

HOOSIER SURVEYOR

SUMMER 2021

BROUGHT TO YOU BY THE INDIANA SOCIETY OF PROFESSIONAL LAND SURVEYORS

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- Spring Graduates



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Eric Banschbach
Indianapolis, IN
Phone: 317-522-9736
Email: ebanschbach@indot.in.gov

Director

Vincent Barr
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Phone: 317-293-3542
Email: vbarr@vsengineering.com

Director

Alex Daugherty
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Phone: 812-719-4399
Email: adaugherty@vsengineering.com

Vice President

Frank Walsko
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Phone: 219-201-3084
Email: traverselandsurveying@hotmail.com

Term Expires Jan. 2023

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Phone: 317-846-6611
Email: hiselman@weihe.net

Director

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Phone: 812-803-2442
Email: matthew.badger@centerpointe.com

Director

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Phone: 317-721-0036
Email: jhoffman@npesindy.com

Treasurer

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Phone: 317-370-0400
Email: rswingley@espassociates.com

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Phone: 812-592-4145
Email: eric.meeks@meekscompany.com

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Email: rickandcal@comcast.net

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Zach Beasley
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Phone: (765) 418-0687
Email: zbeasley@tippecanoe.in.gov

Director

Jason Copperwaite
Indianapolis, IN
Phone: (812) 738-4124
Email: jcopperwaite@ppa-eng.com



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Cover Image

In a bit of digital conference magic, 2021 ISPLS President Norman Hiselman (left) presents 2020 President Eric Banschbach with the Past President's gavel plaque in recognition of his service.

Contact



3502 Woodview Trace, Suite 300
Indianapolis, IN 46268
Phone: (317) 454-8309
Email: editor@ispls.org

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.



Mike Davis, Editor

4310 Broadway Street
Indianapolis, IN 46205
Phone: 317-283-4630
Email: mijdavis@iupui.edu



President's Message

Norman Hiselman, PS, ISPLS President

Greetings to all. This year is really going fast. Here we are September already. I imagine that most of you have been extremely busy. I know that here at Weihe, we have had the most profitable year in its history.

Most of my items have already been mentioned in our email blasts, but I'll go ahead and list some of the things that have happened or should happen this year and into January.

Wetlands Task Force: The Wetlands Task Force was created during this legislative session by SEA 389. It is a committee of fourteen (14) members, representing a variety of professions and associations, charged with researching and making recommendations concerning wetlands. A member of the Indiana Society of Professional Land Surveyors who has expertise in regulated drains must be a member of the committee. Our own Zach Beasley, who lives and breathes regulated drains and wetlands, was nominated, and volunteered to fill the position. Congratulations to Zach.

Workforce Development: On Wednesday, June 23, Ryan Swingley of ESP, Blair Ellison of Weihe Engineers, Inc. and myself introduced land surveying to a group of high school students from Sheridan Heights. The program consisted of PowerPoint presentations, videos, and short lectures. We then went outside where the students examined ESPs mobile LIDAR, observed Weihe's Drone, and had hands on use of robotic total station while topo'ing Weihe's adjacent lawn area.

We have links to [Mentoring Mondays](#), [Geoholics](#), and [access to our video library featuring webinars for catch up](#). The [PS Exam Review](#) is

also available on the ISPLS website. [Associate members who want to become CSTs can take advantage of our sponsorship of the review course](#). ISPLS will pick up the tab. Interested persons must fill out an application for approval. Tony Gregory is still the ISPLS State Coordinator for Trig-Star. I am sure he could guide volunteers to present the program to their old high school alma mater.

Jacob Hoffman is the coordinator for our participation in the [Indiana School Counselor Association 2021 Fall Conference being held at the Marriott East Hotel and Conference Center in Indianapolis on November 11 and 12](#). We need volunteers to man the booth. Please contact Jacob if you want to volunteer hoffmanj@weihe.net. I know I'll be there.

For the next two years the convention will be held at the Marriott East Hotel and Conference Center in Indianapolis. The ISPLS board is looking at doing hybrid versions of the conference, virtual and in person, perhaps a mini virtual conference in the spring consisting of three partial Fridays and in person in January. More on it when the concept gels. Your thoughts on the idea?

The upcoming convention will have a technician's track, I hope you support the effort to help your technicians grow by allowing them to attend that Friday.

I know I am forgetting something, so much going on with the boards effort to be of service to you, my fellow land surveyors.

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The Board of Registration for Professional Surveyors Update

Jacob Hoffman

The Board of Registration for Professional Surveyors (Board) met Friday, July 23, 2021, at 9:00 am EDT. The meeting was held virtually. Members of the Board present at the meeting were Jason Henderson, Rich Hudson, Gary Kent, Christine Arnold, and Doug Lechner.

Kiely Keesler, Deputy Attorney General, supplied the Board with a report of Consumer Complaints and Litigation Cases. Ms. Keesler reported that there are currently 8 open investigation files with an average age of 10.1 months and 4 open litigations with an average age of 4.8 months.

The Board held an administrative hearing for Jay Schwandt (Cause No. 2021SBRPE0002) in order to review the State's Administrative Complaint. Gary Kent recused himself from this hearing and left the hearing prior to its commencement. The Indiana Attorney General's Office represented the State in this matter and Mr. Schwandt represented himself. During the hearing the State presented evidence through exhibits and witness testimony of violations of up to seven statutes on two separate surveys. All of the violations stemmed from a failure to include a surveyor's report with the two surveys. Mr. Schwandt took the stand and admitted his failure to include a surveyor's report and admitted to the violations as a result of not including the report. Mr. Schwandt also stated that he has performed approximately 20 surveys in Indiana over the last two years and that he has implemented systems within his company to ensure that surveyor's reports get included with Indiana surveys for all surveys moving forward. The Board discussed the violations and agreed with the State that Mr. Schwandt was in violation on all counts except for one count that

stipulated that there was a lack of bearings or angles on the surveys. The Board discussed possible probation and fines but wanted to see some examples of the more recent work that Mr. Schwandt has performed in Indiana with his implemented steps to ensure that surveyor's reports are included. Doug Lechner made a motion to table the hearing until the next Board Meeting and have Mr. Schwandt submit five surveys performed in the last two years in Indiana, Rich Hudson seconded the motion, and a unanimous vote was taken in favor of the motion.

Gary Kent was invited back to the meeting and rejoined the meeting.

The Board held an administrative hearing for Aaron Kent Charles and Stanley Kent (Cause No. 2019SBRPS0001) in order to review the State's Order to Show Cause. The state was represented by a Deputy Attorney General, while neither Mr. Charles nor Mr. Kent, or their counsel, attended the hearing. The State requested a Notice of Proposed Default which would set in motion a timeline to allow for Mr. Charles or Mr. Kent to respond or allow for the State to proceed without them. Christine Arnold motioned to send a Notice of Proposed Default, Gary Kent seconded the motion, and a unanimous vote was taken in favor of the motion.

Jacob's Note: Mr. Charles and Mr. Kent (D/B/A Drone Pro Media, LLC) were previously brought before the board for the advertising of offering surveying services without having a PS on staff (Cause No: 2019SBRPS0001). The reason for the Charles and Kent hearing today was that they were found advertising "boundary and

topographic surveys" on their website despite a 2019 settlement agreement that they would cease advertising this.

The Board reviewed a Settlement Agreement (Cause 2021SBRPS0003) between the State and Brett Miller of Miller Land Surveying. The details of the settlement were not discussed, but Gary Kent was involved in the settlement on the Board's behalf and stated that he supports the settlement. Christine Arnold made a motion to accept the settlement agreement, Rich Hudson seconded the motion, and a unanimous vote was taken in favor of the motion.

The board then discussed that some potential changes to the Indiana State Specific portion of the exam may be brought before an executive session of the Board for discussion in the future. The PLA reported that 22 people were approved

to take the exam this quarter and that only 10 people showed up to take the exam. The Board requested that the PLA give updates on the number of individuals approved to take the exam versus those that actually took the exam for future meetings.

The meeting was adjourned at 10:25 am.

The next scheduled meeting is Friday, October 8th, 2021, and will be a virtual meeting. Please check the Indiana PLA website (<https://www.in.gov/pla/>) for the agenda and meeting link for the next meeting.

Respectfully Submitted,

Jacob T. Hoffman, EI, PS
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Results from the 2021 ISPLS Compensation Survey

During the Spring of 2021, ISPLS conducted a compensation survey. The survey was sent out to over 65% of all licensed surveyors in Indiana that ISPLS has an accurate email address for, regardless of their membership status. With almost 20% of all Indiana Licensed Surveyors responding to the survey, we have some statistically significant results to share. These responses include only those who indicated that they are licensed in Indiana and finished a complete survey so questions could be cross analyzed.

Over 55% of respondents indicated that one of their primary job functions was managerial, either as the owner of their company or in executive / general management.

Primary Job Function

Respondents could select more than one answer.

- 69% - Surveying / Geomatics
- 36% - Owner / Executive Management
- 27% - General Management
- 15% - Consulting
- 13% - Engineering
- 12% - Field Crew

The highest average annual salary was \$114,408 for those indicating Engineering as a primary job function.

Average Annual Salary by Primary Job Function

- \$114,408 - Engineering
- \$106,993 - General Management
- \$102,803 - Surveying / Geomatics
- \$99,139 - Owner / Executive Management
- \$84,064 - Consulting
- \$74,255 - Field Crew

Respondents were also asked to list all the types of surveys that they are primarily involved with and who is their primary client type.

Percentage of Respondents Primarily Involved with the Following Survey Types

- 82% - Boundary surveys
- 81% - Topographic surveys
- 73% - ALTA/ACSM surveys
- 66% - Engineering surveys
- 57% - Construction surveys
- 51% - Subdivision surveys
- 49% - Site planning surveys
- 37% - Location surveys
- 35% - Title surveys
- 16% - Hydrographic surveying
- 11% - Geodetic surveys

Average Annual Salary for Respondents Primarily Involved with the Following Survey Types

- \$120,871 - Geodetic surveys
- \$116,542 - Hydrographic surveying
- \$111,329 - ALTA/ACSM surveys
- \$110,298 - Engineering surveys
- \$105,493 - Boundary surveys
- \$104,206 - Topographic surveys
- \$103,821 - Construction surveys
- \$103,261 - Subdivision surveys
- \$102,010 - Site planning surveys
- \$101,658 - Location surveys
- \$99,623 - Title surveys

Percentage of Respondents with the Following Primary Client Type

- 40% – Private Company
- 35% – Government Entity / Municipality
- 22% – Property / Homeowner
- 3% – Other

Average Annual Salary for Respondents with the Following Primary Client Type

- \$108,632 – Government Entity / Municipality
- \$107,607 – Private Company
- \$97,336 – Other
- \$84,197 – Property / Homeowner

The data indicates there is a correlation between average annual salary, who the primary clients are, and to a lesser extent the types of surveys being done.

The size of the company that the respondent was working for seemed to have an impact only if the company is 6 employees or larger while the average salary continues to grow as the size of the surveying department increases.

Average Annual Salary by Company Size*

- \$71,510 – 1-5 Employees
- \$114,808 – 6-39 Employees
- \$112,052 – 40-149 Employees
- \$112,506 – 150+ Employees

Average Annual Salary by Size of Surveying Department*

- \$86,847 – 1-4 Employees
- \$101,149 – 5-10 Employees
- \$108,345 – 11-20 Employees
- \$119,681 – 21+ Employees

**These ranges were selected so each category is approximately 25% of the responses received.*

Lastly, looking at years of experience, 62% of respondents have between 20 to 40 years of experience and an annual salary of around \$105,000.

Average Annual Salary by Years of Experience

- \$85,250 – 6-10 Years
- \$90,860 – 11-15 Years
- \$91,356 – 16-20 Years
- \$96,876 – 21-25 Years
- \$112,679 – 26-30 Years
- \$102,182 – 31-35 Years
- \$109,029 – 36-40 Years
- \$107,725 – 41-45 Years
- \$116,650 – 46 – 50 Years
- \$159,300 – 50+ Years

One of the primary reasons we conducted this survey we to have some statistics to aid in our workforce development efforts so it's important to note that over 26% of respondents have 30+ years of experience and 78% have more than 20 years of experience. As the Surveying community is aware, there is a lot of opportunity for young Surveyors or those just getting into the profession.

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Meet A Young Surveyor

Joel Edwards

Unlike many surveying professionals, I began studying Surveying not knowing a Surveyor personally. I grew up on a family farm, having a basic understanding and interest with land and property rights. In my sophomore year of high school, a local surveyor came into my school and gave a presentation describing what surveying is all about and hosted the trig star competition. I found his presentation to be quite intriguing and later received the Trig Star Award for winning the competition. Due to this experience, I began doing more and more research on surveying and concluded that it best suited my skills and interests. Since then, my appreciation and interest with the surveying profession has only grown. My studies and work experiences have helped to refine my skills and develop a passion for the surveying profession.

Although I have not been working full time very long, I have already learned several lessons. First, I have learned the importance of time management. It can be difficult to effectively manage time while working on various projects simultaneously. I have learned the importance of prioritizing and being thorough, yet efficient. Secondly, I learned that the real world is not perfect. There are times when you must think outside the box to be able to resolve out of the ordinary situations.



I have greatly enjoyed getting involved in the Young Surveyors Network. It has been exciting to attend the social events where I am able to meet and get to know like-minded individuals. I have also appreciated the network's focus on educating and mentoring aspiring surveyors. The network has provided numerous opportunities to learn from many different skilled individuals. I am excited for the future of this close-knit community.

Spring Graduates

As summer winds down, I would like to thank everyone that has participated in our Roundtable Tuesday events – discussion leader or attendee – and all those that were able to make it to the CIC/YSN Summer Social Event at the Punch Bowl Social. We also wrapped up a joint Fundamentals of Surveying Exam study group with the Oklahoma Young Surveyors Network that ran during the summer. Roundtable Tuesday will continue to run the rest of the year on the Second Tuesday of each month through November. We will not be doing anything in December with the Holiday Season coming into full swing. We will also be having one more in person YSN event for this year at the same time the Vincennes University Alumni Golf Outing will be taking place. The event will be more geared towards networking with students, YSN members and anyone interested in attending!

For this addition of the Hoosier Surveyor, I wanted the members of the society to hear from 3 recent graduates from surveying programs at Vincennes University, Cincinnati State University and Purdue University. Each graduate wrote from their own perspective and experience. As university programs for land surveying become less common, it is important to take away what drew the students into their programs and how they prepared them for their careers to follow.

Vincennes University – Joel Edwards

My name is Joel Edwards and I attended Vincennes University from 2018-2021. During my tenure there, I earned an Associates of Science in Surveying Technology, as well as a Bachelor of Science in Surveying Management. Vincennes University helped lay the groundwork for my career in Surveying. At the beginning of my freshman year, I had little knowledge about surveying and its industry. The knowledgeable staff at Vincennes taught me in a comprehensive manner that helped me understand the basic precepts of surveying. I was also exposed to different facets of the profession which helped me better understand my strengths and weaknesses.

One of my favorite things about Vincennes University was the “hands on” education I received. With each concept discussed, we were put to the task to apply the concept while using industry grade equipment and software. We often participated in class projects where we were able to better refine our understanding of the concepts, as well as our abilities to utilize the equipment. I thoroughly enjoyed the education I received at Vincennes University learning about both field and office practices.

Cincinnati State University – Cara Morman

Going to Cincinnati State was one of the best decisions I could have made when choosing a college. For me it was perfect because it wasn't too far from home, and they had plenty of scholarship opportunities to help us pay for our education. Besides these two facts, you also start your first semester there, learning about surveying and how to do it. It allowed someone who wasn't sure to figure out whether they wanted to go into Land Surveying. This program also taught the rules and gave the information on being a Land Surveyor for 3 different states, Indiana, Ohio, and Kentucky. They had in person and online classes because they know that usually by the time you hit Junior year, students are working full time or at least trying to, so online makes going to school fit better.

The teachers and class sizes were also perfect for me because I do not learn well in giant lecture halls, so the class sizes of 25 students allowed me to ask questions during class and retain the material better due to getting the needed explanations right then and there. With this size class, there was also the possibility for a lot of hands-on learning with Civil-3D, total stations, GPS, some GIS software, and a lot of other technology that everyday surveyors need. Aside from the field side of the learning we also learn about the legal and historical sides and what it takes to get our license, how different areas were divided and therefore the best way to get started on a survey there. But the biggest

draw and way of learning for me was getting to interview and work for a survey firm both full and part-time. It allowed me to take what I learned in class and see how it applies. Overall, this program helped me get ready for the work force and transfer in from student to surveyor flawlessly. I was able to have the basics to get started and the understanding that in this profession, you are always learning.

Purdue University – Dan Cinal

Hello all, my name is Dan Cinal. I am a recent graduate from Purdue University in West Lafayette, where I studied Civil Engineering with an emphasis in Geomatics. I am currently taking classes part-time at Cincinnati State to finish the educational requirements for becoming licensed, with an end goal of being dual licensed in Engineering and Surveying. My path to surveying began in CE 20300 with Professor Bethel lecturing the class on how to run a level circuit. When I discovered the technical/physical and the office/field splits that surveying offered, I was hooked.

Land surveying and geomatics courses have been discontinued at many universities around our state for various reasons. I would like to extend a Thank You to Professor Johnson at Purdue University for staying multiple semesters following an "official" retirement to teach independent study courses in surveying to fulfill the requirements for geomatics students.



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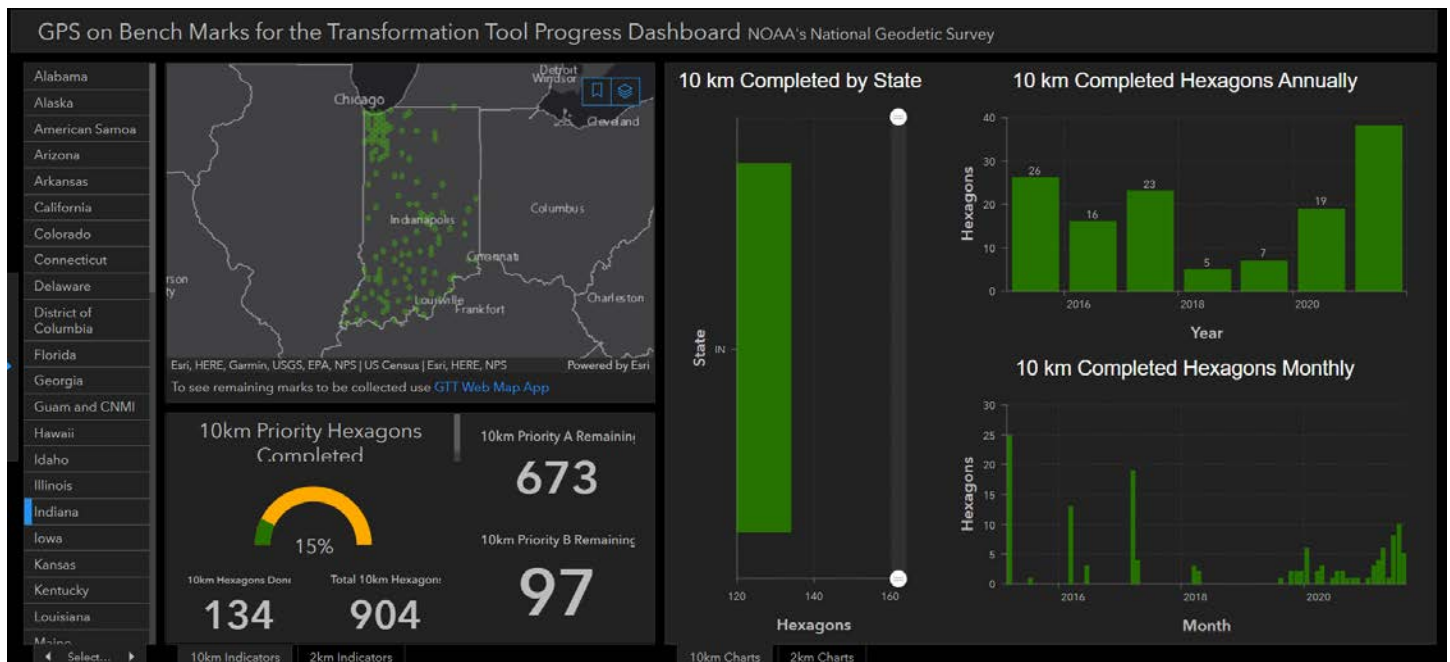
Indiana at 15% contribution to the 2022 NGS DATUM Project

Less than four months remain until the December 31st, 2021 cutoff to submit GPS data that NGS can guarantee will be analyzed to compute the initial set of 2020.0 Reference Epoch Coordinates (RECs) to be released with the Modernized NSRS. This initial set of RECs is currently the only set that NGS can guarantee will be used to build the 2022 Transformation Tool. Currently, Indiana has only completed 15% of the 10km priority hexagons.

Unfortunately, across the state, there remain several populated areas where, without additional data, NGS will be forced to interpolate over large data gaps and the resulting transformation values will be less reliable. This is your opportunity to provide NGS with data from the areas you work in that will help improve the local accuracy of the national scale models and tools that NGS provides to the Nation.

Learn more about how to contribute with these resources from the NGS:

- GPS on Benchmarks webpage: <https://geodesy.noaa.gov/GPSonBM/>
- NGS Mark Recovery form: https://geodesy.noaa.gov/cgi-bin/mark_recovery_form.prl





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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. Because of the recent changes to the court's website, I use 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 at www.in.gov/judiciary. Comments or suggestions for future columns are welcome by email to: Bryan.Catlin@indy.gov.

Anthony Hughes and Jennifer Hughes, v. First American Title Insurance Company, Indiana Court of Appeals Case No. 20A-PL-1850, April 1, 2021

Here the Hughes bought a property in Russiaville in 2012 and obtained title insurance. However, the prior owner had granted an easement across the entire south side of the parcel which was missed in the title examination. The Hughes became aware of the easement, and in June 2016, submitted a claim. The next month first American notified them they acknowledged coverage and were assessing options for resolution.

Meanwhile, the Hughes filed suit against the easement holder and her boyfriend seeking declaratory and injunctive relief. Eventually they moved to dismiss their complaint under circumstances where the easement was valid, and they had used 'tire poppers' to thwart use of the easement. Ultimately, the Hughes were ordered to pay \$61,000 in attorney's fees and costs to the easement holder and her boyfriend.

In June 2018, the Hughes commenced an action seeking damages for their loss caused by both the easement and the Injunction Suit. Soon thereafter, First American received a diminution in value appraisal finding a \$3,000 diminution in value caused by the easement, which was forwarded to the Hughes' counsel. Receiving no response, First American tendered a \$3,000 payment to the Hughes' counsel in October 2018. In November 2019, First American moved for summary judgment, and the Howard Circuit Court eventually found for First American.

On appeal, the Hughes argued that the "actual loss" covered under the title insurance policy should include the \$61,000 judgment entered against them. The court affirmed that title insurance is a contract which specifically covers encumbrances upon or defects in title. Here, that was found to be \$3,000. The \$61,000 was caused by their conduct, and title insurance does not cover personal dealings between individuals.

Blind Hunting Club, LLC and Brian Lane, v. David Martini and Theresa Farrell, Indiana Court of Appeals Case No. 20A-PL-1868, April 20, 2021

Here Brian Lane leased 440 acres from the Blind Hunting Club in 2019 which depends on a 2016 easement for access. The easement is somewhat ambiguous but allows access across the properties of Martini and Farrell to York Ridge Road for farm equipment, pedestrian and vehicular access, limited to no more than two residences that may hereafter be constructed. Some of the land had been

used for a farming operation without conflict, but when Lane began operating a fee-based hunting club for birds and deer, Martini and Ferrell filed a complaint. Lane was buying the birds, holding them in pens, and releasing them into 150 acres of milo which provided cover for the birds but was not harvested. At trial, the Blind Hunting Club argued that the easement was a broad general ingress and egress easement, not limited to residential or farm use, and even if it was limited to those uses, it was being used for an agritourism business, a game preserve. The Dearborn Circuit Court entered summary judgment for Martini and Ferrell, noting that the framers of the agreement had intended that you could farm the land and/or you could have up to 2 homes, but that the hunting business was not contemplated by the framers of the easement agreement.

On appeal, the court noted that the easement was subject to more than one interpretation, but that the recitals in the easement and the conduct related to them are clear. In addition, the court looked at the definitions of farming and hunting and decided there was a clear distinction such that a hunting business did not fall within the scope of farming. The judgment of the trial court was affirmed.

Elda Corporation and Anderson Mounds Theater, LLC, v. Holliday, LLC, Indiana Court of Appeals Case No. 20A-PL-2316, May 17, 2021

Here is a case from the Madison Circuit Court that demonstrates a risk a landowner runs if they own the land subject to a ground lease which allows another party to construct and own improvements separately from the land.

In 1955, Elda became the owner of about 30 acres in Madison County. In 1963, Elda granted a ground lease with Simon Property Group that included buildings and paved

parking areas. The monthly rent under the ground lease was \$70,236.80, and Simon operated Mounds Mall on the property. In 1993, Simon transferred its interest in the ground lease and the Improvements Parcel to Bayview Malls, LLC, which later transferred their interest to Anderson Mounds. From the outset, the Improvements Parcel was identified separately from the land and had its own property tax parcel number. The parcels have been taxed separately as real property, and the Improvements Parcel has been assessed to the ground lease tenant with a note stating, "Improvements on Leased Ground."

At some point Anderson Mounds failed to pay property tax on the Improvements Parcel and it went up for tax sale. IBYH, LLC purchased the Improvements at a tax sale on April 8, 2019 and subsequently transferred the sale certificate to Holliday.

Elda never challenged the tax sale, and after the redemption period expired, Holliday received a tax deed to the Improvements Parcel on October 3, 2019. The tax sale certificate noted the purchase was for "Improvements ONLY." The trial court corrected a clerical error on the certificate and ordered the county auditor to execute and deliver a tax deed to Holliday for the Improvements Parcel. The order also provided that "the tax deed ... is an estate in fee simple, free and clear of all liens and encumbrances created or suffered before or after the tax sale, except those liens granted priority under federal law, and liens of the state or any political subdivision thereof ..."

On November 13th, 2019, Elda served Holliday with a "Notice to Quit, Notice of Default, Notice of Termination & Demand." The notices demanded that Holliday either agree to the terms of the previous ground lease or "vacate the premises." Elda claimed that Holliday was in unlawful possession of

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its land, beginning October 2019. Holliday sued Elda for a declaratory judgment on March 25, 2020. Among other things, Holliday requested the trial court to determine that Elda had no right to collect rent from Holliday or eject Holliday from the Land. Elda then filed a counterclaim seeking to eject Holliday from the premises and requested damages for Holliday's alleged wrongful occupation of the Land. On July 2, 2020, Elda filed a motion for "final partial summary judgment," requesting that the trial court enter an order of ejectment against Holliday, and to award attorney's fees and damages. After several more motions, a hearing was held, and the trial court entered partial summary judgment in Holliday's favor on November 24, 2020, concluding that the Improvements Parcel was severed and taxed separately from the Land and that Holliday was the fee simple owner of the Improvements Parcel because Elda failed to challenge the tax sale and did not pursue any redemption rights. Thus, the trial court determined that Elda had no right to eject Holliday from the Land or collect rent for Holliday's exercise of its rights under the Improvements Parcel.

It appears Elda was trying to force Holliday to abide with the terms of the prior lease by claiming they were trespassing on Elda property simply by occupying the land. However, an owner of a right relative to land can exercise that right without being a trespasser as in the case of an easement or mineral rights. Elda could have defended their rights by paying the taxes and sought repayment from the ground lessee, or redeemed the improvements, but did neither. The trial court found that, as matters of law, Holliday is not obligated to pay rent to Elda for occupying and using the improvements and that Elda may not bring an ejectment action against Holliday.

Elda appealed and the judgment of the trial court was affirmed.

As you might expect when this amount of rent is involved, Elda has sought transfer to the Indiana Supreme Court so this might appear again.

S&C Financial Group, LLC, v. Pinky Khan and Ahmad Khan, Indiana Court of Appeals Case No. 20A-TP-1934, May 19, 2021

S&C Financial Group, LLC purchased a property at a tax sale. After the period for redeeming the property from the tax sale expired but before the tax deed was issued to S&C Financial, the owner of record at the time of the tax sale conveyed the property to another, who in turn conveyed the property to Ahmad and Pinky Khan. After S&C Financial moved to evict the tenants of the property and be placed in possession, the Khans petitioned to set aside S&C Financial's tax deed. Both parties moved for summary judgment, and the trial court granted summary judgment to the Khans, setting aside the tax deed and effectively granting the Khans ownership and possession of the property.

S&C Financial appeals the Marion Circuit Court's grant of summary judgment to the Khans. This case has several interesting features dealing with incorrect names on deeds and mailings (which were also the name of a real company which the owner never bothered to correct), whether the Khan's were bona-fide purchasers, and what sufficient notice of a tax sale involves. After lengthy discussion, the judgment of the trial court was reversed, and remanded to the trial court to enter judgment for S&C Financial.

Sandra A. King and Danielle D. Benge, v. Dan Dejanovic and Alice Dejanovic, Indiana Court of Appeals Case No. 20A-PL-2366, May 28, 2021

Here the parties own adjoining lots in Monrovia Place (platted in 1996 and 1997

as Bradshaw Subdivision, Section I and Section II) in Monrovia with "Covenants and Restrictions" but no homeowners association. The covenants and restrictions include a provision that a lot can have one outbuilding, no larger than four hundred square feet and with construction to be of a minimum eighty percent brick masonry balanced around all four sides. In October 2018, King and Bengé told the Dejanovics that they planned to build a pole barn and the Dejanovics told them about the restrictive covenants, but King and Bengé said they didn't apply to them. The pole barn was constructed from October 22 to November 7. The pole barn is between the parties' houses and is 30x40 feet with a 10x40 porch and is constructed of metal with no brick. The Dejanovics filed a complaint for breach of covenant in the Morgan Superior Court. At a bench trial in August 2020, King and Bengé did not dispute the outbuilding size and material violations, but argued the Dejanovics waived their right to enforce the covenant because they did not object to other violations in the subdivision. In December of 2020, the trial court ruled that the Dejanovics had not waived their right to enforce the covenants because the other violations, on the other side of the 33 lot subdivision, did not affect their property like the pole barn does. King and Bengé were given 90 days to bring their property into compliance by removing or reducing the size of the structure and were ordered to pay the Dejanovic's attorney fees in the amount of \$12,913.13. King and Bengé appealed the determination that the right to enforce the covenants had not been waived.

The judgment of the trial court was affirmed.

Hicks & Sons, LLC, v. Carewell International, LLC, Indiana Court of Appeals Case No. 20A-PL-1874, June 9, 2021

Carewell owns and operates a Holiday Inn franchise in Cloverdale on property that it

bought in 1996. Carewell had negotiated with adjoining landowners for easements at that time. In 2014, Hicks bought a property burdened by Carewell's Ingress-Egress Easement and a separate Sign Easement. In particular, the Ingress-Egress Easement included language stating "the Easement Real Estate may be freely used and enjoyed by the parties hereto and others for such use and purpose as are common to commercial driveways generally." Carewell was also granted an express license to install a Holiday Inn sign within the ingress-egress easement in 1997 to assist customers in locating the hotel drive. This sign was installed and later replaced in 2009 with the current larger electrified sign. Hicks did not have a survey performed when they purchased the property but did have one prepared later in 2014 which revealed that the sign was not in the sign easement but was in the ingress-egress easement. Hicks went ahead with preparing plans for a building for their flooring business which was constructed with completion in 2016.

At some point Hicks demanded Carewell remove their sign. Carewell refused and Hicks filed a complaint in the Putnam Superior Court on September 15, 2017 seeking damages and injunctive relief for civil and criminal trespass. After the usual back and forth claims and motions, the trial court entered summary judgment for Carewell on the criminal trespass charge and held a bench trial for the civil trespass charge. The trial court found for Carewell noting several things, including: the sign was erected with the permission of the former property owner; the sign was in place (but may have been covered while the hotel was closed for renovation) when Hicks bought the property; and Hicks had the building designed and constructed knowing where Carewell's sign is and placed their sign in the same sight line and waited two years to sue.

Hicks appealed and the court's opinion explained at length precedent that an easement holder possesses all rights necessary to enjoy the use of that easement, and that, in the case of an ingress-egress easement, a sign can be necessary to point customers to the business it benefits. In addition, the broad "freely used and enjoyed" language in the ingress-egress easement also supported that view. The judgment of the trial court was affirmed.

David K. and Jane A. Burton, et al., v. Board of Zoning Appeals of Madison County, and Lone Oak Solar, LLC, Indiana Court of Appeals Case No. 20A-MI-2186, June 21, 2021

Here decisions relating to approvals of a solar farm in Madison County were taken to the Madison Circuit Court for judicial review by thirteen neighbors who subsequently found out that one member of the Board of Zoning Appeals did not meet residency requirements to serve on the board. The trial court did not allow the residency issue to be heard because it had not been raised before the petition for review, and, even if it had been properly raised, the board member was a de facto public official at the time. The trial court also held that it was not a conflict of interest for another board member to recuse herself from the original approval and then participate in later actions on the project as well as that there was rational basis for a Special Use Application and a Setback Variance which had been granted. The neighbors appealed.

The Court of Appeals affirmed the decision of the trial court. Of special interest to me is their discussion of the de facto public officer doctrine which Indiana has followed for over 150 years. This doctrine is to prevent lawsuits challenging every action taken by an official whose claim to office could be called into question, and it seeks to "protect the public by insuring the orderly functioning of the

government despite technical defects in title to office."

Windy City Acquisitions, LLC, v. Estate of Leland Simms, et al, and Brentwood Equitable Trust #1003-061387, and Green Leaf Enterprises, LLC, Indiana Court of Appeals Case No. 20A-TP-2347, June 24, 2021

Let me start out by saying this opinion includes probably the nicest survey exhibit I have seen included on the Court's website to date. It is worth noting, this is the second opinion looked at this quarter where whether or not sufficient notice was given affected the outcome of the case.

Leland Simms owned a home in Gary. He also owned an adjacent ten-foot-wide vacant strip that appeared to be part of the yard with a different official address. After his death, the house parcel was sold, and his brother Lloyd arranged to have his mail for the home address sent to his house. Lloyd never opened Leland's mail, he just threw it in the trash. Due to unpaid taxes, the vacant parcel was eventually sold at a tax sale and Windy City was assigned the tax sale certificate. Windy City filed for a tax deed, and after several tries and mailings to various addresses as well as posting a notice in front of the property, Brentwood Equitable Trust, successor to Lloyd, filed an objection to the issuance of a tax deed. A bench trial was held in the Lake Circuit Court where among other findings, a surveyor testified that, in his opinion, the notice was posted on the vacant lot, but Lloyd testified that a chain link fence was not on the property, and when he saw a notice posted he thought it was for the house and didn't stop to read it. The trial court denied the issuance of the tax deed to Windy City and Windy City appealed.

The appeals court noted several of the trial court's findings conflicted with other



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findings, and that given those conflicts, the trial court's findings were clearly erroneous, and the appeals court was unable to say the findings support the judgment. The findings affect the judgment, which the appeals court reviewed de novo. The court notes that since the property was still listed in Leland's name, Lloyd was not entitled to receive notice even as an heir. Further, since Windy City and their predecessor substantially complied with the notice requirements, the trial court's judgment was reversed and remanded for proceedings consistent with the appeals court opinion.

Krause-Franzen Farms, Inc., David P. Krause, Jane E. Krause, and Philip C. Krause, v. Tippecanoe School Corporation, Indiana Court of Appeals Case No. 21A-PL-115, June 28, 2021

This case concerns landowners who, after significantly long discussions, rejected an offer for property to be used for construction of a new school building. The School Corporation then moved to condemn the property and the landowners filed an objection, arguing the need for the property was remote and speculative. Both the Tippecanoe Superior Court and the Court of Appeals found for the School Corporation in what seems like straightforward decisions from the record.

John J. Cerngul v. Paul W. Bradfield, Indiana Court of Appeals Case No. 20A-SC-2139, April 9, 2021 - MEMORANDUM DECISION - not regarded as precedent

This case concerns a twenty feet wide conservation easement around the perimeter of a subdivision that is poorly defined in restrictive covenants as to what the easement is to be used for. After Bradford, an owner of a lot in the subdivision, started clearing trees, shrubs, and brush from the easement bordering his lot, Cerngul, an adjoining neighbor not in the subdivision

objected that the easement was to remain unaltered. Bradford reviewed the restrictive covenants and met with a representative of the homeowner's association, who reportedly advised Bradford he could continue with his clearing work if he didn't change the grade of the land. Bradford continued clearing but left some trees.

Cerngul filed a claim in the St. Joseph Superior Court on September 8, 2020 asking for injunctive relief and damages for the loss of quiet enjoyment of his property and \$8,000 total for two rows of shrubs, planting labor, and fertilizer. The trial court entered an order denying Cerngul damages and stating Cerngul lacked standing to challenge activity within the easement and that he had failed to demonstrate he had been denied a property right.

Cerngul appealed but conceded he cannot obtain injunctive relief in small claims court and that he lacked standing to enforce the easement. Rather, he argued he is entitled to damages to ameliorate a nuisance. Bradford did not file a brief. Deciding the findings of the trial court were not contrary to law, they were affirmed.

Knox County Board of Commissioners, et al., v. Cynthia S. Frey, et al., Indiana Court of Appeals Case No. 20A-PL-1812, June 4, 2021 - MEMORANDUM DECISION - not regarded as precedent

I'll start out by noting that based on the size of the attorney's fees versus consultant's, etc. fees requested in this case, consultants are not charging enough.

The Frey family has farmed in Knox County since the mid-1800's. In 1930, the fifty-two-mile-long Vieck Ditch, which drains their property, was made a regulated drain. There is a private Vieck Ditch Association which

receives monies assessed to maintain the drain. The Knox County Drainage Board is responsible for ditch construction or reconstruction. The Knox County Highway Department shares responsibility for alteration or construction of drains crossing their roads at those crossings.

In the past decade, the Freys observed rapid water flows and flooding on their property. The Freys investigated and reported their findings to the Vieck Ditch Association. The Freys believed that, apart from expansion of Highway 41 in Vincennes, increased water flow was from lack of maintenance, replacement of bridges with culverts, improper placement and sizing of some culverts, and obstructions and intrusions by free-roaming animals, including cows and a llama. The Ditch Association dredged an area of the ditch, but that did not alleviate the flooding.

The Freys filed a complaint against the Vieck Ditch Association in the Knox Superior Court on December 1, 2015, seeking to compel maintenance. The Drainage Board and Highway Department were brought into the action. The Freys identified four locations under three roads where bridges had been replaced with culverts, and asked for replacement of those bridges along with cleaning of a fork of the ditch, removal of private culverts, removal of livestock and fencing, and implementation of a three-year rotating maintenance schedule. After hearings commencing on February 6, 2019 and May 30, 2019 where, among other testimony, it was noted that one culvert had been placed five feet above the water flow, two were placed at least a foot too high and one had inconsistent input and output diameters, and all of this had been done without hydraulic or hydrological studies. On November 22, 2019, the court declined to enter a mandate against the Ditch Association, finding they were probably not adequately funded, but ordered

the Knox County Highway Department, c/o the Knox County Board of Commissioners to perform hydrological studies for the roads and provide them to the Freys and the Knox County Surveyor within twelve months. On February 28, 2020, the court heard the Freys claimed entitlement to costs and attorney's fees. The attorney's fees claim was based on the defendants knowing they had taken reconstruction actions without hydrological studies and they had thus litigated a groundless defense. The defendants responded that performance of hydrological studies had not been part of the Freys prayer for relief and no defense pertaining to such studies had been litigated. On September 11, 2020, the trial court awarded the Freys \$7,956.32 (for expert witness fees, surveys, mediation costs, depositions and reports), \$80,930.62 for attorney's fees, and \$2,365.70 and \$938.00 for the lost wages of two family members. The Drainage Board and Highway Department appealed.

The Court of Appeals noted that relief is "available only to compel a specific, ministerial act, and only if the plaintiff is clearly entitled to that relief." A ministerial act is non-discretionary, performed based on a given set of facts, in a prescribed manner, in obedience to the mandate of legal authority, without regard to, or the exercise of, judgment upon the propriety of the act being done. Examples of a ministerial act include acting on a permit application, approving a subdivision plat, paying a salary, and paying a judgment. Even if a statute has mandatory terms such as "shall", the term does not make a statute subject to judicial mandate. The Statute must compel the performance of a specific act, not just a specific outcome. Acts are subject to mandate while outcomes are not. Here the appeals court found that the statutes about the review of plans and hydraulic data for road crossings contemplate the exercise of discretion, and the County Surveyor, or other

registered person is to ascertain whether the plans and hydraulic data indicate the structure will allow the drain to flow properly. So, the existence of hydraulic data is contemplated, but there is no specific mandate that a particular study be done by the Highway Department. Here the judgment of the trial court about performing hydrological studies was reversed and the Freys are not entitled to costs or attorney's fees.

Lyle Davis, Mary Davis, Nickie Hartzler and Wayne Hartzler v. Ray Howard and Rosetta Howard, Indiana Court of Appeals Case No. 20A-MI-2007, June 14, 2021 - MEMORANDUM DECISION - not regarded as precedent

This case from the Vigo Superior Court involves a continuing property dispute between the Howards and the Davises, partially involving a thirty-foot wide ingress and egress easement the Davises held across part of the Howards property. As a part of the case, the Howards and Davises entered into a stipulation to have a legal survey performed to establish and monument the thirty-foot wide easement to the extent it affected the Howards property. They also agreed to be bound by the results of the survey, waive appeal of the survey, admit the survey as evidence, and to each pay for half of the survey. The survey was completed, but also included a sixty-foot easement on the L. Davis Estate One Lot Subdivision property. Believing the surveyor had exceeded the scope of the requested survey, the Howards filed an appeal of the legal survey. On September 22, 2020 the trial court did not dismiss the appeal of the legal survey, and this interlocutory appeal followed.

The Court of Appeals noted that both parties agreed the stipulation was unambiguous, but they rely on different parts for their arguments. Here the judgment of the trial court that the inclusion of the additional easement on the

legal survey, beyond the contract language agreed to in the stipulation, would be binding on the Howards unless they were able to appeal the legal survey was affirmed, and the case was remanded for further proceedings.

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

Young Surveyors Network & Central Indiana Chapter Summer Social

On June 31, 2021 surveyors from across Indiana gathered at the Punch Bowl Social in Indianapolis for the Young Surveyors Network and Central Indiana Chapter Summer Social. Attendees enjoyed a few hours of bowling, billiards, and giant jenga. Photos below.



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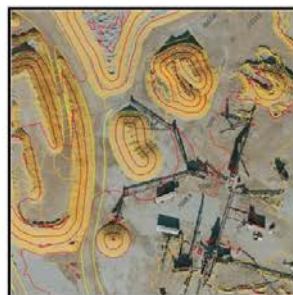
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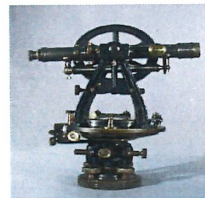
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