indiana State Board of Registration for Land Surveyors. A Professional Member shall be eligible to vote, hold office and to participate fully in the affairs of the corporation.

ASSOCIATE: An Associate membership will be granted to those non-registered individuals who are actively engaged in support of the practice of land surveying. An Associate Member is entitled to vote and participate fully in the affairs of the Corporation but shall not be entitled to hold office. Associate Members shall, at such time that they become Registered Land Surveyors in good standing with the Indiana State Board of Registration for Land Surveyors, become Professional Members without further vote of the Board of Directors of this Corporation.

AFFILIATE: An Affiliate membership will be granted to those individuals who qualify under the following provisions:

- a) Anyone who is affiliated with the Land Surveying profession or
- b) Any Non-Resident who is registered and in good standing as a Land Surveyor in a state other than Indiana.

An Affiliate Member is not entitled to vote, or to hold office but will receive newsletters and be invited to participate in meetings.

STUDENT: A Student membership will be granted to those non-registered individuals who are endeavoring to make surveying their chosen career and who are enrolled as a full time student as defined by the university or school they are attending. Membership in this class shall not exceed a total of (5) years. A Student Member is not entitled to vote or hold office, but will receive newsletters and be invited to participate in meetings.

LIFE: Any person holding Professional Member status shall be eligible to petition the Board of Directors to change his membership to that of a Life Member. If the Board of Directors finds that the Professional Member so petitioning has reached the age of 65 years and has been a Professional Member (or Member before July 1, 1999) of this Corporation for at least a total of twenty (20) years, it shall grant the petition and the Professional Member will become a Life Member. If the Board of Directors finds that the Professional Member so petitioning has not fulfilled the above requirements, the Board may grant a petition if it finds that the Professional Member has retired from active practice for reasons of health and is no longer engaged in Land Surveying. Life Members shall be furnished with a Life Membership card and Certificate and such membership shall take effect upon approval by the Board of Directors. Life Members shall not be subject to payment of dues, but shall enjoy all the rights and privileges of full Professional Member status in this Corporation.

To view and read the ISPLS Constitution, By-Laws, Code of Ethics, and the Memorandum of Understanding with NSPS, please visit www.ispls.org and About ISPLS.

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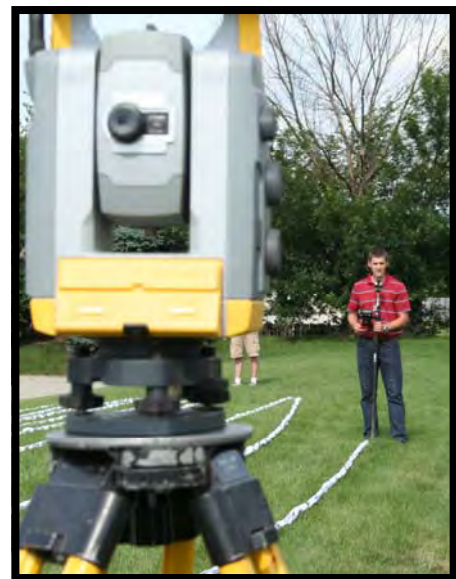
Story and photos provided by R. Jason Coyle, PS

As the Executive Director for ISPLS, I am constantly looking for opportunities in which I can share my profession of surveying with others. I received an e-mail from Brian Rayl, PS, with the Hamilton County Surveyor's Office, stating that a woman in the Fishers, Indiana area was needing a Professional Surveyor to measure her attempt at breaking a Guinness World Record for the longest paper chain. My interest was immediately sparked - the only problem was that I didn't have access to the surveying equipment necessary to do the measurements quickly and efficiently. Therefore, I contacted Jacob Hoffman, PS, President of the Central Indiana Chapter of ISPLS, Inc. (CIC) and asked him to request assistance from the CIC membership. Almost immediately, I received a phone call from Joshua Werner, PS, with Weihe Engineers, Inc., saying he would be happy to assist.

Julie McKinney, a member of BridgeWay Community Church of Fishers, Indiana, would be attempting to break the Guinness World Record by connecting lengths of paper to create the Longest Paper Chain made by an individual. The attempt was in conjunction with a fundraising campaign the BridgeWay Community Church was conducting to provide drinking water to children in India. For only \$2.50 (just 10 quarters!) a school child in India can have clean water for drinking and bathing for a year. During the BridgeWay's summer program called Mission Adventure Week, children would be collecting and donating quarters for the cause. For every quarter they turn in, they would receive a length of paper to decorate. Julie McKinney would then attempt to break the Guinness World Record by connecting all the decorated lengths of paper to create the longest paper chain by an individual. The current record of the longest paper chain by an individual measures 392.6 m (1,288 ft. 0.66 in.) long and was achieved by Emily Chaplin in Brisbane, Queensland, Australia, on November 15, 2013.

On Sunday, June 22, 2014, Josh Werner and I were on hand to measure the paper chain using a robotic total station, a Trimble S6. We measured the chain at each end point and at intervals of 50 - 60 feet and recorded the measurements with a data collector. We then used the data collector to calculate the length of the chain. The chain measured 779.2 m (2,556 ft. 5.4 in.), thus breaking the record! Josh and I completed our work by certifying a certificate of measurement and presented it to Julie. Besides crushing the previous record, the church also raised enough money to provide clean water to over 1,800 children in India! Outstanding Job!

I would encourage each of you to find opportunities to serve your community while sharing your professions.



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