



FALL, 2013 NEWSLETTER

A PRESIDENT'S PERSPECTIVE CHAD CUTSINGER

Greetings Bluegrass Chapter Members and Friends!

I hope this letter finds everyone in good health and financial wellness! Our upcoming October 18th General Membership Meeting will be held at the Cornerstone Cottage in Louisville. We'll be continuing with our tradition of having a Chili Cook Off, so please check the details in this newsletter.

I should begin by updating you all on the recent happenings of our Chapter and changes to the Executive Board. Many of you are probably already aware that our president, Brett Thiess, has accepted a position with Humana here in Louisville which is not right of way related. Therefore, Brett resigned his position and is no longer involved in the Right of Way profession. In order to adhere to our current Chapter bylaws it means that I was "field promoted" to the President's position, which is why you are reading this address from me and not Brett.

Since this transition has taken place several other changes have occurred. After a few years of discussion between IRWA headquarters and our fellow chapters nationwide, it has been mandated that all chapters change their calendar year to align with headquarters. This means that our installation of officers in December is no longer allowed. Our new calendar year will run from June 30th to July 1st of the following year. This change was not well received by our executive board and although we did not wish to make this change, we had no choice. Our December meeting installation banquet is not only our most well attended and enjoyable event of the year, it has been a staple event since the inception of our chapter. But, as stated earlier, it has been mandated, so the installation of new officers will now take place in June. That said, we shall still have the December Christmas Program/Dinner at the historic Brown Hotel in downtown Louisville on December 6th. Anyone who has been to the Brown knows that this will be a very enjoyable evening of both great food and ambiance. Details will be sent to you as we get closer to the event.

In light of these changes to the installation banquet, this also means that the presentation of the slate of officers that typically takes place at our General

2013 Officers

President:
Chad Cutsinger

Treasurer:
Matt Chapman, MAI
(*Land & Economic Studies*)

Secretary:
Leigh Alden Karr, SR/WA
(*Newsletter, Relocation*)

International Director:
James D. Brent SR/WA
William L. Busch, SR/WA,

2013 Committee Chairs

Education:
Mike A. Penick SR/WA,
RW-EC

Membership:
W. Clement Russell

Roster:
Morris L. Smith

**Professional
Development:**
William Busch, SR/WA

Utilities:
Henry Ford, Jr.

Transportation:
Bruce Napier, SR/WA

Local Public Agency:
James Wray

Engineering Liaison:
Debby Taylor, PE

Valuation & Website:
William R. Cox, SR/WA

**Communication &
Marketing/Newsletter:**
Wayne Kimbel

Newsletter Publisher:
Jessica Grivna

Membership meeting in October will not occur either. **However, in keeping with tradition we shall once again be hosting the annual Chili Cook-Off in October.** This even will take place in the evening starting at 6 PM and as previously mentioned will be held at the Cornerstone Cottage in Louisville. We have always had a fun time at this event and we anticipate that we'll continue to do so. Last year we had a good turnout and as some of you are aware, the competition between a few of the members is fierce. Please come out and participate in the competition. Everyone is welcome to attend and there is no cost to participate. In order to sweeten with incentives, there will be trophies and cash prizes for the top three winners! **I do ask that you contact me or Mike Penick and RSVP as soon as possible so that we can make sure we get a head count in order to make necessary preparations at the venue.**

...and as a good friend and past president once said: "and remember, we'll buy the beer!"

As always, if there is anything that you need regarding education requirements or if you would like to get involved and participate on the executive board or at another level, please let us know. We'll find a spot for you.

If you would like to share any ideas or have an article you would like to see published in future newsletters, please contact Wayne Kimbel at wkimbel@lwcky.com and let him know.

Thank You

Chad Cutsinger
Chapter 25 President

**AUGUST GENERAL
MEMBERSHIP MEETING**
Crowne Plaza, Lexington, KY
KYTC Update



**Great Learning Opportunity
& Fellowship!**

Right-of-Way 101: Reasoning with Unreasonable People

Mike Penick, SR/WA, Education Chair & Facilitator

Recently, Louisville Metro Government proposed to build a new sidewalk on Shelbyville Road in the Lyndon area. As with all projects, Metro tries to use existing right-of-way whenever possible when planning new sidewalk projects. However, there are times when additional right-of-way and/or easements are needed in order for projects to proceed. This scenario was one of those times.

At the public meeting for this particular project, half of the owners in the immediate area were for the sidewalk, and the other half were against it. Below are some of the comments heard at the meeting:

PRO-SIDEWALK COMMENTS	ANTI-SIDEWALK COMMENTS
Accessibility to other neighbors improves Easier to take TARC Able to exercise by walking or running New sidewalks look nice Can walk to the malls & shopping centers Safer to have than not	Easier for criminals to break in houses A target for graffiti artists It will bring more “riff-raff” There’s no need for this Skateboarders & kids will dart out into traffic People will fall and get hurt

The remarks speak for themselves, so no elaboration is necessary.

Metro came up with a final sidewalk design, choosing the least objectionable alternative. However, this proposal requires permanent easements from two property owners who were also next-door neighbors. It just so happens that both owners attended the public meeting, and were split on wanting the sidewalk.

The pro-sidewalk parcel owner accepted the offer to purchase and signed the easement document without a counter offer or special conditions, and voiced their approval of this project.

The anti-sidewalk owners (a married couple named Yates) were much less accommodating in negotiations. On the first scheduled meeting, the Yates were no-shows. The next day I received a voicemail message stating they are unable to meet at this time, with no explanation. I called back and left a message telling them to let me know when they would be available. Mr. Yates called back and told me to call in about a couple weeks (playing phone tag). After waiting two weeks, I called to reschedule. Mr. Yates said they just had a death in the family and would be out of town for another week. Again, I waited. A week later, I called to schedule another meeting, and Mr. Yates said they couldn’t meet until very late. So, I ended up scheduling a meeting at 8:30p.m. (Thank GOD it was still summer time, so I was still able to utilize the daylight.)

The night of our meeting, we discussed a lot of issues, most of which were not tangential to the sidewalk. We walked outside to the area of the proposal. Mr. Yates complained that a big truck driven by someone damaged a portion of his asphalt driveway (he blamed us specifically). I told him it wasn’t Metro, because we don’t drive big trucks when we do design engineering work. I also pointed out that the damage on his driveway possibly occurred after his trees were trimmed (and pointed to the recent tree trimmings near power lines along Shelbyville Road).

Right-of-Way 101: Reasoning with Unreasonable People Continued...

The permanent easement area needed for this project was 300 square feet. I'll just say the offer was \$500.00 (it wasn't, but that's the number I'm using for this article). After making the offer for the permanent easement, Mr. Yates became agitated and did not want to continue meeting. However Mrs. Yates calmed him down and allowed me to continue. I explained the counter offer process; that it had to be explanatory and something comparable/relative to the original offer. The Yates are losing a bush at the corner of their property, and its replacement value was not included in the offer. That leads to some credence to at least that portion of their argument.

After another month of me calling and leaving messages, I finally got a written counter from the Yates. The counter offer was \$4,500.00. In my mind, I'm thinking "for 300 square feet they want NINE TIMES our offer???" Here is what they listed as justification:

1. The new sidewalk will make it harder for them to mow their yard. (My response: this is non-compensable)
2. The offer did not include the loss of their bush on the corner. (My response: this is reasonable)
3. The new sidewalk will cross their asphalt driveway, and they want a concrete apron to match. (My response was to check with engineering on this)
4. The work on the sidewalk will cause lots of noise and dust on their property (My response: this is non-compensable, and that since they live on a major highway like Shelbyville Rd, noise and dust is not necessarily a result of our project)
5. They are taxpayers and think this project is wasting their money (My response: this is non-compensable; I wanted to respond and say **their** counter-offer is the reason why projects waste money, but I didn't)



I won't get into the details of whether or not we filed condemnation (but feel free to talk to me and I'll tell you the final outcome of this situation). However, check out the Yates parcel now:

"Come now, and let us REASON together says the Lord" in Isaiah 1:18.

Right-of-way agents have to find ways to build relationships with property owners, yet at the same time avoid making arguments *ad hominem* (threatening). We also have to use our intellect to help property owners understand why we operate in a certain way. The majority of land owners are willing to listen, but there are some that refuse to be open-minded in hearing what you have to say. Aristotle's Logic identifies those owners as "poisoned wells". This means they already have their minds made up in advanced of any negotiation, and will make statements completely contrary to your argument. You cannot "reach" those persons, no matter how hard you try.



Right-of-Way 101: Reasoning with Unreasonable People Continued...

I no longer make it my goal to obtain an acquisition no matter what the cost. In my younger days, I was all about “getting the signature”. Today I make it my goal to make sure the owners understand the project by answering all questions and negotiating in good faith. It’s important that owners comprehend what will happen to their property. I’m not deemphasizing the importance of getting the owners’ signature; it’s just not my goal.

Your IRWA friends are not here to tell you how to negotiate with property owners. As you gain experience, you will learn how to build trust and relationships needed to gain the rewards from our industry. Just be sure that you do your best, especially when conferring with unreasonable property owners.

1. ***Listen with empathy.*** You can allow the owners to vent their frustration without agreeing to all of their positions.
2. ***Find common ground.*** There’s some in every negotiation; getting to it may take some work.
3. ***Use problem solving skills.*** Take notes of concerns, repeat back for clarification, and give a time frame to find results.
4. ***Manage conflict but stick to business.*** Taking property is very touchy. Recognize that you may feel the same way if it were your own property.
5. ***Explore all possible alternatives.*** Discuss owner issues with engineers and project managers, and ask for reasons to relay to owners.

Negotiations can be tiresome, long suffering, and frustrating, but don’t take it personal. You gain knowledge and strength when you encounter difficulty, so learn from the struggle. The message I’ve tried to relay in this article for you is this: BE ENCOURAGED!



William “Bix” Cox, SRWA and Bill Busch SRWA taught courses at the September Partnering Conference with the American Council of Engineering Companies held in Louisville. Here they are in action...

The Reviewer's Corner – Issues & Answers

Manufactured vs. Mobile Homes

This discussion examines the question of whether a mobile home set up on site is personal property or real estate.

It has been said that the definition of a genius is one who can hold two opposing thoughts in their mind at the same time. You are about to become a poly-genius!

The January 4, 2005 Uniform Act revision added a new definition for mobile homes. “The term “mobile home” includes both manufactured homes and recreational vehicles used as residences. Appendix A explains that “mobile homes” and “manufactured homes” are recognized as synonymous by HUD for that Agency’s programs, and for purposes of this regulation will be considered the same... (Subpart F continues to include an explanation of the different methods of computing relocation assistance when a mobile home has been determined to be personal property, and when it is determined to be real property.) “It further explains that “Their designation as personalty or realty will be determined by State law.”

Kentucky Revised Statute 227.550 states "Manufactured home" means a single-family residential dwelling constructed in accordance with the federal act, manufactured after June 15, 1976." The federal act is the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. sections 5401 et seq. And...

“"Mobile home" means a factory-built structure manufactured prior to June 15, 1976, which was not required to be constructed in accordance with the federal act.”

Are your eyes glazed over yet? Okay, so far the Feds say the terms are synonymous, but State Law says the terms are divided by the date of June 15, 1976. The Feds say that State Law determines whether either is personalty or realty. Here's a bit more legaleze...

Kentucky Revised Statute 186A.297 states “When a manufactured home is or is to be permanently affixed to real estate, the owner may execute and file an affidavit of conversion to real estate with the county clerk of the county in which the real estate is located. The affidavit shall attest to the fact that the home has been or will be permanently affixed to the real estate and be accompanied by a surrender of the Kentucky certificate of title. The county clerk shall file the affidavit of conversion to real estate in the miscellaneous record book.” While a chattel mortgage may be obtained, lenders will not grant a real estate mortgage unless such an affidavit is recorded in the county clerk’s office. Pretty clear, eh?

However, since we are appraisers and not lenders, let’s look at the Kentucky Transportation Cabinet’s Appraisal Guidelines.

Section IV defines manufactured structures as “a structure that is cut, packaged, or assembled in one location to be shipped to another location for use as a residence, office, etc.” After a discussion of (1) kits and (2) sectional units, the following distinctions are made:

The Reviewer's Corner – Issues and Answers Continued...

- “3. Modular structures, are buildings assembled in modules - complete sections - for transport to a site for "set up." Modular structures are differentiated from the "mobile home" concept by the type of frame or framework on which the unit is transported. Most modular structures are transported on a framework that is removed once the unit is placed on a permanent foundation. Some manufacturers provide steel rails or frame as an integral part of the structure. Running gear, wheels, axles, and springs along with the hitches are removed once the unit is placed on a permanent foundation.”
- “4. Mobile homes, complete structures assembled on steel frame rails with running gear for transport from a manufacturing plant to the users site.”

“Typical construction of types, 1, 2 and 3 above, requires a permanent foundation for support. In all but exceptional cases, these completed structures are considered real property. “

“Mobile homes may be handled in one of two ways:

1. If the land owner and mobile home owner are the same, the mobile home should be considered a fixture (real property).
2. If the land owner and the mobile home owner are different, the mobile home should be considered personalty.”

“In the second instance, items normally considered real property (room additions, porches, decks, septic systems) that belong to the tenant should be included as tenant-owned realty.”

Section IV also has some input on Tenant Improvements. “Part 24 of 49 CFR of the Code of Federal Regulations states: "When acquiring any interest in real property, the Agency shall offer to acquire at least an equal interest in all buildings, structures, or other improvements located upon the real property to be acquired, which it requires to be removed or which it determines will be adversely affected by the use to which such real property will be put. This shall include any improvement of a tenant- owner who has the right or obligation to remove the improvement at the expiration of the lease term."

“Simply put, this means that if a tenant has added improvements (either structures or site improvements) to a property, and both lessor and tenant agree the improvement(s) belong to the tenant, a separate offer must be made to the tenant to acquire those improvements. The value of the tenant-owned realty must be included in the overall compensation since this is the total amount of compensation to acquire the real estate on a particular parcel.”

“In some instances, a mobile home being acquired and falling into the second category above may be in such poor condition it cannot be moved without destroying it. In these unusual circumstances, the mobile home may be considered tenant-owned realty and included in the compensation.” Moving costs can run as much as \$20,000 to \$30,000.

Now, don't you feel so much smarter? Please write your own comments or criticisms and send them to Wayne Kimbel at wkimbel@lwcky.com for publication in the next newsletter.

-William R. Cox, SR/WA

Education Rundown: What Courses have you missed out on?

By Mike Penick, SR/WA, Education Chairman & Facilitator

To my Fellow Chapter Members,

For the first time in ten years, I had to cancel our planned courses in October 2013. I only received a total of four registrants on four planned courses and that's obviously not economical. While it pains me to have to do this, I also understand that our needs and priorities are constantly changing.

I encourage all of you to complete the IRWA Course Survey link that I e-mailed out to everyone on Sept25 and Sept30; if you lost the link or need it again, let me know before October 15. This will help me plan your needs to better serve you in the next couple years. We need everyone's input and participation. Our chapter does not have the membership it once did, and your voice is critical to our continued successes.

As always, if you would like to discuss your educational and professional needs, give me a call or send me an e-mail. I'll do my best to make sure you are getting what you need to move you on to the next level.

Mike P

Take a good look at this list, and any classes, seminars, or chapter meetings that you would like to see held in the future, just let me know about it. Thank you and good luck as always! **This is a repeat from the August Newsletter.**

- Course 100: Principles of Real Estate Acquisition, October 16-19, 2007, Best Western
- KY Chapter 25 Right-of-Way Seminar, September 10-11, 2008, Memorial Auditorium
- Course 100: Principles of Real Estate Acquisition, November 3-6, 2009, Best Western
- Course 501: Relocation Assistance, March 30-31, 2010, Best Western
- Course 400: Principles of Appraisals, May 18-19, 2010, Best Western
- Course 504: Computing the RHP, June 8-9, 2010, Best Western
- Course 201: Communications in Real Estate Acquisitions, June 15-17, 2010, Best Western
- Course 803: Eminent Domain Law, October 26-27, 2010, Capital Plaza
- Course 502: Business Relocation, January 25-26, 2011, Capital Plaza
- Kentucky Land Titles Seminar & Exam, March 22, 2011, Capital Plaza
- Course 421: Appraisal of Partial Acquisitions, June 21-24, 2011, Ramada
- Course 100: Principles of Real Estate Acquisitions, October 18-21, 2011, Ramada
- Course 403: Easement Valuation, May 9, 2012, Ramada
- Course 409: Integrating Appraisal Standards, May 10, 2012, Ramada
- Course 503: Mobile Homes Relocation, June 27, 2012, Ramada
- Course 505: Advanced Relocation Residential, June 28, 2012, Ramada
- Course 701: Property MGT Leasing, November 13-14, 2012, Ramada
- Course 703: Property MGT Assets, November 15, 2012, Ramada
- Course 502: Business Relocation, June 4-5, 2013, Ramada
- Course 506: Advanced Business Relocation, June 6-7, 2013, Ramada
- Course 100 Principles of Real Estate Acquisition August 20-23, 2013



IRWA
BLUEGRASS
CHAPTER 25

CHILI
Cook-Off™

What: 3rd Annual IRWA Chapter 25 Chili Cook-Off

Where: Cornerstone Cottage
3799 Bardstown Road
Louisville, KY 40218

When: Friday, October 18th, 2013
6:00 - 9:00 pm

Cost: Free to IRWA Members

Registration Deadline: ASAP by mail or email to
Chad Cutsinger
Qk4
1046 East Chestnut Street
Louisville, KY 40204
502-585-2222
email: ccutsinger@qk4.com

OCTOBER General Membership Meeting

Bring some chili to enter into the competition OR just bring your appetite and taste buds. Drinks will be provided.

Please RSVP Chad Cutsinger or Mike Penick by the end of business day, Wednesday, October 16th so that we can get an approximate head count as best we can. We want to make sure that we have enough drinks and food, etc. You don't have to be in the competition to attend but please let us know if you plan to bring chili.

Chad Cutsinger (502) 585-2222, ccutsinger@qk4.com

Mike Penick (502) 574-5338, mike.penick@louisvilleky.gov



International Right of Way Association

Chili Cook Off

Cornerstone Cottage
3799 Bardstown Road
Louisville, KY 40218
Friday, October 18th, 2013 @ 6:00 to 9:00 p.m.

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

1) Name _____ Title _____
2) Name _____ Title _____
3) Name _____ Title _____

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

Cost: Free to IRWA Members

I will bring a pot of chili

I will only judge the other's chilis

Registration Deadline: ASAP – Please RSVP by mail or Email

to:

**Chad Cutsinger
Project Manager
Qk4
1046 East Chestnut Street
Louisville, KY 40204
502-585-2222
e-mail: ccutsinger@qk4.com**

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www.IRWA25.org