

International Right of Way Association



KACHINA CHAPTER 28

Phoenix, AZ

Chapter Newsletter

www.irwaaz.com

FEBRUARY, 2004

-  Executive Board Meeting
-  Wednesday, February 4, 2004
-  Az State Land
-  3rd Floor Conference Room
-  4:45 pm

Confirm to Doug at dwm@mail.maricopa.gov

February Luncheon

When: Tuesday, February 10, 2004 @ 11:30am
Where: Doubletree Guest Suites * 320 North 44th Street (NWC 44th Street & Van Buren)
Menu: London Broil marinated in wine and herbs served with Forest Green Mushroom Sauce; Chef's selection of Rice or Potato; Fresh Vegetable Medley; Rolls and Butter; Doubletree Cookies and Iced Tea, Coffee or Decaf
Cost: \$15 for members & guests (please have exact change or your check payable to IRWA Chapter 28)
RSVP: Please RSVP online at http://www.irwaaz.com/index_luncheon.htm or Call Pam Hicks @ 602-236-5948 or Rebekah Louis @ 602.236.8195

February Luncheon Guest Speaker

Richard Anduze SRP Archaeologist

Mr. Anduze has been an archaeologist and cultural resource manager for over 20 years working almost exclusively in Arizona and New Mexico. He has previously worked for the State, the Forest Service, and private consulting firms; and has been at SRP for six years in the position of archaeologist. He is experienced in survey and excavation; artifact analysis; report preparation; and project management. Right-of-way projects have included electrical transmission and distribution lines, fiber optic lines, water and gas pipelines, canals, roads, and a railroad. At SRP Mr. Anduze works as a project manager and contract administrator ensuring that all required consultations are conducted for SRP projects and that projects meet governmental standards even if not required by law.

Join us February 10th for this very informative presentation. Information on the luncheon can be found in the box to the left.

President's Message

Doug McLaughlin, SR/WA

In December I received an E-mail from IRWA regarding "Member Advantage." Here are some of the High Lights of that E-mail.

The International Executive Committee identified the core values on which we will build IRWA in the future. These include: professional development achieved through lifelong learning; providing an environment that fosters excellence in professional growth and opportunities; providing a community to people in the Right Of Way industry; adherence to the highest stand of ethical practice; and providing quality services to our stakeholders.

Embarking upon the path to obtain IRWA's prestigious SR/WA designation or one of several Certifications. Senior Member professional designation is granted to members who have achieved professional status through experience, education and examination in several major right of way disciplines

Contact Chapter 28's PDC Committee Members, who can help you plan a program to obtain your Senior designation. You also can go on to IRWA's Web site for additional information about the SR/WA designation as well as other IRWA certification programs.

Our Chapter has and is a strong supporter of its members obtaining the senior designation. The Chapter's educational program has scheduled the core class needed by those members seeking the SR/WA can meet their educational requirements. For those who have completed their core classes and are preparing to take the exam, the Chapter is sponsoring an exam studies session in the very near future. Look to the newsletter for the time and place; we will keep you posted as to when that will be.

THOUGHT FOR THE DAY

"Let your light shine in the corner in which you stand and you will light the world."

Membership Committee

Rebekah Louis, Chair

The following people were read for approval at the January 7, 2004 Executive Board Meeting:

- Brad Stoelk
- Patrick Murphy, Department of the Interior
- John Duel, DLR Property/Property Management
- Angela Castellano, SRP
- Allen Garrison, SRP

The following applicant was read for 30 day consideration at the January 7, 2004 Executive Board Meeting:

- David N Rodriguez, DLR Property/Property Management

The following applicant transferred membership from Chapter 6 to Chapter 28:

- Carol Rempel-Bear, Universal Field Services

For Membership information, please refer to the Chapter website or contact our new Membership Chair, Heather McCook at heather@davisvaluation.com.

Seminar Committee

The first Seminar planning meeting will be held on Wednesday, February 4th in conjunction with the monthly Executive Board Meeting. Please consider participating this year in helping put together another successful seminar. Many hands make for light work. If you have any questions, please contact Doug McLaughlin at 602.506.4648 or dwm@mail.maricopa.gov.

*HAPPY
VALENTINE'S
DAY
February 14th*

EDUCATION

Dan Kovoich, SR/WA, Education Chair

UPCOMING SR/WA REVIEW & PREPARATION PROGRAM

Are you serious about receiving your SR/WA designation? Don't miss this rare opportunity!

Chapter 28 is currently working out the details to host an SR/WA Review, Preparation and Examination program this May 3rd, 4th and 5th of 2004. The Cost structure will be as follows:

Review/Preparation Fee

Law \$50.00

Negotiation \$50.00

Appraisal \$65.00

Engineering \$65.00

Senior Examination Fee

\$25.00 per examination; (4) examinations (Law, Negotiation, Appraisal & Engineering) will be offered.

Total Package: \$330.00

All candidates are encouraged to prepare and take all (4) exams

This program is specifically designed to prepare candidates to pass the four (4) senior examinations the first time. Past attendees have a better than 90% pass rate by this program!

The Programs Instructor will be Michael Wolfe. Michael Wolfe, SR/WA is a Right of Way Agent with the Alameda County Public Works Agency performing Right of Way acquisition activities for several agencies throughout Northern California. Mr. Wolfe has conducted a number of SR/WA review sessions and has made presentations at several IRWA International Education Seminars over the years. Chapter 28 is looking forward to hosting Mr. Wolfe again in May.

Pre-registration will be mandatory so be on the lookout for Program information, available soon. If you are interested, please forward Dan Kovoich at quick note at djkovoch@srpnet.com.

OTHER UPCOMING CHAPTER 28 COURSES

- Course 600 Environmental Awareness - Late March (details soon to follow)

Please contact me with any questions!

Presidential Preference Primary Election

Tuesday, February 3, 2004

Voting is a privilege, not a right. Every vote counts!





SURVEYOR'S CORNER

Gregg Tuttle, Survey Chair

Gregg, here is a "hypothetical situation" about "family-subdivisions".

Potential client calls a Surveyor requesting a "boundary survey of 80 acres and split that into a 40 and two 20 acre parcels".

Surveyor asks: "what's on your mind?"

Client says: "I'm keeping 40 and my 2 children will each get 20".

Surveyor asks: "what on your children's minds?"

Client says: "Oh, I think they're going to break theirs down to 5 acres parcels".

QUESTIONS:

- 1) **Is this legal?**
- 2) **Is this ethical?**
- 3) **If you were in private practice, would you provide the survey services?**
- 4) **And, just WHY did the Surveyor ask those questions?**

Gregg's RESPONSE:

As always, the following are my own personal opinions, and do not necessarily reflect the opinions, or beliefs, of my employer. Also, I am NOT offering a legal opinion; - if anyone needs that they should be consulting an appropriately qualified AZ real estate attorney.)

Having said that, my opinionated answers follow:

(NOTE: These insights are based on my own presumption the land in question is in an unincorporated area of a county without any subdivision regulations and zoning laws that may be stricter than the AZ state statutes, and, that the land is *not* within the "extraterritorial jurisdiction" of any nearby municipalities with strict(er) regulations.) The following numbers reference the Questions.

1. At first glance one might think that it is not legal, however, the way the statutory law was structured by the AZ legislature, apparently the legislatures actually anticipated, at least the first part of the scenario, in allowing for AZ families to divvy up land to be distributed within their respective families, (that is the first part of the scenario where the two children each get a twenty acre parcel). *Is that legal? Most definitely.* Then, What about the allegation that children are going to break each of the two twenty acre parcels into five parcels? Well, as long as the parent(s), who owned all of the land at the beginning, is(are) not a direct (financial) beneficiary, then under current law, those secondary divisions also *may be* legal. However, in those 'informal' family situation, in this 'hypothetical' - such as with conveyances between multiple family members- a *series* of these types of lot splits *could be* considered, (by "some"), to be part of a chain of splits specifically designed to create what eventually amounts to an illegal subdivision. Such time- lengthy splits could take years before reaching a "subdivision threshold", (i.e., notice by some applicable regulatory entity). For more background insights, please check out "Yank v. Juhrend, 151 Ariz. 587, 729 P.2d 941, (Ariz. App. 1986)": and, also, "Landin v. Ford, 151 Ariz. 273, 727 P.2d 326, (Ariz. APP. 1985)". The various Arizona state, and local, subdivision acts are somewhat 'vague' regarding exactly how the division of the property is to be computed with regards to the number of divisions of the land over time. The respective state/county/municipal acts, *for the most part*, appear to apply only to the current division of property; however, there are certain jurisdictions that have adopted a CUMULATIVE approach to determining the number of parcels that will result from the proposed division of property. Those jurisdictions look beyond the currently proposed division and look at the division of such property over time, including divisions by previous owners of such property, and, even previous divisions of ADJACENT land which, in total, comprise the 'original' parcel of property for municipal subdivision requirement purposes. Phoenix, Tucson, Flagstaff, and Sedona are examples of municipalities (as I currently understand it) that have adopted some type of historical and/or cumulative approach, and they look at the aggregate number of divisions to a given parcel of property in determining whether some 'illegal/unethical' threshold had been met. The state Department of Real Estate, and Maricopa County, look at the number of splits by any ONE person, or by more than one person acting in concert, but do not consider the amount of time over which such splits occurred, in determining the their threshold. Also remember that the AZ laws in this area do not distinguish between permissible avoidance and prohibited evasion. The laws make it unlawful to avoid regulations in this area. However, lot splits receive little, if any, attention, and scrutiny, as compared to actual large subdivisions, from either (most) county or from (most) municipalities.

continued on next page...

(BTW, as a historical note, the AZ state statutes on Subdivision only go back to 1/1/1974, and any subdivision plat recorded before that date is now known as a *'hiatus plat'* as before 1/1/74, *anyone could get a subdivision plat recorded.*)

2. It depends... on a lot of factors, personal, public, location, cultural, historic, etc. The “E” question has no easy answers. It depends on who is asking, (and Why), and who is answering, (and Why). Given the same set of ‘facts’ as outlined above, it might be ethical in one array of particulars and unethical if just one of those ‘particulars’ is changed. It may be considered (un)ethical depending on one’s background and upbringing, lifestyle, area, (rural versus urban), etc. I do not think that it “universally” unethical, but there may be specific circumstances, situations, and, scenarios where it might be considered by some to be unethical. That is the problem with ethics as they can be quite subjective, based on personal beliefs, and cultural influences, and when and where we are in the historical continuum. Example: slavery was legal at one time. Was it every ethical?
3. Again, it depends on the potential client(s), and the specifics of the situation, such as *which county, what about the location? (Would the land owner(s) need to give notice to nearby municipalities?)*, and, just *who are the surrounding land holders?* What other factors of geospatial, political, cultural, and personal-psychology (of the surveyor) might influence the final decision? It might be legal/ethical in one rural county, and just the opposite in a more urban environment. It depends! (I know that sounds a LOT (no pun intended) like an attorney, but, again, I assure you, I am not offering legal advice ! ☺).
4. Because: First, “*professional*” surveyors always wants to gain as much insight as possible as to *WHY* a survey is being requested, (to assist in answering question 3, among other considerations); and, Secondly, so as to gauge the client’s intentions, and motives, so as to be able to advise the client about potential problems arising from the proposed land splits, (dependent on the concepts discussed above), and, to *firmly suggest* that the client should consult a well qualified AZ attorney, who specializes in AZ land law. Surveyors who blindly accept surveying assignments without asking “WHY” run the risk of potentially finding themselves embroiled in unforeseen controversies, and possible problems, both financial, (unanticipated costs not covered in the written scope of services documents), and, as with the surveyor’s own personal ethical beliefs.

I hope that this response has successfully addressed and answered your questions.

As always, I am interested in the opinions of, and the feedback from, the readers of the Kachina Chapter 28 Newsletter.

Until next time – Thank you.

Gregg Tuttle, manager, SRP LAND-Surveys Division

2004 Chapter Executive Board

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