

# **The Interior Angle**

**November 2023**



**Kentucky Association of Professional Surveyors**

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# Interior Angle

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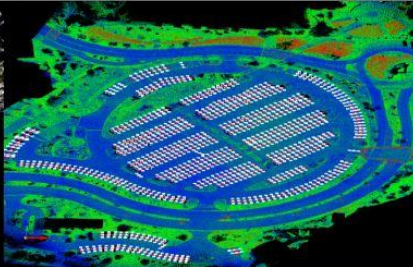
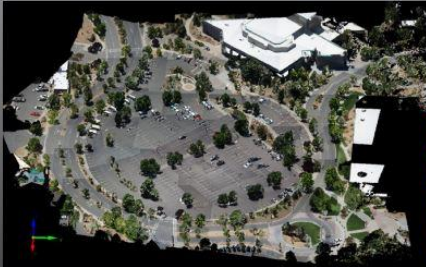
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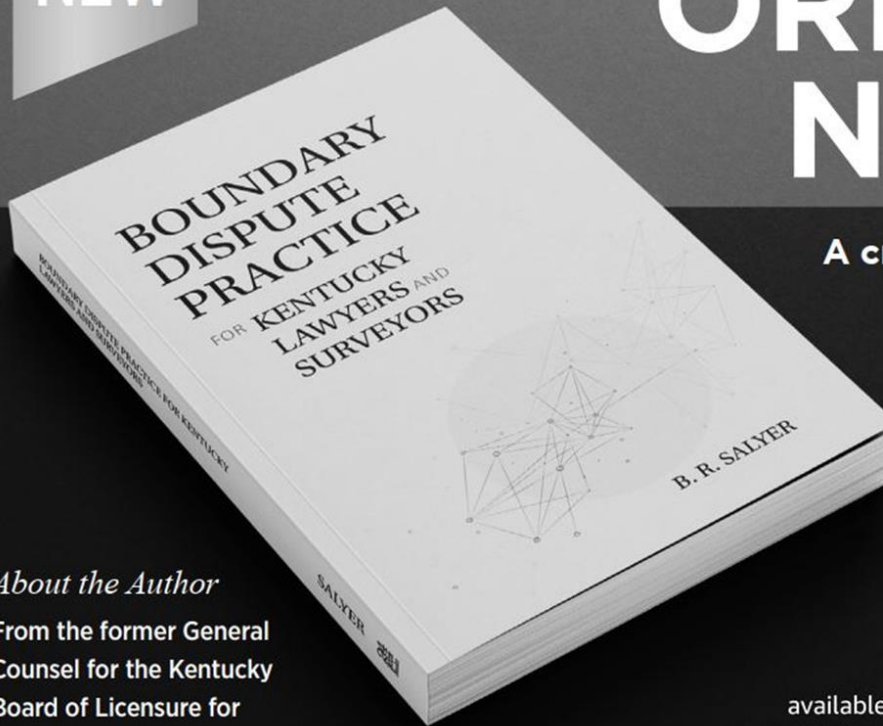
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# From the President's Desk...

By Mike Billings, PLS



Fellow Surveyors,

It is with great pride and honor that I write my first letter as your President of KAPS. First and foremost, I would like to thank all the surveyors and past KAPS officers who have served our organization and profession over the years and who have laid the groundwork for the successful continuation of our profession for years to come. I would personally like to thank Bob Smith for taking me under his wing and for serving as our past president the last two years. Bob as well as all the KAPS Officers have welcomed me into the organization over the years and have always been willing to discuss matters, answer questions, provide help and time and whatever else has been needed to help me and our organization. We are all in the business of providing service and time and it speaks to the quality and beliefs of a person who is willing to go above and beyond to provide their time to another surveyor to assist with their growth as a person and a surveyor.

For those of you who are not familiar with who I am. I was born and raised in Hardin County. Upon graduation from North Hardin High School, I attended Elizabethtown Community College, (now Elizabethtown Community and Technical College), for two years, and then attended the University of Kentucky. I graduated from the University of Kentucky with a BSCE, (yes, I will go ahead and put it out there I am also a professional engineer). Upon graduation I worked briefly as a research assistant for a college professor, and in May of 1993 I began working with Hawkins Engineering in Hardin County. While working at Hawkins Engineering, I gained much valuable experience under Mr. Ed Hawkins and Mr. John Wiseman. I am very thankful for the friendship and education that they provided and continue to provide to this day. I obtained my Professional Surveying License, (KY PLS 3472), in January of 1999 and my Professional Engineering License, (KY PE 21230), in February of 2000. Since late 1999, I have been owner and partner of



Engineering Design Group, Inc. in Elizabethtown, KY. Engineering Design Group, Inc. is a small surveying and engineering business with only around 5 employees. Our work focuses on subdivision and commercial site developments, utility design, and school site design.

I have been married to my high school sweetheart, Sharon, for 28 years. Sharon is a 4th grade teacher with the Elizabethtown School District. We have one daughter Grace Smith, who also graduated from the University of Kentucky with a BSCE this past May. Grace was also married this past May and is now living and working in Indianapolis with her husband Josiah. In my spare time, I enjoy spending time with and relaxing with family and trying to stay healthy by playing basketball or walking with my wife and dog. We are currently attending Southeast Christian Church in Elizabethtown and I am hoping to become more active with the church.

I am becoming more and more aware that there are many things going on with KAPS. For those of you who are either not active or who wish to become more active, I urge you to do so. I can assure you that the relationships and resources that you gain through being active with KAPS are well worth your time. We held a successful KAPS Conference in Somerset this past September. I would like to thank Nancy and Greg and the rest of the conference committee for their time and efforts in putting the conference together. Our conference committee is already busy planning our 2024 conference to be held in September in Louisville, KY. Please visit our website [KAPS1.com](http://KAPS1.com) to stay informed and up to date with all other KAPS activities.

As the fall season ends and we are in the woods surveying please take a few moments to enjoy the wonderful trees and surroundings that we are blessed with in Kentucky. As winter and the Christmas season approach, please take time to enjoy family and friends and to be thankful for the many blessings that God provides for all of us each and every day. Also, if there is some slow time during the winter, I would suggest scheduling an appointment with your dermatologist to look you over and make sure that there are no signs of skin cancer showing up. As being outside and enjoying the sun is a benefit to our profession it can also be a curse with the sun bearing down on us all day long. For those of you like me without much or any protection on top, I urge you to always wear a hat while out surveying.

Wishing everyone a blessed and Merry Christmas and holiday season and thank you all for the opportunities you have given me and may God Bless. Ephesians 4:28 "Let the thief no longer steal, but rather let him labor, doing honest work with his own hands, so that he may have something to share with anyone in need."

Respectfully,

Mike Billings, PE, PLS

KAPS President

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# Editor's Corner

By Jon Payne, PLS (cpd@kaps1.com)



We have reached the end of another year's worth of issues of *The Interior Angle*. I very much appreciate all the past year's contributors and want to thank them all for their participation. I know it is difficult to take even a few hours away from business and personal matters to prepare a short article. Know that your time and effort are very much appreciated.

Moving forward, we will hopefully have some additional tales from our colleagues around the state, some more interesting maps or monuments and continue to learn a little bit about our fellow land surveyors.

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# Found “Stone” Monument

By Jonathan Payne, PLS

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From Brown’s Boundary Control and Legal Principles, a ‘good monument’ should be “...*easily visible, certain of identification, stable in location, permanent in character, and nondependent on measurement for its location.*” In the text Clark on Surveying and Boundaries, it is stated that “...*the original surveyor is required to place lasting monuments that are adequately described in the written record and accurately related to nearby objects.*” Further, Evidence and Procedures for Boundary Location indicates, “*If there is a call for a monument, that monument, if discovered and undisturbed and uncontradicted by the remainder of the writings, is conclusive.*” Finally, our own Kentucky Standards of Practice indicate the importance of an accurately and well-described monument:

- *201 KAR 18:150 Section 4 (1) The marks and monuments on the ground as found and verified, or as set by a professional land surveyor shall constitute the actual boundary survey.*
- *201 KAR 18:150 Section 5 (2) In performing a boundary survey, a professional land surveyor shall conduct research to obtain and evaluate the following: The description of the physical monument that represents each property corner.*
- *201 KAR 18:150 Section 6 A professional land surveyor shall thoroughly: (1) Search for the physical monuments that represent each boundary corner; (2) Search for other physical monuments set out in the description of the parcel or tract of land being surveyed.*
- *201 KAR 18:150 Section 10 (4)(h) A complete description of each "found" monument that complies with the following: 1. It is sufficiently accurate and adequate for subsequent identification by another professional land surveyor; and 2. To the extent possible, the description shall include the monument’s dimensions, type of material and the identification cap or other identifier that was used.*

As we can see, a high level of certainty needs to be in place for recovering, describing, and placing monuments. For our clients, monuments are usually the most visible and important result of our surveys (notwithstanding those

clients that just need the paper to give to some agency and could not care any less about their actual boundaries). Not everyone may be able to accurately understand the survey plat we provide, but they often understand a physical object pointed out is their corner. For that reason, we need to make sure that when we point out an object as being the corner of the property, it is the correct object that is supposed to mark the property.

Being human, I have no doubt that I have/had shortcomings in this area of adequate description of monumentation and evaluation of record descriptions of monuments. So, the following information is not to point out anyone who has done any of the following, it is just to encourage everyone to be extra vigilant regarding the importance of a good description of the monuments we find/set. And now - two cautionary tales about searching for and calling out monuments.

While not an isolated case, this first tale shows why verification of monuments is important and may take just a little bit more than scrapping the dirt off the top of the 'found' monument. This situation is one that has happened often enough that I suspect some of you readers have experienced it as well.

Following behind the earlier retracement conducted by a surveyor that I know to do good work, I was surveying a property nearby to that surveyor's earlier project. With a copy of his recorded plat in hand, I easily found several of the corners indicated on his drawing. However, one corner called for a ½-inch diameter rebar reported as found by his crew during their fieldwork. It fell near a power pole and a telephone pedestal, so I wanted a closer position to search before poking around too much near the telephone pedestal. Using a couple of other points from my colleague's survey, I calculated the location of the called for ½-inch rebar and staked out to within an inch or so before moving any soil.

*Jackpot! There is the top of the ½-inch rebar...*

*but why does it look a little odd...*

*I have never seen a copper-colored rebar before...*

*oh no, better dig a little deeper.*

As some of you have already guessed based on the internal monologue written above, what I uncovered at that position was a ground rod complete with the ground wire looped and clamped to it. It took just a little bit further digging than my colleagues field crew had done to confirm this. I would suggest for those running multiple crews that you make sure your less-experienced technicians know what a ground rod is and to be on the look-out for any ground rod masquerading as a property corner. Fortunately for my colleague, this particular point was outside the property he was surveying (his crew was trying to go above and beyond so they gathered data well outside their subject property) and it did not play a role in his boundary resolution. However, the ground rod is very close to the actual corner location and is, unfortunately, shown on a recorded plat. Since the power companies like to put their power poles right on top of our corner monuments, this instance of misidentified corner monument is something that I expect has happened more than once.

In another case of mistaken identification of a corner monument, there was potential for developing problems down the road. Although the following story is VERY long, it is the abbreviated version of the entire process. Not all details are provided even if it reads as if they are.

I was hired to survey three adjoining lots in a small town in Trigg County. I gathered enough research to feel comfortable developing a scope of work and fixed price for the project. Once I got the go ahead, I did a deeper dive into the paper trail and had everything fitting together very nicely. The deed work traced back to some late 1880s divisions, all of which fit together very well. Everything in the paper trail indicated that this project should be straightforward – oops, just jinxed myself.

Prior to beginning work, I spoke with neighbors to let them know I was going to be working in the neighborhood. Everyone was pleasant enough and one lady had recently gotten a new double wide mobile home installed. She mentioned having a survey done. I asked if it would be possible to look at her survey and she declined. That seemed a little odd as most people are all too ready to ‘prove’ their property lines by pulling out anything from an actual survey to a USDA ag map where their grandpa sketched the property lines. Oh well, I figured I would see what I find as sometimes people claim they had a survey recently when they have not - it is possible she is calling some non-



authoritative map a survey. If I found corners that indicate a recent survey, I could work on getting the information needed.

The lots I was surveying are two properties removed from a central street intersection, so that intersection seemed a good location to begin. As shown on the edited “Kentucky From Above” (<https://kyfromabove.ky.gov/>) aerial image, this intersection would correspond to the street intersection near the base of the north arrow. Ignore the red square for the moment as we’ll have to come back to this location later in the project.



With a deed plot in hand, I started out at the intersection and had a look. The call in that property’s deed reads as:

*“...beginning on a stone N.W. corner of the original lot near the store house (now gone) and in Main Street; thence with said street S. 23-1/2 W, 54-3/4 feet to a stone in said street...”*

Since I know I will not be able to just probe for a stone under the paved road, I use the metal detector both in the street and along the edges at typical locations that may have been considered as ‘right of way’ width. I’m sweeping a rather large search area in case someone had, subsequent to the call for in the street, witnessed the corner with an offset. Finding nothing, I headed down the road to the east, continuing a wide search area with the metal

detector. Given how well the deeds plotted up, I consider that the deed distances should be close to correct. At the north end of line L-3, I did find a T-post and, about 3.5' away, a pin and survey cap with identifying license information. These items were about 30 feet farther east than I had expected based on starting "in" Main Street per the corner tract's deed.

Continuing eastward, I lined up with a very visible tree line (seven trees along 163 feet of line) on what appeared to be the west line of Lot C. Surprisingly, I did find a stone just about in line with the trees. However, the deed for the neighbor to the west of Lot C calls for:

*"... N. 5-1/2 E. 165 feet to a stone on the South edge of the Hopkinsville road ..."*

and my subject deed calls for:

*"... NE 200 feet to the south side of Hopkinsville Road; thence S. 79 1/2 W. 112 1/2 feet to NE corner of J.D. Weller lot, thence with said line S 3 1/4 W 165 feet to the beginning..."*

Despite finding a stone, I was not satisfied that it was the original called for stone as the location was not what I would think of as the south edge of the street although it was definitely the south side of the street. In addition, there was a significant cut from the stone location down to the street level. I took a measurement and figured I would try to prove/disprove the stone by the deed call from the back of the lot. I also swept the metal detector an additional 30 feet eastward based on the earlier found new pin. There was a matching pin and survey cap at that location.

As I continued east, each of the deeds had consistent calls for a stone on the south edge of the road. I found a tree line (8 trees along 211 feet of line) between Lot C and Lot B. I also found some old concrete from 4" X 4" wooden fence posts that had been set in concrete but had been cut down near ground level. These concrete remains continued eastward at a very regular interval of about 10 feet between posts along the frontage area of Lot B. Note the red block labeled PT-C - as with the street intersection, we'll be back to this matter.

Continuing eastward, I find the end of a north/south running stone wall between Lot B and Lot A (PT-A) and at the next line to the east, a short tree line

(only 2 trees, so really a line segment) that would project to the west edge of an asphalt drive. Further eastward were additional signs of occupation such as mow lines or driveways until finally arriving at an old fence around a farm which is south of Lot A and east of Lot B.

Now it is time to look for anything along the back lines. Making my way around the farm property, I headed back westward towards Lot A metal detecting and probing with the shovel at each point. By the time I got to the southeast corner of the neighbor east of Lot A, the deed distances put me in line with the edge of the drive and a propane tank. Measuring towards Lot A, I find a 36-inch diameter ash tree. Continuing along line L-9, the farm fence wraps around a 16-inch diameter elm tree very near the called distance. Following along the farm fence to the south, I can see by eye that a fence line along the back of Lot B and Lot C would intersect with the farm fence near PT-D. I continue down line L-5 measuring several fence posts along the way and find that the fence continues south, and another fence turns east very near the called for deed distance of line L-5 as taken from the elm tree between Lot B and Lot A.

Going back to point D, I start to work my way along the old fence behind Lot B and Lot C to see if there is anything to be found. I measured several fence posts along the way. The called-out distances from the deeds did put me in line with the tree lines mentioned earlier if measured from the elm tree where the farm fence cornered. I found another recently set pin and survey cap about 15 feet east of the north/south tree line as shown on the west side of Lot C and about 6 feet north of the fence line along the back of the lots. Finally, at point B, I found a flagged wooden privacy fence corner – this fence is of newer appearance than the fence I had been following along the back of the lots and the corner of it is about 6 feet south of the older fence. I continued working my way along line L-2, L-1, and L-6 with no success in finding original called for monuments (since each side of line L-1 is the same property owner, there wasn't even evidence of occupation any longer).

Phew! That was a decent day's work. We've looked for evidence around 6 acres to try to define an acre and a half of ground. Searching for corners for a total of ten different tracts (3 subject properties and 7 nearby). But there isn't anything I would yet hang my hat on as the only called for monument I found was a stone that I wasn't satisfied was in its original location. Time to look at

this back in the office and see if I can narrow down some closer search areas – also, I need to see if I can get a copy of the survey that resulted in the pins I found.

Back at the office, I use the Board of Licensure roster(<https://elsweb.kyboels.ky.gov/kweb/Searchable-Roster>) to look for contact information for the licensee whose caps I had found. I am able to get in contact with the office he works at and receive a call several days later. That office sent a copy of their survey to me. While working through the contact process, I have been trying to analyze the collected data and resolve it with the record deeds. I am finding that physical occupation (tree lines, fences, stone walls, and roads) works VERY well in relation to the 1880s era measurements. Based on my determination, the largest difference between deed call versus street/fence/tree lines was **0.6 feet**. My observations and analysis even refuted the only stone I had found as the distance from the back line placed the ‘south side’ or ‘south edge’ of the road as being 9 feet south of the physical centerline – much closer to the road, which is what I had expected when I was in the field. But if my analysis is correct, I cannot figure out why the newer pins are placed where they are located. I spent a good deal of time trying to make the other surveyor’s determination somehow fit any of the evidence I found and just could not come up with any scenario that seemed correct.

Upon receiving the emailed drawing from the other licensee, I entered his plat data and placed it within my drawing on top of my measured location of the pins he had set. From this I created stake-out coordinates to look for the evidence he had found that controlled his boundary determination. He had found two stones along the road frontage that he based his work on, so I really wanted to locate those stones with my own measurements. After all, the corner monuments called out in the deeds were stones.

Back to the property for some additional probing in my calculated locations as well as to locate the evidence the other surveyor had found that I had apparently missed. We are back at that red square over by the north arrow. Recall from the beginning of this story that the corner lot began at a stone “in Main Street.” Using the calculated stake out point, I located the stone the other surveyor called for at this intersection. What he located was 30 feet east of the centerline of the road that had been called Main Street in the 1880s. It was absolutely a stone and looked very substantial. However, it was

not “in” Main Street. Instead, it was at the base of a rather large tree and at the back of a sidewalk that was built well after the 1880s. Wanting to know exactly what I was dealing with, I pulled on the edge of the stone and was able to move it with minimal effort. It was a beautiful stone of about 6-inches by 14-inches by 3-inches and may very well have been the original as called for in the road, but it was just sitting on top of the ground. It was not “...uncontradicted by the written record...” which called for in the road, was not “...certain of identification...” as the original description of the stone provided no dimensions, and (from my measurements around the neighborhood) was not “...accurately related to nearby objects...”



To the second of the found stones on which the other surveyor based his boundary determination. I staked out to point C on the roadside between Lot C and Lot B. This location was about 15 feet east of the tree line that appeared to define the line between Lot C and Lot B. The object that was called out was very discernable without shoveling. It looked very suspicious as I walked towards it and my suspicions were confirmed when the stake out coordinates placed me right on top of the remains of a 4” X 4” wooden fence post set in concrete. This was just one of the many such posts I had found and noted in my earlier search area. The farthest west of these fence posts actually lined up very well with the tree line that I suspected indicated the original division line.



I took the photographs shown in this write-up and provided them along with a very detailed explanation of my boundary resolution to the other surveyor. At that point, his intention was to continue to call out both of the “stones” used for his determination as found original stones in their original locations. I let him know that I could not agree with his resolution, so I was going to have to go with my own conclusions but before marking anything on the ground, I would speak to the neighbor he had surveyed for (the lady west of Lot C who would not allow me to see her recent survey) and let her know that I did not agree with his determination, but I could not tell her she could not claim ownership of any ground as surveyors do not determine ownership. In speaking to the neighbor, she told me when her survey was done, she and her sister (who had owned Lot C prior to my client) wondered why it was marked where it was marked as they always understood the tree line to be the property line. This conversation was relayed to the other surveyor, and he subsequently revised his work.

One aspect of this tale that needs to be stressed is the importance of having crews you can trust to be your eyes and ears if you send them out on a project. Another point would be that with today’s modern technology, perhaps requiring a photograph of found ‘monuments’ might be useful to verify that the field crew has accurately determined what was found in the field. Experience provides a different lens when looking at/for boundary evidence. With fewer crew members on site, some of the mentoring we older surveyors got to experience is not being passed on to the younger generation that is currently working in technician roles before becoming licensed. As the licensee, it falls on you to make sure things are done correctly. It is

completely reasonable to send unlicensed technicians to perform certain aspects of the job, but they are in the technician phase of their careers and are supposed to be gaining valuable experience from their work under the leadership of the licensed professional. Part of this experience should include guidance on the level of effort needed to verify that what you are calling out as a corner monument can be substantiated and is not simply the proverbial goat stake.

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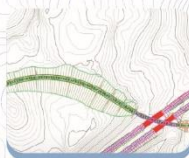
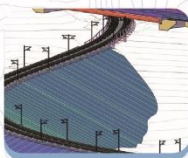


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# Getting to Know... The Kentucky Ohio Border

Jon Payne, PLS.

I do not specifically practice in the geographic area discussed. If any information provided runs contrary to knowledge from those who do practice in the area and clarification or correction is needed, please send a note to the editor and any needed corrections will be included in the next issue.

The border between Kentucky and Ohio was the subject of a court case which ended up being argued before the Supreme Court of the United States and a decision was reached to fix the location of the border between the two states. Following is the court's opinion as retrieved from Google at:  
[https://scholar.google.com/scholar\\_case?case=3335497994854185650&q=Ohio+v.+Kentucky,+444+U.S.+335+\(1980\)&hl=en&as\\_sdt=4000006](https://scholar.google.com/scholar_case?case=3335497994854185650&q=Ohio+v.+Kentucky,+444+U.S.+335+(1980)&hl=en&as_sdt=4000006)

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**444 U.S. 335 (1980)**

**OHIO**

**v.**

**KENTUCKY.**

[No. 27, Orig.](#)

**Supreme Court of United States.**

Argued December 3, 1979.

Decided January 21, 1980.

ON EXCEPTIONS TO REPORT OF SPECIAL MASTER.

*James M. Ringo*, Assistant Attorney General of Kentucky, argued the cause for defendant. With him on the briefs were *Robert F. Stephens*, Attorney General, and *George F. Rabe*.

*Michael R. Szolosi* argued the cause for plaintiff. With him on the brief were *William J. Brown*, Attorney General of Ohio, *Howard B. Abramoff*, Assistant Attorney General, and *Stephen C. Fitch*.

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

The State of Ohio, in 1966, instituted this action, under the Court's original jurisdiction, against the Commonwealth of Kentucky. By its bill of complaint as initially filed, Ohio asked that the Court declare and establish that the boundary line between the two States is "the low water mark on the [336\\*336](#) northerly side of the Ohio River in the year 1792." Leave to file the bill of complaint was granted. 384 U. S. 982 (1966). In due course, Kentucky filed its answer and a Special Master was appointed. 385 U. S. 803 (1966). In its answer, Kentucky alleged that the boundary line is the current low-water mark on the northerly side of the Ohio River.

Ohio later moved for leave to file an amended complaint that would assert, primarily, that the boundary between Ohio and Kentucky is the middle of the Ohio River, and, only alternatively, is the 1792 low-water mark on the northerly shore. That motion was referred to the Special Master. 404 U. S. 933 (1971). The Special Master held a hearing and in due course filed his report recommending that Ohio's petition for leave to amend be denied. 406 U. S. 915 (1972). Upon the filing of Ohio's exceptions and Kentucky's reply, the matter was set for hearing. 409 U. S. 974 (1972). After argument, the Special Master's recommendation was adopted, Ohio's motion for leave to amend was denied, and the case was remanded. [410 U. S. 641 \(1973\)](#).

The Honorable Robert Van Pelt, who by then had been appointed Special Master following the resignation of his predecessor, thereafter filed his report on the case as shaped by the original pleadings. That report was received and ordered filed. 439 U. S. 1123 (1979). Kentucky lodged exceptions to the report, and Ohio filed its reply. Oral argument followed.

The Special Master recommends that this Court determine that the boundary between Ohio and Kentucky "is the low-water mark on the northerly side of the Ohio River as it existed in the year 1792"; that the boundary "is not the low-water mark on the northerly side of the Ohio River as it exists today"; and that such boundary, "as nearly as it can now be ascertained, be determined either a) by agreement of the parties, if reasonably possible, or b) by joint

survey agreed upon by the parties," or, in the absence of such an agreement or [337\\*337](#) survey, after hearings conducted by the Special Master and the submission by him to this Court of proposed findings and conclusions. Report of Special Master 16.

We agree with the Special Master. Much of the history concerning Virginia's cession to the United States of lands "northwest of the river Ohio" was reviewed and set forth in the Court's opinion concerning Ohio's motion for leave to amend its 1966 complaint. [410 U. S., at 645-648](#). Upon the denial of Ohio's motion, the case was left in the posture that the boundary between the two States was the river's northerly low-water mark. The litigation, thus, presently centers on where that northerly low-water mark is—is it the mark of 1792 when Kentucky was admitted to the Union, ch. IV, 1 Stat. 189, or is it a still more northerly mark due to the later damming of the river and the consequent rise of its waters?

It should be clear that the Ohio River between Kentucky and Ohio, or, indeed, between Kentucky and Indiana, is not the usual river boundary between States. It is not like the Missouri River between Iowa and Nebraska, see, e. g., [Nebraska v. Iowa, 143 U. S. 359 \(1892\)](#), or the Mississippi River between Arkansas and Mississippi. See [Mississippi v. Arkansas, 415 U. S. 289 \(1974\)](#), and [415 U. S. 302 \(1974\)](#). See also [Iowa v. Illinois, 147 U. S. 1 \(1893\)](#); [Missouri v. Nebraska, 196 U. S. 23 \(1904\)](#); [Minnesota v. Wisconsin, 252 U. S. 273 \(1920\)](#); [New Jersey v. Delaware, 291 U. S. 361 \(1934\)](#); [Arkansas v. Tennessee, 310 U. S. 563 \(1940\)](#). In these customary situations the well-recognized and accepted rules of accretion and avulsion attendant upon a wandering river have full application.

A river boundary situation, however, depending upon historical factors, may well differ from that customary situation. See, for example, [Texas v. Louisiana, 410 U. S. 702 \(1973\)](#), where the Court was concerned with the Sabine River, Lake, and Pass. And in the Kentucky-Ohio and Kentucky-Indiana boundary situation, it is indeed different. Here the boundary [338\\*338](#) is not the Ohio River just as a boundary river, but is the northerly edge, with originally Virginia and later Kentucky entitled to the river's expanse. This is consistently borne out by, among other documents, the 1781 Resolution of Virginia's General Assembly for the cession to the United States ("the lands northwest of the river Ohio"), 10 W. Hening, Laws of Virginia 564 (1822); the Virginia Act of

1783 ("the territory. . . to the north-west of the river Ohio"), 11 W. Hening, Laws of Virginia 326, 327 (1823); and the deed from Virginia to the United States ("the territory . . . to the northwest of the river Ohio") accepted by the Continental Congress on March 1, 1784, 1 Laws of the United States 472, 474 (B. & D. ed. 1815). The Court acknowledged this through Mr. Chief Justice Marshall's familiar pronouncement with respect to the Ohio River in [\*Handly's Lessee v. Anthony\*, 5 Wheat. 374, 379 \(1820\)](#):

"When a great river is the boundary between two nations or states, if the original property is in neither, and there be no convention respecting it, each holds to the middle of the stream. But when, as in this case, one State is the original proprietor, and grants the territory on one side only, it retains the river within its own domain, and the newly-created State extends to the river only. The river, however, is its boundary."

The dissent concedes as much. *Post*, at 342. The dissent then, however, would be persuaded by whatever is "the current low-water mark on the northern shore." *Post*, at 343. But it is far too late in the day to equate the Ohio with the Missouri, with the Mississippi, or with any other boundary river that does not have the historical antecedents possessed by the Ohio, antecedents that fix the boundary not as the river itself, but as its northerly bank. *Handly's Lessee*, in our view, supports Ohio's position, not the dissent's. If there could be any doubt about this, it surely was dispelled completely when the Court decided [\*Indiana v. Kentucky\*, 136 U. S. 479 \(1890\)](#). [339\\*339](#) There Mr. Justice Field, speaking for a unanimous Court, said:

"[Kentucky] succeeded to the ancient right and possession of Virginia, and they could not be affected by any subsequent change of the Ohio River, or by the fact that the channel in which that river once ran is now filled up from a variety of causes, natural and artificial, so that parties can pass on dry land from the tract in controversy to the State of Indiana. Its water might so depart from its ancient channel as to leave on the opposite side of the river entire counties of Kentucky, and the principle upon which her jurisdiction would then be determined is precisely that which must control in this case. [\*Missouri v. Kentucky\*, 11 Wall. 395, 401](#). Her dominion and jurisdiction continue as they existed at the time she was admitted into the Union, unaffected by the action of the forces of nature upon the course of the river.

.....

"Our conclusion is, that the waters of the Ohio River, when Kentucky became a State, flowed in a channel north of the tract known as Green River Island, and that the jurisdiction of Kentucky at that time extended, and ever since has extended, to what was then low-water mark on the north side of that channel, and the boundary between Kentucky and Indiana must run on that line, as nearly as it can now be ascertained, after the channel has been filled." *Id.*, at 508, 518-519.

The fact that [\*Indiana v. Kentucky\*](#) concerned a portion of the Ohio River in its Indiana-Kentucky segment, rather than a portion in its Ohio-Kentucky segment, is of no possible legal consequence; the applicable principles are the same, and the holding in [\*Indiana v. Kentucky\*](#) has pertinent application and is controlling precedent here. The Court's flat pronouncements in [\*Indiana v. Kentucky\*](#) are not to be rationalized away so readily as the dissent, *post*, at 343-345, would have [340\\*340](#) them cast aside. Kentucky's present contentions, and those of the dissent, were rejected by this Court 90 years ago.

We are not disturbed by the fact that boundary matters between Ohio and Kentucky by the Court's holding today will turn on the 1792 low-water mark of the river. Locating that line, of course, may be difficult, and utilization of a current, and changing, mark might well be more convenient. But knowledgeable surveyors, as the Special Master's report intimates, have the ability to perform this task. Like difficulties have not dissuaded the Court from concluding that locations specified many decades ago are proper and definitive boundaries. See, e. g., [\*Utah v. United States\*, 420 U. S. 304 \(1975\)](#), and 427 U. S. 461 (1976); [\*New Hampshire v. Maine\*, 426 U. S. 363 \(1976\)](#), and 434 U. S. 1 (1977). The dissent's concern about the possibility, surely extremely remote, that the comparatively stable Ohio River might "pass completely out of Kentucky's borders," *post*, at 343, is of little weight. Situations where land of one State comes to be on the "wrong" side of its boundary river are not uncommon. See [\*Wilson v. Omaha Indian Tribe\*, 442 U. S. 653 \(1979\)](#); [\*Owen Equipment & Erection Co. v. Kroger\*, 437 U. S. 365, 369, n. 5 \(1978\)](#); [\*Missouri v. Nebraska\*, 196 U. S. 23 \(1904\)](#).

Finally, it is of no little interest that Kentucky sources themselves, in recent years, have made reference to the 1792 low-water mark as the boundary.

Informational Bulletin No. 93 (1972), issued by the Legislative Research Commission of the Kentucky General Assembly, states:

"Kentucky's North and West boundary, to-wit, the low water mark on the North shore of the Ohio River as of 1792, has been recognized as the boundary based upon the fact that Kentucky was created from what was then Virginia." *Id.*, at 3.

See also the opinion of the Attorney General of Kentucky, OAG 63-847, contained in Kentucky Attorney General Opinions 1960-1964. See also [\*Perks v. McCracken\*, 169 Ky. 590, 341\\*341 184 S. W. 891 \(1916\)](#), where the court stated that the question in the case was "where was the low water mark at the time Kentucky became a State."

The exceptions of the Commonwealth of Kentucky to the report of the Special Master are overruled. The report is hereby adopted, and the case is remanded to the Special Master so that with the cooperation of the parties he may prepare and submit to the Court an appropriate form of decree.

MR. JUSTICE POWELL, with whom MR. JUSTICE WHITE and MR. JUSTICE REHNQUIST join, dissenting.

The Court today holds that the present boundary between Ohio and Kentucky is the low-water mark of the northern shore of the Ohio River when Kentucky was admitted to the Union in 1792. This curious result frustrates the terms of the Virginia Cession of 1784 that first established the Ohio-Kentucky border, ignores Mr. Chief Justice Marshall's construction of that grant in [\*Handly's Lessee v. Anthony\*, 5 Wheat. 374 \(1820\)](#), is contrary to common-law rules of riparian boundaries, and creates a largely unidentifiable border. Accordingly, I dissent.

## I

In 1784, the Commonwealth of Virginia ceded to the United States all of its territory "to the northwest of the river Ohio." 1 Laws of the United States 472, 474 ( B. & D. ed. 1815). As this Court recently observed, the border question "depends chiefly on the land law of Virginia, and on the cession made by that State to the United States." [\*Ohio v. Kentucky\*, 410 U. S. 641, 645 \(1973\)](#), quoting [\*Handly's Lessee v. Anthony\*, supra, at 376](#). The 1784 Cession was construed definitively in *Handly's Lessee*, a case involving a dispute over land that was

connected to Indiana when the Ohio River was low, but which was separated from Indiana when the water was high. The Court held that since the 1784 Cession required that the river remain within Kentucky, the proper [342\\*342](#) border was the low-water mark on the northern or northwestern shore. Consequently, the land in issue belonged to Indiana.

Mr. Chief Justice Marshall, writing for the Court, pointed out that Virginia originally held the land that became both Indiana and Kentucky. Under the terms of the Virginia Cession, he stated: "These States, then, are to have *the [Ohio] river itself, wherever that may be, for their boundary.*" [5 Wheat., at 379](#) (emphasis supplied). The Chief Justice found support for that conclusion in the original Cession:

"[W]hen, as in this case, one State [Virginia] is the original proprietor, and grants the territory on one side only, it retains the river within its own domain, and the newly-created State [Indiana] extends to the river only. The river, however, is its boundary." *Ibid.*

Such a riparian border, the Chief Justice emphasized, cannot be stationary over time. He wrote: "Any gradual accretion of land, then, on the Indiana side of the Ohio, would belong to Indiana. . . ." *Id.*, at 380. This rule avoids the "inconvenience" of having a strip of land belonging to one State between another State and the river.

"Wherever the river is a boundary between States, it is the main, the permanent river, which constitutes that boundary; and the mind will find itself embarrassed with insurmountable difficulty in attempting to draw any other line than the low water mark." *Id.*, at 380-381.

Because the boundary between Ohio and Kentucky was established by the same events that drew the line between Indiana and Kentucky, the holding in *Handly's Lessee* should control this case.<sup>[1]</sup> The Ohio River must remain the border between the States and within the domain of Kentucky. The [343\\*343](#) *only* way to ensure this result is to recognize the current low-water mark on the northern shore as the boundary.

The approach taken by the Court today defeats the express terms of the Virginia Cession and ignores the explicit language of Mr. Chief Justice Marshall in *Handly's Lessee*.<sup>[2]</sup> The Court's holding that the boundary forever remains where the low-water mark on the northern shore of the river was in

1792, regardless of the river's movements over time, may produce bizarre results. If erosion and accretion were to shift the river to the north of the 1792 low-water mark, today's ruling would place the river entirely within the State of Ohio. The river would thus pass completely out of Kentucky's borders despite the holding in *Handly's Lessee* that the Ohio "[R]iver itself, wherever that may be, [is the] boundary." *Id.*, at 379. The river would not be the boundary between the two States nor would Kentucky as successor to Virginia "retai[n] the river within its own domain" as Mr. Chief Justice Marshall declared that it must. *Ibid.* Similarly, if the river were to move to the south of the 1792 line, Ohio would be denied a shore on the river. Sensible people could not have intended such results, which not only would violate the plain language of the 1784 Cession, but also would mock the congressional resolution accepting Ohio into the Union as a State "bounded . . . on the South by the Ohio [R]iver." Ch. XL, 2 Stat. 173.

## II

The Court, like the Special Master, disregards the teaching of *Handly's Lessee*. Instead, the Court relies heavily on the [344\\*344](#) decision in [Indiana v. Kentucky](#), 136 U. S. 479 (1890), where Mr. Justice Field wrote that with respect to Kentucky's northern border, the State's "dominion and jurisdiction continue as they existed at the time she was admitted into the Union [1792], unaffected by the action of the forces of nature upon the course of the river." *Id.*, at 508; *ante*, at 339. Kentucky argues, with some force, that the Court in 1890 found no change from the 1792 boundary because that case concerned the abandonment of a channel by the river, the sort of avulsive change in course that ordinarily does not alter riparian boundaries. There is no sign of an avulsive change in the length of the Ohio River at issue in this case. Moreover, [Indiana v. Kentucky](#) went on to find that Indiana had acquiesced in Kentucky's prescription of the land at issue. There has been no showing before us that Kentucky has acquiesced to Ohio's claim that the 1792 low-water mark establishes the entire boundary between the two States. See n. 3, *infra*. Absent such a showing, I do not believe the holding in [Indiana v. Kentucky](#) should be applied here.

In any event, the force of Mr. Justice Field's opinion as a precedent may be questioned on its face. The decision cannot be reconciled with *Handly's Lessee* or with any normal or practical construction of Virginia's Cession in 1784.



Indeed, the Court's opinion is essentially devoid of reasoning. After reproducing the passages in *Handly's Lessee* that establish that Kentucky must retain jurisdiction over the river, Mr. Justice Field states abruptly that, nevertheless, the boundary should be set at the low-water mark "when Kentucky became a State." [136 U. S., at 508](#). Mr. Justice Field apparently was unaware that, in effect, he was overruling the case on which he purported to rely. His conclusion is based simply on the startling view that when Kentucky "succeeded to the ancient right and possession of Virginia" in 1792, the new State received a boundary that "could not be affected by any subsequent change of the Ohio River." [345\\*345 Ibid.](#) The opinion offers no further explanation for its holding.

Of course, Kentucky did succeed to Virginia's rights in 1792. After the Cession of 1784, Virginia was entitled to have the river within its jurisdiction and to have the northern low-water mark as the boundary between it and that part of the Northwest Territory that became Ohio and Indiana. Kentucky's entry into the Union could not, without more, replace those rights with the immutable boundary found by Mr. Justice Field. Neither Mr. Justice Field in 1890 nor the State of Ohio in this litigation pointed to any suggestion by Congress in 1792 that it intended such a result.

### III

Today's decision also contravenes the common law of riparian boundaries. In a dispute over the line between Arkansas and Tennessee along the Mississippi River, this Court noted:

"[W]here running streams are the boundaries between States, the same rule applies as between private proprietors, namely, that when the bed and channel are changed by the natural and gradual processes known as erosion and accretion, the boundary follows the varying course of the stream." [Arkansas v. Tennessee, 246 U. S. 158, 173 \(1918\)](#).

See [Bonelli Cattle Co. v. Arizona, 414 U. S. 313 \(1973\)](#). This rule has an intensely practical basis, since it is exceedingly difficult to establish where a river flowed many years ago. Physical evidence of the river's path is almost certain to wash away over time, and documentary evidence either may not survive or may not be reliable.

The Court suggests that the Ohio-Kentucky boundary should not be determined by reference to previous river boundary decisions because the border in this case is not "the river itself, but . . . its northerly bank." *Ante*, at 338. This [346\\*346](#) contention contradicts Mr. Chief Justice Marshall's statement, quoted by the Court, that with respect to Kentucky's northern border, "[t]he river, however, is its boundary." *Ibid*. In addition, the Court does not explain why established principles of riparian law are inapplicable simply because the northern low-water mark, not the center of the river, is the boundary. Since both lines shift over time, it is only sensible to adopt the common-law view that borders defined by those lines will move with them.<sup>[3]</sup>

#### IV

Following today's decision, all boundary matters between Ohio and Kentucky will turn on the location almost 200 years [347\\*347](#) ago of the northern low-water mark of the Ohio River. This cumbersome and uncertain outcome might be justified if it were dictated by unambiguous language in the Virginia Cession. But since the Court's decision is not only unworkable but also does violence to that deed as it has been construed by this Court, I cannot agree with its ruling today.

<sup>[1]</sup> Both parties to this litigation agree that the boundary between Kentucky and Ohio is controlled by the same legal and historical considerations that define the boundary between Indiana and Kentucky.

<sup>[2]</sup> Mr. Chief Justice Marshall, the author of *Handly's Lessee*, would seem a particularly reliable interpreter of the 1784 Cession. The Chief Justice was not only a practicing lawyer in Richmond in 1783 and 1784, but also served as a member of the General Assembly of Virginia that approved the Cession. 1 A. Beveridge, *The Life of John Marshall* 202-241 (1919).

<sup>[3]</sup> The Court seeks support for today's decision from a recent statement by the Legislative Research Committee of the Kentucky General Assembly and a 1963 opinion of the Kentucky Attorney General. *Ante*, at 340. Although both documents refer to the 1792 low-water mark as the proper boundary, they are hardly authoritative pronouncements that should control our outcome. Indeed, other legislative and judicial statements refer to the northern low-water mark without any mention of the 1792 line. See 57 Stat. 248 (interstate Compact between Indiana and Kentucky defining the boundary as the "low-water mark

of the right side of the Ohio River"); [Commonwealth v. Henderson County, 371 S. W. 2d 27, 29 \(Ky. App. 1963\)](#) (Kentucky's boundary is "north or northwest low watermark of the Ohio River"); [Louisville Sand & Gravel Co. v. Ralston, 266 S. W. 2d 119, 121 \(Ky. App. 1954\)](#) ("our state boundary is along the north bank of the Ohio river at low-water mark," quoting [Willis v. Boyd, 224 Ky. 732, 735, 7 S. W. 2d 216, 218 \(1928\)](#)).

Under the doctrine of prescription and acquiescence, it may be proved that one party has recognized through its actions a riparian boundary claimed by another party. See [Michigan v. Wisconsin, 270 U. S. 295, 308 \(1926\)](#). That question, however, is one of fact. The Special Master did not request evidence from the parties on this issue, so it is not properly before us now. We cannot decide such a question on the basis of particular shards of evidence that may come to our attention. In view of the conflicting evidence on the claim of prescription and acquiescence, the correct course would be to return this litigation to the Special Master for findings of fact on that question.

---

This case resulted in the development of exhibits and a series of coordinate values which defined the common border between Kentucky and Ohio:

OHIO V. KENTUCKY, ORIG. NO. 27, JOINT EXHIBIT NO. 307

BEGINNING AT THE POINT ON THE OHIO RIVER COMMON TO THE BOUNDARY LINES FOR THE STATES OF OHIO, WEST VIRGINIA AND THE COMMONWEALTH OF KENTUCKY, THENCE NORTHWESTERLY, NORTHERLY AND WESTERLY ALONG THE BOUNDARY LINE COMMON TO THE STATES OF OHIO AND KENTUCKY, THE BOUNDARY LINE BEING A SERIES OF STRAIGHT LINES BETWEEN EACH OF THE FOLLOWING SEQUENTIALLY NUMBERED GEODETIC POINTS, 1927 NORTH AMERICAN DATUM:



These coordinates are in the official form of a table an example of which is shown here:

OHIO V. KENTUCKY, ORIG. NO. 27, JOINT EXHIBIT NO. 30

PAGE 1

755 (251)  
+V366r  
1985

	---GEOGRAPHIC COORDINATE SYSTEM---			-----STATE PLANE COORDINATE SYSTEMS-----				
	LATITUDE		LONGITUDE	OHIO SOUTH ZONE		KENTUCKY NORTH ZONE		
	1927 NORTH AMERICAN DATUM			X	Y	X	Y	
1	38 25 18.473 N	82 35 36.700 W	CATLETTSBURG, OH-WV-KY	1973201.09	153640.92	2474556.69	339944.69	1
2	38 25 21.002 N	82 35 38.536 W	CATLETTSBURG, OH-WV-KY	1973055.22	153896.93	2474406.00	340197.84	2
3	38 25 21.893 N	82 35 39.567 W	CATLETTSBURG, OH-WV-KY	1972973.26	153987.16	2474322.34	340286.49	3
4	38 25 23.137 N	82 35 40.784 W	CATLETTSBURG, OH-WV-KY	1972876.53	154113.11	2474223.25	340410.56	4
5	38 25 26.024 N	82 35 42.929 W	CATLETTSBURG, OH-WV-KY	1972706.11	154405.37	2474047.32	340699.49	5
6	38 25 27.408 N	82 35 44.105 W	CATLETTSBURG, OH-WV-KY	1972612.66	154545.48	2473951.24	340837.79	6
7	38 25 28.891 N	82 35 45.074 W	CATLETTSBURG, OH-WV-KY	1972535.70	154695.60	2473871.44	340986.40	7
8	38 25 32.804 N	82 35 46.869 W	CATLETTSBURG, OH-WV-KY	1972393.26	155091.62	2473721.51	341379.60	8
9	38 25 34.149 N	82 35 47.632 W	CATLETTSBURG, OH-WV-KY	1972332.68	155227.76	2473658.36	341514.54	9
10	38 25 38.478 N	82 35 49.818 W	CATLETTSBURG, OH-WV-KY	1972159.17	155665.90	2473476.57	341949.26	10

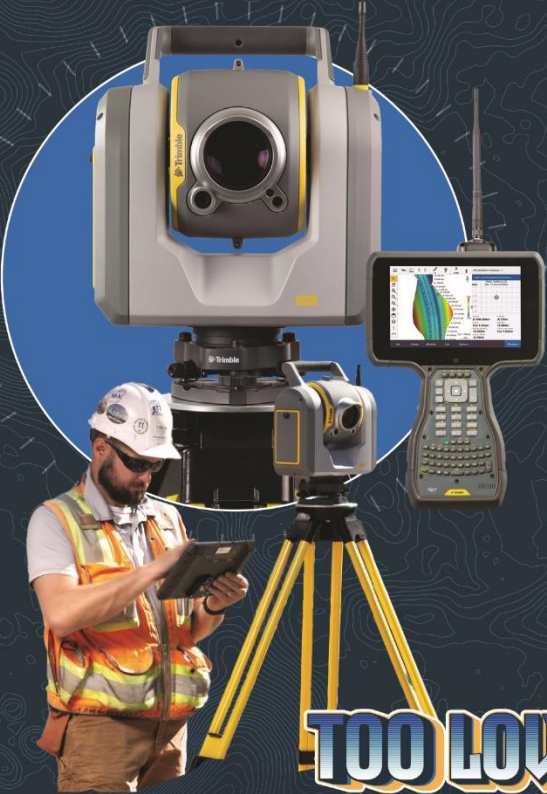
The table consists of 4439 coordinate values defining the boundary between the two states. The coordinates were established to represent the northerly low water line of the Ohio River in 1792 with an agreement between Ohio and Kentucky to maintain a minimum of 100-feet from the current northerly shoreline. In order to best estimate the 1792 location, maps of the Ohio River developed by the United States Army Corp of Engineers between 1893 to 1906 were taken to be as close as the 1792 location could be determined.



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Hi Everyone,

With the help and support of NCEES the new BeASurveyor website has launched. If you want to promote on your website or monthly magazine please use the attached documents.

Check it out – [beasurveyor.com](http://beasurveyor.com)

If you have any questions, please let me know.

Enjoy your weekend!

Trish

## **Trish Milburn**

National Society of Professional Surveyors

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Beasurveyor.com article

## **Revamped and Ready to Educate: beasurveyor.com**

Beasurveyor.com has undergone a complete redesign, tailored specifically to engage K-12 audiences. With a sleek new design and user-friendly interface, the website is geared towards making surveying accessible and exciting for young minds. The updated aesthetics, curated videos, and intuitive navigation are sure to captivate students and educators alike.

## **Surveying Outreach Resource Page**

One of the standout features of the redesigned website is the Surveying Outreach Resource Page. This section is a treasure trove for surveyors interested in outreach and educators looking to incorporate surveying into

their curriculum. It offers a variety of valuable resources. You can download lesson plans for classroom activities, access surveying presentations, play videos, and even order materials for speaking engagements or career fairs. For those new to outreach, the "Outreach 101" section offers guidance on how to effectively engage students and the broader community in surveying. It's the perfect starting point for surveyors eager to share their knowledge.

### **Why Focus on K-12 Education?**

The decision to cater to K-12 audiences is a strategic move. After a yearlong research project, results pushed for outreach efforts to be aimed mainly at K-12 demographics. By introducing surveying to students at an early age, [beasurveyor.com](http://beasurveyor.com) aims to kindle an interest that could turn into a lifelong passion and a career choice. Although K-12 is the main target audience, the website and outreach plan will incorporate college students, ex-military, and others looking for a change in career.

### **Get Started Today**

Together, we can inspire the next generation of surveyors and change the way they perceive the world around them. Visit the new and improved [beasurveyor.com](http://beasurveyor.com) today and be a part of the surveying revolution!





**BEaSURVEYOR.com**

Introducing the  
**Surveying Outreach  
Resource Hub**

*for Surveyors and Educators*

Access  
**Surveying Presentations**

Download  
**Lesson Plans**

Order  
**Outreach Materials**

At BEaSURVEYOR.com's surveying outreach resource hub, you can download lesson plans for classroom activities, access surveying presentations, and even order materials for speaking engagements or career fairs.

# The Board of Licensure Report

July 2023

**Kyle Elliott, Executive Director**

## **Firm Renewals**

All business entity (firm) permits expire on December 31, 2023. The online permit renewal system is open, and you can renew those permits online at: <https://secure.kentucky.gov/formservices/KBOELS/PERMITAPPLICATION>.

The Board has already sent out three email notifications about the permit renewals. These email notifications, and other Board correspondence, come from the Kentucky General Government Cabinet, of which the Board of Licensure is a part. Please renew your permit before the expiration date to avoid late penalties.

If you are unsure of your permit or individual license status, please check our online searchable roster for that status. The roster is updated continually and can be found on the Board's website, or here:

<http://elsweb.kyboels.ky.gov/kboels-web/SearchableRoster.aspx>. If you have any questions about your license status, contact the Board offices for assistance.

## **Individual License Renewals 2023**

Individual licenses expired on June 30, 2023, for those individuals whose last name begins with the letter A – K. Any person that missed the renewal deadline may still renew their license online for up to one year from the date of their license expiration but will have to pay a late renewal penalty of 10% per month, or any part of a month they are late. The Online Renewal takes only a few minutes, and you can pay the renewal fee with a credit card or electronic check. Please read all the renewal questions carefully and answer them honestly.

Anyone who renews after September 1 of their renewal cycle year will automatically be audited for compliance with the continuing professional development regulations. Access the online renewal system at:

<https://secure.kentucky.gov/formservices/KBOELS/LicenseRenewal>.

## **CPD Task Force**

A Task Force committee of the Board of Licensure, NSPE-KY, ACEC-KY, and KAPS has recently completed work on revising the Continuing Professional Development regulations for professional land surveyors and professional engineers. Those revisions were presented to the Board of Licensure at their October 27, 2023, meeting and were approved. The Board will be following the administrative regulation review process and hope to get the regulations updated in calendar year 2024.

## **Calendar of Events 2023**

January 26	Board of Licensure Meeting	Frankfort, KY
April 19	Board of Licensure Meeting	Frankfort, KY
July 19	Board of Licensure Meeting	Frankfort, KY
August 14 – 17	NCEES Annual Meeting	Chicago, IL
October 18	Board of Licensure Meeting	Frankfort, KY

# Board of Licensure Enforcement Report

**April 1, 2023 – June 30, 2023**

**Heather L. Baldwin, PE, PLS, Director of Enforcement**

## **DISCIPLINARY ACTIONS**

### **BERARDI + PARTNERS, LLC**

Berardi + Partners, LLC, is a limited liability corporation organized in the state of Ohio. On May 1, 2023, the company applied for a business entity permit to practice engineering in Kentucky and failed to disclose four disciplinary actions, a November 2016 Ohio action, a February 2022 West Virginia action, a March 2022 Ohio action, and a December 2022 West Virginia action, on its application, in violation of KRS 322.180 (1) and/or 20 KAR 18:142, Section 3. A subsequent investigation revealed that the company had provided engineering services for two Kentucky projects, in Crescent Springs in 2018 and in Murray in 2023, without a business entity permit, in violation of KRS 322.060. To resolve the investigation, the company, through its vice president Christopher Bruzzese, entered into a Consent Decree with the Board and agreed to: (1) receive a Letter of Reprimand; (2) pay a fine of \$6,000 within 30 days; (3) maintain a current and valid business entity permit for any period of time in which the company is providing engineering services in Kentucky; and (4) notify the Board in writing of any change in status of the professional engineer(s) in responsible charge of the engineering work in Kentucky within 14 days. The Board of Licensure approved this Consent Decree on October 27, 2023.

### **TERRASMART, INC.**

Terrasmart, Inc. is a foreign corporation organized in the state of Ohio. On June 30, 2023, the company applied for a business entity permit to practice engineering in Kentucky and failed to disclose a March 2023 disciplinary action in Ohio on its application, in violation of 201 KAR 18:142, Section 3. A subsequent investigation revealed that the company solicited engineering services in Kentucky through its website, in violation of KRS 322.060 (1)(a);

offered to practice engineering services in Kentucky through its website, in violation of KRS 322.020; solicited land surveying in Kentucky through its website, in violation of KRS 322.060 (2)(a); offered to practice land surveying in Kentucky through its website, in violation of KRS 322.020; and provided engineering services for one Kentucky project in Frankfort in March 2023 without a business entity permit to practice engineering, in violation of KRS 322.060. To resolve the investigation, the company, through its president Edward McKiernan, entered into a Consent Decree with the Board and agreed to: (1) receive a Letter of Reprimand; (2) pay a fine of \$6,000 within 30 days; (3) maintain a current and valid business entity permit for any period of time in which the company is providing engineering services in Kentucky; (4) notify the Board in writing of any change in status of the professional engineer(s) in responsible charge of the engineering work in Kentucky within 14 days; and (5) obtain a land surveying business entity permit or remove the word “professional” from the phrase “professional surveying” on its website or state “Terrasmart, Inc. does not offer or provide professional surveying services in the Commonwealth of Kentucky” on its website. The Board of Licensure approved this Consent Decree on October 27, 2023.

**TIMOTHY G. FUTCH, PLS #4163**

In August 2019 and February 2021, the Board of Licensure received written complaints from a landowner regarding a survey that was performed by DDI Engineering and certified by Timothy G. Futch, PLS, on November 9, 2017. In August 2017, DDI was retained by the complainant’s neighbor to complete a boundary retracement survey of a property in Central City, Kentucky. Prior to performing the survey, Futch did not make a reasonable effort to inform the complainant of the need to enter his property during the survey, in violation of KRS 322.470. In making his boundary determination, Futch disregarded two original iron pin monuments and two retracement iron pin monuments found along the common boundary line with the complainant and ignored the complainant’s statement to the DDI survey crew that the monuments had been in place for twenty years. Futch also failed to depict said found monuments on the plat of survey. The boundary determination resulted in one corner of the property being located inside of the residence of the complainant, creating an

encroachment that had not previously existed. Furthermore, Futch failed to visit the site during the survey, despite creating said encroachment. These actions are violations of 201 KAR 18:150, the standards of practice for land surveying, Sections 3(1), 6, 6(4), and 10(5)(e), and 201 KAR 18:142, Section 3 and Section 8 (7). In addition, the investigation found that Futch did not have any expertise in surveying with GPS equipment and provided land surveying services outside of his area of competence, a violation of 201 KAR 18:142, Section 7 and 8. The actions set forth constitute misconduct, gross negligence and/or incompetence in the practice of land surveying, and are grounds for disciplinary action pursuant to KRS 322.180 (2) and (3). To resolve the investigation, Futch entered into a Consent Decree with the Board and agreed to: (1) receive a Letter of Reprimand; (2) pay a fine of \$7,500 within 30 days; (3) have his professional land surveying license placed on probation for two years with quarterly project reviews; (4) complete a four hour course in the standards of practice for professional land surveyors, professional ethics, and the code of professional practice and conduct by June 30, 2024; and (5) complete the webinar entitled *The Art of Retracement for Surveyors*, by Gary Kent, offered by HalfMoon Education Online Learning, by June 30, 2024. The Board of Licensure approved this Consent Decree on October 27, 2023.

**ANTHONY E. BOWLING, PE #14199, PLS #2690**

In August 2018, the Board of Licensure received a written complaint from a Letcher County landowner regarding Post Mining Land Use (PMLU) maps prepared by CBC Engineers & Associates, Ltd., and certified by Anthony E. Bowling, PE, PLS. Said maps were prepared for Cheyenne Resources, Inc. and were used for reclamation of the complainant's and adjoining owners' properties. The location of a concrete structure near the common property line of the complainant and an adjoining property affected how the properties would be reclaimed. A January 31, 2018, PMLU map prepared by Mark Summers and certified by Bowling depicted the concrete structure as being on the property of the complainant. An August 27, 2018, PMLU map prepared by Summers and certified by Bowling depicted the same concrete structure as being on the adjoining property and not on the property of the complainant. Bowling was unaware of the change. A September 18, 2018, PMLU map

prepared by Summers and certified by Bowling also depicted that concrete structure as being on the adjoining property and not on the property of the complainant. Bowling was still unaware that the structure was depicted on the adjoining property. The investigation found that Bowling provided services outside of his area of competence in relation to the PMLU maps, in violation of 201 KAR 18:142, Section 7, and certified work product dealing with subject matter in which he lacked competence by virtue of education or experience, in violation of 201 KAR 18:142, Section 8, by certifying the PMLU maps without being aware that the depiction of the location of the concrete structure had been changed. To resolve the investigation, Bowling entered into a Consent Decree with the Board and agreed to: (1) receive a Letter of Reprimand; (2) pay a fine of \$1,000 within 30 days; (3) have his professional engineering license suspended for 30 days; and (4) complete the online 60-hour Texas Tech Engineering Ethics course within six months. The Board of Licensure approved this Consent Decree on October 27, 2023.

**CHARLES S. BISHOP, PE #10619**

In February 2020, the Board of Licensure received a written complaint from a member of the public regarding Mining and Reclamation Maps certified by Charles S. Bishop, PE, for Bluegrass Materials Co, LLC. The investigation found that four Mining and Reclamation Maps certified by Bishop on June 18, 2018, October 9, 2018, January 23, 2019, and January 7, 2020, were prepared by Bishop's client, Martin Marietta Materials, Inc., the parent company of Bluegrass Materials Co, LLC. The maps were not prepared by Bishop or an individual under his direct supervision, in violation of KRS 322.180 (16) and 201 KAR 18:142, Section 8, and KRS 322.180 (3). To resolve the investigation, Bishop entered into a Consent Decree with the Board and agreed to: (1) receive a Letter of Reprimand; (2) pay a fine of \$1,000 within 60 days; (3) have his professional engineering license suspended for 30 days; and (4) complete the online 60-hour Texas Tech Engineering Ethics course within six months. The Board of Licensure approved this Consent Decree on October 27, 2023.

## **LEE WILLIAM BEST, PE #33693**

On February 7, 2022, Lee William Best, PE, renewed his Kentucky PE license over seven months late, subjecting him to Continuing Professional Development (CPD) audit due to late renewal for the 2019/2020 reporting period. On April 18, 2022, Lee William Best, PE, was issued a Written Admonishment for failing to respond to a CPD audit within 30 days, failing to obtain 30 professional development hours (PDH) during the 2019/2020 reporting period, and falsely answering the CPD question during renewal. He was scheduled for another CPD audit for the 2021/2022 reporting period with materials due by January 10, 2023. After Best failed to submit 30 PDH for the 2021/2022 CPD audit and failed to respond to repeated attempts by Board staff to contact him, an administrative action was filed on March 30, 2023. Best failed to participate in a Prehearing Conference and/or Show Cause Hearing on two occasions, and the Hearing Officer recommended that the Board be granted Default Judgment and that Best's PE license be revoked. The Board of Licensure accepted and adopted the Hearing Officer's Findings of Fact and Conclusions of Law and ordered Lee William Best's PE license to be revoked by Final Order entered on October 27, 2023.

## **NON-DISCIPLINARY ACTIONS**

### **Cases Closed with a Written Admonishment – 15**

PE – admonishments for CPD violations –

5 (2 late renewal audits 2022. 3 random audits 2023)

PLS – admonishments for CPD violations –

5 (4 random audits 2023, 1 enforcement audit)

PE – admonishments for unlicensed practice – 2

PE – admonishment for failing to report disciplinary action on renewal – 1

Firm (engineering) – admonishments for failing to report disciplinary action on application – 2

### **Cases Closed with an Educational Letter – 1**

PE licensed in another state using PE designation in Kentucky



**Case Closed with No Action – 4**

PLS – no violation - 2

PE – CPD (invalid exemption claim) – no violation – 1

Firm (engineering) – withdrew business entity permit application – no violation - 1

# KAPS Board of Directors

## Meeting Minutes



**Date:** Saturday, July 15, 2023  
**Time:** 10:00 AM ET  
**Location:** Kentucky Engineering Center  
160 Democrat Drive  
Frankfort, Kentucky 40601

### **CALL TO ORDER**

KAPS 2023 President, Robert Smith, called the Saturday, July 15, 2023, KAPS Board of Directors meeting to order.

### **PROXY VOTES:**

- a) Greg Barker to Robert Smith
- b) James Mayo to Kevin Phillips
- c) Kevin Simmons to Tyler Pence

### **MEMBERS PRESENT:**

**Bob Smith**– President/ Kentucky Board of Licensure Liaison, **Mike Billings** - President-Elect/KSPE Liaison, **Ben Shinabery** – Vice President of External Affairs/ Falls of the Ohio Chapter Chair, **Kelly Carr** – Director, **Michael Ladnier** – Director, **Tyler Pence** – Director, **Tom Bushelman** – Secretary, **Curtis Felts** – Southeast Chapter Chair, **Johnny Justice** – Highlands Chapter Chair, **Shaun Foley** - Jackson Purchase Chapter Chair, **John St. Clair** – Scholarship Committee Chair,

### **STAFF PRESENT:**

**Nancy Broyles**, Executive Administrator

### **GUESTS PRESENT:**

**Kyle Elliott** – KY Board of Engineers and Land Surveyors

### **MEMBERS ABSENT:**

**Greg Barker** – Past President, **Kevin Phillips** – Vice President of Internal Affairs, **James Mayo** – Director/Treasurer, **Richard Matheny** – Director, **Tim Tong** - Director/ Bluegrass/Capital Chapter Chair/GIAC Liaison, **Kevin Simmons** – Audubon Chapter Chair, **Chris Higgins** – Barren River Chapter Chair, **Mike McKinney** – Green River Chapter, **James Elliott** – Northern Kentucky Chapter

Chair, **Craig Palmer** – KAMP Liaison/KSPE Liaison, **Jon Payne** – Publications/Newsletter Chair/Continuing Education Review Committee Chair

## **REVIEW AND APPROVAL OF BOARD MEETING MINUTES**

Mike Billings made a motion to accept the minutes of the April 1, 2023, meeting. Tyler Pence seconded. Motion carried.

## **KAPS OFFICER'S REPORT**

President's Report – Great turnout at golf outing/picnic. We had about 25 teams and 40-50 people at the picnic.

President Elect's Report – no report

Treasurer's Report – [Financial reports in packet](#)

KAPS Executive Administrator's Report – [Report in packet](#)

## **OLD BUSINESS**

KAPS booth – [No report \(no committee members present\)](#)

Insurance – [Our general liability coverage has been moved from Hartford to Hannover](#)

Memorandum of Agreement - [The MOA was signed by Bob Smith, President of KAPS, and Geni Jo Brawner, Chair of KAMM and posted on the KAMM website.](#)

Storage Unit – [Richard Matheny and some of his crew moved the storage unit from Indiana to Stor All in Middletown, KY.](#)

NSPS Spring Meet Sponsors – [KAPS sponsored \\$1,500.](#)

Next Board meeting: [Monday, September 18, 2023, at 6:00 PM ET at The Center for Rural Development, 2292 South Highway 27, Somerset, KY](#)

## **NEW BUSINESS**

Kyle Elliott provided a few updates:

- [Don Pedigo's term is up January 1, 2024. KAPS nominating committee submitted 3 names: Don Pedigo, Christopher Morris, Jason Graves](#)
- [CPD Task Force is taking a break and will meet again in October.](#)
- [86% of KY licensees have renewed for the year.](#)
- [This calendar year 32 people have taken the Fundamentals of Surveying test and 20 have taken the Principles and Practice test.](#)

## **EX-OFFICIO DIRECTORS' REPORTS**

GIAC Liaison – [Report in packet](#)

KAMP Liaison – no report  
KY State Board of Licensure Liaison – no report  
KSPE Liaison – [Report provided.](#)  
NSPS Director – no report  
Professional Development Chair – [Report submitted via email.](#) Jonathan Payne stated he will start contacting chairs after the fall conference to see if they want a Winter/Spring local seminar. From the Falls, Northern, and Purchase seminars last year, it appears there is still a demand for a local in-person option. Also, everyone has knowledge to share, so if you would like to share your knowledge in even a 1- or 2-hour online seminar he is willing to help you get it ready and on the KAPS website. Online is a good way for those who won't do the public speaking thing to share what they know.

### **CHAPTER REPORTS**

Audubon – no report  
Barren River – no report  
Bluegrass-Capital – no report  
Falls of the Ohio – [Report in packet.](#)  
Green River – no report  
Highlands – [Johnny Justice reported offering a meeting in June at which no one attended.](#)  
Northern Kentucky – no report  
Southeast – no report

### **COMMITTEE REPORTS**

Annual Conference – no report  
Annual Golf Outing and Picnic – no report  
By-Laws – no report  
County Surveyors – no report  
Education – no report  
Ethics and Professional Practice – no report  
Finance – no report  
Legislative – no report  
Membership – [Report in packet](#)  
Nominating – [Mike Billings reported the committee is nominating Ben Shinabery for President Elect, Tyler Pence for Vice President of External Affairs, Kevin Phillips for Vice President of Internal Affairs, and Kelly Carr for director. The nominating committee is still working on the last three director positions.](#)  
Past Presidents – no report  
Policy Manual – no report  
Public Relations – no report

Publications / Newsletter – Report submitted by email. Jonathan Payne reported an Interior Angle edition will come out in August. Four golf sponsorships included ½ page ads. Kyle Elliott has been mass emailing the IA and reported 13,700 people opened the last email and 448 accessed the IA through that email.

Scholarship – Report submitted. John St. Clair reported receiving 31 applications compared to 2 last year. The scholarship winners are Gabriel Jerdon (\$3,000), Carson King (\$2,000), Matthew Steven Dicks (\$2,000), Levi Shinabery (\$2,000).

### **SPECIAL COMMITTEE REPORT**

Board of Licensure Nominations – no report

Continuing Education Hours – no report

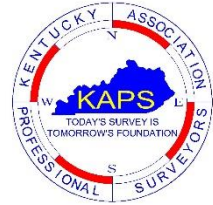
Young Surveyors Network – no report

### **ADJOURNMENT**

Tom Bushelman made a motion to adjourn. Mike Billings seconded. Motion carried. Meeting adjourned.

Submitted by Nancy Broyles, Executive Administrator

# **KAPS ONLINE CPD CONTENT**



Make sure to login as a member to get the member rate.

Courses are hosted on an online learning management system which means they are available to you anywhere that you have internet service, and they can be accessed via PC, tablet, smartphone, etc... You will be creating an account and password for that learning management system website.

At the end of the course, you will electronically state that you have personally completed the course in its entirety. Time spent on task, date and time of access, and number of times each section of the course is accessed are all recorded and viewable by the account administrator to help support your statement.

Currently, all fees from the online courses go to the KAPS scholarship fund. If you would like to produce a course to support the scholarship fund, there are KAPS members who will be glad to aid if they can.

<https://www.kaps1.com/online-courses/>



# Become a KAPS Member



We would love to have you be a member of KAPS if you are not already one. If you would like to join for a first time or would like to renew your membership for the coming year, you can do so easily online using the following QR code from your smartphone or by visiting the website at:

<https://www.kaps1.com/join-us>



JOIN UP

and

Become a Member of KAPS