

VOLUME 47 ISSUE 4

HOOSIER SURVEYOR

SPRING 2021

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- ISPLS 2021 Convention Awards Recap
- Virtual Conference from Young Surveyor Perspective
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- GPS on Bench Marks: A Perfect Activity for National Surveyors Week
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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

Norman Hiselman, PS, ISPLS President

Greetings to all. I was going to begin this short column by saying something about spring has sprung and so forth, but at the time of this writing my part of Indiana had received two inches of snow and two nights of record low temperatures. So much for the old advice of not planting until after April 15. Perhaps April 30 would be better.

Anyway, winter is passé, and my Santa gig is over, so I trimmed off the white bushy beard to a respectfully looking goatee. I can now walk through a mall without getting those inquisitive looks from the tots: "Could this rotund old man with the white beard be him?" You know you have reached that point when your neighborhood association or company wants you to play Santa Claus for certain gatherings. Where is that morning workout channel located?

Several years ago, when I first ran for a position on the Board of Directors for ISPLS, my platform was to provide support for our nonlicensed professionals, whether you call them technicians, field crew members or draftsmen. It has been part of my mantra ever since then. We, the board, have enlisted the Young Surveyors group to help in this endeavor and brainstormed at meetings to come up with ideas to achieve this goal.

We have been working on doing some sort of partnership with the Geoholics Group, who do podcasts providing interesting topics survey-related as well as learning opportunities like Mentoring Mondays. Some of our own have been guests of the program — Ryan Swingley, Gary Kent and Nolan Mark, to name a few. In support of the Certified Survey Technician program, we are in the process of creating

a grant process for funding fees for the preparation/review course, benefiting those who want to take the tests.

We are also developing a program for our techs to be presented during the coming convention. Tentatively, technicians will come in on Friday, and we should have three class offerings for them. If we want technicians to be a part of this profession, then we must engage them and start talking to them about professional things. The idea is that these classes will be open to PS's and technicians; ideally, the PS's would bring and sit with their techs and discuss these topics together afterward. Friday will be Gary Kent talking about Corner Perpetuation for Boundary Surveys in the morning and ALTA, a field surveyor perspective, in the afternoon. Gary's afternoon session may be presented before the entire convention attendees because everyone involved with surveying in Indiana should hear him speak ... especially technicians. Shane Turay and Ryan Swingley will be developing a session called "The Connected Surveyor" for Friday morning and talk about ways to improve communications between the field and office. As you can see, we are making the effort to include and grow your nonlicensed personnel; will you make the same commitment?

Our workforce development initiative has been slow to nonexistent because of COVID-19 — cannot get in the schools or larger crowds. However, we were contacted by Lisa Samuels of the Sheridan Youth Assistance Program inquiring if land surveying was a profession that students who cannot go to college can get into. I think so and I can give a reason why. Ed Sweetland, Ryan Swingley and I are tentatively scheduled in late June to host these kids and tell them all about land surveying.

I do not have to tell you how hard it is finding help to fill needed field positions. I think one reason is we have primarily all gone with the one-man field crew, limiting the pool of talent. It is a mistake. I can start listing safety reasons, wear and tear issues on field techs and the loss of the ability to pass on knowledge that only experience can provide. We look for the experienced or college educated individual, but they just are not available. In my opinion, we can and should go back to earlier days, have that two-man crew where a kid out of high school can enter a profession, become proficient at it, and grow to fill the need of adding a crew or replace a party chief who is hanging up his plumb bob (I know, it dates me). Some of you are probably thinking this is not cost effective, but I can tell you a two-man crew doing construction layout is more efficient than one man. Can we afford not to start passing on the experience, knowledge and opportunity for the growth of the profession?



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Indiana Young Surveyors Network

Ethan Hopf, PS

Growing up in a family filled with carpenters, contractors and construction workers, there were numerous "colorful" phrases thrown around within chaos or in a fit of frustration. Every once in a while, there would be a phrase that was insightful and stuck with me as I became an adult. One of these phrases said by my father was simple: "If you wait on the weather, you won't get anything done."

Although I believe this was said in the literal sense of waiting on weather, it is comical to look back at how many times it rained or snowed when it was most inconvenient. However, I tend to be over-analytical and used this phrase in a more figurative sense in that you just cannot wait for the "weather," or circumstances in life, to be perfect; you must continuously be proactive, move forward, and get involved in order to see progress.

For the future of land surveying, we need to get ahead of the weather by investing in securing future surveyors through recruitment of young individuals, mentoring, and becoming involved with and promoting programs like GPS on Benchmarks, a program put together by the National Geodetic Survey to aid in the establish the upcoming North American-Pacific Geopotential Datum of 2022 (NAPGD 2022), and the Indiana Young Surveyors Network (IYSN).

Unfortunately, due to Covid, the IYSN has been only able to safely meet in-person once, but since then established numerous virtual meetings to connect and recruit. We

currently host monthly Zoom meetings, called "Roundtable Tuesdays," that allow for discussion of new and old ideas, techniques and tools to expand the knowledge to an already diverse field of land surveying. The following are the upcoming presenters and topics for Roundtable Tuesdays:

- May 11 – Gary Kent – Description Analysis: Rules of Construction
- June 8 – Todd Bauer – Surveyor's Report: Rules of Construction
- July 13 – Bryan Catlin – Indiana Boundary Law
- August 10 – Tony Gregory – Detention and Storm Sewer Design
- September 14 – Bryan Catlin – GIS for Surveyors
- October 12 – Ryan Swingley – GPS Micro Networks
- November 9 – Marisa Trzemzalski and Josh Twitty – NCEES: Marketing and Outreach Update and Threats to Licensure

In addition to the Roundtable Tuesday discussions, the IYSN is taking advantage of the Zoom technology by hosting a study group for the FS exam. The group will be meeting on the following Sundays at 2 p.m. Eastern and reviewing the knowledge areas of the exam, talking about test-taking habits and tips. Anyone thinking about taking the exam by the end of summer is welcome to join!

- May 16 - FS Knowledge Areas 1, 4, 6
- May 23 - FS Knowledge Area 7
- June 6 - FS Knowledge Area 3
- June 27 - FS Knowledge Area 2
- July 11 - FS Knowledge Area 5 and Calculator Day
- July 18 - FS Knowledge Area 6 and Test-Taking Tips

Among many others within the IYSN, I decided to participate in GPS on Benchmarks during National Surveyors Week. This program was encouraged by the National Geodetic Survey to have individuals with capable equipment make survey grade observations and perform static observations on published

benchmarks to aid in the creation of the upcoming NAPGD 2022 datum. This was the first time I submitted a benchmark to NGS, however I was amazed at the simplicity of gathering the necessary information and submitting to the online portal. This program offers a great opportunity to connect with others in the profession and make an impact on the upcoming datum that will be utilized by surveyors for decades to come.

As my father said, if we wait on the weather, we will never get anything done. As a profession, we cannot idly wait as technology advances, as numbers decrease, and as there is a broader separation amongst those in our profession. Let's get ahead by recruiting, mentoring and participating in programs like GPS on Benchmarks.

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Meet A Young Surveyor

Ethan Hopf, PS

My path to becoming a land surveyor is typical among most in our profession; I had a generalized background of what a surveyor did based upon my experience in construction, however I was unaware of what all was involved within land surveying until a course in my construction management curriculum. From that course on, I was hooked and earned my associate degree in Surveying Technology through Vincennes University. I am currently 30 years old and licensed within the state of Indiana and a project surveyor with Brosmer Land Surveying & Engineering, Inc. in Jasper, Indiana. I am currently the secretary for the Indiana Young Surveyor's Network (IYSN) founded in 2020.

I have been privileged to work for a firm that has encouraged me to get involved with anything related to surveying, from different technologies in the field to courthouse research and job preparation, as well as AutoCAD drafting and calculations. I frequently work closely with our engineering department in various ways, such as preparing subdivision plats and designs, obtaining the topographic information required for designs, and the ultimate construction staking and as-builts. Each step in the process has allowed me to expand my knowledge within the surveying profession in addition to helping me understand the importance of good mentorship, getting involved, and keeping up-to-date with technology.

One aspect of my career I underestimated is how many different types of equipment and software programs I would need to learn and become proficient in for everyday use. The ever-evolving and state-of-the-art technologies are some of the many perks to the surveying profession, but with these perks comes the need to understand, use, and troubleshoot not only the equipment but also the data the equipment gathers. As surveyors, we tend to be self-proclaimed master-measurers. However, data is only good if you can convert it into a usable format and the format of the data for each job can vary based upon the client. I would encourage anyone getting into the profession to push yourself to learn new and old technologies, as well as begin to



understand the programs and softwares needed to convert this data into a deliverable format.

Although I am still young to the profession with being licensed for over two years, I found there is a lack of young individuals getting into the profession as well as a lack of mentorship for existing young surveyors. One of the enticements of the surveying profession is the ability to use new, state-of-the-art technology. Despite the advancements in technology, it is becoming increasingly difficult for individuals or small crews to gain the hands-on knowledge that historically had been passed through multiperson crews. Mentorship can play a key role in solving this issue. Mentorships are a valuable component of the surveying profession and I was lucky enough to have several mentors that helped me through challenges I encountered in the field. These mentors encouraged problem solving, learning new technology and staying involved with programs like IYSN and ISPLS. My hope is for the profession to continue this mentorship with new surveyors.

Meet A Young Surveyor

Jennifer Morehouse, RPC, MS



My name is Jennifer Morehouse, and I am 25 years old. I am originally from the northern suburbs of Chicago but now live in the Indianapolis area. I graduated from Michigan Technological University in 2018 with a degree in Surveying Engineering and recently a master's degree from Embry Riddle Aeronautical University in Unmanned Systems - small operations in 2020. I currently work at a civil engineering firm in Indianapolis.

Growing up, I was always interested in math and science and STEM, wanting to go into the engineering field. I first became interested in surveying when my sixth-grade science teacher had the complete activity of creating a topographic map out of cardboard. Then, when I was introduced to the geospatial side of the industry later in high school I found that the surveying and engineering industry would be perfect.

I had several internships during my time at Michigan Tech; throughout these experiences and undergrad, I quickly realized how rapidly technology is changing in the industry, and that is when I decided to pursue a masters in Unmanned Systems, in hopes to be able to combine the fields of Unmanned Systems and Surveying.

I have worked on a multitude of projects from field topographic data collection to office processing to right-of-way engineering. Each project has helped me expand my knowledge in the surveying industry. I give credit to my professor from college for sharing a quote with us every day before we left class and will share it with you as well - "Go make a positive difference in the world!"

Jennifer Morehouse takes a self-portrait photo as she pilots a DJI Mavic 2 Pro drone with a remote control attached to her phone. She has a Remote Pilot Certificate with a small Unmanned Aircraft Systems rating and works for a civil engineering firm in Indianapolis.

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NSPS Day on the Hill

Tony Gregory, PS, Alex Daugherty, PS & Nolan Mark, PS

During this time of year, Professional Land Surveyors would be walking the halls of the Capitol, chasing down senators and representatives and discussing a range of surveying topics. Unfortunately, with the COVID-19 pandemic still lingering, surveyors from across the United States took part in virtual meetings throughout the day on April 21 with congressional leadership and their staff. Tony Gregory, Alex Daugherty and Nolan Mark represented Indiana and the Indiana Society of Professional Land Surveyors and met with staff members on behalf of Sen. Todd Young, Rep. Frank Mrvan, Rep. Jim Banks and Sen. Mike Braun. The issue at hand: the Role of Surveying and Mapping in National Initiatives.

With the help and guidance from the National Society of Professional Surveyors and federal lobbyist John (JD) Byrd, surveyors were able to provide examples of everyday-life scenarios to show how surveying affects everyone. One example was when you start your morning with a shower, shaving or brushing your teeth. The water utility company uses geospatial data to plan routes, lay water lines and monitor water flow. Local contractors use "One Call" or "Miss Utility" systems to make sure they do not hit an underground water or electric line when excavating.

Other examples provided throughout the day included a situation of you arriving back home after work to find that your neighbor has decided to build a fence along your common property line. A survey, including precise GPS, will assist a Professional Surveyor in determining the accurate location of the property line between your respective properties, avoiding any potential disagreement about whether the new fence may encroach onto your property.

Since Alex and Nolan were both new to Day on the Hill, Tony began the day taking the lead while meeting with both Burke Miller (on behalf of Todd Young) and Megan Salrin (on behalf of Frank Mrvan). Nolan led the discussion with Taylor Tougaw (on behalf of Jim Banks) while Alex led the discussion with Adam Battalio (on behalf of Mike Braun). Each surveyor brought his own experiences to the meetings and all participated in each meeting. Tony was able to talk about teaching university students and gave examples of the need to update FEMA maps. Nolan discussed how the change to electric vehicles is impacting more locations with the need for charging stations and how bills were based could help create growth in surveying companies such as his new business. Alex touched on his work in the transportation field and how projects such as the Mid-State Corridor are critical to Indiana's future road infrastructure.

At the end of each conversation, the surveyors respectfully urged the inclusion of a provision enabling improved utilization of surveying and mapping technologies and applications in relevant legislation and asked if the congressional member would act. Staff members could not provide an answer on behalf of representatives or senators, but all said they were going to provide feedback. Some brought up the timing of the current infrastructure plan coming to discussion and its progress within Congress. One staff member said they would be following up in the fall when they thought finalization of the plan may be happening.

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ISPLS Volunteers Judge Student Survey Competition

Ryan Perry, PS

Purdue University recently hosted the annual competition of the Great Lakes Student Conference of the American Society of Civil Engineers (ASCE). The Great Lakes Student Conference is one of 18 geographical regions containing ASCE student chapters. It consists of 19 universities and is one of the largest regions based on the number of schools. The Great Lakes Student Conference includes schools from Southern Wisconsin as well as Northern and Central Illinois and Indiana.

The competition is well known for its concrete canoe and steel bridge competition but also includes an AutoCAD competition as well as a technical paper, quiz bowl and survey competition.

The Great Lakes Student Conference reached out to ISPLS seeking volunteers to judge the survey portion of the competition and Chris Marbach and myself answered the call. The survey competition consisted of two tasks: a topographic mapping project and a differential and profile leveling with engineering design.

The topographic mapping portion required each team to submit a 24" x 36" PDF file of the site with 1-foot contours, key spot elevations and map contents. The teams were provided a PNEZD point file and a description of the map boundary. The teams were also judged on a 5-minute presentation of the topographic map.

The differential leveling competition required teams to calculate elevations at each turning point and side shots of a differential leveling circuit. Teams were provided a starting elevation, rod readings, slope and size of a proposed sewer line. Teams then calculated elevations at all turn points, side shots, foresights/backights,

adjusted elevation and each station as well as cut/fill to the pipe inverts.

The final submittal consisted of a table with all adjusted elevations, a sketch of the profile with stations and cut/fill labeled. Teams were evaluated based on accuracy.

While many of the submissions fell short of the standards most in our industry are accustomed to seeing, the competition does demonstrate that universities are working to promote the profession and encouraging students to become involved in surveying. ISPLS and its membership should continue to work with state and regional schools to encourage students to pursue careers in the surveying profession. ISPLS's involvement with this competition helps promote the profession and hopefully encourages them to become more involved in surveying.



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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. This quarter, I found that the courts website at www.in.gov/judiciary has a new search function that apparently was brought online in late January. Currently, there is not a way to search cases by keywords on the Indiana site like there was before the change. Because of this, I used Google Scholar to search for Indiana cases. Once cases were found, I could search for a case by a party's name on the Indiana site to obtain a more conveniently formatted document, in most cases. I hope the keyword search function on the state site will be added back soon, and I have described the usefulness I received from it to staff there. If a reader has found the ability to search cases by keyword convenient, I would encourage you to reach out to the administrators of the court's website too. Comments or suggestions for future columns are welcome by email to: Bryan.Catlin@indy.gov.

Herbert C. Haggard and Alice M. Haggard v. State of Indiana and Jerry L. Hillenburg and Morgan County, Indiana, Indiana Court of Appeals Case No. 20A-PL-1502, January 21, 2021

Here is an interesting case arising out of the land acquisition process for I-69. Hillenburg owned property based on a 1981 Warranty Deed which reserved an easement for the Haggards for ingress and egress and to erect and maintain a billboard (which was actually done by Outfront Media LLC, apparently within the scope of the easement rights as no one complained otherwise). An offer was made to

Outfront Media for the physical sign and another offer was made to Hillenburg. After Hillenburg and the State did not agree on the State's offer of \$310,000 for the property and any damages that may be caused by the State's appropriation, the State filed a complaint for appropriation in the Morgan Circuit Court on February 21, 2020, naming Jerry Hillenburg as owner, and the Haggards as defendants as to any interest they had in the lands due to the easement in their name. The Haggards objected because they had not received an offer to purchase their easement rights prior to the filing. The State filed a motion to overturn the objection because they are not required under IC 32-24-1-13 to prove that they have made a good-faith effort to purchase real estate; they only had to make an offer to the owner of the real estate, and the Haggards did not meet the statutory definition of an owner. There were timing issues argued also because of COVID-19 related orders dealing with deadlines. Eventually the trial court ruled against the Haggards and this appeal was filed.

The court now finds that the Haggards are not owners of the land but merely had a right to use the land of another. The overruling of the Haggards' objections and motion to vacate the order of appropriation was affirmed.

John A. Huntzinger v. Champion Lake Ski Club, Inc., and Bryan Burney, Indiana Court of Appeals Case No. 20A-PL-1653, March 9, 2021

John Huntzinger, through his corporation Mega Lakes, Inc., developed The Champions Lakes Estates Subdivision, which included a lake, Common Area, and parcels. The Champions Lake Ski Club is the homeowner's association for the development. Fifteen of the lots have

homes with docks adjacent to their parcel on the lake. The Common Area includes three docks and a boat ramp. Sometime before August 1995, there was a dispute about the administration and governance of the Ski Club. A complaint was filed in the Hancock Circuit Court which resulted in a settlement whereby control and fee simple title to the lake would be transferred to the Ski Club, all lot owners would have access to the boat dock/Common Area, and John Huntzinger would retain a lifetime ski right, in addition to any other rights he has as a lot owner, along with other miscellaneous provisions. Huntzinger eventually sold his property on the lake but retained his right to ski. In February 2018 Huntzinger requested permission to build a personal dock in the Common Area. Ski Club President Bryan Burney denied this request because the Ski Club did not believe Huntzinger's lifetime right included a right to construct a dock in the Common Area. Huntzinger filed a complaint in the Hancock Superior Court alleging breach of settlement and intentional interference with a contractual relationship and requested injunctive relief against both the Ski Club and Burney to stop them from preventing the full exercise of his lifetime right. The trial court entered summary judgment in favor of the Ski Club and Burney on all counts and Huntzinger appealed.

The Appeals Court found that Huntzinger's right to ski was in addition to and separate from his rights as a landowner. Because he no longer owned a lot on the lake, his rights were limited to those in the settlement. Huntzinger argued that unrestricted use for water skiing includes the right to build a dock, but the documents only granted him the right to ski. The Court found skiing does not include dock building. The judgment of the trial court was affirmed.

Janice Steele and Kenneth Steele v. Steuben Lakes Regional Waste District, Indiana Court of Appeals Case No. 20A-PL-1000, March 30, 2021

Here the waste district was installing a sewer system by two properties the Steeles own and the district asked the Steeles to provide

easements without other compensation where the district could install lines and grinder pumps to service the Steeles' properties. The Steeles did not grant the required easements and the district bypassed their properties. In February 2017, the district notified the Steeles that the line was now complete, and their properties needed to be connected within ninety days at their own expense. The Steeles failed to connect and in March 2018 the district filed a petition in the Steuben Superior Court asking for a court order that they do so at their own expense. The Steeles filed an answer and counterclaim, alleging (1) their properties are exempt from the connection requirement; (2) the district's connection policy is "not authorized by Indiana law and is in direct contravention of the statutory authority of regional utility districts"; (3) the district's connection policy "violates equal protection [as] well as the privileges and immunity afforded the Defendants"; (4) requiring the Steeles to "destroy" their private septic system is a taking without just compensation and is contrary to Indiana law; (5) Indiana Code section 13-26-11-5, which authorizes billing and collection, "is unconstitutional in that it is a 'taking' by the government of the money of Defendants for nothing in return"; (6) the district dictating where on a property certain equipment must be located is contrary to Indiana law and a taking; (7) certain fees charged by the district are illegal; and (8) the district's "acts and omissions" have caused monetary damages. After a bench trial, the court ordered the Steeles to purchase a grinder pump and related equipment and have the equipment installed and connected to the district's system at their own cost for each property. The cost of doing so would be approximately \$15,000-\$20,000 for each property, including about \$7,000 for the grinder pump and other equipment. The court also ordered the Steeles to pay the district \$48,505.58 in fees and penalties, including attorney's fees. The Steeles appealed.

The Steeles tried to argue issues they hadn't raised at trial with no success. The district was found to not have a right to enter the Steeles' property and install equipment without an

easement as they had argued. But the district did not use the option of eminent domain to obtain the needed easements when the Steeles did not want to grant them without compensation. Instead the district chose to penalize the Steeles for not voluntarily granting the easement at no cost to the district by making them pay for grinder pumps and other equipment that were freely provided to others who did grant easements. The courts have previously held that such punishments are bad public policy. The court affirmed that the Steeles connect and pay for the construction but reversed the order to pay for the equipment. Also, since they were not required to connect until the district provided the necessary equipment, several fees and penalties were reversed. However, this did not affect the \$3,000 capacity fee for each property and a \$6,029.92 contractor reimbursement fee which is still owed. In addition, the attorney's fees were reversed because this was a good-faith dispute between a party who did not want to grant an easement and connect without compensation, but there was no indication they refused to connect, just whether it would be done with, or without, an easement. Since the Steeles prevailed in part, they do not owe attorney's fees. The case was remanded back for a revised order complying with the findings on appeal.

Judge Bailey concurred in part and dissented in part. He would have wanted clarification from the trial court about deadlines and actions the district could have taken if the Steeles did not comply with the connection order; would have remanded for findings about the reasonableness of the attorney's fees; and, would not have had a problem with charging for the grinder pump and equipment and some of the financial penalties for failing to connect. On all other issues, he concurred.

Thomas De Cola v. Katherine Chaffins, Indiana Court of Appeals Case No. 20A-CT-1609, January 20, 2021 - MEMORANDUM DECISION - not regarded as precedent

This case started at a 2014 tax sale in Starke

County when a former railroad right-of-way parcel was offered. Since DeCola owed a small parcel next to that parcel, he bid on it but was outbid by Herb Kuehn who eventually failed to pay. Chaffins, the Starke County Auditor, also bid unsuccessfully. The tax sale would have normally been rescheduled but the county discovered the entity they believed to be the owner only had easement rights; the adjoining owners owned the underlying fee title. Since property tax assessment was not consistent with ownership, the parcel should not have been offered for sale. On April 10, 2017, the deputy auditor sent a letter to DeCola which stated that the railroad property running through his property had been transferred into his name and all prior taxes had been removed. The deputy auditor offered to combine DeCola's tax statements, which was done after DeCola filled out the needed paperwork. On October 3, 2017, DeCola filed suit against the Starke County Commissioners in the Pulaski County Circuit Court alleging fraud connected with the tax sale. Eventually the trial court granted summary judgment in favor of the County Commissioners. DeCola appealed and the trial court decision was affirmed. DeCola petitioned the Indiana Supreme Court for transfer, which was denied.

On February 24, 2020, DeCola, pro se, filed an action in the Starke County Circuit Court alleging Chaffins committed actual and constructive fraud by "wrongfully securing the possibility of and expectancy of title" for the parcel offered for sale; for falsely claiming, in her official capacity, that "the adjoining landowners [including] Chaffins, DeCola, et al. possessed deeded rights to the tract supposedly proofed by an ancient deed[.]" He claimed he relied on Chaffins' false assertions and, as a result, was denied the highest winning bid for the parcel despite bidding against an individual claiming to be Kuehn who did not attend the sale, among other allegations. Chaffins filed a motion to dismiss arguing the claims were barred based on the doctrine of res judicata (a matter that has been adjudicated by a competent court and may not be pursued further by the same parties). DeCola filed a notice to remove the action to federal

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court. The action was remanded to the Starke Circuit Court, which after a hearing, granted Chaffins' motion. The trial court stated some issues were decided in the earlier DeCola case and some were criminal actions, not a private cause of action, or should have been pled in the earlier case. DeCola appealed again.

The decision of the trial court was affirmed.

Ronald J. Wolfe v. Max Weaver and Wabash Valley Abstract Co., Inc., Indiana Court of Appeals Case No. 20A-PL-1618, February 5, 2021 - MEMORANDUM DECISION - not regarded as precedent

This case from the Miami Circuit Court concerns a one-third interest in land held by Hazen Horner who died in 1987. His nephew, Ivan Martin, was appointed administrator of his estate and obtained permission from the court to sell the property. Wolfe was the highest bidder at a private auction. Weaver had prepared an abstract of title, which was certified through December 28, 1987, going back to 1849, which noted that in 1890 a strip was sold to the Peru & Detroit Railway Company per a quitclaim deed. The cover sheet of the abstract of title contained a legal description that noted an exception for a railroad right-of-way, as had prior deeds for the property. Wolfe had reviewed the abstract of title before the purchase was finalized and the estate administrator's deed was recorded, which did not mention the right-of-way. Wolfe received an administrator's deed signed by Martin on November 18, 1987, as well as a warranty deed, both prepared by the estate's attorney and recorded on January 20, 1988. In August 2008, Wolfe conveyed the tract to Terry P. and Joyce A. Powell via warranty deed which contained a description which was basically identical to those in the deeds Wolfe received. In August 2019, Kent Eiler, who had purchased the former railroad property by warranty deed in 1979, filed a quiet-title complaint against the Powells alleging they claimed an adverse interest in his real estate that clouded his title. The Powells filed an amended third-party complaint against Wolfe for breach of warranty, requesting Wolfe defend them against the Eiler

suit and pay them damages if Eiler prevailed. In March 2020, Wolfe filed a third-party complaint against Weaver and the Wabash Valley Abstract Company, alleging they were negligent in omitting prior deeds for the railroad parcel from the abstract. In May 2020, Weaver and Wabash Valley filed a motion for summary judgment, asserting that the abstract is not for the disputed real estate and that a registered surveyor was clearly able to identify the land in question as shown by his October 12, 2018, survey. In August 2020, the trial court granted Weaver's and Wabash Valley Abstract's motion, noting that the nothing in Weaver's certificate indicated an intention to cover any real estate other than that described at the beginning of the document, among other points, and Wolfe appealed.

Weaver and Wabash Valley Abstract did not file a brief, but the court found that Wolfe was unambiguously put on notice of the railroad right-of-way by the abstract — a potential title defect — and Wolfe did not act on that notice. The judgment of the trial court was affirmed.

Twin Mills, LLC v. Leisure Acres Association Inc., Indiana Court of Appeals Case No. 20A-PL-1516, February 11, 2021 - MEMORANDUM DECISION - not regarded as precedent

Here the Cagley family created two adjacent campgrounds in 1979, Leisure Acres and Twin Mills. Twin Mills had a lake, swimming pool, fishing pond, three parks, a store and sponsors' activities, all of which Leisure Acres lack. In 1979, the Cagleys signed covenants for Leisure Acres, running with the land, that granted access to Twin Mills facilities. In 1985, the Cagleys signed revised covenants running with the land which also allowed use of Twin Mills recreation facilities, "subject to all usual and customary fees applicable to the general public" In 1996, the covenants were again revised which allowed free access to Twin Mills facilities free of charge, except the swimming pool. These covenants did not mention that they would run with the land. In 2001, Leisure Acres incorporated to establish a property owners association. In 2004, Twin Mills was sold to Twin Mills, LLC and in 2006, Twin Mills, LLC was sold

again. In a November 12, 2009 letter, Twin Mills, LLC informed Leisure Acres that its residents would be required to pay fees to enter Twin Mills property which prompted discussions back and forth. Eventually though, from several years before the 2009 letter until early June 2019, residents of Leisure Acres were able to enter Twin Mills' property and use their facilities free of charge, except the swimming pool. In early June 2019, Twin Mills began charging a daily fee of \$5 per person to enter their property and use their facilities. On July 24, 2019, Leisure Acres sued Twin Mills in the LaGrange Superior Court. The arguments revolved around whether the homeowners association was able to represent the Leisure Acres in court and whether the Leisure Acres covenants allowed free entry and use of Twin Mills facilities. Eventually Leisure Acres prevailed, except for the return of fees paid by individual members, and this appeal ensued.

On appeal, the judgment of the trial court was affirmed. The acquiescence of Twin Mills, LLC in allowing free use of their facilities, except for the swimming pool, by Leisure Acres residents for at least thirteen years weighed heavily in this decision.

Gregory L. Ernstberger, as Trustee of the Ernstberger Planning Trust Dated February 27, 2016; Mary Ruth Ernstberger; Paul A. Harrett, Jr.; and Stevie Joe Lewis v. Floyd County Board of Zoning Appeals; The Margaret Phan-Rogers Revocable Living Trust of July 19, 2005; Full Circle Automation, LLC; and Jeffrey Kiper, Indiana Court of Appeals Case No. 20A-PL-2014, March 17, 2021 - MEMORANDUM DECISION - not regarded as precedent

Here the owner of a property authorized a potential user to apply for a variance to operate an electrical contracting business on the property which was zoned rural residential.

Once the variance was granted, Ernstberger, et al petitioned for judicial review of the Board of Zoning Appeals (BZA) decision with the Floyd Circuit Court which affirmed the BZA decision. This appeal and affirmation of the trial court judgment followed.

This case is mostly of interest in that it clearly states why great deference is given to administrative agencies' decisions in courts.

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.

2021 Legislative Session Wrap-Up

Gary Kent, PS, ISPLS Government Affairs Committee Chair

The ISPLS legislative effort this session was to get a bill passed that would amend the legal survey and adverse possession statutes. The idea was to close a loophole whereby an adverse possession claim could defeat a legal survey years later — even though the claimant had never appealed the results of the legal survey in the first place.

ISPLS felt that this loophole was interfering with the intent of the statute which would otherwise provide a means by which a legal survey could settle uncertain and disputed boundaries in perpetuity.

The bill made it through the Indiana House with flying colors but did not get a third reading in the Senate even though the Senate committee recommended passage. From what we understand, there were some attorneys who may have believed that the bill would interfere with adverse possession claims.

The committee and our sponsor Senator (and ISPLS member and Professional Surveyor) Blake Doriot will regroup for next session to see if a fourth try on this bill is viable. In the meantime, if ISPLS members have concerns or thoughts related to bills they believe would be beneficial or necessary, they can send them to Government Affairs Committee Chair Gary Kent at gary.kent54@gmail.com and they will be taken into consideration as we prepare for the 2022 legislative session.

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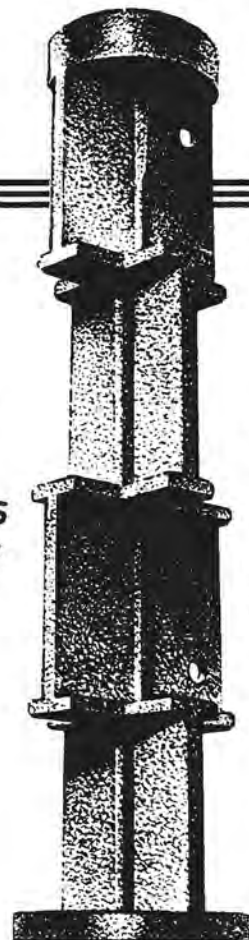
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