

HOOSIER SURVEYOR

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ISPLS, INC.



Trail Trees are an Attraction

Trail trees like this one are often found in hilly areas, pointing toward something of significance to those who formed the tree. Moss is growing on this one where water collects. The red arrow in the image points to the rock whose close-up is on page 13. (Photo by Tom Reoch)

Read more on pages 12-13

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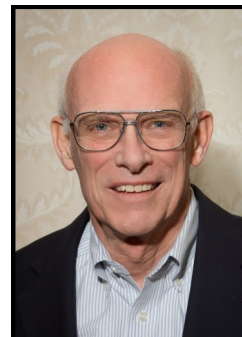
EDITOR’S NOTES

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

- Winter - February 1
- Spring - May 1
- Summer - September 1
- Fall - November 1

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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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Rethink Your Email Strategy - 5 Tips to Master Your Email

While email is a huge part of your daily work life, I would venture to guess your livelihood does not center on you reading and responding to email. However, most people don't have a strategy for dealing with email. We all live in this reactive loop of sending and receiving and with our smart phones our email is with us 24/7. Jump off the hamster wheel with these strategies to master your email.

1. Know What Is Important.

Think about your life and your job holistically. Knowing what is central to your success and what is important to your life will help you to prioritize your day, weeks and months. Make time for the things that are important to you and the organization you serve and you will be more fulfilled and successful. This understanding should guide your email management strategy.

2. Let go of FOMO (fear of missing out).

Don't check your email constantly because there might be something important in your inbox. If a matter is truly urgent, people will call you. If you don't believe this, keep a log for a week of each time you checked your email and found something that was incredibly urgent. Could it have waited two more hours? Four? A day? Finally, turn off all email alerts, ghosts, blings, etc. You control when you check your email, not your email software.

3. Train People How to Treat You.

How you respond to your email determines your team member and client's expectations. If you always respond to email within 5 minutes, that is what they will expect. Same goes for weekends and after hours. If you consistently respond during these times people will come to expect it. Look at your schedule and priorities for both work and your personal life and determine the timeframe for email responses that works best for you and makes sense for your coworkers and clients. Don't be afraid to set up an auto response if you have an important priority that you are working on and will be slower to respond to email. Also, let people know that if a matter is urgent they can call you or another staff member. *Note: Some executives are now only responding to email once per day or even once per week!*

4. Close the Loops In Real Time.

If you are getting a lot of emails from staff with questions that could be addressed in a weekly staff catch up, schedule a meeting and set the expectation that if it is not urgent that is the place for questions. If you see a long email conversation between multiple people that is not getting resolved after several emails, schedule a quick phone call to discuss. The phone conversation will likely take much less time than reading and responding to fifty emails. As soon as you perceive a miscommunication or misunderstanding in an email conversation, pick up the phone and resolve the issue. Closing these email loops in person or on the phone will reduce the number of emails in your inbox and lead to better outcomes and relationships.

5. Email Smarter with These Tips:

- Keep completed items out of your inbox. Set up mail rules to move eNewsletters, receipts and anything else you do not need to look at immediately to a folder to review later. Continually unsubscribe or mark as junk things you do not want. File emails that you have read and responded to into another folder.
- Read, Take Action, File is faster than read, hmm...what should I do, I'll come back to it later, read again, I think I will do this later, read again, finally take action, read again because it is still in your inbox, read again... Don't look at your emails unless you have time to take action.
- Follow the 3 minute rule. When it is time to check email, go through new emails and if you can respond/take action in 3 minutes or less do it now then file. Otherwise, move the email to your task list or flag the item and set a deadline to complete (then file). This allows you to clean your inbox out quickly.
- Make your subject lines actionable. The subject line "Requesting Meeting to Discuss XYZ – Please Reply with Your Availability" will get a more immediate response than just "Meeting".

Article provided by Kim Paugh, CAE, Raybourn Group International.

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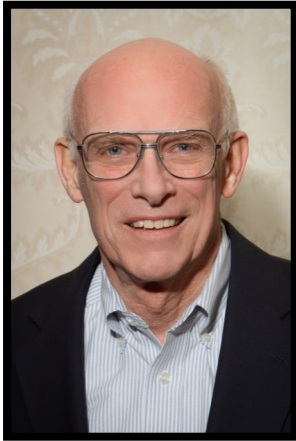
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So What is Fodar?

By Mike Davis



Mike Davis, Editor

The word fodar probably isn't in your dictionary, though that could soon change.

The combination of "foto" and "lidar" was developed by Dr. Matt Nolan, a research professor at University of Alaska Fairbanks, to describe the gathering of airborne photogrammetry to produce topographic maps and imagery showing centimeter-level changes to the ground surface.

Nolan developed fodar as an affordable method to directly measure topography and changes to it at high-precision resolution. He then formed the Fairbanks Fodar company to help others with similar needs.

His process consists of planning a mission and then piloting a light plane over an area in a grid pattern, taking many photographs with a digital single-lens reflex camera linked to a survey-grade GPS unit. He then post-processes the photos in a computer.

"For airborne work, you should be able to make maps with an accuracy of about 30 meters and a precision of about 10 meters with the same introductory hardware and software you used on the ground," notes an article on the Fairbanks Fodar website. "By comparison, fodar maps typically have an accuracy of 30 centimeters or better and a precision of 15 centimeters or better, without the use of any ground control."

Also, by setting up the computer to follow a Structure-from-Motion (SfM) process in comparing images taken at separate times, Nolan can produce imagery that shows position changes as small as a single centimeter.

Nolan says his method can reduce the hardware cost by 10 to 1,000 times of what is used in standard lidar and photogrammetry, making it economically feasible to repeat flights over a certain area on a shorter time-frame, sometimes weeks or days.

And, though the company's website indicates that fodar is essentially survey-grade Structure-from-Motion photogrammetry, it says Fairbanks Fodar does not practice land surveying: "We simply provide awesome raster data to land surveyors, land management professionals, and other clients at an affordable price. If you need land surveying services, please contact us for references."

In presentations he has identified cracks in airport runways, antlers on a grazing caribou, and even caribou hoofprints in the snow. He also has used snow-free and snow-covered images of where planes are parked at Fairbanks International Airport to show snow depths within a centimeter.

Recent advancements in hardware and software, notes a "What is Fodar?" article on the Fairbanks Fodar website, have opened digital photogrammetry to anyone with a camera, GPS unit, and a version of software that turns photos into topography. "You don't need an airplane – you can make maps from the ground, from a pole, or from a UAV," the article says.

Nolan's advice for non-experts who want to give it a try is to stick with a commercial and user-friendly Surface-from-Motion software application like Agisoft PhotoScan. "Not all SfM photogrammetry gives the same level of accuracy. It's just like GPS: the word itself means nothing; it's the type of GPS and how well you understand how to use it that distinguishes accuracy levels," he said.

(Continued on page 7)

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“Think of all the things that are happening on the earth’s surface right now this year that are happening on the 1 centimeter to 10 centimeter level that we have no idea about – and we’re not gonna’ have any idea about until we start mapping things like this,” Nolan said in a webinar presentation to the Alaska Fire Science Consortium in February 2014. “We have to wait until meter-scale changes occur and somebody just happens to see it.”

“I think the next few years are going to see a revolution in earth science – both in our understanding of it, and our ability to detect changes and actually measure changes like this through that understanding.”

(Editor’s note: Thanks to ISPLS Vice President Perry Cloyd for suggesting this topic.)

Read more about fodar at <http://fairbanksfodar.com/understanding-fodar>

Watch the recorded webinar of Dr. Matt Nolan’s presentation – “What do forest fires, caribou, and monster truck tires have in common?” – at <https://vimeo.com/87797023>.

Read a paper published in The Cryosphere journal by Matt Nolan and Kit DesLauriers – “Which are the highest peaks in the US Arctic? Fodar settles the debate” – at <http://www.the-cryosphere.net/10/1245/2016>.

Learn more about Nolan’s work at <http://drmattnolan.com>.

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Pure Gold – The Boone County Surveyor’s Record

By Jim Swift, PS

If good records are like pure gold, the Boone County Surveyor’s Record is like Fort Knox. Chock full of interesting, informative, and ever so useful entries from the mid-1800s through the early 1900s, this record is the guiding light to our section corner perpetuation project at the Boone County Surveyor’s Office.

Shared below is a representative sample of some entries in that record. They are listed in no particular order, though they are limited to entries pertaining to section and quarter section corners. Many other entries also pertain to intermediate aliquot corners or corners of various parcels created by the County Surveyors.

The name associated with each entry is the County Surveyor responsible for that record. Please note that the corner identification system in these records begins with Corner A representing the northwest corner of a section and proceeds clockwise around the section in half-mile increments. Corner B represents the north quarter corner, Corner C the northeast corner and so on to Corner H, which is the west quarter corner.

Note also that all dimensions pertaining to the size of objects such as stones or trees are reported in inches. Some entries use commas, others an x and others a dot to separate numbers. They are reproduced here as found in the record. Distance measurements are reported in chains and links. The symbol “+” refers to a cross mark etched on the rock, typically with each arm of the cross about 2 inches in length.

Explanatory notes are included after select entries. Many of these corners have been excavated since 2007. In most cases, excavation at a corner for which the record specifically describes stone has yielded discovery of the monument just as described, or within an inch or two in all dimensions.

Section 26, T20N, R1E

David M. Burns, January 23, 1872

Corner B - *Reestablished from both trees, set rock 13.9.8+.*

David M. Burns, March 12, 1874

Corner D – *Reestablished from the roots of both trees. Set Rock 24.13.13+.*

Section 16 T18N, R1E

Thomas Huckstep, April 5, 1877

Corner H - *Reestablished by intersecting lines & found an old red oak stump to correspond with the bearing tree. Set Rock 23,10,10 +. Rock 14,9,8 marked W N45W, 34 [links].*

Section 33, T18N, R1E

David M. Burns, April 5, 1871

Corner B - *Reestablished at intersection of lines. Set Two Rocks One 5 ½,5,4 +, Top One 14,10,6 +.*

David M. Burns, February 20, 1873

Corner D - *Reestablished from S.E. Poplar, the other had just been dug out. Set Two Rocks, One 13,9,6 +, Top one (sandy) 18,14,17+.* (Note - most stones marking corners in Boone County are granite. The exception to that rule is specifically noted in this record.)

Section 32, T20N, R1E

David M. Burns, June 2-3, 1862

(Continued on page 9)

(Continued from page 8)

Corner E - Found by measuring the lap. Drove no stake.

Corner F - Set two rocks, one 7.5.5 in X. Top Rock 28.18by10 in marked 1.

For other notes and explanations see Record No 4 pages 136 & 137.

(Note - the term "lap" in this record means the distance offset between the standard and closing corners on a township or range line.)

Section 30, T19N, R1W

Thomas W. Huckstep, April 27, 1879

Cornr A - Reest'd 71 links S. of the lap corner. Set two limestones, 13x11x3, lower, lies on side, + on top side. (top) 18x18x4 on end + on top and a smaller one on each side + on sides. (Note - these stones were found exactly as described in 2015, except that the top rock was leaning slightly toward the north, evidently having been hit by road grading equipment sometime in the past.)

Section 17, T19N, R1E

David M. Burns, February 9, 1872

Corner F - Reestablished from Oak (green). Set Rock Marked +. F to G 39.94 [chains] Var 3 degrees 52' G to f 19.97.

M.F. Orear, March 9, 1886

Corner A - Re-established by measurement (& found point of stake) Set rock 20,14,12 + on top. Wit. North 10 feet 20.18.12.

Section 19, T19N, R1W

William N. Lane, March 8, 1893

Corner F - Rock that was set recognized from recollection from time witness was here and agreement of parties. Measured and marked + same & sunk same to level of ground. Size 21.8.6,. Placed rock + 4.8.6 under. Placed rock W 17.8.6 south 15 feet. Placed rock W 10.12.6 N 11 ½ W 15 feet.

Section 22, T20N, R2E

David M. Burns, February 18, 1869

Corner H - Reestablish and in digging for to place rocks found a stake in grading driven nearly 3 feet deep. Then I looked for and found where Elm stood by roots. Set two Rocks, One 16.9 by 5 ½, Top One 17.13 by 9 in. A rock 18.11 by 6 in. brs S 49 ½ E, 40 lks. (Note - these stones were found as described in 2013. This was a rare instance wherein the record stones were found situated in the fill material of the road, rather than embedded in the clay layer below the road bed.)

Section 8, T19N, R1E

Thomas Huckstep, April 22, 1880

Corner D - A Rock 20.8.3 which was set – stump of NW tree agrees – marked the rock + - thence South 39.68 to E.

Corner E - Reestablished – tree has fallen but is here and retains mark – set rock 15.9.9 + on top.

(Note - the term "a rock which was set" is accepted as meaning a rock which was found that appeared to have been set previously.)

Section 24, T20N, R1E

David M. Burns, December 13 & 26, 1871

Corner E - Reestablished by running the line from D Section 25 North 79.80 to D of this Sect. Think the Oak B. Tree was a little west of the range line but am not sure, but it is gone. Placed corner the middle of the line I run 39.80 feet from D and 279 links south of corner Section 19 and 30.

(Continued on page 10)

(Continued from page 9)

Section 18, T20N, R1E

Thomas W. Huckstep, February 25, 1879

Corner G - *Found point which marked by chopping notch in crosslaying also marked (+) Rock 16.9.6 for parties to set. (Note - the "crosslaying" was found during excavation in 2014. It is a most interesting object which merits further discussion.)*

Section 28, T20N, R1W

David M. Burns, September 25, 1871,

Corner E- *Reestablished from knowledge obtained when surveying road, when stump of one tree was here. Found two stakes I drove at that time. One 15 ft. N, the other 15 ft. S. of corner. Set rock 28x16x10 marked +. Elm 25", S31 degrees E, 36 links.*

Section 14, T19N, R1E

David M. Burns, October 17, 1870

Corner H – *Reestablished from one tree. Set a Rock 12.10 by 6 + & four small ones under it.*

J.T. Ashley, April 27, 1898

Corner D – *Established; drove harrow tooth from which a rock S 45 E, 45 lks; also a rock N 45 W, 45 lks, each with hole in top and a small rock on top of each.*

(Note - the harrow tooth was found during excavation in 2011. It is a square shafted iron spike, 10.5 inches long, tapering from 1 inch wide at the top to a dull point at the bottom. This is the earliest known example of a metal monument marking a section corner in Boone County.)

Ollie M. Dodd, 10/16/1912

Corner F – *Drove a Red-bud stake. (Thanks Ollie! That is very helpful 100 years later.)*

Section 35, T19N, R1W

David M. Burns, October 24, 1868

Corner D – *Rock*

Corner H – *Reest from stump of Ash, Set Rock 20x6x4 marked + on S. side.*

David M. Burns, June 27th, 1872

Corner C - *Reest'd from trees. Oak lately cut down. Is 18 links to Elm. Set Rock 31x13x8 +.*

Corner B – *Drove Stake.*

Section 11, T18N, R2E

David M. Burns, August 10, 1868

Corner D – *Reestablished from stumps of both trees. Rock 16.13 by 12 in. marked + fr. wh. an Elm 28 in., S70W, 73 [lks].*

James C. Barb, September 28 & October 14, 1891

Corner D - *Found rock of proper size but mark worn off by wagons – remains of Elm to correspond with witness. Remarkd rock + and lowered it to level of road.*

(Note - the rock described by Burns and remarked by Barb was found during excavation in 2009. It has an etched mark on top, though the mark is vague, more discernable by feel than by sight. Perhaps the new mark was worn down by wagon traffic as well. The rock remains in place with a Harrison Monument set above it.)

Section 26, T20N, R1W

David M. Burns, March 3, 1860

Corner D - *Reest'd from the original trees. Found blaze and notch in closest Beech, and stump of the other. (Note - there is no men-*

(Continued on page 11)

(Continued from page 10)

tion of a stone set, but the subsequent record below indicates that one evidently had been set.)

William N. Lane, August 21, 1893

Corner D - *Rock and bearing trees here as above. Marked rock +.*

David M. Burns, October 21, 1871

Corner H - *Reest'd from both trees (green), Set Rock 16x13x13 marked +.*

Corner G - *Corner of Sections 26, 27, 34, & 35. Reestablished from trees, Boxed ash, and found mark. Hickory out. Set Rock 18x15x10 +.* (Note – numerous records refer to “boxing” or “chopping into” bearing trees to find the mark. In some cases it is specifically noted that this was done to prove the position of the corner to interested parties doubting the survey.)

Section 2, T17N, R1E

B.F. Barker, September 1, 1901

Corner D – *Found stone in center of road, fences indicated corner. (Amen Brother – they often do!)*

Jim Swift is a Professional Surveyor employed by the Boone County, Indiana Surveyor's Office. He holds a Bachelor of Arts degree in History from St. Olaf College in Northfield, Minnesota, and a Master of Science degree in Geomatics from the School of Civil Engineering, Purdue University, West Lafayette, Indiana. Jim's current project and professional passion is finding the section corner stones of Boone County.

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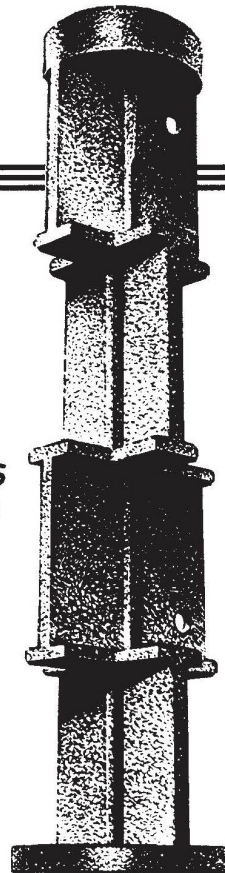
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Trail Trees are an Attraction

By Mike Davis

Brown County GIS Coordinator Tom Reoch has his eyes out for trail trees – also known as pointer trees – and he hopes others will do the same.

He's learned that Native Americans used them to point to key features like good water or mineral sources, trails or a "crossable" section of a stream, as well as areas they considered sacred.

Photos that are with this article show examples of the types of directional trail trees he's looking for, and he says they generally are found in two forms. One has a tree trunk that goes up, turns abruptly about 90 degrees to become a pointer, and then turns back 90 degrees to continue growing vertically. The other has a trunk with a more rounded bend or arc, and its previous main stem becomes the pointer.

"The trees catch your eye because they have a horizontal line to them," says Reoch, whose name is pronounced REE-ock. He's particularly noticed them in hilly areas, often halfway up a ridge line, along well-imbedded trails.

He estimates that the ones he's found are close to 200 years old, and he thinks one may date back more than 300 years. The type of tree varies – many are white oak, though some of the bigger trees are sugar maple.

He makes an effort to check every one he's told about, prioritizing them into four categories, putting ones that fit the timeline and either have or don't have an apparent purpose at the top of the list. He estimates he has been told of more than 100 trail trees.

As you might expect, time is not on his side. Trees like these are slowly deteriorating. Water sometimes pools on top of the "pointers," causing them to rot. Some reported trees have already fallen.

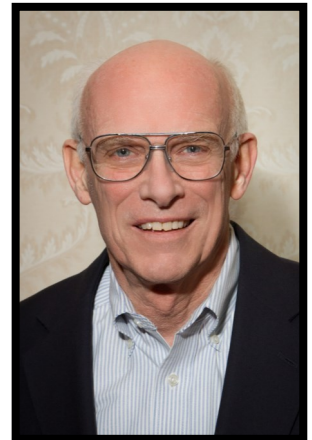
His suggestion for anyone who thinks they might have found a trail tree is to collect all possible information about the location. He generally packs a tape measure, smart phone and a "good camera" when he goes in search of a tree. When a tree is found, he recommends opening a compass app on the phone, placing the phone on the bent part of the tree in the direction it's pointing, and using the camera to photograph the smart phone's screen. He also suggests taking photos of the tree's diameter and its horizontal section.

For people who are concerned about what might happen to a tree if it's reported, he tells them the information won't be made public if they don't want it to be. "I just want to find out the hidden purposes of these things," he says.

And really, his curiosity doesn't stop with trail trees. The flyer he distributes asks for locations of "any other unique or odd geographic places or features." In Brown County, for instance, he knows of a valley riddled with nodules of iron. Another site features geodes.

The former union carpenter's goal is to put all of them on a map, using GIS skills learned not long ago at Ball State University. He was attracted during his time there by Indian mounds near the university, as well as old geological reports and maps, some from the early 1800s. "In other areas of the U.S., work is being done to document (things like geographic places or features) and preserve them," he said. He would like to do that here by mapping them or showing their purpose.

To help, contact Reoch at 812-988-5500 or send an email message to him at reocht@browncounty-in.us.



Mike Davis, Editor

(Continued on page 13)

(Continued from page 12)



Trail trees like this one, which also is pictured on the cover, are often found in hilly areas, pointing toward something of significance to those who formed the tree. Moss is growing on this one where water collects. The red arrow in the image points to the rock whose close-up is below. (Photo by Tom Reoch)



This is a close-up of a rock with bone-like features that a trail tree was pointing toward. Native Americans were known to bend young trees to mark points of interest. (Photo by Tom Reoch)

Dave Ruckman to Present at the ISPLS 65th Annual Convention

Dave Ruckman will present the course *Understanding of 45-mile linear retracement and importance of the Buffalo Trace* at the 2017 ISPLS Convention, January 18-20, 2017 at the Indianapolis Marriott East.

Dave, a native Hoosier, graduated from New Albany High School in 1968 and attended Purdue and Indiana Universities. He began surveying in 1969, eventually becoming registered to practice in eight states, and now maintains registrations in Indiana, Kentucky, and New Mexico. Dave served as President of ISPLS several times and is a founding member of the Initial Point Chapter of ISPLS. He created the LONG KNIFE Award for outstanding excellence in Surveying. Dave has published several books including *Men of the Compass*, *Legend of the Indian Hill Silver*, and *the Clark, Floyd, Harrison and Crawford Buffalo Trace*; and produced the video *Surveyors on the Buffalo Trace 1806.*"

Mark your calendar for the convention and visit www.ISPLS.org for more details.



The Indiana Professional Land Surveyors Foundation Awards Inaugural Benchmarking Scholarship to Ferris University Student Michael Flowers

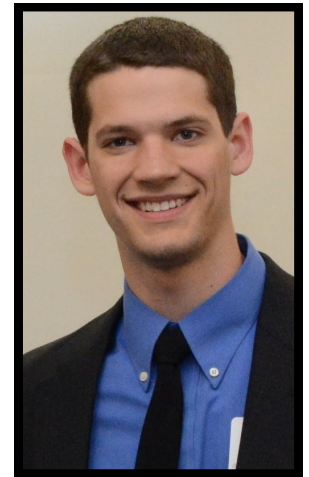
The Indiana Professional Land Surveyors Foundation, Inc. (IPLSF) is pleased to award the inaugural Benchmark Scholarship to Ferris State University senior Michael Flowers. His outstanding academic achievements and desire to join the surveying industry deems him a worthy recipient of the \$2,000 scholarship.

An Illinois native residing in Avon, IN since the age of seven, Michael is passionate about the surveying profession and is excited to work in the industry post-graduation. His interest in being outdoors and strength in math led him to pursue a career in the field.

“Since starting school, I have become more interested in the technology used in surveying,” he commented. “In addition to that, I enjoy some of the aspects of boundary surveying and am looking forward to learning a little more about that in some of my upcoming classes,” he wrote.

Outside of his studies, Michael enjoys hiking, camping, playing ultimate Frisbee, and has recently tried his hand at hunting. When he’s not spending time at school, Michael is serving at church, spending time with his girlfriend, or doing one of his favorite aforementioned hobbies with friends.

Michael has a bright future in surveying ahead of him. A true scholar, he hopes to finish his senior year strong and secure a position in surveying after graduation. “Looking a little further, I would like to like to work on a field crew right out of college in order to have the outdoor work experience, and would like to be able to gain experience using some of the more recent technology available to the surveying profession,” he noted. “Beyond that, I just hope to enjoy learning more and working full-time in the surveying field.”



Michael Flowers
Senior
Ferris State University

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LEGAL SURVEYS

Bryan F. Catlin, PS



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.

John Belork v. Robin Latimer, Davis Township Trustee and DMK&H Farms, Inc., Indiana Court of Appeals Case No. 75A04-1503-MI-100, May 5, 2016 - OPINION ON REHEARING

As a reminder, my earlier summary of the Appeals Court opinion follows in italics.

John Belork v. Robin Latimer, Davis Township Trustee and DMK&H Farms, Inc., Indiana Court of Appeals Case No. 75A04-1503-MI-100, November 16, 2015

This case does not involve a survey, but surveyors are often asked about fences and their status. I am including this summary to help in understanding Indiana's Partition Fence statutes.

Here Belork raises cattle on his farm in Starke County and has had complaints about them leaving his property in the past. Belork rebuilt the southern half of the fence along his eastern boundary with Jan Ferch and the western half of the fence along his southern boundary with DMK&H, using what is known as the right hand rule. Ferch and DMK&H are grain farmers and did not complete the rebuilding of the fences along their shared boundary with Belork. Belork asked Robin Latimer, the township trustee, to require his neighbors to construct or fund the remainder of the fences along the common boundaries in question. Latimer did not grant this request.

Belork filed a Petition for Writ of Mandamus per IC 34-27-3 naming Latimer, as trustee, as the respondent to fulfill her statutory duty to have the fences completed. DMK&H filed a motion to intervene as a respondent which the court granted. The Starke Circuit Court held a bench trial on February 9, 2015. The trial revolved around whether the fence would be used by the owners on both sides of the fence as required by IC 32-26-9-1. Belork's counsel argued that the statute applied if one of the adjoining parcels is agricultural. The court noted that the statute does not apply just because a fence exists but must be of use to both owners. In this case where Belork's neighbors are grain farmers, their only use would be for protection from Belork's cattle. Belork also argued that his neighbors might have livestock in the future and one stretch of fence caught windblown sand which would be benefits to his neighbors. The court ruled against Belork and this appeal followed.

The Court of Appeals affirmed the trial court decision that Ferch and DMK&H did not use or derive benefit from the fence so IC 32-26-9 did not apply to the facts of this case.

Belork petitioned for a rehearing arguing that the Appeals Court did not correctly apply the partition fence statutes. The Indiana Agricultural Law Foundation, Inc. filed a motion for leave to file an amicus curiae brief in support of the petition for rehearing, which was granted. After consideration of the applicable Indiana Code sections and definitions of agricultural land and partition fences in the code, the court found that the fences in question were partition fences, and all of the parties do benefit from them and are thus required to maintain their half. The opinion of November 16, 2015 was vacated, the trial court's order was reversed and the case was remanded for further proceedings.

(Continued on page 18)

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Judge Riley filed a dissent from the majority opinion. He stated that he would not have granted the petition for rehearing and would reaffirm the earlier opinion. He is concerned that the same arguments were made and that the presence of the amicus curiae brief was an attempt to insert interest group politics into the process. He is also concerned that additional arguments or claims not made in the previous appeal were considered in the rehearing.

So it seems Belork did not include the arguments he probably should have in the appeal or rehearing. Indiana Code seems to favor his position, but his attorneys may not have argued the correct code sections, while the amicus brief apparently pointed out the applicable portions beyond the original appeal. The result of the rehearing is what I grew up understanding as our responsibilities as to fences on the family farm, but occasionally someone in the area would argue otherwise, usually for economic reasons.

3155 Development Way, LLC v. APM Rental Properties, LLC, Indiana Court of Appeals Case No. 10A01-1508-PL-1235, March 29, 2016

APM Rental Properties (APM) was buying a parcel of land with a 23,000 square foot building from 3155 Development Way (Development). Development had listed the property as having easy access to I-65 and US 31 in Sellersburg. APM and Development entered into a contract where APM would make 36 monthly payments of \$7,500 and then a balloon payment of \$566,589.22. As the balloon payment was approaching APM sought mortgage financing which required assurance APM had access from a public street. Upon hiring a surveyor, APM learned that the paved access road was not a public road and ran across two neighboring tracts without benefit of an easement. APM attempted to obtain an easement from the property owners but was unsuccessful as the closing date neared. APM filed a complaint in the Clark Circuit Court against Development and the neighboring landowners to establish an access easement and began making monthly payments into an escrow account until the access issue was resolved. Several other motions were filed, and eventually the trial court granted partial summary judgment to APM, finding that Development did not have marketable title due to lack of public access to the tract, and APM could not be forced to accept such a deficient title. Development appealed the partial summary judgment.

Several issues were raised on appeal such as whether APM had breached the contract by paying into the escrow account until the access issue was cleared up, whether APM had a duty to investigate title issues by May 1, 2011 or waive such issues and if APM was even a real party to the contract. But the court decided that APM was induced into a contract by Development's misrepresentation, so the trial court was correct in rescinding the contract, and APM's payments into escrow did not breach the contract, so the judgment of the trial court was affirmed.

Town of Reynolds v. Board of Commissioners of White County and Certain Identified Landowners Remonstrating Against Ordinance No. 2014-09-02EX-2, Indiana Court of Appeals Case No. 79A02-1511-MI-1821, June 16, 2016

In this case from the Tippecanoe Superior Court, the Town of Reynolds in White County wished to annex two adjoining parcels, one, owned by MAG Pellet, LLC, and the other by Allen Farms 'N' LLC. In January of 2015, the Town adopted an annexation ordinance which extended to the center line of County Road 100 North. However, a parcel owned by the County and occupied by County Road 50 East also touches a portion of the MAG Pellet property. In 2014 MAG Pellet and the Town had entered into a Sewer and Water Main Extension Contract in which MAG Pellet agreed to not remonstrate against or oppose future annexation and consented to such annexation. Allen Farms and White County filed a complaint on April 14, 2015 for declaratory judgment, saying the failure to include entire County Road 100 North right-of-way, County Road 50 East and the County owned parcel County Road 50E is located on, by not complying with Indiana Statutes, rendered the annexation void. A second count was for a statutory remonstrance action. The next day the County and Allen Farms amended the action to include MAG Pellet. The Town filed an answer, counterclaim and motion for partial summary judgment.

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The trial court conducted a hearing and eventually granted judgment for the County since the failure to include the adjoining rights-of-way as well as the County parcel that contained CR 50E did not meet the requirements of IC 36-4-3-2.5, which states that adjoining rights-of-way **must** be included in annexations. Otherwise the County would still be obligated to maintain them and would not have standing to remonstrate against an annexation. The second remonstrance complaint was moot based on the court's judgment. The Town appealed.

On appeal the Town argued that the admitted failure to comply with statute should be overlooked as "technical non-compliance" and that the County did not have standing to challenge the validity of the annexation under the annexation statute. The Appeals Court did not agree and affirmed the judgment of the trial court.

Jeffrey B. Morgan and Wendi S. Morgan v. Andrew White and Holly White, Indiana Court of Appeals Case No. 41A05-1512-PL-2267, June 28, 2016

This case from the Johnson Superior Court is interesting because it involves neighbors whose beliefs about the location of the boundary between two platted lots in a subdivision were based on Surveyor Location Reports. Those beliefs eventually led to a successful adverse possession claim.

Here the owner of Lot 32 in Pleasant Creek Acres in Greenwood built a home in 1983 or 1984 and almost immediately built a chain link fence to enclose his back yard. The owner of Lot 33 to the south also built a chain link fence soon after and requested that he be allowed to connect to his neighbor's fence. The southern owner paid the northern owner toward the cost of the existing fence.

In 1998 the Whites purchased the southern lot and received a SLR at closing. Based on the SLR, they believed the property line between Lots 32 and 33 was the chain link fence. The Whites maintained to the fence and the property south of a line if the fence had been extended to the street as well as paid taxes on Lot 33. Around 2000, the owner of the northern lot wanted to install a privacy fence and asked the Whites if they would like to take down the shared chain link fence and replace it with a privacy fence. The Whites declined, and the northern owner removed his chain link fence except the portion between Lots 32 and 33 and replaced it with a privacy fence. Along the lot line in question, he installed it north of the chain link fence. In 2003, the Morgans purchased Lot 32. Prior to the closing, the Morgans believed the Whites owned the chain link fence and that it was on the White's property. But after reviewing the SLR they received at closing, the Morgans believed the Whites owned the chain link fence but that it was on Lot 32 by about two feet. In 2003 Jeffrey Morgan and Andrew White had a conversation where Morgan said the fence was on the Morgan's property, and White responded that he was not going to voluntarily change the fence location.

Since the Morgans have lived at Lot 32, they and the Whites have maintained to the chain link fence and the prolongation of the fence line to the street. In 2009, the Morgans planted some juniper bushes north of this line. In August of 2013, Andrew White trimmed the bushes he believed were across the property line as they scratched his wife as she mowed the lawn and were killing grass on his property as determined by the line of the chain link fence.

On February 13, 2014, the Morgans filed a complaint alleging trespass related to the trimming of the bushes and a complaint to compel removal of the fence. On April 8, 2014, the Whites filed counterclaims and a complaint to quiet title to the real estate alleging adverse possession and quiet title, title by acquiescence and quiet title, and slander of title. A motion for summary judgment by the Whites was denied on July 8, 2015, and a trial was held on August 26, 2015. On November 23, 2015, the court ruled in favor of the Whites on the Morgans complaints, in favor of the Whites on the adverse possession and quiet title count, and in favor of the Morgans on the White's other counts.

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Up until this time, neither party introduced evidence of a staked survey to establish the property line, and the court noted it had admitted a surveyor location report for the limited purpose of the Whites state of mind regarding their belief in the location of the property line while noting the SLR disclaimer about limited accuracy. The court also ordered the Whites to obtain, at their expense, a staked survey of the existing fence line and that the parties exchange reciprocal quitclaim deeds confirming the chain link fence line as the property boundary between Lots 32 and 33. This appeal followed.

Among other arguments, the Morgans challenged the identification and description of the tract while the Whites submitted that IC 32-30-2-4(1) notes that a description is sufficient if the sheriff, with the aid of a surveyor, can find the property and determine its boundaries. The Whites noted that a surveyor had established the property line in accordance with the court's order on December 18, 2015. The trial court had applied *Fraley v. Minger* to determine if the requirements for adverse possession had been met, and the Morgans argued that the court could not find for the Whites adverse possession where the exact borders were not entered into evidence. Here the Court of Appeals noted that it need not be known if the fence was on the lot line or on one or both of the lots in question. The Appeals Court stated that since the Whites had established the elements of adverse possession, they either owned the disputed strip legally or pursuant to the doctrine of adverse possession. The trial court's judgment was affirmed.

Kathryn Arnold v. Dennis Arnold, Indiana Court of Appeals Case No. 52A02-1511-PL-2602, April 15, 2016 - MEMORANDUM DECISION - not regarded as precedent

Here Dennis and Jo Ann Arnold lived on family property that they obtained by a 1974 warranty deed from his parents, subject to a life estate. After the death of his father in 1978 and his mother in 1979, they allowed Kenneth and Kathryn Arnold, Dennis's brother and sister-in-law, to live rent-free in their parent's former home on a tract that had been divided from the tract Dennis and Jo Ann lived on. Kenneth died in 2004, and the home fell into disrepair. In 2006, Dennis sent contractors to work on the home and Kathryn "drove them off." In 2011, Dennis sent Kathryn a written demand to vacate the property, which she ignored.

In 2013, Dennis filed suit to eject Kathryn from the property, and she filed a counterclaim for adverse possession. After a bench trial in the Miami Superior Court, the court entered judgment in favor of Dennis's claim and against Kathryn's counterclaim, and this appeal followed.

Kathryn's appeal focused on whether she had paid taxes, while the trial court had judged that Kathryn lived in the home with Dennis and Jo Ann's permission and acquiescence which defeated any hostile use. The judgment of the trial court was affirmed.

James H. Calkins and Walnut Hill Development, LLC v. James Leto and Colony Bay Apartments, LLC, Indiana Court of Appeals Case No. 02A03-1511-CT-1849, May 20, 2016 - MEMORANDUM DECISION - not regarded as precedent

Leto owns Colony Bay which represents a multifamily apartment complex in Fort Wayne. Walnut Hills owns a parcel immediately north of Colony Bay. On May 14, 1987, a predecessor in title to Colony Bay entered into an Encroachment Agreement with the then owner of the north parcel to allow the use and maintenance of parking areas and a tennis court that encroached onto the northern parcel. A survey attached to the agreement depicted twenty-two parking spaces and four light poles with electrical lines just north of the north property line of Colony Bay.

On August 21, 2012, Colony Bay filed a complaint against Calkins asserting criminal trespass since Calkins had placed boulders on the parking spaces in the encroachment area which interfered with possession and use of the area.

(Continued on page 21)

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On October 29, 2013, Walnut Hills filed a complaint against Colony Bay and Leto, requesting a judgment on the validity of the Encroachment Agreement. The causes were consolidated on August 18, 2014. Colony Bay and Leto requested a summary judgment on September 4, 2014 seeking a declaration that the agreement is valid and granted an exclusive right to park vehicles in the area and to maintain the utility poles and lighting. Calkins and Walnut Hills claimed the agreement was extinguished by merger. The Allen Superior Court issued a summary judgment on July 20, 2015 finding that, as a matter of law, there was no genuine issue of material fact and that the Encroachment Agreement is valid. This appeal ensued.

The Appeals Court noted that the Encroachment Agreement clearly created an appurtenant easement which designated the dominant and servient estates, the encroached upon area and included rights to maintenance, repair and replace. The Agreement incorporated a survey showing the dominant and servient estates. The court noted that the owner of the dominant estate possesses all rights necessary to the enjoyment of the easement. In addition, since the four light poles were depicted in the agreement, that is decisive of the enjoyment of the easement including the right to maintain the lights. The argument about merger having extinguished the agreement failed as there had never been common ownership since the agreement was put in place. Calkins and Walnut Hills had based their argument on a Siara Management Ltd. being named in two small claims court actions. But title research was presented which noted that while Siara had owned the Walnut Hills parcel, they had never owned the Colony Bay parcel, although Siara had managed the apartments. The trial court judgment was affirmed.

Robert J. Fiedler and Dianne C. Fiedler v. LaGrange County Regional Utility District, Indiana Court of Appeals Case No. 44A03-1512-MI-2316, May 25, 2016 - MEMORANDUM DECISION - not regarded as precedent

This case from the LaGrange Circuit Court involves the Fiedlers who owned a lot on Shiphewana Lake. The utility district entered into an agreement to provide sewer services around the lake with funding from the United States Department of Agriculture which brought with it a requirement to follow the Uniform Relocation Assistance and Real Property Acquisition Act (URA). The district notified affected owners that the district would install a grinder pump and other equipment on each lot at no cost to the homeowner in exchange for a voluntary easement to install and maintain the equipment. The Fiedlers declined to provide a voluntary easement. The utility stated that it would not install the equipment, that the Fiedlers would have to do so at their own cost, and that the Fiedlers were required to disconnect from their private septic tank by a certain date. The Utility District filed a complaint on August 22, 2013 seeking to force the Fiedlers to discontinue use of their private septic system, to connect to the districts sewer line and to pay costs and attorney fees from the litigation. After several motions, and the Fiedlers eventually getting counsel, the court entered partial summary judgment for the utility district, requiring the Fiedlers to connect to the sewer system and reserving calculations of damages for later. Other actions were taking place as well but eventually the judgment was appealed and affirmed by the Court of Appeals.

James Albert Costello and Lisa Renee Costello v. Wayne Zollman and Teresa Zollman, Indiana Court of Appeals Case No. 10A05-1503-PL-97, May 31, 2016 - MEMORANDUM DECISION - not regarded as precedent

The Costellos and Zollmans live on neighboring lands in Clark County. Prior to 1957, a fence was constructed between the two properties. In the 1960s, Zollman began leasing the parcel he would eventually purchase in 1978 for hunting and farming. Wayne Zollman believed the fence was the boundary between the northeastern portion of the Costello property and the southwestern portion of the Zollman property. Zollman built additional fences over time and attached them to the fence in order to contain livestock and repaired the fence from time to time. In 1993, Lisa Costello's parents purchased the Costello Real Estate and the Costellos often resided on the property. She did not know if the fence was the legal boundary line but observed the Zollmans house animals up to it. In 1997, Lisa's parent deeded the property to her. Lisa observed the Zollmans store piles of lime dust near the barn 100 feet east of the fence. The Zollmans again attached additional fencing to enclose animals. The Costellos claimed the Zollmans' animal damaged the fence and entered the Costellos' property and caused the Costellos to repair and replace portions of the fence. Around this time a cluster of thirty-one trees just west of the fence began to die and rot. Lisa had soil samples taken which were tested indicating an increased pH level. *(Continued on page 22)*

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In 2003, Lisa had a boundary survey prepared which revealed that the entire length of the fence was on the Costello property and a strip east of their property which was unowned. At some point, the Township Trustee removed and replaced a portion of the fence which was then assessed against the Costellos' property taxes. In October 2005, the Costellos filed a complaint against Wayne Zollman and several township officials. Wayne Zollman asserted a counterclaim alleging the lawsuit was frivolous and requesting attorney's fees. After mediation, the claims against the township officials were dismissed in consideration of a payment, but the claim against Wayne Zollman was not settled.

In 2009, Lisa had additional soil testing done which indicated the soil pH had returned to normal and on September 10, 2010 hired the prior surveyor to perform a legal survey. On October 13, 2010, the surveyor again adopted his 2003 findings and recorded the survey at the Clark County Surveyor's Office. The survey indicated the Costello boundary was 1.33 feet east of the fence and that an additional 5.88-foot-wide strip east of that (together, the disputed property) was unowned. In May 2011, the Costellos filed a complaint amending the 2005 complaint, and in August 2011, the Costellos filed a third amended complaint for damages and request for declaratory judgment and added Teresa as a defendant. The complaint requested the Clark Circuit Court adopt the findings of the 2010 survey and declare the Costellos the owners of the disputed property, award damages to the Costellos for common law trespass, and award treble damages and attorney's fees.

After discovery, a bench trial was held in August 2014. Prior to trial, the Zollmans made a motion for specific findings of fact and conclusions, which were granted. Also prior to trial, Lisa removed the fence. On October 28, 2014, the court held that the Zollmans held title to the disputed property, the Costellos were not entitled to damages, and the Zollmans were entitled to a personal judgment against the Costellos in the amount of \$1,950.00 for damages suffered by the removal of the fence. The trial court adopted the Zollmans' proposed findings verbatim. This appeal followed.

The Costellos contended the trial court erred in concluding Zollman had proved adverse possession in 1988. The Court of Appeals notes why the requirements of *Fraley v. Minger* were satisfied in this case for the disputed property although title to the actual fence was not determined. The Court of Appeals affirmed that Zollman acquired title of the disputed property by adverse possession, but since they did not gain title to the fence, their claim of trespass due to removal of the fence and damages for removal of the fence related to trespass fail. The Costellos also claimed that the trial court erred in finding that the Zollmans did not commit common law or criminal trespass by allowing lime to flow onto their property where the trees died. The denial of the Costellos claim of trespass by lime flowing onto their property was reversed and remanded back to the trial court with instructions for further proceedings.

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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Keyboard Shortcuts

Mastering just a few of these essential shortcuts can drastically increase both your productivity and the pace at which you work. Check out these important PC and Mac shortcuts that you absolutely need to know.



For PC users

Delete with confidence

Backspace can be both your friend and your enemy. Deleting a word or two is no problem, but anything longer may turn a simple deletion into an arcade-style game of stop the cursor before it erases the whole paragraph.

Ctrl + backspace allows you to delete entire words at a time, or a whole sentence in no time.

S.O.S.

From time to time programs crash, lag, and freeze. You can avoid having to shut down your machine and call IT to recover documents with this three-button combo.

Ctrl + Shift + Escape will open your computer's Task Manager, allowing you to terminate the problem program and continue uninterrupted.

Learn to Quick-Pick

Alternating between different programs? Don't let your mouse slow you down. This game changing shortcut allows you to seamlessly work across all of your essential programs without having to lift your hands.

Holding **Alt + Tab** brings up the index of currently opened programs, and pressing Tab again allows you to cycle between them.

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Dude, where's my desktop?

When your work day is firing on all cylinders, you might have more than a few different windows open on your machine. Need easy access to a file that's currently on your desktop? Don't break your flow minimizing.

Win + D is a shortcut for you to quickly clear your screen and grab what you need.

Oh, snap!

This is my favorite tool for doing research, writing, or any other time I'm simultaneously working in different windows. **WIN + left/right arrow keys** makes the currently selected window "snap" to one half of the screen or the other. Apply left and right positioning to two windows and enjoy a perfect split screen setup.

On your OS X

Find it faster

Spotlight helps you quickly locate files, apps, documents, and more. You can add to the speed at which you search with this simple Spotlight shortcut. **CMD Spacebar** makes finding files far less tedious, and the additional functions - dictionary, currency conversions, Wikipedia articles, and more - make this smart search function an invaluable tool for power users.

Snap a section

Screen shots are a frequently used feature for many mac users. Sometimes though, be they nefarious or accuracy-related reasons, you'd rather not capture your *entire* screen. **CMD + 4** allows you to easily select the section of your screen you want captured with a simple drag of your mouse.

Say What?

With over 1,000,000 words in the English language, there's a chance you might run across one that you don't know. **CMD+Ctrl+D** will bring up the definition of a word you've highlighted, helping you to understand the context, so you can continue your work indefatigably.

Four-for-one in Finder

Corporate file servers being what they are, it's possible to spend inordinate amount of time just looking for the right file. Be more productive by staying on the keyboard.

CMD+F opens the Finder, and the arrow keys get you from folder to folder

CMD+O opens a selected item

CMD+I will show its meta-info, and the space bar will even give you a visual preview of it.

CMD+1, 2, 3 or 4 lets you toggle between Finder views.

Keep it secret

Sometimes you need to keep prying eyes off your screen. Here's a quick way to minimize your risk. **CMD+W** a great keystroke to remember if the boss walks by and you want to hide that top-secret, game-changing market analysis you've been working on (or anything else).

The Keyboard Shortcuts information was gathered from the following website: <http://www.qclearnfree.org/techsavvy/keyboard-shortcuts/1/>

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