

## President's Message

By Ken Anderson, PLS

This month's column will consist of various ramblings of a disjointed mind, so please bear with me as I drift about. My day today started at 5 AM when I awoke, dragged myself out of bed to work on a couple of drawings on my laptop that were overdue. As I write this column, it is about 7:30 PM on Saturday, May 17, 2008. I am on the ferry returning from helping a friend on Martha's Vineyard. I missed my son's morning baseball practice this morning (I'm his town team's coach) and it put me in a foul mood.

I get a lot of questions from MALSCE members. One of the most frequently asked is "What do I get for my membership dues?" Let me list my MALSCE agenda for the last two weeks.

Tuesday, May 6, 2008: I receive a call on my cell phone from TEC Executive Director Abbie Goodman, (I am on my way to the wake for a friend of 20 years) reminding me that the The Engineering Center Educational Trust Leadership dinner is Wednesday night and wants to know if I am bringing my wife. My wife is not with me because our son has an appointment with his surgeon for his biweekly visit. She will be attending the wake later as I cannot stay as a scheduled game starts at 6 PM and is about 40 miles from the wake.

Wednesday, May 7, 2008: My birthday. That morning, before the funeral, I receive an email to set up meeting with Wentworth Institute of Technology to discuss their proposed class schedule and MALSCE's support. Email back to set up meeting for following week. Attend funeral. Drive home, feed dog, check to see that my son is with sitter, change and drive back to Boston for Leadership Dinner. Arrive in Boston, call Abbie Goodman to see if we can kill time at TEC before the dinner. Abbie says she is already at the Four Seasons and to come over. Walk to Four Seasons; find out that there is a pre-reception reception for the honoree, Andy Card, former White House chief of Staff. Meet Andy Card, make small talk (easy to do since he was very personable), and realize that the room is very full of men engineers, wife not pleased, no one to talk to. Attend main reception. Same situation. Attempt to talk to several friends when I am introduced to the new dean of the Division of Continuing Professional Studies at Wentworth. Give her some advice

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about who can help her to promote the DCPS land surveying certificate program. During the dinner have a brief talk with the MALSCE Vice President about the upcoming slate of people running for MALSCE board. Have a chance meeting with a friend from high school, who now is a partner in a successful environmental firm. We laugh about which of us has less hair. We leave early and get home around 11 PM.

Friday, May 9: Have cell phone discussion with Abbie Goodman about upcoming Wentworth meeting.

Wednesday, May 14: Arrive at Wentworth in the morning, discover that I forgot about Design Professionals Day at the State House held on Tuesday, May 13. Have extensive meeting with the department head at Wentworth, along with Joe McNichols, Abbie Goodman and Adam Webb. Meeting followed by debriefing session and discussion over the agenda for the upcoming Board of Director's meeting on Saturday. After meeting gets out realize that it is too late to do any fieldwork and drive one hour back to office. (Not much work done today.)

Friday, May 15: Attend MALSCE seminar on GPS. Make special effort to thank the presenter, Ray Hintz, for donating his time and support. Miss middle portion of seminar due to

## MALSCE Board Selects 2008–2010 Officers

By Abbie R. Goodman, MALSCE Executive Director

On May 17, 2008, MALSCE's Board of Directors selected its 2008–2010 officers by accepting the report of the Nominating Committee and instructing the Secretary to cast one ballot on behalf of the Board. These officers will begin their terms at the November 2008 MALSCE Convention. The 2008–2010 officers include:

**President:** Scott D. Cameron, PLS, RE Cameron & Associates, Inc. in Norwood (Eastern Chapter)

**Vice President:** David W. Humphrey, PLS, Schofield Brothers of New England, Inc. in Framingham (Central Chapter)

**Treasurer:** Mary Ellen Streeter, PLS, Holmes and McGrath, Inc. in Falmouth (Cape Cod Chapter)

**Secretary:** Richard F. Gosselin, PLS, Northeast Engineers & Consultants, Inc. in West Bridgewater (Eastern Chapter)

**Past President:** Kenneth B. Anderson, PLS, Anderson Surveys in Hanson (Eastern Chapter)

The MALSCE Board also appointed two new representatives to The Engineering Center Board of Directors and The Engineering Center Education Trust Board of Trustees: Stephen P. Dyer, PLS (Cubellis in Weymouth) and Kenneth B. Anderson, PLS (Anderson Surveys in Hanson), who will join Dean Schofield, PE (Schofield Brothers in Framingham) and Mike Clifford, PLS (DGT, Inc. in Boston) as MALSCE representatives to these Boards. We thank Scott Cameron and Richard Gosselin for their service on the TEC and TECET Boards, which concludes on June 30, 2008.

We are grateful to all these leaders for their willingness to serve in these key MALSCE roles. We'll profile them in upcoming newsletters.

## Remembering Charles Forbush, PLS

MALSCE was sad to learn of the loss of member Charles B. Forbush, PLS, of North Attleboro, who passed away on June 4. We remember him from his work as the Chief Engineer for the Massachusetts Land Court for many years, as well as his involvement in MALSCE.

Charlie was a graduate of Purdue University in Indiana and worked as an Engineer and Surveyor for the Commonwealth of Massachusetts Land Court for over twenty years before retiring in 2003.

He was the husband of the late June (Martino) Forbush who passed away on the same day in 1997. He was a US Navy Veteran of the Vietnam War. He is survived by his daughter, Heather Forbush of Derry, New Hampshire; two sons, John of Norwood & Christopher Forbush of Franklin; a grandson, Ethan Forbush of Derry, New Hampshire and a loving companion, Patricia Donlin of North Attleboro. The funeral was held on June 9. Donations in his memory may be made to American Cancer Society, 30 Speen Street, Framingham, MA 01701.

### TOWN-NAME TRIVIA QUESTION:

**What town was formerly known as Assaswampsit?**

*Answer on page 14*

## The MALSCE Surveyor

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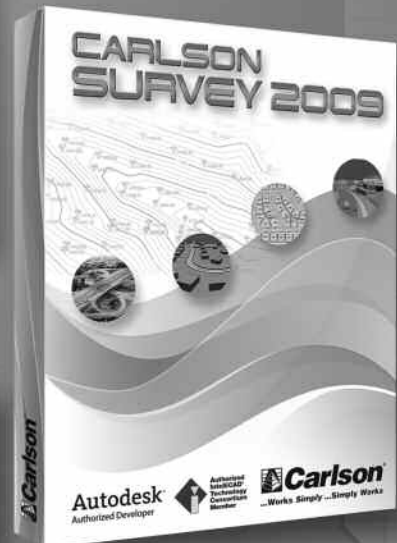
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# Design Professionals Gathered at State House on May 13

by Abbie Goodman, MALSCE Executive Director

About 80 professional engineers, professional land surveyors, licensed site professionals and other design professionals gathered at the Massachusetts State House on May 13 to meet with state senators and state representatives about public policy issue as part of our Design Professionals Day at the State House. This annual event is a key opportunity to give input on issues affecting our professions.

Public policy makers at all levels of government want to talk to us and seek our input. We bring problem-solving skills, insights and expertise needed by our elected and appointed officials. They may not always agree with our views on specific laws or regulations, but they are always interested in listening to what professionals from their home districts have to say. This is how legislators educate themselves.

Even if you were unable to participate in Design Professionals Day on May 13, you can still help by contacting your Massachusetts State Representative and State Senator directly. (Look up Representative and Senator in the General Court at [www.wheredoivotema.com/bal/myelectioninfo.php](http://www.wheredoivotema.com/bal/myelectioninfo.php) to get their names). Many state legislators are running for re-election this fall, or you may see a contested race or someone running for an open seat in your community. In any case, it is helpful for these elected officials and candidates to know that you can be a resource to them on many issues. The Massachusetts Primary Election will be on Tuesday, September 16, 2008 with the State Election (and Presidential Election) on Tuesday, November 4, 2008.

We focused on the following issues for this year's Design Professionals Day. If you would like a set of briefing sheets on these issues, please email me at [agoodman@engineers.org](mailto:agoodman@engineers.org). You can find

the actual text of these bills at [www.mass.gov/legis](http://www.mass.gov/legis). Senate bills start with an S; House bills start with an H.

## Board of Registration of Professional Engineers and Land Surveyors

**Issue:** The Board of Registration of Professional Engineers and Land Surveyors should have the same authority as other Boards of Registration that are part of the Division of Professional Licensure.

**We support:** H.4339, "An Act Relative To Professional Engineers And Land Surveyors," that gives this Board of Registration the authority equivalent to other registration boards that are part of the Division of Professional Licensure. It also corrects a drafting error from a prior legislative session by adding 2 more land surveyors to the Board of Registration of Professional Engineers and Land Surveyors. This bill has passed in the House and needs action in the Senate.

## Water Infrastructure Finance Commission

**Issue:** The Commonwealth and its municipalities are facing a water and wastewater crisis created by antiquated infrastructure and a failure to properly invest in maintaining existing infrastructure. We support S. 2292 (new draft of H. 855 and S. 543), that creates a special commission charged with evaluating this public health and public safety problem and recommending ways to increase the investment in water and wastewater. This bill has passed in the Senate and needs action in the House.

## Infrastructure Funding: Transportation

**Issue:** Massachusetts should invest in maintaining, repairing and upgrading its infrastructure, and identify new sources

of revenue to meet the Commonwealth's infrastructure needs. Massachusetts has fallen behind in maintaining our bridges/roadways, water/wastewater systems, schools, and other infrastructure. Lack of adequate maintenance contributes to a continuing increase in the backlog of unmet infrastructure needs. Adequate investment in infrastructure will have long-term benefits by improving the quality of life for our citizens, promoting future growth and development, and creating needed jobs. We support certain current transportation bills including:

- H. 4609, the second part of the Transportation Bond Bill, needs to be passed this session.
- H. 4743, a bill that creates financing for an accelerated structurally-deficient bridge improvement program. The Governor, Senate President and Speaker of the House are supporting this \$3 Billion program that would reduce the growing number of structurally deficient bridges in the next few years, ultimately saving the state money as construction materials continue to increase in cost. This bill needs speedy legislative action.

## Homeowner Heating Oil Spill Remediation

**Issue:** Massachusetts homeowner insurance policies do not provide coverage for residential oil spills, which have serious environmental, financial and health impacts if left unaddressed.

**We support:** S. 2404, "An Act to Facilitate Homeowner Heating Oil Spill Remediation," requires Massachusetts homeowners insurers to provide coverage, with specified limits and deductibles, for the costs of investigating and cleaning up home heating oil releases. It also creates incentives and requirements to prevent

residential releases by requiring homeowners who own above ground liquid fuel tanks to upgrade their systems. This bill has passed in the Senate and needs action in the House.

### Qualifications Based Selection (QBS)

**Issue:** When procuring design services, government agencies should award contracts based on the qualifications of the firms. This is known as Qualifications Based Selection (QBS). In addition to delivering quality projects, government agencies safeguard the public while being accountable to taxpayers. Selection of design professionals using qualifications accomplishes these goals. To bring Massachusetts in line with the federal government and 44 other states, we filed and support H.3182, "An Act Relative to Public Safety and Fair Practices in Procurement Relating to the Commonwealth of Massachusetts Selection of Architects Engineers and Related Professionals." This bill is in the House Ways and Means Committee.

### Contracting Out

**Issue:** The engineering industry plays an essential role in helping state agencies to deliver critical services to the taxpayer. From designing solutions to

address congestion on state roadways, ensuring continued access to safe drinking water, to putting green technologies to work to make industry and government more sustainable, engineering firms in Massachusetts are working every day to solve public policy challenges and improve the quality of life for every resident.

Unfortunately, efforts have been made in the past to prevent state agencies from taking advantage of the value and technical innovation that the private sector engineering and land surveying community in Massachusetts offers. Delivery of critical infrastructure improvements requires a close partnership between public and private resources. The public sector has a key role to play in this process, providing the overall management and oversight of public projects, while the private sector brings the innovation, expertise, on-time delivery and long-term cost savings to ensure that taxpayer dollars are well invested. We oppose any amendments or attempts to prevent state agencies and municipalities from contracting out for design services.

How can you reach your legislators in your community to talk about these issues? Here are a few ways:

- By stopping by local office hours they have in your town hall or local library within the next few weeks to brief them on the issues. (See your local newspaper or call your legislators' offices for these dates/times/locations.) OR...
- By sending a personal note, with your home contact information along with our briefing sheets, to your legislators. Be sure to mention that you are an engineer (etc.), where you live, you are a member of the Massachusetts Association of Land Surveyors and Civil Engineers (MALSCE) and see whether you can provide a local example of how these issues affect your community (and they all do). AND...
- If you could get a few others in your office to do the same, that would help to build on our efforts!

If you have questions about the issues, please let me know. Design Professionals Day at the State House was sponsored by American Council of Engineering Companies of Massachusetts (ACEC/ MA), Boston Society of Civil Engineers Section/ASCE (BSCES), LSP Association (LSPA), Massachusetts Association of Land Surveyors and Civil Engineers (MALSCE), and several other professional groups.

## President's Message

*continued from cover*

MALSCE Professional Development Committee meeting. Have several private conversations with people to cajole them to "volunteer" for meetings and future events. Forget to have meeting with presenter of next seminar to plan out my portion of seminar. No work done today.

Saturday, May 17: 9 AM Board of Directors Meeting at TEC, where we had vigorous debate over the proposed FY2009 budget and fall 2008 convention plans. TEC/TECET board members gave an hour-long presentation on TEC/

TECET planning and an upcoming meeting planned for Friday afternoon, June 6. I agree to accept MALSCE director seat on TEC/TECET board after I conclude my term as MALSCE President. Meeting adjourned 1:30 PM. Drive back to office because I forgot my ferry tickets on my desk. Head to the Vineyard, spend time with friend fixing his equipment, get home at 9:30 PM.

I am not complaining or bragging. Many other MALSCE members put in just as much time and effort. Some put in more! We are not compensated for our time. We pay MALSCE dues just like all the other members. Our compensation is the

relationships we develop with other professionals and the self-satisfaction that comes from helping improve the profession. It's time for other members to step up and help the association. The current board has already answered the question: "If not me, then who?"

As a point of personal privilege I apologize to the people who emailed me about my message in the last newsletter. I have not replied because I somehow deleted my last year's worth of email. (No, I do not know how I did it. If I did, it wouldn't have happened.) Please feel free to resend those emails to me at [kbasurveys@earthlink.net](mailto:kbasurveys@earthlink.net). Thanks.



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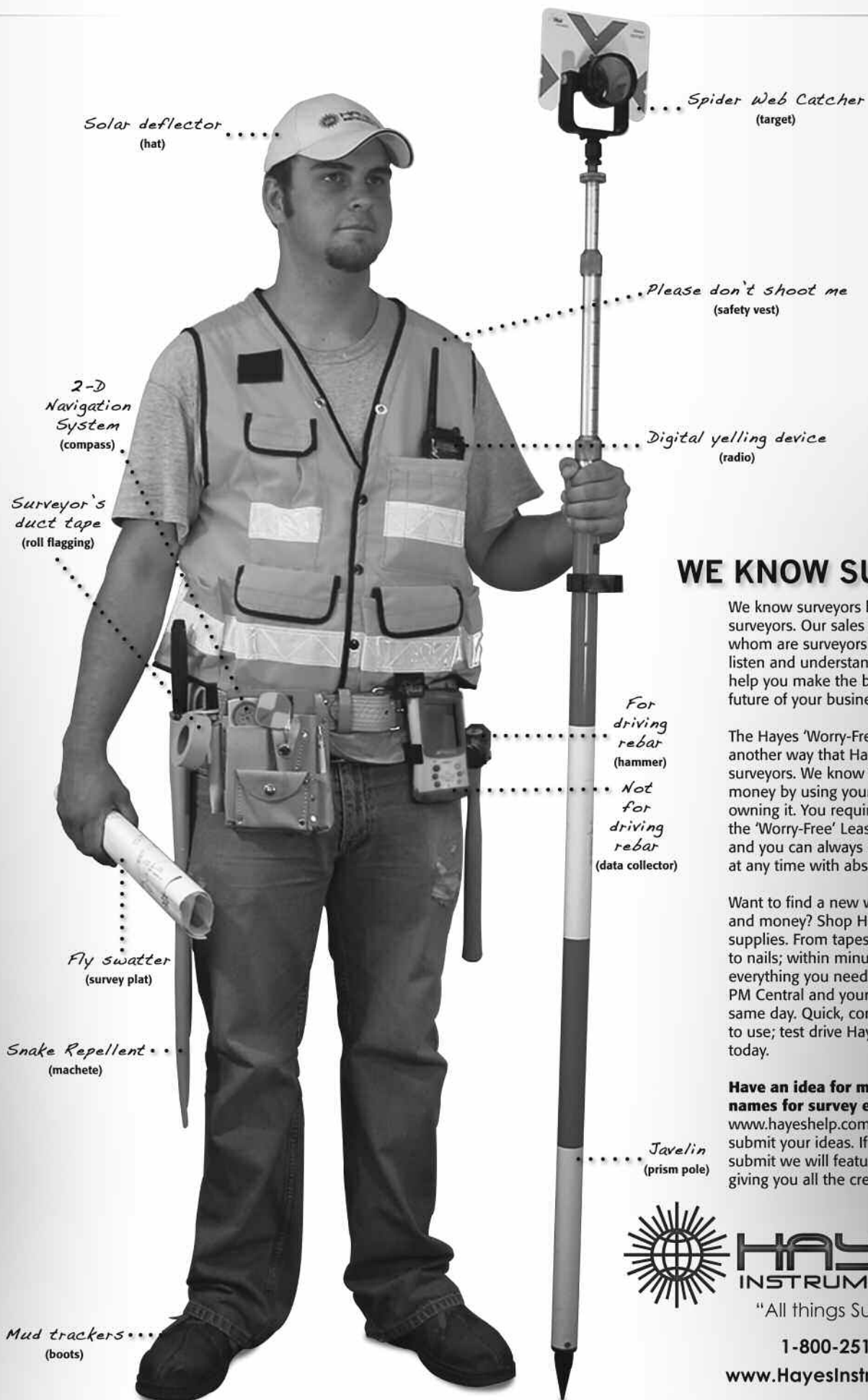
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## Trig-Star Exam at Nauset High School

By Donald Poole, PLS, MALSCE Cape Cod Chapter President

On April 30th, 2008 I had the pleasure and honor of administering the 2008 Trig-Star Exam at Nauset Regional High School in North Eastham MA, my old alma mater. It's a fun coincidence for me because in 1971 I was introduced to Land Surveying at this very school by our wood shop teacher in the back yard of the newly completed school. We used a K&E transit to run a little traverse and shoot some topo (stadia rod style) and then plotted up our results. I have to say that I was absolutely smitten with the profession from that moment onward.

So it was a delight to be back at Nauset High School to sponsor and proctor this exam today. It started in March when I spoke with Steve Grubiak, Math Department Head, and he invited me to the school to discuss the exam with him. He invited one other teacher who was familiar with the exam as it was presented in the early 90's. I met with them and reviewed the sample exam as well as the philosophy behind the intentions of the exam; that is, to expose students to the profession and also to demonstrate some sound applied trigonometric examples. I also volunteered to demonstrate our survey equipment, from old to new, after the exam or at a later date.

The two teachers asked me to come back to Nauset and meet with the whole math department at their April monthly meeting. I then met with the Math Department as a whole and presented the exam to all the teachers, answered questions and scheduled the exam date. The teachers were enthusiastic about the exam. Several commented on the "stars" that they had in their classes and assumed they would do well, as well as being interested in having a surveyor come to class and demonstrate the equipment and show how math can be important in day to day professions, ones that they are not familiar with yet!



*John Karlen, the Nauset High School winner, was given his award by MALSCE Cape Cod Chapter President, Donald Poole.*

Nauset Regional High School is not a large high school, although there are twice as many students attending than when I was a student there. There are about 1,100 students, but this comes from four of the towns: Wellfleet, Eastham, Orleans and Brewster for the most part. There is school choice available so there are students attending from other nearby towns such as Provincetown, Truro, Chatham and on to Yarmouth!

So we showed up at 7:20 AM on April 30th to give the exam. Nauset runs on rotating blocks and days in a method that I will NOT try to explain, suffice to say that we had first block and that would run from 7:30 AM to 8:50 AM, just enough time for the exam. Too many students expressed an interest in the Survey demonstration to hold it after the exam (more than 140 students signed up for the demonstration) so we will be visiting individual classrooms in June.

Forty four students did show for the exam. I had left sample exams with the teachers to review for the last couple of weeks so I hoped the exam wouldn't be too much of a shock. I had not taken a close look at the exam myself so I decided that I would take it at the same time. Dawn Sternlieb, my office manager and wife, assisted in gathering the exams

as they were completed so that we could time the response in case of a tie.

First of all, this isn't an "easy" exam. The first page of the exam is pretty straight forward but the second page required a lot more thought, and then the particular example was a mix of both. For those who are really curious, I scored a 94, missing one question because of rushing and not converting from degrees, minutes and seconds to decimal degrees. It reminded me of my old Casio that had a conversion button on it!

As a result of the exam we had one clear winner with a 90, second place with a 78 and third was 76. It was surprising to me how many 0's and 5's were turned in, but then again having to convert from degrees, minutes and seconds to decimal degrees is confusing! Most everyone (except those pesky 0's) did get the correct answer on number one where the Pythagorean Theorem was used with the exception of our winner, who got those two questions wrong and every other one correct!

On May 8th we presented Mr. Maynard's class with certificates for all those that took the exam from his class. John Karlen, the Nauset winner, was present to accept his gift certificate to a local coffee shop frequented by the students of Nauset. While I was waiting for the class to show up, Mr. Maynard told me that the past exams were an excellent teaching device for his students. Then he pulled out an exam from the early 90's with a trigonometric leveling problem that he had just assigned to the class the previous week!

I enjoyed meeting with the teachers, I was very pleased with the student response, and I am looking forward to going to the classrooms and meeting more of the students and teaching them about our profession!





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# The Surveyor's Sword Comes Under Attack (Again)

by David Humphrey, PLS, MALSCE Secretary

It was sometime back in the last century that I started working in the field as a surveyor. I distinctly remember my surprise and apprehension at being introduced to the "surveyor's sword." I knew machetes were used in the sugar cane fields of Costa Rica and the tobacco fields of the Connecticut River Valley, but I had never actually touched one. In short order, I found machetes to be the ideal survey tool for clearing line. They are not too heavy and they can cut anything from wispy grasses and weeds, through poison ivy and rose bush vines, to medium sized trees.

Machetes are amazing tools and their uses cannot be understated. They limb, they trim, they slice, they dice, they intimidate; all in the same convenient package. But wait! If you call right now, we'll send you absolutely free, a lovely tooled-leather sheath, a deluxe sharpening stone, and a second machete all for the same low monthly payment of \$19.95.

In 2006, a bill was submitted to the Massachusetts State Legislature which

would have required all machetes to be registered with the local police departments where they were to be used. Problems with that bill included the fact that machetes lack a serial number or other unique identifying mark and the cost and inconvenience of registering multiple "weapons" in multiple towns would be overly burdensome for surveyors, landscapers, etc.

Thankfully, the 2006 bill went nowhere. But recently, based on some bad press about gangs of felons wielding machetes in vicious attacks on innocent citizens, various towns and cities are banning machetes. Chelsea, Everett, Revere, and Lynn already have bans in effect. Boston is considering such a ban but theirs includes the exemption of machetes used "for the purpose of cutting vegetation." Granted, these towns are relatively urban, but clearing and trimming is still needed even in these areas. And how many more towns will vote for such bans?

I suspect that surveyors are currently in violation of some of these local ordinances merely by driving through the towns with a conventionally-equipped survey vehicle.

So what do we do? What can MALSCE do to protect surveyors and their swords? How do we balance the surveyor's right to chop brush with the convenience store sales clerk's right not to be chopped?

I think the secretary of MALSCE should send a letter to each of the towns that have instituted bans on machetes. The letter should explain the legitimate uses of the tool and ask how to avoid violating the local ordinances. MALSCE members are encouraged to send in information regarding other towns that have instituted or are considering such bans. By educating the towns, we may be able to prevent confrontations with police and other officials.

(Some information taken from *Boston Herald* article, April 27, 2008).

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## TOWN-NAME TRIVIA QUESTION:

What town was formerly known as Chabanagungamug?

Answer on page 14

## Dig Safely, Dig Safe

By J. Thadd Eldredge, PLS, MALSCE Cape Cod Chapter Treasurer

This article is being written to clarify the requirements for surveyors to contact Dig Safe prior to performing certain surveying related activities.

“Excavation”, is defined as “An operation for the purpose of movement or removal of earth, rock or the materials in the ground including, but not limited to, digging, blasting, augering, backfilling, test boring, drilling, pile driving, grading, plowing in, hammering, pulling in, jacking in, trenching, tunneling and demolition of structures, excluding excavation by tools manipulated only by human power for gardening purposes and use of blasting for quarrying purposes.” [MGL Ch. 82, Section 40 and 220 CMR, 99.02]

As surveyors, we perform several activities that qualify as excavations. These activities include, but are not limited to staking, probing, digging, boring and setting of stakes or monuments. The Massachusetts Department of Public Utilities has verbally verified that if you plan to break the surface of the earth, you are required to have the area marked by the utility companies. The problem is, most utility companies and their subcontractors do not mark for planning purposes and assume that any work requested by a surveying or engineering firm is intended for planning.

Dig Safe System, Inc. is a communication network, assisting excavators, contractors and property owners in complying with state law by notifying the appropriate utilities before digging. Dig Safe, a free service, notifies member companies of proposed excavation projects. In turn, these

member utilities visit the site and identify the location of underground facilities. Those companies who are not members of Dig Safe must be contacted separately from Dig Safe.

Fortunately, some of the Dig Safe process can be performed on-line. You must register your company as a contractor, which involves completing a short form. Dig Safe will issue a Contractor Identification Number within a few hours of submission of the form.

The marking of certain locations can be applied for though the ‘Quick Ticket’ application. The application to mark any location can be applied for by calling Dig Safe or sending a fax. Be sure to pre-mark the area with white flags prior to calling Dig Safe.

The information Dig Safe requires for an official request can be found on the website. The form will request the following information be provided:

- Your contractor’s ID number
- The caller’s name and title
- The company name and address
- The next line on the form asks for you to check whether you are a “contractor,” “member,” “public” or “other” type of requester. Use the option of “other” and fill in “Surveyor and Engineer”
- Latitude and Longitude (optional)
- Address/Intersection of the site
- Additional Information
- Nature of Work—“Probing, staking and/or setting bounds.” This is the most important piece of information. It is important to ensure the description states activities that will potentially affect underground utilities. This specific wording was suggested to us when we applied

for our contractor’s number.

- Depth (feet)—more than 4 feet
- Area—entire property
- Pre-marked (?) “YES.” They will not accept your request unless it has been pre-marked.
- Start Date and Time—give the day that the job is scheduled. Dig Safe provides the service within 72 hours.
- The question area of “Reason” with the options of “E” (Emergency), “V” (Violation), “B” (Blasting), “SP” (State Permit), need only be filled in if the situation applies.
- The exactor doing the work is your company.

There are three disclaimers on the form:

1. There may be non-member utilities in the area that you need to notify.
2. Electric and other companies may not mark lines they don’t own or maintain.
3. The excavator is responsible to maintain marking placed by member utilities.

It is important to ensure the description states activities that will potentially affect underground utilities. This specific wording suggested to us when we applied for our contractor’s number is “Probing, staking and/or setting bounds.”

Once you have provided this information, you will be given a Dig Safe Ticket Number and the Date and Time that the project will be marked.

Under State Law, the utility companies have 72 hours to mark the area. If an area is not marked within 72 hours, contact Dig Safe and file a complaint.

Dig Safe can be contacted at: 1-888-DIG-SAFE (1-888-344-7233) or [digsafe.com](http://digsafe.com). Be safe out there!

### TOWN-NAME TRIVIA QUESTION:

**What town was formerly known as Plumtrees?**

*Answer on page 14*

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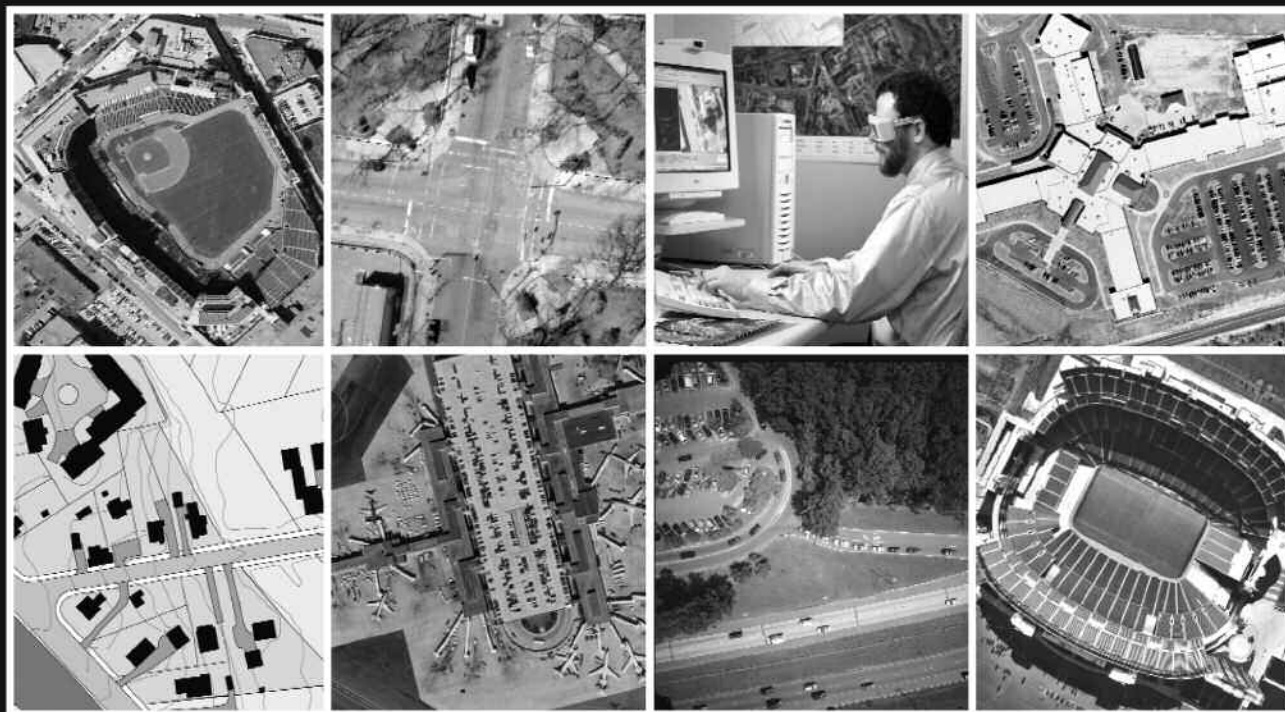
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## A Discussion of *Lawrence v. Town of Concord* (439 Mass. 416, 2003)

By A. Richard Vannozzi, PLS

If you have the winning *Powerball* ticket in your pocket and it expires before you ever check it, were you ever a millionaire?

To be honest this case has nothing to do with *Powerball* tickets, however if someone dies and leaves you a house in Massachusetts and you didn't know you had it, and 20 years went by with someone else living in it and you're wondering what would happen, *Lawrence v. Town of Concord* would be very important reading.

One of the indicators that a case might be significant is when, upon appeal, a higher court overturns the decision of a lower court. The significance stems from the fact that when a case is overturned on appeal it is often because of one of two things: the case turns on a fine point of law and/or the higher court wishes to signal a change of direction in Massachusetts law. In the decision in *M.P.M. Builders LLC v. Dwyer* the SJC took the opportunity to change the direction of Massachusetts law. In this case, *Lawrence v. Town of Concord*, you see a significant debate in the judiciary on a fine point of law.

Through a series of events, Mr. Lawrence found himself in possession of a house at 1586 Main Street in Concord. He had been left the house in the will of a Joseph Frazier who had lived there with his wife, however his wife only had a life estate, and upon her death the fee became completely vested in the Town of Concord. Though Mrs. Frazier had predeceased Mr. Frazier by some 30 years, Mr. Frazier continued to live in the house and/or rent it after his wife's death up until his own death in

1996. It was only after the death of Mr. Frazier, when Mr. Lawrence was left the house, that the town became aware for the first time that they had an interest in the property at 1586 Main Street. When they became aware of Mr. Lawrence's intention to claim the land by adverse possession, the Town made an eminent domain taking against themselves. Mr. Lawrence received no damages in the eminent domain proceedings so filed suit to prove his ownership by adverse possession in order to collect damages for the taking.

First in the Superior Court, and then again in the Appeals Court, Mr. Lawrence's adverse possession claim was denied on the grounds that since the Town did not even know that they owned the property Mr. Lawrence's possession was not "open" or "notorious" enough to meet the requirements for adverse possession. The Town contended that without actual notice of ownership it would be inequitable to require them to defend the title so the adverse possession claim should fail. The Supreme Judicial Court (SJC), however, did not agree, and on further appeal, they overturned the Appeals Court with an opinion that for an adverse possession to be "open" there could not be an attempt to conceal the use, and that the term notorious, refers to the owner's being on notice or reasonably able to notice the use of the premise and does not have anything to do with an owner being on notice of their ownership.

As mentioned above, the fact that the SJC overruled the Appeals Court is often a good indication that a case is

important. Think of the example of a case that is pretty straightforward in the superior court but is appealed. It is probably just as straightforward in the appeals court and will likely to be affirmed. If it is again appealed to the SJC, and affirmed again, not a lot will be learned from reading the cases except an affirmation that the law remains straightforward on the issue. If the rulings from court to court vacillate, however, you have to begin to think that something is "going on" and it is time to take note.

Along with its in-depth discussion of the proper application of the terms "open" and "notorious" to an adverse possession fact pattern, this case also has a good discussion of the concept of "taking" since the perfection of the adverse possession all took place before Mr. Lawrence even owned the property. There is also a useful discussion of the privity between a tenant and an owner that provides for the fact that an adverse possession claim is not broken just because the adverse possessor personally leaves the premises but rents the property to another who possesses it in his stead.

In the tradition of *Ryan v. Stavros*, (348 Mass. 251, 1964) the most often cited adverse possession case from the last 40 years, occasionally a case comes along that is relevant on a variety of issues and is cited regularly. In the short time since the SJC decided *Lawrence v. Town of Concord* in 2003 the case has been cited (and held) nearly 30 times. Add *Lawrence v. Concord* to the list of "must reads" when confronted with adverse possession issues in practice.



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