

43-4 Spring 2017

# HOOSIER SURVEYOR

Quarterly publication of the Indiana Society of Professional Land Surveyors, Inc.


## FEATURED ARTICLE


Pat Sheehan, president of Weihe Engineers, leading an immersive learning activity with students at IPS Butler Lab School #60


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 The Forty-Acre Law

 Legislative Update

 NGS Offers a Variety of Educational Opportunities

 The Buffalo Trace-Wilderness Road Surveyor's Rendezvous



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L to R: Alexander Fabian, Munster; Rich Hudson, Valparaiso; Norman Hiselman, Avon; Bryan Catlin, Clayton; Ed Sweetland, Indianapolis; Brent Friend, Franklin; Dave Myers, Terre Haute; Eric Banschbach, Indianapolis; Don Williams, Crown Point; Kurt Vonderheide, Munster; Vincent Barr, Franklin. Not pictured: Ryan Swingley, Indianapolis.

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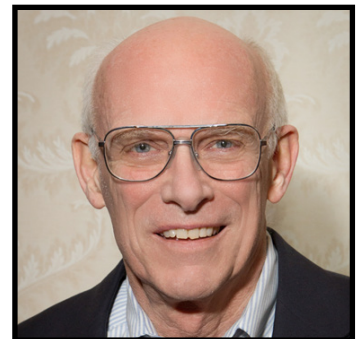
## FROM THE EDITOR

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

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

By ISPLS President, Bryan F. Catlin, PS

**G**reetings,

Indiana may have celebrated its bicentennial last year, but pioneer surveyors were active in Indiana before and after 1816.

Where I work in Marion County, GLO Deputy Surveyor John McDonald laid out the township boundaries in 1819, and Deputy Surveyors John Hendricks in 1820 and William B. Laughlin in 1820 and 1821 laid out the sections. It is sometimes hard to picture that present-day Indianapolis was once mostly wooded, but I see the evidence weekly as I research the history of section corners to add to tie sheets.

I read this in the handwritten Marion County copy of the GLO notes, which brings me to the main point of this message. The Cadastral, Boundaries and Public Land Survey System committee of the Indiana Geographic Information Council is in the process of fund raising to make these and other historic land records easily accessible for free on-line. The pilot project deals with Marion County, but the goal is to provide access to the Federal copy of the GLO notes and plats from the National Archives that ISPLS member Clayton Hogston has scanned, enhanced and indexed, the State copy of the GLO notes and plats as well as the GLO field books that were found during an initial phase of this project at the State Archives, the County copy of the GLO notes and plats, GLO Land Patents from the Bureau of Land Management, links to corner ties sheets and several more layers of data for the entire state via the IndianaMap web site.

Some of the county-level data may not be available for all counties now, but there will be a framework to support it if it does become available. As Clayton Hogston has previously demonstrated, there are errors and differences in the different copies of the GLO data, and it would be helpful to know where any differences are when trying to confirm a corner location. While most corners have some type of evidence, in areas with few corner ties, I have used GLO distances and topo ties to help confirm or rule out possible corner locations. There is also at least one original bearing tree for a Marion County section corner that was still alive when we last updated the corner tie a few years ago (a picture of it is on the Marion County Surveyors website). Without easy access to GLO data, we wouldn't be looking for original bearing trees and might have made the common assumption that they are long gone.



If anyone is interested, Clayton is also making his data available to surveyors for a fee. Once he has had someone purchase data, he will make that township, county, etc. available for public use for this project. So that is another way to help support this project.

As a member of the IGIC committee trying to get this project off the ground, I urge you to consider going to the Go Fund Me website, searching for IGIC, and making a donation to this effort as I have.

Finally, the Indiana General Assembly is wrapping up their session, but one bill supported by ISPLS, Senate Bill 505 which deals with many Recorders Office issues, has been signed by the Governor. Among other things this will establish fixed fees for recording many types of documents and broaden the types of documents that have five dollars of the recording fee directed to the County Surveyors Corner Perpetuation Fund. The fixed fees were requested by Mortgage and Title Insurance groups so that they will not have to go back and forth with Recorders Offices to finally determine the correct recording fee, saving them time and money.

Bryan F. Catlin, PS  
2017 ISPLS President





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# ENGINEERING THE FUTURE

Submitted by Weihe Engineers, Inc.

**W**eihe Engineers is proud to partner with clients to help them “Build with Confidence.” Recently, we shifted our focus for a few hours to introduce the civil engineering profession to students. Most engineering companies have struggled to fill the highly skilled positions needed in our profession. We believe it is important to introduce as many students as possible to civil engineering, land surveying and landscape architecture to ensure a qualified workforce for developments of the future.

From January 13-18 we had a senior from Traders Point Christian High School job-shadow our staff. He spent 25 hours with us, asking questions about day-to-day activities and learning how the civil engineering industry produces designs that protect the health and safety of the public while providing practical, aesthetically pleasing solutions for communities.

During that time, the student spent a day with each of our three departments: commercial engineering, land surveying, and residential engineering. He met with our senior management to learn about each department, then spent time with project managers and designers to learn about the tools and skills practiced daily in our profession. The student joined our commercial team for a project management meeting and was given the opportunity to review a sample set of commercial construction plans with a follow-up question-and-answer session with a Professional Engineer.

While shadowing our survey department, he reviewed three types of surveys and had the unique syntax of a legal description explained to him. During time spent with the residential department, the student met with project managers and shadowed designers to see how AutoCAD is used to prepare subdivision construction plans.



A Traders Point Christian High School student watches the on-screen work of a designer at Weihe Engineers.

On January 25, Pat Sheehan, president of Weihe Engineers, visited with a kindergarten/first grade class at IPS/Butler Lab School 60, 3330 N. Pennsylvania Ave., Indianapolis. He spoke to the class about the civil engineer-

ing profession and showed them some of the tools a civil engineer works with. He then led them in an immersive learning activity where the students teamed up to create their own city master plan by placing a water tower, parking lots, roads, and bridges.



Weihe Engineers President Pat Sheehan with young students at IPS/Butler University Laboratory School.

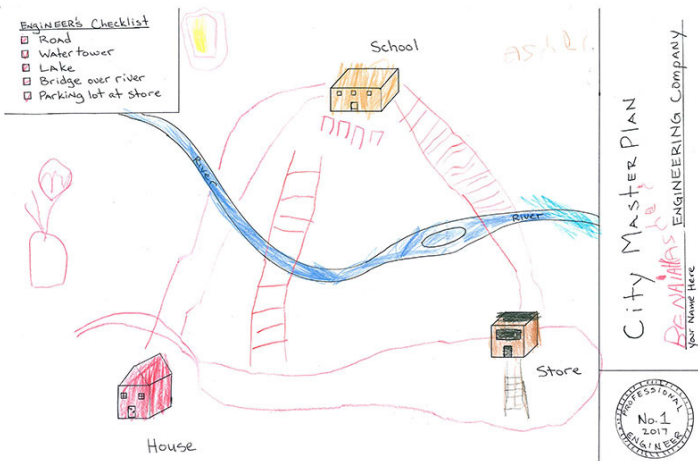
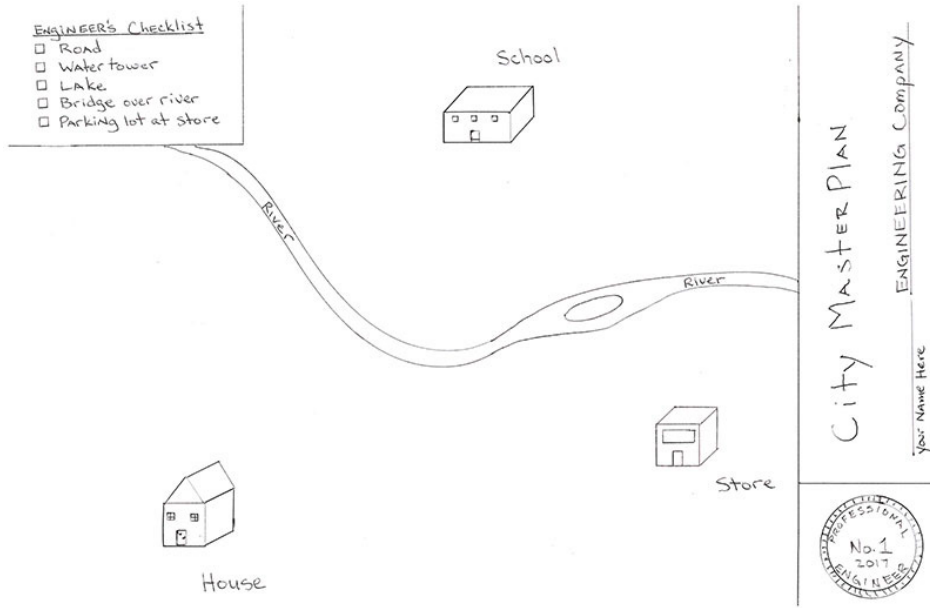
Here’s what the teacher, Samantha Cusick, said about the activity: “We were so thankful for this experience! Such a wonderful thing happens when we have these rich experiences. Questions arise, such as when the students asked how do you build bridges over water since there is water there or when the students learn that engineers use math every day, just like they do.

“Through this our identities are continuously transforming. We are readers, writers, mathematicians, friends, creators, airport and airplane experts, and engineers. Around the room, I heard so many students squealing with excitement saying, ‘We are engineers now!’”

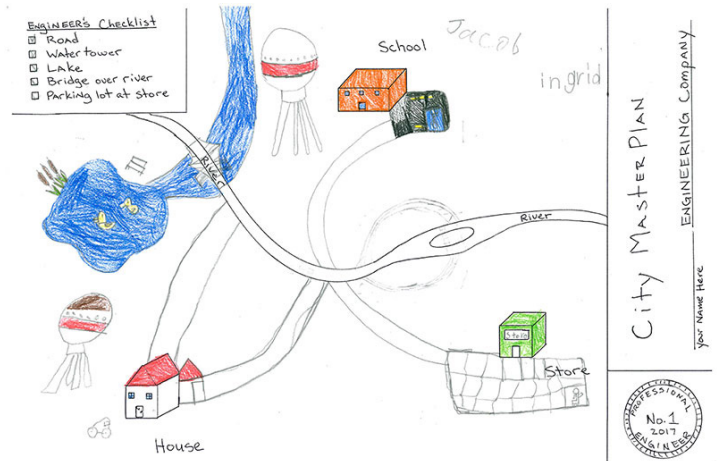
We hope that sharing our profession with students gives them useful insight into a potential career path and helps them understand the satisfaction of a rewarding career in civil engineering. We wish them the best of luck as they engineer their own future!

*Drawings on Page 7*

Blank Master Plan



Completed Master Plan by Kindergarteners



Completed Master Plan by First Graders

# THE FORTY-ACRE LAW

By Jim Swift, PS

**A**s the 22nd Congress of the United States of America met in 1831, matters of legislation pertaining to the sale of the public lands were of utmost importance. The old Northwest Territory, the Louisiana Purchase, and swaths of the South remained under ownership of the U.S. Government, or were under negotiation to be transferred from the native inhabitants to the U.S. Government. The sale of these public lands to private citizens accomplished two critical goals at once. Critical revenue was brought into the government coffers while westward migration and settlement were enabled, thus securing American occupation and control of the western frontier.

Members of the 22nd Congress were likely familiar with the operations of General Land Office and regularly debated specifics about the mechanisms by which to sell public lands. Typical of the debates of the U.S. Congress throughout its history, a primary issue was the degree to which legislation favored wealthy investors or the common man. As of 1831, the law specified that public lands could be sold in tracts of eighty acres minimum, in the form of a half-quarter section. Late in 1831, those supporting the opportunities of the would-be settler who could not afford the full eighty-acre tract introduced a bill which would provide for the sale of forty-acre quarter-quarter sections with the condition that purchasers of such tracts would actually settle on and cultivate the ground.

The ensuing debate was heated, with some administrators of the regional land offices strongly opposed. Land Officer Gideon Fitz wrote to Elijah Hayward, Commissioner of the General Land Office, "The project proposed by some, to cut up the Sections into forty acre tracts, would be attended with endless difficulty. It would destroy the use of all the tract books at present in use in the land offices, and would make it so difficult for purchasers to describe the lots, for the tracts could not be designated any other way, that erroneous entries would continually occur." (Fitz to Hayward, compliments of The Land Office Business, Malcolm Rohrbough, Oxford University Press, 1968).

Further debate centered on the merits and effectiveness of legislation designed to help the poor farmer over the rich investor. Matters of pre-emption, addressing the fact that some settlers had made improvements to ground prior to the purchase of that ground, were also addressed. Pre-emption was a hot topic in Congress at that time. Ultimately, debate was brought to a close and the law passed. On April 5, 1832, President Andrew Jackson signed An Act Supplementary to the Several Laws for the Sale of Public Lands, commonly known as "The Forty-Acre Law." Prior to this law, the smallest division of a section offered for sale by the U.S. Government was the eighty-acre

half-quarter section. Subsequently, the forty-acre quarter-quarter section became available. In Indiana, the opportunity to purchase a smaller parcel was quickly embraced by settlers. Entries of quarter-quarter sections in the tract books became common beginning in 1833. Considering the time frame and the history of surveying and settlement in Indiana, it seems that one is more likely to encounter original, patented quarter-quarter sections in the central and northern parts of Indiana than in Southern Indiana, as most of the southern portion of the state had already been sold to private citizens by the time this law came into effect, while much of the central and northern parts of the state remained available.

The full text of the law is reproduced below.

## **Act Supplementary to the Several Laws for the Sale of Public Lands**

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled,* That from and after the first day of May next, all the public lands of the United States, when offered at private sale, may be purchased at the option of the purchaser, either in entire sections, half sections, quarter sections, half-quarter sections, or quarter-quarter sections; and in every case of a division of a half-quarter section, the line for the division thereof shall run east and west, and the corners and contents of quarter-quarter sections, which may thereafter be sold, shall be ascertained as nearly as may be, in the manner, and on the principles, directed and prescribed by the second section of an act, entitled "An act concerning the mode of surveying the public lands of the United States," passed on the eleventh day of February, eighteen hundred and five; and fractional sections, containing fewer or more than one hundred and sixty acres, shall in like manner, as nearly as may be practicable, be subdivided into quarter-quarter sections, under such rules and regulations as may be prescribed by the Secretary of the Treasury: Provided, That this act shall not be construed to alter any special provision made by law for the sale of land in town lots: And, provided also, That no person shall be permitted to enter more than one half-quarter section of land under this act, in quarter-quarter sections, in his own name, or in the name of any other person, and in no case, unless he intends it for cultivation, or for the use of his improvement.

And the person making application to make an entry under this act shall file his and her affidavit, under such regulations as the Secretary of the Treasury may prescribe, that he or she makes the entry in his or her own name, for his or her own benefit, and not in trust for another:

*(Continued on page 9)*



(Continued from page 8)

Provided, further, That all actual settlers, being house-keepers upon the public lands, shall have the right of pre-emption to enter, within six months after the passage of this act, not exceeding the quantity of one half-quarter section, under the provisions of this act, to include his or their improvements, under such regulations as have been, or may be prescribed by the Secretary of the Treasury; and in cases where two persons shall live upon the same quarter section, subject to be entered under the provisions of this act, each shall have the right to enter that quarter-quarter section which includes his improvements. APPROVED, April 5, 1832.

[Click to access Twenty Second Congress, Session 1, Chapter 65](#)

*James Swift is a Professional Surveyor with degrees in History and Geomatics. He maintains a keen interest in the history of surveying, the land office business, and the Public Land Survey System.*



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By ISPLS President, 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](http://www.in.gov/judiciary). Comments or suggestions for future columns are welcome by email to: [Bryan.Catlin@indy.gov](mailto:Bryan.Catlin@indy.gov).



**Flat Rock Wind, LLC v. Rush County Area Board of Zoning Appeals and Daniel Sprinkle, et al, Indiana Court of Appeals Case No. 70A01-1606-PL-1382, February 14, 2017**

Here Flat Rock Wind was proposing a wind farm in Rush and Henry Counties. The Rush County zoning ordinance treats wind farms as a special exception and has over twenty pages of specifications for wind farm development, covering initial zoning application, to permitting, to final decommissioning. In particular, there is a provision for a minimum setback distance of one thousand feet for non-participating landowners measured from the center of a wind turbine to the nearest corner of a residential dwelling. Flat Rock Wind submitted a special exception application which contained a certification that the proposed wind turbines would meet the 1,000 feet setback from residential dwellings. Flat Rock Wind filed an amended application and the BZA heard from residents for and against the project and reviewed a study on the effects of wind turbine noise. One remonstrator noted that a turbine manufacturer's recommended setback was 6,562 feet. Potential negative impacts on property values were also discussed. The BZA approved the special purpose application including a 2,300 feet setback between the wind turbines and the properties of non-participating owners.

Flat Rock Wind filed a petition with the Rush Superior Court seeking judicial review of the BZA decision with emphasis on the setback condition. Several landowners filed a motion to intervene which was granted over Flat Rock Wind's objections. After a hearing the court affirmed the BZA's zoning decision and Flat Rock Wind appealed, arguing that the landowners should not have been allowed to intervene and that the BZA approved setback was improper.

The Court of Appeals affirmed the trial court decision. Flat Rock Wind had argued at trial and on appeal that the 1,000 foot setback was an objective standard which should be followed. Both the trial and appeals courts agreed that

the BZA was operating within its authority and correct in interpreting the 1,000 feet as a minimum which could be increased to protect the health, safety and general welfare of the public

**Mint Management, LLC, and J&MW Holdings, LLC v. City of Richmond, Indiana, Indiana Court of Appeals Case No. 89A01-1603-PL-496, February 15, 2017**

The plaintiffs own four parcels in Richmond which has a stormwater ordinance which provides that:

A [Stormwater Fee] shall be imposed on each and every lot and parcel of land within the City which *directly or indirectly contributes* to the storm water system of the City, which charge shall be assessed against the property owner thereof, who shall be considered the user for the purposes of this chapter. (emphasis added)

After hiring a surveyor who determined that stormwater runoff from the properties did not drain directly or indirectly into the City's stormwater system, the property owners filed claims against the City requesting a declaration that they were not required to pay Stormwater Fees under the Ordinance since the properties did not "contribute to" the City's stormwater system as well as requesting repayment of fees already paid. The City moved for summary judgment on all claims. The City argued that the Ordinance imposed a fee for all property in the City's boundaries, not just properties whose stormwater runoff drained into the stormwater system. The City referred to other parts of the Ordinance which indicated the fee was meant to apply to all users of the stormwater system, and defined users as property owners benefitting from the system. The City also referred to the Indiana Code which enabled the ordinance which indicated that all property owners were to be considered to benefit from the stormwater system. The property owners argued that their properties did not contribute to the system and they should not have to pay a stormwater fee, but they did not address the definition of user and the intent of the ordinance to charge all property owners benefitting from the system. The Wayne Superior Court granted the City summary judgment. The property owners appealed arguing the trial court erred in deciding there were no genuine issues of material fact about whether they were subject to the ordinance.

The appeals court agreed that the selective reading of "directly or indirectly contributes" leads to an irrational interpretation of the ordinance as a whole. In addition, the ordinance includes combined sewers as a basis for the stormwater fee which indicates it is not solely based on runoff draining into the system.

(Continued on page 11)

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The judgment of the trial court was affirmed.

**Blaine Boyland, Amy L. Boyland, David K. Jones, and Susan E. Jones v. Castle Farms, Inc., Indiana Court of Appeals Case No. 06A05-1511-CC-1867, February 28, 2017**

Castle Farms owns a field north of Jones and Boyland in Boone County. Jones (part of Lot 1) and Boyland (part of Lot 2) own property in The Woods, a 1959 subdivision. In 1960, a quitclaim deed conveyed to the owner of Lot 1 a strip of land 61 feet wide immediately north of Lot 1 and a similar quitclaim deed conveyed a strip 61 feet wide immediately north of Lot 2 to the owner of Lot 2. In 1992 Castle Farms purchased property including a field north of The Woods. There was a fence and tree line separating the field from the residential lots. Castle Farms had an ALTA survey prepared by Anderson & Associates which included the description of the purchased property. The description noted the south line was along an existing fence, ... the North line of the Himmelein Property ... and the North line of the Jones Property. The 1992 survey also noted that the distance from a Quarter-Quarter corner in the road to the south, to the southern boundary of the property conveyed to Castle Farms was 700.3 feet. Dean Jackson farmed the field prior to 1992 and continued to do so under a share-crop agreement with Castle Farms. In 1993, the Joneses acquired a part of Lot 1 and the strip 61 feet in width north of Lot 1. In 2002, the Boylands acquired part of Lot 2 and the strip 61 feet in width north of part of Lot 2. Blaine Boyland contacted a member of Terry Castle's family on November 26, 2007 about a question on the boundary line location. Terry Castle, one of the principal owners of Castle Farms, met with Blaine at the property, looked at some drawings and walked on the field with Blaine. Terry indicated he did not want to sell any land to the Boylands. At the time of this meeting, Terry did not notice any dumping of logs or other materials across the fence row and observed that the fence or fence remnants existed. Terry felt comfortable with his ownership, did not see anything in question and did not see the Boylands trying to occupy his land. On December 7, 2007, the Boylands re-recorded the warranty deed they received in 2002 but attached a modified legal description which indicated "Also 61 feet in width immediately North and lying adjacent to the North line of the above described real estate." So two 61 foot strips were now described.

In 2013, Jackson informed Terry Castle that he was unable to farm the property. Terry Castle visited the field and noticed logs, cut wood, ash and leaves had been placed north of the fence line, there was no fence where the Boylands had placed a drive, that the Boyland's driveway had been extended north from where it was in 2007 and where he

thought the boundary was, and that logs and other debris extended 30 or 40 feet from where he thought the boundary was. A letter was sent to the Boylands on behalf of Castle Farms in October 2013. The Boylands did not make any changes.

On January 31, 2014, Castle Farms filed a complaint for trespass against the Boylands. The Boylands responded with a counterclaim that they owned the 61 foot strip by adverse possession. Castle Farms responded denying the Boylands' claim. On January 30, 2015, the Joneses filed a motion to intervene, based on the similar language about a 61 foot strip, which the court granted. The Joneses alleged quiet title, trespass, conversion and adverse possession. Castle Farms replied that they had farmed the land north of the fence row and now owned it by adverse possession. During an April, 2015 bench trial in the Boone Circuit Court, there was much evidence presented about taxes, GIS, the 1992 survey, and testimony from two surveyors. One surveyor testified he found a marker at the northwest corner of the 61 feet added on to Lot 1 where fence remnants still exist 700 feet north of the road. The other surveyor disregarded a 639.3-foot plat dimension in favor of the called for fence and believed the 61 feet was north of the fence line. On May 8, 2015 the court entered 207 findings and conclusions determining that Castle Farms owned the disputed property having satisfied the element of adverse possession including that they had a reasonable and good faith belief they had paid taxes on the disputed strip. The Boylands were ordered to remove all debris and property, other than septic lines, within 90 days and to remove the septic lines within two years.

The Boylands and Joneses filed a motion to reconsider, arguing that Castle Farms only be awarded what they farmed five feet north of the tree line. Castle argued for the line of the fence remnants as the tree row was too irregular and indefinite. After a hearing which noted all parties deemed the motion to reconsider to be a motion to correct error, Castle Farms was awarded the property north of an east-west line seventeen and one-half feet north of the fence remnant. The parties were ordered to hire a surveyor to establish the description of the east-west boundary and to share the costs equally.

On appeal, and after discussion of why the elements of adverse possession in *Fralely v. Minger* were satisfied, the judgment of the trial court was affirmed.

**Certain Tell City Annexation Territory Landowners v. Tell City, Indiana, Indiana Court of Appeals Case No. 62A01-1603-MI-510 March 30, 2017**

Here the Perry Circuit Court ordered the Auditor of Perry

(Continued from page 11)

County to review a remonstrance petition to determine if enough landowners had signed to have standing to remonstrate against an annexation. The Auditor found that there were 637 total parcels in the annexation territory and that 145 of the 438 signatures in the remonstrance petition did not comply with Indiana Code. The 145 signatures were found non-compliant because they did not exactly match any of the names on the tax duplicate. For example, one person signed as “Joe” instead of “Joseph”, some people had added middle initials, and some trustees had signed on behalf of their trusts and/or corporations. The property owners filed a memorandum objecting to the Auditor’s schedule arguing that the Auditor’s interpretation that the signatures had to exactly match the tax duplicate was arbitrary since it was not required in the remonstrance statute, that parcels were included that did not belong in the annexation territory and that the Auditor had improperly counted forty-eight separate state owned parcels instead of one single parcel. If these alleged errors were adjusted the remonstrators would have standing. The City responded basically supporting the Auditor’s determination.

After a hearing where many of the minor signature problems were detailed, the court held the remonstrance petition did not contain the necessary signatures for the property owners to have standing to challenge the annexation. The property owners appealed.

After a lengthy discussion of prior decisions about names in legal settings, the statutory requirements for remonstrance signatures, and a finding that there were enough valid signatures for the remonstrators to have standing, the trial court’s decision was reversed and remanded.

**Keith Krzeminski v. James Carr and Renee Carr, Indiana Court of Appeals Case No. 76A03-1603-MI-716, January 23, 2017 MEMORANDUM DECISION**

This case from the Steuben Superior Court involves property which was sold at auction to two buyers which would require an easement to be provided across one parcel to the other. Both buyers backed out of the purchase and once the closing date in the purchase agreement had passed, the property was later sold to another entity for a lower amount. The trial court granted summary judgment to the sellers requiring one of the buyers who backed out of the sale to be responsible for the difference in the value determined at auction and the amount the property finally sold for. On appeal, the court found that there are genuine matters of fact that should be decided at trial so summary judgment was not appropriate. Some of the issues deal with whether easement and deed language had been provided to the buyer before the closing date as well as the amount of rents from a campground that were to be paid to

the buyer. Since there is a question about who breached the contract, the decision was reversed and remanded for further action.

**Margaret J. Wilkinson v. Ivan H. Kuehn and Micki L. Kuehn, Indiana Court of Appeals Case No. 74A05-1608-PL-1994, February 3, 2017 MEMORANDUM DECISION**

Here Wilkinson sold land in a wooded area to the Kuehns in 1998 while retaining a 150-foot scenic easement along the common boundary which restricted buildings from being constructed on that part of the Kuehn property. In 2007 the Kuehns showed Wilkinson flags where a house was to be built and Wilkinson admittedly did not object to the location. The Kuehns indicated the location did not encroach on the easement but they did not have a survey performed. In 2016, the Kuehns attempted to sell the house and the buyers survey revealed that the house encroached onto the easement by seven to eighteen feet. The Kuehns petitioned the Spencer Circuit Court for emergency partial relief from the easement. After a hearing, the court ordered title be quieted and a declaratory judgment entered making it clear the court was not going to order removal of the house. The court ordered a partial release of the scenic easement in the encroachment area. Damages to Wilkinson for the encroachment and taking of the rights protected by the easement would be determined at a later damages hearing. Wilkinson appealed. The appeals court noted that all acknowledged the house was built in the easement and that Wilkinson did not object before or after the house was built (Wilkinson had the opportunity to have a survey performed but did not do so). This is a clear case of acquiescence based on these two facts alone. The decision of the trial court was affirmed.

**Neidlinger Trust #0801, by John P. Neidlinger and Casey Neidlinger, Trustees v. Michael S. Lewallen and JMJ Farms, LLC, Indiana Court of Appeals Case No. 50A03-1606-MI-1270, March 9, 2017 MEMORANDUM DECISION**

Here is a quiet title case from the Marshall Circuit Court where a river had changed course since the properties north and south of it had originally been described. The property north of the river was re-described to note the original location of the river after it had changed course, but the property to the south retained the original description. Now the current southern owner is arguing for the current location as being the boundary. The trial and appeals courts held that title should be quieted in the name of the northern owner based on the original river location.

(Continued on page 13)

(Continued from page 12)

**Green Fields LTD v. Hancock County, Indiana, acting by and through The Board of Commissioners of Hancock County, Indiana, Indiana Court of Appeals Case No. 29A04-1607-PL-1649, March 29, 2017 MEMORANDUM DECISION**

In this case Hancock County needed to acquire right-of-way to improve the County Road 300 South bridge over Brandywine Creek. Green Fields owns land north and south of the road, and the County sought to acquire fee simple title to approximately four acres from Green Fields as well as a small temporary right-of-way. The County appointed an appraiser who determined the fair market value to be approximately \$17,900 which was confirmed by a second appraiser. An offer for \$17,900 was sent to Green Fields, which then countered with \$70,803. The County raised their offer to \$19,613 and Green Fields did not respond. The County initiated condemnation proceedings, and Green Fields filed objections arguing the County cannot acquire the property in fee simple and that the County failed to make a good faith offer to purchase the property. The Hamilton Superior Court held a hearing at Green Fields request, overruled Green Fields' objections, ordered the case proceed to appropriation and appointed

three appraisers according to Indiana Code 32-24-1-8(e). Green Fields appealed.

On the issue of whether the County can acquire property in fee simple, the court found that IC 32-24-1-3(a) & (f) clearly allows fee simple condemnation for public use. Green Fields had also argued that the County should provide additional justification for taking property in fee simple which the court found was not supported by Indiana law or precedent. Here because the County made an offer based on appraised value and raised their offer when Green Fields countered, the court found that the County had, in fact, made a good faith effort to negotiate a purchase price. The decision of the trial court was affirmed.

*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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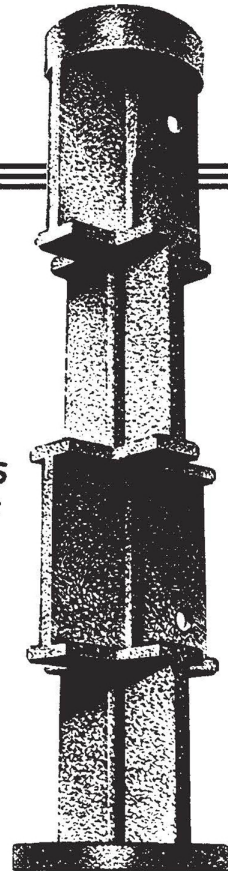
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# LEGISLATIVE UPDATE

By Michael O'Brien, Executive Vice President, 1816, Inc.

Friday, May 12, 2017

**T**he 2017 long session of the Indiana General Assembly got a late start and an early finish while lawmakers ultimately tackled a number of top issues. Noticeably absent from the session were high profile issues of controversy that have dominated headlines in previous sessions. By all accounts, this was the most "normal" legislative session close observers can recall for several years.

The session got a late start as two major changes in power occurred when legislators returned to Indianapolis in early January. Eric Holcomb's inauguration as governor during the second week of January and Mike Pence's ascension to the office of Vice President dominated the attention of lawmakers and lobbyists alike. By the time Hoosier politicians returned from inaugural activities in Washington, D.C. the clock was already ticking on the end of the first half of the session.

Aside from passage of another balanced budget, the top agenda item for statehouse Republicans was passage of a long-term, sustainable road funding package. Republican lawmakers have spent the past three years studying the state's infrastructure needs and what it would cost to meet the demands of state and local government. By the end of session, the road funding package included an increase and indexing of the gas tax, increases in registration fees, and use of the state's 7% sales tax on the purchase of gasoline for roads.

Overall, the package will produce \$1.2 billion in new state and local road money by 2024. Of particular note, under the new law, the state will take the first meaningful steps to examine whether tolling should be considered on a broad basis.

Other top issues included expanding funding for the state's pre-kindergarten program, investing more in workforce training, and attacking the state's addiction epidemic with new treatment programs.

For ISPLS, legislation affecting local zoning issues, surveying the state line, and increasing county government fees topped the agenda. While we fell short of finding new funding for the state line project, county surveyors across Indiana will see more money in their corner perpetuation funds. SB 505 was an omnibus proposal affecting the county recorder statute. Included in the package is an increase in recording and document fees that will direct more money to other accounts, including the county surveyor corner perpetuation funds.

The bill wasn't without controversy, but a strong lobbying effort was led by the Indiana Records Association and the bill ultimately passed by wide margins and was signed into law by Governor Holcomb.

While 2017 is not an election year, the laying of groundwork for the 2018 election is already underway. The top of the ticket is the race for U.S. Senate. Currently occupied by Sen. Joe Donnelly, Indiana's senate seat will be a top target nationally. Two Republican contenders are Congressmen Todd Rokita and Luke Messer. If they both decide to run, this will trigger a down-ballot domino affect with two open congressional seats that will be sought by other state and local elected officials, causing more vacancies. Incumbent lawmakers are deciding whether to seek reelection and this could cause more changes at the statehouse.

In the near-term, legislative leaders will convene in early June to determine what issues will be studied over the interim in preparation for the 2018 short session of the general assembly. Interim study committees will begin work in August and report their findings on a number of issues ahead of November's organization day kickoff for the new session. We don't expect much activity at the statehouse through the summer months, which presents a perfect opportunity to refresh and reload the ISPLS legislative agenda for 2018 and beyond.

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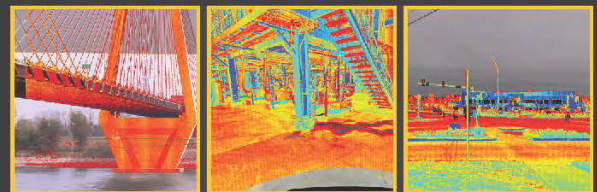
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# NGS OFFERS A VARIETY OF EDUCATIONAL OPPORTUNITIES

By John Ellingson, PE, PLS  
National Geodetic Survey Great Lakes Region Geodetic Advisor

**T**he National Geodetic Survey (NGS) provides many learning opportunities for users to increase their knowledge of geodesy and their use of the National Spatial Reference System (NSRS). The NSRS is the consistent coordinate system that defines latitude, longitude, height, scale, gravity, and orientation throughout the United States. Some of these NGS learning opportunities include face-to-face training at our NGS Corbin Training Center in Virginia, or locally by the Regional Geodetic Advisors. In addition, training opportunities are available as live webinars. Educational (YouTube) videos are being developed that can be viewed anytime. Additional learning opportunities are available as archived versions of past presentations. I will explain some of these opportunities in this article and provide you with some of the links you will need if you want to investigate these resources.



is next for Geodetic Datums.” Other videos cover “Best Practices for Minimizing Errors During GNSS Data Collection,” “VDatum – Transforming Heights Between Datums,” “Precision and Accuracy In Geodetic Surveying,” or “Survey Foot vs. International Foot.” You can view any of the approximately one-dozen videos [here](#).

One final resource: NGS transitioned the State Geodetic Advisor Program into a Regional Advisor Program in October 2016. I am the NGS Geodetic Advisor serving the Great Lakes Region (Michigan, Indiana, Illinois and Wisconsin). I am here to assist you with any matters that relate to NGS. I encourage you to contact me if you have any NGS questions or concerns (or info on NGS marks).

**Contact:**

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The ultimate hands-on learning experience is to attend one of several different training classes that take place at the NGS Corbin Training Center, located near Fredericksburg, Virginia. More information is at the Training Center’s [web-site](#). At this website, you will learn about Training Center on-site opportunities, and about webinar opportunities. The Corbin Training Center organizes and provides some NGS online training opportunities that are delivered in webinar format. When you visit the Corbin websites, please locate the link that enables you to subscribe to an email list. The Training Center uses that list to inform partners of upcoming training opportunities.

NGS also offers an online monthly webinar series where NGS geodesists provide a 1-hour presentation on NGS topics that will benefit our customers. These presentations often include detailed information about NGS programs, on-going NGS projects, NGS products that are available to our customers, and services that NGS provides to users across the U.S. The webinars provide constituents with knowledge about NGS activities, and they enable NGS to gather feedback from our constituents. Webinars are held on the second Tuesday of each month from 1 p.m. to 2 p.m. central time. Registration is free. [Click here](#) to learn more. Video recordings are usually made of the presentations. These allow our customers to later view missed presentations, or to review presentations after attending. To view this web page, [click here](#).

Recently, NGS began a program to create YouTube videos that provide basic knowledge about a variety of geodesy-related topics. Some of the topics relate to geodetic datums, such as “What Are Geodetic Datums” or “What



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# THE BUFFALO TRACE-WILDERNESS ROAD

## Surveyor's Rendezvous

By David J. Ruckman, PS and David R. Blankenkemper, PS

This fall, Oct. 13-15, 2017, to be exact, the Initial Point Chapter of the Indiana Society of Professional Land Surveyors will host a Surveyor's Rendezvous at the Site of the George Rogers Clark Cabin, Clarksville, Indiana. The cabin is the site where General Clark spent part of his life after the Revolutionary War. Clarksville, being the first settlement of the northwest Territory, is also the location where Meriwether Lewis and William Clark met to organize their famous exploration of the Western Lands.

"In Honor of Land Surveyors and Ancient Footpath Trails, whereupon the First Human Families 12000 years past, followed Animal Trails and arrived at the Devonian Age Uplifted Limestone Falls of the Ohio, where at the Middle America Mother Earth Ohio River churns, as it rapidly descends across the fossilized face of this Ancient resting place of fishes and shells, exposing us to Mother Nature's creation of a Natural Stone Bridge, linking Louisville, Kentucky to Clarksville, Indiana, we LAND SURVEYORS will gather there and promote the ART of Land Boundary Surveying." David J. Ruckman

The Initial Point Chapter and others such as the esteemed Randy Miller, PS, embraced the idea of hosting a Rendezvous where interested surveyors could gather to learn and reflect on those days over 200 years ago.

"A Historic Gathering of Land Surveyors is planned at the Buffalo Trace Wilderness Road Crossing of the Ohio River, Clarksville, Indiana. The Falls of the Ohio creates a link of Ancient Footpath Trails from the Atlantic Ocean up through the Carolina's and Tennessee, crossing into Kentucky at the Daniel Boone Cumberland Gap of the Appalachians Mountains, flowing through the inspiring Bluegrass along Kentucky's Wilderness Road to arrive at The Falls Of the Ohio; thence marching West into and across Indiana, known as the Indiana Buffalo Trace; thence plunging into the shallow rock shoal crossing of the Wabash River at Vincennes, whereat this ANCIENT TRACE becomes the Illinois Buffalo Trace as it tracks across the vast Illini grasslands to St. Louis; thence onto Kansas City whereat the TRACE forks and becomes the Oregon Trail and the Santa Fe Trail. Literally thousands of Surveyors walked or rode this Footpath to their destiny." David J. Ruckman

This family friendly outdoor event starts at noon on Friday, Oct. 13. Registration will be followed by short, mostly 1 hour, presentations, which will count for continuing education credits for Indiana and hopefully most other states. It is hoped that the Engineering board will also recognize these for credit for Professional Engineers. The schedule is set up for mostly 50 minute (1 credit hour) sessions with 30

minutes between them for plenty of time to visit the vendor booths, share a meal with family and fellow professionals, wander the falls of the Ohio, kayak the river, or just relax. Sessions end at 5 p.m. Friday, but for those interested, primitive overnight camping is available on-site (by pre-registration only) served by port-o-lets only, no running water or electric. Bring your own tent or teepee, chairs, grill, bedding, food and drink. Saturday sessions start at 9 a.m. following the same format as Friday, ending around 5 with the exception of a Polaris observation and session by the surveyor turned astronomer, Victor H. McCauley, PS, that evening. This will be a 2 hour course for CE credit. All pre-registered campers are welcome Saturday night as well, although, for many the nearby hotels and full service campground will certainly be the more comfortable choice. On Sunday, the only agenda item is a Boy Scout merit badge program led by Randy Miller, PS. The event will close Sunday around noon or as soon thereafter as the Scouts complete their tasks.

"A very Festive Outdoor Event focused on Education and Recruiting Future Land Surveyors. All proceeds to benefit the Boys Scouts of America. From 1800's Compass's, Jacob Staff's, Chains, tents, TeePee's, and LeatherStocking Surveyors, to today's GPS and Drones - propelling us into our Hi tech future of Mapping and Boundary Determinations, we, as LAND SURVEYORS continue to EVOLVE, for it is by Gathering and Sharing we grow strong. Attendee's and Camper's will awaken to mists and Wild River sounds as they attend a weekend of Family camaraderie at Sir George Rogers Clark's humble Log Cabin overlooking the wide Ohio and the Buffalo Trace. Stories of the exploits of Land Surveyors and American Heroes such as George Rogers Clark will be shared in the evenings at the Gazebo, so bring your best story and enlighten and entertain us." David J. Ruckman

Special guest speakers include nationally known speaker, Milton Denny, Centenarian Robert Vollmer, local legends David J. Ruckman, Randy Miller, Harold Hart, Randy Smith, David Blankenkemper, Victor H. McCauley, and Ben Shinnabery on topics such as surveying history, history of the Buffalo Trace, Clark Co. Surveyor's office and GIS System, Indian Treaty Boundaries, Surveying in the Grants, Surveying from WW2 to present, Tree Identification and Astronomic observations.

All interested fellow surveyors, engineers, family and friends are welcome to attend. There is no fee if registered by Sept. 1, 2017 and continuing education credits will be awarded to those attending seminars. We ask that you consider a donation to the Boy Scouts of America when

*(Continued on page 19)*

(Continued from page 18)

you arrive. The suggested amount is \$50, but no amount is too large or too small. Registration is via email. Just send your name, address, cell phone number and email address to: [j.theis@jtleng.com](mailto:j.theis@jtleng.com).

For those wishing to camp overnight, or those wishing to be a vendor, please contact David J. Ruckman at [davidjruckman@aol.com](mailto:davidjruckman@aol.com). So please consider joining us for a wonderful fall day or weekend at the Falls of the Ohio, where so much history of Indiana began.

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