

# INTERNATIONAL RIGHT OF WAY ASSOCIATION

*Kachina Chapter 28*

*PMB #428*

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## *2003 Kachina Chapter 28 Officers and Committee Chairs*

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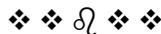
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[www.irwaaz.com](http://www.irwaaz.com)

NEWSLETTER

## JULY & AUGUST, 2003

### EXECUTIVE BOARD MEETING

The next Executive Board meeting will be held on Wednesday August 6th @ 4:45pm in the 3<sup>rd</sup> floor Conference Room at Az State Land. Additional information can be found on the Chapter website.

### → AUGUST CHAPTER LUNCHEON ←

**DATE:** Tuesday, August 12th @ 11:30 am

**PLACE:** Double Tree Guest Suites (See website for address & map)

**MENU:** Italian Buffet serving Garden Green Salad with Italian Dressings, Traditional Style Meat Lasagna, Fresh Vegetable Medley, Garlic Bread, Tiramisu, Coffee, Iced Tea or Decaf.

**COST:** \$15.00 for members and guests. Please have exact change or your check made out to IRWA Chapter 28.

**GUEST SPEAKER:** FA Fiedler, Long time Chapter Member & Real Estate Broker

**RSVP:** Through the Chapter website or call Pam Hicks @ 602.236.5948

### JOB BANK

For current job openings, please visit the Chapter website:  
[www.irwaaz.com/jobbank\\_openings](http://www.irwaaz.com/jobbank_openings).

Please visit [www.irwaaz.com/region1](http://www.irwaaz.com/region1) for current information on Region 1 activities. You can also contact Mark Keller, SR/WA at 602.236.8164 or [makeller@srpnet.com](mailto:makeller@srpnet.com) for information.

### AUGUST GUEST SPEAKER

Doug McLaughlin, SR/WA, President Elect

FA Fiedler, Real Estate Broker, and Kachina Chapter Member since the late 50's. He is one of the original Chapter 28 Members. He served in World War 11, as a Lt. under General Patton's command. Throughout his working career he has ventured into different businesses, real estate, import, etc.

### Quote for the Day

Only those who will risk going too far can possibly find out how far they can go.

## **PRESIDENT'S MESSAGE**

Melita Hillman, SR/WA

July and the heat is upon us. It was a refreshing change to be in Kansas City – the City of Fountains. And there are lots of fountains, all types of fountains. And BBQ – there are BBQ and steak restaurants everywhere. We were not able to provide quality control at all of them, but the ones we sampled passed with flying colors.

The 49<sup>th</sup> Annual International Educational Conference at the Hyatt Regency Crown Center in Kansas City was attended by over 1,000 participants, spouses, children and guests. With eight members and five spouses/guests from Chapter 28, we had the largest attendance of the 14 chapters in Region One.

The Conference had something for everyone from the opening reception on Sunday evening to the Presidents Dinner on Thursday night. In addition to all the sessions which cover everything from acquisition, relocation, environmental, survey, valuation, ethics, career development, asset management in the post 9/11 world, to wireless, billboards, farmland preservation, railroads, to the Japanese Compensation system to chapter officer and course coordinators workshops. In between there were events which ranged from a golf tournament and the Finnegan Fun Run (I walked) to a choice of tours to Ft. Leavenworth, Sprint, the Negro Baseball Museum and the Steamship Arabia which sank in the Missouri River in 1856 – a fascinating museum which I would recommend to anyone visiting the area. Evening activities included an event at the restored Union Station that now houses restaurants, museums and shops as well as a tour of various jazz and blues clubs in the local area.

The keynote speaker at the Opening Ceremonies was Capt. Charles Plumb, an Air Force pilot who was shot down in Vietnam five days before he was to have returned home. Instead, he spent 2,103

days as a POW in various facilities – mostly in an 8' x 8' cell. To say that his story and the life lessons he drew for us were inspiring does not do justice to his presentation.

The following day we were honored to have Buck O'Neill, Board Chairman of the Negro Leagues Baseball Museum in KC as our luncheon speaker. You may remember him from the "Baseball" series on PBS a few years ago. Another inspiring speaker and message.

At the President's Dinner on Thursday evening, Patricia Patino, SR/WA of Michigan was awarded the 2003 Balfour Award. This was her second nomination and a well-deserved recognition for her. Congratulations to our Mark Keller, SR/WA who was one of the five finalists for the award.

As we continue planning here for our Annual Educational Seminar in September, we asked that you participate locally. Review the brochure when you receive it and sign up to attend, support our corporate sponsors (or encourage your employer to contribute), help by soliciting goodies for the goody bags, nominate someone deserving for a Special Services Award or the Professional or Employer of the year. Your participation will make our Seminar as much of a success as the Annual International Conference in Kansas City.

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Please consider submitting an article for publication in the Chapter newsletter. The deadline for submission is the 15<sup>th</sup> of each month for the following month.

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## **REGION 1 & BOARD OF DIRECTORS ANNUAL MEETING INTERNATIONAL CONFERENCE KANSAS CITY**

Melita Hillman, SR/WA

At the Board of Directors Meeting on Thursday afternoon, the two resolutions

presented to the Directors were approved. The first was a housekeeping matter to amend Ethical Rule 2.3(a) regarding the disclosure of confidential information requested in response to legal proceedings. The second added to the By-laws the Agency Membership category. This membership is designed primarily for federal employees whose agencies are not allowed to pay membership costs. The resolution as passed was modified from that originally presented for discussion in March when some "free" courses were included as an incentive. The class portion of the proposal was deleted and the approved change is membership only.

Finally, after significant information provided to all present by the Spokane, Washington and Austin, Texas chapters and Visitors Bureaus from each community, the Board voted to return to Texas in 2008 for the conference. I am told that Region One votes favored Spokane, but we will be traveling deep in the heart of Texas in 2008.

The formal election of Ronn Carlentine to another term as Region One Chairperson and Mark Keller as Region One Vice-Chair was ratified. Congratulations to Ronn and Mark for the recognition of all the work done to create the Region One web site and keep region activities coordinated. Finally, on the issue of realignment of Region One and Region Nine, the overwhelming response of the chapters in Region One was to make no change in the current configuration of Regions and Chapters. A proposal being considered will be to change the International By-Laws to allow more than 10 chapters in a region – thus alleviating the problem with the current size of Region One.

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## **CHAPTER 28 SCHOLARSHIPS**

For the past two years, Chapter 28 has presented two \$250 scholarships to students at Arizona State University. Last month, a representative of ASU attended

our Board meeting to both thank us for prior support and to solicit additional funds. The Board voted to increase the scholarships to \$500 each. These scholarships are awarded annually to two upper-class students – one in the Business/Real Estate School and one in the Engineering School. In both the past two years, at least one of the recipients has attended our Seminar in September.

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## **Chapter 28 Contributions to the Education Foundation**

Melita Hillman, SR/WA

Earlier this year, the Board voted to join with other chapters from Region One and approved the donation of \$1,000 from Chapter 28 to the Education Foundation. Though our check was presented to the Region One representative at the Spring Forum in March, a formal presentation was made to the Education Foundation Board on Sunday, June 15 in Kansas City.

One of the more interesting events with the Annual Conference is the Silent and Live Auction held on Tuesday evening. This event raises funds for the RWIEF, CWF and SARPA, the US and Canadian Education Foundations and scholarships. Each chapter donates items for the auction – usually items related to the state or region. As in years past, our chapter donates a Kachina for the live auction. This year our Sun Kachina, signed by the Navajo artist, was auctioned for \$375 (we had a bid of \$400 which was withdrawn). While our donations may not have been as large as the \$50,000 donated by the chapters in Region Two (what else can you expect from Texas – the home of the outgoing International President), our Chapter 28 raised and contributed \$1,375 this year to the Foundation.

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## **NOMINATIONS & ELECTIONS**

Nominations will be taken from the floor at the August Luncheon for 2004 Chapter

Officers. If you have a desire to serve your Chapter, please contact Paul Herndon at paul.herndon@aps.com or 623.932.6729.

Please start thinking about the Special Awards that will be given out at the Educational Seminar in September. The criteria are posted on the Chapter website under the Seminar section which can be accessed from the index page of the site. Deadline for submitting nomination is August 15<sup>th</sup>.

☆☆☆☆Our very efficient **Education Chair**, Dwight Davis, will be relinquishing his position at the end of this year. The Chapter is extremely appreciative of Dwight's service in this very critical position for our Chapter. The Chapter is seeking a member or members to fill Dwight's shoes and continue on with the tradition of providing the Chapter with excellent leadership in this area. If you are interested, please contact Paul Herndon or any of the Executive Board Members.

### **Seminar Committee**

The **Seminar Committee** is working hard to have all available information out to the general Chapter Membership on or about July 1<sup>st</sup>. We will be mailing out brochures to the Membership and the same information will be available on the Chapter website. We will also be offering PayPal as an option to pay your fees. If you have questions or need additional information, please contact any Board Member or info@irwaaz.com.

Your Seminar Co-Chairs this year are Melita Hillman, SR/WA and Douglas McLaughlin, SR/WA. Their contact info can be found on the Chapter website under Committees.

### **MEMBERSHIP COMMITTEE**

Rebekah Louis, Membership Chair

The following people were approved for membership at the July 9<sup>th</sup> Executive Board Meeting:

- Robert Sachs – Flood Control District
- John (Steve) Laney – City of Phoenix

The following people were read for 30 day consideration at the July 9<sup>th</sup> Executive Board Meeting:

- Rosa Bowser – Acquisition Sciences
- Carrie Lundin – Acquisition Sciences

If you are interested in membership, please contact Rebekah @ 602.236.8195 or rblouis@srpnet.com.

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### **TRANSPORTATION COMMITTEE REPORT**

Ronald Hill, SR/WA

A new web site has been established at FHWA which allows an individual to click on a Uniform Relocation Assistance and Real Properties Acquisition Act of 1970 question and have an answer provided to the question. The website is as follows: <http://www.fhwa.dot.gov/realestate/uafaqs.htm>.

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### **TRANSPORTATION LEGISLATION**

Ronald Hill, SR/WA

As many of the Right of Way community may know, Transportation legislation runs out of Congressional authorization this calendar year on September 30. The proposed reauthorization bill has been announced and released. The proposed legislation is known collectively as "SAFETEA". This stands for: "The Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2003." A number of provisions have an effect on the right of way activities.

First of all, **Section 1306** of the proposed Act deals with the Commercialization of Rest Areas. It allows the Secretary of Transportation to permit as pilot projects. These pilot projects can be for: acquisition, construction, operation, conversion, and maintenance of rest areas along Interstate highways in their States in accordance with some standards. The provisions are to include commercial operations that provide goods, services, and information that

benefit the traveling public and the commercial motor carrier industry, and as deemed appropriate by the States, including: (A) commercial advertising and displays if such advertising and media displays are: (i) exhibited solely within any facility constructed in the rest area; and (ii) not legible from the main traveled way. The programs are to provide commercial vehicle operators with special services designed to enhance motor carrier and highway safety; and allows the States to promote tourism-oriented items. These activities in rest areas may be operated by the DOT's or private operators. Participation in this pilot project is limited to those proposals submitted to the Secretary for approval during a one year period after the date of enactment of this Act. The legislation goes on to identify the contents of the various proposals. Any revenues received by a State from the commercial operations in a rest area under this section that are in excess of amounts required for the proper operation and maintenance of the rest area shall be used by the State for projects eligible under title 23, United States Code. If vending machines are placed in a pilot project, the State shall give priority to vending machines operated through the State licensing agency designated under the Randolph-Sheppard Act.

Second, **SEC.1504**, would amend Section 108 of title 23, United States Code, by adding at the end the following provision regarding Critical Real Property. This section provides that, in certain limited circumstances, title 23 funds may participate in a State's costs incurred in acquiring parcels of real property, considered to be critical for any project proposed for funding under title 23, prior to the completion of environmental reviews for property acquisition. The Secretary's approval would be required for the acquisition of each parcel before Federal funds could participate in its cost and the number of critical acquisitions on any given project would be limited, so as not to significantly affect alternatives. Prior to acquisition approval, the Secretary must

determine that the property is offered for sale on the open market and that acquisition is critical because the property value is increasing significantly, there is imminent threat of development of the property, or the property is necessary for implementation of the project's stated goals. The acquisition of a critical parcel would also be considered an exempt project for purposes of the transportation conformity regulations. This section would enable States to use Federal funds to acquire expeditiously a limited number of parcels that are potentially needed for future transportation purposes, and are threatened by future economic development. "Critical parcels" are typically those with a high probability of use for transportation purposes. The early acquisition of such parcels would maintain viable transportation options. Environmental reviews and approvals would be required before physical construction, demolition, or clearing could occur. States could not retain the Federal-aid share of the proceeds if a parcel was sold or leased. This section would give States the opportunity to reserve future alignment alternatives while allowing timely and cost-saving acquisitions.

Third, **SEC.1614**, I believe, to be a technical amendment to allow for the appropriation of lands or **interests** in lands owned by the United States. This proposed change would amend and clarify the process by which the Federal Highway Administration (FHWA) acquires right-of-way over Federal lands on behalf of State transportation departments, under 23 U.S.C. 317. Proposed section 317(a) updates several aspects of the current law. First, it clarifies that all adverse environmental impacts to the Federal land must be mitigated. Second, it clarifies that the authority may be used to acquire Federal land for any project eligible for Federal-aid funding. Third, it clarifies that if the land is ever not needed for transportation purposes, the land will revert at the discretion of the prior owning agency, in which case the land must be

restored to its former condition. These clarifications are consistent with current FHWA transportation policies. This section would retain the authority of the Secretary of the Federal agency supervising lands proposed to be appropriated, to certify that the appropriation is contrary to the purpose for which the lands or materials were reserved. Proposed section 317(b) adds a **new** provision clarifying that lands cannot be forever barred from use for projects eligible under title 23 just because other Federal funds were spent on their acquisition at some time in the past. If the land is needed for transportation purposes, and appropriate mitigation and environmental coordination has taken place, the acquisition and use of right-of-way needed for the project would be allowed under this provision.

Fourth, **SEC. 1617, INDEMNIFICATION ON CERTAIN RAILBANKED PROJECTS** would allow States to use these funds to make grants to local governments and private organizations ("project sponsors") for trail projects. Such projects include trails established pursuant to the National Trails System Act Amendments of 1983, 16 U.S.C. 1247(d) ("Rails to Trails Act"), located on a railroad right-of-way. Where the railroad or project sponsor's ownership interest in the right-of-way would not allow for railbanking and interim trail use under applicable State law but for the operation of the Rails-to-Trails Act, the United States has been held liable by the Federal courts under the Fifth Amendment to pay just compensation. The result in these instances is that the United States can be said to pay twice for the same trail corridor -- first through funds provided by DOT, and then a second time as the result of a just compensation award to property owners who abut the trail corridor and who are found by the court to hold the underlying fee interest. This section adds an indemnification requirement for States involved in railbanking. If a Federal court determines that property owners are entitled to just compensation in a corridor where Federal-aid highway funds have

been used after the date of enactment to acquire right-of-way interests or develop a trail that is located on a railroad right-of-way under the Rails to Trails Act, then the State would have to pay the United States the lesser amount of the judgment awarded (including attorneys' fees) or the Federal-aid highway program money received in connection with that railroad right-of-way.

Fifth, **SEC. 1810, DONATIONS AND CREDITS** would amend Section 323 of title 23, United States Code by simplifying and broadening the scope of 23 U.S.C. by deleting subsection (e) and adding a reference to local government employees in subsection (c). This would expand section 323 to include the value of donated services provided by local government employees, as already allowed for services donated by a person, to be credited to the non-Federal share for projects funded under title 23 funds. This provision would give States and local governments' additional flexibility to match Federal funds and expedite project implementation.

## **SURVEYORS CORNER**

Gregg Tuttle, Survey Chair

I get a lot of interesting questions – here is one of them.

Gregg: Our survey office needs to file an affidavit of correction for a final plat recorded in \_\_\_\_\_ County. We are unable to contact the surveyor who signed the plat for our company. I have not seen a plat corrected by affidavit signed by a surveyor other than the original who signed the plat. Is it legal to do that? Can you provide me with an example where that has been done before? Or is a replat the only method by which the plat can be recorded at this point? Thanks for your help!

Gregg's Response:

First, Please NOTE: that I am NOT licensed to practice law as an attorney. The following does NOT constitute legal advice. It is the PERSONAL OPINION of a Land Surveyor licensed to practice Land

Surveying in Arizona and no other. NO Warrantee is expressed or implied regarding ANY of the information or OPINIONS following. The article is meant solely for the purpose of stimulating thought and discussion regarding the subject at hand.

The following is, by no means, meant to be a complete and exhaustive treatment of the subject matter.

I am not, personally, aware of any state of Arizona statute law that forbids or prohibits "others" from filing an "AFFIDAVIT OF CORRECTION" - (others being persons other than the original AZ/RLS who sealed and signed the original recorded plat map drawing.)

However, I have not reviewed all of the various "rules" within the Arizona Administrative Code (AAC), so I can not say with certainty whether or not there are any rules that might pertain to your question. And, as to any of the various county and/or municipal rules and regulations - well... that is most certainly a potential minefield, and the appropriate agency (agencies) should be contacted to solicit their feedback.

**NOTE:**

IF the recorded drawing in question, (a "FINAL" plat map, of a subdivision, I presume?), were "Approved" by some governmental entity, (such as a City Council or a Board of Supervisors), then the Affidavit of Correction may, (or may not), also need such NEW approval to make it official.

Please consult the applicable local authority (authorities) as to what procedures may apply and also if there are some types of time limits which if action is take after (or before) it can be accomplished without further involvement of the original approving entity (entities).

Also, remember, that even if the area in question is in an unincorporated area of the county, a nearby municipality would have

to be consulted IF the land is within three (3) miles of the municipality (municipalities) according to state the subdivision law.

AND, It may all depend on just WHAT is being corrected.

If the correction is just for a minor typographical error, (such as ONE (1) distance, or one (1) bearing, or other similar items of a MINOR nature), then the Affidavit of Correction (AOC) is "probably" A-OK.

HOWEVER, it there are MAJOR changes needed to the "Final" Recorded plat map, (such as a reconfiguration of some of the lots, where it changes overall lot dimensions and/or orientations and/or areas, then a Re-Plat is definitely in order. Again, remember, with a "replat", it may have to again go through some type of governmental approval process, especially if the original "final" plat was so approved. And, many times in many counties the AOC does not get appropriately or applicably referenced back to the original plat. Many times a subsequent records research will easily find the original subdivision plat (or results-of-survey) drawing, BUT will NOT find or know of the AOC, (or Affidavits if more than one is filed in a sequential series of 'corrections'), which will create problems. I have seen one AOC that contain seventeen (17) PAGES of single spaced typed corrections to a subdivision plat map. Obviously that should have DEMANDED a 're-plat' versus the AOC. Many times AOCs create more problems than they solve. Except to most mundane and minor of corrections a 'replat' is the way to go. It is costlier, but usually much more effective and directly discoverable than a AOC.

**(SIDE BAR Story):**

I am aware (via hearsay, and anecdotal stories) that there are examples of AOCs that have been recorded by people other than the original AZ/R L Surveyors who were the responsible registrants on the original "final" plat maps. However, I do

NOT have any copies there of to share as an example of prove.

There is one apocryphal story of a surveyor who performed, AND RECORDED, the results of an ALTA survey as performed for a title company. In addition to the ALTA survey map, the surveyor also recorded, (separately), the written property boundary description, including calls for monuments set by the surveyor. Not a deed, per se, just a written description of a parcel's boundary. This recording, (which was apparently unchallenged by the county recorder's personnel), was accomplished PRIOR to the recording of the ALTA drawing itself.

On the ALTA drawing, it referenced the (now) previously recorded written property boundary description, with the caveat that if that description was not used by the title company, then the ALTA survey itself was voided !! Well, as you can imagine the title company lawyers were flummoxed over this situation, and they insisted that the surveyor file an AOC to BOTH the recorded drawing AND the recorded description, (which by the way, was recorded by the County Recorder's Office under "Miscellaneous"), and if the surveyor did not, they would not pay.

The surveyor refused, so, (according to the telling, - by the surveyor in question), the title attorneys file a document entitled an AFFIDAVIT OF NULLIFICATION as to the two previously recorded documents to put the public on notice to ignore the other two documents !!!

I have never personally verified that story, so as to get a copy of that document. Now, I wish I would have followed up on it. (END of Side Bar Story).

I hope this response is of some assistance in your decision making process as to how to proceed.

And I hope it is of some benefit to the readers of the Kachina Chapter newsletter.

Until next time, THANKS! - Gregg Tuttle  
AZ/PRLS