

Fall 2020

THE
NEBRASKA
Surveyor



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2020 Summer Seminar Photos
Submitted by Jerry Penry



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David Forsythe, Secretary (2020-2021)
John Berry, Treasurer (2019-2020)

Board Members

Jay Dubs (2019-2020)
Bonita Edwards (2019-2020)
Brian Foral (2020-2021)
Grant Miller Penry (2020-2021)
Eric Schaben (2020-2021)
Matt Tinkham (2019-2020)
Casey Sherlock - State Surveyor

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** Sustaining Membership (\$300 annual dues) includes 1/4 page ad and Exhibitors Fees at Annual & Summer

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- PSAN reserves the right to reject any advertisement of whatever nature, without cause.
- Published quarterly - Winter, Spring, Summer, Fall.

Editor: Gwen Bowers at 402-432-3444
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Professional Surveyors Association of Nebraska

The Nebraska Surveyor is the official publication of the Professional Surveyors Association of Nebraska (PSAN). It is published quarterly: Winter, Spring, Summer, and Fall. All issues are published on the PSAN website. Material published is not copyrighted and may be reprinted without written permission as long as credit is given.

Articles and columns appearing in the publication do not necessarily reflect the viewpoint of PSAN, 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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The Nebraska Surveyor
deadlines to submit
content for publication:
Winter: February 15
Spring: May 15
Summer: August 15
Fall: November 15

Cover Photo submitted by Boni Edwards

President's Letter

December 10, 2020

For some fairly obvious reasons, I can't wait for this year to be over. I'm not sure why... it sounds like 2021 is going to start about the same way 2020 ends. As I think of the year to come, I begin to consider personal goals. I know some people start the year with a New Year's resolution. Maybe it's to work out more, lose weight, go to church or maybe even to spend more time with family.

I would like to challenge our membership in 2021. Call it a challenge, a goal, or even a resolution. It's not complicated or even time consuming. It's simply this:

Talk to someone about the surveying profession and tell them how much you enjoy it!

I think one of the main reasons young people aren't getting into surveying is because they don't know this type of job exists. I was not aware of land surveying until I was a senior in high school. I knew about accountants, teachers and engineers. Why in the world did it take me so long to learn about our great profession? We know we love our jobs. Surveying is challenging, rewarding and no two days are the same. Over the next year, find an opportunity to promote our profession. Share what you like about the job and encourage them to consider joining our ranks. If we don't...then who will?

Sincerely,

Jeremy D. Fenster

Jeremy D. Feusner
PSAN President



2020 Summer Seminar

September 3-4, 2020 Chadron, Nebraska— narrative and photos submitted by Jerry Penry

The PSAN summer conference was hosted by Phil Curd and Jerry Penry on September 3-4, 2020. The event was held at Chadron, Nebraska and began on Thursday evening with a social gathering at the Westerner Motel where attendees enjoyed grilled hamburgers and other refreshments. On Friday morning, everyone gathered at the motel and then began a caravan by vehicles to the site located about 12 miles north of Chadron on the state line.

The main focus of the morning was having the entire group participate in digging around the Terminal Monument that was established at the intersection of the 103rd Meridian with the 43rd Parallel. These lines are also the west line of the Pine Ridge Indian Reservation in South Dakota and the Nebraska-South Dakota state line. The marked stone placed by Charles H. Bates on September 6, 1892, was recovered and the remains of wooden posts were also examined. The group had hoped to recover a bottle with a note that was placed next to the stone by Bates, but only broken glass was found.

Members then divided into teams and searched for and recovered mileposts and closing corners on the 103rd Meridian and also on the state line. A hot meal was catered from Chadron to the site and was set up in a buffet line. A group effort was then made in the afternoon to properly restore the position of one of the large quartzite state line mileposts that was found to be lying flat. The weight of these massive monuments was fully realized once it was time to reset the quartzite monolith into the hole. The day was concluded by searching for an 1882 quarter corner stone in Nebraska.

The weather was nearly perfect for the event beginning with a morning temperature in the mid 50's and rising into the low 90's. Dry conditions in the area made access to the various points completely accessible by vehicles. Participants came from three different states and numbered 17 who took part in the field activities.



2020 Summer Seminar (con't)



Summary of September 25, 2020 Board Meeting

Subject to approval by the Board of Directors

The PSAN Board of Directors Meeting on September 25, 2020, was held at Chances R restaurant in York, Nebraska.

The roll call was as follows:

President, Jeremy Feusner — Present

Treasurer, John Berry — Present

Secretary, David Forsythe — Absent

Administrative Secretary, Gwen Bowers — Present

Directors

Matt Tinkham — Absent

Bonita Edwards — Present

Brian Foral — Present

Eric Schaben — Present

Jay Dubs — Present

Grant Miller — Present

Casey Sherlock, State Surveyor — Present

Dennis Whitfield, SENLSA Affiliate — Absent

Committee Members

Jerry Penry — Present

Minutes from the June 26, 2020 meeting were read amended and approved. The Board approved the Treasurer's report dated September 16, 2020.

Conference Committee

Jerry Penry reported on the 2020 Summer Seminar.

Dan Martinez submitted a written report on the planning of the 2021 Winter Conference.

Officer Reports

No Officer reports were given.

Director Reports

State Surveyor, Casey Sherlock reported on behalf of the Board of Examiners regarding the handling of complaints and violations, as well as the number of applications received by the Board of Examiners.

Standing Committees

Historical: Jerry Penry and Boni Edwards reported on improvements made to the Nelson Buck sign.

Nominations and Membership: Boni Edwards has begun reaching out to members regarding elections for open 2021 PSAN Officer and Board positions.

Publications: Gwen Bowers noted the Summer Newsletter had been sent to membership and published. Gwen would like to include election information in the Fall Newsletter for all of membership to view—official ballots will still be sent out separately. She continues her ask of membership for newsletter content and photos.

Ethics and Standards: There was additional discussion about the proposed changes to the minimum standards.

Public Relations: Eric Schaben reported that PSAN now has a Facebook account, Twitter account, and Instagram account. We really want members to utilize these platforms to share information and photos. We will also use these platforms as another way to distribute information to membership and the public.

Associate Committee: Brian Foral is researching the direction for this committee.

NSPS: Dan Martinez's submitted report noted that the September NSPS meetings were moved from in-person to virtual meetings. The NSPS will be voting on a motion for the current NSPS officers to extend their current terms one year due to the COVID-19 pandemic.

Nebraska State Surveyor, Casey Sherlock reported that he's created 94 digital seals for LSs. He also has five potential statute changes that he's working on.

Old Business

We will have an attorney that will perform a legal review of the proposed changes to the Minimum Standards before the changes are presented to the General Assembly at the 2021 Winter Conference.

New Business

One application for membership applications, reviewed and denied due to not meeting the requirements for membership.

Good of the Association

Dylan Campbell was introduced as the new Land Surveying Instructor at SCC-Milford.

The next Board Meeting is scheduled for December 4, 2020.

After the complete September minutes are approved by the PSAN Board,

they will be published to the PSAN website.

<https://nebraskasurveyor.com/meeting-minutes/>

BOARD OF EXAMINERS FOR LAND SURVEYORS

CASEY C. SHERLOCK
Secretary

www.nbels.nebraska.gov



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November 23, 2020

Report of the Nebraska State Surveyor as Ex-Officio Secretary to the Board of Examiners for Land Surveyors.

The Board of Examiners for Land Surveyors met for regularly scheduled board meetings on July 16, 2020, September 2, 2020 and November 19, 2020.

The meeting schedule for the Board of Examiners for the 2021 calendar year is as follows: January 15, March 11, May 20, July 22, September 23, and November 18.

The Board discussed Complaint 20-1 at all three meetings and required the attendance of the LS at two of the meetings. The Board discussed Complaint 19-2 at two of the meetings and closed the Complaint with no further action at the September meeting.

Two LS's appeared before the Board and one LS was contacted by mail due to COVID-19 concerns to discuss a lack of compliance with the Minimum Standards for surveying. All three LS's were given instructions by the Board to make corrections and file revised surveys.

The Board held a discussion regarding a report of Violations of Land Surveying in Nebraska by a non-resident Land Surveyor and directed the Secretary to send a letter by certified mail to the LS requesting additional information and directives for compliance with Nebraska Law.

The Board was updated at each meeting regarding compliance by Nebraska Land Surveyors with use of only the Board approved and issued rubber stamp seal or digital seal. As of the November meeting 100 digital seals have been requested and approved for use by registrants.

The Board approved 3 - Class I license applications for examination, denied 1 - Class I application for examination, issued 0 - Class I licenses, approved 3 - Class II license applications for examination, issued 4 - Class II license registrations, denied 1 - Class II application for registration for failure of the reciprocity exam, received no applications for Class III Surveyor in training and issued 1 registration for SIT, reinstated 1 LS license, and approved 5 LS licenses for inactive registration beginning April 1, 2021.

The Board continues to hold discussions regarding Land Surveyors failing to file surveys with the Nebraska Survey Record Repository as required by Nebraska Revised Statutes. Registrants have been found to be failing to file subdivisions, additions, and minor subdivisions with the repository as required and the Board will continue to have discussions with those individuals violating the statutes individually as they are discovered at Board meetings. Registrants who have failed to file any surveys or subdivision plats with the repository as required may look forward to an in-person visit with the Board of Examiners at one of the upcoming meetings in 2021.

Per request of the Board, Governor Ricketts issued "Executive Order No # 20-23, Coronavirus – Land Surveyor Continuing Education Waiver", due to a state of emergency, declared in Nebraska on March

13, 2020, to control the spread of the COVID—19, and the cancelation of planned continuing education opportunities...

Hawks moved and Pro seconded that the Board lower the PDH hour requirement to 20 hours for the upcoming renewal period. Any certificate holder who completes in excess of 20 hours of professional development within the preceding 2 calendar years may have the excess, not to exceed 15 hours, applied to the requirement for the next biennium. The remainder of the requirements to renew will remain the same for the biennium of January 1, 2019 thru December 31, 2020. All PDHs must be obtained during the time the surveyor's registration has been active. In addition, the Board voted to audit 25 percent of all renewals to insure compliance with professional development requirements. Names appearing on the audit list, will be notified and required to provide the necessary documentation. Audit letters will be mailed prior to November 1, 2020 with renewal forms.

The issue of electing or appointing the County Surveyor appeared on the November 3, 2020 ballot of many counties in Nebraska. The unofficial results of the votes of those counties appears to show that only Hayes County voted to discontinue election of the County Surveyor and will appoint the County Surveyor for the next term of office.

The Board of Examiners discussed the general business practices and client communication of registrants and feels there is a lack of education and training by some registrants in these areas that may be improved by registrants participating in some Professional Development training, perhaps sponsored by PSAN or SENLSA in the future.

Respectfully submitted on behalf of the Board of Examiners.



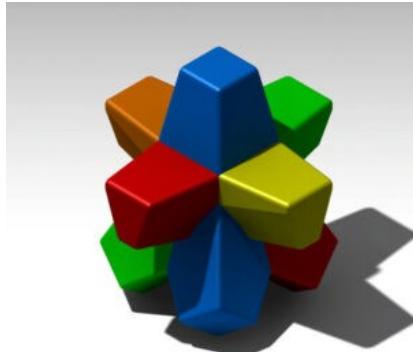
Casey C. Sherlock, Ex-officio Secretary

The Forever Chainman

Article by Scott Martin—xyht.com—November 9, 2020

A friend and colleague recently used a phrase I hadn't heard, but it caught my attention – Forever Chainman. My initial assumption was it was intended as a negative, but that didn't seem consistent with his prolific positivity. He didn't disappoint.

He said he used it to describe a certain type of self-starting mentality that was directly associated with a strong understanding of what needed to be done without having to talk about it. He said he first developed this trait when serving as a member of a field crew, typically as the sole assistant for the party chief. Although no longer a junior crew member, it is a learned skill that he still strives to employ, regardless of his "title."



Like the Everlasting Gobstopper, some surveyors love to linger forever as the chainman, and they always seem to be the ones with a little psychic ability.

As he explained, I not only embraced the moniker as positive, but quickly started to reflect on my own examples.

I'd like to think that I, too, had developed this skill because of great mentoring in my early years. I certainly worked for party chiefs who gave me every chance, and some who didn't. It was developed through communication and routine. Knowing what the job(s) was for the day was all I needed to know about how the truck needed to be equipped.

Driving to the site may have included some sort of procedural discussion, but as the non-verbal bond between chief and chainman strengthened, that was less and less necessary. Running levels? Tripod, level (firmly attached), rod, bubble, and turning point materials prepped and ready to go. Staking curb and gutter? Lath rack loaded, maybe even pre-marked



with stationing and offset information. Hub sack filled, vest stocked with flagging, tack ball fully loaded, and marking pens ready. Sledge in hand.

One of my chiefs even taught me small efficiencies that added up, like setting things in front of you with purpose, so when you drove the lath in, you literally picked the gear up as you started walking to the next station rather than gathering it up here and there. I still use this technique today when it makes sense, like laying out clothes in the order I will put them on, or laying out boards in a specific way when building a fence.

I know that I had a chainman who could almost read my mind. We worked so well together we almost never had to talk specific tasks. He caught some of my mistakes too, because he was attentive to the work, not just going through the motions.

The ultimate example was working on a three- or four-person government crew where I was not the chief, except during acting stints. A member of the crew was well into his 70s and had been on field crews for many decades. He loved the hard work and never aspired to be anything more than a contributing journeyman. Best I ever saw. His vest was like a magician's jacket or a clown car. We would be somewhere far distant from the trucks and discover that we needed something, perhaps a tool. Invariably, Frank would pull the needed item out of his vest. I swear he carried a utility body instead of a surveying vest. He was a master at being a Forever Chainman.

One morning, when I was running the crew, on the way to the site he pulled over short of our destination. I pulled up next to him to ask why, and he was already pulling a tripod and prism bag out of the truck. He said "going to set the backsight. I'll catch up in bit." Off he went, scaling the hill to do exactly what was needed.

That afternoon, I accidentally insulted Frank when I asked a more junior member of the crew to retrieve the backsight at the end of the day. We were working out of town and Frank would hardly talk to me at dinner that night. I asked him if he was okay and he replied, "No, I am not. You took my job away from me this afternoon. I climb the hills and set the sights. Please don't do that again." Enough said.

In the many years since I worked as a chainman, I can't tell you how many times I have delivered something to my supervisor without them asking for it, often getting the reaction, "How did you know I was going to request this today?" I just thought it was some sort of sixth sense. Now I know it's because I am a proud "Forever Chainman."



2021 PSAN Officers and Board of Directors Elections

Voting ballots will be mailed to all eligible PSAN members on December 12, 2020.

Please respond immediately with your vote.

Ballots must be postmarked no later than January 22, 2021 or they will not be counted.

Candidates for President Elect

Warren Headlee, LS 620



I am Warren Headlee and a candidate for President-Elect. Originally from Iowa, my wife Andrea and I moved to Omaha in 1993 after deciding to enroll in the Civil Tech Program at Iowa Western Community College. I interned at Lamp Rynearson in the summer of 1994 and am currently the Geomatics Group Leader for Lamp Rynearson. I am licensed in Nebraska, Iowa, and Missouri, and am member of the Society of Land Surveyors of Iowa, and Missouri Society of Professional Surveyors.

I have served on the board and as Secretary of PSAN. The declining number of surveyors is a concern of mine and I would like to see PSAN continue to promote awareness of the profession to youth across the state.

Matthew Tinkham, LS 692



After graduating from Fort Calhoun High School, I went on to the University of Nebraska at Omaha and earned a Bachelor's of Science Degree in Geography. I began my survey career in 1995 working for Gary Tinkham at Tinkham Land Surveying. I went on to work at Lamp Rynearson in 2006. I was licensed in Nebraska in 2009, and then North Dakota in 2012. Currently, I am a Senior Project Manager at Lamp Rynearson with almost 25 years of service in the Omaha Metro area.

I have served on the PSAN Board for the last 6 years. I have been the Chair of the Education Committee, and have worked on the GIS Committee for several years. My goals for PSAN would be to continue to provide great educational seminars for our members, continue to listen to the concerns of our group and be proactive in our response to changes in the survey profession as they arise.

Candidate for Treasurer

John Berry, LS 535



I have been the PSAN Treasurer since 2011. In the past few years, we have created a new website, created a monument fund, and have gone as paperless as possible. I enjoy working with the Board and all members. I will continue to work hard on cutting costs.

I was recently appointed the Lancaster County Surveyor. Prior to working at the Lancaster County Engineering office, I worked for Gilmore & Associates for 31 years. I enjoy working with the public and doing everything possible to advance the surveyor profession.

I am married, and have a son and a daughter, and seven granddaughters.

Candidates for Board Member

Jay Dubs, LS 522



I live in Alliance and am the owner of R & J Industries Plus, Inc., which I started in 1995. After graduating from the Surveying and Drafting Program in Milford, I began my career at Gilmore and Associates. I then went on to spend the next 8 years with the City of Alliance Engineering Department.

I enjoy spending time outdoors hunting and fishing. My wife, Erin, and I have 3 children at home.

Fred Franklin, LS 525



Fred M. Franklin, was born in Detroit, but raised in Lakeland, Florida. After graduating from Sante Fe Catholic High School in Lakeland, he went on to attend Polk Community College in Winter Haven, Florida. He started surveying for Alpha Engineering and Surveying in Lakeland. After 3½ years with Alpha with a 2-year stint with Whitaker Land Surveying in Winter Haven, Florida in the middle, he started Franklin & Associates which he operated for a little over a year. In October of 1991, he moved to Oakland, Nebraska and started working for Olsson Associates managing their new South Sioux City office. In May of 1993, he went to work for Siouxland Engineering. At the beginning of 1996, Fred started Alpha Land Surveying and Mapping, which he continues to operate. He has been the Burt County Surveyor for 21 years and served as Chairman of the PSAN Education Committee from 1997-2006.

Fred raised 4 boys and 1 girl. He has been a volunteer with Nebraska USA Wrestling for over 20 years and is currently the State Chairman of the organization. He loves what wrestling teaches kids and what it has taught him as well. Fred was inducted into the Nebraska High School Wrestling Coaches Hall of Fame in 2017 as a contributor to the sport of wrestling. He created a Kids National dual tournament that has been going on for 13 years, which is the largest wrestling tournament of its kind in the United States.

Michael Frecks, LS 490



Michael Frecks is the Survey/LiDAR manager for TREKKS's Omaha area office with direct responsibility for nationwide mobile LiDAR services. Michael has 43 years of land surveying experience with extensive knowledge and hands on experience with LiDAR applications since 2000. He has worked with DOTs, owners and AEC firms on more than 200 successful projects using various mobile LiDAR systems. His extensive surveying experience supporting civil transportation includes: GPS (static, post-process kinematic chains and real time kinematic); total stations (field to finish and back to field, robotic total stations); static scanning (phase based and time of flight); mobile (line scanners and 3D-field-of-view systems). This foundation provides the spatial recognition needed for mobile LiDAR acquisition and QA/QC. Over the course of his career, he has performed beta testing on survey software and hardware for Leica Geosystems because of his knowledge of project workflows and interactions.

Board Member Candidates Continued on page 12

Candidates for Board Member

Warren Headlee, LS 620



I am Warren Headlee and a candidate for Board Member. Originally from Iowa, my wife Andrea and I moved to Omaha in 1993 after deciding to enroll in the Civil Tech Program at Iowa Western Community College. I interned at Lamp Rynearson in the summer of 1994 and am currently the Geomatics Group Leader for Lamp Rynearson. I am licensed in Nebraska, Iowa, and Missouri, and am member of the Society of Land Surveyors of Iowa, and Missouri Society of Professional Surveyors.

I have served on the board and as Secretary of PSAN. The declining number of surveyors is a concern of mine and I would like to see PSAN continue to promote awareness of the profession to youth across the state.

Jerry Penry, LS 504



Jerry is a native of Nebraska and currently lives in Lincoln. He earned a degree in surveying from Southeast Community College in Milford, Nebraska, in 1985, and immediately began his career. During his initial 13 years of surveying he was employed by several private companies in Lincoln doing all types of surveying and drafting. In 1997, Jerry began working for Lancaster County Engineering where his expertise became boundary surveying and section corner recovery and remonumentation. He obtained licensure in Nebraska in 1994 and South Dakota in 2012. Jerry has written over fifty professional articles pertaining to land surveying. He has also authored eight books pertaining to his interests in surveying, railroads, and World War II. Jerry is a frequent speaker at surveying conferences in several area states and a contributing author to *The American Surveyor* magazine. He has been directly involved in several historical projects in Kansas, Nebraska, and South Dakota.

Jerry has previously served two terms on the PSAN Board and is currently the chairman of both the Historical Committee and the Ethics & Standards Committee.

Matthew Tinkham, LS 692



After graduating from Fort Calhoun High School, I went on to the University of Nebraska at Omaha and earned a Bachelor's of Science Degree in Geography. I began my survey career in 1995 working for Gary Tinkham at Tinkham Land Surveying. I went on to work at Lamp Rynearson in 2006. I was licensed in Nebraska in 2009, and then North Dakota in 2012. Currently, I am a Senior Project Manager at Lamp Rynearson with almost 25 years of service in the Omaha Metro area.

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“And that survey is the one we all go back to.

When you find one of their original corners, it is like a handshake with the past.”

— Andro Linklater, *Measuring America: How an Untamed Wilderness Shaped the United States and Fulfilled the Promise of Democracy*

HAPPY HOLIDAYS & HAPPY NEW YEAR

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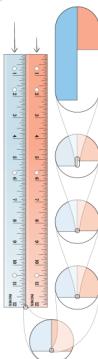
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"America Has Two Feet. It's About to Lose One of Them."

Read the *New York Times* article about the retirement of the U.S. survey foot.
Search on Google: [NYT survey foot](#)

[Don't forget to check out the PSAN website](#) — nebraskasurveyor.com

We would LOVE if you'd submit pictures from the field or articles to add to the website, etc.

The goal is to keep the website updated with information that's important to you! The website is also location for announcements and important information.

Send website content to: Administrative Secretary
Gwen Bowers at PSAN@nebraskasurveyor.com

SURVEYING BY STATE

THE BEST STATES FOR LAND SURVEYING RANKED.

Point of Beginning Magazine — in partnership with the National Society of Professional Surveyors — is creating a comprehensive, state-by-state ranking of the best states for land surveyors.

How It Works: *POB* is working directly with the professional land surveyor associations in each state to create a profile of the state's land surveying community that is also informed by the work of its individual membership base. Factors taken into consideration for ranking include salaries, benefits, impactful projects completed and diversity.



How You Vote: To influence your state's ranking, submit the following short questionnaire and choose the professional land surveyor association where you are a member. If you are not a member of your state's association, your work still counts toward your state's ranking. Simply select the non-member option.

The Winning State: All states will be ranked, but only one state will be ranked No. 1. The winning state — determined by our *POB* Editorial Advisory Board — will receive a cash scholarship toward a project of the state association's choice, a free *POB* Premium subscription and will be featured on the cover of a special edition of *POB*.

GO TO: pobonline.com/surveying-by-state to vote! **VOTE EARLY/VOTE OFTEN**

NOTE: Point of Beginning Magazine is now a sustaining member of NSPS

We measure success one accurate reading at a time.

PRECISION IS OUR CALLING CARD

We're Olsson, a nationally recognized engineering and design firm looking for meticulous surveyors to join our team.
Learn more at olsson.com/survey.

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The Land Surveyor's Guide to the Supreme Court of Nebraska

Chapter 58 – Converse v Kenyon (1965)

While we have noted references made by the Court to statute 34-301, the primary Nebraska statute governing the resolution and adjudication of boundary disputes, in some previous cases, the potential relevance of that statute to many land rights controversies was often overlooked during the first few decades of the statute's existence. As we have often observed, and as all experienced boundary surveyors know, most attorneys and judges think primarily in terms of title, rather than properly recognizing the separate nature of boundary issues, as pure location issues independent of title issues, and the procedural policies adopted by the Court reflect this attitude toward boundaries, approving the treatment of boundary issues as title issues. For many years, 34-301 was therefore rarely utilized, and little need to make use of it was seen by most attorneys, since the Court had long ago established that boundary issues can be most conclusively resolved through the application of adverse possession, whenever the statutory 10 year period has expired, making all of the obscure details pertaining to ancient evidence of original boundaries inconsequential. The use of 34-301, which had existed for over 40 years by this point in time, began to ramp distinctly upward during the 1960s and 1970s however, as the potent force of technology began to assert itself, making surveys far more precise, and as all surveyors realize, that trend has only continued and accelerated over the subsequent decades. The upside of this trend for surveyors is obvious, resurveys are now known to be vastly superior to original surveys in terms of precision, so those matters which can be resolved through the use of superior measurements alone can now be quite easily and definitively settled by means of a resurvey. Moreover, resurveys are now viewed with reverence by many people, including many lawyers and judges, whose predecessors viewed resurveys with great suspicion and trepidation, and understandably so, since early resurveys contradicted each other as often as not, giving the impression that the work of land surveyors in general had little or no consistency and was simply unreliable. With the advent of surveyor licensing however, nationwide during the twentieth century, land surveying finally took on the mantle of a genuine profession, and surveys began to benefit from the resultant improvement in the public perception of the reliability of survey work, making both lawyers and judges more comfortable relying on resurveys as evidence. Nonetheless, the Court remains quite cognizant that most land rights issues are not subject to resolution by means of superior measurements, because they are fundamentally evidentiary issues, and not measurement issues subject to correction based on improved precision. In the case we are about to review, we will look on as the Court makes it very clear that this pivotal factor applies to boundaries, even when 34-301, which expressly directs judicial attention to boundary evidence, is properly invoked and actively in play.

1874 to 1900 – An apparently typical township in Brown County was subdivided and platted by the GLO. Kenyon's grandfather became the patentee of the east half of Section 4 in this township, and at an unspecified time he commenced to farm his land. By the end of this period Kenyon's father had become the owner of the Kenyon property, Kenyon had been born, and he was growing up on the family farm. Whether or not any of the surrounding lands had been settled by others by this point in time is unknown, and whether or not Kenyon's father or grandfather ever made any effort to locate the GLO monuments marking their property corners is unknown as well.

1901 to 1933 – Nothing is known regarding the use of the Kenyon property or the surrounding lands during this period, presumably the Kenyons continued to use their farmland in the typical manner, and the surrounding tracts were patented and occupied by others in a similar manner. Whether the Kenyons enclosed any portion of their tract during this period is unknown, but there is no indication that any boundary issues or other land use issues arose in this area during this time.

1934 to 1940 – Kenyon's father died, and he became the operator of the farm. By the end of this period he had married, he had a son, and he had acquired the interests of the other heirs of his father, thereby becoming the sole owner of the family farm.

1941 to 1951 – The Kenyons continued farming their land as they always had, but at an unspecified date early in this period a fence was built along the entire west side of the Kenyon tract. Who erected this fence is unknown, but there is no indication that it was built with reference to any survey monuments. The north end of this fence was based upon an existing fence running northward through Section 33, and the south end of this fence was based upon another existing fence running southward through Section 9, so it appears that only these existing fences built upon adjoining lands by others were relied upon by whoever erected the fence running through Section 4.

1952 – Converse, who was a resident of Ohio, acquired the SW1/4 of Section 4, upon the death of his father, who had acquired that quarter at an unspecified time. How the land in the west half of Section 4 was being used at this time is unknown, there is no indication that any members of the Converse family had ever lived on their Nebraska land, so it may have been vacant for an unspecified length of time. Converse visited Nebraska at this time, apparently to view his property, but he evidently paid no attention to the boundaries of his tract, and he returned to Ohio without ever speaking with Kenyon or anyone else.

1953 to 1959 – The Kenyons went on farming all of the land east of the fence throughout this period, without interruption. At the end of this period however, Converse, who was still living in Ohio, was shown an aerial photo of the area in which his land was situated, and he noticed that his quarter appeared to be somewhat smaller than most of the other quarters in the vicinity. This discovery prompted Converse to become concerned about the use being made of the land by the Kenyons, so he contacted another Converse family member who lived in Denver, and asked him to set up a meeting to discuss the matter. It was then discovered that Kenyon was also living in Denver, having apparently retired and turned the operation of the family farm over to his son, so Kenyon was contacted and he agreed to meet and discuss the property boundary issue with the Converse family.

1960 to 1961 – Three meetings took place between Converse and Kenyon in Denver, during which Kenyon admitted that he did not know if the fence was located on the quarter section line or not, and he agreed to have the fence moved, but nothing more was done.

1962 – Kenyon sent Converse a letter, stating that moving the fence would be expensive and troublesome, so he was not sure when he would get around to it, and this prompted Converse to order a survey of the line in question. The survey indicated that the fence was about 330 feet west of the quarter section line, so the Kenyons had been using 40 acres that was actually part of the west half of the section, including 20 acres lying within the Converse quarter. No details relating to the manner in which the survey was conducted are known, so the process through which the

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location of the quarter section line in question was ascertained is unknown, and there is no indication that any survey monuments were found, either on that line or elsewhere. Kenyon did not challenge the survey however, and he ordered no survey of his own, in fact he told Converse that he was willing to buy the disputed area, but he was then apparently advised that it would be foolish to do that, so he retracted his offer. Tired of waiting for Kenyon to take action, and armed with this survey, which Kenyon had openly conceded to be accurate, Converse filed an action against Kenyon, evidently confident that he could obtain a judicial decree confirming the validity of the surveyed quarter line, which he presumably supposed would enable him to have the fence legally moved or removed.

Converse argued that the survey done for him was entirely correct and accurate in all respects, and thus properly indicated the location of the quarter section line which had always formed the boundary between the Converse and Kenyon tracts, so Kenyon's excessive land use was clearly nothing more than a plain mistake, and the fence in question represented an encroachment that was subject to removal. Converse further argued that Kenyon had obviously never known where the true quarter line was located, and Kenyon had never made any claim that he owned any part of the west half of the section at issue, so Kenyon's land use could not be characterized as being adverse in nature. Converse also pointed out that Kenyon never had the area in dispute surveyed and numerically described with metes and bounds calls, so Kenyon had no way of stating the exact size or dimensions of the portion of the Converse tract that he was now claiming to have acquired, thus the contested area could not be awarded to Kenyon, due to the lack of a precise legal description of the relevant area. Kenyon simply argued that he had held the area in contention, under the belief that the fences in the adjoining sections correctly indicated the quarter line location in his section, without ever being disturbed or questioned about his land use by anyone, for a period of time that was well in excess of the statutory period, so he had adversely acquired any portion of the fenced area lying west of the surveyed line. The trial court ruled in favor of Kenyon, finding that all of his land use was adverse in nature, and nothing that he had said or written in any of his communications with the Converse family was of any relevance to either the disputed boundary location or the extent of the title held by the respective litigants.

Converse had quite correctly filed his action under statute 34-301, expressly identifying it as an action to resolve a boundary issue, not a title issue, and he was correct in his notion that no title conflict existed, because the titles of both parties were clear, complete and without ambiguity, only the location of their mutual boundary line was in play. The Court however, set out to very diligently explain why Converse was nonetheless destined to experience defeat. Converse appears to have brought his action under 34-301 with the hope that by doing so he could eliminate adverse possession from the equation, but the Court informed him that he was mistaken in that regard, while reiterating many of the numerous essential factors that control the applicability of adverse possession in the PLSS boundary context. Intent shown by physical acts and objects prevails, the Court reminded Converse, as superior evidence, over intent to honor deeded boundaries, or any other internal intent that conflicts with the evidence of intent revealed on the ground, in accord with the same elementary principle which dictates that monuments, being physical objects, are superior to measurements as boundary evidence. Adverse possession becomes conclusive after 10 years, the Court also reiterated, so nothing that happens thereafter matters, the adverse party, like any other land owner, can only lose land by relinquishing it through conveyance, or by losing it to a subsequent adverse claimant, so all of the negotiations and the agreement to move the fence had simply come too late to have any impact on the situation. If Converse had acted in 1952, he may well have prevailed, since the 10 year window of opportunity provided by the statute of limitations may still have been open, but by the time he acted that window had closed, and his opportunity to challenge the land use made by Kenyon was thereby terminated. Likewise, no resurvey can have any impact upon an established boundary, and 34-301 supports this concept, rather than abrogating it, the Court recognized, as the words of the statute express the intent of its authors to mandate that boundaries, just like title issues, are ultimately controlled by principles of equity. The Court in this instance may well have been tacitly unconfident in the resurvey, despite the existence of the legal presumption of correctness in its favor, since no monuments of any kind, original or otherwise, had evidently been found in the quarter corner locations at issue, and the Court, as we have repeatedly seen, is always reluctant to elevate measurements alone to controlling status. Be that as it may however, reliance upon a prior survey can support adverse possession, regardless of whether that survey was rightly or wrongly done, because a survey provides a legitimate basis for the occupation of land, yet a survey cannot disrupt or overturn a completed adverse possession, because no resurvey is conclusive as to title or ownership of land. In addition, absentee owners such as Converse cannot escape adverse possession by virtue of their own absence, the Court realized, because allowing them to do so would invite all land owners to simply ignore any and all land use made by others. Converse was on inquiry notice of the existing conditions when he acquired his land, the Court was well aware, because the fence was functioning as a clearly visible line of demarcation at that time, so concluding that describing a boundary established through adverse possession solely by means of such a visible boundary monument is entirely sufficient, the Court fully upheld the lower court decision in Kenyon's favor:

"Converse ... brought this action ... to correctly establish the corners and boundaries of Section 4 ... the boundaries became lost or destroyed and are presently in dispute ... plaintiffs asked that the Court determine the correct boundaries and require the defendants to conform thereto ... a trial ... resulted in a finding ... that the fence in question was the line between the plaintiffs and defendants property ... Kenyon always considered the fence to be on the correct boundary line ... the land east of the fence he has claimed to be his, as against all persons and the world ... no one else had ever made claim to the land east of the fence prior to the plaintiffs in 1961 ... the fact that one claiming title by adverse possession never intended to claim more land than is called for in his deed is not a controlling factor ... adverse possession is founded upon ... and determined by what he has done ... after the running of the statute, the adverse possessor has an indefeasible title, which can only be divested by his conveyance of the land or ... by a subsequent disseisin ... it cannot be lost by a mere ... acknowledgement or recognition of title in another ... or by survey ... there was nothing in the negotiations between the parties that would divest the defendant of title ... this action was bought under the provisions of section 34-301 ... its purpose is to establish corners and boundaries ... the last portion of this section reads ... boundaries or corners ... recognized and acquiesced in by the parties or their grantors for a period of ten consecutive years ... in conformity with the equity rules ... this section specifically provides for the determination of a line recognized and acquiesced in by the parties ... plaintiffs argue that the description in the judgment is ... impossible of ascertainment ... the land claimed by the adverse possessor was enclosed ... up to a fixed monument ... a "monument", when used in describing land, has been defined as any physical object on the ground which helps to establish the location of the line ... a permanent object which may be either a natural or an artificial one ... an established fence may be such a monument ... the fence marked the boundary ... no other boundary could be established."

Two additional cases dealt with by the Court at this time also shed light on the Court's perception of the role of recognition and acquiescence in boundary

(Continued on page 18)

resolution, and its interaction with adverse possession. *Mentzer v Dolan* (1964) was an adverse possession case resulting from an encroachment, set in an urban context. Mentzer and Dolan owned adjoining typical platted rectangular residential lots in Lincoln, and each lot bore a house built in 1911, with a space of about 8 feet between the 2 houses. The Mentzer family had owned and occupied their lot since 1911, and Dolan had acquired her lot in 1917, but Dolan rented her lot to tenants, so she never lived on it herself. While Dolan apparently never paid any attention to their mutual lot line location, the Mentzers had always assumed that a certain sidewalk seam, which pointed down a line running between the 2 houses, and lined up with the outer edge of the eave on the Mentzer house, marked the lot line. During the 1940s and 1950s Mentzer built a garage, a fence and a retaining wall, all up to the line marked by the sidewalk seam and the eave, which projected 2 feet from the edge of the Mentzer house, all without any objection from Dolan or her tenants. In 1962 however, a survey revealed that the lot line ran along the edge of the Mentzer house, rather than the eave line, so the eave, the garage, the fence, and the wall, all projected 2 feet into the Dolan lot. Mentzer then filed an action against Dolan, seeking to quiet title to the 2 foot strip thus occupied by his improvements, and the trial court ruled in his favor. Dolan protested that both parties had in fact always been mutually ignorant of the true lot line location, which was certainly true, so the improvements built by Mentzer were mere encroachments, and did not represent adverse possession. The Court nevertheless fully upheld the ruling in Mentzer's favor, finding that the eave alone was sufficient to support Mentzer's adverse possession claim, so in fact the Mentzers had owned the 2 foot strip beneath their eave for over 40 years, by the time the survey was done, and the 2 foot strip extended all the way to the front and to the back of the lots. In so holding, the Court pointed to Dolan's long acceptance of the existence of the eave, as the decisive factor, stating that "the whole doctrine of title by adverse possession rests upon acquiescence" reminding Dolan that any "acts of dominion" such as the openly visible presence of the eave in this case "put an ordinarily prudent person on notice of the fact that his lands are in the adverse possession of another". Although mere conversation about moving fences, once adverse possession has been completed, is ineffectual, as indicated by the *Converse* case, an adverse claimant who moves a fence during the statutory period can thereby terminate his own developing land rights, as illustrated in *Foos v Reuter* (1966). In that case, Foos owned the west half of the SW1/4 of a certain Section 25, while Reuter owned the east half of that quarter, and the area along their mutual boundary consisted of a bog that was used by both parties for drainage. In 1945, Reuter built a fence running through the westerly part of that area, but he subsequently moved portions of it, and various ditches were dug and trees were planted in that area as well over the ensuing 20 years, until a survey indicated that the sixteenth line ran along the easterly edge of the drainage area. Foos then filed an action against Reuter, and the trial court confirmed the surveyed sixteenth line as their boundary, but Reuter insisted that he had used all of the land at issue up to a zigzag line formed in part by fences, ditches and trees, all lying varying distances west of the surveyed line. The Court fully upheld the lower court decision in favor of Foos however, since Reuter had moved portions of his fence, making acquiescence inapplicable to the situation. while also noting that the zigzagging boundary claimed by Reuter, was "quite irregular, and it is obvious that no survey of the government line would coincide with it".

This article represents a portion of a book written in 2013 for professional land surveyors, the complete book is available from the Nebraska State Historical Society Library or free of charge upon request directly from the author (bportwood@mindspring.com).



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Issue 22 October 2020

NSRS Modernization News

For all issues of **NSRS Modernization News**, visit:
geodesy.noaa.gov/datums/newdatums/TrackOurProgress.shtml

New Technical Papers Released

Three new papers relating to the modernized NSRS were released recently. They are:

- [NOAA Technical Report NOS NGS 74 \(Rotation of the Mariana Plate\)](#)
- [NOAA Technical Memorandum NOS NGS 84 \(Biquadratic Interpolation\)](#)
- [NOAA Technical Memorandum NOS NGS 85 \(On the Propagation of Formal Error Estimates of Euler Pole Parameters into Modernized NSRS Coordinates\)](#)

Updates to Blueprint Documents

All three previously released “Blueprint for 2022” documents have been updated. Each revision has significant new information, corrections and updates from their previously released versions. They will all be released in Fall 2020 or Winter 2021.

Progress in Ongoing Projects

There are currently **20 ongoing projects** directly related to NSRS modernization around NGS. Here are highlights from a select few:

Multi-GNSS replacement of PAGES (Project Manager: Dr. Mark Schenewerk)

Progress continues on the new GNSS software. Comparisons of float, GPS-only results to PAGES are very good. A preliminary multi-GNSS float solution was recently completed and is promising. Release for beta testing in activities such as OPUS should begin in spring, 2021.

Standardized Data Formats (Project Manager: Dr. Dan Gillins)

This project will develop a single file format for each type of geodetic observable which NGS will support in the modernized OPUS (raw GNSS, GNSS-based vectors, leveling, relative gravity and total stations). Some of these formats are likely to be XML-based, sharing commonalities with the forthcoming [GNSS Vectors Exchange \(GVX\)](#) format.

GPS on BM (Project Manager: Galen Scott)

As of October 1, only 15 months remain to add data to the GPS on Bench Marks 2022 Transformation Tool Campaign. We have recently passed 10,000 completed 10km hexagons around the country, but this data is concentrated in specific areas. Large data gaps remain in significant regions of the country. Without new data, NGS will be forced to interpolate over these gaps creating larger uncertainties when transforming between NAVD 88 and NAPGD2022.

GRAV-D (Project Manager: Jeffery Johnson)

GRAV-D was able to resume field work in late August 2020 for 3 weeks. NOAA has established a robust COVID-19 mitigation strategy that has allowed us to get back to work.

GRAV-D progress last quarter: up 0.3% to 81.9%

Behind Schedule!

Recently: Grand Junction, CO



Schedule: 87.0%

2021 Annual Meeting

February 12, 2021

10AM CT

Virtual Meeting

Stay tuned for more
details!

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