

book. review

Modernizing American Land Records: Order upon Chaos

In order to appreciate *Modernizing American Land Records*, by Earl Epstein and Bernard Niemann, Jr. (Esri Press, 2014) readers must have the ability to set aside their paradigms about what constitutes 'land records' in the twenty-first century. If we consider the tremendous amount of 'data' in our world that has a geo-spatial component, we corral not only the traditional deed, easement and mortgage, but also such wildly varying concerns as soil types, tracking of invasive species, flood hazard, the Mortgage Electronic Records System, zoning, spread of disease, wetlands, tax parcel records, rising sea levels, effects of pollution, land cover and geologic hazards—none of which play a role in our traditional view of 'land records.' While portions of virtually all of that disparate information reside somewhere in someone's proprietary version of a Geographic Information System, there are major gaps and little coordination across political boundaries.

Epstein, one of the authors of the ground-breaking 1980 NRC report *Need for a Multipurpose Cadastre*, and Niemann, professor emeritus at the University of Wisconsin where he taught GIS/LIS for 30 years, are eminently qualified to write this book. Evidence is provided by the few stones left unturned, notably including the sobering realities of funding, political resistance, privacy concerns and bureaucratic intransigence. (I would throw in the utter ignorance of most citizens as to virtually

all aspects of the land tenure system in the United States).

The authors lay out an action plan that encourages the reader to envision the possibilities, while bemoaning the fact that technology exists that could make that vision a reality. Notwithstanding an inadvertent reference to 300 years being two centuries, this book is an excellent resource for a variety of people; from those who simply want to understand land records in the broader sense, to those adventurous-types who would like to champion a more ambitious, coordinated land records vision.

Gary Kent, PS
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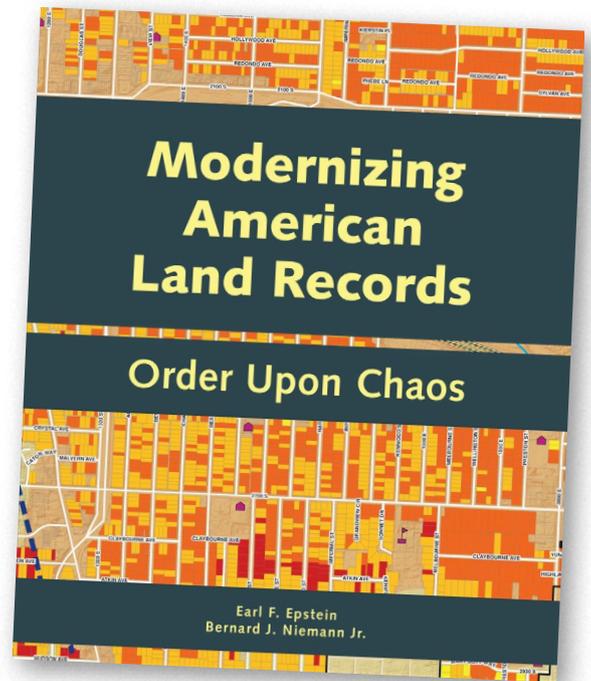
There is a key phrase in the intros: "The better to implement planning and zoning." All in favor of more big brother should certainly buy this book. However, we moved to Idaho County, Idaho because there is no planning and zoning here. Guess you know where this review is going.

Don't get us wrong, we will love it when the County Recorders go digital and we no longer have to drive 25, 35 or 45 miles to the three county courthouses that we deal with. Readily

available, high quality GIS maps will also be a treat. But to receive these at the lessening of personal land rights (read freedoms) is like baiting a cyanide gun with filet mignon.

On page 147 the benefits of an ALRS (American Land Records System) are listed as "Efficiency", "Effectiveness" and "Equity". Other than good alliteration, these are not worthy goals for government.

If we valued efficiency in government we would be a monarchy.



Effectiveness can be seen in the contrast between European land owners and American ones. The first meekly stand around while the government cadastral employee dictates the resolution of their land boundary disputes. Contrast this with the American version which is usually accompanied by a lot of shouting, swearing and law suits. Liberty is messy.

Equity. The protection of land ownership and lines (read “land boundary surveying”) has nothing to do with equity, and everything to do with the recognition of senior rights and original lines and corners.

Yeah, yeah, America is a messy place when it comes to land ownership, but there is a reason it is messy, and a reason for not messing with it. As insinuated in the subtitle of this book, *Order Upon Chaos*, land ownership and rights in

I would highly recommend to anyone involved with the transfer of titles to land in America to read and pay close attention to what has been written in *Modernizing American Land Records*.

James J. Demma, PS, Esquire
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This book is based on the premise that the land records, in their current state, are broken and dysfunctional. Since there have been trillions of dollars successfully invested in real estate in this country, all of which are dependent on that “dysfunctional” system, the premise at first glance makes no sense. One must read further to learn that the authors have an expanded definition of the term “land records,” to encompass land

however, makes no attempt to quantify how much such an effort might cost, not to mention who would bear that cost.

The authors recognize that the written interests in land, what we surveyors would call traditional land records, present a more complex set of problems in that not only do the appropriate documents need to be identified, the parcel(s) which they affect need to be flagged. The authors here resort to a Parcel Identification Number in a GIS as linkage. In short, flagging all the documents in the courthouse land records (or at least all which still have an impact on the current parcel fabric) with the appropriate PIN would allow searchers to retrieve all those documents for a parcel in one take. Of course this is true: databases married to images make those operations a snap, and many organizations have implemented similar document retrieval systems. By use of this device, the authors assert, the two broad categories of land information—title and regulation—can be merged into one information system. This would transform our land records into something much more useful: a comprehensive land information system providing one-stop shopping for all land-related questions. It goes without saying that true perfection in such a system would involve endowing the GIS parcel boundaries with legal status, but recognizing the predictable push-back from certain quarters (ours), the authors stop short of calling for that.

What’s Not to Like?

It’s necessary at this point to revisit how most land transactions in America operate. Several professionals—title attorneys, surveyors, environmental engineers, etc.—all execute certifications to the transaction parties that the papers they have produced are correct and complete. The state of title is actually what the title attorney wrote; the boundaries are actually what the surveyor drew. From the review of those papers decisions are made whether to proceed with the deal and, if so, what provisos need to be included in the new papers in order to protect the buyers’ and lenders’ interests. Without those certifications (or guarantees), *backed up by real dollars if something is later found amiss*, the transaction will not occur. Some of those guarantees are required by Federal regulations, but most are merely sound business practices honed over hundreds of years. The government

The book champions a more ambitious, coordinated land records vision.

American is a chaotic system. This is a literal truth and, according to James Gleick in his book, *CHAOS-Making a New Science*, the handling of such a chaotic system must be based upon recognized principles. Order must not be forced upon a chaotic system, for such is disease and death to it. Restricting a heart will cause it to fail.

Chad & Linda Erickson
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It is about time that someone like Earl F. Epstein has taken the time to study the history and development of the land record systems in American, from colonial times to the present. Attorneys, title companies, surveyors, the courts and generally everyone dealing with the transfer of title to real property, all depend on the content and accuracy of the land record system in order to determine the ownership and marketability of real estate. However, very little is known about the origins and inherent defects in the various recording systems; and what the future may hold for improvements to those systems.

regulations as well as title records and it’s *that* combination they claim is broken.

In a nutshell, the authors argue that in the twenty-first century, land management is the right of all citizenry, not merely the affected land owners and government officials. But alas, land information—data allowing for informed decision-making—is scattered across a multitude of repositories, and thus is practically, if not actually, out of reach for most people. Enter the GIS phenomenon with its ability to aggregate and display data from many sources into a cohesive whole. Hence boundaries, zoning, environmental constraints, utilities, easements and other land burdens can all be made available to everyone, at the click of a button.

Now, in the abstract there is nothing wrong with that, setting aside overtones such as being entitled to weigh-in on the disposition of land not one’s own. (Perhaps that’s an argument for another day.) Land information is scattered across many venues, and gathering it into a package for a particular place is a feat. So streamlining that process, if it could be done, would be beneficial, as long as the effort were not prohibitively expensive. This book,

only provides the repository for documents; it does not guarantee or in any way validate the contents of the documents.

The only way to dispense with such a system is by implementing a *Torrens system* where the government guarantees the current state of affairs (like an automobile title). Torrens systems come with their own set of problems (which are a subject for another day as well), not the least of which is great cost for enrollment. That is likely why they have remained as rare as they are.

In a transaction, one either has guarantees from private entities willing to risk their own money if they're wrong, or one looks to the government to guarantee that status. There is no middle ground. No bank will lend millions of dollars on a project when the only assurance it has that the right people are signing the mortgage is a database, guaranteed by no one. The book completely overlooks this central aspect of land transactions in America, perhaps because neither author has any experience in transactional real estate. Some years ago I wrote an essay responding to a similar hare-brained suggestion—that time appearing in *Forbes* online (www.amerisurv.com/content/view/5793/136), written by someone with a corresponding lack of experience.

Devil's In The Details

The PIN idea ignores other real-world problems, such as who determines which document applies to which parcel. Surveyors involved in land transactions remember the stacks of documents foisted upon us by careful title companies who, having identified the documents as in the “chain of title,” cannot determine whether they *apply to the parcel* in the current transaction. We are thus expected to separate the wheat from the chaff, as it were, and certify that the documents not making the cut aren't entitled to make the cut. The authors here make no provision for a similar exercise; in fact, the authors fail to recognize the problem at all. How many parcels are there in America? How many documents in those land registries? A gargantuan task, to be sure, but who will be responsible for its correctness? And who will pay for the task?

Lest anyone think that such an obstacle could be overcome once for all time, remember that subdivisions and property consolidations, which still occur with great frequency, reignite the issue, and someone

will have to reallocate the impact of the old documents on the new parcel configuration.

A careful reading of the text reveals that the authors are familiar with and prefer Torrens systems. They wistfully recognize that those systems are now out-of-reach for the vast part of the America. Yet the solution they suggest would require Torrens-like authority to actually be of use, because of the guarantee-laden transactions now common everywhere.

Some books deserve not to be written, for they incorrectly (or inadequately) frame the discussion, resulting not surprisingly in a flawed solution. This is such a book. There is nothing wrong with critically

“Order must not be forced upon a chaotic system, for such is disease and death to it.”

examining the current landscape and offering enhancements now available to us through technology. But to do that effectively one must actually *understand how that landscape works, and why it works* that way. Sadly, readers of this book are deprived of that.

Joel Leininger, PS
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It is inevitable that the country's antiquated land records need to be modernized as the constant march of bits and bytes continues and as maps and papers continue to disintegrate; dust to dust and ashes to ashes. Earl F. Epstein and Bernard J. Niemann Jr. have done an impressive job of identifying this problem and their suggestions are impressive, formulaic, and needed. Not surprisingly, their book *Modernizing American Land Records—Order Upon Chaos*, is an ESRI Press publication, ESRI, of course, being a purveyor of GIS software, this being a compliment and not intended as a derogatory observation.

Some might argue that land records are of greatest value to Land Surveyors and not to planners and professors of quantum

mechanics, subjects in which the authors are impressively trained. It is unfortunate that the land surveying community has not risen to the challenge of addressing this important topic. Sadly, this is another vexing example where the Professional Land Surveyor could have taken a leadership role but once again, has opted out. As with GIS, we have decided to sit on the sidelines while others decide our fate and future. We appear content with scraps from the main table.

I am constantly intrigued with Land Surveyors who complain that they do not have enough work or, that the work they are doing does not pay well. Whose fault

is it when the profession has walked away from one of the most profitable areas of land surveying, that of developing and maintaining GIS systems which, in the end is another form of mapping, once the exclusive purview of Land Surveyors. The evaluation and assimilation of land records should be a large part of every Land Surveyor's practice and our licensing laws must reinforce our role. Unfortunately, that will not happen if we do not make our presence known and establish ourselves as vested stakeholders.

To the extent anyone would criticize this book, I am reminded of the work done by committee. When a problem needs to be solved, it is common practice for folks to band together and work as a team to accomplish the stated goals for that group. When that happens and one is dissatisfied with the results of the committee work, your criticism must be tempered by your lack of contribution.

If the land surveying community is interested in modernizing land records, it must write its own book or be willing to accept table scraps.

I enjoyed the book and I applaud the authors for their thoughtful treatise.

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