

# feedback

## Road Riders

I enjoy *The American Surveyor* and I often feel compelled to contact the authors of some articles to offer some commentary about my own experiences which parallels their topics.

I am currently involved as a Professional Surveyor Expert Witness in two separate lawsuits involving road R/W issues. I often rely on the Curtis Brown books as support for my opinions and recall that they and a few others were recommended as “bibles” to be studied by me in preparation for the Florida Surveyor’s Licensing Exam. Study I did and passed the exam in 1962 and still maintain my license while actively working a full 40 hour week but mostly in the air-conditioned office. Rank (and Old Age at 81 years) does have its Privileges.

*Bill Powell*

*Florida PS 1812*

## Jones responds:

I appreciate your interest and understand that you are one of the “old hands” I referred to in my article. I take a lot of pride in the fact I have made my living as a professional surveyor and feel an obligation at this stage to give something back by sharing my views with, especially, the younger practitioners. The industry has seen dramatic changes over my career and practice is not, in many ways, where I would like to see it.

My hope is to help foster a public conversation within the profession to address the shortcomings. *The American Surveyor* is a reputable professional journal that provides exactly the platform for that conversation.

I hope you will join in—there really is no substitute for experience.

*James Jones, PS*



“Old dogs know where the bones are buried.”

Re: the Road Rider’s Books and local archives. The 1923 petition for permanent right of way is an interesting glimpse into how ordinary people spoke and wrote. It

reminds me of a comment about the script for the John Wayne movie, *True Grit*. Apparently scholars of American vernacular say that is how people spoke in the old West. The document seems to agree.

Doing genealogy research I have had to read copied manuscript church records in French in old-fashioned formal church language. At least your records are neatly reproduced and in one language.

*WO/Adj CE (Terry) Warner, CD BA  
Unit Historian, Mapping and Charting  
Establishment (MCE)  
Department of National Defence  
Government of Canada*

## Jones responds:

One of the more rewarding aspects of property research is holding in your hands documents prepared by people who actually settled the country. I have a great admiration for the brave souls who faced the hardships required to establish our communities and a way of life that too many of us take for granted. Maintaining those links to our past are essential in continuing the progress we have inherited.



I wanted to say how much I enjoyed reading *Road Riders* by James Jones in the May 2015 issue. This type of research being a large part of our investigative work, I can easily relate to his expression of difficulties and frustration, but, as is often the case, overcome by perseverance. Like the original monument you have to believe is really there, the important record is often there as well, even if the researcher is the only one who believes it. The article is well written, entertaining and instructive in several ways. If researchers and investigators would read it, and take a lesson from the author, more surveys would be what they should be.

*Don Wilson, LLS, PLS, RPF*

## Jones responds:

Thank you for the generous critique. I’m glad you enjoyed the article. As you might

guess, writing about the events was more enjoyable than the actual experience. You hit on a key point I hoped to make about the survey professional—perseverance.

There’s something unique about the professional who has spent the day tramping around a snowy forest examining the pine trees for blaze marks or braved a Colorado thunderstorm above tree line hunting for a stone monument that prepares him to face down the civil bureaucrat in a calm and equable manner. I have learned that the tenacity that serves the surveyor so well in everyday practice is a valuable, and probably underestimated, skill we bring to the legal team.

## Easements on Title Commitments

What’s the story with a lot of new title commitments?

Why are title commitments now having “Easement Parcels” on almost every new ALTA in the legal description?

Are title companies now having to insure over the easements that benefit the subject parcel being surveyed? Even if the easement falls on someone else’s land?

Typically, these are listed under the Schedule B items.

Any thoughts or reasoning behind this?

*Steven J. Metcalf, P.S.*

*Parma Heights, Ohio*

## Gary Kent responds:

From the standpoint of title insurance and land title surveys, there are two types of easements: Those that *benefit* a parcel and those that *burden* a parcel.

Those that benefit a property are what we sometimes call “off-site” easements. They are appurtenant to the property being insured (and surveyed) meaning they provide some benefit to that property. Perhaps, for example, one is an access easement across a neighboring property that provides a secondary source of access to the surveyed property. Or perhaps one is a private sanitary sewer easement across a neighboring property that

the surveyed property needs in order to reach a public sewer.

Generally these appurtenant easements are important or necessary to the value of the property being insured, in which case the buyer and lender want title insurance to assure that they will have the benefit of their use. In those cases, these easements will be insured and will be listed in Schedule A as such. They are being insured *not as fee parcels*, but as to their *beneficial use as easements*.

Those easements that *burden*—or encumber—a property are *generally* listed in Schedule B2 of the title commitment as exceptions (see my “aside” comment below). If they are, the title company is, in essence, saying “We know this easement exists, it is a burden on the property we are insuring, so we are taking exception to it and we’re putting everyone on notice to that fact by identifying it here in Schedule B2.”

So, an easement listed in Schedule A of a title commitment is an “off-site” easement; i.e., *not on* the property being surveyed, but rather, *providing benefit* to that property in some manner. When listed in Schedule A, it is *not* being insured *over*, it is, rather, being *insured* (as an easement). Alternately, an easement listed in Schedule B2 of the commitment is one that *encumbers* the property being surveyed and is therefore identified as an *exception* to the insured property (i.e., *not* being insured).

There may that rare situation in which an easement *both* encumbers *and* benefits a property, in which case it could conceivably be listed in *both* Schedule A *and* in Schedule B2.

As an aside related to title commitments, surveyors should recognize that a title commitment is *not* a statement as to the conditions affecting the property—that is to say, it is *not* an abstract of title. Rather, it is merely a statement as to the *conditions under which the title company is willing to insure the property*. As such, there are situations when a lender may convince the title company to “insure over” an easement that otherwise encumbers the property. For example, perhaps there is a sense that the

easement will never be exercised. In order to keep the client happy and get the deal closed, the title company may make a business decision to essentially “pretend” that the easement does not exist and thereby *remove it* as an exception in Schedule B2. This is *not* because the easement does not exist—a title company cannot extinguish an easement—it merely means that the title company has made a risk-based decision to insure over it. It is making a bet against itself that no claim ever occurs related to it; because if a claim *does* occur, the title company will have to either defend against the claim, or indemnify the owner as to the loss incurred.

Hopefully that clears up the question and provides some beneficial information. I spend a considerable amount of time talking about title insurance in more depth in many of my seminars.

Gary R. Kent, PS

## Surveyors Rescuing Buyers

Linda and Chad,

I wanted to first offer my condolences on the loss of your daughter. I can't say anything to ease your loss, but please know that I am thinking about you and Lani. I will keep you in my prayers and I know that your memories and her works will keep her with you. May God Bless you all.

And, I want to congratulate you on your *Surveyors Rescuing Buyers* article. I *absolutely love it*. The profession could use a lot more practitioners like you. Advertising is *not* a sin, education is always positive. And the world deserves every effort to keep the Relators® in line. I will spend a full day fantasizing about a world where the boundaries of every parcel are known to buyers in advance of purchase. Oh, the trouble it would save.

I suspect that there will be those who will want to trample what is clearly your right to free and unimpeded speech. Let me know and I will send them a copy of the Constitution and Bill of Rights.

Kudos. Great Article. Great Effort. A+  
Mark Silver  
Salt Lake City

## Chad & Linda respond:

Both your condolence and congratulation are greatly appreciated. It has been a hard time. Did you know that we got called before two state survey boards at the same time in response to the articles that we have written? In fact, their notices and a notice from BLM that we were to no longer have contact with their survey crews arrived on the same day. During the first board hearing, while we were at the hospital conversing telephonically, we were interrupted by the doctor conveying the devastating news that Lani only had two more days to live.

There is a story here that is difficult to write, but it goes something like this. When the high and mighty whupped up on us for what we thought were good ideas, we felt like quitting. Then we thought about our illustrator and daughter, Lani; home schooled, never went to public school a day in her life, then, while working full time, she attended the San Francisco Academy of Art (the nation's finest art school in a very strange town). She dreamed the impossible dream, she fought the unbeatable fight, she ran where the brave dared not go, and she pulled down all A's and B's in the process. In the winter of her Junior year she tried when her arms were too weary, in April and May she was peaceful and calm while her body broke down. In the end she was covered with wounds and scars but she still strove with her last ounce of courage for one more breath. We don't know if like the 🎵*The Impossible Dream*🎵, the world is better for this, but heaven just got a good artist.

In comparison, what is the little scorn that Linda and I have to endure? We'll write on.

So, your thoughts are a breath of fresh air. Thank you, sir.

Chad & Linda

## Got some feedback?

Contact us via [www.amerisurv.com](http://www.amerisurv.com), or send a letter to: The American Surveyor, P.O. Box 4162, Frederick, MD 21705-4162. We reserve the right to edit letters for clarity and length. ■