

BLUEGRASS BULLETIN

Winter 2025 Newsletter



Greeting, my fellow right-of-way counterparts! The main thought I'm having in my mind right now is trying to figure out who is our chapter prayed for all this snow and deep-freezing cold? It's been a long time since we dealt with this type of weather! My team at Louisville Metro Public Works did an amazing job of keeping open the main and secondary roads in the Metro area, and shout out to the Kentucky Transportation Cabinet guys in all twelve districts for working to keep our interstates and state roads open during these events. What the public doesn't understand is how difficult it is working a straight twelve-hour shift with no breaks, meals, and irresponsible drivers who are determined to drive in conditions not conducive.



Also, a shout out to my utility folks at LG& E and KU for quickly restoring power outages on our state. Those folks work in icy and extremely cold temperatures to keep the rest of us warm! Finally, thanks to ALL of you who brave the conditions to meet with property owners to determine property values, make offers, perform relocation, and property management duties. We know even during the harsh weather conditions that we must carry on and be about the business of right of way.

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Purpose

We improve people's quality of life through infrastructure development.

Mission

We empower professionals by elevating ethics, learning, and a standard of excellence within the global infrastructure real estate community.

www.irwa25.org
www.irwaonline.org
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Disclaimer: The views and opinions expressed in this publication are those of the authors and do not necessarily reflect the official policy or position of the organization.



(continued from front page...President's Message)

Our Christmas Party was held at the Brown Hotel. If you didn't attend because you did not want to, let me just say this: the Brown Hotel is one of the top hotels in our state, and there's very few chapters, if any at all, that only charge \$20 for a night out with a fantastic dinner, cocktails, and party gifts. Those who couldn't make it this year, you were sorely missed, but to those that came: WAS THAT A PARTY OR WHAT!!! I think it one of the best we've had in a long time!

Congratulations to Mr. Orië Dobson, SR/WA, for being recognized as our 2024 Right of Way Professional of the Year! Orië has been an outstanding addition to our board, always has a willingness to step up and step in to help out in any capacity, and is one of the most selfless people you will ever meet. Orië, cheers to you my friend, and well done!

Also, a quick shout out to Kari Stockdale and Amanda Murphy-Sanders, both of whom our chapter recognized at the dinner for their hard work this year on our board and bringing a much needed perspective on right of way related issues! Finally, although not present, I'd like to thank our newest member, Sarah Orange, for not only joining our chapter, but stepping into our board as Relocation Chair. This is what makes it all worthwhile to me; people stepping up and filling much needed roles!

Our next general gathering will be our annual Right of Way Symposium, which will be held on Thursday, March 13, 2025, back at Burhans Hall at the University of Louisville East Campus on Shelbyville Road at Hurstbourne Lane. More details on the topics and speakers will be included with this newsletter, but please make plans to join us! (If you work for the state and would like to attend, please reach out to me on how to properly register.)

Your board directors and I are planning to attend the 2025 Region Five Spring Forum, which will be hosted by Illinois Chapter 12 in Naperville. The location is Hotel Zachary (American Airlines Conference Center), which is right across the street from Wrigley Field. The Forum dates are March 21-22, 2025. Chapter 12 is also hosting IRWA Course 400, which is Principles of Real Estate Appraisal, which will be taught by Smedmore Bernard, SR/WA, MAI on March 18 & 19. Smed is an excellent instructor, so if you need this course, I highly recommend attending, if you're interested! They are also hosting a Utilities Symposium on March 20, 2025. Check out their chapter website for more details on all these events (www.irwachapter12.com).

I'd like to encourage you to become more involved with our chapter. It's an amazing opportunity to network, grow, and learn about our various industries. Also, consider taking more training courses and obtaining one of the designations. I assure you it will be helpful to advance your careers and prospects in this field, especially if you want to work in other states! Reach out to me for more information on how I can help advance you to the next level.

In closing, I'd like to thank our current board members for their willingness to serve and offer advisement on how to keep our chapter functioning and moving forward. They are the backbone, and I'm honored to be the mouthpiece for this chapter. Contact me if you need to discuss anything!

—Mike Pennick



Right of Way 805: Acquisitions & Restrictive Covenants

By: Mike Penick, SR/WA, Instructor and Chapter Education Chair

A quick ode to the acquisition process: “I love the many mysteries that are contained within your deepest, darkest, and unknown territory! Then you reveal your true self to me, and your mystery unravels to levels of ridiculousness!”

There’s nothing worse than being handed a set of plans with a “Notice to Proceed” and then finding out that “SOMEONE” missed something. This isn’t a blame game, but I’ll be vague as to whom this “SOMEONE” is. It’s irrelevant, because the fact is ALL issues should have been identified well before the plans end up on my desk and I’m told to go forward and bless the world with my charm.

Let’s briefly talk about parcel deed covenants. A **covenant** is language on a deed that controls the use of the property. These constraints usually run with the land; the only way this language can be modified, amended, or terminated is through the court system. This language must be about preserving the land, surrounding, or the history without being discriminatory.

Restrictive covenants used to be about keeping certain people from owning property. The Supreme Court has struck down all previously written covenants containing language about race, culture, religion, etc., calling it unconstitutional. [*see Shelley vs. Kraemer, 334 U.S. 1 <1948>*] Also reference the 14th Amendment of the U.S. Constitution]

The types of covenants are as follows:

Restrictive: limits your usage of the land

Architectural: dictates your design and standards to be implemented, such as an overlay.

Lease: You may be prohibited from leasing, or certain principles must be adhered to

Obligatory: your duties listed to the land. Example: you may be required to prune trees monthly. Or, partnerships may have specific responsibilities in land ownership.

I worked on a local roadway project that widens it from two lanes to five: that’s a significant impact on connecting parcels. One of the things I do before I contact property owners is I read the title report thoroughly. I read all deeds, mortgages, and lien documents attached to it. Sure, this takes a lot of time to do, but it’s important to get an idea of the history of a parcel before negotiations begin. At first, no major issues were discovered. Then I read a deed that referenced the granting of this property as being “subject to the restrictions as outlined in” another deed book and page number. Thus, I pulled that deed book and page, and saw it was titled “Conservation Easement”. My breathing increased, my hair stood up, and my hands became fidgety. As I read the language, this sentence immediately struck my nerve:

“Now, therefore, the Grantor does hereby grant, give, and convey unto the Grantee, its successors and assigns, a CONSERVATION and SCENIC EASEMENT, which prohibits the construction of buildings, structures, asphalt and concrete surfaces, and any fixtures that are that are unrelated to preserving the land as an open greenspace.”

To make matters worse, this easement did not cover just one parcel; it shielded 18 more parcels! It gets even better: I find out that the holder (grantee) of this conservation easement is none other than LOUISVILLE METRO GOVERNMENT! This instantly put me in a pickle, and I’ll explain later on why this is such

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The most common type of covenants today has to do with some sort of land or neighborhood preservation. When you purchase a home in a subdivision, you may be limited on the type of drapes you can hang in your window, or you may be required to park your cars in your driveway. Violations of these covenants can bring about liens, fines or court proceedings to the perpetrators. Many property owners are not aware of covenants unless it's explained to them during the closing process, or if they take the time to read their deed.



Among the many things that I work on for Metro Government, a major one is an environmental covenant. Many times, we acquire properties that contain underground storage tanks, parcels with lead paint and asbestos, or some sort of spillage. On one specific parcel, an elevator hydraulic lift was damaged and several hundred gallons of hydraulic fluid ran into the elevator shaft. For my chemistry buffs, hydraulic fluid is extremely harmful because it contains high toxicity, corrosive control agents, thick viscosity, and little-to-no biodegradability. The state required us to create an environmental covenant about how we will forever contain and manage this spill. Another environmental covenant we had to create had to do with lead on the property, which also added to the unusual high readings of arsenic in the soils. This was because the parcel was a former police gun shooting range. Yet another covenant had to do with archeological artifacts, and an agreement not to disturb the parcel for any reason.

Now, back to my original discussion about the conservation easement on the 18 parcels I need to acquire right-of-way on. I still have to meet and negotiate with the property owners, but because of the deed language, **my only option is the use of condemnation.** Yet, that creates ANOTHER dilemma for me.

When a roadway project takes place, the government that controls the road also governs the use of eminent domain. In this case, since the road is a Metro road, Metro also has the power to condemn. So, what happens when Metro (as the covenant grantee) also has the responsibility to uphold the language in the conservation easement? Metro cannot condemn and argue against itself. So, what is the remedy? There are two solutions for this problem, yet both still involve condemnation.

The first solution is Metro has to find another public agency or charity under IRS Code Section 501(c) (3) that has conservation interests and can hold title to conservation easements. Groups such as River Fields, the Sierra Club, or the Trust for Public Lands qualify. Metro approached these agencies, but all declined to become holders of this particular easement. Apparently, the easement scope was not restrictive enough to garner interests from these organizations.

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The second solution is to get the Commonwealth to intervene on our project and implement eminent domain, since the state can condemn. While reluctant and busy with their own projects, the state agreed to do so. If the state refused, our only option was a “no-build” on the road and cancel the project. With the state as the condemning agency at the helm, the project and the legal system can both move forward. This is called a “friendly condemnation”; they’re not condemning because of issues with offers to purchase; they’re condemning because of the restrictions placed on the property deeds.

Always read the deed on the property, especially if you’re acquiring from a park, historic parcel, or some sort of scenic byway. Check for more deeds, because the covenant may not be obvious on the individual parcel, and always ask property owners if they are aware of any restrictions. Also, if covenants aren’t identified upfront in the design process, assume there may be some sort of issue and follow-up. Give me a call if you have any questions or need clarification about restrictive covenants, or if you need help in researching them. The moral of this story: **DO YOUR HOMEWORK** before you approach parcel owners.

CLASS is DISMISSED!---Mike P

Stay
warm

A red and white striped mug with a green handle and a red and white striped candy cane on top.



Christmas Party 2024 at The Brown Hotel

Good Food, Good Time, Good Friends.











2025 Spring Right-of-Way Workshop & Symposium
Thursday, March 13th, 2025, at 8:30am to 4pm
University of Louisville, Shelby Campus, Burhans Hall (Rm 207)
450 N. Whittington Pkwy, Lyndon, KY 40222

The Kentucky Bluegrass Chapter extends an invitation to you to attend our annual Right-of-Way Workshop & Symposium!

Cost is \$80.00 per attendee (lunch/coffee included)

Our chapter is pleased to have the following presenters cover the following topics (not in order):

Matt Chapman: “Lessons Learned in Creating a Successful Gameplan for Project Appraisals”

Matt Chapman is the principal owner of Chapman Appraisals, LLC, having experience in all commercial and real estate property, including minerals. Matt holds an MAI through the Appraisal Institute, an ASA designation from the American Society of Appraisers, and a CMA (Certified Mineral Appraiser). He also holds his RWP (Right of Way Professional) designation from IRWA.

Joel Holcomb, PE and Blake Combs, EIT: “Plan Development, Right of Way, and Revisions”

Joel Holcomb, P.E., is a 1990 graduate of the University of Kentucky. He has been with the Kentucky Transportation Cabinet since 1988. He currently works in Manchester as a Transportation Engineering Specialist, being designer and a project manager. Previously he served as Branch Manager for Project Support and Branch Manager for Engineering Support.

Blake Combs is a 2020 graduate of the University of Kentucky. He has been with the Kentucky Transportation Cabinet since 2018. He currently serves District 11 as an Engineer-In-Training II, working as a designer and a project manager. Prior to now, he served as an inspector on various projects.

Ray Suell: “The Role of Court Commissioners in Condemnation”

Ray Suell is an attorney, licensed broker, and general real estate appraiser for the State of Kentucky. He is a member of the Kentucky Bar Association, Louisville Bar Association, Nation Association of Realtors, and has been a fee appraiser for Jefferson Circuit Court since 1986.

Joseph Ferguson: “NEPA and the Right of Way Process”

Joseph has worked for the Kentucky Transportation Cabinet as the environmental coordinator in Elizabethtown since 2007. Prior to KYTC, he worked at The Kentucky Division of Water, Department for Surface Mining in Frankfort. He has a bachelor’s degree in Biology from Campbellsville University and a master’s degree in Biology from Western Kentucky University.

Travis Carmack and Orié Dobson: “Mental Health Impacts and Right of Way”

Travis Carmack, SR/WA, is a Right-of-Way Supervisor with Emerald Energy and Exploration Company, with specialized experience in eminent domain, managing right-of-way acquisition and relocation services for both the public and private sectors, and previously worked for the Kentucky Transportation Cabinet.

Orié Dobson SR/WA is a 2001 graduate of the University of Kentucky. He has been with the Kentucky Transportation Cabinet since 2009. He currently serves District 11 as a Right-Of-Way Unit Leader, working in the acquisition, relocation, appraisal, and property management fields. Previously he served as Public Information Officer for the Manchester district.

And if we have not run out of time for the day:

Right of Way Round Table of Topics (lead by Mike Penick and Chad Cutsinger)

MAIL-IN REGISTRATION: Form is attached.

ONLINE REGISTRATION: <https://square.link/u/3gNmKAE4> or scan QR Code below



IRWA Bluegrass Chapter 25 is committed to education and providing learning opportunities to our members and friends as the chance arises. Bring a pen and pad, ask questions, and be a part of the program. Take advantage of this learning opportunity and make plans to attend!



Int'l Right of Way Assoc, Chapter 25

2025 Spring Right of Way Day & Symposium

Right of Way Topics: Engineering, Legal, Environmental, Appraisal
Location: U of L Shelby Campus, Burhans Hall--Room 207
440 N. Whittington Pkwy, Lyndon, KY 40222
Thursday, March 13th, 2025 (lunch included)

*Use one form if more than one attends from same company please.

1) Name _____ Title _____
 2) Name _____ Title _____
 3) Name _____ Title _____
 4) Name _____ Title _____
 5) Name _____ Title _____
 6) Name _____ Title _____

Company _____ Address _____
 City _____ State _____ Zip Code _____
 Phone _____ Fax _____ E-mail _____

Cost: \$80.00 per person

Fill in

Total Enclosed \$ _____

Registration Deadline: make check/money order payable to:

None IRWA Kentucky Chapter 25

And mail to:

JAMEY CASH, PE
STRAND ASSOCIATES
325 W. Main Street, Suite 710
Louisville, KY 40202

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