

Summer 2023

THE NEBRASKA Surveyor



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Photo submitted by Jerry Penry
from the PSAN 2023 Summer Seminar
Harrisburg, NE

On the north line of Section 36 looking east toward the N ¼ Corner



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- Matt Tinkham, President (2022-2023)
- Chad Marsh, President-elect (2023)
- Mark Streit, Secretary (2022-2023)
- Josh Borchers, Treasurer (2023-2024)

Board Members

- Jai Andrist (2022-2023)
- Jay Dubs (2023-2024)
- Brian Foral (2022-2023)
- Carl Gilbert (2023-2024)
- Grant Miller (2022-2023)
- Jerry Penry (2023-2024)
- Casey Sherlock - State Surveyor

2023 Advertising Rates

Display Ads per Issue

**** Sustaining Membership (\$300 annual dues) includes 1/4 page ad and exhibitors fees at the PSAN annual and summer conventions.**

Size of Ad	Sustaining	Reg. Rate
Quarter Page	**	\$50
Half Page	\$50	\$100
Full Page	\$100	\$150
Full Page Inside Cover	\$150	\$200

Professional Business Card Directory

\$25/4 Issues - members only.

Classified Ads

\$0.25 per word.

Advertising Information

- All ads must be submitted as black & white or color in digital (PDF or JPEG) format or an additional charge will be made for set-up.
- Payment must accompany the advertisement request.
- All ads must be professional in nature.
- 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
or email: PSAN@nebraskasurveyor.com



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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
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content for publication:

Winter: February 15
Spring: May 15
Summer: August 15
Fall: November 15

President's Letter

August 16, 2023

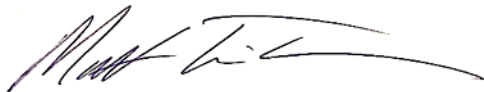
During my years of serving on the Board of PSAN I have come to appreciate what a great organization we have. I have seen how much hard work our members put into improving our association, and our profession, for all Surveyors of Nebraska.

As we are gearing up for membership renewals, I ask that each member considers volunteering to serve this organization. As always, we will need members that are willing to run for open positions on the Board. I would also like to ask members to think about serving on one of the various committees within our association.

If you are passionate about the profession and/or helping to improve PSAN, the committees are a great place to start. The Education Committee and Associate Committee work with our students and young professionals to gain the knowledge and skills they need to become licensed. The Historical Committee is key in preserving our history for the next generation. The Legislative Committee works with key personnel in our government to monitor and shape legislation that can affect our profession. The GIS Committee is tasked with being a bridge between the Surveyors and GIS professionals in this state. The Publication and Public Relations Committees are always looking for help with content to deliver our stories to our members. The Conference Committee is charged with providing quality seminars for our members. And finally, the Ethics and Standards Committee work hard to make sure our constitution and bylaws remain current and relevant.

If you would like to be a member of the PSAN Board or serve on a committee please signal your intent on your membership renewal form, talk to any of the Board Members or current committee chairs. Our next president, Chad Marsh, will be assigning committee chairs early next year. Remember our organization is not possible without the efforts of its members.

Sincerely



Matt Tinkham
PSAN President



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Summary of June 2, 2023 Board Meeting

Subject to approval by the Board of Directors

The PSAN Board of Directors Meeting on June 2, 2023, was held at the Nebraska State Surveyor's Office and began at 8:59AM CT.

The roll call was as follows:

President, Matt Tinkham — Present
Vice President, Chad Marsh — Present
Treasurer, Josh Borchers — Present
Secretary, Mark Streit — Present
Administrative Secretary, Gwen Bowers — Present
Directors
Jay Dubs, Chairman — Present
Jai Andrist — Present
Brian Foral — Present
Carl Gilbert — Present
Grant Miller — Present
Jerry Penry — Present
Casey Sherlock, State Surveyor — Present
Dennis Whitfield, SENLSA Affiliate — Absent

Minutes from the March 3, 2023 meeting were amended and approved.

The Board approved the Treasurer's report dated May 25, 2023 with one change.

Treasurer's Report

The Board discussed and clarified which accounts specific amounts of money raised from the Winter Conference needed to be deposited.

Conference Committee

C. Gilbert described the program of events for the upcoming 2023 Summer Seminar.

2024 Winter Conference is mostly planned, speakers and breakouts are already assigned. Greg Chlebicki will be back in 2024 to put on the pre-exam workshop, but will focus on FS Exam prep for the two days.

2024 Summer Seminar planning has begun.

Officer Reports

M. Tinkham spoke about PSAN participating in the Skills USA event; it was great exposure for the association. PSAN should have a presence at this and FAA conventions in the future.

Director Reports

J. Penry will be presenting at SCC on spiral curves.

C. Sherlock reported on LB102, it didn't make it to the floor this session but is number seven on the list for next session.

Standing Committees

GIS: Several members of the PSAN Board presented at the 2023 LIS/GIS Symposium.

New Business

Two applications for Active Membership and one application for Affiliate membership where approved.

The meeting was adjourned at 11:13AM CT.



After the complete June 2023 minutes are approved by the PSAN Board, they will be published to the PSAN website.

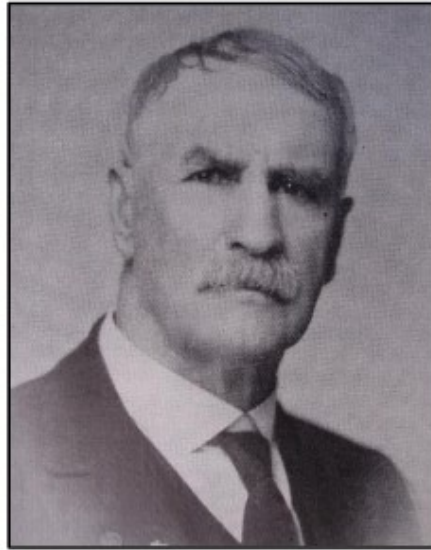
<https://nebraskasurveyor.com/meeting-minutes/>

Robert Harvey

100th Anniversary Remembrance

Friday, October 20, 2023

St. Paul, Nebraska



Robert Harvey's career in surveying in Nebraska began in 1869 and continued until his death on November 1, 1923. During those 54 years, he worked as a U. S. Deputy Surveyor, a County Surveyor and was Nebraska's first State Surveyor from 1902-1923. Although he worked many years in Lincoln, Harvey considered his hometown to be St. Paul where he obtained a soldier's homestead in 1871 in Howard County. He is undoubtedly one of Nebraska's greatest surveyors devoting his entire life to finding or restoring lost corners and completely reorganizing the state's Government Land Office Records.

- **Meet at the Howard County courthouse 9:00 a.m. Coffee and rolls.**
- **Review surveys by Robert Harvey and items in the display case.**
- **Tour the St. Paul Cemetery where Harvey and his family are buried.**
- **Visit the Harvey family homestead.**
- **View monuments in St. Paul that were established by Harvey.**
- **Buffet lunch in downtown St. Paul restaurant. (Your own cost).**

- ✓ Please RSVP to either Tim Aitken hcsurveyor@gmail.com or Jerry Penry jerry.penry@nebraska.gov so that the number attending can be made available to the restaurant for the noon meal.
- ✓ This is not a PSAN sponsored event and no PDH's will be given for this event.

2023 PSAN Summer Seminar



Article & photos
submitted by Jerry Penry

The 2023 PSAN Summer Seminar will be one well remembered. Our host, Carl Gilbert, did a fantastic job in preparation and organization. The food was excellent, and the weather was near perfect. We gathered at the Banner County Museum in Harrisburg on Thursday evening, July 13, for a cookout and horseshoes. On Friday morning, a presentation was given at the museum detailing what the group would be doing in finding several long-forgotten corners in Section 36, T20N, R56W in the rugged Wildcat Hills.

We set out for the hills with twenty-three surveyors in attendance including five SCC Milford students and their two instructors. Six all-terrain vehicles shuttled the group to the site. The primary focus to begin the day was finding the NW Corner of Section 36. The GLO notes of 1873 indicated that a pine tree was marked for the corner monument along with a bearing tree. The all-terrain vehicles could only get us so close, so a half mile hike through steep forested canyons was required to reach the point. Both Carl Gilbert and State Surveyor Casey Sherlock had independently calculated a search location based upon the topo calls in the notes. Upon reaching the approximate location in dense cedars, the group discovered widely scattered

stumps in the area from pine and cedar trees that had been cut long ago.

Through much debate, checking distances and ruling out other possibilities the group collectively arrived at the conclusion that one particular pine tree stump was most assuredly the tree that had been marked for the corner location. A distance south to a high vertical wall measured 26.4' which was the exact same as the GLO distance. The distance east to another vertical wall measured 457' compared to the GLO distance of 409.2'. The distance north to the dry creek bed that only carries runoff water was 189' compared to the GLO distance of 198'. The discrepancies of the latter two distances were understandable due to the terrain. Another nearby stump located 7' to the northwest of the stump accepted for the corner compared to the GLO direction and distance of 6.6' for the bearing tree.

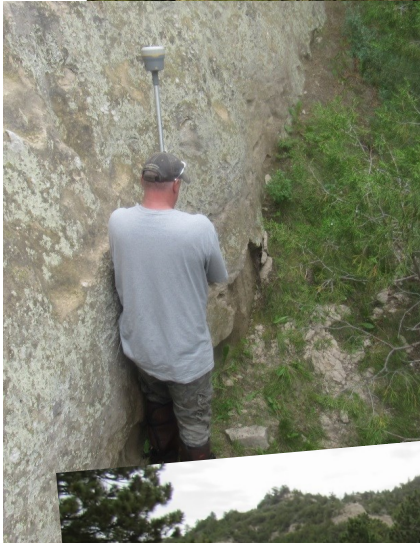
It was almost inconceivable that anyone would have logged this area due to its inaccessibility. However, the group later talked to a nearby landowner who told a story of a moonshine still once being located further into the canyon during the prohibition years of the 1920's. It then made sense that the trees in this rugged area were likely cut down

as firewood for the still. Supposedly, parts of the still remain in the canyon today.

After a lunch on site with catered sub sandwiches, chips and cold drinks, the group renewed their strength to go after another corner. The N $\frac{1}{4}$ Corner of Section 36 was the target, but it was equally difficult to access. It required more than six miles by all-terrain vehicles by going back west and then coming into the site through Section 25 to the north. The trip was well worth the extra effort as we skirted bluffs affording fantastic views of the countryside for many miles in all directions. The area was overgrown with yucca, but they proved no match for the young college students with spades to clear the area. Although the topo calls from the GLO notes made sense, we failed to find the recorded stone after much visual searching, probing, digging and the use of ground penetrating radar brought by the State Surveyor's Office.

The event was deemed a great success since everyone gained valuable experience in reading and deciphering the original notes to retrace the steps of the government surveyors 150 years previously.

2023 PSAN Summer Seminar Photos



Head Chainman Award Criteria

Approved by the PSAN Board on March 25, 2022

The presentation of this award should be viewed as a prestigious recognition of an individual who has surpassed their normal duties and responsibilities as a professional land surveyor and has met the minimum criteria as shown below in order to be considered. This award is not intended to be presented on the basis of personal friendship, a working relationship, or someone being a hard or diligent work. It should not be awarded solely on the basis of someone who has been surveying for a long time unless it is viewed as a culmination of many things this person has done or contributed to the land surveying profession throughout their entire career.

Nominees are required to have done something that is above and beyond what others are also doing or have already done. Consideration should be made as to whether the recipient was paid to perform the work and/or whether the work was associated with their normal job duties. In order to be considered for this awards, a large portion of the PSAN membership should already be aware of the efforts that have been made by this person. An exception may be made if the person being nominated did something privately that needs to be recognized. The person submitted the nomination should provide specific details to the Board of Directors as to why the person being nominated deserves consideration for this award.

The recipient must be an active member of the Professional Surveyors Association of Nebraska or has recently retired after having an active membership.

As a guideline for the PSAN Board of Directors to present this award to a nominee, the Board will consider the following criteria:

- Has invested their personal time, resources, or funds to enhance the surveying profession in Nebraska
- Has done something that is directly related to land surveying that is of visible or lasting importance outside of their normal surveying duties
- Is generally well-known and active withing the land surveying community
- Has maintained a high degree of integrity within the land surveying profession

SCC Students with their instructor at the 2023 PSAN Summer Seminar



call for **NOMINATIONS**

**** To be awarded at the General Assembly Meeting ****

Award Nomination Instructions

PSAN is seeking nominations for the following awards:

Head Chainman Award

The Head Chainman Award was created in 1989 by PSAN to recognize individuals who have served the profession and/or enhanced its image. If you know someone who personifies the following statement, please consider nominating them for this award:

“The HEAD CHAINMAN shall take the front of chain and lead the party. He shall clear the way and mark the line of progress. He shall always be mindful of his relationship to the rear chainman so that he does not go too far ahead; to the instrumentman so that he does not stray too far from the true line; and to the ground so that he is able to make a true and accurate measurement. He is charged with responsibility to set the pace so that the task at hand will be accomplished with the greatest speed while maintaining the integrity of the results.”

Honorary Life Membership

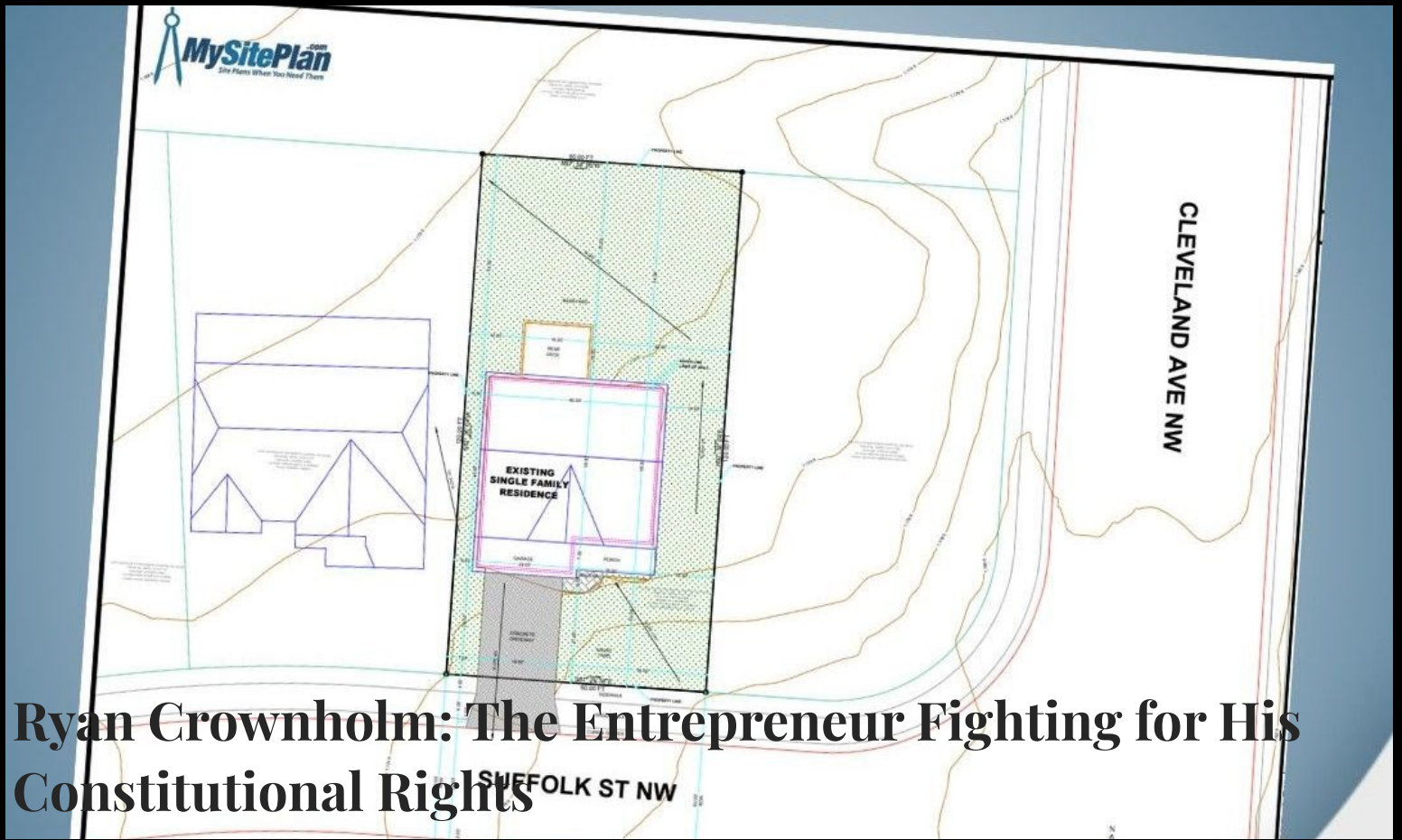
Pursuant to Article III, Section 1b of the Constitution, an Honorary Life Member is defined as follows:

A person of acknowledged eminence in Surveying, who has rendered outstanding service to the Land Surveying or Engineering Profession and who has been an Active Member of the Professional Surveyors Association of Nebraska, may be elected as a Life Member of the Association by a two-thirds vote of the Official Board. Honorary Life Membership does include full membership voting rights.

In order to highlight the accomplishments of our members, please share specific characteristics about the person or examples of their leadership in the nomination letter. The nomination letter/email could be read as an introduction to the award recipient at the Winter Conference banquet. A letter stating, “I would like to nominate Joe Best Surveyor...” will not be considered without supporting information. I know we have great members who do great things in the field of land surveying, so let’s take the opportunity to showcase these accomplishments amongst our surveying peers!

Nominations MUST be received by **November 15, 2023**.

If you know a member of PSAN who meets the requirements for one of these awards, please send an email to PSAN@nebraskasurveyor.com, with the subject line “Awards”.



Ryan Crownholm: The Entrepreneur Fighting for His Constitutional Rights

Ryan Crownholm, the owner of [MySitePlan.com](https://www.mysiteplan.com) and US Army Veteran, is currently embroiled in a legal battle against the California Board for Professional Engineers, Land Surveyors, and Geologists ([BPELSG](https://www.bpelsg.com)) over accusations of unlicensed land surveying.

Crownholm's website allows customers to create their own site plans using public records and information that is **readily available to the public**. However, the BPELSG alleges that Crownholm is practicing land surveying without a license.

As a veteran-owned business, Crownholm is passionate about providing his customers with a valuable service, whilst also defending his constitutional rights. Crownholm argues that he is not providing surveying services but is instead exercising his First Amendment right to create plans using publicly available maps. [The Institute for Justice](https://www.instituteforjustice.org), a non-profit

libertarian public interest law firm, has filed a lawsuit against the BPELSG on behalf of Crownholm, claiming that the board's actions violate his constitutional rights.

How does the first amendment apply? The First Amendment of the United States Constitution guarantees the freedom of speech and the press, which includes the right to receive and impart information. In the case of Ryan Crownholm's use of publicly available maps in California, the First Amendment could be relevant in a few ways.

Firstly, the First Amendment could protect Crownholm's right to access and use publicly available information, such as maps, as a means of gathering information and expressing his ideas. This could be particularly relevant if Crownholm is facing any legal challenges or restrictions on his ability to access or use these maps.

Secondly, the First Amendment could protect Crownholm's right to

communicate his findings or opinions based on the maps he has obtained. If Crownholm is using these maps to conduct research or make a statement about a particular issue, the First Amendment could protect his right to express his ideas and opinions without fear of government censorship or retaliation.

Overall, while the specific details of Crownholm's case would need to be considered to fully assess how the First Amendment applies, it is possible that the First Amendment could be invoked to protect his ability to access and use publicly available maps in California, as well as his ability to express his findings and opinions based on those maps.

The trouble began when the California Board for Professional Engineers, Land Surveyors, and Geologists (BPELSG) sent a letter to Crownholm accusing him of practicing land surveying without a license. According to the board, Crownholm's

website offered services that only licensed surveyors were legally allowed to provide.

“This is a classic case of government overreach,” MySitePlan.com provides a valuable service that is protected by the First Amendment and is simply providing a platform for their customers to create their own site plans using existing public records and information (i.e. GIS (Geographic Information System)/Google and other publicly available sources. To put it simply, MySitePlan, allows you to overlay your specific use case over those maps or satellite images.

“Hotels and resorts use it to help guide guests from the lobby to their assigned room. Farmers’ markets use it to help show vendors where they should set up shop. And homeowners and contractors use it to show local California building departments where they plan to do various small projects, like building a fence or a shed or removing a tree or pool, to aid those departments in issuing a permit.” – Institute For Justice

“MySitePlan.com does not conduct surveys or provide any information that is obtained through surveying,” Crownholm said in a statement. “Instead, MySitePlan.com creates plans using public records and information that is readily available to the public.”

The **Institute for Justice**, a non-profit libertarian public interest law firm, has filed a lawsuit against the BPELSG on behalf of Crownholm. They claim that the board’s actions violate his constitutional rights.

Crownholm’s case has far-reaching implications for anyone who uses publicly available information to create plans or designs. The outcome of this case will determine whether or not the First Amendment provides protection for individuals like Crownholm.

As a veteran-owned business, Crownholm is passionate about providing his customers with a valuable service while also defending his constitutional rights. He hopes that his case will inspire others to stand up for their rights and fight back against government overreach.

The legal battle between Crownholm and the BPELSG is ongoing, and it is unclear when a final decision will be made. In the meantime, Crownholm is continuing to operate his website, but with a disclaimer stating that he is not a licensed surveyor and is not providing surveying services.

Speaking from my experience as a small business owner and a veteran, I fully endorse Crownholm’s exercise of his constitutional right to free speech by filling a gap in the market and offering a service that utilizes publicly accessible information.

Sources:

- Commercial Speech and the Evolution of the First Amendment, <https://www.theuscourtinstitute.org/news/commercial-speech-and-the-evolution-of-the-first-amendment/>
- California Mapping, Entrepreneur Fined \$1,000 for Using Public Information to Draw Lines on Maps Files Federal Lawsuit Against California, <https://ij.org/case/california-mapping/>
- California Entrepreneur Who Was Fined \$1000 for Drawing Informal Maps without a License Takes Regulatory Board to Court, 22 October 2022, <https://fee.org/articles/california-entrepreneur-who-was-fined-1000-for-drawing-informal-maps-without-a-license-takes-regulatory-board-to-court/>
- Entrepreneur Fined \$1,000 for Using Public Information to Draw Lines on Maps Files Federal Lawsuit Against Innovation Stifling California Regulations, <https://ij.org/press-release/entrepreneur-fined-1000-for-using-public-information-to-draw-lines-on-maps-files-federal-lawsuit-against-innovation-stifling-california-regulations/>



Civil Engineering Technology

Continued Education Offerings

2023

LSIT Prep Class
2 days (16 hours)
\$250, Oct 5-6, 2023

This course is intended to assist candidates who are preparing for the fundamentals of surveying exam. Class material will cover the NCEES study areas.

Topics will include: survey math; statistical analysis of measurements; acquisition of field data; traverse computations; horizontal and vertical curves; boundary law and cadastral surveys; topographic; aerial & GIS mapping and surveying geodesy.
Instructor: Greg Chlebicki, PE, PLS

LS Prep Class
2 days (16 hours)
\$250, Oct 12-13, 2023

This course is intended to assist candidates who are preparing for the Principles and Practice of Surveying (PS) examination. Class material will cover both the NCEES 6-hour PS examination and the 2-hour Iowa state specific examination.

Topics will include: Public Land Survey System, boundary law principles, survey standards and specifications; land descriptions; professional survey practices including research, field procedures, calculations and documentation; Iowa State specific review; preparing and taking the exam.
Instructor: Greg Chlebicki, PE, PLS

LS Prep Class (State Specific Portion Only)
1 day

\$125 Oct 13, 2023

Join the LS Prep Class for the last portion, which includes the Iowa State specific review. You will receive the entire book given to the full LS Prep Class.
Instructor: Greg Chlebicki, PE, PLS



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PROFESSIONAL SURVEYORS ASSOCIATION OF NEBRASKA

August 28, 2023

Dear PSAN Member:

It is time to renew your PSAN Membership for 2024.

I understand that it is convenient to pay your dues at the Winter Convention however this creates a bookkeeping mess.

- Please submit your dues as soon as possible to the address listed under “MAIL TO” on the next page.
- Please complete the Member Information portion in its entirety. We are updating our records and want to be sure we have your most current and accurate contact information.
- You can renew your annual membership online! [Click Here](#) or find it on the sidebar of the website.
Please DO NOT use Internet Explorer when completing online renewals; the form isn't compatible with the Internet Explorer web browser.

We have several email addresses that do not work. If you have changed your email address and neglected to notify PSAN, please be sure to write it legibly on the sheet to be returned with your dues. If your email address has not changed, the security on your computer may have been set higher or set so as not to accept bulk emails. Also, if you are not receiving email from PSAN and I'm not getting the “not deliverable” message, you may want to check your “junk file” to make sure your computer isn't looking at PSAN as spam.

Your membership in PSAN is an investment in your professional future. We, as a group, make a larger impact on issues that affect each and every one of us. When there are important issues, we try to keep you informed. We provide educational services and information for professional development hours, pre-exam seminars and workshops.

If you have a question, an idea, or would like to get more involved in PSAN, please contact an officer or board member or our PSAN office at 402-432-3444. Our e-mail address is: PSAN@nebraskasurveyor.com

Thank you for your cooperation.

Josh Borchers, Treasurer, PSAN

PLEASE BE SURE YOUR DUES ARE PAID BEFORE November 15, 2023

Complete the form **in its entirety** and use only one form for each person.
 Make your dues check payable to: Professional Surveyors Association of Nebraska and

MAIL TO:
 Gwen Bowers, Administrative Secretary
 Professional Surveyors Association of Nebraska
 PO Box 83206
 Lincoln, Nebraska 68501

<u>Class of Membership</u>	<u>PSAN Membership Fee</u>	<u>NSPS Membership Fee</u>	<u>Total</u>
Active Member – Nebraska Resident	\$175.00	Included	_____
Active Member – Non-resident	\$125.00	Optional - \$50.00	_____
Associate Member	\$75.00	Optional - \$50.00	_____
Retired Active Member	\$5.00	Optional - \$50.00	_____
Honorary Member	\$0.00	Optional - \$50.00	_____
Sustaining Member	\$300.00	N/A	_____
Student Member	\$10.00	N/A	_____
Affiliate Member	\$15.00	N/A	_____
Total Payment Due:			_____

Member Information

Name: _____

Address: _____

Address 2: _____

City, State, and Zip Code: _____

Company: _____

Preferred Phone: _____

Alternate Phone _____

Preferred Email: _____

Alternate Email: _____

Please help and volunteer to better serve your organization!

- | | | |
|---|-----|----|
| I would be interested in serving as a PSAN officer. | Yes | No |
| I would be interested in serving as a PSAN board member. | Yes | No |
| I would be interested in serving on a committee for PSAN. | Yes | No |

PLEASE BE SURE YOUR DUES ARE PAID BEFORE November 15, 2023



Vanguard Real Estate Solutions, a nationwide service provider for energy and infrastructure projects, is looking to expand our services to include in-house surveying.

To achieve this goal, we are reaching out to assess if there are survey professionals interested in joining our team. We are also looking for survey companies that may be interested in being acquired.

- ▶ For job inquiries, please contact Tim Baigent at 520.483.5424 or tim@vresolutions.com.
- ▶ For company acquisition inquiries, please contact Jon Yoachim at 402.309.4088 or jon@vresolutions.com.

Vanguard Real Estate Solutions is based in Nebraska. We are also looking to hire and acquire in Colorado, Kansas and Wyoming.



To learn more about Vanguard, please visit vresolutions.com

MONUMENTS GOING UP IN SMOKE

By Carl C. De Baca
The American Surveyor
July/August 2023

Let's talk wildfire, or more specifically, let's talk about the effects on boundary monuments by wildfire. Even more specifically, let's talk about heavy equipment making fire breaks before the fires start and heavy equipment scooping up the remains of devastated properties after the wildfire has gone through, and how those two activities can completely destroy critical survey monuments for a parcel, for a neighborhood, or for an entire community.

Why this is relevant to me: Having worked for 3 years in the Town of Paradise after the deadly Camp Fire, I can attest to the fact that the wholesale use of loaders and dozers to clean up in the aftermath are where the monuments were lost, not in the fire itself. My firm recovered some 5500 monuments prior to cleanup while working with a utility company to restore electricity to Paradise, neighborhood by neighborhood. In looking at the law in California, it appeared we were on the hook for 5,500 corner records documenting the position and character of each monument. As a matter of efficiency and of giving the most useful tool to the surveying community, we chose not to prepare corner records and instead filed a 64-sheet record of survey documenting these monuments with a control diagram, coordinates and descriptions, before they were lost during the protracted rebuilding process. Strangely, perhaps, the Butte County Surveyor was not involved in any way in these activities. While they were very grateful to receive the survey, it can easily be argued that a similar effort could and should have been done under their direction as an immediate reaction to the conflagration. But there is no plan or guidelines for this kind of situation and any county surveyor would need to think outside the box in such circumstances.

In 2021, in the aftermath of the North Complex Fire, Butte County did in fact release contracts for surveyors to establish and mark out the right of way lines for 40 miles of rural highways before tree felling could commence. The contracts were not directly



On Thursday, November 8, 2018 the Camp Fire ripped through the Town of Paradise, CA, destroying 95% of Paradise with a loss of over 18,000 structures and 85



Cleanup in the aftermath of the Camp Fire involved wholesale scraping of parcels, resulting in many property corner monuments that had survived the fire being destroyed.

monument preservation but it would not be possible to reestablish these rights of way without recovering numerous monuments and so it was a happy by-product. In my firm's ten-mile stretch we recovered well over a hundred section corners, quarter corners and property corners. We filed nine records of survey to document the results.

In 2021, in the aftermath of the North Complex Fire, Butte County did in fact release contracts for surveyors to establish and mark out the right of way lines for 40 miles of rural highways before tree felling could commence. The contracts were not directly targeting monument preservation but it would not be possible to reestablish these rights of way without recovering numerous monuments and so it was a happy by-product. In my firm's ten-mile stretch we recovered well over a hundred section corners, quarter corners and property corners. We filed nine records of survey to document the results.

In 2022 El Dorado County, in the aftermath of the Caldor Fire, issued a contract to our firm to go into the community of Grizzly Flats, while the embers were still hot and before tree falling and dozing began, to establish a permanent control network and recover as many monuments as we could in a two-week period. In the

absence of any funding mechanism for the work, including FEMA disaster relief, the El Dorado County Surveyor spent discretionary funds out of his department's account to get this done. And we donated some of our time and effort for the good of the community. We recovered about 450 monuments before FEMA blocked us from getting into the danger areas, and we filed an 18-sheet record of survey showing the network and the monuments. This operation should serve as a solid example of how a county can react after a catastrophe.

Why this is relevant to you: Last year Oregon and Washington started generating wildfires in a way that was very reminiscent of California, and just this spring huge wildfires raged across Canada from British Columbia to Quebec. And wildfires are not the only disasters where this discussion is relevant. Hurricanes, tornadoes, catastrophic flooding, landslides, earthquakes, and volcanoes (in Hawaii, primarily) can all have dramatically deleterious effects on boundary monuments, as well. Taken altogether, there is precious little of the country where monuments are not subject to assault by natural forces.



Monument recovery activities started right away, in an attempt to stay ahead of the cleanup activities.



Many monuments were located and described and a Record of Survey perpetuating their position was filed.



We cannot afford to think of these events as occasional, or as being limited to one region of the country, that they 'can't happen here.' These days, natural disasters seem to have become a regular part of our lives, across the continent. Cities and counties will need to accept this new reality and start behaving in such a way that disaster prevention and disaster recovery become organized operations and not haphazard responses. Surveyors need to raise the awareness level of these agencies as to the critical nature of monuments with respect to land boundaries and the legal requirements to preserve or perpetuate them. And if the area you practice in does not have a legal requirement to preserve monuments, maybe your state society's legislative committee needs to take this up, and soon.

Hereabouts, a longtime practicing California Land Surveyor from the Central Valley has taken this issue to heart. Michael Quartaroli has spent countless hours preparing and promoting a very succinct white paper on the topic of wildfire and monument preservation. To date, his has been a lone voice in the wilderness. California has strong regulations regarding monument preservation, but they were written in the context of construction and development activities and make no specific mention of the surveyors' (or agencies,' or contractors') responsibility in the face of disaster prevention work, such as dozing wholesale fire breaks or buttressing slopes in danger

of failure. While the law is clear enough that anyone should be able to see that conserving monuments must be an unavoidable part of any such operation, that fact may not be well known or understood in offices beyond that of the County Surveyor. As urgent as disaster prevention policy is with respect to monuments, it is even more urgent to establish a policy regarding disaster recovery. In all cases,

“These days, natural disasters seem to have become a regular part of our lives...”

the local agency should be prepared to dispatch surveyors in to recover monuments before clean up commences. Is there a funding mechanism for this? Probably not. But if that is true then the agencies should work on establishing one. Mike's paper lays out responsibilities and strategies for monument preservation in fire country very well and could serve as blueprint for how to deal with this issue, whether for fires or any natural disaster, far beyond the borders of California. It can be obtained by emailing mike@quartaroli.com. I hope you will all download and review it and start a conversation about it at your local chapter!!



Funding was made available to rebuild lost homes. Paradise just announced their 2,000th completed Certificate of Occupancy. There is a long way to go.



How can we ensure there are monuments from which to rebuild?

Carl C. De Baca, PLS, is a Nevada and California licensed land surveyor. He served as President of the Nevada Association of Land Surveyors, and has served on the Board of Governors and Board of Directors of the National Society of Professional Surveyors. He owned a business serving the mining industry for 11 years.



Thoughts on Professional Practice and Education

Article 6: Licensing With and Without A degree

by Knud E. Hermansen [†]

P.L.S., P.E., Ph.D., Esq.

This is the sixth article I have prepared in the series offering thoughts on professional practice and education. In this article, I wish to review survey licensing requirements. I have noted that a graduate of a surveying course of study will likely seek multiple state survey licenses. More practitioners seek multiple state licensing than when I started my surveying practice. It is common for four-year surveying graduates to be licensed in two or more states. I know of one individual licensed in more than a dozen states. As I look back on fifty years of surveying practice, over that time, I have held licenses to practice surveying in six states.

While the reader is probably aware of their state licensing requirements, a review of licensing requirements nationwide is appropriate. Requirements for licensure among states vary.

More than 25% of states require some formal education in order to be licensed. Not all of these states require a surveying or geomatics degree. The most stringent academic requirement found for licensure exist in states that require a surveying or geomatics degree from an ABET accredited program.¹ Some states relax this standard slightly by not mandating an ABET accredited surveying or geomatics degree. Relaxing academic restrictions even more, some states accept any four-year degree with a certain number of surveying credits. Next in academic laxity is a state allowing any four-year degree without specific surveying credits. Some states will permit a two-year surveying or geomatics degree with a certain number of surveying courses. Finally, a number of states continue to allow licensing by experience only. Two-years of experience is a minimum requirement coupled with education. The norm for experience among states appears to be four-years of experience coupled with education. More experience is required when there is less formal education.

It stands to reason that a person wishing to pursue licensure as a surveyor with the widest possible opportunity for employment and licensure in the United States should meet the most stringent state requirement for licensure. The person casting a wide net for employment or licensing should obtain an ABET accredited four-year surveying or geomatics degree. There are several universities in the United States and foreign countries with excellent programs that are ABET accredited. Some offer accredited surveying degrees

entirely through distance education. Individuals can achieve an ABET accredited degree without leaving their state.

This wide diversity of pathways allowing surveying licensure reveals differing opinions nationwide and within state societies as to what should be the requirements for licensure in a state. The issue has been firmly settled in some states. It is a source of great debate in others. This article is not intended to create controversy in states that has had the controversy and has settled the requirements.

A person that does not have a degree or possesses a degree not accepted in a state of their residency or employment can always seek licensure in another state should they wish to show professional achievement. Of course, I must stress that a person working in one state holding a survey license in another state cannot necessarily provide surveying services in the state where they work. The surveyor must hold a license in the state in which services are offered or performed.

I would also caution that in many states holding a valid survey license to practice in the state is not sufficient. The person must also hold a certificate of authorization (COA) or similar business license or work for a firm that does hold a certificate of authorization in the state. I have seen many disciplinary citations issued to out-of-state firms that incorrectly believed that they could provide services in a state by simply having an employee of that firm licensed in the state. I would also caution that the out-of-state firm must often pay income taxes to the state and in some case the municipality in which they performed their services and received payment. A most frustrating time in my past was when a municipality in a state I was not a resident demanded I pay an income tax on a small fee I received for services completed in that municipality. Had I been aware, I would have refused the services or doubled my fee to cover the frustration and time to do the extensive paperwork involved in paying a municipal income tax.

I would also like to dispel some misconceptions that surveying must be thought of as a 'lesser' profession or not a profession at all because individuals can be licensed without formal education in the professional field. I suppose some judges or legislatures feel and have ruled otherwise. Their position allows them to have an opinion that establishes the definition in that state. It is a fact of

life that an opinion of a person in power means more than an opinion of some other person.

The fact is there are other professions that surveyors work alongside that permit licensure without a formal education. As I write this article, Washington, Vermont, California and Virginia allow an individual to become a member of the bar without graduation from a law school. Wyoming, New York and Maine allow individuals to be members of the bar without a juris doctorate (J.D.) degree so long as the individual has at least some law school courses.

Not all states require an engineering degree to become a professional engineer (P.E.). Some state permit engineering experience alone to qualify for licensure.

I am sure that some individuals reading this article will wonder what my opinion is regarding a requirement for formal education in order to obtain a survey licensure. I have five degrees and taught in a four-year surveying program for more than thirty years. My background would suggest I am a strong advocate for a degree requirement. Yet surprisingly, I am not in favor of mandating education in order to become licensed. My first surveying licensure was obtained based on my surveying experience alone. There is no question that I learned more about surveying by obtaining my B.S. degree. I also learned a lot more about surveying when

obtaining my M.S. degree followed by my Ph.D., and, lastly, my law degree. The fact that I learned more about surveying upon attaining each degree, doesn't mean each degree should be required for licensing.

My opinion is that an individual that passes the fundamentals of surveying exam, professional surveying exam, and state specific exam has the knowledge necessary to competently practice surveying. Competent practice demands a minimum level of knowledge - not retention of all knowledge possible. A degree will instill the information in less time, with a better understanding, and with more extensive knowledge. Yet, an intelligent individual, through self-study, and extensive experience can also gain the minimum level of knowledge for competent practice. I believe the important point is whether the individual has the knowledge, not the way the knowledge was acquired. Some of the best surveyors I have ever met or followed had no formal education or a two year degree only.

1 A search portal that provides ABET accredited surveying programs can be found at <https://amspub.abet.org/aps/category-search?disciplines=69&disciplines=67>

† Other books and articles by Knud can be found at <https://umaine.edu/svt/faculty/hermansen-articles/>

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Unwritten Rights

LEGAL BOUNDARIES: MISNOMER OR MISCONCEPTION

June 14, 2023

xyht.com

Jeff Lucas, JD, PLS, Esq

A misnomer is “a wrong name or inappropriate designation,” the “use of a wrong or inappropriate name.” (Webster’s) Otherwise stated, “a misnomer is a particular kind of mistake in labeling.” (Google) A misconception, on the other hand, is a “wrong or inaccurate idea or conception.” (Webster’s) Another way of phrasing this is “an opinion formed from a poor understanding of the topic.” (Google) It seems to boil down to a simple mislabeling versus not understanding the subject matter.

I have said for a long time in seminars and other fora that the term “unwritten rights” (referring to unwritten property rights) is a misnomer. I have finally decided it is more than just a mislabeling, it is a lack of understanding the subject matter.

Either that, or it is a throwback to the Neanderthalic idea that slapping the client’s deed on the ground (deed-staking) is good practice and anything else is practicing the law. Actually, if you think about it, staking the client’s deed on the ground in contradistinction to the property boundary lines that are already established on the ground, could be considered a legal opinion that the title documents are wrong. Perhaps this is where the idea of “unwritten [property] rights” was illegitimately conceived and subsequently born.

In the property context (not constitutional law), I’m not sure who first came up with the idea of unwritten property rights. In 1955, Curtis Brown published an article entitled “Duties and Liabilities of the Surveyor Where Land is Transferred by Unwritten Means.” In that article Brown discussed “unwritten

means of transferring title” and included estoppel, agreement, recognition and acquiescence, adverse rights [i.e., adverse possession], statutory proceedings, accretions and erosion, and escheatment. We will eliminate “statutory proceedings” and “escheatment” because these two activities do not involve surveyors.

We will put adverse possession aside for another day, as it deserves its own discussion that I can’t give in the space I have available. Let’s just say that adverse possession is both a title and location doctrine.

The title will be affected in an adverse possession case, but in all the other situations only the location of the property is affected, not the title. Therefore, no conveyance is taking place, meaning there are no unwritten rights/transfers of property. It is also important to note at this point in the discussion that boundaries involve two questions: 1) the legal question of title; and 2) the factual question of location.

Possibly picking up where Brown left off, sometime in the mid-1970s, Darrell Dean and John McEntyre, who were then professors in the School of Civil Engineering at Purdue University, wrote a 171-page treatise entitled “Establishment of Boundaries by Unwritten Methods and the Land Surveyor.”

As Brown did in his 1955 article, Dean and McEntyre discussed what they considered to be the primary doctrines by which title may be transferred by unwritten means: adverse possession, estoppel, oral agreements, acquiescence, and practical location. Again, with the exception of

adverse possession, none of these location doctrines affect the title to the property.

We will take our last treatment of unwritten rights from Brown’s 1979 article, “Land Surveyor’s Liability to Unwritten Rights.” In that article, he describes three surveying scenarios based on real events, wherein title to property was somehow conveyed by unwritten means. In all three cases, however, there was written title and there was confusion as to the on-the-ground location of the property.

The real question in each case boiled down to the factual question of location, not the legal question of title. The star-witness case Brown discussed in that article but did not name, turned out to be *Western Title v. Murray and McCormick*, (1977), that Ted Madson featured in his book *The Anatomy of a Surveying Disaster*, (1989). The ostensible unwritten transfer in that case was actually a junior/senior rights issue between two properties out of a common grantor. The rights were written, it was an interpretation issue (who had the senior rights?), not an unwritten transfer of title.

“Unwritten rights” is not a misnomer, it is a misconception of the difference between the title to property (the legal question) and the factual question of location (not a legal question). By the way, answering the factual question of location is not practicing the law—it is practicing land surveying.

Jeff Lucas is an attorney and land surveyor in private practice in Birmingham, AL. He is an author, columnist, lecturer, seminar presenter, and continuing education provider. His monthly newsletter, The Lucas Letter, deals with legal issues and the practice of surveying. More information can be found at www.lucasandcompany.com

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The National Society of Professional Surveyors has an active government affairs program that protects the interests of the surveying and mapping professions in the federal legislative and regulatory arenas. Working with a government affairs consultant, NSPS monitors federal government activities that may be of interest and concern to our members. The consultant works closely with members of the NSPS Government Affairs Committee and our Executive Director to represent members' interests before Congress and Executive Branch Agencies.

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Education

- ABET-Lead Society for surveying/geomatics program evaluation for accreditation
- Scholarship Program: 15 annual awards

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- ALTA/NSPS Land Title Survey Requirements
- NSPS Model Standards

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

Chapter 81 – Sila v Saunders (2008)

As has been noted previously herein, the Court has never adopted the concept of practical location for Nebraska, so that doctrine remains unknown here, having never been applied to boundary resolution in Nebraska. The Court, as we have repeatedly observed, has instead seen fit to rely almost exclusively upon the statute of limitations for the purpose of bringing repose to boundaries, while also rarely making reference to estoppel as a supporting factor, which the Court has seldom found it necessary to expressly invoke in the boundary context. Although practical location has never been implemented in Nebraska under that name however, our present case provides a superb example of a boundary location which was derived through the humble and unsophisticated process of practical location, conducted by land owners themselves, despite the fact that the Court never uses that conventional terminology when making reference to it. Here a long established practical boundary is effectively challenged by one survey, while being documented by another, yet this is not a true contest between opposing surveys, because one surveyor was unaware of the existence of any agreed or established line, and the other chose to depict both lines, so neither of them made a deliberate commitment to one boundary location over the other. Under the Court's flexible view of surveys, though surveys can create tracts, boundaries remain perpetually subject to the manner in which the land owners act upon their legal descriptions, because both surveys and legal descriptions, as we have seen the Court consistently maintain, merely identify land, so surveys cannot represent the sole form of boundary control, since that domain is ultimately governed by the many equitable elements of title law. In addition, we have learned that the Court has long supported the use of agreements, in part to empower land owners and encourage them to resolve their own issues, but also to require them to live up to their commitments, rather than either changing their own prior position, or changing what has been done on the ground by others. Therefore, intent on the part of land owners to establish a boundary themselves is always a potentially controlling factor, because no law exists mandating that no boundary can be established without a survey, ascertaining a described boundary location by means of a survey is just one option, rather than an absolute obligation under the law, and statute 34-301 serves as confirmation of this. Moreover, the Court's desire to protect the corners and lines of an original survey has nothing to do with guarding the survey itself, it simply represents a manifestation of the Court's emphasis upon supporting secure and stable societal conditions, which can often mean disregarding boundary locations of record, while honoring land use as primary evidence of intent. The courts of all states generally strive to prevent surveys which operate in a manner that is disrespectful toward established land rights from controlling, and such rights once in place upon the ground, as our course of study has amply demonstrated, constitute the primary source of judicial reliance in the adjudication of boundary issues. The case we are about to review stands as the Court's clearest recognition that agreed boundaries can become legally controlling, showing that the purpose of the statutory option to honor agreed boundaries merely represents the element of adversity supplanted by the element of agreement, creating a condition which is legally binding under statute 34-301, though it does not conform to any boundary location of record.

Prior to 1961 – The Saunders family acquired the north half of the NW1/4 of an apparently typical Section 13, presumably described in the usual PLSS fashion, which then became their family farm. This tract was evidently bounded by a section line road on the west, and it was fenced on the other 3 sides, although whether or not the entire tract was under cultivation at this time is unknown.

1961 – The grandfather of Saunders died, and the family farm was partitioned between his 3 sons, George got the west 18 acres of his late father's tract, while Eugene and Vern split the remainder. How the land which passed to Eugene and Vern was described is unknown, but George's tract was described simply as "the west 36 rods of the north half of the NW1/4", nominally amounting to 18 acres, subject of course to any measurement variation that may have been present in the original survey of that particular section.

1962 – Vern died, and Eugene, who was the father of Saunders, acquired Vern's tract, apparently before any separate use of the farm had been made by any of the brothers. George and Eugene then decided to establish their mutual boundary on the ground, and rather than obtaining the assistance of a surveyor, they decided to simply identify and mark the boundary between their tracts themselves. To accomplish this, they first measured 36 rods eastward along the north fence line, using a 100 foot tape, from the centerline of the road, which they logically presumed to represent the section line, and when they reached their destination, they monumented the northeast corner of George's tract by crimping a penny over a strand of the barbed wire comprising the fence. They then repeated that process with respect to the south fence, and having done so, they were both fully confident and satisfied that they had properly and conclusively divided the Saunders tract, in accord with the wishes of their late father.

1963 to 1965 – The two brothers began farming their respective tracts up to the penny line, but near the end of this period, the south fence was removed. Before removing the fence however, a well was placed where the south penny had been, and the brothers agreed that the well had accurately replaced the penny as the boundary monument anchoring the south end of their property line.

1966 to 1985 – The mutual use of the land up to the established line continued throughout this period, without any material variation. At an unspecified time however, a tree grew into the north fence, and the segment of wire bearing the north penny became embedded in the tree. Nevertheless, the two brothers remained fully aware of the location of the penny, and when they later cut down the tree, they cut it above the fence, so the stump containing the penny still stood, acknowledged by both of them as the monument marking the north end of their property line.

1986 to 1989 – George and Eugene both died during this period, but the use of their tracts was carried on just as before, by their heirs.

1990 to 2001 – The agrarian use of all of the Saunders property continued, although the east and west tracts were farmed as one for an unspecified number of years during this period. At the end of this period, the Saunders heirs conveyed the west tract to Sila, who acquired it without making any effort to learn or verify the location of the boundaries of his tract, apparently unconcerned with the location of his east line, and without asking anyone where that boundary line might be, or inquiring about whether or not it had ever been physically marked.

2002 to 2005 – How the land was used during this time period is unknown, but relations between Sila and the Saunders family evidently turned sour, when at the end of this period Sila ordered a survey, which indicated that his tract extended 5 to 10 feet eastward beyond the line established in 1962. Saunders objected to the surveyed line, but Sila was apparently convinced that the established line was of no legal significance, so after Saunders pointed out the objects which marked that line, Sila proceeded to bury the well with dirt, tear out the stump, and file an action against Saunders, seeking a decree that his survey controlled the location of the disputed boundary. Evidently aware that adverse possession might be inapplicable to the situation, Saunders wisely responded by ordering a survey of his own, which showed the relationship between the two lines at issue, and identified the stump and the well as the historically honored monuments marking that boundary.

Sila argued that under statute 34-301 the proper location of the boundary in question could only be determined by means of a survey, and his survey had correctly placed the east line of his tract in the position indicated by his legal description, without regard to any other evidence, so he owned all of the land lying to the west of the described line, as that line was depicted on his survey. Sila further argued that both adverse possession and recognition and acquiescence were irrelevant, because the location of the contested line was always clearly defined and was never unclear or unknown, and because the effort to mark that line in 1962 was nothing more than an estimation or approximation of it's location, and because all of the parties who had relied upon the 1962 line were members of the same family, so their use of that line was not legally binding upon him or anyone else. Saunders argued that the disputed line had been adequately located and monumented on the ground in 1962, and that the location thus marked was intended to be permanent, by all of the parties who held any interest in the lands thereby divided for over 40 years, so the boundary in contention had been conclusively established in the monumented location, thus that location was legally binding upon all parties, and it was not subject to relocation by means of any subsequent survey. Saunders further argued that the boundary location in question was controlled by recognition and acquiescence, regardless of how that line was legally described, and regardless of the fact that it had been established and accepted by two brothers, because his late father and his late uncle had intended the monumented line to be definitive and final, and they had always treated it in that manner. Unconvinced that the line monumented in 1962 was properly placed, or that it was really meant to be permanent, the trial court held that a boundary location must be so ambiguously described as to be incapable of being precisely surveyed, in order to be controlled by the doctrine of recognition and acquiescence, and therefore decreed that Sila's survey accurately depicted the legally binding location of the boundary between the litigants.

The Saunders brothers, not being land surveyors, had quite obviously failed to monument their mutual line with precision in 1962, but owners of property thus partitioned are free to establish an agreed boundary, the Court well understood, and they are not expressly required or legally bound to order a survey for that purpose. Under the law, upon deciding to divide their land, property owners can establish their own controlling boundary monuments, by marking their respective tracts in a plainly visible and permanent manner, which provides open notice to all those who may later inquire about their boundary location. In the eyes of the Court, the brothers had performed the equivalent of an original survey, since they established the initial location and monumentation of a line which was previously described only on paper, and rather than disrespecting what they had done, the Court found their activity in 1962 to be worthy of praise, commenting that they had "carefully measured and marked" their boundary. A genuine boundary, though established between family members, can be permanent and binding, because in creating such boundaries they stand as strangers to one another, thus their solemn acts cannot be ignored or dismissed, either by others or by the law itself, as creating only an inherently temporary or permissive condition. Unwritten boundary agreements are discouraged and rendered voidable by the statute of frauds, but even a verbal boundary agreement lies entirely outside the statute of frauds, as several of our earlier cases have illustrated, once the agreement is put into practice through the subsequent acts or performance of the relevant parties, in fulfillment of their agreement. Moreover, the subsequent conduct of the parties to a conveyance can provide the best evidence of whether or not any agreement between them, either documented or undocumented, was intended to be permanent, as the Court has also frequently acknowledged in prior cases. In addition, testimony regarding boundary locations is always admissible, and can control over the location of record, under the boundary resolution process mandated by statute 34-301, when such testimony reveals that the parties who established a given boundary, without the benefit of a survey, did so intentionally, and that intent is borne out by their subsequent treatment of their own line as conclusive. The trial court, the Court announced, had improperly defined recognition and acquiescence, incorrectly restricting the use of that doctrine, which exists to facilitate all amicable forms of boundary resolution, to poorly described boundaries, when in fact recognition and acquiescence is potentially applicable to all boundaries, regardless of how they are described, thus the lower court decision was fatally flawed and could not stand. Citing comparable cases from California, Florida, Oregon, Utah and Washington, while also confirming that the concept of recognition and acquiescence had been properly applied by the Court of Appeals in the Campagna case of 2006, previously reviewed herein, in the context of a PLSS boundary, the Court expounded upon it's applicability to the present scenario, spelling out why Sila could not prevail:

"In 1962, George and Eugene set about establishing the shared boundary of their properties ... measuring and marking the boundary to split the farm ... George and Eugene decided not to hire a professional surveyor ... after the removal of the fence in 1965, the well was understood by George and Eugene to be the south visual marker for the boundary ... when George died in 1986 ... they maintained the crop boundary line according to the well/stump boundary ... when Eugene died in 1989 ... they still considered the well and the tree stump as boundary markers ... Sila ... did not have a survey of the property conducted prior to purchase ... In 2005, Sila ... discovered ... that the platted boundary of Sila's property lies east of the boundary claimed by Kirk (Saunders) ... Mordhurst ... hired by Kirk to survey the 18 acres in accordance with the stump and the well as boundary markers ... was able to find the stump's prior location by excavating it's remainder ... Mordhurst's survey used the stump ... and the well ... the district court ... opined that as a matter of law mutual acquiescence can only determine a boundary that is unknown ... under the doctrine of mutual recognition and acquiescence ... a different boundary shown to have existed between the parties for the 10 year statutory period ... is determinative, and not that of the original survey ... where a boundary supposed to be the true line ... is acquiesced in by the adjoining owners for more than ten years, it is conclusive ... the district court ... relied on the proposition that the doctrine is simply unavailable when a deed ... sets forth ... metes and bounds ... this has never been the law ... we do not understand the rule to be that ... the true line should be absolutely unascertainable ... what was important was that the true line was actually unknown and uncertain to the parties acquiescing ... the parties were free to forego the trouble and expense of having a survey conducted and to agree upon a division line ... the fact that an accurate survey is possible is not conclusive ... it is the uncertainty in the minds of the landowners ... that is relevant ... that the true

boundary is knowable ... does not preclude the property owners from acquiescing ... George and Eugene understood the boundary they had marked to be the permanent actual boundary ... error in the measurement ... does not make the boundary ... a temporary agreement or approximation ... the filial relationship rule has no bearing on a mutual recognition and acquiescence analysis ... George and Eugene in fact mutually recognized and acquiesced to the boundary represented in Mordhurst's survey ... the boundary was established by mutual recognition and acquiescence ... we ... set the boundary between the properties in accordance with the stump and well markers as represented in the Mordhurst survey."

The authority of the Saunders brothers to control their own land had been overlooked and improperly discounted by the lower court, so the Court reversed the lower court ruling, striking down Sila's victory, and fully upholding the penny line, just as if it had been the product of an authentic original survey. In so doing, the Court approved the Campagna decision, verifying that an agreed or acquiesced boundary can control even over a PLSS line, however clearly the line of record may be described, because the agreement is not fundamentally antagonistic to the described location, it merely represents the practical interpretation of the described line, implemented by the parties on the ground. Any degree of uncertainty justifies the formation of a boundary agreement, the Court indicated, the record location of the line in question need not be unknowable, or even ambiguous, if it has never been placed upon the ground, it remains genuinely unknown to the parties. Even crude and implicitly inexact objects such as a stump and a well can become boundary monuments, the Court observed, adhering to its historically broad and inclusive view of monuments, and again communicating the Court's strong desire to enforce the principle of monument control, wherever it can be applied. While the Court understands and highly appreciates surveys as evidence, it also realizes that surveys are just one form of evidence, and there is no legal obligation to conform to a survey, or even to obtain a survey, between parties who hold the authority to resolve their own boundary locations, as did the Saunders brothers. From an evidentiary perspective, the surveyor employed by Saunders had a huge advantage over Sila's surveyor, because Saunders provided his surveyor with relevant knowledge and information that Sila's surveyor never had, making the outcome inevitable. Whether Sila's surveyor would have proceeded any differently, had he been fully informed, is unknown, but it appears that he never had the chance, because Sila, acting in his own self interest, presumably never shared what proved to be the controlling evidence with his own surveyor. Nonetheless, in the end the survey which properly utilized all of the available evidence, most notably the parol evidence relating to the homemade boundary monuments, and which fully illustrated the parameters of the conflict controlled, emphasizing that in order to be well prepared and well qualified to prevail, a survey must incorporate all the evidence, rather than being limited to evidence of record, while bypassing important evidence on the ground. The mere execution of a resurvey, along with the creation of a new legal description, as all surveyors know, cannot alter an established boundary, and given the strong preference of the Court for boundary monuments of substance, such as the well and the stump in this instance, as opposed to minimally visible survey monuments, the new legal description created for Sila simply stood no chance of controlling. Just like the vanquished boundaries of record in the Campagna, Huffman and Brandt cases, of the previous two years, the precise location of the described boundary at the heart of this battle had been mutually neglected by the relevant land owners, and had never been utilized at all, making that location irrelevant, in the view of the Court. Naturally quite disinclined to punish land owners for marking their boundaries, the Court recognized and verified that the Saunders brothers had done nothing that could be portrayed as illegal, they had merely resolved the location of a boundary lying entirely within their own land, which was thus of relevance only to them. They had prominently monumented their boundary, in complete good faith, providing ample physical notice of the existence of an established line of demarcation, thereby placing the burden upon Sila to question those existing boundaries prior to making his acquisition, if he ever intended to do so. Sila's sole reliance upon his legal description, along with his ignorance of the power of the principle of monument control, made him merely the next unfortunate party to learn the age old lesson, that every grantee must exercise both diligence and vigilance, before stepping into the shoes of his grantor.

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).



Issue 33 July 2023

NSRS Modernization News

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

Introducing the NSRS Modernization

Alpha Site

To provide early access to upcoming, yet incomplete, products of the modernized NSRS, NGS has created the [Alpha NSRS Modernization website](#). That site provides examples of the content, format, and structure of select data and products that NGS plans to release as a part of the Modernized NSRS. Products found on this page are for testing purposes only and do not contain any authoritative NGS data or tools. They are under active development and are subject to change without notice. But early access to alpha products should enable a smoother rollout of the Modernized NSRS. As products are released to this site, NGS will refer to them as being “released to Alpha.”

SPCS2022 Released to Alpha

An alpha version of the State Plane Coordinate System of 2022 (SPCS2022) and its implementation in the NGS Coordinate Conversion and Transformation Tool (NCAT) has been released to the Alpha site. This includes:

- [Alpha SPCS2022 website](#)
- [Alpha NCAT](#) with SPCS2022 conversions enabled
- [Online interactive maps](#) of SPCS2022 zones
- Tables of [zone definitions](#) and [example coordinates](#)
- [Maps](#) of linear distortion with performance statistics
- Updated SPCS2022 [Policy](#) and [Procedures](#)

Alpha SPCS2022 content will be updated and augmented as it evolves toward completion.

Progress in Ongoing Projects

There are currently **32 ongoing projects** related to NSRS modernization around NGS. Here are some highlights.

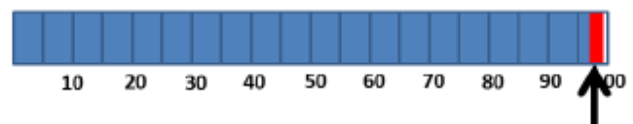
GRAV-D (Project Manager: Jeffery Johnson)

In June of 2023, NGS's Gravity for the Redefinition of the American Vertical Datum (GRAV-D) project completed the airborne data collection effort in the American Samoan and Hawaiian regions. NGS teamed up with NASA Langley Research Center's Research Services Directorate to use their Gulfstream IV jet (Tail # N522NA) for this project. These remote Pacific islands were the largest hurdles for the GRAV-D project to finish before December 2023 so that the geoid team can have a complete airborne gravity data set as they build the North American-Pacific Geopotential Model of 2022 next year.

GRAV-D progress last quarter: **up 2.6% to 99.6%**

Ahead of Schedule!

Recently: American Samoa, Hawaii



Schedule: 97.5%



SENSLA Fall Seminar

October 14, 2023
American Legion
Bennet, Nebraska

PSAN Board Meeting

December 1, 2023 at 9AM CT
Nebraska State Surveyor's Office
Lincoln, Nebraska

SENSLA Winter Seminar

December 9, 2023
Omaha, Nebraska

2024 Winter Conference

February 8-9, 2024
Holiday Inn & Convention Center
Kearney, Nebraska

2024 Summer Seminar

July 19, 2024
Mahoney State Park
Ashland, Nebraska

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