Tecumseh Chapter of the Indiana Society of Professional Land Surveyors
309 Columbia Street, Suite 101 Lafayette, Indiana 47901

February 13, 2005

Indiana Professional Licensing Agency
(Attn: State Board of Registration for Land Surveyors)
302 W. Washington Street, Room E034
Indianapolis, Indiana 46204

Indiana Society of Professional Land Surveyors
55 Monument Circle, Suite 1222
Indianapolis, Indiana 46204

Re: Possible Rule changes to consider

During the 2005 convention, a seminar was held with the State Board of Registration for Land Surveyors. During that seminar members of the Board encouraged members of the profession to submit ideas to them and/or ISPLS for consideration. Within the past year, the Tecumseh Chapter of ISPLS has had several discussions through their chapter meetings or their Government Affairs Committee regarding some possible rule revisions in order to clarify the practice of land surveying and account for changing trends and technologies related to our profession. The items that we feel deserve consideration and, ultimately, revisions to the law are as follows: (1) How far can Contractors go with doing their own staking? (2) Flood data companies who certify properties' relationships to flood boundaries. (3) How much staking can engineers do before they are considered to be practicing land surveying? (4) Why can't a land surveyor certify the "site portion" of a construction design release through the State Building Commission? Each of these items are discussed in further detail below:

(1) How far can Contractors go with doing their own staking?

This topic can cover many subtopics. First, let's start with Contractors who use GPS guided construction equipment on projects. The Tecumseh Chapter specifically discussed this issue during their February 25, 2004 chapter meeting. Following is the portion of the minutes from that meeting that related to this topic:

A group discussion was held on the definition of land surveying and how the law may need to be changed to account for changing technology. While there are several issues to be discussed in this regard including staking by engineers and flood data companies who certify properties' relationships to flood boundaries, the discussion focused primarily on how far Contractors can go with doing their own staking and using GPS on their equipment for site work. In regards to the Contractors using GPS, three main issues were raised: Surveyors should be involved with (1) the

calibration of the GPS equipment, (2) setting appropriate control so the Contractor can check himself, (3) quality control during construction (prior to as-builts) to ensure that the job is being built correctly. The goal was to avoid the scenario that is currently happening with state right-of-way markers on INDOT jobs—as you probably know—these markers are commonly not set by surveyors and the state has little knowledge of how they were actually set.

The intent following that meeting was to create a committee to work on this issue with the State society; however, the chapter had its hands full with planning for the 2005 convention and involving itself with providing feedback on revisions to their local stormwater, zoning, digital data submission, and GIS data fees ordinances throughout the 2004 year.

Another subtopic could concern fairly common situations such as Contractors who do their own staking for homes or other buildings. There are many situations where surveyors (or engineers for that matter) are not involved, to any degree, with the staking of these facilities, yet most of these situations involve the placement of infrastructure very near if not directly against a property line, easement, right-of-way, or building setback line. While it is not our intent to control every stake that is ever placed on any construction site, we believe that the intent of our existing law is to require, at a minimum, that land surveyors provide appropriate control and staking for the Contractor to use. Perhaps what needs to be clarified is what constitutes appropriate control. Is it enough to say that when a surveyor has set lot corner markers, that is appropriate control for a Contractor to use when placing a house directly at the edge of an easement or setback? How long have the lot corner markers been there? Are they disturbed? Does the Contractor check between them to verify their published dimensions? Is he experienced enough to identify a lot corner marker? Does he even bother to check that they are there before he proceeds with his work? If a land surveyor was required to set control specifically for the job at hand, those questions would disappear, and the fate of the Owner would be where it should be—in the hands of a licensed professional who's primary obligation is to protect his health, safety, and welfare. Some Counties have passed ordinances that require a land surveyor place stakes specifically for the construction of a new home. We feel that requirement is a good starting point for our State Code.

(2) Flood data companies who certify properties' relationships to flood boundaries.

The first question to ask regarding this issue is whether this is considered practicing land surveying. If it is, then there are many companies who are practicing in the State of Indiana without a license. We would contend that it is the practice of land surveying. Such a determination requires the interpretation of a legal description in a property deed for the purpose of locating the property and rendering an opinion on whether a piece of property lies within a regulatory floodplain zone based on flood insurance rate maps published as part of the National Flood Insurance Program.

Does it bother you that this determination is not completed under the supervision of a registered land surveyor in the State of Indiana? Does it bother you that the public is sometimes damaged by these determinations because the flood data companies do not understand the limited accuracy of the flood maps or do not understand the inaccuracies in some legal descriptions and sometimes make determinations that fly in the face of common sense? Does it bother you that as a registered land surveyor in the State of Indiana, that you are often required to pay for this service at your closing when you are more qualified to render such a determination? Is this current practice protecting the safety, health, and welfare of the public?

(3) How much staking can engineers do before they are considered to be practicing land surveying?

This issue is probably not as clear as the others, but if we take a look at IC 25-31-1-2, it contains the following definition:

"Practice of engineering" means any service or creative work that the adequate performance of requires engineering education, training, and experience in the application of special knowledge of the mathematical, physical, and engineering sciences to services or creative work that includes the following:

(1) Consultation.
(2) Investigation.
(3) Evaluation.
(4) Planning, including planning the use of land and water.
(5) The design of or the supervision of the design of engineering works and systems.
(6) Engineering surveys and studies or the supervision of engineering surveys and studies, including all surveying activities required to support the sound conception, planning, design, construction, maintenance, and operation of engineered projects, but not including the surveying of real property for the establishment of land boundaries, subdivisions, rights-of-way, easements, and the dependent or independent surveys or resurveys of the public land survey system.

While there is no disputing that engineers are permitted to perform construction layout work, shouldn't there be a requirement that a land surveyor establish appropriate control at a site prior to the engineer's work. This infrastructure that an engineer may be permitted to stake, such as sewer lines, waterlines, roads, building pads, etc., are located within easements, rights-of-way, and are in a certain relationship to land boundaries. If a land surveyor at a project site has not already established properly spaced control, how does the engineer know that he is within the easements, rights-of-way, or land boundaries? In some respects this item is similar to the Item (1) above concerning how much staking can Contractors do. We are the experts in the boundaries of property, easements, and rights-of-way; therefore, for the public's safety, health, and welfare, we should control how the infrastructure is placed in relation to those boundaries. If a land surveyor is not required to adequately establish such bounds before the engineer begins his work, is the public being protected?

(4) Why can't a land surveyor certify the "site portion" of a construction design release through the State Building Commission?

This item pertains to the construction design release forms that commonly accompany plans that require the approval of the State Building Commissioner (copy attached). IC 22-15-3 prescribes the conditions for the release. On the release form the design professional (currently architect or engineer) can certify to the design of various systems, one of which is the "Site" system. According to said form, the requirements of the "Site" system plans are a drawing showing the following:

Site plan showing dimensioned location of building to all property lines and to all existing buildings on the property, as well as width of any streets, access roadways or easements bordering the property.

The design professional's certification on the form is as follows:

As the design professional for the project for which this application and plans are being filed, I hereby certify:

1. *I am qualified and competent to design such buildings, structures, and systems;*
2. *the plans filed in conjunction with this application were created by me and / or by persons under my immediate personal supervision and will comply with all applicable building laws and rules of the Commission;*
3. *the project data contained on this application is correct and corresponds with the plans that are being filed in conjunction with this application:*
4. *the design professional identified below or a designee will inspect the construction covered by this application at appropriate intervals to determine general compliance with the released documents and applicable rules of the Commission and will cause all noted deviations from released documents and code violations to be corrected or notify the owner and authorities having jurisdiction of all specific deviations and code violations: and*
5. *I affirm under penalty of perjury that the representations contained herein are true and I further understand that providing false information constitutes an act of perjury, which is a Class D felony punishable by a prison term and a fine of up to $10,000.*

This certainly seems to be within the definition of the practice of land surveying; therefore, a land surveyor should be permitted to certify the "Site" system on the form. Revision of IC 22-15-3 would permit this to happen.

We believe that these items need the appropriate action to make them a reality. We would like the opportunity to present these ideas to the Board of Directors and then our chapter would be happy to assist in making these items a reality.

If you have any questions, feel free to contact Pat Cunningham or Tim Beyer at 765-742-6479.

Respectfully yours,

Timothy A. Beyer