

VOLUME 47 ISSUE 1

# HOOSIER SURVEYOR

SUMMER 2020

BROUGHT TO YOU BY THE INDIANA SOCIETY FOR PROFESSIONAL LAND SURVEYORS

## IN THIS ISSUE

- NEW NGS REGIONAL GEODETIC ADVISOR
- NOTES FROM THE FIELD
- NORTHWEST CHAPTER GOLF OUTING

Photo provided by Don Williams, PS



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## Cover Image

A crew from DLZ's Burns Harbor office had a spectacular view of Chicago's skyline during a Chicago Transit Authority Red Line renovation project in 2017. Instrument operator Ray Cancarillo is by the Trimble S7 robotic total station and crew chief Brian Bratcher took the photo. Division Manager Don Williams, PS, supplied the image to ISPLS.

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## From the Editor

Deadlines for the Hoosier Surveyor:

- 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

Eric N. Banschbach, PS, ISPLS President

This year has brought us all some significant challenges and opportunities. Hearing from some of you throughout this year, in dealing with those daily challenges and concerns for the future, I am constantly encouraged and motivated by the positive and resilient outlooks. It is impressive, considering when we look back there has been a whirlwind of "wackiness" so far. We started with Impeachment, then Australia caught on fire, Iran, Kobe, Iowa, Brexit (then Megxit), Sahara Dust cloud, Tiger King, Murder Hornets, protests and unrest, and lest we forget, Covid, just to recall a few. And just when you think what more can happen this year, it's as if someone out there says "Here, hold my beer."

But I do remain hopeful and encouraged for the future, as I know many of share the same outlook. We have been able to adapt and adjust to some of those challenges, and in many cases, become stronger for it. I'm encouraged by those folks that have stepped up to make a difference in our profession, by the efforts of the Young Surveyors Network, by the momentum of our Career and Workforce Development activities, the potential of our evolving Technician Work group, and the efforts to establish productive relationships with affiliate associations. And I

look forward to seeing some additional projects the board has been working on come to fruition. Stay tuned.

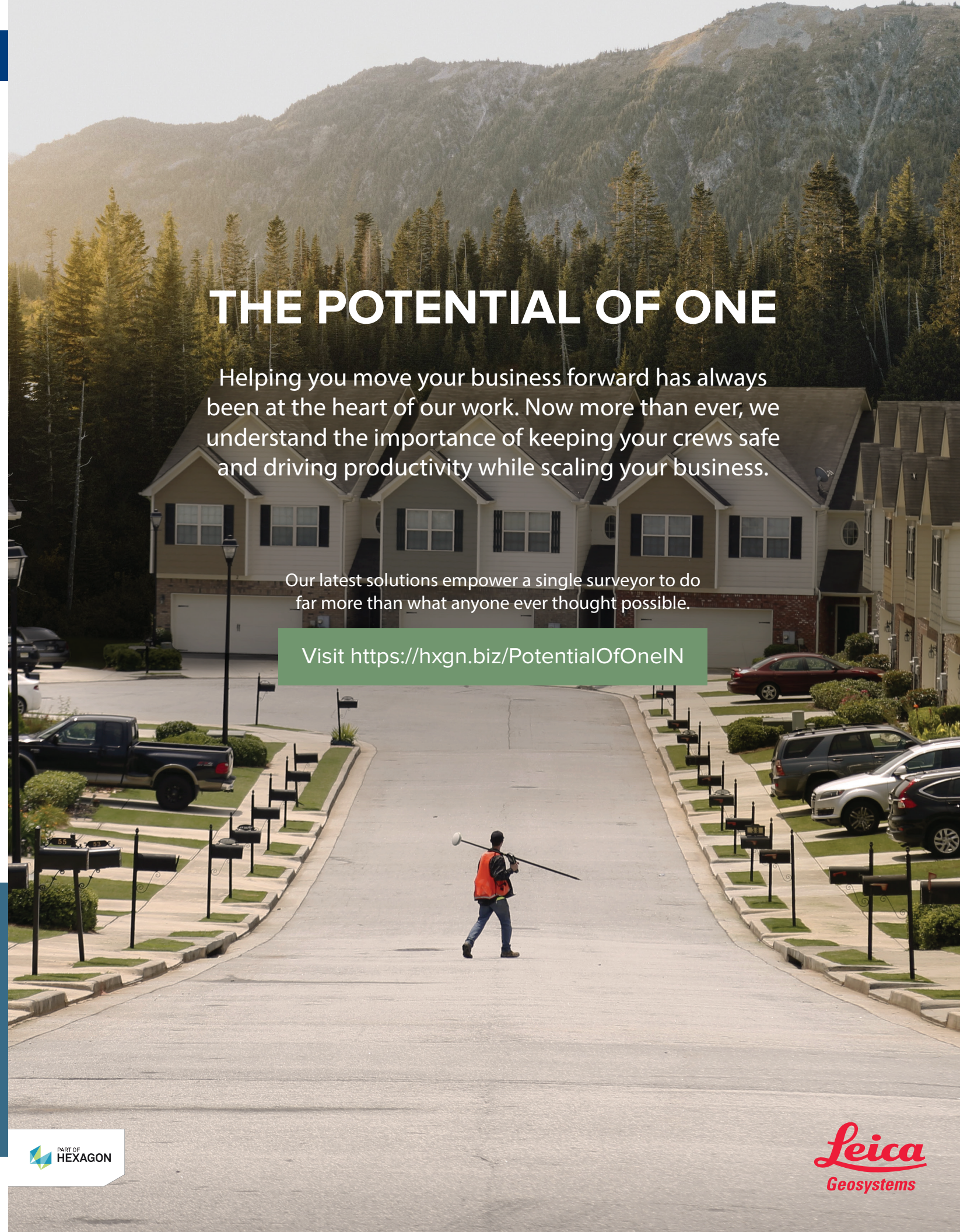
We still have opportunities to do even more this year, even under these challenging circumstances. I would like to remind our membership that your help and participation is essential to what we can accomplish. It starts with staying informed thru the periodic email blasts, participating in various surveys, attending chapter meetings and events, and participating in the nomination and election process. And it extends into opportunities to volunteer your time with your chapters, on committees, work groups, and board directors and officers. I encourage all to make an impact on our profession in whatever way you can.

As always, don't hesitate to reach out with any questions, concerns, or suggestions. Let's finish the year off strong. After all, what else could happen ...

God bless and stay safe out there.  
*Eric N Banschbach, PS*  
*President*

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## Notes From the Field, Spring 2020

John G. Brinkworth, III

This one has all the makings of a good job. Nice country, clean air. Cool in the morning, but 68 and sunny by midafternoon. The kind of day whether you're not sure to roll your sleeves up or leave 'em down. I opt to leave them down. A good job because I have this one all to myself – to meander through acres of woods, cross open fields and follow a clean stream running just enough to provide a consistent hum, yet low enough to see the gravel bed below – perfect for wading.

A good job because it's just far enough away for my thoughts to slow down as I drive. Radio off, the spring peepers are out, time to breathe. The office gets to stay at the office today.

Packing light this day. Though I did remember to bring small bits of food. Won't see the truck again until late afternoon – perfect! Just need to find a good rock to eat my lunch on. Maybe see the sunlight filtering through the spring leaves. You know the ones – like neon green signs lighting up the blooming eastern redbuds.

And then there's the surveying – the sole reason I get to experience these beautiful places. A handful of good surveys to work from, mostly from the '40s and '60s – my favorite kind. Or perhaps it's just because I enjoy following this particular surveyor, Mr. Charles E. Condra. A household name growing up, holding a larger-than-life significance for me through the years. This is Southern Indiana I'm talking about. Floyd County. Clark County. Elevation and wild terrain.

Every surveyor should have to cut his or her teeth in these knobs. The land of crooked, mostly stable lines.

I have a certain affinity for crooked lines. They have an honest quality, something of substance. Straight lines have that new car smell. They tend to warn that something's not quite right.

A great many things about the bigger picture of surveying can be learned climbing up and skittering down steep ravines. So steep that your knees brush the ground as you climb. Today, though, I choose to casually follow the stream rather than take the ridge line, even if it does add extra mileage. Easy choice, the stream is host to chickadees, whippoorwills and the occasional downy woodpecker. Not to mention the fire pink wildflowers, mayapples and trout lilies blooming along its banks. It is a gamble weighed on the fact that the stream will lead me to the stone that I think is at the bottom of the steepest ravine. Aren't they all at the bottom of the steepest, most heinous ravines? "That stone is down there; it has to be!" I say out loud, as if to justify it to the woods. Who else would be going there? No one in their right mind, I presume.

Good. That's where I'll eat my lunch.



**John Brinkworth** is a Professional Surveyor who lives in Floyds Knobs, Indiana, with his wife, Anna, and three children. He is a third-generation surveyor and has spent his 23-year career surveying in and around Floyd, Clark and Harrison counties. John has devoted his craft to the family owned and operated John G. Brinkworth, Inc., which is celebrating 60 years of business this year.



## The Land Office Business: Finishing The Survey

Jim Swift, PS

Picture yourself on a survey crew. An old survey crew. An 1822 survey crew. Take a flight of fancy and be one of the surveyors who laid out the mile-square land sections in central Indiana. Your boss is Thomas Brown, Deputy Surveyor. His boss is Edward Tiffin, Surveyor General. You and your mates have quite a job on your hands this summer and fall of 1822. You are charged to subdivide numerous townships in central Indiana, following on the perimeter surveys of 1819. Based on a review of records from Boone and Clinton counties, it appears you had nine townships to subdivide that year. At 85 miles surveyed in a standard township, including random lines to the east, lines corrected back to the west, and at least 35 miles of additional walking to get back to points-of-beginning, that is quite a few footsteps. All told, you must have walked over a thousand miles that year, most of it in full survey mode, with compass, chain and axes. Setting posts every half mile, marking trees all along the way. More impressive, perhaps, is that you camped all the way. No hotels. No bars. Forget the per diem meal credit. You toughed it out all summer and fall, trudging through woods, swamp and prairie. You surveyed across flooded creeks and through deep ravines. And you did a great job. Extensive retracement of Thomas Brown's 1822 survey

in five townships in Boone County has convinced the author that this was a crack crew. Reliable, dependable and quite accurate. Well done, you!

Based on dates included with field notes, it appears you got started about the first of June that year, subdividing Township 19 North, Range 1 East. You moved right along, working your way north. Things got a little tricky up in Townships 21 & 22 North, Range 1 East, where the eastern edge of your survey was bounded by the Great Miami Reserve. By early August, you had come back down south, crossed the Second Principal Meridian, and began surveying Township 19 North, Range 1 West. Things got quite tricky at this point. No simple subdivision of this township was possible. The straight-forward program of survey 80 chains north, 80 chains east, correct-back-to-the-west, continue to the north and so on and so on, was out the window, so to speak. If only you had a window! Before you could tackle these townships, you had to survey the perimeter of a 100 square-mile Indian reserve. Nowadays we call this the Thorntown Reserve, located in northwestern Boone County and southwestern Clinton County. You probably called it the Reserve at the Village on Sugar Tree Creek.

### IN CASE YOU MISSED IT:

TOP ARTICLES FEATURED IN THE ISPLS NEWSLETTER | MAY - AUGUST 2020

**America Has Two Feet. It's About to Lose One of Them.**

August 18 Newsletter | [The New York Times](#)

**Fundamentals of Surveying: Land Surveying, GIS and Geomatics**

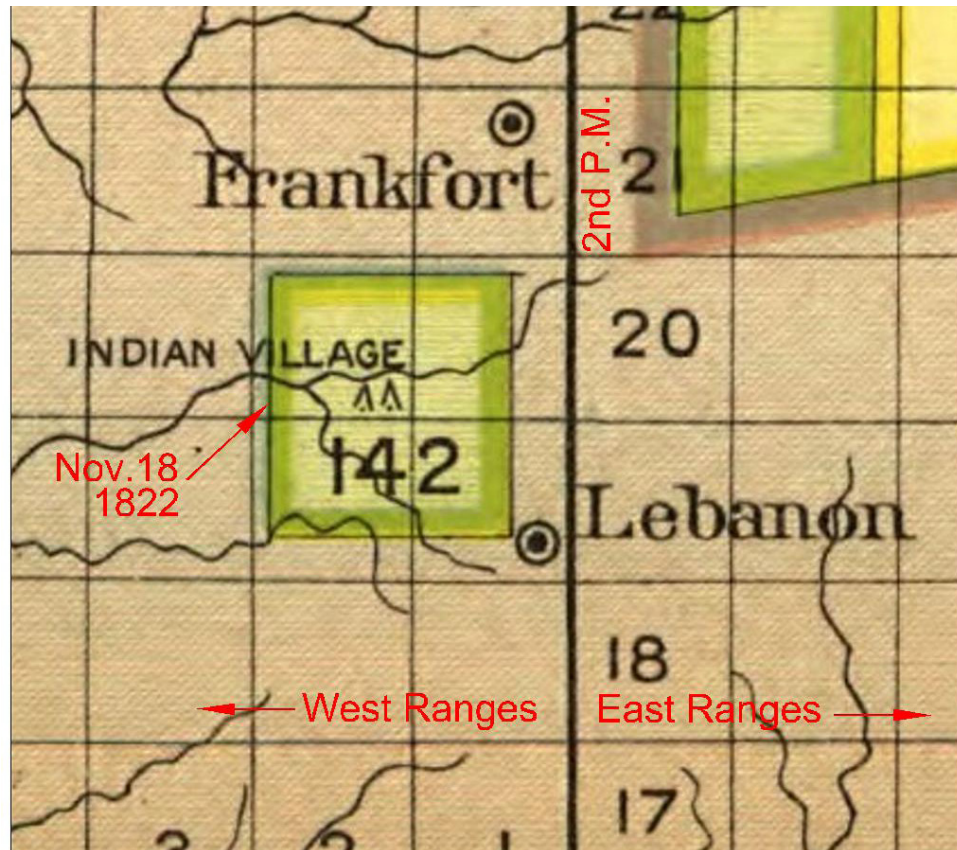
August 25 Newsletter | [GeoData Point](#)

**Indiana Code Change: Senate Enrolled Act 340**

July 28 Newsletter | [ISPLS Blog](#)

**Lessons Learned from COVID-19**

July 14 Newsletter | [The American Surveyor](#)



This map shows the Thorntown Reserve in green (10 miles by 10 miles), amongst the surrounding townships in black (6 miles by 6 miles), just west of the Second Principal Meridian. The green and yellow area at the top right is the Great Miami Reserve.

The field notes for the township surveys and the perimeter survey of the reserve tell us what happened. On August 20, 1822, you noted your compass variation to be 5 degrees 42 ½ minutes East and commenced to survey, "Beginning in a Prairie where raised a mound for a Common Center of Indian Reservation." Over the next two days, you and your crew surveyed a random line five miles to the east, then five miles to the south, where you set a post to officially mark the southeastern corner of the reserve. Over the course of the next eight days, you surveyed the east line of the reserve, setting posts every mile, while at the same time you subdivided those parts of Townships 19 & 20 North, Range 1 West which lay east of the reserve. Then you left. The author does not know exactly where you went, though he suspects you continued to survey townships to the north. Evidently, you were on a specific schedule, because by the first of September, you were no longer surveying in this particular vicinity, even though your work was clearly not finished. Indeed, you did not return until November 11, at which time you were back to subdividing the

southeastern part of Township 20 North, Range 1 West. It has been a long summer and fall by now, eh? You must be exhausted. But you have a job to finish. Before you can call it a year, the north, west, and south lines of the Thorntown Reserve must be surveyed, as well as subdividing those parts of the Townships 19 & 20 North, Ranges 1 & 2 West, which lie outside the reserve. So off you go. Mid-November, pushing six months in the field, the weather turning toward winter. Finish the survey! On November 15, you start at the northeast corner of the reserve, set in August, and begin surveying the north line of the reserve. By the end of the 17th you have finished the north line and subdivided those parts of the townships which lie north of the reserve. Then, on November 18, you begin at the northwest corner of the reserve and commence to survey a random line which will lead 10 miles south, then 10 miles east, where you will close on the existing southeastern corner of the reserve, after which you can survey true lines back north and west. But November 18 - that was a hard day, right? Your field notes indicate that you had a habit of stopping for the day at a logical position on your

survey. You would get to a certain corner, note the date and set up camp. But on November 18, you stopped at an odd spot, totally out of character with your heretofore methodical approach. Why did you stop at that spot on that day? Why not push onto a corner, as had been your habit? Were your feet wet? Were you simply exhausted? Or was the weather bad and you camped in a sheltered position? A review of your notes from that day indicates a resounding "All of the Above." According to your field notes, November 18, surveying a random line south from the northwest corner of the reserve, you crossed a stream 25 links wide twice, then crossed another stream 15 links wide, then came back to that stream and trudged down it on a course of "south" for three chains (about 200 feet), then after crossing several more streams, you crossed through a bayou, only to hit a stream 110 links, or about 73 feet, wide. That was Sugar Creek. It was probably quite high that day. Then you crossed several more streams before calling it a day. Your notes show the last entry of the day to be at 380.50 chains south of the northwest corner of the reserve. You surveyed almost five miles that day. Five hard miles, to be sure, but why did you stop at that exact spot? Modern retracement of your footsteps tells us exactly where you camped that night. It is a sheltered grove, tucked in against a hillside which wraps around from the south to the northwest. An excellent place to camp, especially if a brutal mid-November wind is blowing from the west. Especially if you just had a hard day crossing wet ground. Especially if that hard day came at the end of many months surveying through the wilderness. Well done you. You found some shelter on a cold

evening. You must have dreamed about returning to civilization soon. But you did not rest at that spot for long. Your field notes tell us that the next day you surveyed another 5.25 miles all the way to the temporary southwestern corner of the reserve. And you kept going. Within two days you had surveyed the random line all the way to the southeastern corner of the reserve and had turned around and began working your way back on the true line, subdividing those parts of the townships which lie south of the reserve as you went. Well done, by the way, on your rather impressive closure on the existing southeastern corner of the reserve, which you had set back in August. Missing the corner by only 224 links linear distance after surveying 40 miles through wooded and swampy country is quite impressive. By November 30, you had surveyed all the way back to the northwest corner of the reserve and subdivided all which remained of Townships 19 & 20 North, Ranges 1 & 2 West, south and west of the reserve. By the first of December, you were headed home. Six months in the field, a good thousand miles under your feet, and a job complete and well done. Thank you for sticking it out. Thank you for finishing the survey.

**Jim Swift** is a Professional Surveyor who lives in Crawfordsville, Indiana with his wife, Beth. Jim owns Swift Land Consulting LLC which performs private surveys and also contracts with the Boone County Surveyor's Office. He has devoted much of the last twelve years to perpetuating the section corners of Boone County, Indiana. A keen student of history, Jim spends a lot of time searching for evidence of the original survey of the PLSS and thinking about the early surveyors and pioneers of Indiana.

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# Jacob Heck Steps In As New NGS Regional Geodetic Advisor

Jacob Heck

Hello! My name is Jacob Heck and I am the new National Geodetic Survey's Regional Geodetic Advisor for the Great Lakes, where I will be serving as a liaison between NGS and its public, academic and private sector constituents in Indiana, Illinois, Wisconsin and Michigan. John Ellingson held this job until his retirement in January 2020. My office will be located at the NOAA Great Lakes Environmental Research Lab in Ann Arbor, Michigan. I would like to take this opportunity to introduce myself and to share with you some of my background.

My interests in math and maps led me to pursue a career in surveying. At Michigan Tech I studied for my bachelor's degree in Surveying Engineering, which I completed in 2010. During that time I became involved with professional surveying societies, ultimately serving as president of the Douglass Houghton Student Chapter of what was then the American Congress on Surveying and Mapping. During the summers while I was in college, I worked several internships, first at the Monroe County (Michigan) Road Commission, then at the Michigan Department of Transportation, then finally at Garcia Surveyors.

After Michigan Tech, I traveled south to Columbus, Ohio, to pursue advanced studies in the Geodetic Science Department at The Ohio State University, where I earned a master's and PhD in Geodetic Science.

My time at Ohio State brought about terrific opportunities to see the world. My first stop was Antarctica, where I worked on maintenance for continuous GPS stations that monitored crustal motion related to changes in ice mass on the continent. I then spent years traveling back and forth to Bolivia to work with that country's Military Geographic Institute (IGM) in support of their

national geodetic infrastructure. In Bolivia I spent about a year's worth of time exploring remote corners of the country installing and observing passive GPS marks, maintaining continuous GPS stations and conducting gravity surveys. I examined the data collected in these surveys to study crustal motion in the Central Andes. I also worked with the Chilean IGM on GPS surveys in Patagonia.

From Ohio State I went to work for the National Geodetic Survey in 2016, coming into the Geosciences Research Division to focus on GNSS positioning research. For the four years I was stationed at the Silver Spring, Maryland, headquarters, I was involved with developing processing software to support OPUS and CORS, as well as a variety of other activities. During this time I also became active within the International GNSS Service and the International Federation of Surveyors.

My wife and I both grew up in Michigan and we are very happy to be returning to the Great Lakes region. I look forward to working with the geospatial community throughout the Great Lakes and am interested in learning more about Indiana. I hope to see you at the annual conference or at other events in the region. If you would like to know more about geodesy, check out the NGS website at <https://geodesy.noaa.gov/> or reach out to me at [jacob.heck@noaa.gov](mailto:jacob.heck@noaa.gov) if I can be of any assistance with your use of the National Spatial Reference System.

## Northwest Chapter Golf Outing

On August 14, ISPLS members gathered in Valparaiso at The Course at Aberdeen to participate in the 17th Annual Northwest Chapter Golf Outing. All proceeds from the event went toward the Ordell L. Gertsmeier Memorial Scholarship Fund. This scholarship is given out each year to students seeking to become Professional Land Surveyors. Candidates must fit the criteria and be interviewed by the NW Chapter Scholarship Committee to be considered for this scholarship. Some photos from the event are below and on the following page.

All photographs were contributed by ISPLS Northwest Chapter member Joel Janowski.



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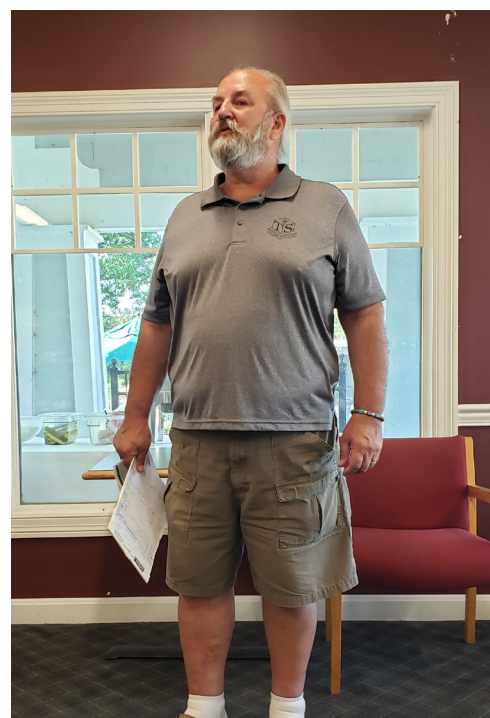
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# Legal Surveys

Bryan 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 court's 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).

In case anyone wonders, all the parties to the cases summarized below had legal representation.

## **Miami County and Miami County Board of Commissioners v. Indiana Department of Natural Resources, Indiana Court of Appeals Case No. 19A-MI-2099, April 14, 2020**

Here is an interesting case from the Marion Superior Court. It raises an issue a potential buyer might want to consider before purchasing a lot that includes a dam.

Around 1990 development work began on what became Hidden Hills subdivision in Miami County which included seven dams to make recreational lakes. The plats dedicated sixty-foot easements for public roads, some of which were on top of dams. In 2005, the Commissioners accepted the roads into the county highway system obligating the county to maintain them. In 2014, the Indiana Department of Natural Resources issued notices of violation of the Dam Safety Act (Act) to Miami County and the owners of the property on which six of the dams are located including findings that the county and the owners are the owners of the dams, that the dams are unsafe, and that the county and the owners are required to fulfill their statutory duty to maintain the dams in a safe condition. The county and the owners asked the Indiana Natural Resources Commission (NRC) to review the finding that they own the dams. The NRC issued an order that the county owns the dams, as defined by the Act, but only to the extent of its obligation to maintain the roads, and that

the owners are also owners of the dams and are jointly and severally responsible for repairing or reconstructing them. Both the county and the owners petitioned for judicial review of the NRC decision. The trial court issued an order finding the county is an owner of the dams and is solely responsible for repairing or reconstructing them. The county appealed this decision.

On appeal, the court noted that the Act, IC 14-27-7.5-4, defines an owner as: *an individual, a firm, a partnership, a copartnership, a lessee, an association, a corporation, an executor, an administrator, a trustee, the state, an agency of the state, a municipal corporation, a political subdivision of the state, a legal entity, a drainage district, a levee district, a conservancy district, any other district established by law, or any other person who has a right, a title, or an interest in or to the property upon which the structure (i.e., the dam and its appurtenant works) is located.*

The trial court had found that by accepting the roads into the county highway system, the county had assumed the duty to maintain the roads, and that maintenance included the responsibility to maintain the structure upon which the roads were built. The appeals court noted that if a statute is unambiguous, words and phrases shall be taken in their plain, or ordinary and usual, sense. Here, the Act defined an owner as someone with a right, title, or interest in the property upon which the structure (here the dams) is located. The appeals court agreed with the county that they did not have "an interest in or to the property upon which the structure is located." The county has an easement interest in the roads on top of the dams. In other words, the county has an easement on top of the dams. But the owners, per the Act, are those whose property the dams are located on. The decision of the trial court was reversed, and the case was remanded for further proceedings.

## **Michael O. Cain and Linda A. Raymond v. William J. Huff, II, Revocable Trust Declaration, Dated June 28, 2011, and Nichole E. Huff Revocable Trust Declaration, Dated June 28, 2011, Indiana**

## **Court of Appeals Case No. 19A-PL-2176, May 29, 2020**

The parties to the current appeal have already been before the Court of Appeals. As a reminder, my summary of the prior opinion follows in italics.

## **William J. Huff, II Revocable Trust Declaration, Dated June 28, 2011 and Nicole E. Huff Revocable Trust Declaration, Dated June 28, 2011 v. Michael O. Cain and Linda A. Raymond, Indiana Court of Appeals Case No. 18A-PL-1123, March 11, 2019**

*Here the Huffs own about 249 heavily wooded and hilly acres on Lake Monroe, about 193 of which are benefitted by three easements which were originally granted to the Terre Haute Real Estate Corporation (THR). The easements were the result of negotiation and dispute between Robinson, the owner of what would eventually be platted as The Shores and THR, as THR believed that development of The Shores would landlock their property. The easements granted driveway and surface easements including such access as necessary "to repair, restore, maintain or replace water lines or sewer lines or other utilities located within the described easement and to repair, maintain or improve the driveways." The use of the easements was limited to "the construction, development and use by Grantee and its grantees and assigns of six (6) single family residential structures, each of which may include guest and caretaker quarters and other buildings attendant thereto." The attorney representing THR at the time stated: "that's all Mr. Robinson would agree to." The Huffs used a forester to develop a stewardship plan for the property. The Huffs then hired Logan Freeman to clear out the easements (the parts that weren't already parts of a drive in The Shores.) Freeman brought in approximately 100 tri-axle dump truck loads of stone during this process without complaint from Cain or anyone else in The Shores. At about the same time the Huffs hired Ohio River Veneer to begin the process of harvesting timber. Ohio River Veneer applied for a logging permit from the Monroe County Planning Department which refused to issue a permit after being contacted by landowners in The Shores who believed that logging activities would overburden the easements. The Huffs reviewed Indiana statutes and consulted attorneys and determined that a permit was not needed when logging outside urban*

*areas and withdrew their application for a logging permit. The Planning Department noted a permit was still necessary as their ordinance predated the statute. In December 2017, the Huffs hired Tri-State Timber to cut and remove trees from the Huff real estate with the Huffs to receive a percentage of the approximately \$500,000 worth of timber to be harvested. Tri-State filed for a logging permit in April 2018 and was notified that special restrictions may apply in the Lake Monroe watershed and that logging as a part of clearing for development may require a grading permit be obtained before clearing land. The department did not issue a permit, and Tri-State decided to proceed, believing they did not need a permit outside of an urban area under Indiana Code. After large commercial logging trucks and heavy equipment began using Shady Side Drive, the first of the three easements and a hilly and curvy two-lane road with no sidewalk or shoulders, Cain filed a complaint on April 18, 2018.*

*At the Monroe Circuit Court, Cain, a landowner and member of The Shore Homeowners' Association, asked for among other things, a judgment that the easement did not authorize ingress and egress for commercial logging. On April 20, 2018, Cain filed a petition for a temporary restraining order to enjoin the logging. The temporary restraining order was denied, and logging activity greatly increased after the hearing. On May 3, 2018, a hearing was held where testimony objecting to the use of the easements to remove logs for commercial sale even if for development of single-family homes, the annoyance and inconvenience of logging trucks on the easements and the effect on pedestrian traffic was presented. William Huff testified that, although he was clearing trees, he was not in the process of building homes, but was preparing for future use. The Huffs maintained that they would incur penalties and fees under their contract with Tri-State if the logging was stopped and that \$20,000 of timber already cut would spoil if not removed.*

*On May 8, 2018, the trial court granted Cain relief and prohibited the Huffs from using the easements for anything other than the construction, development, and use of single-family structures. The Huffs appealed.*

*On appeal, the Huffs and the court took issue with a part of the order prohibiting, but not defining*

"forestry activity" as an encroachment on their ability to exercise their rights on their property. It was noted that Indiana Code 32-30-6-1.5 defines "forestry operations" as "facilities, activities, and equipment used to plant, raise, manage, harvest, and remove trees on private land ... (and) includes site preparation, fertilization, pest control, and wildlife management." The court saw some cutting and removal of trees as essential in development and concluded the trial court injunction was overbroad. The trial court decision was vacated and remanded with a suggestion that some sort of middle ground be sought through mediation and that the trial court consider whether covenants on which a middle ground cannot be found are contrary to law and should be vacated.

Judge Patricia A. Riley dissented, believing that the term "forestry activity" was not overbroad for the purpose of preserving the status quo between the parties. Also, because the Huffs were not in the process of developing residential structures, but were instead conducting commercial logging, she

did not believe they were being prohibited from exercising their rights granted by the easements. She found that Cain would suffer irreparable harm from continued logging and had a reasonable likelihood of success on the merits of his claim. She also found the recommendation that the case be referred to mediation as bordering on offering an opinion on ongoing litigation and overstepping the role of reviewing the grant of preliminary injunctive relief.

This opinion did not address access from the part of the 249 acres not acquired from THR. The opinion also did not discuss any possibility of legal access from the reservoir or mention the possibility that development could be accomplished by cutting down and burning what trees needed to be removed for development without commercial logging, or alternatively, cutting them up for firewood. These are certainly not as cost effective for the developer as selling the logs, but would allow the development specifically permitted when Mr. Robinson executed the easements. It might be that Mr. Robinson wanted to allow limited development using his property as

access while preserving mature forested scenery he wanted his development of The Shores to enjoy.

The Huffs property is comprised on the former THR property as well as land they acquired from Chumley, LLC. Sometime in March 2019, logging activities began on the former Chumley property and Cain filed a second motion for a preliminary injunction. Cain stated that the Huff's "have extended their activities and are now engaged in commercial logging and other activities on real estate adjacent to the real estate owned by [the Huffs], but real estate which is not described in and is not benefitted by the Grant of Easements." After several motions and petitions were filed, eventually the Monroe Circuit Court denied Cain's motions.

On appeal Cain argued several points, but the portions of interest to surveyors would be that: 1.) there is an adequate remedy at law as the Huffs have agreed on multiple occasions to fix any damage done to the road after timber harvesting is complete and so far there has been very minimal cracking and ordinary wear and tear; 2.) the Huffs use of the easement is not an illegal trespass as in Indiana an action for trespass "... cannot be maintained for an invasion of a right of way or easement"; 3.) the Huffs did not exceed their rights to use the easement to access the Chumley parcel because while the Huffs property has been described as the THR property and the Chumley property for convenience, in reality there is only the Huff property under unity of title. Once the Huffs use the easement to cross the servient property of The Shores, they have all the property rights needed to access any portions of the Huff Real Estate for those same purposes. The judgment of the trial court was affirmed and remanded for further proceedings.

**Central States Tower IV, LLC, v. Board of Zoning Appeals of the City of Portage, Indiana Court of Appeals Case No. 19A-PL-3046, June 5, 2020**

This case has been at the appeals court before during:

**Central States Tower III, LLC, a/k/a Central States Tower v. Plan Commission of the City of Portage, Indiana Court of Appeals Case No. 64A04-1710-CC-2400, April 4, 2018**

Now another appeal has been made over technical legal procedure grounds, none of which are really related to surveying this time around. This is only noted so anyone interested in the overall case can follow the appellate process.

**Jason Brimner and Kelli Brimner v. Bradley Binz and Laurie Binz, Indiana Court of Appeals Case No. 19A-PL-3021, June 5, 2020**

In this case from the Allen Superior Court, Neil and Grace Schroeder sold a tract of land to Bradley Binz on August 6, 2014, following a June 8, 2014 purchase agreement that indicated there would be an easement granted prior to closing for access to a second parcel which would otherwise be landlocked. On July 14, 2014 the Schroeders and Brimners executed an easement instrument granting the Brimners an ingress-egress easement from the second parcel to a public roadway giving the Brimners the right to plant trees and other vegetation in the easement as well as construct and maintain an entrance gate, sign, or other structure. On August 8, 2014 the easement agreement and Binz deed were recorded. Note that the easement was not recorded before the Binz sale. Over the next few years, the Brimners landscaped and made other improvements in the easement area.

On April 4, 2018, the Binzes filed a complaint for damages and declaratory judgment against the Brimners and Schroeders. The Binzes have always acknowledged the Brimners are entitled to an easement of necessity but took issue with the landscaping rights in the easement instrument. The Binzes alleged the Schroeders had breached the purchase agreement and committed fraud by failing to disclose the easement agreement before selling them their tract. The complaint also sought a judgment against the Brimners that the easement agreement was unenforceable because it had not been timely recorded. On July 30, 2018, the Binzes and Schroeders settled and the Schroeders were dismissed from the case. On September 6, 2018, the Brimners counter-sued for alleged intentional or negligent removal of shrubs from and damages to a drainage tile within the easement. On September 26, 2018, the Binzes amended their complaint to add First American Title Insurance Company and Metropolitan Title of Indiana, LLC, as defendants. On May 17, 2019,

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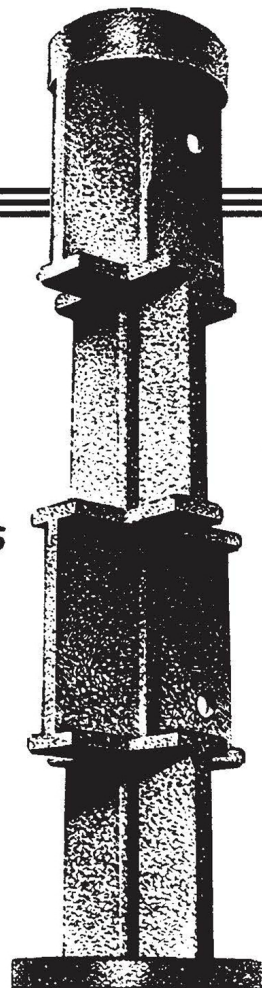
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a notice filed by Metropolitan Title indicated the parties had settled the Binzes' amended complaint but this settlement "does not reflect an agreement to settle the Counterclaim dispute filed by (the Brimners) against (the Binzes)." That same day the Binzes moved for summary judgment on the Brimners' counterclaim, arguing they could not be liable for damages to improvements in the easement because the Brimners had not established the easement instrument was enforceable.

On June 13, 2019, all parties to the Binzes' amended complaint jointly stipulated that the amended complaint by the Binzes is dismissed with prejudice. On July 15, 2019, the Brimners responded to the summary judgment motion, claiming the dismissal of the amended complaint with prejudice was res judicata (a matter that has been adjudicated by a competent court and may not be pursued further by the same parties) as to their counterclaim, barring relitigation of the enforceability of the easement instrument, leaving only the question of damages to their improvements.

On September 12, 2019, the court entered summary judgment in favor of the Binzes on the basis that the easement agreement was unenforceable. The Binzes could do whatever they wanted with any trees, shrubs, signage, or vegetation and the Brimners' rights were limited to a common-law easement of necessity for ingress and egress. On October 15, 2019, the Brimners moved to correct error which was denied in part and granted in part, clarifying only the location of the easement and that the Brimners have a right to maintain a paved driveway and run utilities in the easement. The Brimners appealed. The Brimners argue that the trial court erred in failing to conclude that the dismissal of the Binzes' amended complaint was res judicata as to the enforceability of the easement agreement. The Binzes argue that res judicata does not apply because there was no final judgment on the question of enforceability. The judgment of the trial court was affirmed.

**Celso Abraham Clemente Ramirez v. Swages Real Estate, LLC, Indiana Court of Appeals Case No. 19A-PL-2174, April 3, 2020 MEMORANDUM DECISION**

This case out of the Marion Superior Court points out the problem with using someone else's identity when buying real estate.

Celso Abraham Clemente Ramirez a/k/a Maynor Clemente Ramos (Maynor) was born Maynor Clemente Ramos but has used several other names over the years. Maynor has a cousin in Guatemala named Celso Abraham Celmente [sic] Ramirez. Maynor entered the country illegally in 1999, eventually settling in Indianapolis. On December 11, 2008, Maynor bought a property (Property) under the name Celso A. Ramirez via warranty deed for \$25,000. Maynor used false identification, a consular identification card issued by the government of Guatemala listing his name as Celso A. Ramirez, his cousin's name, and a birthdate that was not the same as Maynor's. Maynor was in a relationship with Wendi Linares with whom he had a child. On July 20, 2011, Maynor was detained and deported to Guatemala on August 4, 2011.

On August 3, 2011, while Maynor was in custody, a durable power of attorney was executed and notarized in Guatemala by "Celso Abraham Clemente Ramirez aka Celso A. Ramirez," designating Linares as attorney-in-fact for Ramirez including the "power and authority to manage and conduct all of my affairs," including buying and selling real estate.

Linares sold the Property to Swages on June 27, 2013 for \$27,500. Maynor returned to Indianapolis in October 2013 and was granted asylum in this country. Maynor demanded, through counsel, that Swages return the Property to him, but Swages declined.

On February 14, 2014, Maynor filed a complaint naming Swages and Linares, among others as defendants. On June 15, 2019, Maynor and all the defendants except Swages reached settlement agreements.

A bench trial was held on June 24, 2019, and on August 19, 2019, the trial court held against Maynor stating, among other things, that he came to the court with "unclean hands" and that he had not proved that he held title to the property as, among other reasons, "Merely attending the closing and tendering funds to purchase the Property does

not necessarily make you the title holder of the Property. You can purchase property on behalf of others." Maynor appealed.

There were many claims the appeals court considered, but the judgment of the trial court was affirmed.

**Bradley SurVance v. Duke Energy Indiana, LLC, Indiana Court of Appeals Case Nos. 19A-MI-2774, 2783, 2786, 2795, April 22, 2020 MEMORANDUM DECISION**

Here Duke Energy filed condemnation complaints against SurVance to amend and release portions of an existing easement on his property. Duke wanted to center the easement (fifty feet on either side) on the transmission line built in the 1950s and release portions no longer needed as well as obtain an ingress-egress easement but SurVance and Duke had not come to an agreement. SurVance filed several objections with the Martin Circuit Court including that the current line only serves one private customer, a U.S. Gypsum manufacturing plant, which is outside of Duke's service area; that Duke had not needed an ingress-egress easement for years and that Duke arbitrarily picked an area for the easement; and that the easement language was vague. At the trial court, SurVance presented no evidence and the court summarily denied SurVance's objections and appointed appraisers. SurVance appealed.

The appeals court noted that Duke is a public utility that has the right to exercise eminent domain via condemnation; and that the necessity for taking is presumed and can be disproved only by the landowner's production of evidence of fraud, capriciousness, or illegality, and SurVance failed to show that. SurVance argued that the taking is not for a public purpose as the line is only allowed to serve one private customer. Here U.S. Gypsum was found to be a commercial member of the public with a legal right to use the electricity. Second, SurVance argued that the taking is improper as it is unnecessary, but the court noted that necessity is, for the most part, to be determined by the condemning utility and is not limited to absolute or indispensable needs, but must be reasonably proper and useful for the purpose sought. SurVance had complained that Duke had not needed a roadway easement since

1954, but the court noted that does not mean it is not reasonably proper and useful now, and SurVance had presented no contrary evidence. Third, SurVance claimed the easement route is arbitrary without support for that position. The court did not find centering the easement on the existing line to allow for more effective operation and maintenance to be arbitrary. Fourth, SurVance claimed the easement is impermissibly vague because it is impossible to determine the exact width of a vegetation control area. The court disagreed as the description is identified as 25 feet on either side of the easement area. The judgment of the trial court was affirmed.

**Elpers Bros. Construction & Supply, Inc. and Elpers Development, Inc., v. Deane L. Smith, II, MD and Lori A. Smith, Indiana Court of Appeals Case No. 19A-PL-1327, April 27, 2020 MEMORANDUM DECISION**

This was an interlocutory appeal (an order, sentence, decree, or judgment, given in an intermediate stage between the commencement and termination of a cause of action, used to provide a temporary or provisional decision) from the Vanderburgh Circuit Court in a case that involves the failure of geothermal heating and cooling coils installed in a subdivision retention pond to operate properly. This was alleged to be because of excess silt in the pond due to the defendant's failure to act as required to undertake proper reconstruction and maintenance of drainage facilities. We will have to wait and see if a final judgment makes its way back to the appeals court.

**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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# Schneider Geospatial Acquires Elevate Product and Local Government Consulting Practice From 39 Degrees North

Provided by Schneider Geospatial

Schneider Geospatial, LLC and 39 Degrees North, LLC have announced Schneider's acquisition of the Elevate product and the local-government consulting practice from 39 Degrees, a leading provider of Geographic Information Systems and real-estate web portals in the local-government market.

This acquisition adds additional clients and resources to one of the largest organizations of its kind in the U.S. It also expands Schneider Geospatial's Indiana county client base to include more than two-thirds of the state.

The Elevate team and its clients will be incorporated into Schneider Geospatial and will operate as an integrated business serving nearly 600 local-government clients in 28 states.

The popular Elevate web portal and supporting GIS services will become part of Schneider Geospatial's growing suite of solutions that includes Beacon, qPublic.net, GeoPermits, IDAM, Agland, Draincalc, and Geogear.

"We are excited to welcome the Elevate clients and team to Schneider Geospatial," says Jeff Corns, president of Schneider Geospatial. "The

geoConvergence, llc d.b.a.



new integrated team will continue to provide all of our clients with incredible innovation and customer service."

While many companies are looking for ways to scale back in 2020, Schneider Geospatial has expanded its services while working remotely to help ensure that local governments remain as accessible to the public as possible. Partnering with local government officials, Schneider Geospatial's popular e-Government platforms have serviced more than 200 million requests for information from more than 35 million visitors since the COVID-19 pandemic started.

*Continued on page 25*

This acquisition brings new opportunities for both Schneider Geospatial and 39 Degrees North. Both companies, previously direct competitors, are looking forward to future partnering opportunities. 39 Degrees North will continue its operations with a renewed focus on markets outside of local government. "This agreement will allow the Elevate team and its client base to continue to grow while 39 Degrees North focuses on commercial partners and the state and federal markets," says Prem Radhakrishnan, the managing member of 39 Degrees North.

## About 39 Degrees North:

Founded in 2004, 39 Degrees North is an SBA 8(a)-certified company specializing in geographical information systems, cloud engineering, data analytics and software development. Its world-class, cloud-based mapping solutions have won Esri's award for Special Achievement in GIS on four occasions and earned the recognition of the Indiana Geographic Information Council. The Elevate platform serves over 125,000 registered users and delivers more than 800,000 maps on a daily basis.

## About Schneider Geospatial:

Schneider Geospatial, LLC provides creative e-government solutions that change the nature of how people interact with government, improving service while lowering costs. Schneider Geospatial is a leader in providing Geographic Information Systems solutions to hundreds of municipal, county, state, federal and private entities. Serving nearly 20% of the counties in the U.S., Schneider Geospatial is one of the largest e-government providers with industry-leading solutions such as Beacon™ / qPublic.net™ (local government information for the web), GeoPermits™ (cloud-based permitting and workflow management), and Agland™ (automates the process of calculating assessments for agricultural land). Schneider Geospatial is recognized nationally for its award-winning work. For more information about Schneider Geospatial, please visit <http://www.schneiderGIS.com>.

# Banning Engineering Promotes Polson to Director of Survey

Sarah Browning, Banning Engineering



Jon Polson, PS

Banning Engineering has promoted Jon Polson, PS, to Director of Survey. Polson has been with the firm since 2005 and most recently served as the Survey Operations Manager.

"Jon has been a valued member of the Banning Engineering team for

well over a decade. Consistent with Banning Engineering values, Jon will bring a reinvigorated vision to our survey department. I'm looking forward to having Jon serve our clients in this new role," said Jeff Banning, PS, the firm's president and founder.

Polson is a graduate of Vincennes University and a licensed Professional Surveyor. Additionally, he serves as president of the Central Indiana Chapter of the Indiana Society of Professional Land Surveyors and is a member of the National Society of Professional Surveyors and the Indiana Chapter of the International Right of Way Association. He also has volunteered with a Central Indiana Chapter's Boy Scout surveying merit badge workshop and at the Plainfield Community School Corporation's Imagination Lab as part of Banning Engineering's involvement there.

## About Banning Engineering:

Banning Engineering is an award-winning, multidimensional civil engineering and surveying firm serving Indiana communities for over 25 years.



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## Stephen Ramsey



On the afternoon of Monday, May 25, 2020, Stephen Ramsey, loving husband, father of four and grandfather of twelve, passed away at the age of 76 in his home in Bloomington surrounded by loved ones.

Stephen was born on March 12, 1944 in Vincennes to John and Margaret (Gartner) Ramsey. He received his degree from Vincennes University and worked for Rogers Group, even after retirement, for over 55 years in Bloomington. He also was a member of the Hoosier Hills Chapter of ISPLS. On August 30, 1969, he married the love of his life, Connie Jo Craig. They raised four children, Stacey, Bradley, Laura and Trenton.

Family was Stephen's priority and he loved traveling to spend time with his kids and grandkids, especially when he arrived with a list of projects to do. He enjoyed his work in surveying and was happiest catching up with friends for early morning breakfasts. He was admired for his strong work ethic and honesty, and always had something nice to say about everyone.

He was a devoted Catholic and never missed Mass.

Stephen was preceded in death by his mother, Margaret Ramsey, his father, John Ramsey, his sister-in-law, Beverly Young, his father-in-law, Elmer Craig, his mother-in-law, Mary Craig and one grandson, Nabil Ramsey. He is survived by his wife, Connie, his four children, Stacey Tolliver of Columbus, Bradley Ramsey (Nooshin) of Plano, Texas, Laura Ross (Michael) of Bloomington and Trenton Ramsey (Amie) of Bloomington, his twelve grandchildren, Jalyn Tolliver, Tevis Tolliver, Lydia Tolliver, Devin Tolliver, Kavon Ramsey, Kamran Ramsey, Aidan Ross, Samantha Ross, Quinn Ross, Zoie Ramsey, Garrett Ramsey and Ava Ramsey, his brother, Robert Ramsey (Brenda) of Bruceville and several nieces, nephews, great-nieces and great-nephews.

*(Photo and obituary provided by The Funeral Chapter)*

## Earl Uban



Earl Charles Uban, 92 of Valparaiso, passed peacefully at home surrounded by his loving family on August 29, 2020. Earl was born on August 13, 1928 to Moses Walter and Evelyn (Gjeldseth) Uban in Valparaiso. Earl leaves to cherish his memory his loving wife of 69 years Sharon L. Uban (Forni); sons James (Cheryl Sanchez), Jon (Brenda Burns Uban) and Thomas (Anne Roberts), grandson Joel (Darah Xiuyu Ye) and his sister, Marie Marshall. He was a graduate of Valparaiso High School and Purdue University. He taught at Valparaiso University. Earl was the first engineer hired at Midwest Steel. He later worked as a surveyor for both Tanke Surveying and Davies Surveying. His earliest hobby was photography. He built the family home. Earl enjoyed all things mechanical, collecting and repairing gasoline engines, antique clocks and building grandfather clocks. He was a ham radio enthusiast and made many friends through it. After retiring, he began collecting. Ever the master craftsman, he was also a violin luthier, and played violin with his wife. He was a lifelong member of First Church of Christ, Scientist, of Valparaiso. He was a great husband, father, grandfather and a wonderful example for his

three sons, building a loving family. Private burial took place at Graceland Cemetery, Valparaiso.

*(Photo and obituary provided by Angel Crest Inc.)*

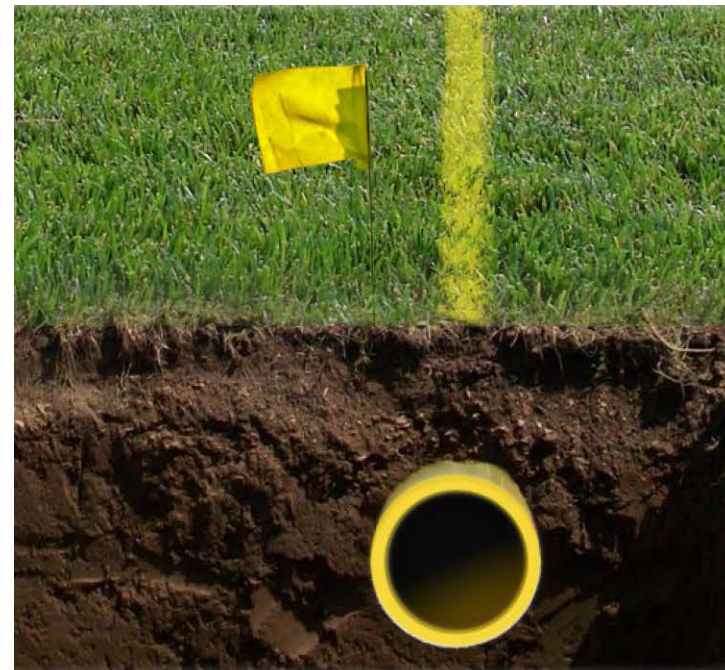


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