

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
9TH DIVISION

M. SCOTT FOSTER;
MIKE WRIGHT;
DANNY BOYETT;
JAY YOUNG; and
MICHAEL DANIELS

PLAINTIFFS

vs.

CASE NO. 60CV-18-8542

DATASCOUT,LLC

DEFENDANT

**DEFENDANT DATASCOUT, LLC'S OBJECTION TO IMPORTANT NOTICE OF
ORDER FOR DELIVERY BEING SOUGHT**

Defendant DataScout, LLC ("DataScout"), by its attorney, H. Clay Fulcher, for its Objection To Important Notice For Delivery Being Sought, states:

1. Plaintiffs seek an Order for Delivery requiring DataScout to surrender possession of certain electronic or printed surveys or plats they allege is their collective personal property.
2. The surveys in question can be described as follows: (a) surveys or plats received by DataScout in electronic or printed form from the State of Arkansas Division of Land Surveys (hereinafter "DoLS"), a division of the Arkansas Geographic Information Systems Office ("AGISO") on or about December 5, 2018 (hereinafter the "December 2018 surveys or plats"); and, (b) other surveys or plats received by DataScout in electronic or printed form from the State of Arkansas Division of Land Surveys within three years prior to the filing of this action (hereinafter the "Other Surveys or Plats").

3. With respect to the December 2018 surveys or plats, DataScout sent a valid, written Freedom of Information Act (“FOIA”) request to the AGISO on November 30, 2018 requesting a bulk data file of the DoLS’s surveys and plats. The request followed several conversations between DataScout employees and AGISO’s and/or DoLS’s employees to determine whether the surveys and plats were available to the public. DataScout was told that it needed to send a FOIA request and that the AGISO would produce the surveys and plats. No one from the AGISO or the DoLS objected to the FOIA request and neither ever stated to DataScout that the data was not subject to a FOIA request.

4. On or before December 10, 2018, the Arkansas Society of Professional Surveyors (“ASPS”) were informed that DataScout had obtained the surveys or plats pursuant to a FOIA request. The ASPS announced on December 10, 2018 that it had retained an attorney to review the issue. No one from the ASPS or anyone acting on its behalf contacted DataScout to notify DataScout that several Arkansas surveyors believed that AGISO had no right to provide the surveys or plats to DataScout and that DataScout had no right to possess the surveys or plats even though it had sent a proper FOIA request for documents that AGISO stated were public records subject to the FOIA.

5. Instead of notifying DataScout that several surveyors believed that AGISO should not have provided the surveys or data to DataScout, five surveyors filed suit against DataScout on December 17, 2018.

6. Had anyone on behalf of the ASPS or the five surveyors named as plaintiffs in the lawsuit contacted DataScout prior to filing suit and informed DataScout of their concerns, DataScout would have returned the December 2018 surveys and plats to the surveyors or their counsel, or alternatively would have destroyed the data files containing the surveys or plats.

7. As of the date that the lawsuit was filed, DataScout had not used or disseminated any of the surveys or plats. Within twenty-four hours after being served with the lawsuit, DataScout agreed to return the December 2018 surveys and plats to the surveyors or their counsel, or alternatively agreed to destroy the data files containing the surveys or plats.

8. With respect to the Other Surveys or Plats, DataScout objects to the plaintiffs' request that these Other Surveys or Plats be surrendered for numerous reasons:

a. Historically, DataScout obtained copies of surveys or plats from numerous sources, including from the AGISO/DoLS website. DataScout primarily uses the surveys or plats to assist county officials with their mapping needs and requirements.


b. For many years prior to 2018, the public had the ability to download unredacted individual surveys and plats from the AGISO/DoLS website at no cost. In or about March 2018, AGISO developed a new process for accessing plats or surveys on DoLS's website. The new process restricted the ability of the public to download plat or survey data though it did allow the public to view unredacted plats and surveys and upon request, AGISO would provide unredacted paper copies of the plats or surveys. (Exhibit A, March 7, 2018 AGISO board minutes – Old Business, item 2 page 3, attached hereto and incorporated herein)

c. At least one of the plaintiffs, M. Scott Foster, sat on the AGISO board in 2018 and almost certainly knew that the public had long been able to view unredacted surveys and plats, and to view the legal descriptions of the surveys or plats. It does not appear that any legal action had ever been taken against any individual or entity for viewing the unredacted surveys or plats on the DoLS website even though now the plaintiffs have taken the position that the only information on the surveys or plats that can be accessed by the public is the identification of the person or person who made the plat and survey and placed [any] survey markers.

d. It is impractical if not impossible for DataScout to determine whether the thousands of electronic copies of individual surveys or plats it has obtained over the past three years were obtained from AGISO/DoLS or from other sources.

WHEREFORE, DataScout agrees to surrender or destroy the December 2018 surveys and plats it obtained from the AGISO, but objects to being required to surrender copies of individual surveys or plats it has obtained over the past three years from sources that cannot be identified.

DATASCOUT, LLC, Defendant

By: 
H. Clay Fulcher, Ark. Bar No. 88005
684 N. Cliffside Dr.
Fayetteville, AR 72701
Phone 307-349-7761

CERTIFICATE OF SERVICE

I, H. Clay Fulcher, attorney of record for the Defendant, DataScout, LLC, state that I have this 21th day of December 2018, served the foregoing to John Keeling Baker, attorney of record for the Plaintiffs, via electronic mail and by U.S. First Class Mail.


H. Clay Fulcher

EXHIBIT A

Arkansas Geographic Information Systems Board (GISB) Board Meeting

Arkansas Real Estate Commission
AREC Board Room
612 South Summit Street
Little Rock, AR 72201

Meeting Minutes
Wednesday, March 7, 2018
9:30AM - 12:00PM

- **Board Meeting called to order by Vice-Chair, Ms. Sharon Hawkins at 9:33 a.m.**
- **Roll Call**

Board Members Present:

Ms. Sharon Hawkins (Vice-Chair)
Mr. Anthony Davis
Honorable Rusty McMillon
Honorable Beth Rush
Ms. Amy Whitehead
Mr. Marion Scott Foster
Dr. John Dennis
Dr. Cody Decker
Mr. Matthew Charton

Board Members Absent:

Ms. Yessica Jones
Mr. Taylor Wynn
Mr. Russell Gibson

- **Vice-Chair Welcomes and Acknowledges Board Members, Board Member Designees, & Guests**

AGISO Staff:

Mr. Shelby Johnson, Arkansas Geographic Information Officer
Ms. Kayla Lyon, AGISO
Mr. Jonathan Duran, AGISO
Ms. Maria Owen, AGISO
Ms. Jennifer Wheeler, AGISO
Mr. Matt DeLong, AGISO
Mr. John Thornton, Division of Land Surveys
Ms. Ashley Vandiver, Division of Land Surveys

- **Meeting**
- **Minutes:** The Vice-Chair called for any corrections to the December 6th meeting minutes. No one contested the December 6th minutes.

Motion: Motion to accept the December 6, 2017 minutes- Mr. Anthony Davis

Second: Honorable Beth Rush

No discussion; Unanimously Approved.

➤ **Old Business**

1. **AGISO Report (Shelby Johnson)**

Arkansas Spatial Data Infrastructure Usage – There have been 10,144 users from April 2017 to March 2018 and 2,270 since January 2018. There have been 15,025 layers downloaded since April 2017 and 3,445 since January of this year. The number one product being used is Parcels. The Feature Services, from January 1st- March 6th, shows Boundaries being used the most. There was a spike in Boundaries Feature Service Requests between December 26, 2017-January 3, 2018. There were 1.8 million views on December 28, 2017 alone. Image Services from January 1st to March 6th, show Imagery 1ft 2017 being the number one product used. The Plats count for the Division of Land Surveys is 192,764 records as of March 6th. There have been 131 corners done from April 2017 to March 6th, 18 of them being in January and February 2018. The Surveyors under contract for the Corner Restoration Program have been paid a total of \$33,500 leaving \$66,500 to be used before the end of the fiscal year. The AGISO is exploring the idea of working with Northwest Arkansas for a Corner Restoration Project similar to the project with Jonesboro last year.

City Annexation Status – AGISO submitted the 2017 BAS to the U.S. Census Bureau on February 28, 2018. There have been 37 municipal boundary changes processed in 2018 as of March 6th.

Discussion Followed.

MAP21 All Public Roads Linear Referencing System –The entire state has been completed. Maintaining the data will be the focus going forward.

Ongoing Policy Tracking – AGISO has been a Participant in the NG911 Strategic Planning Effort. Currently, Arkansas has no Next Generation 911 strategy. The AGISO is helping to form one along with the Arkansas Department of Emergency Management, the Association of Arkansas Counties, the Arkansas Municipal League, and several others like the 911 directors and dispatchers. There is a public phone call every other Tuesday.

Honorable Rusty McMillon gave a brief description of his counties Next Generation 911 strategies and efforts.

Progress of ACF Standard Revision Process – The Public Comment Period for the ACF Standard Revision has been completed. AGISO is preparing a summary report for the Bureau of Legislative Research. The Rules and Regulations Subcommittee will meet in April. The AGISO will update the Board once this revisions have been approved and completed.

U.S. Census Bureau 202 Census Preparation Work— On the School District Boundary Review Example provided, the blue lines are what's recorded in the record books as the accurate boundaries. The red lines are the wrong boundaries and reflect changes that need to be made. If the boundaries are difficult to find, the AGISO will confer with the county clerks or election commission and even read through the

original assessment rolls. The AGISO had 30 counties of school districts to change and submit to the Census. The 2018 Voting District Boundaries have been reviewed by each county clerk for verification. The corrections by the AGISO staff are underway and will be transmitted to Census before the May 31st deadline. The Local Update of Census Address map shows the participation of cities, counties, and the state to review the Census master address file. The blue are counties that have enrolled to participate, the purple are cities that enrolled to participate, and the yellow is the AGISO. The AGISO has actually just elected to review the master address file for the whole state. There are only 120 days to complete this review. The AGISO will review the data independently of the cities and counties that have opted in to participate. The review at the state level will begin at the end of March.

Discussion Followed.

2. **Surveyor Plat Archive Technical Change to Access**— This is a new tool that AGISO Sr. GIS Analyst, Wes O'Donohue, has been creating. It is a PDF viewer for plats that is password protected. A letter has been provided to the board to review about the reasoning behind this transition. The public will only have viewing rights to the plats and will need to reach out to the office if a paper copy of a plat is needed. This new tool enables surveyors and assessors to have the same access they currently have with the plats. If anyone tries to print, snip, or download the plat it will not work and will only display a black box.

Discussion Followed.

➤ **New Business**

1. **Election of 2018 Officers – Chair & Vice-Chair**— There were nominations for Ms. Sharon Hawkins to be elected Chair and for Mr. Matthew Charton to be elected Vice-Chair.

Motion: Motion to cease nominations for chair and to elect Sharon Hawkins – Mr. Anthony Davis

Second: Ms. Amy Whitehead

Discussion Followed; Unanimously Approved

Motion: Motion to elect Mr. Matthew Charton for Vice-Chair – Ms. Sharon Hawkins

Second: Ms. Amy Whitehead

Discussion Followed; Unanimously Approved.

2. **Board Expense Reimbursement & Board Authorization of Agency Purchasing Card Use for Board Meeting Expenses**— AGISO's annual approval from the Board to reimburse members for any travel expenses and for uses of the agency Purchasing Card for meeting expenses according to state requirements.

25-16-902. Expense reimbursement.

(a) Every state board may, by a majority vote of the total membership of the board cast during its first regularly scheduled meeting of each calendar year, authorize expense reimbursement for each board member for performing official board duties.

(b) The expense reimbursement shall not exceed the rate established for state employees by state travel regulations.

Motion: Motion to authorize Board Expense Reimbursements and Agency Purchasing Card Use for Board Meeting Expenses – Honorable Rusty McMillon

Second: Honorable Beth Rush
Discussion Followed; Unanimously Approved.

3. Agency Recommendation on Repealing Mapping Grade GPS Standard — The current mapping standard was put into place in 2000 or 2001. This has not been changed since it was adopted and is now out of date with the current technology used to collect data. Governor Asa Hutchinson has asked the state agencies to look at their rules and regulations that are no longer relevant and repeal them. He has authorized the repealing to be done immediately. The AGISO asks the board to read through the current mapping standard and then put it on the agenda for the next meeting as an action item.

Discussion Followed.

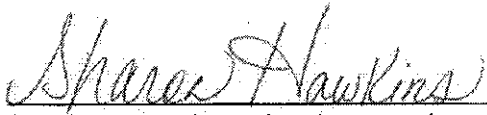
- Announcements
 - The spring meeting will be at University of Arkansas Monticello. The AGISO will coordinate with Dr. Dennis for travel logistics.
- Adjournment

Motion: Honorable Rusty McMillon

Second: Honorable Beth Rush

Next Meeting: June 13th, 2018 in Monticello, Arkansas

Minutes Adopted



Ms. Sharon Hawkins, Chair (Signature)