

TENNESSEE

SURVEYOR



THE OFFICIAL PUBLICATION OF THE TENNESSEE ASSOCIATION OF PROFESSIONAL SURVEYORS

SPRING 2007

Thanks to all who attended the conference and technology exhibition in March. It was an overwhelming success due in part to you who contributed with your time, efforts and presence. We hope you came out with a good experience, a better appreciation for your profession and the desire to return to next year's 40th Anniversary Conference (March 12-15, 2008) which promises to be even better.

Jay Caughman,
President and
Mario Forte,
Vice President
and Conference
Chairman of TAPS



SPRING 2007

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All notification for editorial matters, changes of address, membership inquiries and general TAPS business correspondence should be directed to Lori Medley, Executive Secretary, at the above address.

CONTRIBUTIONS OF MATERIAL

The Tennessee Surveyor welcomes contributions of articles and comments for publication. The editors would appreciate submittals to be typewritten, double spaced, and preferably only seven paragraphs long (each paragraph should have a maximum of five or six sentences). The editors of The Tennessee Surveyor reserve the right to edit (after author notification) each article.

DEADLINES

Advertising and article copy deadlines are December 15, March 15, June 15 and September 15.

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Ads should be camera-ready, black and white POSITIVE PRINT required—ad enclosed in a boxed line with line included in dimensions.

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Past President	Galyon Northcutt	Antioch, TN	galyonnorthcutt@bellsouth.net

The Tennessee Association of Professional Surveyors (TAPS) is dedicated to preserving the heritage of surveying; promoting the profession in Tennessee as the forum for developing ideals that advance the social, professional and ethical conduct of all surveyors; and provide opportunity for educational, scientific, and technological advancement.

From the President

by Jay Caughman III, RLS, 2007 President



Thank you to all who attended the 39th Annual Conference & Technology Exhibition last March. It was an overwhelming success due in part to you who contributed with your time, efforts and presence. I hope that each of you came out with a good experience, a better appreciation for your profession and the desire to return to next year's conference which promises to be even better. (As a side note, we are scheduled to return to Cool Springs for the 40th conference.)

Kudos to both Mario Forte and Lori Medley for putting on a great time that went off flawlessly.

As we head into the busy time of year, I want to ask all of you to make

an effort to attend your TAPS local chapter meetings. The organizational structure of TAPS allows for each local chapter to distribute information about what is going on statewide. Your local chapter president and representatives relay important information from the statewide meetings to you at these local chapter meetings. Most local chapters have monthly or bi-monthly meetings at a central meeting place or restaurant. Log onto the TAPS website (www.taps-inc.com) for the specific time/place.

Several legislative items have been introduced from both the State Senate and House that I'd like to update you on. HB0142/SB1193 which would establish a new method for registration seems to not be progressing. HB0921/SB1311 which would require E/O insurance for land surveyors also seems to be stalled. HB2118/SB188 which would combine the Land Surveyors Board of Examiners with the Soil Scientist also seems defeated for this year, but it is my understanding that it will be reintroduced next year.

Speaking of the Soil Scientists, I've had several conversations with them in regard to combining with the Land Surveyors Board. In general, they are very humbled by the support they've been receiving from the land surveyors. They are asking for the TAPS membership to work with them in drafting the final legislation that would officially combine the boards. It is their intention to submit it for next year's legislative calendar. This is where your participation and input at

the local chapter meetings is critical.

I did receive information from ETSU that the professor position has received several qualified candidates and that

the interview process will begin soon. Your TAPS Board has created a "chair" fund specifically to support the academic staff at ETSU. I believe it is critical that TAPS, in cooperation with other adjoining state associations, supports this fund in an effort to keep the program viable. For example, only 14 new RLS's came out of the Fall '06 ex-

amination. Of those 14, only 8 are residents of Tennessee. It is imperative that we keep this program producing quality graduates. Congratulations to all those who passed.

For those who did not pass or are considering taking the exam, TAPS is working on presenting an exam review course to be offered in conjunction with the annual conference. I'd like to recruit current licensed members as volunteer instructors. I'd also like to see the funds raised by this course to go directly to the ETSU surveying program. Again, attend your local chapter meeting to find out more information.

As with many of you who share the passion for land surveying as not just a job but as a way of life, I encourage each of you to give back to your profession that provides for you and your family. In closing, I would like to thank the membership for the support you have given me and to the board of directors for all their hard work and continuing efforts to improve the land surveying profession. ♦

Coming Events

TAPS Board of Directors Meeting

June 16, 2007

Radisson Hotel at Opryland • Nashville, TN

TAPS Fall Business Meeting & Seminars

October 27, 2007 • Chattanooga, TN

TAPS 40th Anniversary Annual Conference & Technology Exhibition (1968-2008)

March 12-15, 2008

Marriott Hotel - Cool Springs • Franklin, TN

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Proud To Be a Member Results of Ballot

by Tim Lingerfelt, Chairman
TAPS Constitution & Bylaws Committee

On March 17, 2007 the membership of TAPS stepped forward and voiced their views on four constitutional changes. For many this was their first awareness of the issues at hand. Yet the printed handout and ballot, along with discussion, provided each member background prior to voicing their views on the ballot.

Organizations professional or otherwise must keep pace with sociological changes. Often, minor or major changes to their constitution are slow to be considered and slower to be enacted. The TAPS Board took the giant step in being proactive and created an ad hoc committee to study the Constitution for possible change(s).

The ad hoc committee, directed by **Benny Moorman**, worked diligently creating drafts for review and comment. I was fortunate to be named Chairman of the Constitution and By-Laws Committee (2006-2007) and had the opportunity to contribute to this process. The final draft was presented to the TAPS Board in January for a vote. Even then the Board opted for further minor changes, while not being unanimous on the issues to be pre-

sented, preceded with the ballot process.

It was after these changes were implemented that the Board of Directors began the notification process of the upcoming vote on the Constitution. In the past, constitutional issues were strictly handled by a mailed ballot (as per our Constitution). However, on this occasion the decision was made to conduct the actual collection of the

The true strength of any organization is its members.

mailed-in ballots.

This decision can only be applauded as exceptional. Where else could such a large number of TAPS members be present and have the opportunity to voice their opinion and vote shortly thereafter? This formula should be utilized more in the future (not only for constitutional changes) to garner a higher level of participation and awareness from the membership.

The effectiveness of the open meeting aided by the awarding of a PDH is

incalculable. TAPS Board of Directors meetings are held each year at the spring meeting. Yet only a small number of members attend, generally only speaking to their issue or observing.

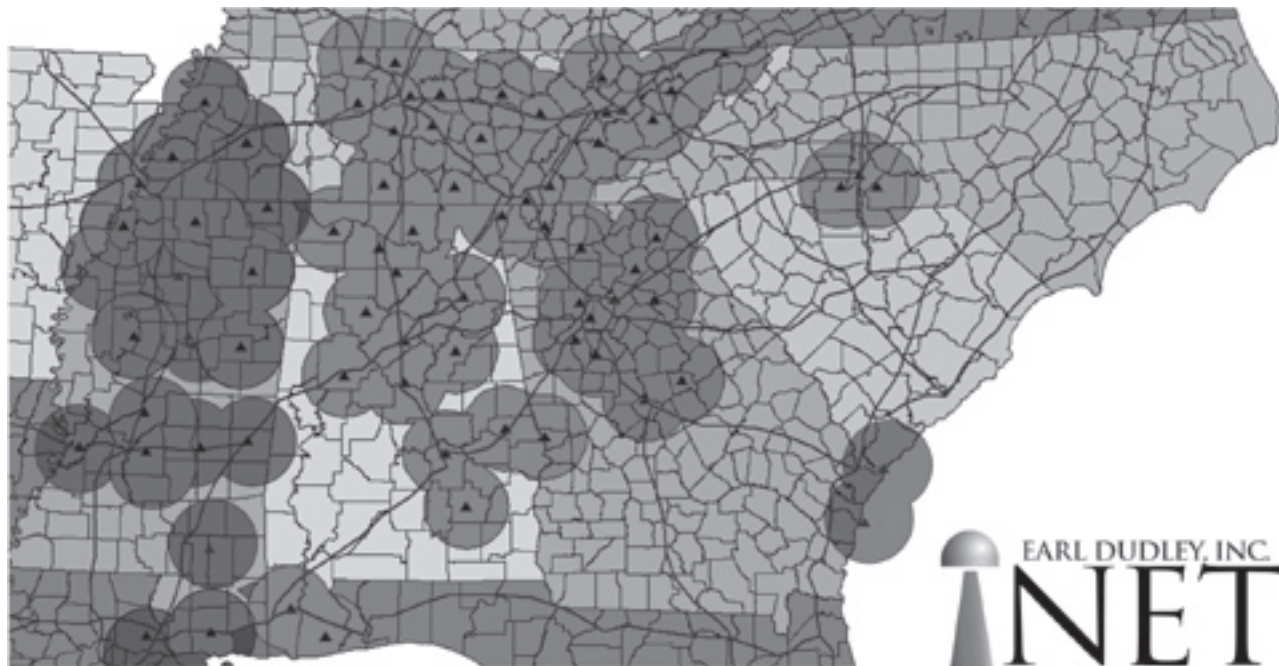
Not to be overshadowed are the results of these ballots. Items 1 and 3 passed and items 2 and 4 failed.

Failure is neither negative nor progressive but an expression of member choice. The items passing will initiate change in the Constitution and modification of the By-laws to coincide.

The true strength of any organization is its members, and those members must voice their opinions individually and through their representatives (directors). All the officers and directors must make themselves available to the general membership in order that the organization will thrive, grow and prosper.

Any forum to get members to voice their opinion and provide constructive discussion on issues can only be positive. I am proud to be a member, because of this foresight and progressiveness. ♦





GPS REFERENCE NETWORK

Imagine the Possibilities

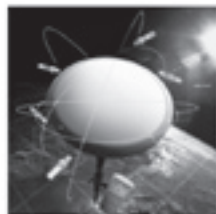
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Boy Scouts of America Merit Badge University

by Jeff Miller, Chairman
Education and Scholarship Committee

On January 20, 2007 the Sequoyah Council of the Boy Scouts of America held their annual Merit Badge University. This annual event is held at East Tennessee State University in Johnson City. Scouts came from 15 counties from Virginia and Tennessee to earn merit badges that are harder to obtain. The Merit Badge University attracted approximately 200 Scouts.

ETSU college students, faculty members, and local professionals from the Northeast Chapter of the Tennessee Association

of Surveyors and the Southwest Chapter of the Virginia Association of Surveyors volunteered to help lecture and assist the Scouts.

The Surveying Merit

Badge course takes a full day, although other courses only take a half day. Despite the long day and hard work, many Scouts felt their endeavors were "worth it." This year was the first time the Surveying Merit Badge was offered at ETSU. Fourteen Scouts committed to earn their Surveying Merit Badge.

A wide variety of badges were offered in chemistry, dentistry, astronomy, surveying and other fields. The badges were taught by professionals. The Merit Badge University offers the Scouts an opportunity to earn the last badges, which are generally more difficult and more time consuming to obtain. The Merit Badge University assists the Scouts in earning their Eagle Scout status. Once the Eagle Scout status has been obtained, the youths have the option of earning the Eagle Palm status before they reach the



Scouts learn how to use a total station



Scouts learn how to use a total station while being interviewed by local newspaper.

age of 18. Merit Badge University offers the Scouts an opportunity to obtain these prestigious ranks.

The requirements of the Surveying Merit Badge required the Scouts to perform certain field work, classroom and lecture environments.

The young scholars were taught about the history of surveying through modern applications and uses. The Scouts were informed of the potential hazards of surveying and first aid application. Also, the Scouts were able to speak to several licensed surveyors and what it takes to become a surveyor.

The Scouts had to perform field work to earn their badge. Their first task was to close a five-sided traverse and locate a couple of specific features. Next, the Scouts had to run a level loop through their traverse. The Scouts were placed in groups of three or four students. All the groups obtained excellent results on their traverse and



Todd Shelton, RLS teaches scouts how to use a level.

level loop. There was no shortage of excitement from the Scouts as each learned their excellent closure results earned a portion of their badge.


Demonstrations were given to show the ease and speed of the latest technology, such as RTK GPS. Advancements in the profession were discussed. Hayes Instrument of Shelbyville, Tennessee demonstrated the GPS units and provided total stations and levels for the field work. Hayes Instrument also provided extra personnel to help teach the Scouts.

In the classroom, the Scouts were taught to research property deeds and how to write a legal description. Next, the Scouts were given the task of creating a scaled drawing of their field traverses, using a protractor and scale. Their drawings were to include the particular items located in the traverse. The Scouts were actually taught in the sur-



Surveying data being recorded in the Scouts field book.

continued on p. 19



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TAPS Conference: Behind the Scenes

by Mario G. Forte, RLS,
Vice President &
Conference Chairman



This year I had the privilege of chairing the TAPS annual conference and working behind the scenes, helping to produce the event. It's definitely time-consuming (I'm sure every Chairperson before me knows what I'm talking about). However, the Chairperson gets to plan the event, work with the exhibitors, choose themes for the continuing education seminars, choose the speakers, apply for the continuing education hours (PDH's), report to the Board of Directors, and make sure the event runs smoothly. It's actually a great honor and a lot of fun.

Having just completed my first annual conference, I can tell you that, while challenging, my job was actually the easy part. What goes on behind the scenes is really what determines whether a conference and exhibition are successful. The main person behind the scenes, and has been for over 20 years, is our Executive Secretary, **Lori Medley**. If someone told me 15 months ago that it will take over a year to prepare for a three-day conference, I would have thought they were kidding. Well, it's no joke, and in fact, Lori is already working on the 2009 and 2010 conferences. And to top it off, Lori will have to work with (and basically educate and train) a new conference chairperson every year.

Knowing how ignorant I was about chairing the conference, I can only assume this is a daunting task all by itself. Lori has to first work on negotiating for conference room space, food and beverage rates and finally negotiating for the hotel room rates. This part is really tricky, because we have to book the venue years in advance, conference space is based on the number of sleep nights and food and beverage that TAPS contracts. If our surveyors don't stay at the hotel, TAPS has to pay attrition for the rooms if

the numbers fall below a certain percentage of their room block. If your food and beverage fall below a certain percentage of the contract amount, conference space will be reduced and we don't get all the space we asked for or need. We essentially have to guarantee "x" amount of sleep nights and "x" amount of food and beverage to the hotel.

This year, those who attended the conference had to dine in the seminar rooms because we fell short in previous years with our sleep night obligations to the hotel. On the surface, it seems like bad planning on our part. The reality is that we did it to ourselves. It's so important that surveyors realize that staying in cheaper hotels in the area ultimately affects what we can and can't do with the conference space, and ultimately affects the cost everyone has to pay the following year for attending the conference.

Next, Lori lines up the display company to set up the booths and works on getting sponsors and exhibitors for the conference. It costs each exhibitor a substantial amount of money to attend our conference. Their needs are important to the success of the conference. The more surveyors we have attending, the happier they are. The more time we get to spend with them is even more important. Thus, we have to juggle the seminars with exhibitor viewing to maximize the short time they are with us and displaying their products. This year we made a concerted effort to merge the two by setting up workshops and offering PDH's for them.

Then there is the conference brochure and exhibitor's packets to be designed and mailed out to all active surveyors, guests and exhibitor. Registrations to be compiled, sorted and confirmed. Registration packets and name badges prepared with each attendee's purchases and ribbons. Then

Lori has to estimate numbers for every meal that is offered as part of the registration package. Again, a huge expense (lunch per day costs well over \$10,000), and if she overestimates, we have to pay for wasted meals. Underestimate, and someone doesn't get fed. That is why it is extremely important to pre-register to make sure that adequate food and seating are available.

Awards have to be picked out, speakers have to be confirmed, handouts obtained, printed and delivered, audio visuals ordered, rooms set up properly and special events confirmed, PDH and evaluation forms compiled and printed. Agenda for each event has to be given to the presenter. Guests have to be invited, assigned a host, notified of what is expected of them during their visit and made to feel welcome.

Lori also has to prepare for the Board of Directors/ General Membership meeting. Board packets have to be compiled and mailed. While all of this is going on she is processing lapsed and new memberships, and putting together a conference (spring) newsletter and carrying out the daily operations of TAPS office.

Also behind the scenes are the Ladies Auxiliary Committee, made up of several spouses of our TAPS members and board members. The Committee volunteers their time to help coordinate and run the registration booth every day, assist with directing surveyors to seminars and assist with the meals. They also have proctored the CST Exams for us and coordinate the silent auctions, which raises money for the younger surveyors of our profession. They are always around to help and I personally thank them for all their

continued on p. 10

Behind the Scenes, cont. from p. 11

commitment and hard work. Next year, I plan to reward their dedication to us by offering some fun “side seminars” (no PDH’s) that they can attend. They would love to grow their membership, so if your spouse would like to get involved, please contact **Bonnie Harris**, Secretary/Treasurer, at byronrls@aol.com.

During the conference, Lori works tirelessly. She is always the one we call on for answers to our questions. She solves the immediate problems and always maintains a smile and cheerful demeanor. After the conference, the evaluations are read, PDH submitted to Board of Examiners, hotel contract revised, speakers paid. She is committed to her job; her professionalism and her dedication to the Surveyors and our Association should not be overlooked. She is a credit to our organization.

I began this article by saying what a privilege it was to be Vice President of TAPS and Chairman for the conferences. It is a privilege for me to serve fellow surveyors and help with continuing education and promote the “professionalism” or our profession. It’s also a privilege to work alongside Lori Medley. ♦



President Jay Caughman presents award to Jim Helton, Chapter President of the Year



President Jay Caughman presents award to Bart Crattie, Newsletter Article of the Year



Mario Forte receives the Young Surveyor of the Year Award

Bruce McClellan is presented the Surveyor of the Year Award by last year’s recipient and President-Elect Benny Moorman





Freddie Alley becomes a Fellow Member

A special thanks to Michael Fulghum for volunteering to take our conference photos.



PAC Fundraiser Winners

***Women's
Beth Crattie
Lookout Mountain, GA***

***Men's
Charles Johnson, Sr.
Jonesborough, TN***



On February 9, 2007, the Ladies Auxiliary was presented a Distinguished President's Trust Plaque from Dr. Paul Stanton, President of ETSU (far right), and Tim Jones, in recognition of the Auxiliary's cumulative support in excess of \$10,000 to the ETSU Foundation through the Crouch/Fulton Scholarship. Receiving the award on behalf of the Auxiliary is Sandra Greenwell.

Thanks to all of the ladies who have worked so hard to make this recognition possible.

A special thanks to the Ladies Auxiliary for all their help during the conference.

Robert Taylor, Tennessee Trig Star Coordinator, presents the Trig Star awards to:



David Vandevander
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Cindy Moss
2006 Trig Star Teacher

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Carlson Software	National Society of Professional Surveyors
Continental Aerial Surveys	Navigation Electronics
Crow Friedman Group	Newman LTC
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E&O Liability Consultants	Sebastian's Woodshop
Eagle Point	Seco Manufacturing Company
Earl Dudley Inc.	Tuck Mapping Solutions
East Tennessee State University	Younts Insurance Agency
Hayes Instruments Company	



On April 19, 2007 The Schneider Corporation honored John Kohl's 52 years of individual service to Nashville and the State of Tennessee. The event was held at Belle Meade Plantation in Nashville, TN. TAPS President Jay Caughman presented John with a Lifetime Achievement Award. John is a charter member of TAPS, NSPS Governor since 1994, Surveyor of the Year in 1998 and has served as Legislative Committee Chairman and PAC Trustee.





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TDS 200NX Recon w/ Standard Software, tripod bracket, & cable	\$1,519.00	\$31.01
Heavy-Duty Wood/Fiberglass tripod	\$188.00	\$2.59
Single Tilting Prism	\$178.00	\$2.19
8ft Prism Pole	\$155.00	\$1.70
Total:	\$8,330.00	\$172.65



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Item	List Price	Monthly Lease Price
Nikon DTM-332 total station with On-Board Data Collection	\$6,495.00	\$139.58
Heavy-Duty Wood/Fiberglass tripod	\$188.00	\$2.59
Single prism & prism pole	\$366.00	\$3.92
Nikon 9 pin download cable	\$100.00	\$1.89
Nikon Connex Software for download & data manipulation	199.00	\$4.51
Total:	\$7,348.00	\$152.49



Contractor's Kit

Lists at **\$7,517**, you pay only **\$5,495** for package price or **\$158.25** a month!

Item	List Price	Monthly Lease Price
Sokkia SCT6 Construction total station	\$4,999.00	\$108.00
TDS Recon w/ Layout Pro, includes cable, & bracket	\$2,095.00	\$45.93
Heavy-Duty Wood/Fiberglass tripod	\$109.00	\$1.98
Mini Prism package	\$159.00	\$2.56
8ft Prism Pole	\$155.00	\$1.70
Total:	\$7,517.00	\$158.25



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3rd mo. \$1000	3rd mo. \$288	\$1,424
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2007 Fall Conference & Seminars October 27, 2007

Chattanooga Convention Center
8:00 a.m. to 5:00 p.m.

8:00am - 12:00pm	TAPS Board of Directors Meeting
8:00 - 11:40am	Seminar (4 PDH's)
11:40am - 1:00pm	Lunch
1:00 - 2:50pm	Seminar (2 PDH's)
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An Appeal **Conditions for Recording Surveys in Hamilton** **County, Tennessee (Chattanooga)**

by Bart Crattie

Some background information is in order: Traditionally, no plat of survey could be recorded in Hamilton County unless it was a “subdivision” as defined in TCA 13-3-401. Then, to add insult to injury (fees included), the “subdivision” plat had to go through review with the local planning agency. Any private survey, whether a quarter acre metes and bounds or a 100-acre metes and bounds survey, could not be recorded. References to plats or drawings in descriptions were for the most part ambiguous because, for the most part, the drawings might have never existed at all. Our brethren die and move away. Files scatter to the four winds.

Sometime around May 2006, we invited our Register of Deeds, Ms. Pam Hurst, to a chapter meeting. Ms. Hurst is an innovator and very conscientious in her duties. She has excelled in some of the positive changes she has made in our system within the county.

During the discussion after her presentation, the above stated fact was brought up. It would not be an exaggeration to say she was incredulous that we would even broach the subject. “State law doesn’t allow this without Planning Commission approval.” We assured her that in all our collective knowledge, Hamilton County was the only county in the State of Tennessee that did not allow recording private plats of survey. An election was approaching; Ms. Hurst was unopposed but would be busy anyway running as the incumbent. She, in turn, assured us that she would take our concerns under advisement.

Doggone it, some of us aren’t very patient. Following the counsel of Misty Cook, Jones and Forte with the Southeast Chapter, I spent a number of days researching the statutes and composing a brief explaining our concerns and presenting proof of the well-

founded grounds for relief through those same statutes.

It hinged entirely on what the definition of subdivision is and then what the Register’s duty is. As you all well know, a certain number of factors must be fulfilled in order for a property to qualify as a subdivision and what a subdivision plat is. My primary objective was to explain the difference between a “plat of subdivision” and a “plat of survey.” Then, using Title 66, it was clear that it was, in fact, the Register’s duty to record “plats of survey.” This occurred the first week in June 2006.

On April 11, 2007, we finally received the long-awaited response. It would be unfair to term it a victory in that when obvious laws are followed, should that be unusual? Ms. Hurst, along with her counsel, CTAS attorney Ron Fults, had agreed to most of what we had presented. There are a number of guidelines (drawing size restrictions, additional certification, etc.) that are to be followed but nothing that could be termed a “deal breaker.”

However, and this is where we are appealing to our fellow surveyors

across the great State of Tennessee, we cannot record any platted lot without going through the planning approval process. If we survey a previously platted lot within a subdivision and produce a drawing showing the improvements and say, an encroachment it will still have to go through the planning commission (fees again included).

The Register’s attorney is basing this on TCA 13-3-402 and 13-4-302, which both state in part: “No county register shall receive, file or record a plat of a subdivision, or an amendment, modification or correction to a recorded plat of subdivision, without the approval of the regional planning commission...”

If you are able, in your counties, to record these forms of survey drawing, please contact us and give us your Register’s reasoning. We would like to have your input. You can send this information to Lori Medley, who will then forward it to the proper individual. Thank you for your time and consideration. ♦

NGS Ten-Year Plan

The membership of TAPS has the opportunity to provide comment to the National Geodetic Survey (NGS) regarding their 10-year plan. This is a chance to help shape the programs and activities of an agency that provides products that the membership of TAPS relies on daily. Please take the opportunity to provide your valuable input.

The NGS 10 year plan released for public comment
<http://www.ngs.noaa.gov/INFO/tenyearnews.shtml>

During the last year, NGS has spent considerable effort refining its mission, vision and strategy for the future. The result of this effort is the NGS 10 year plan. This plan has been reviewed by all of the NGS personnel and because any plans for the future will affect the NGS.

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***We Enjoyed Seeing You During the
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Boy Scouts, cont. from p. 7

veying classrooms; therefore, they were able to experience first-hand exposure to the profession in a collegiate environment.

All the Scouts achieved their Surveying Merit Badge. The Scouts were pleased with their surveying experiences.



Jerry Shearon and Terry Lockwood from Hayes Instrument gearing up for GPS demonstration.



Joe Connelly, RLS holds a level rod.

Brian Whetsel, 13, said he wanted to see if surveying was the path for him. He said that he wanted to learn about surveying and decide if he ever wanted to go out into the field. “I think it would be pretty fun, you get to go to a lot of places and meet new people.”

Curtis Buckles, 14, said he was more confident about what surveying offered before attending this

class. “It just sounded fun,” Buckles said. “It sounded like it would be something neat to do. You never know what you’d want to do as a career.”

David Clayton, 13, said now he will know what goes on when he passes a construction site. “It’s pretty easy,” he said. “It was fun too. It just sounded cool and I wanted to know what they were doing.”

Those of us involved in bringing this project to fruition wanted to get positive exposure for the profession and the surveying curriculum at East Tennessee State University. The class was favorably covered by a local television station and newspaper which highlighted the hard work involved.

We wanted to make this a fun and interesting time for the Scouts and ended up having a good time ourselves. We challenge every-

one to offer the Surveying Merit Badge in your area. You will not be disappointed and could potentially

meet the future of surveying. We plan to offer the Surveying Merit Badge again when the Merit Badge University returns to East Tennessee State University next January. ♦



Group of scouts with college student and professional reading a level.

http://www.nspsmo.org/news_events/merit_badge.shtml

Six Tricks To Remember Names

Almost everyone has been in the awkward situation where you see someone you have met before but absolutely cannot remember his or her name. You can handle this in many ways, by being honest and saying, “I remember you well, but your name has slipped my mind,” or look delighted to see them, extend a warm “Good to see you again” or practice some of these tricks to help you remember names in the future:

- **Be interested.** Pay attention when being introduced. Look at the person and get a mental image of them. How are they unique?

- **Picture the name written across their forehead.** Franklin Roosevelt remembered the names of nearly everyone he met using this technique.

- **Relate the name.** Associate the name with a familiar image, song or famous person. For instance, Arnold could

be seen as the “Terminator,” Susannah with “Oh, Susannah,” etc.

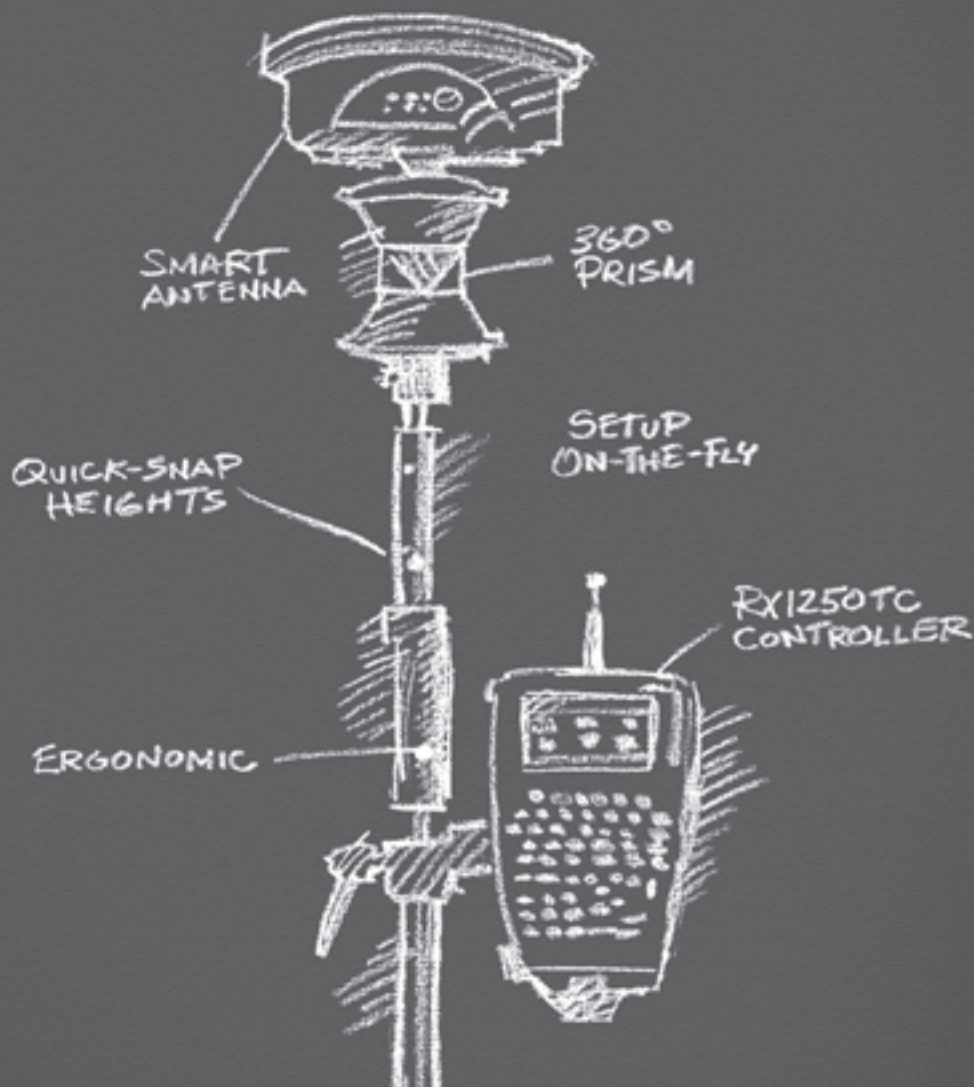
- **Use the name frequently.** Use it when you first meet, during the conversation and when you leave. Introducing the person to others is an easy way to repeat the name without drawing attention.

- **Ask how to spell a difficult name** or glance at the spelling on a nametag, business card, etc.

- **Make a connection** to the person’s hobby or job.

When we remember someone, we are letting them know we think they are important. Dale Carnegie said, “A person’s name is to that person, the sweetest most important sound in any language.” So practice these techniques and eliminate “whats hername” and “whats hisface” from your vocabulary forever. ♦

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Comments on Professional Responsibility

by Knud E. Hermansen, P.L.S., P.E., Ph.D., J.D.

An ongoing debate among professional surveyors focuses on the responsibility of the surveyor toward the client. Part of this debate focuses on where the surveyor's responsibility ends and where the attorney's begins. In other words, at what point does the surveyor stop practicing surveying and begin practicing law? Unfortunately, where the two seem to meet there are no fixed rules or bright lines of professional conduct to guide the surveyor between the practice of law and practice of surveying. As a result, the concept of proper professional behavior varies between surveyors, attorneys, and clients. For example, some surveyors, attorneys, and clients feel the surveyor's professional responsibility should take the form of a "fact-gatherer"; that is, someone who gets information but does not give an opinion. At the other end (some would say extreme end) are the surveyors, attorneys, and clients who feel the surveyor should be the client's "hired-gun." This takes the form of a surveyor who feels it is their professional obligation to zealously advocate their client's position, right or wrong. There are, of course, shades of these and others with every surveyor having a slightly different opinion.

In order to begin and understand, let's start where most surveyors agree. Most surveyors agree that the surveyor's responsibility in regard to a boundary retracement survey is to "follow in the footsteps of the original surveyor." This maxim can be expanded by saying the surveyor's professional responsibility is to: "identify the location of boundaries, verify the location of boundaries, or help resolve conflict among conflicting boundary locations (i.e., gather data for litigation)." Applying this definition to the three recognized boundary categories, the surveyor's responsibility is to identify, verify, or help resolve conflicting

locations among or between record, possession, and ownership boundaries. To further help determine where the practice of surveying stops and the practice of law begins, the following maxims are useful and worth considering:

Surveyors are trained to deal with questions of fact, not questions of law.

Surveyors are trained to gather and analyze facts and apply them to a situation using as guides legal principles and rules of law. Therefore, any decision the surveyor makes should be founded on questions of fact (guided by principles of law), not questions of law. An example to show this di-

At what point does the surveyor stop practicing surveying and begin practicing law?

chotomy is where one surveyor shows the location of a fence and calls it a possession boundary while another surveyor shows the location of a fence and calls it the client's ownership boundary (based on the surveyor's understanding of adverse possession). The first is an opinion based on the facts, the second involves a factual opinion coupled with a legal assumption the client has marketable, fee-simple title (adverse possession generally requires an action to quiet title in order to give marketable title). The courts have held that boundary location generally involves the application of facts while adverse possession involves a question of law. As one early survey practitioner said in the 1800s: "Old fences must generally be accepted by right of possession; though such questions belong to the lawyer [rather] than to the surveyor."¹

Be knowledgeable but prudent.

Surveyors should not be reluctant to give an informed opinion to their client—that is why the client has hired a professional. (Most jurisdictions allow the surveyor to give his or her professional opinion on the location of the boundary even if the opinion appears to answer the ultimate question in dispute.² However, the surveyor should refrain from opinions or action in areas where the surveyor lacks the training, knowledge, or experience. As a general rule to avoid undue liability and problems, surveyors should avoid acting on or giving unrestricted opinions when: (1) the matter is outside the scope of the contract with the client; (2) the surveyor is made aware of a potential problem that is outside of the scope of the surveyor's training or experience; and (3) the surveyor suspects a problem but may not be sure, does not have, cannot obtain, or refuses to get additional facts.

Start from the proper assumptions.

Surveyors frequently find themselves working or having to come to a decision in a situation beyond the scope of their professional knowledge because they incorrectly diagnosed the client's problem at the outset. This situation frequently occurs where the surveyor has assumed the client's problem is a boundary dispute rather than a title dispute or vice versa. A title dispute involves an area that is encompassed (or thought to be encompassed) in two or more deeds. Where there should be one common boundary between the parcels, there are, instead, two separate and recognizable boundaries, each, when properly located, reside on land that appears to belong to the other landowner. (In fact, one party has title to the area and the other party has "color-of-title.") Title disputes are normally resolved in favor of the landowner with senior title,

continued on p. 23

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Professional Responsibility, cont. from p. 21

although adverse possession and estoppel may provide for a different outcome. On the other hand, a boundary dispute is where there is only one boundary but each party feels the boundary should reside in a different location. This problem is generally resolved by gathering the facts, applying principles of law, and coming to a decision based on the preponderance of evidence.

Keep your client informed.

Lack of poor communication between the client and surveyor is the common basis for most complaints to surveyor registration boards. Therefore, one important maxim is to keep the client informed. Professionals should and are generally required to keep their client informed. In some cases, professionals are required to obtain their client's consent before taking certain actions that may be detrimental to their health or their property (Doctrine of Informed Consent). This doctrine in no way suggests that the surveyor act as a hired gun or an advocate for the client's position if it runs counter to the surveyor's professional opinion. On the contrary, the surveyor is expected to perform services in a competent manner; arrive at a professional opinion based on his or her knowledge, training, and experience; and communicate the favorable or unfavorable opinion to the client. As a general rule, the surveyor should inform the client any time the surveyor's opinion, recommendations, or actions: (1) could initiate or increase the possibility of litigation, (2) conflict with or depart from another plausible boundary location, or (3) run counter to another professional surveyor's opinion.

Practice as a professional.

The last maxim is to remember surveying is a profession and the surveyor should act as a licensed professional. A professional is someone who possess some particular knowledge and skill that is beyond the ken of the average member of the pub-

lic. Licensing of professionals is done to compensate for the public's lack of knowledge and thereby protect the public by insuring that any person offering his or her professional services has the requisite minimum knowledge and skill to provide professional services in a competent manner. In theory, licensing should eliminate the concept of caveat emptor that is generally paramount when members of the public deal with peers and tradesmen.³

With these comments in mind, hopefully it should be easier to determine the surveyor's professional responsibility and define where the practice of surveying ends and the legal practice begins. In all cases of doubt or where legal problems could be involved, it is always good practice to

recommend (in writing) that the client consult with an attorney. ♦

References

1. Gillespie, *A Treatise on Land-Surveying* at page 155 (Appleton & Company, New York, NY: 1881)
2. See e.g., *Koenig v. Skaggs*, Missouri, 400 S.W.2d 63, 67 (1966) also see *King v. Browning*, 246 Ga. 46, 268 S.E.2d 653, 655 (1980)
3. Rona, *The Rise and Fall of the Learned Professions*, at page 6 (College of Engineering, West Virginia University, Morgantown: 1977)

Knud E. Hermansen is a professional land surveyor, professional engineer, and attorney at law. He is a professor in the College of Engineering at the University of Maine.

Small Business Focused Tips For News Coverage

by Nettie Hartsock, www.allbusiness.com

- Write to your regional business editor and send them short pitches around your company and what it's doing for the local community.
- Offer a free sack lunch informational seminar—and email the Calendar editor at your newspaper to list it in the calendar.
- Have a good media page for the press on your web site which includes all your coverage, good high res pics of the principals of the company, and a short bio of the company.
- Study what your local business journals are covering and make your pitch fit within their topic of coverage.
- Sponsor a local non-profit or community agency that could use your help.
- Position your CEO or Principal as an expert to call on in case of local news, regional news, radio interviews and local affiliate TV interviews.
- Write letters to the editor in response to business news.
- Submit op-eds in regard to business.
- Join your chamber of commerce and peer groups.
- Make sure to keep the news on your web site up-to-date and regularly submit possible news items around holidays, and special events.

It's not too late to think of ways that your business or product can benefit from some upcoming events including graduation, Mother's Day and Father's Day. What are some special ways you can highlight what your company does during these times? Can you sponsor a graduate, can you let all the moms take a half day off and send a release to your local paper about it? Can you sponsor a Father's Day golf tournament with all the proceeds going to your local cancer foundation? Think in terms of events/holidays and you can build a very good press coverage calendar. ♦

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