

HOOSIER SURVEYOR

FALL 2021

BROUGHT TO YOU BY THE INDIANA SOCIETY OF PROFESSIONAL LAND SURVEYORS



IN THIS ISSUE

- The Board of Registration for Professional Surveyors Update
- Results from the 2021 ISPLS Compensation Survey
- Spring Graduates



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Cover Image

Don Williams supplied photo

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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 my fellow land surveyors. This year has gone by fast, and this is my final President's Message for the Hoosier Surveyor. My plank when running for a position on the ISPLS' Board of Directors was developing relationships and training initiatives for our technicians. I am proud to say that we, the board, have made significant strides in that endeavor. My past messages have outlined those accomplishments and no need to dwell on them again, you will see the summary of our efforts at the annual business meeting at the convention.

One problem that we had was that our message and opportunities for technicians was not getting to them. Our email blasts have been sent to members of ISPLS, which is made up of mostly registered surveyors, was not getting to the technicians the programs were intended for. There is a solution for that, and at the risk of letting the cat out of the bag early, the way we can make this happen is changing some ways to look at membership. This can be accomplished through the FIRM Member category of membership. Currently Firm membership has benefits like discounts on convention costs and name recognition. The fee for being a FIRM member is based on the number of employees involved in land surveying, although all employees are not members of ISPLS. Non-registered employees can become Associate Members, but the cost is around \$80 per person, so there is little push to get techs to become members. We have adopted the following: Firm membership will be based on number of registered employees only, and survey techs who are employees of companies with a FIRM membership may be eligible to become Associate Members of ISPLS at no cost. Under this incentive, they will be privy to email blasts

and directly aware of all the opportunities that ISPLS has to offer them. More information on this shift will be available at the Annual Convention with the new plan to start rolling out in March of 2022.

We have been active in workforce development, trying to spread the good word about land surveying as a career. There is one individual that needs notice, because he is not a registered land surveyor, but is making a real effort at introducing children to the profession. Bill Emerson, Jr. P.E. is the Lake County Surveyor. He is developing a program to get elementary school students interested in the profession. It is called "The Lake County Junior Surveyor Program." Children do activities on the Lake County Surveyor's website. Upon successful completion of the assignment, they get a certificate and an official badge. If you need to know more or might be interested in helping visit www.lakecountyin.org/departments/surveyor/junior-surveyor-program. So, Bill, I applaud you and your efforts.



I look forward to seeing you all at the convention this coming January at the Marott in Indy.



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Indiana Young Surveyors Attend NSPS Fall Business Meeting

Nolan Mark

This fall, Nolan Mark and Levi Rednour attended the National Society of Professional Surveyors (NSPS) Young Surveyors Network (YSN) meeting in Oak Brooke, Illinois, just outside Chicago. This meeting was held in conjunction with the NSPS Fall Business Meeting. Indiana was one of fifteen states/territories to attend.

Since the YSN meeting is held at the same time the NSPS Fall Business Meeting is held, a large part of the YSN meeting is attending and being a part of committee meetings. Both Mark and Rednour participated in meetings for Public Relations, Workforce Development, and Communications on Thursday morning. There was a significant push to get YSN members into the Public Relations committee meeting, with a large portion of the conversation being on social media; what better generation to talk about social media and explain how they use it than YSN. In the afternoon, YSN held their first meeting session, where everyone returned and reported on what each committee was planning and how we thought YSN could help. The evening was capped off with a cruise on the Chicago River and exploring downtown Chicago.



YSN then held its official business meeting on Friday morning. By-Law changes were discussed and reviewed, election nominations were held, and YSN's role in the NSPS Student Competition was first introduced. An interesting by-law change that was proposed is that chapters will no longer be limited to the States. So if a state chapter isn't as active, but maybe the university is involved, a university such as Vincennes



or Cincinnati State could start their own YSN chapter. Both universities are always invited to participate in Indiana YSN events and activities, but this shows how the network is willing to adapt to the changing times. Nolan Mark and Jacob Heck were both nominated for Vice President. YSN will now be the organization in charge of the student competition next year and hopefully from now on. Students that compete in



the competitions also are involved with YSN events. You can hear more about the Student Competition on the NSPS Surveyor Says! Podcast at <https://www.podbean.com/ew/pb-2rsip-10f0b91>. Friday afternoon, continuing education sessions were held on behalf of IPLSA. The evening was capped off with the 40th Anniversary Reception of NSPS.

On Saturday, YSN attended the Board of Directors meeting, where we were able to listen in all day. YSN President Denver Winchester gave a brief update on the Student Competition. Nolan and Levi would like to extend a special thank you to the Indiana Professional Land Surveyors Foundation for hearing our grant request and helping provide funds to attend this meeting, as well as the Spring Business meeting in Arlington, Virginia, coming up next year!

As this year ends, Indiana YSN would also like to thank everyone that has made this year special. You have made our second year amazing from those who have attended events, volunteered to lead a discussion on Roundtable Tuesdays, and those who have helped sponsor our events! We are still reaching out to companies, chapters, and everyone we can to let those who haven't heard yet know that we are here and active. Indiana YSN and Kentucky YSN recently attended the Cincinnati State University student chapter

meeting, where each explained the importance of joining societies or getting involved with the profession. This meeting also marked Cincinnati State starting an NSPS Student Chapter! Congrats! Indiana YSN is currently working on details for a social event during the convention. We will be holding a committee meeting between the last continuing education session Thursday afternoon and the Annual Business meeting.

If you are interested in participating, please do not hesitate to email our YSN at inyoungsurveyors@gmail.com. We have reached out to all Professional, Associate, and Student members of ISPLS that I know of. If you have someone that works for you that might fit the group, encourage them to take the next step in their career and get involved with the society. We are always looking for supporting members as well! We hope that you have enjoyed our "Meet a Young Surveyor" section of the Hoosier Surveyor as much as we have heard they enjoy writing them!

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MEMORIAL ARTS BUILDING

Cincinnati State Land Surveying Capstone 2021

Carol Morman, EdD, PE, PS

The 2021 Land Surveying Graduates at Cincinnati State have been busy bringing history back to life near the city of Lawrenceburg, Indiana. This team of students from Ohio was lucky to have the opportunity to survey a pre-contact village site. The site, located in Dearborn County, Indiana, is the current focus of the Archeological Research Institute, also known as ARI. The stated mission of ARI is to educate present and future generations about the past cultures of the Indiana, Ohio, and Kentucky tri-state region through research archeology and cultural preservation efforts. To accomplish this mission, ARI needed to identify the boundaries of their diggable area, gather topographic information about that area to identify ancient structures and features on the land, establish control to lay out features on the site as needed, and to make the dig site both accessible and enjoyable for the public.

To help ARI pursue their mission, Carol Morman Ed.D., P.E., P.S., Program Chair and Professor of

Land Surveying at Cincinnati State Technical and Community College, arranged for a team of five Land Surveying students to take on the project as the culmination of their degree program. While the project was presented as a simple retracement and topographic survey, there was a unique obstacle in the make-up of the team. Each member was working full time and was also a student. This meant all work would be performed on weekends with smaller tasks needing to be completed after everyone's day job. This limited timeline quickly became problematic as several weekends were lost when the site was entirely underwater, due to its location in the floodway of the Great Miami River.

After overcoming and outlasting the elements, the fieldwork began to take shape. The topography was handled by two crews running Trimble S3 instruments simultaneously with one crew working on the wooded area of the site and another focused on the open areas. The topographic survey was

necessary to be able to see the differences in the elevation of the ground to find more artifacts and other features of the ancient settlement. Three-wire level loops were run to the site to establish elevation from a nearby NGS benchmark. With the help of the ARI's Executive Director, Liz Sedler, and Senior Archeologist, Marcus Schulenburg, the Cincinnati State students were also able to map the locations of known buildings around a Native American settlement, and what



Group members: Luke Strotman, Emerson Hoeweler, Jared Foster, Frank L. Sellinger, II, Rakeem Wright. Also shown: Marcus Schulenburg, MS, RPA, Senior Archaeologist, The Archaeological Research Institute

is thought to be a protective perimeter wall. These structures had been discovered by an earlier magnetic survey conducted by ARI that was able to uncover evidence of the settlement and which helped establish where the huts and the protective perimeter wall are in the ground. To provide a more interactive format for the topographic map, a secondary survey of the site was performed by Cincinnati State cooperative education partner, LJB, Inc.'s survey department. A drone specially fitted for survey work was utilized to create a 3D picture of the project site and allowed for a check to the topographic data collected by robotic total stations and GPS. The drone survey data will be an invaluable teaching aid for ARI's work in educating the Lawrenceburg community about the history of the area. The students of Cincinnati State also set control points for ARI to use for future mapping of dig sites. These points were concentrated toward the eastern portion of the property to provide enough space for work to continue while mapping is taking place in the future.

With the establishment of control and the topographic mapping of the area being completed, the boundary was the next concern. The area being studied by ARI is surrounded by Oxbow, Inc., who leases the fields for agricultural use, an active rail line, and the old riverbed of the Great Miami River. The property also sits in the existing floodway of the Great Miami River. Despite there being a plowed field to the west of the property being utilized by ARI, the class was able to find an undisturbed rebar in the middle of the field and were able to utilize it to help define the western line of the property. There were also several monuments found that proved



Marcus Schulenberg showing the Cincinnati State student's the scope of the project.

to be less than helpful in defining the boundary. Near the southeast corner of the property, there were three existing features that could reasonably be considered corner monumentation. Two of these were rebar set in concrete and encased in PVC piping, and the other was an angle iron. None of these could be fit neatly into the deeded area, the closest being more than two feet from the deeded corner. The boundary of the project was eventually established using the rebar found in the west line of the adjoining property, original concrete monuments in the west line of the subject property, and a rebar located at the north east corner of the property.

With the retracement and the topography of the property completed, it was then the goal of the class to show ARI how the land could be used to allow for guided access to the dig site for tours and information sessions. An improvement plan was prepared for this purpose. Part of the land that had not been marked as a building location was chosen as a possible site for a small parking lot and a walking path was shown that would follow both the perimeter of the village and a row of ancient building sites through the village. The exact location will not be provided as per safety and preservation

concerns but is available upon request.

As the students finish their time in Cincinnati State's Land Surveying Program, they can add this unique experience to their ever-growing body of knowledge. By locating and mapping the sites of these ancient buildings, they have helped preserve the information under the surface. This is information about a culture that could have been lost and can be used to teach us about society and humanity.

This project was completed as part of the requirements of the Bachelor of Applied Science Degree in Land Surveying at Cincinnati State. The Surveying Capstone course is one of the final courses that students in the program take to show their proficiency in land surveying before graduation.

The Archaeological Research Institute (ARI) is a non-profit organization based in Lawrenceburg, IN, near an Ohio River site occupied by past cultures. Under the guidance of ARI's staff-archaeologists, volunteers and students of all ages have unique and immersive hands-on opportunities to unearth site artifacts and features, document and preserve them, and learn about and appreciate the cultures that lived on our Tristate land long before us.



Marcus Schulenburg, Rakeem Wright, Frank L. Sellinger, II, Luke Strotman, Jared Foster, Emerson Hoeweler. Not pictured: Carol Morman, Liz Sedler



Frank L. Sellinger, II calibrating GPS as fellow students wait to discuss next steps.



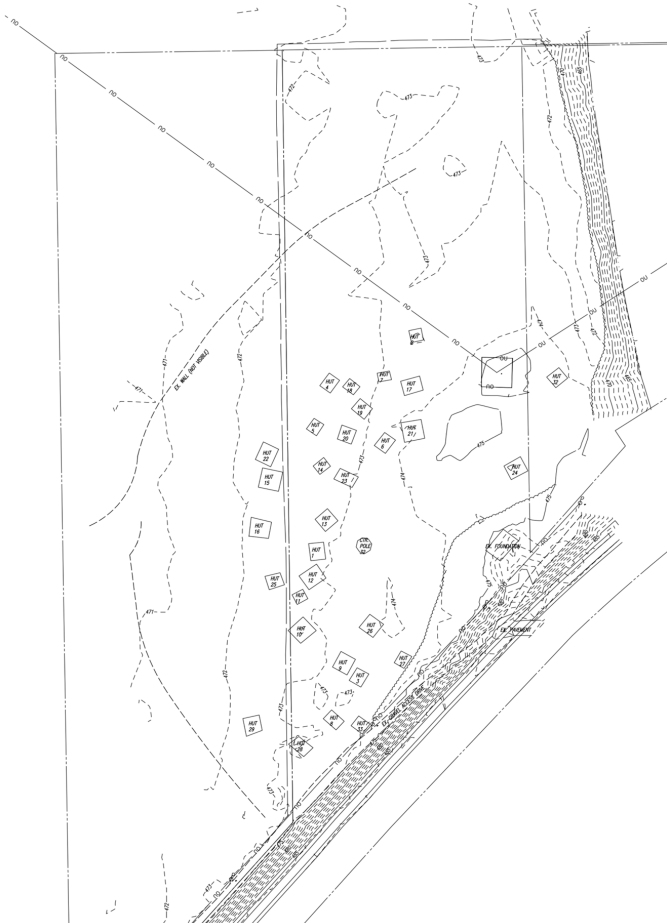
Luke Strotman locating possible corner monumentation.



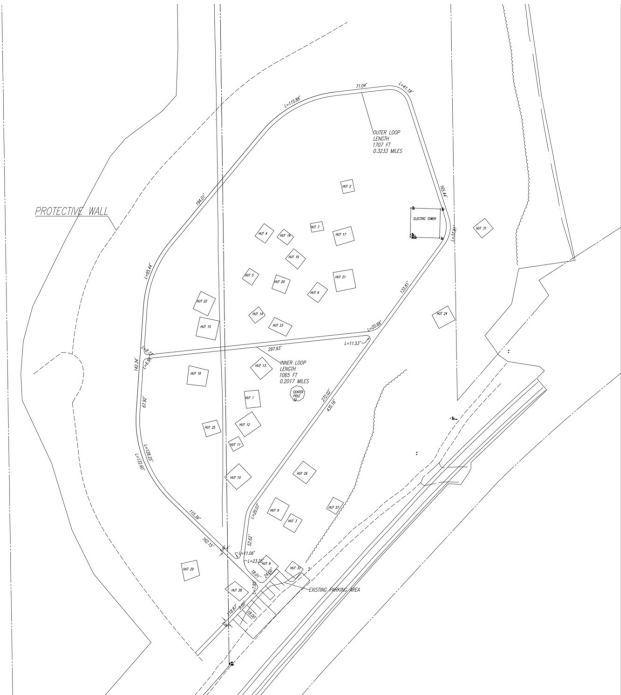
Site flooded after rainfall and snow thawing in the spring.



Emerson Hoeweler and Luke Strotman reviewing level-loop notes



Improvement plan showing huts and proposed improvements



Topographic map

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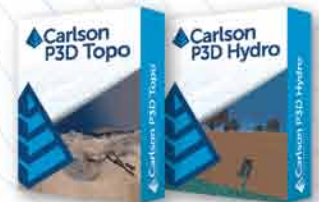
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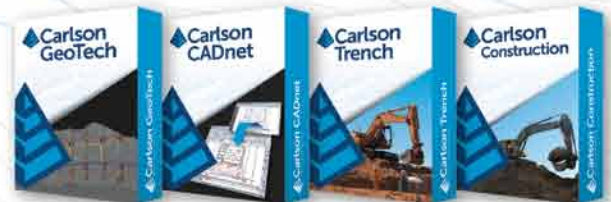


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Board of Registration Update

Jacob T. Hoffman, EI, PS

The Board of Registration for Professional Surveyors (Board) met Friday, October 8, 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.

Ian Mathew, Deputy Attorney General, supplied the Board with a report of Consumer Complaints and Litigation Cases. Mr. Mathew reported that there are currently 9 open investigation files with an average age of 11.2 months and 3 open litigations with an average age of 7.3 months.

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 and a Notice of Proposed Default. The state was represented by Ian Mathew, Deputy Attorney General, while neither Mr. Charles nor Mr. Kent, or their counsel, attended the hearing. Denise Singleton, an investigator for the Office of the Attorney General, was sworn in as a witness. The State begin by requesting that the Board issue a Notice of Proposed Default. The State presented that the parties were sent notice for this hearing by sending notice to the company address on file with the Secretary of State and that additionally an email was sent to the email address listed on the respondent's website. Christine Arnold made a motion for proposed default, Gary Kent seconded the motion, and a unanimous vote was taken in favor of the motion.

Jacob's Note: This allowed the State to continue with the Order to Show Cause despite the respondents' lack of attendance.

The State proceeded with the Order to Show Cause. The State provided evidence of a settlement that was filed in May 2019 that required the responded to remove certain language from their website stating they were supplying surveying services. The State called Denise Singleton as a witness. Ms. Singleton stated that the respondents were required to remove any references to provide surveying services and while they have removed some of the language there are still items that remain on the website.

Items remaining on the website include the phrases surveying, elevation analysis, topographic mapping, boundary maps, property lines, and building elevations. The State submitted three exhibits showing the website with the offending language as pulled on October 4, 2021. The Board closed the hearing and Gary Kent made a motion that they find that the respondents violated the terms of the settlement and requests that the state proceed with taking this to a civil court, Christine Arnold seconded the motion, and a unanimous vote was taken in favor of the motion.

Jacob's Note: The procedure for enforcement of this act was discussed with the Deputy Attorney General and the Board's Council. Since the respondents are not licensed by the Board, then the Board lacks Contempt powers and does not have the ability to really enforce the terms of the settlement. So the AG Office needed the Board to find that the respondent violated the terms of the settlement so that they would have the ability to proceed with enforcement. The next step for the AG is to move this case from their licensing division to another division to proceed with bringing this matter before a trial court to enforce the settlement agreement.

The Board held an administrative hearing for Jay Schwandt (Cause No. 2021SBRPE0002) in order to review the State's Administrative Complaint. This case was tabled from the last meeting to allow Mr. Schwandt to provide examples of recent surveys to the Board so that they could take those into account for the complaint. The State was represented by Ian Mathew, Deputy Attorney General, while neither Mr. Schwandt nor their counsel, attended the hearing. Mr. Mathew reported that Mr. Schwandt had contacted both him and the Professional Licensing Agency this morning informing them that he was at the hospital with his son and would be unable to attend the hearing. Amy Hall with the PLA reported that Mr. Schwandt did not submit any surveys to the PLA after the last meeting. Rich Hudson made a motion to continue this case to the next meeting, Christine Arnold seconded the motion, and a unanimous vote was taken in favor of the motion with Gary Kent abstaining from voting.

Jacob's Note: There was considerable discussion regarding potential avenues to deal with Mr. Schwandt not attending the hearing including a Notice of Proposed Default, but the Board thought it was more appropriate to continue the hearing for one more meeting. It should be noted that the sentiment on the Board was that this would be the last continuance for this case and Mr. Mathews stated that the State would not support any additional continuances for this case.

Jason Henderson reported on the annual NCEES virtual meeting, stating that it was a short meeting and that all of the NCEES Member Boards were represented.

The Board approved the following dates for their 2022 meetings (although they are subject to change):

January 21st, 2022
April 22nd, 2022
July 22nd, 2022
October 7th, 2022

The Board's goal is to meet in person in 2022, but it will be dependent on any Orders by the Governor.

The Board then examined an updated Electronic Participation Policy for the Board. One notable item in the policy is that the Board has the option to hold ½ of their meetings electronically if needed and that the Chair of the Board would determine if a meeting would need to be virtual. Christine Arnold made a motion to accept the policy, Gary Kent seconded the motion, and a unanimous vote was taken in favor of the motion.

The PLA reported that 22 individuals had signed up for the Indiana State Specific Exam and that 11 had taken the exam today. This is consistent with the last meeting where 22 individuals signed up and only 10 showed up.

The meeting was adjourned at 9:50 am.

The next scheduled meeting is Friday, January 21st, 2022, 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.

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Indiana Board of Registration: Distance Learning Restriction

Originally published in the Fall 2020 issue of the Hoosier Surveyor

On December 1, 2020, the Indiana Board of Registration met. One item on the agenda was a request brought before the Board from Jacob Hoffman with ISPLS. Mr. Hoffman requested on behalf of the ISPLS membership that the Board temporarily suspend the Distance Learning Restriction of 12 hours. The current rule reads as follows:

865 IAC 1-15-8 Distance learning requirements

Authority: IC 25-21.5-2-14; IC 25-21.5-8-7

Affected: IC 25-1-11; IC 25-21.5

Sec. 8. (a) Up to twelve (12) hours of the continuing education credits required under this rule may be obtained by distance learning methods.

Mr. Hoffman requested that the Board allow all of the continuing education credits for the 2022 renewal be obtained by distance learning due to COVID restrictions. The Board asked their legal counsel what options they had with regards to this request. James Harry, the Board's legal counsel, reported that they had three options as follows:

1. The Board could go through an Administrative Rule Change.
2. The Board could use authorities in relation to the Governor's Executive Order regarding the pandemic and temporarily suspend portions of the Rules.
3. The Board could take no action.

The first option would be a long process that would require approval from the Governor's Office and would permanently change the Administrative Code. The second option would also require approval from the Governor's Office and would be immediately lifted once the state of emergency is lifted. The third option would allow the Board to take action on a case by case basis should a surveyor be brought before the

Board regarding a lack of in person continuing education credits. Mr. Harry presented the following portion of Indiana Code:

IC 25-1-4-4 Hardship waiver

Sec. 4. A board, a commission, a committee, or an agency regulating a profession or an occupation under this title or under IC 16 or IC 22 may grant an applicant a waiver from all or part of the continuing education requirement for a renewal period if the applicant was not able to fulfill the requirement due to a hardship that resulted from any of the following:

1. Service in the armed forces of the United States during a substantial part of the renewal period.
2. An incapacitating illness or injury.
3. Other circumstances determined by the board or agency.

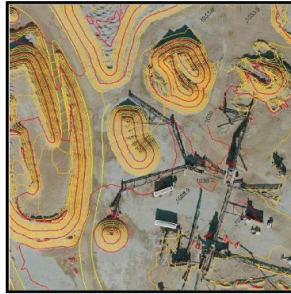
This portion of the code would allow the board to review each individual's situation and determine if a waiver would be appropriate. It was brought up by members of the Board that a renewal cycle just finished in the summer and that the next renewal was a year and a half away, it is still possible for licensees to obtain in person credits during the pandemic, that the pandemic may qualify as a hardship for an individual, and that it would be best to take no action at this time and to take each case on an individual basis. The Board made a motion to deny the request of ISPLS and the motion passed unanimously.



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Legal Surveys

Bryan F. Catlin, PS

The goal of this column is to provide brief summaries of recent Indiana Court of Appeals and Supreme Court cases involving topics related to surveying practice, certainly not to provide legal advice. 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.

Heritage Aggregates, LLC v. CWA Authority, Inc., Indiana Court of Appeals Case No. 21A-PL-161, July 16, 2021 - MEMORANDUM DECISION - not regarded as precedent

This quarter I found only this one case to be on a subject that I felt was of general interest to Indiana surveyors. Because it was short as these opinions go, only eight pages long on the court's website, and I feel it might be educational to occasionally be reminded of how opinions are actually written, I have included the entire text, slightly reformatted, in italics after my summary.

This appeal from the Marion Circuit Court began when CWA, a private utility company with state-delegated eminent domain powers, wanted to build a new sewer sludge line across property owned by Heritage to replace an existing sludge line across their property that was reaching the end of its useful life. CWA filed a complaint in September 2019 to obtain an easement from Heritage, and Heritage objected, arguing CWA was acting capriciously and in bad faith by seeking to condemn property for a sewer line that might need to be moved for the planned INDOT I-69 extension. Heritage cited an email from a CWA contractor that stated they had been hired to design a relocated sewer caused by the proposed I-69 / I-465 interchange. Heritage argued CWA was looking for increased

compensation from INDOT to move a new sewer and that the condemnation was premature until it was known if the INDOT project would affect the new line location. Ten months later, CWA filed a motion to overrule Heritage's objections to the condemnation along with an affidavit swearing there was no overlap between the sewer project and the I-69 project. Heritage requested discovery from CWA to determine why they wanted to condemn the property in the first place, and the circumstances around that decision, not whether the I-69 project would now have any effect. CWA generally objected and produced one document and two photographs. The trial court found that the sewer would not have to be relocated, the state's needs for the INDOT project were now known, and that Heritage was not entitled to an evidentiary hearing. The court overruled Heritage's objections dealing with compensation and premature condemnation, holding they were moot or lacked merit because the interstate would have no effect on the sewer project. The court also found that further delay could threaten public health and disrupt sewer service. Heritage filed an appeal under Indiana Code which allows an appeal of an interlocutory order overruling objections in an eminent domain proceeding.

On appeal, the court found that the question of the condemnation proceeding being premature was moot because the interstate project would not affect it. However, Heritage is entitled to be heard about the issues of compensation because there was a question of whether there was bad faith in taking their property interests and up to \$25,000 in costs and attorney's fees for their objection. Just because a potential bad faith effort to get increased funding to move a sewer project did not actually succeed, that did not disprove bad faith, only that any bad faith effort did not work, and CWA should not escape scrutiny on that basis. Heritage was also found to be entitled to an evidentiary hearing on the

facts and circumstances involved. The trial court decision was affirmed in part, reversed in part, and remanded back to the trial court.

MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

ATTORNEYS FOR APPELLANT

Thomas F. Bedsole, Jenai M. Brackett, Maggie L. Smith, Frost Brown Todd, LLC Indianapolis, Indiana

ATTORNEYS FOR APPELLEE

*Yasmin L. Stump, Exton R. Cordingley, Yasmin L. Stump Law Group, PC Carmel, Indiana
IN THE COURT OF APPEALS OF INDIANA
Heritage Aggregates, LLC, Appellant,*

v.

*CWA Authority, Inc., Appellee.
July 16, 2021*

*Court of Appeals Case No. 21A-PL-161
Appeal from the Marion Circuit Court*

The Honorable Sheryl Lynch, Judge presiding, The Honorable Karen A. Springer, Senior Judge issuing appealed order

Trial Court Cause No. 49C01-1909-PL-40292

Weissmann, Judge.

[1] A landowner objected to a private utility's eminent domain action, alleging that the private utility acted in bad faith by seeking to condemn land for an upgraded sewer line which might need to be moved due to planned interstate expansion. After later finding the interstate expansion would not affect the sewer project, the trial court determined that the landowner's objections were moot. Whether the utility company initially acted in bad faith thereby entitling the landowner to relief remains a live controversy. Therefore, we reverse the court's order as to that objection and remand for further proceedings consistent with this opinion.

Facts

[2] CWA Authority, Inc. (CWA) is a private utility company. With its State delegated eminent domain powers, CWA filed a complaint in September 2019 to acquire an easement from Heritage Aggregates, LLC (Heritage). App. Vol. II, pp. 21-34. CWA sought the easement to construct a new sewer sludge line on the property, as the existing line was reaching the end of its useful life.

[3] Heritage objected, arguing CWA was acting capriciously and in bad faith by seeking to condemn property for a sewer line which might be moved due to the Indiana Department of Transportation's (INDOT) planned Interstate 69 (I-69) extension. App. Vol. II, pp. 35-41. Heritage provided an October 21, 2019, email to support this claim, which stated, "[W]e . . . are under contract with [a CWA affiliate] to design the relocation of the SW Diversion Sewer caused by the proposed flyover I-69 / I-465 interchange." App. Vol. II, p. 40. Based on Heritage's objections, we understand the SW Diversion Sewer mentioned in the email to be the same line that runs through Heritage's property, the replacement of which prompted this eminent domain action. Id. at 36.

[4] First, Heritage argued that INDOT would have to compensate CWA for the relocation of its sewer lines due to the I-69 project, but compensation would be greater if CWA installed new sewer lines as opposed to just moving the lines currently in existence. Heritage alleged, "[CWA] seeks to appropriate Heritage's property, not to operate the new sludge line, but to require INDOT to compensate [CWA] for the relocation of a new line." We refer to this as Heritage's "compensation objection."

[5] Second, Heritage argued the action was premature because CWA could not proceed until it knew if the INDOT project would affect this sewer line. We refer to this as Heritage's "prematurity objection." The trial court rejected CWA's motion to strike both the compensation and prematurity objections.

[6] Ten months after its initial filing, CWA filed a motion to overrule Heritage's objections to the eminent domain action. Attached to the motion was an affidavit swearing there was no overlap between the I-69 project and the sewer project. App. Vol. II, pp. 98-101. Meanwhile, Heritage requested discovery from CWA

to determine "for example, why [CWA] sought to condemn the property in the first place, and the circumstances surrounding such decision, not whether the I-69 project would have any affect." App. Vol. II, p. 182. CWA generally objected to Heritage's discovery requests and responded with one document and two pictures. App. Vol. II, pp. 146-69.

[7] The trial court found that the sewer project will not be relocated, the State's needs for the INDOT project are now known, and Heritage was not entitled to an evidentiary hearing. App. Vol. II, pp. 18-19. It then overruled Heritage's compensation and prematurity objections, holding that they were now moot or lack merit because the interstate project would have no impact on the sewer lines at issue. The court found further delay could threaten public health and disrupt sewer service. Heritage now appeals pursuant to Indiana Code § 32-24-1-8(e), which authorizes appeal of an interlocutory order overruling objections in an eminent domain proceeding.

Discussion and Decision

[8] Heritage argues that the trial court erred in overruling its compensation and prematurity objections, thereby permitting CWA to pursue its easement. The State may delegate its power of eminent domain to other entities, like CWA. *Utility Ctr., Inc. v. City of Fort Wayne*, 985 N.E.2d 731, 733 (Ind. 2013). Eminent domain is a creature of statute, and its procedure is set forth in Indiana Code section 32-24-1 et seq. *Id.* Condemnation proceedings consist of two phases: (1) the legislative determination of the necessity of the taking; and (2) the judicial determination of just compensation for the taking. *Id.* This appeal is from the first phase, in which a defendant to a condemnation action may file objections. Ind. Code § 32-24-1-8(a).

[9] We give great deference to the trial court in eminent domain proceedings. "Where there is evidence to support the trial court's judgment that the plaintiff was entitled to exercise the power of eminent domain, the reviewing court will not set aside such judgment." *First Nat'l Bank of Mishawaka v. Penn-Harris-Madison Sch. Corp.*,

255 Ind. 403, 265 N.E.2d 16, 18 (1970) (citing *Matlock v. Bloomington Water Co.*, 196 Ind. 271, 146 N.E. 852 (1925)). We will not presume anything in favor of the appellant, we indulge all reasonable presumptions in favor of the trial court, and the record must exhibit the errors for which reversal is sought. *Id.*

[10] We find that the prematurity objection is moot because the interstate project clearly will not encompass the land at issue. However, Heritage is entitled to their day in court on the compensation objection. We therefore affirm in part, reverse in part, and remand.

I. Judicial Review

[11] As a preliminary matter, the parties disagree as to whether judicial review is proper in this case. By statute, a defendant may object to the proceedings:

- (1) because the court does not have jurisdiction either of the subject matter or of the person;
- (2) because the plaintiff does not have the right to exercise the power of eminent domain for the use sought; or
- (3) for any other reason disclosed in the complaint or set up in the objections.

Ind. Code § 32-24-1-8(a).

[12] This appeal concerns the third prong because Heritage contends CWA acted in bad faith by filing an eminent domain action for a sewer line at risk for relocation due to the interstate project. Necessity or reasonableness is "a matter for the determination of the legislature or the corporate body to whom the legislature has delegated such a decision." *Cemetery Co. v. Warren Sch. Twp.*, 236 Ind. 171, 139 N.E.2d 538, 546 (Ind. 1957). Judicial review is appropriate, however, where "a question of fraud or bad faith is raised as where an attempt is made to show that the property taken will not be used for a public purpose, or the proceeding is a subterfuge to convey the property to a private use." *Id.*; see also *Derloshon v. City of Fort Wayne ex rel. Dep't of Redevelopment*, 250 Ind. 163, 234 N.E.2d 269, 271 (1968) ("[A] citizen has a right constitutionally to defend against subterfuge and bad faith in the seizure of his property. . ."). Bad faith eminent domain proceedings will not be approved. See *Derloshon*, 234 N.E.2d at 275.

[13] Here, Heritage properly raised a question of bad faith in its timely objections. App. Vol. II, pp. 35, 89. Judicial review is therefore proper.

II. Mootness

[14] The trial court found that INDOT's I-69 project will not affect CWA's project. That finding led the trial court to conclude that Heritage's objections were moot because "the basis for [Heritage's] objections no longer exist." App. Vol. II, p. 16.

[15] But not all of Heritage's objections are moot. An issue becomes moot when: (1) it is no longer "live" or the parties lack a legally cognizable interest in the outcome; (2) the principal questions have ceased to be matters of real controversy between the parties; or (3) the court on appeal is unable to provide relief. See *Comm'r of Ind. Bureau of Motor Vehicles v. Vawter*, 45 N.E.3d 1200, 1209 (Ind. 2015) (citing *In re. Tina T.*, 579 N.E.2d 48, 52 (Ind. 1991)). Now that CWA knows INDOT's I-69 project will not interfere with the sewer line project, the prematurity objection has ceased to be a matter of real controversy between the parties. However, the compensation objection is still live, as the question of the existence of bad faith is not an idle academic inquiry. Heritage retains a legally cognizable interest in the outcome—that is, its property interest and up to \$25,000 in "reasonable costs and attorney's fees incurred for the objection." Ind. Code § 32-24-1-8(h). A real controversy between the parties exists because they continue to dispute whether CWA's initial filing for eminent domain was done in bad faith.

[16] The trial court failed to make a finding on the basis of Heritage's compensation objection. Heritage alleged CWA pursued the sewer project to maximize its future compensation from INDOT by installing a new sewer line which it would soon need to relocate. A later determination that INDOT will not require CWA to move its sewer project—meaning INDOT will not have to compensate CWA—does not disprove bad faith; rather, it proves that any bad faith machinations would have been fruitless. If CWA did act in bad faith to secure additional compensation by INDOT, it should not escape scrutiny simply because the plan did not come to fruition.

[17] We reverse the trial court's rejection of the compensation objection as moot and remand for further proceedings.

III. Evidentiary Hearing

[18] Heritage argues it is entitled to an evidentiary hearing on remand. We agree. Where the defendant objects on bad faith grounds, the defendant has a right to be heard, and it is proper for courts to inquire into the utility's purported use and the surrounding facts and circumstances "tending to show what is the actual, principal and real use to be made of the property." *Hawley v. South Bend, Dep't of Redevelopment*, 270 Ind. 109, 383 N.E.2d 333, 340 (Ind. 1978) (citing *Derloshon*, 234 N.E.2d at 271; *Kessler v. City of Indianapolis*, 199 Ind. 420, 157 N.E. 547 (Ind. 1927)). "Every litigant is entitled to his day in court on the issue of whether or not he is a victim of capricious, arbitrary, governmental action." *Derloshon*, 234 N.E.2d at 273.

[19] We affirm the portion of the trial court's order overruling the prematurity objection, reverse the portion of the order overruling the compensation objection, and remand for further proceedings consistent with this opinion.

Kirsch, J., and Altice, J., concur.

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



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Meet a Young Surveyor

Jackson Rogers

I was introduced to surveying midway through my senior year of high school and at the time I did not know what a surveyor did or how impactful their work was. My close friend's dad was a partner in a surveying and engineering firm so with a couple months left in my senior year and still quite a bit of uncertainty as to what I wanted to do upon graduation other than "work in the outdoors", I spent a day shadowing one of his field crews working on boundary survey for the United States Forest Service. The following summer I started a surveying internship, and, in the fall, I began classes at Vincennes University where I graduated in May of 2020 with a degree in Surveying Technology. After graduation I stayed local to where I grew up, working in Bloomington, Indiana for Deckard Land Surveying.

Coming into the surveying profession I learned that surveying was a very diverse industry with many different aspects and what sometimes seems like no clear answers. This is what I have come to love about the profession though. One of the most valuable lessons that I learned early in my career is to ask questions about concepts and practices that I do not understand and to listen to the surveyors who have the knowledge and experience to answer them. I have been very fortunate in the time that I have been surveying to have had some fantastic mentors and to have worked under professionals that I could ask questions and learn from. A second important point that I learned was to keep an open mind to new practices and technologies, and to use those to make yourself the most dynamic surveyor possible. It excites me to be in an industry that even the most experienced are always learning.

The Young Surveyors Network has established an important connection between the younger surveyors in Indiana and the more experienced surveyors. Being able to network with more experienced professionals is invaluable in



my eyes as a part of the younger generation reaching to learn and improve in our profession. The YSN creates an atmosphere that allows for younger surveyor to speak with the professionals who are well established in the industry and ask questions about the past and the future of surveying in Indiana. The YSN also allows for younger surveyors to connect with each other and discuss topics like education and the path to licensure.

Meet a Young Surveyor

Rebecca Hinkle, PS, EI

When I started out as a freshman at Purdue University, I was set on becoming a civil engineer. As part of their curriculum, I was required to take an Introduction to Geomatics course. The class was scheduled at 7:30 in the morning, which may as well be 4:30 in the morning when you're a college student, but to my surprise I loved it. It was the first class I had taken that had an outdoor component to it, which was much more fun than being stuck in a classroom for two hours. For the rest of my time at Purdue, I took as many land surveying courses as I could and graduated with a degree in civil engineering and a minor in land surveying.

After graduation, I started working for Lawson-Fisher Associates in South Bend. I was looking for a place that would allow me to be both an engineer and a surveyor and Lawson-Fisher was more than happy to allow me to do both. In the five years I've been there, I've worked on a wide variety of surveys including topographic surveys, boundary surveys, route surveys, and right-of-way engineering. I've done field work and office work, along with the occasional research trip to the county courthouse.

This past year I have been working through the process of getting licensed. I ran into an obstacle early on when I realized I would need three references from licensed land surveyors, and I only had close connections to two. Thankfully, I was able to leverage the contacts I had made through the Young Surveyor's Network to connect with a third. After that, it was smooth sailing, and in August of this year I became a PS. Since then, I have stamped a grand total of one survey, with hopefully many more to come.



If I could give advice to someone just starting out in their career, I would stress the importance of the "soft skills". Many times, I have found myself in a position where I need to explain surveying concepts to those who have limited survey knowledge. For example, how do you explain to someone in the Auditor's Office why you need to see the old maps they have? Or how do you explain to a property owner why you want to survey the section corner on their property when the project you're working on is half a mile away? Learning how to communicate effectively is nearly as important as learning the technique of surveying.

Completed Careers



Mark Warner Teepe, 69, of Noblesville, passed away on Monday, October 11, 2021 in the company of family. He was born on July 29, 1952 to George and Elise (Jones) Teepe in Indianapolis, Indiana.

Mark was a land surveyor for many years, working for Cornerstone Surveying, Inc in Florida and Burgess & Niple Civil Engineering Company. He found the Lord at Abundant Life Memorial Church where he was on the Board of Elders. Mark was a word master, every card was full of his heart, every word expressed his love. He enjoyed Notre Dame football, watching movies, going to Disney World with his family, and Christmastime. Most of all Mark was a man of God and loved his family.

He is survived by his wife of 49 years, Teresa Lynn Teepe; daughter, Anne (Daniel Peters) Teepe; son, Mark (Brittany) Teepe; grandchildren, Casey Jaxson Peters and twins, Maddox and Phoenix Teepe.

In addition to his parents, he was preceded in death by his brothers, Stephen Teepe and Timothy Teepe.

Memorial contributions may be made to the Teepe Family to help with funeral expenses.

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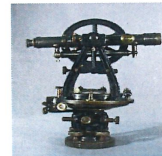
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