



INTERNATIONAL RIGHT OF WAY ASSOCIATION

Kachina Chapter 28 Phoenix, Arizona

Newsletter

www.irwaaz.com

APRIL, 2005

2005 Kachina Chapter Executive Board

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CHAPTER 28
has 2 new SR/WAs
CONGRATULATIONS
TO

GAYLE LEONARD,
SR/WA
&
CORAL SHEEHAN,
SR/WA

APRIL BOARD MEETING

-  Wednesday, April 6, 2005
-  4:45pm
-  3rd Floor Conference Room
-  Az State Land

Confirm your attendance with
Chris Banks, SR/WA at
cdbanks@srpnet.com

Due Diligence Requirements are Changing

New federal requirements intended to provide environmental liability protections are being proposed. These new federal standards will affect how you perform environmental due diligence prior to purchasing property. The buyers of commercial property or any property that will be used for commercial purposes will be most affected. In August 2004, the EPA proposed federal standards for conducting "all appropriate inquiries" as required under the Small Business Liability Relief and Brownfields Redevelopment Act of 2002. "All appropriate inquiry" refers to the requirements for assessing the environmental conditions of a property prior to its acquisition. There are ten statutory criteria that must be met. These new standards may lengthen the due diligence process and increase costs. If you are a government agency or a private entity engaged in real estate acquisitions, you should be cognizant of these changes. An electronic copy of the documents can be obtained from www.epa.gov/brownfields/regneg.htm

PRESIDENT'S MESSAGE

Chris Banks, SR/WA, Chapter President

Last month I said it was probably going to be a very busy year for the members of Chapter 28. Adding another prediction to that, I can say with certainty that this is definitely going to be a very busy year for the Chapter's Board and Committee members.

A number of decisions have already been made:

Thanks to the hard work of Melita Hillman and Doug McLaughlin, we have our AZ Department of Real Estate Education crediting ability restored. We will offer real estate renewal credits on eligible classes.

Due to the positive responses from our membership, we have made a commitment to the Sheraton Phoenix Airport Hotel for our upcoming 2005 September Seminar. Cate has emailed a questionnaire regarding Seminar gifts and we have received quite a few responses with some great suggestions. We are having our first official Seminar Planning Committee meeting this month. It is not too late to become a volunteer and come to the meetings. If you are interested in being a volunteer or sponsor, please email us at info@irwaaz.com. **Because this Seminar is being presented FOR YOU, you will be seeing various emails asking for your help regarding the Seminar issues i.e. speakers, gifts, schedules, classes, and planning from now until September. We will try to keep these emails to a minimum.**

The April 12 luncheon meeting will be our annual Mexican Fiesta luncheon. Look in the newsletter for more information on location, time and speaker information. Questions about our lunch meetings should be directed to Gayle Leonard.

On March 12th the Chapter hosted the Annual Spring Forum, a business meeting of Chapter Presidents and International Directors representing our Region 1 (California, Hawaii, Nevada and Arizona). Along with the Spring Forum, we hosted the Environmental Road Show, a tour of some impacted sites and a hospitality event. Everyone who attended the Forum and the hospitality event had wonderful things to say about our Chapter and our membership. I want to say "Thank you," to the sponsors who were quick to offer their generous support: Acquisition Sciences Ltd., Dennis L. Lopez & Associates, LLC; The Pharos Corporation and First Appraisal Services, Inc. Also, I want to thank the Kachina Chapter members who worked so hard to make this Forum successful. And thank goodness this only happens once every 5 years!

At the Regional Forum, it became apparent that all of the Chapters are experiencing the same problems that we have, especially with International Headquarters. By speaking with the unified voice of the Region Chapters, I think we can make some changes in the IR/WA organization that will solve many of these problems. If you want more information about what happens at these meetings, give Mark Keller a call.

Thought for the Day

Courage is not the towering oak that sees storms come and go;
it is the fragile blossom that opens in the snow.

RELOCATION

Roger Ottaway, Relocation Chair

Relocation Recap:

Uniform Relocation Assistance and Real Property Acquisitions Policies Act (Uniform Act/URA)

Published January 4, 2005, the Uniform Relocation Assistance and Real Property Acquisitions Policies Act has been revised in an attempt to clarify previously vague guidelines. The proposed changes have been floating around for the past year, and after much discussion and revision, it has finally become law. Sometimes change is a “hard pill to swallow.” Despite the mentality that something that isn’t broken shouldn’t be fixed, change can be a good thing once the dust settles. It always takes time to comprehend and adapt to changes in regulations, but it is our legal responsibilities to our agencies and the displacees.

The new regulations shed more light on the topic of eligibility for the displaced. Acquiring agencies can now begin voluntary acquisitions without recourse to the use of eminent domain. A “Notice of Intent to Acquire” is an optional early notification to the displacee and encourages timely and efficient communication. When the agency intends to acquire a property, a notice of intent establishes the potential eligibility for relocation assistance. In the event that the purchase does not occur, the same agency must notify the displacee that they are no longer eligible for benefits. This Notice of Intent to Acquire should not be confused with the current “Notice to Owner” which merely makes the resident aware of the agency’s interest in the property. A Notice to Owner neither, establishes or denies relocation benefits, but a “Notice of Intent to Acquire” does make the displacee aware of potential benefits and eligibility requirements.

Under the previous guidelines, those displaced, including those involved in rehabilitation and demolition actions, could seek guidance and relocation assistance before the acquisition offer had even been accepted. This provided an opportunity for the displacee to seek, find, and enter into a purchase or lease agreement of a replacement site. While this was occurring, relocation expenses could be identified and obtained through the two-bid process. However, the new regulation requires a written acquisition agreement between the agency and the property owner prior to making relocation benefits available.

The positive side to this particular change is that the cost for the relocation would be based on the actual plans for the replacement site instead of the 50 – mile radius basis for those without a replacement site. This rule change prevents the agency from going through the expense of securing cost factors for relocations within a 50-mile radius, then going back to get updated cost factors once they find the actual replacement site.

The potential downside to this particular change is that no matter how proactive the communication may be, once the 90-day notice to vacate is given, the displaced must be out by the due date. If the replacement site needs approved plans and permits, which often takes longer than 90-days to accomplish, there may be hardship for them to meet the projected exit date. The only thing that could prevent these challenges is if the acquiring agency holds off on issuing the 90-day notice, or allows for reasonable extensions, until a realistic relocation move plan has been evaluated and approved.



Surveyor's Corner

Gregg Tuttle, Manager
SRP Land Department
Surveys Division

Continuing from the last article, about famous, (and lesser known) surveyors, we will share a few more insights from "Tiny" Tillotson, and then, space permitting, we will begin to discuss a short history of Arizona's Surveyors "GENERALS" !?!

First here are some more quotes from Tiny's book:

"Legal Principles of Property Boundary Location on the Ground in the Public Land Survey States":

How can I protect my property boundaries?

"You must check on the activity and results of surveyors operating on adjoining properties.

Right-of-way survey parties often tie a suggestive pile of stone as being the corner when the real corner exists and lies several hundred feet away. If the real corner should become lost, that erroneous tie may be construed as the nearest and best evidence of the true position of the original corner, and you may lose land.

Do not let people use your land for any purpose without a written recorded lease.

If the public habitually uses your land as a pathway, or roadway, that use may ripen into an easement by prescriptive right.

The signed lease stops the running of prescriptive rights and adverse possession.

If your neighbor grazes or cultivates some of your land, or drives over it habitually, or builds a fence on it, take action. If you don't necessarily want him to stop, make him sign a lease, perhaps for a consideration as little as one dollar.

Take care to point out your boundary to your neighbors, and occupy your land up to your boundaries. If you are not sure of your exact boundaries on the ground, hire a really good surveyor. ..."

How can a surveyor help me protect my property boundaries?

"The question often arises as to whether a private land owner can legally perpetuate the Public Land Survey corners and other property corners that control the boundaries of his own land.

The answer is simple; yes, he can. In fact, if he doesn't see to it no one else will.

If perpetuation requires the creation of new accessories or references, you should hire a surveyor to do it. The reason you need a surveyor is that this kind of perpetuation is of little value unless it is made a part of the public record in some manner. The surveyor will know how to get this into the record, and his statement in the record will be believed by the courts and other surveyors without question *if it is properly done*. Your own statements will carry less weight.

You may perpetuate your own corners without a surveyor by drawing people's attention to the corner so it will not be destroyed inadvertently. You can do this by piling a ring of stones around the corner, painting bearing trees, erecting guard posts, building enclosures around the corner, and pointing it out to your interested neighbors."

What is the role of the surveyor with respect to my property?

"A competent property surveyor is in effect a minor court. He must decide questions of fact and questions of law. He must search the records for all pertinent deed writings, survey records, and court records and relate these records to evidence he finds on the ground. He seeks and takes the testimony of everyone who has knowledge of the problem at hand. He evaluates all the evidence he can gather from the record, the ground, and from testimony, and makes his own decision. He marks his decision on the ground by durable, exclusively identifiable monuments and accessories. He assumes the responsibility for his work by showing all the pertinent data such as records, evidence, reasoning, and old and new monuments on a plat which he signs, dates, seals, and publicly records. His plat is "... an edited, accurately scaled, dimensioned, pictorial representation of his original notes and record research in sufficient detail that the re-tracement surveyor or reviewing lawyer need have no further recourse to his original notes."

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Surveyor's Corner...continued

The ethical surveyor is impartial and will make the same decisions whether he is paid by one landowner or the other. He must make his decision in such a way that it will be upheld by the court, if tried. Obviously he must know property boundary law. In the words of the late Justice Cooley, of the Michigan Supreme Court:

"Surveyors are not and cannot be judicial officers, but in a great many cases they act in a quasi-judicial capacity with the acquiescence of the parties concerned and it is important for them to know by what rules they are to be guided in the discharge of their judicial functions ... "

And now, about those - Arizona's Surveyors GENERALS:

The Act of February 23rd, 1863, (14 Stat. 664), created the Arizona Territory with boundaries described:

... all that part of the present Territory of New Mexico situated west of a line running due south from the point where the southwest corner of the Territory of Colorado joins the northern boundary of the Territory of New Mexico to the southern boundary line of said Territory of New Mexico be, and the same is hereby, erected into a temporary government by the name of the Territory of Arizona. . .

Section II of The Territorial Act provided for Arizona territorial government officials and for a Surveyor General. The appropriations act of March 3, 1863, provided \$5,000 for public land surveys in the Territory.

On May 4, 1863, Levi Bashford was appointed Surveyor General of Arizona. His notification was sent to him at Oshkosk, Wisconsin, on May 27, 1863. He traveled in the company of the other territorial officials through Leavenworth, Santa Fe, and Albuquerque, and over the "Whipple Road" to the Prescott area. He arrived in Tucson on January 25, 1864, and immediately opened an office there. Bashford did not have any public land surveys executed. He performed no surveys.

The appropriations act of June 25, 1864, (13 Stat. 145), provides \$7,000 for the Surveyor General of Arizona. The Appropriations Act of July 2, 1864, (13 Stat. 344), provides \$10,000 for public land surveys in the Territory. Then, in Section 8 of that Act, it states that Arizona AND New Mexico will constitute one surveying district (under Clark, in Santa Fe). Bashford sent in his first and only annual report on July 4, 1864. On July 18th, Bashford was notified of his termination and told to turn over his records to Clark.

By the Act of May 5th, 1866, (14 Stat. 43), that portion of Arizona lying west of the 37th degree of longitude (West of Washington, D.C.) and the Colorado River, and south of the 37th parallel of latitude, was added to the STATE of Nevada.

By the Act of March 2, 1867, (14 Stat. 542), a Land Office was established in Arizona, and that territory was attached to the California Surveying district, under Lauren Upson, the Surveyor General of California, at San Francisco. U.S. General Land Office Commissioner Wilson notified Clark of the change by letter of March 29, 1867. Clark wrote to Upson on April 16th, informing him of contracts currently underway in Arizona, and as to the work done so far, and then sent all of the Arizona records to California. Commissioner Wilson also notified Upson of his Arizona responsibilities in lengthy instructions dated March 28, 1867. Upson didn't send any plats to the Arizona Land Office (at Prescott), and complained of the lack of adequate help (clerks and draftsmen) to do the work, etc.

Lauren Upson was replaced by Sherman Day as Surveyor General of California, effective July 18, 1868.

Well, that is all the space allotted for this month's edition of the Surveyor's Corner. We will continue next time with more history of Arizona's Surveyors "General" and point out how some of today's Geographic features in Arizona were named for these early, little known surveyors.

Until next time, Thanks for reading about land surveyors. – Gregg Tuttle, Arizona Surveyor 11121

EDUCATION

Rebekah Louis, Chair

The following classes will be held this spring and sponsored by **Chapter 73 in Tucson**. For more information, contact Rebekah at **rblouis@srpnet.com**.

801 Land Titles April 18, 2005

803 Eminent Domain Law April 20, 2005

703 Real Property Asset Management April 22, 2005

NON- IRWA CLASSES:

2 Day Legal Description Class April 14th and 15th, 2005

Chapter 28 Education Update

C504 "Computing Replacement Housing Payments" on May 2-3 with Coral Sheehan instructing [tentative]

C410 "Reviewing Appraisals in Eminent Domain" on May 3 with Donnie Sherwood instructing

C104 "Standards of Practice for the Right of Way Professionals" on May 4 with Ralph Brown instructing

C902 "Property Descriptions" on May 5 with Ralph Brown instructing

We currently have C500 scheduled in October but we are contemplating offering it in 2006 with a run of courses.

MEMBERSHIP

Heather Davis-McCook, Chair

The following people were approved for membership at the March 2nd Executive Board Meeting:

Marvin G. Lovlein, Carter - Burgess

Chris J. Franks, Salt River Project

Todd E. Rakstad, Salt River Project

The following people were read for 30 day consideration at the March 2nd, Executive Board Meeting:

William R. Davidson, Tierra Right of Way Services

Melinda L. Dalton, Trico Electric Cooperative

The following people transferred their membership:

Stephanie Sullivan from Chapter 73 to Chapter 28—Pinal County Public Works

Christine Biggs from Chapter 28 to Chapter 73—Pima County

Jack Aquino from Chapter 4 to Chapter 28 - Pharos Corporation

CHAPTER LUNCHEON

Gayle Leonard, SR/WA, Luncheon Chair

DATE: Tuesday, April 12, 2005

TIME: 11:30 am

PLACE: Flood Operations building (Building is South of parking lot, signs will direct you). Address is 2801 W. Durango, one block West of 27th Avenue and Durango, behind Flood Control Building. Car-pooling is encouraged.

THEME: Mexican Fiesta

MENU: Chips and Salsa. Bean & Cheese Burros, Red Chile Burros, Green Chile Burros. Beans and Rice. Lettuce, tomatoes and sour cream. Soda and water. Chocolate Sheet Cake for dessert. (If you require Vegetarian Burros please call Gayle Leonard at 602.506.1421 before April 8th.)

COST: \$16 for members and guests

RSVP DEADLINE: April 7, 2005 @ 3:00pm

LUNCHEON SPEAKER: Jay K. Delich, SRA, SCRPA of Arizona Appraisal

[Arizona Appraisal provides Real Estate Appraisals by accomplished and experienced appraisers, State Certified / Licensed, and recognized Designated Appraisers of Professional Organizations. A thriving Network of Dedicated Real Estate Appraisers, ArizonaAppraisal.com offers an easy order system, provides professional appraisal services and has a focus on effective communication.]

RSVP online at: http://www.irwaaz.com/index_luncheon.htm

Chapter 28 & Chapter 73 to Co-Host 2010 Annual Seminar????????????

Kachina Chapter 28 and Tucson Chapter 73 are looking into the possibility of co-hosting/planning the 2010 International Right of Way ANNUAL Conference in Tucson. We are currently pricing convention facilities, hotels & motels (for a range of prices) convenient to a convention facility, insuring adequate parking and comprising a list of activities available in the area such as golf, astronomy observatories, Kaerchner Caverns, Nogales & etc.

It is currently the intent of the 'search' team to avoid downtown Tucson due to hotel costs, limited parking and street transportation problems.

If you have any suggestions, please contact: Renee Marruffo, President of Chapter 73 @ rmarruffo@tep.com or Michael 'Doc' Sterling, President-elect for Kachina Chapter 28 @ Michael_sterling@tempe.gov or doc51s.ent@cox.net.

This is a wonderful opportunity for the membership of both Chapters and to showcase Southern Arizona. As of the Region 1 Spring Forum in March of this year, no bids have been received from any Chapter for the year 2010. Bids are due by April 1, 2005, as International requires bids to be submitted and the Conference to be awarded 5 years ahead of time: such is the nature of the convention and related hospitality industry.

It is unlikely that we will have a bid produced by then. No problem. The Conference scheduled for 2006 in Denver, was awarded to Denver by default since no bids were received in 2001 for any location.