

# BLUEGRASS BULLETIN

## Fall 2024 Newsletter



### President Message November 2024

Members, friends, and acquaintances,

Hello to you! I'm back in the role of Chapter 25 President...again! (smile)...I wonder how many of you are tired of seeing my face? LOL...In all seriousness, I am honored to serve our membership in this role. Since I've done it twice before, I do not need to dust off the leadership manual and try to figure things out. I know what this job entails, and I'm happy to do it so that our chapter continues to exist and move prosperously to the future.



I need to recognize a few people. Many thanks to the previous Chapter President, Mr. Chad Cutsinger, SR/WA, for his guidance and directional input during 2023-2024. Next, I'm proud to say that we have a very strong presence on our current Board of Directors, probably the strongest board we've had in many years! The support and help from fellow officers such as Vice President Orie Dobson, SR/WA, the hard work of our Treasurer, Mr. Jamey Cash, PE (his last name says it all), and the eagerness to assist from Secretary Calvin Andries...what more can a President ask for?

(continued on page 2)

#### 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](http://www.irwa25.org)  
[www.irwaonline.org](http://www.irwaonline.org)  
[www.irwaregion5.org](http://www.irwaregion5.org)

*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.*



## President Message November 2024 (continued from page 1)

Lest I forget, our committee chairs are becoming more involved on a national level by attending online forums and webinars, thus bringing back some fruitful information to the directors. Our chapter is only as strong as our board members, and in my opinion we now have a solid foundation in place for the future, at least the next few years anyway.

We've also had two KYTC people join not only IRWA as members, but also our board, and that is amazing! Amanda Murphy-Sanders (from KYTC-District Five) has joined as our Transportation Committee Chair, and Sarah Orange (From KYTC-District Two) has joined, and she will be part of the Relocation Committee. When you see both, please acknowledge and give them a warm "thank you" for stepping up to the mound and adding much needed value. To add to the "girl power", Kari Kelsch Stockdale of Lochner has joined our board as Membership Chair! Kari, I'm grateful to you for stepping up and replacing our friend Ron Geveden who served in that chair for many years until he left our world last year.

If you have the support of your company and want to join our board, let me know. The more, the merrier, the better! You can help us "enlarge the pie" by bringing something unique to the table. Remember that Integrative Negotiations? When everyone brings something, the dynamics are effective, and the differences made in our industry are impactful!

One of the many things that I'm focusing on during my term is having a healthy and successful outlook for the chapter so that we may carry on and continue to exist. I recently found out that Connecticut Chapter 23 which was based in Hartford has dissolved as of July 1, 2024. Any remaining members in that chapter will have to either go to New England Chapter 16, or New York Chapter 18. From what I know, Chapter 23 only had 2 people on their official Board of Directors, with one of the two people passing away earlier this year, and the other person had been using their chapter treasury to support his own personal endeavors as far as attending conferences and forums. Obviously, that was a violation of their chapter bylaws, but when there's no one on the board to enforce the rules, some people take advantage. The whole situation in Chapter 23 concerns me, because they hosted the 2014 IRWA-Con in Hartford! I cannot help but wonder what in the world happened?

There are other chapters in our organization who have some people on their boards involved in four different roles. That's a concern; we need a nice variety of people in positions, so that it remains objective and useful to the members (not to mention potential burnout!). I looked at the officer rosters of all the chapters in IRWA; some chapters are thriving, while others are struggling. Some chapters only have a Pres, VP, and International Directors. We need new people to bring a fresh perspective!

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## President Message November 2024 (continued from page 2)

My point is I don't want our chapter here in Kentucky to fold. We were established in January 1959, so that's 65 years of diligence, networking, and persistence to keep this torch lit. At our highest membership in the early 2000s, we had over 157 total members; today that number is now 64 (more or less), which is a 60% decline from our peak! Our general meetings are smaller than they used to be, and we've had to get creative to bring something useful to the membership. I think our biggest success has been the implementation of our chapter's "Right of Way Day & Symposium", which will be held every March for the foreseeable future. Not only are they well attended, but the topics are outstanding! If you haven't, consider attending our ROW Day Symposium, where we talk about several different disciplines in our industry. Also, think about bringing a friend or a non-member. We want people to be members, but you do not have to be a member to attend our seminars or luncheons. Just sign up!

So, what can I leave you with?

Know that I will do all that I can to support you and our industry.

I have an "open door policy" for anyone who wants to talk to me about any concerns, issues, or circumstances they are facing in right of way, personally or professionally.

I will always commit to doing the right thing, even if that is unpopular with others.

It's OK to disagree with me or others, but let's have a conversation, not a confrontation.



I look forward to serving you, the members and lifeblood of our chapter. Thank you again for the trust and belief you have bestowed upon me. Let's make this a fantastic year in right-of-way. Hopefully, a few of you all will join me at the 2025 IRWA-Con in Virginia Beach on June 1!

--Mike Penick, SR/WA



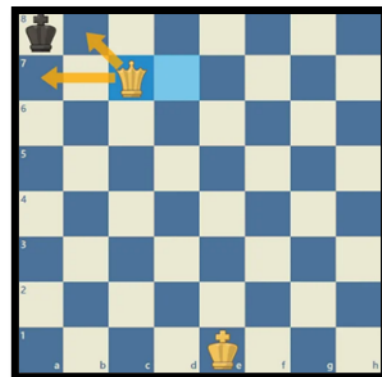
## Negotiations 200(A): Are We at a Stalemate, Impasse, or Deadlock in an Acquisition?

*by Mike Penick, SR/WA, IRWA CLIMB Certified Instructor*

Every negotiator has encountered that one property owner to where the negotiation has stalled. Perhaps the negotiation started off great; both parties were making progress towards an agreement, and then for some reason the negotiation ceased. The property owner may have stopped returning phone calls, or told you to call their attorney, or even become hostile towards you.

In most cases, those of us who negotiate have a **BATNA** (Best Alternative to a Negotiated Agreement) if we hit a barrier roadblock; that means we have options to move forward in an acquisition. Those who work for a government, utility, or municipality have eminent domain as one BATNA, while others may have to revise their plans for the project to move forward, or a WATNA (worse case) is to terminate the project, which may do more harm than good for public purposes. Let's look at the differences between these kinds of negotiation stoppages by identifying them, and then coming up with some solutions besides resorting to eminent domain.

**Are we at a Stalemate?** A stalemate in negotiations occurs when one party has ceased all interactions with the other party. They will not respond to voicemail messages, e-mail, text, letters, or any other forms of communication. When this happens, the person who has stopped the discussions has implemented an "Avoidance" factor, which in conflict means the more one party persists, the more the other party RESISTS. That sort of behavior, while effective in the minds of the responsible party, is actually harmful and hurts their cause.



How should we treat a stalemate? Before we implement our condemnation BATNA, we need to find a way to get the other party to talk to us. A drive up to the parcel may be warranted (be safe in doing so!); maybe the property owner is ill or is dealing with a family issue. If no one is home, leave a business card on their door. Instead of postal certified mail, try a UPS/Fed Ex/DHL Letter Delivery Service. Also, we can talk to a neighbor and find out if the owner is OK. Giving the owner the benefit of the doubt can be helpful. We never want to make any assumptions until we know for certain we're in a stalemate. The main thing is we need to show that we've made every attempt to get a response from the other party, which proves to a judge, jury, or arbitrator we've operated in good faith before resorting to eminent domain.

# impasse

**Are we at an Impasse?** An impasse in negotiations is when one party in the negotiation holds strongly to a particular belief and will not consider any other options. For example: let's say a project plan shows a tree that must be removed. The property owner objects to that removal and refuses to continue negotiations until the tree is saved. You have discussed that concern with the engineers and confirmed there is no way the tree can remain. We have offered options to the property owner, including but not limited to

compensation, and the owner will not accept it. When we have made every attempt to satisfy the owner, and the attempts are not successful, we are at an impasse.



How can we manage an impasse? Ultimately, we need to find out why the owner has taken such a hardline on an issue. Sometimes, it may not be about the issue at all. We must get to the underlying cause of the statements people make. The negotiation technique is called “positioning”, which is where we have to find out why they’ve taken a certain position, and focus on what the driving interest is. In the tree example, we must talk to the owner about the tree. Using courtesy and respect, we will have to ask probing questions to get to the heart of the matter. Is it a shade or privacy factor? Do the kids climb it? Are there unique birds that nest in it? Was it planted in memory of someone? The more information we can discover, the more we can do to understand why it is so important to them, and if possible, address those concerns with a remedy. Maybe we can’t replant a full-grown tree, but perhaps we can have an arborist look at it and make suggestions. We can add some mature landscaping to help with any privacy concerns. The more we know, the more potentially we can do to try to address their concerns. **Empathy** goes a long way in breaking a potential impasse. However, it is prudent to remember that in some case there’s no solution to satisfy the landowner. Only after we have made every good-faith effort to address the dispute should we then consider the condemnation BATNA. Remember, we’re trying to show a potential court that we’ve done all that we can to resolve the impasse.

**Are we at a Deadlock?** A deadlock is when neither side is willing to work together, compromise, or find common ground to a situation. Some of the sources of deadlocks are stubbornness, ego, irrationality, and competitive nature. Do you know someone who argues in every conversation? If you say “the sky is blue”, they respond “the sky isn’t blue”.



Have you ever read the story of “The Zax” by Dr. Seuss? There were two Zaxes, one traveling north, and the other traveling south. They end up meeting each other, and neither would budge or move out of the way to allow the other to continue walking. They both stood still, and as they did the world around them changed; the four seasons happened, the days and nights passed, and large cities grew around them. All because neither one of them were willing to take one step east or west to allow the other to pass. This is a deadlock; it is often a “lose-lose” negotiation tactic that only satisfies self.

How do we best manage a deadlock? First, set aside any pride you have and realize that you do not need to win the negotiation. The goal is to reach an agreement, not to win a competition. The other side that is being overly difficult or unreasonable may be struggling internally with issues we are unfamiliar with. Then, recognize that many individuals may be so absorbed with themselves that they don’t care about the other person’s attempts to build a bridge. Stay humble, focus on the negotiation task, and address the stuff that we know we can do. If you’ve made every attempt to accommodate and the other person is still being unreasonable, then it’s time to consider other BATNA options.

When you can identify the trigger of any stalled negotiation, it is easier to know what the next steps towards a resolution will be. In our right of way industry, it is hard enough to approach someone and ask that they give up a piece of their dream for a project they may not want or directly benefit from. Placing yourselves in their shoes and seeing the world from their perspective will help you to negotiate wisely and helpfully. Try building a rapport, find common ground, and agree with the truth.

(Sources: *Getting Past No* (William Ury), *Program on Negotiation* (articles, Harvard Business School))

**MEMO TO ALL MEMBERS****FROM: MIKE PENICK, SR/WA, CHAPTER 25 PRESIDENT****DATE: FRIDAY, NOVEMBER 1, 2024****RE: NEW SCHOLARSHIP PROGRAM FUNDED FROM THE EDUCATION FOUNDATION**

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Chapter Members,

It was announced at our Region Fall Forum in Pittsburgh that there will be a new scholarship for those who are interested in beginning or continuing their education.

The scholarship, named "Global Education Initiative", will be available to applicants starting Wed, January 15, 2025, with a deadline to file by April 1, 2025. Every chapter will award ONE recipient, who will receive \$2,500 towards education. The application will have details of what you will have to provide for consideration, and will require an essay with your goals, objectives, and ambitions in regards to the right of way industry. YOU MUST BE A CURRENT IRWA MEMBER IN GOOD STANDING TO APPLY!

Anyone and/or everyone can submit an application, but only one person will receive the award in our chapter. If you are awarded, you can only use the scholarship towards IRWA courses, and the award cannot be split or shared with any other person.

We have not taken advantage of scholarship programs provided by RWIEF as much as I would like, so I felt the need to inform you about this now, so you can start thinking about it. Please set a note to yourself to check the IRWA website for the Global Education Initiative Scholarship ([www.irwaonline.org](http://www.irwaonline.org)), starting January 15.

The winner will be notified on June 1, 2025, at IRWA-Con in Virginia Beach, VA. You will not need to be present at the conference to win. You WILL have to acknowledge that you've been notified, and it will be available to use beginning July 1, 2025.

If anyone needs any help or assistance with the application process, please reach out to me. If you have any questions about this program or any grant programs, let me know. As an academic and former scholar, I am more than happy to advise and help! Let's take advantage of FREE MONEY!

Thanks everyone!



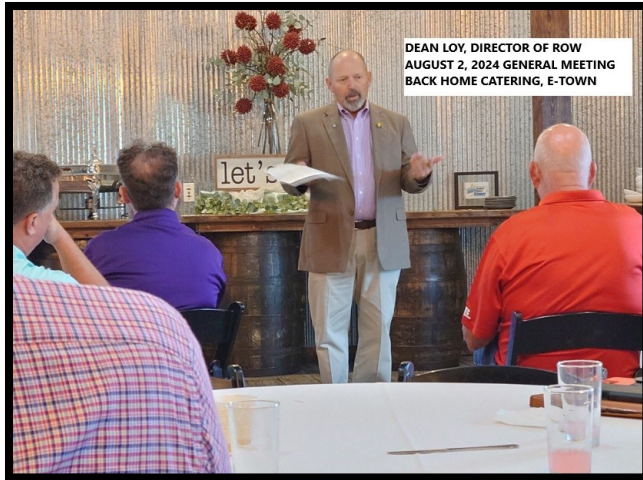
*“Greetings to my fellow Chapter 25 friends and colleagues. I just wanted to take a moment to touch on my experience at this year’s KYTC/ACEC Partnering Conference. This year co-hosted a session with Rex Alexander (HDR) which covered basic Right-of-Way disciplines and how they related to KYTC and FHWA policies and procedures. In an effort to keep it fun and interactive, the format for this session was a game of Jeopardy. We played two rounds and gave out the usual marketing swag as prizes. While we had a number of folks in the sessions that were not Right-of-Way people, we did get lots of interaction, which was good. With the new changes by FHWA, it made for an actual learning experience, even for the veterans in the room. Rex and I did our best to keep it light and lively and we were even able to garner a few laughs in the process. To those of you that came out and attended our two sessions, I’d like to say THANK YOU. For those of you who didn’t, I hope to see you at the partnering conference next year.”*

*Chad Cutsinger, SR/WA  
International Director*





## August General Meeting 2024



DEAN LOY, DIRECTOR OF ROW  
AUGUST 2, 2024 GENERAL MEETING  
BACK HOME CATERING, E-TOWN



TONY MOORE & DEAN LOY PRESENTING  
GENERAL MEMBER MEETING, FRI, AUG 2, 2024  
BACK HOME CATERING, E-TOWN



KELLY DIVINE, ASSISTANT DIRECTOR OF ROW  
GENERAL MEMBER MEETING, FRI, AUG 2, 2024  
BACK HOME CATERING, E-TOWN





**TONY MOORE & DEAN LOY PRESENTING  
GENERAL MEMBER MEETING, FRI, AUG 2, 2024  
BACK HOME CATERING, E-TOWN**



**CHARLES HALE, ASSISTANT DIRECTOR OF  
ROW  
GENERAL MEMBER MEETING, FRI, AUG 2, 2024  
BACK HOME CATERING, E-TOWN**



## FALL FORUM Pittsburgh 2024







**JAMIE ROSE TIEU & RAKSHAN MAZAREI  
BUSINESS SESSION, REGION FIVE FALL FORUM  
OCT 12, 2024, PITTSBURGH**



**DOUG GRANT, MIKE PENICK, & CALVIN  
ANDRIES  
2024 REGION FIVE FALL FORUM,  
PITTSBURGH**



**REGION FIVE AUCTION  
BRAD KRABEL, SR/WA  
AUCTIONEER**



## ACEC Conference



REX ALEXANDER & CHAD CUTSINGER  
PRESENTING AT THE 2024 ACEC PARTNERING  
CONFERENCE (WED, SEPT 9, 2024)

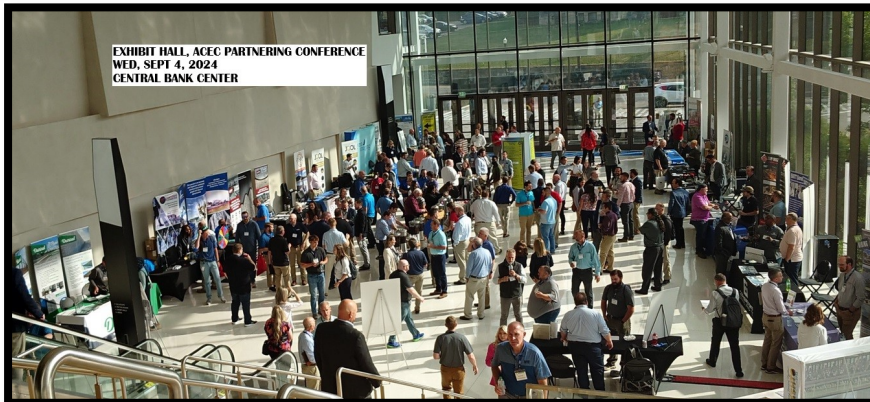


EXHIBIT HALL, ACEC PARTNERING CONFERENCE  
WED, SEPT 4, 2024  
CENTRAL BANK CENTER



KEITH MCDONALD & MIKE RUSSELL  
2024 ACEC PARTNERING CONFERENCE  
LEXINGTON



LUNCHEON, ACEC PARTNERING CONFERENCE  
WED, SEPT 4, 2024  
CENTRAL BANK CENTER





**DOUG GRANT & CALVIN ANDRIES  
SAT NITE EVENT, PITTSBURGH  
2024 REGION FIVE FALL FORUM**



**SAT NITE EVENT AT SIENNA MERCATO  
2024 REGION FIVE FALL FORUM  
PITTSBURGH**



# Right of Way Meeting 2024





## NEPA On Trial

### **NEPA On Trial: Seven County Infrastructure Coalition v. Eagle County, CO**

Just over a year after we received the Sackett decision, which altered how we view Clean Water Act enforcement, environmental law is once again up for debate at the Supreme Court. **Seven County Infrastructure Coalition (SCIC) v. Eagle County, Colorado** tackles arguments about the reach of NEPA enforcement. The SCIC was formed to advance infrastructure projects across seven counties in Utah. This case arose from SCIC's efforts to promote a transportation and utility infrastructure project that Eagle County contends could negatively impact the environment, raising concerns central to NEPA's requirements for thorough environmental review before major federal actions. Specifically, they proposed building a rail network to carry crude oil and other products from Utah to refineries and distribution centers along the Gulf.

At the heart of the legal arguments is the scope of NEPA compliance. The SCIC asserts that it has met all necessary environmental assessments, while Eagle County emphasizes the importance of "downstream" impacts and argues that the study was not sufficient. They contend it should have considered increased rail traffic, heightened oil drilling due to improved distribution methods, and impacts to areas where refining will occur. This conflict highlights a broader tension between regional interests, which advocate for economic growth through infrastructure improvements, and local concerns focused on environmental preservation and community welfare.

The outcomes of this case could have wide-ranging implications. A ruling could clarify NEPA guidelines regarding the scope of potential impacts. If the case is ruled in favor of Eagle County, future NEPA studies will likely take longer, necessitating more considerations in development, which will have trickle-down effects in the ROW sector due to increased wait times for NEPA review.

This case has officially been placed on the SCOTUS docket, with oral arguments set for December 10, 2024. Regardless of the outcome, it will undoubtedly alter the way we approach NEPA review and the scope of potential project impacts.



## Int'l Right of Way Assoc

### Course 100: Principles of Right of Way Land Acquisition

Instructor: Mike Penick, SR/WA  
Location: Wingate by Wyndham Louisville East, Bluegrass Conference Room  
12301 Alliant Court, Jeffersontown, KY 40299  
December 10<sup>th</sup>-11<sup>th</sup>, 2024, 8:15am to 5pm

\*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 _____

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

Course Cost: \$600.00 per IRWA Member  
\$630.00 per KYTC or DOT Employee  
\$700.00 per NON-IRWA/NON-KYTC member

Fill in

Total Enclosed \_\_\_\_\_

**Registration Deadline:** make check/money order payable to:

**None** IRWA Kentucky Chapter 25

And mail to:

**Mike Penick**  
Louisville Metro Government  
444 S. Fifth Street, Suite 400  
Louisville, KY 40202  
502-574-5338  
e-mail: [mike.penick@louisvillky.gov](mailto:mike.penick@louisvillky.gov)

For ACCOMODATIONS:

Wingate by Wyndham: 502-785-0850

Ask for the government rate, which ranges from \$109/nite to \$123/nite depending on room selection

**FOR CREDIT CARD PAYMENTS:** Call Mike Penick please

# Principles of Land Acquisition

**Course Number:** C100 (2-Day)

**Course Title:** Principles of Land Acquisition

**Course Level:** Core

**IRWA Credits:** 16 QEU/CEU

**AQB Credits:** Non Applicable

**Prerequisites:**

## Course Description

IRWA Course 100 - Principles of Land Acquisition is a course designed as an educational offering to the global community of right of way and infrastructure professionals, and to anyone who directly or indirectly engages in this profession. The purpose and content of this course are centered on members of the Project Team, with specific emphasis on the right of way agent. This course is an introduction to industry-specific disciplines, which have overlapping roles and responsibilities with project managers, designers and legal needs. Agents who typically participate on a project team are from the following disciplines: environment, engineering/surveying, appraisal, negotiation, relocation assistance, law and real property management. Law is included not only because of the attorney's role in compulsory purchases (condemnation, expropriation, etc.), but also because it is a vital component of the agent's responsibility to prepare legal documents and obtain the correct signatures of vesting property owners. This ensures the document is legal and enforceable. This course provides an awareness of the disciplines involved in right of way and infrastructure projects, and the importance of a team approach to the work.

## Credentialing

- **New SR/WA Program:** Core course required for the RWA certification.
- **Industry:** Core course required for the RWA certification.
- **Specialist:** Required course for the R/W-URAC certification.



## Topics

- **Ethics:** Describe the IRWA's Code of Ethical Conduct, Standards and Procedures, as well as ethical behaviors that guide the work of the right of way and infrastructure professional.
- **Interdisciplinary Team:** Recognize the key role that the right of way and infrastructure professional plays on the project team, as well as the importance of a team approach to the work.
- **Environmental Concerns:** Describe the effects of public projects on the environment, as well as the types of environment assessment processes and studies.
- **Engineering/Surveying:** Summarize the three-view concept of engineering plans, as well as property descriptions.
- **Appraisal:** Describe the basics of the valuation process and the role of the appraiser in the acquisition process.
- **Negotiation/Mitigation:** Explain the right of way agent's role during negotiation, including basic components from preparation to closing.
- **Relocation Assistance:** Discuss the basics of relocation assistance for residential and non-residential displacements.
- **Property Law:** Define real property law concepts and terms.
- **Property and Asset Management:** Understand the core dimensions of real property (asset) management.

## Course Tuition Includes

- Learning Guide
- Principles of Right of Way Textbook
- Engineering Tools (engineering scale, protractor, and scaled ruler)
- Real Estate Dictionary
- Study Guide
- United States Law Relocation Supplement (for U.S. classes only)

## Required Material

Non Applicable

## Who Should take this course

This course is geared toward infrastructure professionals, novice right of way professional with little or no experience in the right of way field, individuals specializing in a specific area of right of way, and right of way managers desiring a refresher course.

IRWA BLUEGRASS CHAPTER 25

65th ANNUAL

# Christmas Party

THE BROWN HOTEL  
SECRETARIAT ROOM  
LOUISVILLE, KY

Friday, December 6, 2024

6:30 pm - Cocktails and Hors d'oeuvres

7:15 pm - Dinner (\$20/person advance, \$40 at the door)

8:00 pm - Awards and Door Prizes

RSVP: Orie Dobson at (502) 764-0254 or  
orie.dobson@ky.gov

Rooms available under the International Right-Of-Way  
Association block; call (502) 583-1234

INCLUDE FLYER WHEN PAYING IN ADVANCE VIA MAIL

Name: \_\_\_\_\_  
Guests: \_\_\_\_\_

Send to Jamey Cash, P.E., Strand  
Associates, 325 W Main ST, STE 710,  
Louisville, KY 40202, checks made  
payable to IRWA Chapter 25. Prefer to  
use a credit card?



<https://square.link/u/4QU1vmzv>

\*\*\*Please include this bottom slip when you RSVP\*\*

Name: \_\_\_\_\_

Guests: \_\_\_\_\_

Please enclose \$40/singles or \$60/couples (make your check payable to IRWA Chapter 25)  
And mail to:

Mike Penick, SR/WA  
Louisville Metro Government  
444 S. Fifth Street, Suite 400  
Louisville, KY 40202

Credit Card link: <https://square.link/u/4QU1vmzvd> mail to:

