

Greetings fellow Chapter 25 Members! Well it's that time of year again. The flowers are in bloom, the bees are buzzing and everybody's allergies are acting up. But more importantly, its horse racing season in the bluegrass. Whether it is at Churchill Downs, Keeneland, Turfway Park or Ellis Park, this is the time of year where Kentucky takes the world stage and shows what our historical traditions are all about. But if you are not a fan of horse racing, derby hats, and fine bourbon, there are plenty of other great things that our state has to offer outside, like our parks. As you all are aware, the annual installation of officers will now take place in June instead of December. Since this event will be the first time in the history of our chapter to install our officers in June and will continue to do so from now on, we need to start the tradition properly by making sure that it is well attended. This event will be held at **The Parklands of Floyds Fork on June 13th, 2014**. **Mary Anne Marr, IEC Treasurer and fellow Region 5 member from Michigan**, will be performing the installation of officers. In addition to lunch and the installation of the 2014-2015 officers, Mary Anne will be discussing the specific pathways to the SR/WA designation. For those of you who do not know, the process/educational requirements to obtain the SR/WA has recently changed and has been revamped allowing for particular certifications within the SR/WA designation itself. I know there are a number of us (myself included) who have taken several courses over the years and are close to meeting the requirements to obtain the SR/WA designation. Which is exactly why those of you who are close to achieving this goal or are just getting started, need to attend this meeting and learn the path to obtaining this certification. After the meeting and installation has taken place, everyone is invited to enjoy the things that this beautiful park has to offer. There are many hiking, biking and walking trails, a large pond and streams to fish in. Go online to www.theparklands.org to find out more.

In the next few weeks, every member of our chapter will receive a ballot with a return envelope. This ballot will present a slate of officers for the upcoming 2014-2015 executive board. In addition to the person(s) name for each position on the board, there will be an option to run from the floor for that particular position. In order for us to make this happen by our June meeting, it is imperative that everyone fill out your ballot and mail it back to us ASAP. Those individuals with the most votes for their elected positions will be the slate of officers to be installed at the June meeting.

Another great reason to attend the installation meeting in June is so that you can let your voice be heard. The annual educational conference takes place on June 22nd in Hartford, Connecticut. Chapter 25 will be sending our International Directors to this conference as we do each year, to speak on behalf of the wishes of our chapter and part of this involves voting on different issues. These issues involve the potential increase of our chapter dues, the location of the 2019 educational conference and the election of the candidates looking to be selected for the open position on the IEC Board. Regarding the three potential locations of the 2019 conference, the city's to be voted upon are: Las Vegas, NV, Minneapolis, MN and Portland, OR. The three candidates running for a position on the IEC Board are: Vivian Howell, SR/WA

Call to Post

2013 Officers



President: Chad Cutsinger



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



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



International Director: 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 L. Busch, SR/WA



Utilities: Henry Ford, Jr.



Transportation: Bruce Napier, SR/WA



Local Public Agency: James Wray



Engineering Liasion: Debby Taylor, PE



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



Communication & Marketing/Newsletter: Wayne Kimbel



Newsletter Publisher: Jessica Grivna

(California Chapter), Tamara Benson, SR/WA (Oklahoma Chapter) and **Region 5's very own Jeffery Jones, SR/WA (Michigan Chapter)**. If you cannot attend the General Membership Meeting in June, please contact me at ccutsinger@qk4.com and let me know your voting wishes so that our chapter representatives can be confident about the opinions our chapter wish to convey at the conference.

Now that the official stuff is out of the way, I'd like to take this opportunity to say thank you to everyone who has helped me over the past year and a half, to keep our chapter events going and picking up the slack where I fell short. I'm not going to say names, but you know who you are and I really appreciate you.

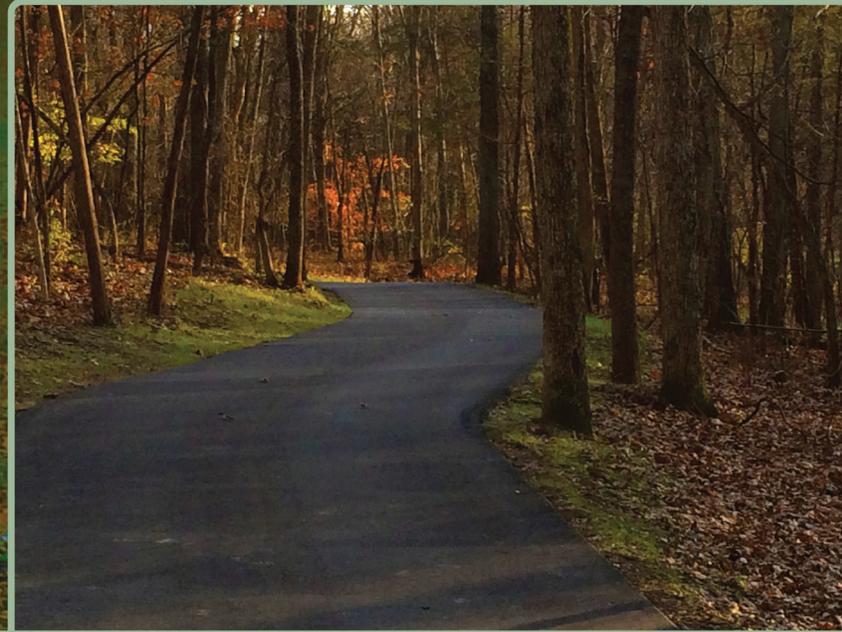
I would like to leave you with this thought, get involved with the chapter now. Don't wait until it is too late. Over the past several years, our chapter has relied upon the recycling of the same individuals to keep us going and at some point those folks are going to stop. What will happen then? How will you continue to network with and learn from your peers? Where will you get your education needs? This is a great organization filled with extremely knowledgeable people and we need to recognize and maintain this bond and relationship. I know there are a lot of people who say to themselves, "Well, I'd like to help out but I am really busy right now and I know somebody else will step up if I don't. Maybe I'll do it next year if I have time..." The truth is, yes it does require you to devote some of your time to it, but filling a position on the executive board (or other committee chairs) really doesn't take up that much time in the grand scheme of things. If you don't know what to do, don't worry we'll help you. Take some classes, get your SR/WA, get involved with the chapter at some level, ANY level. Let's not take this organization and most importantly the people who make up Chapter 25 for granted and let it fall to the wayside.

Thanks so much,
Chad J. Cutsinger

The Parklands of Floyds Fork

Louisville, Kentucky

The Louisville legacy of Frederick Law Olmsted, designer of New York City's Central Park and Louisville's own nineteenth century parks, provided inspiration for The Parklands of Floyds Fork. One of the world's most ambitious urban parks projects, its 3,800 acres now provide a rich variety of experiences for visitors. Miles of paved trails traverse streams snake through thick forests and glide under an active train trestle. Busloads of schoolchildren explore a Disney-esque manmade wetland where they can see, listen, smell, and discover with their own hands. The Great Wall of Distillery Bend eases pedestrians, wheelchairs and bikes up a 33% grade via a meandering trail that preserved a treasured forest and archaeological site. The 41-foot wall is the tallest built of pre-fabricated stone reminiscent of Kentucky's limestone bedrock. The Parklands of Floyds Fork does what Olmsted's parks did for Louisville a hundred years ago—improves lives and attracts business by bringing nature to neighborhoods while rising to his legacy.



Client/Owner → 21st Century Parks
Client/Owner Location → Louisville, KY
Firm Entering → Qk4, Inc.
Firm Entering Location → Louisville, KY



2014 Spring Forum Cincinnati, OH



**Christine Deacon & Mark Edgington
received the Life Member & Lifetime
Achievement Awards**



**Ron Barker received the Region 5
Professional of the Year**



**Don Brent, Mike Penick, William Busch &
Chad Cutsinger represented Chapter 25 at
the Forum**

**IRWA Chapter 25
Welcomes the following
new members:**

**Travis S. Carmack
Danielle Rae Fowler**

Right of Way 505: Acquisitions and Restrictive Covenants

By: Mike Penick, SR/WA, Education Chair & Facilitator

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 the 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 systems. 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’m currently working on a local roadway project that widens it from two lanes to five. That’s a pretty 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 BETTER: I find out that the holder (grantee) of this particular conservation easement is none other than LOUISVILLE METRO GOVERNMENT! This instantly puts me in a pickle, and I’ll explain later on why this is such.



Right of Way 505 Continued

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.

The second solution is to get the Commonwealth to intervene on our project and implement eminent domain, since the state can condemn Metro. While reluctant and busy with their own projects, the state agreed to do so. If the state refused, our final option was a no-build on the road. Now with the state as the condemning agency at the helm, the project and the legal system can both move forward. This is a "friendly condemnation"; we're not condemning because of issues with offers to purchase. We're condemning because of the restrictions placed on their 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**



The Reviewer's Corner - Issues & Answers

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

Rural Appraising

I have been asked to say a few words about the experience of right of way appraising in the less urban areas of Kentucky, and that is most of the Commonwealth.

Before an appraiser can even meet with the property owners, there is a comparable sales book to publish. Usually, the first stop along this path is the local Property Valuation Administrator's office to find out if they track property sales. Some don't. Many have binders available for appraisers and real estate agents and it's a simple matter to go through the books and copy what you need. But every PVA office is different and each office reflects the personality of the current PVA.

In one county, the PVA called me into his office and grilled me from 8 AM until noon, asking me about my views on politics, religion, sports, and my family tree. At noon, he tossed me the keys to the office and said that he and the staff were going to lunch and to get whatever I needed. I guess the interview went well.

In another county, the PVA told me that he was a lame duck, wasn't running for office again and did not care. So I would not be receiving any information from him, period. And I didn't. I had get maps of the county with the watersheds identified (topos), memorize the names and then go to the deed room and start with the last page in the last deed book and read all the deeds backwards until I had collected sufficient information for my sales book.

The toughest PVA took me three months of regular visits before she finally relented and gave me the information that I was asking for. I was initially told that it would cost me \$1,000 for the sales data, so I said I would pay it. Then, I was given excuses that the computer or the printer was broken. I finally got everything I asked for and was only charged \$75. Her daughter eventually succeeded her in office and the next time I showed up, the new PVA required that I fill out a Freedom of Information Act request form. So, I did, and then I got the sales data.

Another PVA was also a property owner on the project. He just wanted to talk about guns and bourbon before he told me how much money he wanted. He was disappointed with the offer, so I probably won't be doing a lot of work in that county in the future.

Once, I had such rapport with a PVA that he allowed me to bring in my own printer and scanner and set up shop in his office. Then there was an election and a new PVA took over. Like night and day. I wasn't allowed in the office until I could prove that I was who I said I was. I had them call the District Right of Way Supervisor. I could hear him screaming through the phone from across the room. Everything was fine after that.

Okay, enough about boots on the ground with PVA's. You just have to adjust, that's all.

Today, many of the PVA offices have data accessible by qPublic.net, for a fee, of course. But it sure is a handy service for long distance projects. The County Clerks may or may not be online, as well. When they are, it's great.

I usually try to join the local area Board of Realtors to get access to the Multiple Listing Services. Some won't let you in. I have a real estate broker's license as well as an appraiser's license, but some MLS Boards see you as competition from outside of the area and won't allow you access. Another adjustment.

I have often said that right of way appraising is like working a giant jigsaw puzzle, only first you have to go find all of the puzzle pieces.

Once you get the data collected and analyzed, its time to meet the neighbors.

As a whole, property owners are the best citizens in the county. They own land. They are stalwarts in the community. As such, they may be suspicious of foreigners coming in from the big city. In Eastern Kentucky, the question I most often have to answer is, "Now, whose boy are you?" It helps to know your genealogy, even if it was only passing through.

The Reviewers Corner Continued

In Western Kentucky they are more forgiving of foreigners since they have a lot of transplant retirees from Illinois and Michigan who came for vacations on Kentucky or Barkley Lakes and decided to come back to stay.

But east, west, central, north, or south, all small communities have a singular characteristic in that everyone knows everyone, and they all know each other's business. They talk to each other about each other and they talk to each other about you. So, while you are in their community, you become part of their community dynamic. Like it or not, you are a huge part of their social structure due to the impact of the project upon them and your role in that impact. How you interact with the first family will determine how you will be viewed by the last. It's rather tribal; you may be accepted into the tribe, or you may not. It depends on how your performance is viewed by the natives.

In order to adequately appraise rural property for right of way purposes, you have to get to know all of the owners and be able to view the issues through their eyes. Many have lived there for their entire lives and may have been there for generations. They know more than you do about their homes. It's your job to find out what they know.

It is unfortunate that just when an appraiser gets to know everyone in the community and has amassed this inventory of local knowledge, it's time to move on to the next project and there is no way to pass along all of that information to the buyers. The sales book was written too early in the process. Because there is a firewall between appraising and negotiating, most buyers don't talk to appraisers to find out what they have learned.

That should change.

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

Spring 2014 - Course Announcement

Greetings Members! At the request of the state, I have booked two IRWA training classes that are available to anyone, members or not.

IRWA Course 501 (Relocation Assistance, taught by Lee Hamre, SR/WA) and Course 803 (Eminent Domain Law for Right-of-Way Persons, taught by Joe Neighbors, SR/WA, Esq.) are now open for all registrations. Both classes are two-day courses. There will be no deadline on registrations, but there will also be no refunds on any cancellations, so make sure you're committed before you sign up.

Course 501 is first up on June 10-11, 2014, and Course 803 is the next week on June 17-18, 2014. Both classes will be held at the Clarion Hotel, off Newtown Pike in Lexington.

For anyone staying at the Clarion, the room rates of \$79.00 per nite is under "IRWA-KYTC".

We are also looking to put on Course 103 (Ethics and the ROW Profession), more information down the road on this.

Any questions about these classes, just let me know.



Mike Penick, SR/WA
Right-of-Way Project Manager
Louisville Metro Government
444 S. Fifth Street, Suite 400
Louisville, KY 40202
(502) 574-5338



Int'l Right of Way Assoc

Course 501: Relocation Assistance

Instructor: Lee Satterfield-Hamre, SR/WA

Location: Clarion Hotel

1950 Newtown Pike, Lexington, KY 40511

June 10th-11th 2014, 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 _____

Company _____ Address _____

City _____ State _____ Zip Code _____

Phone _____ Fax _____ E-mail _____

Course Cost: \$575.00 per IRWA Member

\$600.00 per KYTC Employee

\$675.00 per NON-IRWA/NON-KYTC member

Fill in

Total Enclosed _____

Registration Deadline: None

Make check/money order payable to:

**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

For ACCOMODATIONS:

Clarion Hotel Lexington (859) 233-0512 (Rooms are under "IRWA-KYTC")

Rates of \$79.00 per nite (+ taxes)

FOR CREDIT CARD PAYMENTS: www.IRWAONLINE.ORG or call (310) 538-0233

www.IRWA25.org



Int'l Right of Way Assoc

Course 803: Eminent Domain Law in Right-of-Way

Instructor: Joe Neighbors, Esq.
Location: Clarion Hotel
1950 Newtown Pike, Lexington, KY 40611
June 17th-18th 2014, 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 _____
 Company _____ Address _____
 City _____ State _____ Zip Code _____
 Phone _____ Fax _____ E-mail _____

Course Cost: \$575.00 per IRWA Member

\$600.00 per KYTC Employee

\$675.00 per NON-IRWA/NON-KYTC member

Fill in

Total Enclosed _____

Registration Deadline: None

Make check/money order payable to:

**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**

For ACCOMODATIONS:

**Clarion Hotel Lexington (859) 233-0512 (Rooms are under "IRWA-KYTC)
Rates of \$79.00 per nite (+ taxes)**

FOR CREDIT CARD PAYMENTS: www.IRWAONLINE.ORG or call (310) 538-0233

www.IRWA25.org

IRWA
General Membership Meeting
& Installation of 2014 Officers
Speaker & Presenter: Mary Anne Marr, SR/WA
IEC Treasurer & Region 5 member from Michigan

Friday, June 13th at Noon
The Parklands of Floyds Fork
Gheens Foundation Lodge (The Parklands Room)
1421 Beckley Creek Parkway
Louisville, Kentucky 40245

1) Name _____	Title _____	
1) Name _____	Title _____	
1) Name _____	Title _____	
1) Name _____	Title _____	
Company _____	Address _____	
City _____	State _____	Zip _____
Phone _____	Fax _____	E-mail _____

Cost: \$30.00

Total Enclosed \$ _____

Registration Deadline: Monday, June 9th, 2014

Make check/money order payable to:

IRWA Kentucky Chapter 25

and mail to:

Chad J. Cutsinger

Qk4, Inc.

1046 East Chestnut Street

Louisville, Kentucky 40204

PREFER TO USE YOUR CREDIT CARD? WE GOT PAYPAL!
GO TO <http://www.irwa25.org>, and look for this meeting!