The Ongoing Evolution of Land Surveying

Williamsburg, Virginia
January 31 - February 2, 2013
A Law That Works
John Palatiello

The American people and its Federal, state and local political leaders, indeed elected officials worldwide should have learned an important lesson from the devastating earthquake that ravaged Haiti on January 12. Why did Haiti suffer such abject building failures when earthquakes of similar or greater magnitude are less severe in the United States? The answer is a combination of factors.

“It’s really not the earthquake that’s killing the people, it’s the buildings that fall down on people, that cause most of the casualties,” Thomas Jordan, director of the Southern California Earthquake Center said January 16 on CBS Evening News.

The United States has some of the most comprehensive building codes in the world. Standards for construction of structures are implemented and enforced by both the construction industry and government agencies. Inspections and oversight are important government functions, but compliance and proficiency by the industry is also critical.

But the U.S. is also a leader in another area that has served the Nation well. There is a traditional process which emphasizes the importance of quality over low price in the selection of firms to provide architecture, engineering, and related services.

Known as the “Brooks Act”, the Federal law enacted in 1972 codified a process that had traditionally been used by Federal agencies since before the Civil War. It provides for the selection of firms to perform architecture, engineering, and related services on the basis of the competence, qualification, background, and track record of competing firms, not the lowest bid.

“Ask ten A/E firms to bid on the design of a particular facility and many agencies will take the easy way out and select the low bidder. Under such circumstances, we may end up with a technically capable architect or engineer, but one who, for lack of experience or because of a desire to stay within his bid reduces the time spent on field surveys or in the preparation of detailed drawings, or in providing inspection services. As a result, the government may have saved itself a half of one percent to the cost of construction, operation or maintenance,” said Senator Jennings Randolph (D-WV) said on the Senate floor during the 1972 debate on the legislation that became the Brooks Act.

The “qualifications based selection” or “QBS” process is codified for Federal agencies in Title 40 of the United States Code, section 1101. Named for its author, then Representative Jack Brooks (D-TX), the Brooks Act was passed in 1972 on a bipartisan basis and has been supported by lawmakers in both parties over the ensuing 38 years.

Long before “best value” and “past performance” became the tenet of Federal procurement, the Brooks Act was enacted to assure that quality and competence was invested in “A/E” services, so the integrity of buildings, facilities, and other government activities dependent on designs, drawings, surveys, and other related services could be relied upon during construction operation and maintenance over the life of such structures. The QBS process is also endorsed by the American Bar Association in its Model Procurement Code for State and Local Government. More than 40 states, including Virginia, have enacted “mini-Brooks Acts”.

Virginia’s QBS process, Section 2.2-4301 of the Code of Virginia, provides that for the procurement of professional services, particularly architecture, engineering, and surveying. Like the Federal law, Virginia publicly announces its requirements for professional A/E-related services, interested firms compete by submitting their qualifications, usually on a standard government form, SF 330, the agency evaluates the firms’ submittals and selects a short list of most qualified firms for an interview. Based on evaluations of the firms’ qualifications, experience, past performance and other factors, the agency determines which firm is the most qualified to meet the government’s requirements.

The government prepares an independent estimate of the anticipated cost, and a negotiation is held between the government and the selected firm to arrive at a price that is fair and reasonable to the government. In the process, the government holds the cards. If a fair price cannot be negotiated, the government is free to terminate the negotiation and begin discussions with the second ranked firm.

There is no law anywhere in the United States that requires competitive bidding for A/E services. In 2001, legislation to inject price competition to such procurement in Virginia was introduced in the General Assembly. It never made its way out of committee and the proposal has not been reintroduced since.

There is no doubt that the United States has suffered its share of faulty buildings. After incidents such as the collapse of the Hyatt regency in Kansas City and the implosion of the roof of the Hartford Civic Center, Congress investigated these incidents and issued a report on “Structural Failures in Public Facilities” in 1984. It found, “procurement practices that lead to or promote the selection of architects and engineers on a low bid basis should be changed to require prequalification of bidders with greater consideration given to prior related experience and past performance.” The chairman of the subcommittee conducting the study and publishing the report was then Rep. Al Gore, Jr. (D-TN). As President Ronald Reagan said at a ceremony recognizing
In the first week of October, I had the privilege of representing VAS in Ocean City, Maryland at the Maryland Society of Surveyors conference. The old saying, “it’s a tough job but someone has to do it,” was never more true. It was a beautiful three days and as it happened, it was Cruiser’s Week. This twice-a-year festival of hot rods, antiques, and the latest muscle cars turns Coastal Highway into a continuous parade of color and ear-splitting exhaust for three days. Oddly enough this phenomenon was not as pleasing to the wives as it was for the average surveyor in attendance and I will admit that I felt compelled to drop the top on the Mustang and take a couple of laps myself.

All this has nothing to do with surveying of course, but it does give you just one example of some of the great things Deanna and I have seen and done while traveling to surrounding states on your behalf this year and why I definitely recommend to anyone with a little time to give that service to your professional association which can be very rewarding. More than the out-of-state travel, I regard my trips to VAS Chapters the best part of the last two years. Getting to know a little more about Virginia’s surveyors is really what matters and what I have found in traveling to most of our Chapters over the last two years is that while we have a variety of opinions, when we get together and discuss the facts and options, we can come to a consensus and move our profession forward. We certainly face some uphill battles, but if we pool our talents and knowledge, we can find the place that our profession fits into this ever-changing technological environment.

When I took this post in January, my stated goal was to improve Chapter participation. As it happened that was the easiest part of the job this year. It seemed that all I had to do is say that is what I wanted and it happened without any special effort on my part. I believe we have the strongest Chapters that VAS has seen in a while. Excellent representation at Board functions, continuing education offerings, and special events have been highlights at the Chapter level this year. The one low point was the loss of the Appalachian Chapter and while I regret this development greatly, I believe the Western Chapter will do a good job of representing the surveyors in the far southwest of our state. I would like to say thank you to all the Chapter Presidents and other Chapter officers for the warm welcome I have received at your meetings and special functions and I only wish I could have visited everyone. I will continue to make every effort to get out and see the Chapters I have not yet been to over the next fifteen months that I am on the Board at VAS.

65th VAS ANNUAL CONVENTION AND MEETING
January 31—February 2, 2013, Williamsburg Lodge, Williamsburg, VA

Hotel reservations must be made by December 14, 2012.
The rate is $143.00 for single or double room.
Reservations must be made directly with the Williamsburg Lodge
and please use Group Code 6663
Online: https://resweb.passkey.com/go/6663
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Seminars for the 65th VAS Annual Convention

**Tech Session IA: “Torts and the Land Surveyor”**  
Jeffery N. Lucas, Esq., PLS — Lucas & Company, LLC, Birmingham, Alabama

Many surveyors are under the mistaken impression that they are somehow immune to prosecution. That their only responsibility is to their client and the measurements found in their client’s deed when performing boundary surveying work. A tort is “a private or civil wrong or injury, other than breach of contract, for which the court will provide a remedy in the form of an action for damages.” (Black’s Law Dictionary). The rise of professional negligence as a stand-alone tort (instead of purely through contract) and the development of the legal concept that damages can be recovered for injury to property and property rights (as opposed to being recoverable for personal injury only) have combined to open new arenas of land surveyor liability under tort law. This seminar will study the primary torts that can be committed by the land surveyor and the remedies available to property owners injured by the actions of the land surveyor. Ample cases studies will be provided.

Jeffery N. Lucas is in private practice in Birmingham, Alabama. Lucas has been in the surveying business since 1976. He is a licensed land surveyor registered in Alabama, Florida, Georgia, Mississippi and Tennessee. Lucas is also a licensed attorney and member of the Alabama State Bar since 2003. He is also a mediator registered on the Alabama State Court Mediator Roster. Lucas specializes in land boundary issues as an attorney, land surveyor, consultant and expert witness. He has been a seminar leader on surveying topics that include ALTA/ACSM standards, boundary law, law of easements, water boundaries, surveying evidence and procedures, expert witness testimony, business law, contract law, torts and liability. Lucas is the author of “Alabama Boundary Law” and “The Pincushion Effect, The Multiple Monument Dilemma in American Land Surveying” as well as many articles on surveying and boundary issues and a regular column for P.O.B. Magazine.

**Tech Session IIB: “What Went Wrong?”**  
Jeffery N. Lucas, Esq., PLS — Lucas & Company, LLC, Birmingham, Alabama

From Jeffrey: “As I continue “Traversing the Law,” studying and writing about court cases involving boundary disputes and land surveyors, I have found everything from the ridiculous to the sublime. In some cases, I have to shake my head in disbelief over what I was reading leaving me with just one question: What went wrong? This seminar will investigate the answer to this question by a detailed study of several court decisions involving surveyors and surveys that went terribly wrong. The painful lessons learned by others through the school of hard knocks can be painlessly explored and appreciated without the accompanying liability and damages that attach to boundary disputes and negligence actions. These cases will be studied and discussed through a Power Point presentation.”

**Tech Session III: “Wetlands for the Land Surveyor and Wetlands Archeology”**  
Mark W. Headly, Executive Vice President; John P. Mullen, Principal Archeologist; Tammy Bryant, Principal Archeologist/Lab Manager; Boyd Sipe, Principal Archeologist — Wetland Studies and Solutions, Inc., Gainesville, Virginia

Attendees will be provided instruction and knowledge that will help them to determine wetland areas based on the types of soil, vegetative cover and moisture content.

**Tech Session IV: “How to Fix a Boundary Line (and How NOT to!)”**  
Kristopher Kline, PLS — 2Point Inc., Alexander, North Carolina

Kline has a four-year degree (class of ’84) in general science from Bridgewater College of Bridgewater, Virginia and he has been involved in the surveying profession since graduation. In the summer of ’84, he moved to Brevard, North Carolina, and took his first North Carolina surveying position as crew chief for William Leonard, P.L.S. After working for several firms in North Carolina, Kris became licensed in 1991 (P.L.S. L - 3374). He has attended numerous seminars on topics including Rights of Way, Adverse Possession, Ethics, Real Estate Law and various technical aspects of surveying. He is a 1999 graduate of the North Carolina Society of Surveyors (N.C.S.S.) Institute, a three-year continuing education program that has drawn national attention for the quality of its curriculum and instructors. Kris served for a year as the Chairman of the Standards of Practice Committee for N.C.S.S., followed by 5 years as Chairman of the N.C.S.S. Education Committee. He has appeared as an expert witness in court on numerous occasions, and has spent the last several years in the hard school of boundary dispute (an informal class taught the hard way with no fixed curriculum, location, or schedule!) Kris has been teaching classes in North Carolina since 2001 on subjects including Boundary Retracement, Standards of Practice, Adverse Possession, Easements, and Intent of the Parties, as well as a portion of the annual Exam review. More recently, he has been invited to teach classes in South Carolina, Ohio, and West Virginia and Virginia. Kris now writes a bi-monthly column for “Point of Beginning”, a professional trade journal for land surveyors and spends his spare time researching material for upcoming articles and classes.

See Seminars, page 12
Annual Plat Contest

The Annual Plat Contest will be held during the 65th Annual Convention and Meeting, January 31-February 2, 2013. The categories are the same as the 2012 ACSM/NSPS Plat Competition.

Entries may be machine or hand-drafted and have a maximum plat size of 34” x 44”. While each submission must be a single sheet drawing, the drawing may be part of a set. Entries must have been prepared within 30 months prior to the mailing deadline. All entries will be judged on adherence to the minimum standards as set forth by NSPS and VAS. The judges will consider interpretability, content and layout of data shown, presentation, innovation, applicability to typical client or persons using this type of plat, and correctness. Neatness and accuracy of scale will also be considered. All plats must be signed and sealed with a label stating ‘FOR PLAT CONTEST USE ONLY’. Each plat must also be labeled with the name of the category in which it is being submitted. Contest winners will be announced at the Awards Banquet on February 1st.

Plat Categories:

Subdivision Plats
Topographical Maps
ALTA/ACSM Survey Maps
Miscellaneous Maps
Boundary/Cadastral Maps

The first and second place winners in each category can also be entered in the NSPS Map/Plat Contest. First and Second place plaques will be awarded for each category.

Mail your entries to:
Judy Hite
8752 Landmark Road
Richmond, VA 23228

Your entries for each firm or branch office must be received along with the entry fee of $40.00 (for one to six plats) by January 18, 2013. Please make checks payable to the Virginia Association of Surveyors, Inc.

Silent Auction

The silent auction will be held again this year. As always we are looking for items to be donated by the chapters or individuals. These items do not have to be survey related. Donations can be brought to the VAS registration desk starting on Thursday at Noon or sent to the Central Office by January 18th.

We look forward to seeing everyone in Williamsburg. The silent auction will be open at the President’s Reception and close at 1:30 p.m. on Friday in the Exhibit Hall. Items must be paid for and picked up during the last afternoon breaks on Friday. All proceeds go to the Education Trust for scholarships.

Guest Program

The Guest Program will be held on Thursday, January 31 and Friday, February 1, 2013.

Welcome to the 2013 VAS Guest Program. For those arriving on Thursday, we have planned a trip to Yorktown for lunch at the Riverwalk Restaurant and shopping at some very unique boutiques. We will return to the hotel and attend high tea at The Inn. On Friday we will leave the hotel for a tour of the Lazare Gallery, a Russian art museum, followed by lunch at the Charles City Tavern. We will return to the hotel for a wine tasting in the afternoon.
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Awards Banquet and Casino Night

We cordially invite you to attend our Annual Banquet and Casino Night. Our keynote speaker for the Banquet will be Brent Jones. Mr. Jones is the Global Manager, Cadastre/Land Records at Esri where he oversees worldwide strategic industry planning, business development, and marketing activities. He is actively involved in the modernization of land records in the United States and in international activities designing and building cadastral systems in the developing world and Eastern Europe. Based in Washington DC, he has extensive experience with cadastral and surveying systems worldwide utilizing GIS technology. Esri technology is used worldwide for all components of land administration systems including cadastre, addressing, taxation/valuation, planning and development. He is the past Industry Solutions Manager at Esri for Survey and AEC.

We will be installing new state and chapter officers as well as presenting plat contest winners and other various awards. Immediately following the banquet, we are going to have a Casino Night. For your added pleasure, you may listen to the music of RagTop. This husband and wife team sing a wide variety of music. This will be perfect to socialize with friends and just relax and enjoy the entertainment. A cash bar will be available for the evening.

Come join us for three fun filled hours of hanging out with old and new friends, while trying your luck at assorted casino games. Everyone attending the Awards Banquet will be given $1,000 in chips to start the night and from that generate your fortune. For those who don’t bet wisely and run out of chips, there will be a table manned by a VAS helper where you can use the chips to keep playing. See Awards Banquet, page 12

Brent Jones, P.E., PLS
2013 Preliminary Convention Program

Thursday, January 31, 2013

7:30am to 8:00am – Technical Sessions IA & IIB Sign-in Desk – Tidewater Room Foyer
8:00am to 12:00noon – Technical Session IA – “Torts and the Land Surveyor” – Tidewater Room
11:00am to 4:00pm – Guest Program – meet in lobby of hotel
12:00noon to 1:00pm – Lunch for Tech Sessions IA&IIB Registrants & board members – Lodge Dining Room (must have ticket)
1:00pm to 5:00pm – Technical Session IIB – “What Went Wrong?” – Tidewater Room
1:00pm to 5:00pm – Convention Registration – Colony Room
1:00pm to 5:00pm – Board of Directors Meeting – Alleghany Room AB
3:00pm to 4:00pm – Affiliates Meeting – Colony Room
3:30pm to 4:30pm – ETSU, Northern Virginia Apprenticeship Program, and other Educational Institutions Meeting – Hospitality Suite
5:30pm to 7:00pm – Exhibit Hall Opens with President’s Reception – Colony Room

Friday, February 1, 2013

7:30am to 4:00pm – Convention Registration – Colony Room
7:00am to 4:00pm – Exhibit Hall Open – Colony Room (breaks and lunch in Exhibit Hall)
7:30am to 8:00am – Technical Session III & IV- Sign-in Desk – Room TBA
8:00am to 5:00pm – Tech Session III – “Wetlands for the Land Surveyor; Archeology” - Alleghany Room
8:00am to 5:00pm – Tech Session IV- “How to Fix a Boundary Line (and How NOT to!”– Alleghany Rm.
10:30am to 4:00pm – Guest Program – meet in hotel lobby
12:00 noon to 1:30pm – Lunch for Tech Sessions III & IV Registrants and Affiliates – Colony Room
12:00 noon to 1:30pm – Foundation Meeting and Lunch – Piedmont Room AB
6:00pm to 7:00pm – Social Hour prior to Banquet – Colony Room Foyer
7:00pm to 12 midnight – Awards Banquet & Casino Night – Colony Room ABCD

Keynote speaker Brent Jones, installation of officers and plat contest awards

Saturday, February 2, 2013

9:00am to 12:00 noon – Annual General Membership Meeting – Colony Room ABCD

Hospitality Suite

VAS members, affiliates, and their guests are invited to come and enjoy the Hospitality Suite at the 2013 Annual Meeting and Convention. The suite will be staffed and will be open according to the following schedule:

Wednesday – Open this evening for those arriving early
Thursday – 10:00 p.m. until midnight
Friday – 12:00 midnight until 2:00 a.m.

The Hospitality Suite will not be open on Saturday. If anyone needs to use the suite for a meeting, please contact Craig Brown to arrange a time.
VAS Slate of Officers for 2013

President
Bruce J. Frederick

Bruce Frederick is a Vice President and Regional Manager of the Norfolk and Newport News offices of Patton Harris Rust and Associates now Pennoni Associates. Bruce has been with PHR&A now Pennoni Associates for 24 years and was one of the first employees hired when the office opened in Virginia Beach.

Bruce got started in his surveying career with the City of Portsmouth where he worked summers between school semesters. Bruce obtained a Bachelor of Science Degree from the College of Bridgewater in Business Administration with an emphasis in economics.

Bruce was Region III Director in 2008, Secretary/Treasurer in 2010, Second Vice President and Editor of The Old Dominion Surveyor in 2011, and currently the First Vice President. Bruce was born and raised in the Tidewater area and currently resides in Chesapeake with wife Anne and daughter Nicole.

First Vice President
John Sehl

John is the President of Allison, Baird & Sehl, P.C. in Montross, Virginia. He started surveying in Minnesota in 1979 and has been surveying in Virginia since 1983. He was licensed in 1993 and became a member of the Rappahannock Chapter in 1995 and has held all offices in that chapter. John has also served a two-year term as Region II Director, served on the VAS Budget and Awards Committees, Secretary-Treasurer, and currently the Second Vice President and Editor of The Old Dominion Surveyor. Born in Minnesota, John is one of fourteen children growing up on the family farm. He moved to Virginia in the early 80s to try and find work during that recession. John and his wife Donna have four children and currently reside in Fredericksburg, Virginia.

Second Vice President
David R. Gardy

Dave has over 25 years of diversified professional and technical experience in the fields of land surveying and consulting engineering. A graduate of Virginia Tech, Gardy became registered as a Professional Land Surveyor in 1987 and has been involved in the principal management of diverse surveying programs since that time. He has been a member of the Virginia Association of Surveyors since 1990 and has served the Association at the state and local level. He has served the Central Chapter board serving in all officer positions, served the state association in the capacity of Membership Committee Chairman, and is currently Secretary-Treasurer. During his career, Gardy has served as principal manager on major projects for both the public and private sector as well as managing smaller projects, all the way down to single lot subdivisions. Mr. Gardy founded Gardy and Associates, Surveying and Mapping Services in 2009 and currently serves as President. Dave and his wife Marcia live in New Kent County, and along with their daughter, Katie, enjoy their life out in the country.

Secretary/Treasurer
Michael Starling

Michael Starling is the owner of Shoreline Surveyors, located in Onley, Virginia. Michael began surveying in 1988. He received his license in 2002 and started Shoreline Surveyors in 2005. Michael has been a member of Virginia Association of Surveyors since 2003. Serving on the Tidewater Chapter Board since 2005, Michael is currently serving his second term as Chapter President. Michael has served as the Tidewater Chapter’s TrigStar coordinator since 2005 and is currently the chairman of the VAS Budget and Awards Committees.
David L. Holland, LS is the County Surveyor for Henrico County, Virginia and a licensed surveyor in the Commonwealth of Virginia. He holds a degree in Journalism from the University of Memphis and a degree in Surveying and Mapping from the Denver Institute of Technology. David is a Past President of the Virginia Association of Surveyors. He is also a member of the advisory board and an adjunct faculty member for the School of Engineering and Technology at J. Sargeant Reynolds Community College in Richmond.

Michael has been married to his wife Beth for 17 years and they have one daughter, Valerie (10). The Starling family resides in Onancock, Virginia. In his spare time, Michael enjoys assisting the Eastern Shore’s ESO Arts Center where his daughter takes classes with ballet productions both backstage and onstage.

Region I Director

Ed Dodd

Ed Dodd has worked over 28 years in the field of Land Surveying in the Northern Virginia Region and became Licensed in 2000. He has an AAS degree in Civil Engineering from NVCC and has attended Old Dominion University studying Boundary Law, Building Construction and Environmental Science. Currently Ed is pursuing his Bachelor’s degree with the Volgenau School of Engineering at George Mason University. During his career, Ed has received accolades for his outstanding performance and efficiency in the production and management of multiple, concurrent commercial and residential projects. Ed has been a member of the Virginia Association of Land Surveyors since 2002 and has served as President of the Bull Run Chapter. This year Ed celebrates his 10-year anniversary as President and Owner of Dodd & Associates in Warrenton, Virginia. He resides in Culpeper, Virginia with his wife Tracy and three children. Ed enjoys playing golf and leading the praise and worship team at his church.

Region III Director

Hayden Frye

Hayden Frye is the President of Hayden Frye and Associates, Inc., located in Virginia Beach, Virginia. Hayden has been active in the VAS since 2000, as served on the Board of Directors for the Tidewater Chapter since 2004, and was 2007 President. Hayden and his wife Victoria reside in Virginia Beach with their daughter Phoebe and son Gresham.

In Memoriam

Joseph J. Basgier

Joe passed away at his home on Friday, September 14, 2012. Joe was president of VAS in 1975 and a member of the Tidewater Chapter. Joe and Jack Hill worked together for VAS on a number of programs. Joe was instrumental in the establishment of the VAS Scholarship Fund and he was its first chairman. They worked with VPI & State University (now known as Virginia Tech) on the establishment of a surveying program. It was there for many years and then the program moved to Old Dominion University. In lieu of flowers the family respectfully requests that memorial donations be made in Joe’s name to VPI&SU College of Engineering Scholarship Fund.

George Clifford Freeman, II

George Clifford Freeman, II passed away in Portsmouth on September 25, 2012. Cliff was a past president of the Tidewater Chapter of the VAS. In lieu of flowers, please feel free to make a memorial donation to the American Cancer Society, the Portsmouth Humane Society or to a charity of one’s choice.

Both Joe and Cliff will be missed by their families, fellow surveyors and many friends.
A Law, continued from page 2

design excellence in Federal buildings said, “Good design doesn’t cost money. Good design saves money, and you know how that warms my heart.”

When the landmark Competition in Contracting Act was enacted in 1984 in response to the scandals related to overpriced coffee pots and toilet seats bought by the Pentagon, Congress defined the QBS process as a competitive procedure in Federal law. During consideration of the original Brooks Act in 1972, Senator Edward Gurney (R-FL) explained “any Federal procurement officer ... will tell you that competition based on professional-technical qualifications is every bit as hot and demanding as competition based on price, perhaps more so.”

The famous showman, P.T. Barnum is well known for saying, “There’s a sucker born every minute.” What is less known is that Barnum also observed, “The smartest way of deriving the greatest profit in the long run is to give people as much as possible for their money.” To the nineteenth century British author John Ruskin is attributed the observation, “It’s unwise to pay too much, but it’s worse to pay too little. When you pay too much, you lose a little money — that is all. When you pay too little, you sometimes lose everything, because the thing you bought was incapable of doing the thing it was bought to do. The common law of business balance prohibits paying a little and getting a lot — it can’t be done. If you deal with the lowest bidder, it is well to add something for the risk you run, and if you do that you will have enough to pay for something better.”

There is no evidence that selecting architects, engineers and related professionals on the basis of price results in higher costs. Indeed, given that such services amount to less than 1/10th of 1 percent of the total life cycle cost of a structure or facility, but affect the operation and maintenance costs over the life of the facility, the research and data shows the investment in quality in design-related services saves money and human lives.

At the same time the earthquake hit Haiti, new research was released showing government agencies in the United States achieve lower construction costs, more efficient use of taxpayers’ money, and higher construction satisfaction.

See A Law, page 18

Seminars, continued from page 5

Deeds and grants operate in tandem with the Statute of Frauds, which requires most property transfers to be in writing. However, there are numerous alternative mechanisms which the Courts can apply as the situation demands in those cases where an unyielding adherence to the Statute of Frauds would ultimately perpetrate an injustice. This seminar will focus on those “irregular” methods of title transfer. Topics include:

1. Adverse Possession and Prescriptive Easements
2. Estoppel (general information)
3. Boundary determination by Estoppel
4. Boundaries determined by Acquiescence
5. Boundary determination by Practical Location
6. Conditional and Consentable Boundary Lines
7. Informal Written Agreements (written and unwritten)

These concepts will be examined in the context of Virginia Statutes and Case Law and contrasted with neighboring states. Knowledge of these topics should improve a surveyor’s ability to succeed as an expert witness, and to aid the client and attorney when litigation seems possible.

- Thursday seminars separately will have 4 PDH’s/4 CE Units for licensed surveyors.
- Thursday seminars combined will have 8 PDH’s/8 CE Units for licensed surveyors.
- Friday seminars will have 8 PDH’s/8 CE Units for licensed surveyors.

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Please register early as there will be a cutoff in attendance so that we can be sure we have enough gaming tables and dealers on hand.
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<td>ROBOT, CARLSON DATA COLLECTOR, PRISM KITS WE’VE MAKING TOP QUALITY AFFORDABLE</td>
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<td>WE’RE THE GUYS THOSE OTHER GUYS SEND THEIR STUFF TO!</td>
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<td>CARLSON DESKTOP SOFTWARE</td>
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We are pleased to announce a merger between
Earth Vector Systems and Duncan-Parnell, Inc. of Charlotte, North Carolina

Founded in 1946, Duncan-Parnell is an authorized Trimble Dealer and a trusted supplier to the
construction, surveying, mapping, and design markets in the Carolinas and Georgia. Their commitment
to top customer service and top quality products matches that of Earth Vector Systems.

EVS and Duncan-Parnell have worked together on various projects for many years, and we are confident
that this merger will benefit our customers by allowing us to expand our product offerings, improve our
ability to process repairs, and provide technical support in a timely manner. The entire staff here at EVS
will be moving forward with Duncan-Parnell.

What does this mean to you, our valued customer?
Simply put, it means our continued commitment to assist you with product selection, configuration,
training, and technical support to ensure your optimum performance and return on investment.

Same location. Same great service. Same folks ready to help.

Now offering Nikon Optical Instruments!

Nikon

Save time & overhead through the use of advanced instruments.
Contact Grant Stickler, Land Survey Manager at 434.962.3909 or grant.stickler@duncan-parnell.com
Charlottesville, VA 800.887.8445 evsgps.com
Greetings fellow VAS members and soon to be new NSPS members! At our fall Board of Directors meeting the vote was 100% in favor of incorporating NSPS membership as part of VAS membership, which goes into effect January 1, 2013.

Surveyors today are faced with many challenges. The economy, regulations, competition with technology based applications, and an aging population of practicing surveyors are just a few. We need a strong national association and a strong voice to protect the future of the surveying profession, to represent the profession when working with allied professionals, and to provide a strong voice in the federal legislative and regulatory areas. National issues now affect the daily practice of all surveyors in both public and private sectors. The surveying profession should be prepared to address them or risk being marginalized. As was previously stated, the only way we can enhance our collective voice and keep our national influence at the forefront of those seeking, or those looking to destroy, our services is to present a strong, united, and educated society of professional surveyors not willing to step aside for any reason. In order for the surveying profession across the nation to not only maintain, but enhance our national influence, the first step is to collect our membership into a single unified organization that is represented by, as near as possible, 100% of the surveying profession.

I have recently returned from the fall NSPS governors meeting in Gaithersburg, Maryland where I delivered the Memorandum of Understanding (MOU) between the Virginia Association of Surveyors and the National Society of Professional Surveyors. I learned the following states have also signed MOU’s, voted to join, or are awaiting a membership vote to join at the 100% affiliate rate: Tennessee, Massachusetts, Montana, New York, Oregon, Washington, Wisconsin, Florida, Minnesota, North Carolina, and Texas. I expect the remaining state affiliates will join within the next couple of years as they hold their membership meetings and board meetings.

The background for this proposal started with the American Congress of Surveying and Mapping (ACSM), which was founded in June of 1941 as a non-profit educational organization whose goal was to advance the sciences of surveying, mapping and related fields, in furtherance of the welfare of those who use and make maps. In 1984, in a move to give more focus to the organization, it was reconstituted as a group of member organizations operating under the umbrella of ACSM. The member organizations were the American Association of Geodetic Surveying (AAGS), the Cartography and Geographic Information Society (CaGIS), the Geographic Land Information Society (GLIS), and the National Society of Professional Surveyors (NSPS).

For a variety of reasons, the ACSM has been merged into the National Society of Professional Surveyors (NSPS) and NSPS has emerged as THE National Organization representing the survey profession in the United States.

The current NSPS member benefits and programs are:

- NSPS Member Website
- PBS show
- Spotlight On Surveying Weekly Radio show with Curt Sumner
- National legislative involvement (NSPS was instrumental in coordinating resistance to LightSquared)
- The Certified Survey Technician Program
- A national voice to national and international entities such as NGS, USGS, FEMA, Department of the Interior, Bureau of Land Management, Bureau of Indian Affairs, NOAA, FIG, ABET, ALTA
- National Surveyors Week
- Boy Scouts of America Surveying Merit Badge, Speakers Kit
- Trig-Star Program
- NCEES Exam Prep
- Insurance Program (E&O Insurance Discounts)
- Scholarships
- Certification Programs including Hydrographic, Certified Survey Technician (CST)

In Summary the 100% Membership Program will:

- Unify the Surveying Associations throughout the United States.
- Strengthen the Survey Profession’s National Voice.
- Create a pathway for the Association’s advisory role (Board of Governors) to become a voting role on the Board of Directors.
- Allow all surveyors who benefit from the work of NSPS to be counted as members at a modest cost.
- Provide a home and structure for other allied professionals such as AAGS.

Remember, few things are built without the involvement of a surveyor. That fact alone elevates the professional surveyor to a position of importance far and above most other professions. This NSPS 100% membership program has already exceeded our projections and will continue to do so. Strength in numbers is the key and increased participation is the solution to empowerment of the world’s second oldest profession.
Surveyors can no longer afford a lack of familiarity with the legal principles by which their work will be judged. The following excerpts deal with boundary dispute scenarios in which the surveyor may become involved. However, they are only a small part of the material we will discuss in my upcoming class in Williamsburg, Virginia. The actual statements by the courts themselves are of critical importance, as established common law from previous decisions will generally control outcomes of future boundary disputes.

Parol Agreement and Acquiescence

In some instances, the Virginia courts have equated acquiescence to parol agreement when considering the limits of ownership for a given parcel. Hale v. Arms: 137 Va. 167; 119 S.E. 94 (1923) describes the complications which arise when a parol agreement is expressed between adjoiners. The primary question as stated by the court: “Did the parol agreement ... (which agreement was not carried into deed or other writing), of itself vest title in the predecessors in title of the plaintiff, and so in him, to the land beyond the bounds set forth in the plaintiff’s paper title, so as to confer upon the plaintiff title up to boundary line which the plaintiff alleges was established by such parol agreement? The question must be answered in the negative.”

This opinion also observes the lack of any occupation up to the agreed-upon line, and notes the time requirement is insufficient to fulfill the time requirement found in the Statute of Limitations. Judge Sims concedes that estoppel is another legitimate process by which a boundary line dispute may be settled, and notes that parol testimony or an agreement may be considered legitimate evidence as to the location of a given boundary line. However, he continues: “Acquiescence or verbal acknowledgment or agreement as to the location of a disputed boundary cannot, where there is no question of title by adverse possession...pass title from one man and vest it in another.” [emphasis added]

Adverse Possession

In 1916, we begin to see the developments in Virginia common law that will eventually culminate in the acceptance of adverse possession under mistaken belief—a position which is now referred to in many jurisdictions as the “majority rule”. Christian v. Bulbeck: 120 Va. 74; 90 S.E. 661 (1916) is clearly a landmark opinion still cited in modern Virginia case law.

This opinion begins by noting that use adverse to the true owner and intent to claim title are both still legitimate requirements for a prescriptive claim. However, the intent “need not be expressed” in a statement. At this point in time, the court still adheres to the position which holds adverse possession may not be committed by mistake, but modifies the language by observing that actions upon the ground by the claimant may provide adequate proof the claimant has made a conscious decision—that the line marked is in fact the boundary line.

Christian draws upon case law from several other states in order to clarify this issue (including the leading Connecticut opinion French v. Pearce) and formulates the following precedent: “…on the whole proof a case must be presented in which the preponderance of evidence as to the character of the possession, how held, how evidenced on the ground, how regarded by the adjoining land owner, etc., etc., supplies the proof that the definite and positive intention on the part of the possessor to occupy, use and claim as his own the land up to a particular and definite line on the ground existed, is the practical test in such cases.” This emphasis on physical evidence of possession increases the probability that a surveyor may be called upon to map the features in question in the event of a claim.

The court then added a key phrase which still survives in modern Virginia opinions: “The collateral question whether the possessor would have claimed title, claimed the land as his own, had he believed the land involved did not belong to him, but to another...is not the proximate but an antecedent question, which is irrelevant and serves only to confuse ideas.”

Possession of Submerged Lands

The difficulty of proving an adverse possession claim to submerged lands is illustrated in a 1958 opinion when one adjoining to a private fresh water pond attempted to claim the pond against the remaining riparian adjoiners. The outcome is reminiscent of situations involving claims by one tenant against other co-tenants, since all riparian owners originally had equal rights to boat on or fish from the pond. In Leake v. Richardson: 199 Va. 967; 103 S.E.2d 227 (1958)

See Boundary, page 18
What Does a Tick Look Like?

Today I had a very interesting talk with Mauricia Shanks. Mauricia has a very interesting story to tell about ticks.

Mauricia owns and runs a dog grooming business in Pearisburg, Virginia. Pearisburg is a rural mountain community in a county that borders West Virginia, near Blacksburg. During the course of her work, like many of us, she is exposed to all breeds of ticks and other disease carrying parasites. And like many of our friends and relatives, she contracted a tick-borne disease that has drastically changed her life. Unlike me, she did not quit or whine about her fate. She decided to contribute in her own way to educating others and help to assure that others do not suffer.

Mauricia has invested her own time and money to try and educate anyone who will listen about ticks. She collects ticks and places them in clear acrylic liquid that dries to a hard, clear display. She then will send the tick exhibits to anyone or any organization that wants to use them for educational purposes. She does not charge for the exhibits and does not profit from the distribution. What she does is make a difference in the world.

Mauricia has a backlog of request for her exhibits from all over the United States. She is unable to fill the request because she does not have ticks to make the exhibits with.

This is a call for your help. If you find a tick, don’t flush or burn it. Don’t put it down the shirt of a friend or eat it. And don’t otherwise destroy it.

What you need to do is place the tick(s) in a zip lock bag. The tick(s) can be alive or dead. The tick(s) can be any breed of tick. You can place more than one tick in a bag. Please do not use alcohol in the process (except to calm your nerves).

Mail the tick(s) to:
Mauricia Shanks
117 Curve Road
Pearisburg, VA 24134
540-921-2836
mjpetgrooming@yahoo.com

Like Mauricia, maybe we can go to bed feeling like we are trying to do something. And, thank you!
made procuring design and engineering services for such projects on a qualifications rather than price. The study conducted jointly by the University of Colorado and Georgia Institute of Technology, drew from a database of approximately 200 public and private construction projects in 23 U.S. states, included transportation, water, commercial, and industrial projects, ranging in size from relatively small projects to those costing hundreds of millions of dollars. Its authors compared various procurement methods, including QBS, Best Value, and Low-Bid, with such factors as total project cost, projected life-cycle cost, construction schedule, and project quality outcome. Results showed that using QBS to procure the design component of a construction project “consistently meant lower overall construction costs, reduced change orders, better project results and more highly satisfied owners than in other procurement methods”.

The Brooks Act is a law that works. It is part of what makes the United States the envy of the world.

John Palatiello president of the firm of John M. Palatiello & Associates, Inc., a public affairs consulting firm located in Reston, Virginia, providing association management and public affairs services to firms and organizations. He has been Executive Director of MAPPS, a national association of private geospatial firms, since 1987, is Administrator of the Council on Federal Procurement of Architectural-Engineering Services, a coalition of the nation’s leading design professional societies and President of the Business Coalition for Fair Competition, a coalition of firms, organizations and individuals fighting unfair government-sponsored competition with private enterprise. He is the former Executive Director of America Moving Forward, a non-profit association of firms engaged in public private partnerships in transportation.


It was held that the claimant had made no physical changes to the condition of the pond that in any way constrained the other parties from their reasonable use of the pond.

In addition, the color of title created by the deed of the claimant was not sufficient to divest other legitimate owners when unaccompanied by adverse actions and other conditions required to fulfill a prescriptive claim. “The existence of color of title does not dispense with the necessity for acts of adverse possession. It is merely evidence tending to support complainants’ claim when accompanied by the essential elements of adverse possession. Nor did the recordation of the deeds subsequent to the acquisition of their lands by defendants constitute of itself notice to them of the beginning of the running of the statute”. As the defendants had not only used the pond for fishing but also granted fishing permits to others, it was held that Leake had not fulfilled requirements for any form of prescriptive right to the pond.

In my upcoming course “How to Fix a Boundary Line – and How Not To” we will consider a more recent situation where an adverse claim was made on submerged lands.
John Tyler Community College
Spring Semester
Surveying and Related Courses

CIV 171 Surveying I
Tuesdays, 6:30 - 8:45 p.m., and Saturdays, 9:00 - 11:45 a.m. Chester Campus.
Introduces surveying equipment, procedures and computations, including adjustment of instruments, distance measurement, leveling angle measurement, traversing, traverse adjustments, area computations and introduction to topography.

ARC 221 Architectural CAD Applications Software I
Mondays and Wednesdays, 5:30 - 7:20 p.m. Chester Campus.
Course content includes AutoCAD Architecture 2013.

CAD 201 Computer Aided Drafting and Design I
Wednesdays, 6:00 - 9:45 p.m. Chester Campus.
Course content includes AutoCAD 2013.

CAD 231 Computer Aided Drafting I
Fridays, 9:30 a.m. - 1:15 p.m. Chester Campus.
Course content includes MicroStation.

GIS 101 Introduction to Geospatial Technology
Wednesdays, 6:00 - 8:45 p.m. Chester Campus.
Course content includes ESRI ArcView.

John Tyler Community College offers career studies certificates in Geographic Information Systems and Surveying. For additional information on these programs, please contact the Division of Engineering, Business and Public Services at 804-706-5121 (Chester Campus) or 804-594-1480 (Midlothian Campus).

General Registration for the Spring 2013 semester runs November 5, 2012 - January 4, 2013. Visit www.jtcc.edu to apply to John Tyler, to register for classes, or to learn more about the College.

William G. Wyatt, Ed.D.
Professor of Drafting and Building Construction Engineering, Business, and Public Services
John Tyler Community College -- Defining Your Future
13101 Jefferson Davis Highway
Chester, VA 23831
Chester Phone: 804.706.5125
Email: wwyatt@jtcc.edu<mailto:wwyatt@jtcc.edu>

Don’t forget to vote for your new VAS officers for 2013! Ballots will be mailed the first of December.
Calendar of Events for 2012 - 2013

December 5, 2012, Mount Vernon Christmas Party, Alto Plaza Restaurant, Centreville, Virginia. For information contact Christopher.jensen@fairfaxcounty.gov

December 6, 2012, Tidewater Chapter Christmas Party, Steinhilbers, Virginia Beach. Contact Mike Starling, shoreline_surveyors@verizon.net.


2013 VAS Seminars and Board Meetings
- April 12 & 13, 2013 hosted by Rappahannock Chapter
- June 21 & 22, 2013 hosted by Central Chapter
- September 20 & 21, 2013 hosted by Southern Chapter

2013 Exam Dates for Land Surveyors and Surveyor Photogrammetrists
- April 12, 2013 LS-A & Surveyor Photogrammetrist (Spring only); Deadline for application and fee December 3, 2012
- April 13, 2013 FS and LS-B (Spring only); Deadline for application and fee December 4, 2012
- October 25, 2013 – LS-A; Deadline for application and fee June 17, 2013
- October 26, 2013 – FS; Deadline for application and fee June 18, 2013
- Deadline for Exam Fee to PCS – February 21, 2013 for April Exam; October Exam TBD