

# GRASS ROOTS REPORT



SPRING 2016

*The Official Newsletter of the ND Township Officers Association*

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## Executive Secretary's Updates

*By Larry Syverson*

It is hard to believe this year is already more than one-fourth done. Seems like just a couple of weeks ago we were in Minot for our annual convention (really that was December) and now we are done with the township annual meetings.

Most of the equalization meeting are done too. I guess winters can even go fast if we aren't constantly battling snow and weeks of 20 degrees below weather.

One of the things we do to pass the winter, when not occupied with a legislative session, is to produce the updated handbook. That was accomplished in December and January.

Then in February we traveled for two weeks around the state and held 15 workshops to distribute the updated handbooks.

***There are 100 changes since the 2014 edition of the Township Officer's Handbook. So if you do not have the 2016 insert— your book is really out of date.***

Some of you attended a workshop and got the new handbook, others might have gotten theirs at a county

meeting since then. If you missed the opportunity to get an update or if you are a new officer that hasn't had a chance to get one, we do have some left. Just contact me, or Barb Knutson or your District Director and we will see to it that you get one.

I have had several inquiries about the Township Report Software otherwise known as ATR and have sent out information about just what the program can do for the township annual reports.

I include sample copies of the reports it produces and a copy of the operators guide. If you are interested in seeing just what it can do for your township reports please email me.

The material can be sent to you and perhaps if you show your auditor how clear and readable the reports can be you will get it purchased for the townships in your county too. It looks like the ATR will now be made available for the townships in several more counties because someone did just that.

There is a very good possibility that Marty Visto, the developer of the ATR software, will be available during our annual convention in December at the Bismarck Radisson.

He may put on a workshop and

demonstration session. The details are yet to be determined. Watch in our fall issue for further information.

There are also interim committees to keep an eye on as the next legislative session is not all that far away. A proposal to eliminate the sales and use tax that contractors have to pay on work they do for townships as well as other tax exempt entities is still being developed in the Political Sub-divisions Tax Committee.

It seems a no-brainer that we should not have to use property tax dollars to pay sales or use taxes. We might be able to get this fixed but it is not easy for some of them to understand this.

Of course the tax is hidden because a contractor cannot charge a township sales tax but you have to know we end up paying it anyway.

I have also been on the committee that has been setting up the truck size and weight study being done by the Upper Great Plains Transportation Institute (UGPTI).

They are looking into the possibility of harmonizing our truck limits with some of the other states in the



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## President's Comments



Hello again everyone,

Calendar says spring began over three weeks ago, but it is now near mid-April and I have yet to see much spring weather. Be patient, it will show up sooner or later!

Another round of NDTOA workshops was put on in February with 15 sessions conducted around the state. Thank you to the workshop committee and cast for a job well done as we received many positive comments regarding the content and presentations.

Since it was so well received by those who attended, it was disappointing not to see more township officers attending these workshops.

If you were unable to attend a workshop and have not received the 2016 version of the Township Officers Handbook Update, check with your district director on where you can obtain one.

Some County Auditors or Extension Agents may have a few on hand. It is very important that everyone obtains these updates as they usually contain many changes made to NDCC during the most recent legislative session.

If you are not using the township ledger software we've been talking about for the past few years but are interested in doing so, be sure to check with your County Auditor about getting this started in your county.

More counties are beginning to make this available to the townships as time goes on. County Auditors that have been working with the program are very happy with the program and how it helps the

townships be more accurate and consistent with their reports.

The members of the NDTOA Board of Directors have been busy attending many county association meetings the past couple months. If we didn't have someone at your meeting, it is most likely because we did not know about it.

The new assessor certification requirement is probably the most discussed topic at these county meetings this year. We may be able to get by another year using an uncertified assessor, who must then have their work approved by a certified assessor, but after that we will need to have our assessor certified or hire someone that has taken the required courses.

With a little thought and effort, it is possible to keep our assessing done at the local level. It sounds like there are a few individuals in my corner of the state taking the certification courses and then planning on assessing for multiple townships in their area.

This is something to watch for if you have no one in the township willing to become certified.

Let's do our jobs diligently and keep our form of Grassroots Government alive and well.



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**www.ndtoa.com**

# The Country Lawyer

by Thomas R. Moe, Attorney-at-Law



Greetings to all—Sure is nice to have the winter over!

The baseball season has begun, and I've seen a few guys in the field at this writing already scratching around, so Spring is definitely here!

I don't think any township was overburdened with a lot of snow removal expense, and the lack of the extreme cold was well appreciated as well.

We got to meet several of you at the February workshops and happily, the attendance was good. It's still disappointing, though, to have several of you call the office in the weeks after the workshops and many still have no idea that the workshops were held, or that they didn't think there would be anything at the workshops that would interest them.

Those of you who did attend could help us out by spreading the word to your neighbors who don't attend and encourage them to come next time—especially for the upcoming annual state NDTOA convention this coming December.

The workshop committee works pretty hard to put together a good program, so I'm sure there will always be something to learn for all those in attendance.

The March annual meetings have come and gone, along with the equalization meetings. We're seeing several townships anticipating having to struggle with complying with the new assessor rules so it appears to be a work in progress.

Perhaps we can get the Legislature

to fine tune the assessor process next session. Legislative elections will be this fall, so it's not too early to meet and greet the folks from your area that are running for the Legislature.

Make sure they know you are a township officer and that you expect them to listen to your concerns if they are elected.

We handed out copies of the new handbook at the workshops, so if you are missing that, check with your county association, or your district board member, as we left several copies behind for just that purpose.

It's really helpful to have your handbook handy when you call us. Most of the time, questions can be easily answered by referring to your handbook.

Remember that the two parts of the book which pertain especially to townships are Title 58 (townships) and Title 24 (road issues).

Several of the workshop attendees had questions about officer compensation and what the proper procedure is. Even though most townships pay their officers once a year, the township still should establish a daily rate for officer work.

The maximum rate is 60 dollars per day up to an annual maximum of \$2,000 per officer per year. Keep in mind those rates are maximums, and it is not required for townships to pay at that higher rate.

On the other hand, I believe that paying only a hundred bucks for the

entire year's work is no longer appropriate, either. And, officers should keep a simple log of their time spent on township business.

Now is a good time to inspect your roads and signs and detect if there has been any damage over the winter.

Use the road and sign inspection form that the Insurance Reserve Fund puts out as this is a great way to document your trip. If you don't have one of the forms, give myself or Larry a call and we'll get one off to you and then you can make copies.

Hope everyone has a good Spring—keep it safe and remember, the game of baseball is the only game where a player who only succeeds 30 per cent of the time as a batter is considered Hall of Fame material! Following are some questions I've received in the office lately. TRM

**Question:** We decided to change the date of our annual meeting to an evening in April, after all our snowbirds came back. Was this legal?

**Answer:** NO. The state law is pretty clear: ".....the citizens of the township shall annually assemble on the third Tuesday in March....." There really isn't any other date listed in the law. I'm pretty sure that if the annual meeting is held on the wrong day, then that township probably would have someone

*Cont'd on page 4*

challenge their levy and budget process, causing the township to have to do everything all over again at a special meeting called for that purpose.

**Question:** We elected a new supervisor in March who has decided that the job is not for him and has already resigned. Now what do we do?

**Answer:** You treat the position as vacant, and the remaining two supervisors have the authority to appoint a successor in the interim between now and next March's annual meeting—at which time the patrons would elect someone to fill the remainder of the unexpired (3 year) term.

Many of our townships are running out of people to fill the positions, so a resignation is always difficult to deal with. Consolidation of townships is an alternative, of course, and NDTOA would rather see two or three townships join together into one "super" township rather than totally dissolve and turn everything over to the County. Up to five townships can consolidate and the procedure for doing so is listed in the handbook.

**Question:** *(Here's a question from my archives, but it's still timely as many townships are still struggling with zoning procedures)*

What's the difference between a "deed restriction", a "variance", and a "conditional use permit"? Our zoning board seems to get many requests for these, but nobody can keep the differences straight.

**Answer:** All of these terms deal with restrictions or controls on how someone uses their land, which is what zoning is all about. Recall that a township (or a county or city for that matter) is divided into zoning districts which designate how the

land within that district is to be used. Most townships are zoned "agricultural" meaning that only farming operations are allowed on the land—no industrial, no commercial, and no residential (other than farmer's homes), etc.

However, many townships which have had some development activity—a residential subdivision for example—should probably now designate and map a residential district within the township where the subdivision is.

A **conditional** use is where the landowner wants to do something other than what the zone calls for—e.g. a beauty shop (commercial endeavor) inside their home which is in a residential zone.

The zoning body could allow this person permission to construct and operate the beauty shop upon satisfaction of certain 'conditions'—off-road parking for example, or having the beauty shop certify that it has all the appropriate licenses before opening for business.

A **variance** does not deal with a change of use, but rather a change in some measurement contained within the zoning rules. For example, the township has a 75 foot setback from the road for all new buildings or newly planted trees, and the farmer wants to build a new shop which will be 65 feet (rather than 75) from the road.

The farmer would ask the zoning board for permission to vary the rule and put the shop ten feet closer to the road than what is allowed—a variance.

A **deed restriction** is an attempt by a prior owner of the land to control what happens to the land after it is sold. For example, a seller writes in the deed which he gives to the buyer of the land a statement that

says, " the land must always be used for farming", or, "the land must be used for church purposes", or, "only one outbuilding may be constructed on the premises".

Deed restrictions are private controls only on the land affected by the deed, whereas Zoning ordinances are public controls and are to be applied township-wide.

**Question:** I note in Section 24-08-02.1 of the Century Code it states that Counties are responsible for culverts in township roads. Our commissioners don't want to pay for our culverts. Can we force them to do so?

**Answer:** The key to the statute you list above is that counties are responsible for culverts where the road intersects "established drains". An established drain is either a legal assessment drain, or a creek or channel which we call a "blue line" waterway as defined on US Geological Survey maps as such. (they are shown on the maps in blue ink—thus the name).

So equalizer culverts—those that merely keep water at equal heights on either side of a road—are not "established drain" culverts and therefore not the County's responsibility.

Further complicating the matter is that many counties and townships have entered into agreements over the years, where townships have agreed to handle smaller pipes and the County will handle only the larger projects.

Those agreements could of course be re-negotiated if the parties choose to, but my guess is that most counties will not be agreeable to adding to their responsibility!

## **Paying Employees When Mother Nature Closes The Office** *Submitted by CEO, NDIRF*

**Question:** *Our office was forced to close a couple of days because of a winter storm in our area. How do we handle paying the employees who were scheduled to work those days? What about the people who scheduled vacation time and personal hours on those days?*

**Answer:** A winter storm in North Dakota is pretty much an expected yearly occurrence. Employee safety is, of course, the foremost concern for employers.

However, after the storm subsides, you are then faced with the question of how to pay (or not pay) employees who couldn't or didn't report to work because of the inclement weather.

Let's start with the easy issue: nonexempt hourly employees. Under the Fair Labor Standards Act (FLSA), you are required to pay nonexempt employees only for the actual hours during which they performed work.

The FLSA doesn't obligate you to pay a nonexempt employee for time during which he performed no work, even if he was scheduled to work and was sent home early.

That means if your company decides to shut down and send employees home in the middle of the shift, you're permitted to pay nonexempt employees only for the time they spent working.

The question of whether to pay (or not pay) exempt employees is a bit more complicated. The FLSA prohibits you from reducing an exempt employee's pay based on the quantity or quality of his work or when she is ready, willing and able to work but no work is available.

Applying that basic principle, the U.S. Department of Labor (DOL) has taken the position that an employer that decides to close because of weather conditions must pay its exempt employees their regular salaries for any shutdown that lasts less than one full week.

But what are you supposed to do about vacation time, and is it OK to force employees to use it? Let's remember for a minute that the FLSA doesn't require private-sector employers to provide vacation time or personal leave in the first place.

Accordingly, nothing prohibits a private-sector employer from requiring its employees, including those who are exempt, to use accrued vacation time or other time off to cover missed work.

That means you can deduct a period of absence due to bad weather from an employee's remaining vacation or leave time, whether the absence is a full day or

a partial day, as long as you pay exempt employees their regular salaries for that time.


And if an employee was already scheduled to take vacation time or personal leave, you can still require her to use the vacation time or personal leave if the office is closed.

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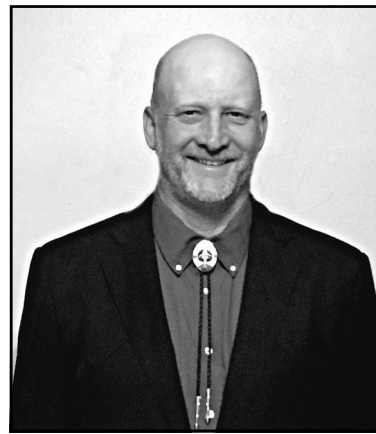


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**New Vice President  
Lee Brandvold**



A black and white portrait of Lee Brandvold, a middle-aged man with a balding head and a goatee, wearing a dark suit jacket, a light-colored shirt, and a bolo tie. He is smiling slightly and looking directly at the camera.

## Executive Secretary's Updates *cont'd from page 1*

region. This change could raise the max gross vehicle weight for certain truck configurations to as much as 129,000 lbs.

While we understand the importance this might have to the haulers, these long heavy rigs are not a good fit on our roads with limited radius intersections. We urge caution in changing the limits.

The UGPTI is still working on the Road Needs Survey and a few weeks ago sent out a second survey to any township that did not respond to the first survey that was sent out last fall.

If you got one again, please fill it out and send it in. We all know we are not likely to see much if any state money from this session but we need the information in hand and ready, the case proven for road needs when the money starts to be available again.

Watch out for encroachment on your township road right-of-ways. Don't let them work and plant within 33 feet of the center line. This becomes a special problem at intersections with tall crops such as corn.

Thank you for being a Township Officer!

## Meet New District 1 Director Tom Wheeler



Mr. Tom Wheeler is a fourth generation farmer in Williams County. His family lives on the farmstead his great grandfather homesteaded two miles northwest of Ray, ND in 1902.

They raise hard red spring wheat, durum, malt barley, and lentils. He is a certified seed producer and they also have a beef cattle herd.

They use a one-pass seed/fertilizer set up on their acres that have been minimum till for 20 plus years.

Tom is an Equality Township Supervisor, and serves on the advisory council for the Williston Research Center.

He is also a board member of the Northwest Landowners Association—a property rights advocacy group.

## Treasurer's Report by Barb Knutson



HAPPY SPRING! I hope! It was nice to get out on the workshop tour and see some of you. Of course we always have room for more at these functions.

Since the annual meetings are past, there are new officers and changes to be made to the mailing list, so I would encourage you to get your changes in as soon as possible, so the lists can be updated across the state.

I really appreciate the changes that have been shared with me. It is important for the new officers to get on the list right away.

We are always expanding our list to include e-mail address and cell phone numbers where people want to share that.

Dues are coming in as well. I want to thank everyone that have sent them in a timely fashion. More counties are paying for unorganized townships and we want to say we appreciate that.

Just a reminder—dues are due the first of May and delinquent the first of October. If you have a county association, please be sure to pay your dues through the association so they can keep their portion of dues at the county level.

Hope this finds you all having a good spring and thanks for doing what you do. It is important! Any questions? Please feel free to call.

**DISCUSSION FORUM ONLINE:** If you have any questions about situations in your township, please click on the "Discussion Forum" tab at [www.ndtoa.com](http://www.ndtoa.com) and we will post them. Someone else has probably confronted the same situation and be able to help you.

# UGPTI Prepares to Report on Truck Harmonization *by Larry Syverson*

In 2015 the Legislature passed HB 1012, of which Section 10 called for a study of the harmonization of truck size and weight limits to coordinate with the regulations of other states in the region.

The ND Department of Transportation contracted with the Upper Great Plains Transportation Institute (UGPTI) to do the study and put together a steering committee to help outline the study.

We were included on that committee along with the other transportation providers including members from the ND Highway Patrol, the Ag Coalition, growers groups and truckers.

The committee has met several times to review the methods and assumptions used by the UGPTI to complete the study, all parties had opportunity to note any concerns about what would be considered in the study.

If the legislature authorizes this change, gross vehicle weights could be increased to as much as 129,000 lbs.— at least for certain routes.

The benefit to the haulers would be fewer trucks, drivers and trips needed resulting in lower cost per ton hauled.

The benefit to the driving public would be fewer trucks to encounter on the road. Fewer trips to haul the same total amount of product would cause less wear on roads too, provided properly configured trucks are used.

There are also negative items to weigh, for the driving public; the longer trucks will be more challenging to pass on two lane roads. In cities the traffic signals would have to be changed, increasing the “all

red” time to allow longer trucks time to clear the intersections, on truck routes the slower changing lights may cause traffic congestion.

While fewer heavier but longer trucks are better for roads they do cause a concern on our already challenged bridges, many would need replacing. Oregon opted out of harmonization over bridge concerns.

A more wide spread problem is the huge turning radius required, these rigs need 75 or even as much as 82 feet to turn. This is not possible at an intersection of two 24 foot wide township roads without a significant modification.

It was estimated to fill in one corner of an intersection to provide the needed radius would cost \$7,056 all four corners would cost \$28,250. The turning radius is also a huge item in the cities where they say the trucks we have now are driving over fire hydrants and knocking down signal standards.

With the cost of a set of signal lights for a multi-lane intersection rivaling the cost of a new combine it is no wonder the cities also ask, “Who is going to pay for this?”

The most likely highways to be affected by this would be the interstate, national highway system routes, the U.S. highways, but as these things always grow it is best to look at the future possibilities now.

It was assumed that farmers would not be switching to these configurations because they are nearly impossible to turn into or out of field driveways.

However, with more and more grain being delivered to distant

terminals, farmers may very well switch over for hauling from their bin sites.

The report will be presented by the UGPTI on May 31, then the interim Transportation Committee will likely take it up to prepare legislation for the 2017 Session which starts in January.

I said, I realize the goal here is not to run these rigs on township roads but I know that if they are legal anywhere in the state we are going to see them out on township roads. No one disputed that.

## **So what is the legal weight on a township road?**

That is in NDCC 39-12-05.3 subsection 2: The gross weight on state highways may not exceed one hundred five thousand five hundred pounds unless otherwise posted and on all other highways the gross weight may not exceed eighty thousand pounds unless designated by local authorities for highways under their jurisdiction for gross weights not to exceed one hundred five thousand five hundred pounds.

Local authorities are encouraged to assess all roads under their jurisdiction and designate the roads for the appropriate weight limits allowed under this subsection.

A few sessions back there was an attempt to change this to 105,500 lbs. unless otherwise posted, that would have required a huge outlay for signs to protect all the roads that could not stand up to those heavier and also longer trucks.



# Grass Roots Report

North Dakota Township Officers Association  
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## NOTICE TO COUNTY COMMISSIONERS

### If your county includes unorganized townships:

Is your county paying dues for each unorganized township?  
The per mile funding each township gets is a result of NDTOA effort.  
If your county doesn't pay dues, someone else is paying your freight!  
Your county has benefited from NDTOA for many years.

**Have you calculated the benefit your county  
has received from the efforts of NDTOA?**

**WON'T YOU PLEASE PAY THE DUES?**



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