

BEFORE THE ENGINEERING AND LAND SURVEYING EXAMINING BOARD OF THE STATE OF IOWA

IN THE MATTER OF:)	
)	CASE NO. 12-12
MARK LINDSAY LEE, PE/LS)	
#11582)	COMBINED STATEMENT OF
)	CHARGES AND CONSENT ORDER
)	IN A DISCIPLINARY CASE
Respondent.)	
)	

A. STATEMENT OF CHARGES

1. The Iowa Engineering and Land Surveying Examining Board ("Board") has jurisdiction of this matter pursuant to Iowa Code chapters 17A, 542B, and 272C (2013).
2. Respondent is a licensed professional land surveyor and a licensed professional engineer in Iowa. The Board issued Respondent his license as a professional engineer on July 19, 1989 and as a professional land surveyor on January 21, 1998, both under license number 11582. Both licenses are current and set to expire December 31, 2014.
3. On December 3, 2001, the Board issued a Notice of Hearing and Statement of Charges in Case No. 01-04 alleging that Respondent:
 - a. engaged in unethical conduct and practices harmful to the public when he inappropriately certified and sealed an affidavit with the City of West Des Moines in which he made statements that were incomplete, misleading and deceptive, were not objective and not based on fact, in violation of Iowa Code sections 272C.10(3) and 542B.21(3) (2001), and 193C IAC 4.8(3).
 - b. engaged in unethical conduct and practices harmful to the public when his firm offered land surveying services to the public prior to his licensure as a land surveyor and without regularly employing one or more licensed land surveyors who directly controlled and personally supervised all land surveying work performed by the firm, in violation of Iowa Code sections 272C.10(3) and 542B.21(3) (2001), and 193C IAC 4.7.
 - c. engaged in careless acts and omissions and a practice harmful or detrimental to the public when he prepared plats of survey without complying with minimum land surveying standards set forth in Iowa Code chapters 354 and 355 (1999)

and 193C IAC Chapter 2, in violation of Iowa Code sections 272C.3(2)(b), 272C.4(6), 272C.10(3), 542B.21(2) & (3), and 193C IAC Chapter 2.

4. Respondent did not admit the allegations, but did agree to a Consent Order filed March 15, 2002 in which Respondent was reprimanded for failure to adhere to minimum land surveying standards. Respondent was also assessed a civil penalty of \$250 and was ordered to correct the plats and associated corner certificates, and affidavits and submit the corrections to the peer review committee. Respondent was further ordered to complete a 40-hour ethics course created by New Mexico State University and the University of Maine. Finally, Respondent was placed under a mandatory desk review process in which he had 20 days to secure a preapproved desk reviewer. Until released from desk review, all plats of survey and associated corner certificates were required to be reviewed and corrected as needed. Respondent was released from the desk review process in March 2003.

5. The Board received a complaint in August 2012 alleging that Respondent failed to adhere to minimum land surveying standards. The Board assigned the matter to a peer reviewer for expert opinion. Based on the peer review report, the Board concludes Respondent has violated minimum land surveying standards. The standards at issue are outlined in the peer review report provided to Respondent and include Iowa Code sections 355.4 (failure to correctly utilize section corners), 355.7(6) (failure to provide an accurate boundary description), and 355.7(13) (failure to identify the location of the river as related to the meander line), as well as associated administrative rules in 193C chapter 11, including 11.1, 11.2, and 11.3.

6. The Board charges Respondent with failure to adhere to minimum land surveying standards, as provided in paragraph 5, and as more fully set forth in the peer review report.

7. Respondent has a right to a hearing on the charges, but waives his right to hearing and all attendant rights, including the right to seek judicial review, by freely and voluntarily entering into this Order.

8. This Consent Order constitutes discipline against the Respondent, and is the final agency order in the contested case, pursuant to Iowa Code section 17A.10 and 193 Iowa Administrative Code 7.4. Respondent acknowledges that he had an opportunity to consult with legal counsel before signing this Consent Order.

9. Respondent agrees the State's counsel may present this Order to the Board and may have ex parte communications with the Board while presenting it.

10. This Order shall be part of the permanent record of Respondent and shall be considered by the Board in determining the nature and severity of any future disciplinary action to be imposed in the event of any future violations.

10. This Combined Statement of Charges and Consent Order is a public record available for inspection and copying in accordance with the requirements of Iowa Code chapter 22 (2013).

11. Failure to comply with the provisions of this Order shall be grounds for further disciplinary action pursuant to Iowa Code section 272C.3(2)(a) (2013). However, no action may be taken against Respondent for violations of these provisions without a hearing, or waiver of hearing.

12. This Order is subject to approval of the Board: (a) If the Board fails to approve this Order, it shall be of no force or effect on either party, and it shall not be admissible for any purpose in further proceedings in this matter. (b) If the Board approves this Order, it shall fully dispose of all issues in this case.

IT IS THEREFORE ORDERED:

A. Reprimand

The Respondent is reprimanded for failure to adhere to minimum land surveying standards.

B. Remedial Action

(1) By April 1, 2014, Respondent shall submit to the Peer Reviewer a corrected plat of survey with associated corner certificates, as more fully described in paragraph 5 and the September 16, 2013 Peer Review Report.

(2) The Peer Reviewer shall determine whether the corrections identified in the Peer Review Report have been addressed in conformance with Iowa Code chapters 355 and 542B (2013), and associated rules. Respondent shall make any changes needed to make the corrections.

(3) Respondent shall provide the Peer Reviewer field notes, calculations, and such other documents as the Reviewer may reasonably request.

(4) The Peer Reviewer will not duplicate field work or determine the accuracy of Respondent's work product, but will review the documents for facial compliance with relevant surveying standards. Respondent shall be solely responsible for his work product and shall take such steps as are necessary to correct and finish field work, locate and set monuments, prepare corrected documents, and record the corrected plats of survey, and corner certificates. He shall not record these documents until they have been approved by the Peer Reviewer.

C. Probation and Desk Review

Respondent's professional land surveyor license is on probation until further order of the Board. While on probation all plats of survey and associated corner certificates are subject to pre-release desk review by an Iowa licensed professional land surveyor in good standing and pre-approved by the Board on the following terms and conditions:

(1) Respondent shall submit for pre-release desk review all surveys and corner certificates he prepares after the date this Consent Order is fully signed until expressly released by the Board.

(2) An executed copy of the agreement shall be submitted to the Board prior to implementation of the agreement. The desk review agreement may be in letter form, but shall attach a copy of this Consent Order.

(3) The reviewing professional land surveyor shall perform a desk review of each plat of survey and corner certificate before the final documents are signed, submitted to the client, and recorded. The review shall be for facial compliance with minimum land surveying standards. The reviewer will not perform field work or warrant the accuracy of Respondent's work product, but will review field notes, calculations and any other documents reasonably needed. The reviewer shall prepare written comments on each survey's compliance with the minimum land surveying standards set forth in Iowa Code chapters 354 and 355.

(4) The reviewer's recommended revisions or corrections, if any, shall be incorporated into each plat of survey and corner certificate prior to releasing the survey to the client or recording the survey with county officials. A copy of the reviewer's comments shall be submitted directly to the Board from the reviewer. The comments do not need to be received by the Board prior to the completion of the survey. Respondent shall submit to the Board within ten days of written request copies of draft and final surveys and certificates which were issued subject to desk review.

(5) Once ten plats of survey with associated corner certificates have been reviewed which qualify as division surveys under Iowa Code section 354.4, and which are not retracement surveys, and a period of at least three months of probation has expired, Respondent may petition the Board for release from this requirement. The Board shall release Respondent from desk review of surveys if the draft surveys (i.e., those prepared prior to receiving the reviewer's comments) and review comments do not reveal serious deviations from minimum surveying standards. If the draft surveys or review comments do reveal serious deviations from minimum surveying standards, the review process shall continue until further order of the Board. Respondent may petition the Board for release from the desk review process after an additional ten surveys have been reviewed.

(6) This settlement shall not preclude the Board from filing additional charges if one or more of the surveys or corner certificates subject to desk review demonstrate probable cause to take such an action. Respondent agrees Board review of desk review reports or surveys subject to desk review shall not constitute "personal investigation" or otherwise disqualify a Board member from acting as a presiding officer in any subsequent contested case.

(7) Given Respondent's need to secure an approved reviewer to stay in business once this Consent Order is accepted by the Board, the effective date of the desk review portion of the agreement shall be twenty (20) days following the date this Order is signed by the Board.

D. Future Compliance

Respondent shall in the future adhere to all statutes and administrative rules in the practice of land surveying.

AGREED AND ACCEPTED:

The Respondent

[Redacted Signature]

Mark Lindsay Lee

3-6-14
Date

**The Iowa Engineering and Land
Surveying Examining Board**

[Redacted Signature]

By: Marlon Vogt, PE, Chair

3/13/14
Date

DATE OF ISSUANCE 3/13/2014

BEFORE THE ENGINEERING AND LAND SURVEYING EXAMINING BOARD
OF THE STATE OF IOWA

ELSER
[Redacted]
Signature, Executive Officer

IN THE MATTER OF:

Case No. 12-12

DIA NO. 14ELS001

Mark Lindsay Lee, PE/LS
#11582

Respondent

CONTINUANCE ORDER

A prehearing conference is scheduled for March 7, 2014 at 11:00 a.m. and a hearing is scheduled for March 13, 2014 at 1:30 p.m. On March 6, 2014, the state of Iowa filed an Application to Continue both the prehearing conference and the hearing based on the state's receipt of a signed Consent Order from Respondent. The signed Consent Order, if accepted by the Board, will resolve all of the issues in this pending disciplinary proceeding. IT IS THEREFORE ORDERED that the March 7th prehearing conference and the March 13th hearing are hereby CONTINUED, pending further order of the Board.

Dated this 7th day of March, 2014.

Margaret LaMarche

Margaret LaMarche
Administrative Law Judge
Department of Inspections and Appeals
3rd Floor, Wallace State Office Building
Des Moines, IA 50319

[FOR THE IOWA ENGINEERING AND LAND SURVEYING EXAMINING BOARD]

cc: Mark Lee, 3117 115th Street, Van Meter, IA 50261 (FIRST-CLASS MAIL)
Pamela Griebel, Assistant Attorney General, Hoover Bldg., Second Floor (LOCAL)
Robert Lampe, Executive Officer, Iowa Engineering and Land Surveying Examining Board, 1920 SE Hulsizer, Ankeny (LOCAL)
[all parties also served by e-mail]

12-12

3/13/14

BEFORE THE IOWA ENGINEERING AND LAND SURVEYING EXAMINING BOARD

IN THE MATTER OF:)

Mark Lindsay Lee, PE/LS)
11582)

Respondent.)

Case No. 12-12

STATE'S APPLICATION TO)
CONTINUE PREHEARING AND)
HEARING)

Department of Commerce
Professional Licensing Bureau
FILED 3/6/2014 (Date)
I E L S E B
Board/Commission
Signature, Executive Officer

The State of Iowa moves the Board to continue the prehearing conference set for March 7, 2014 and the hearing set for March 13, 2014, as follows:

1. The State has received a signed Consent Order which if acceptable to the Board will fully resolve all issues in this case.
2. It is in the interest of justice and administrative judicial economy for the prehearing conference and hearing to be continued to give the Board the chance to consider the Consent Order.
3. The State recommends the Consent Order.

Respectfully submitted,

THOMAS J. MILLER
Attorney General of Iowa



PAMELA D. GRIEBEL
Assistant Attorney General
Hoover Building, 2nd Fl.
Des Moines, Iowa 50319
Tele: (515) 281-6858
FAX: (515) 281-7551
pgriebe@ag.state.ia.us
ATTORNEYS FOR THE STATE OF IOWA

Original by email on March 6, 2014 and by local mail on March 7, 2014 to Board.

Copies by email on March 6, 2014 and by local mail/mail on March 7, 2014 to:
Administrative Law Judge and Respondent

FILED 1/13/14 (Date)

BEFORE THE IOWA ENGINEERING AND LAND SURVEYING EXAMINING BOARD OF THE STATE OF IOWA

IFLSER
Board / Commission
[Redacted Signature]

Signature, Executive Officer

IN THE MATTER OF:)	Case No. 12-12
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Mark Lindsay Lee, PE/LS)	
# 11582)	
)	
Respondent.)	NOTICE OF HEARING AND
)	STATEMENT OF CHARGES
)	IN A DISCIPLINARY CASE

The Iowa Engineering and Land Surveying Examining Board ("Board") issues this Notice of Hearing pursuant to Iowa Code Sections 17A.12(2) and 17A.18(3) (2013). Respondent is a licensed professional engineer and professional land surveyor. His license is active and is scheduled to expire on December 31, 2014. The Board has jurisdiction of this matter pursuant to Iowa Code chapters 17A, 272C, and 542B (2013).

A. TIME, PLACE AND NATURE OF HEARING, AND HEARING PROCEDURES

- Hearing.** A disciplinary contested case hearing will be held before the Board on the 13th day of March, 2014, at 1 p.m. at the Board's offices at 200 E. Grand, Ste. 350 Des Moines, IA 50309
- Answer.** Within 20 days of the date you are served with this Notice you must file an answer to the charges as provided in 193 Iowa Administrative Code 7.9.
- Prehearing Conference.** A prehearing conference will be held by telephone on the 7th day of March, 2014, at 1:30 p. m. before an Administrative Law Judge from the Iowa Department of Inspections and Appeals ("ALJ"). You are responsible for notifying the Board office of the telephone number at which you or your counsel can be reached. Please send this number to: Iowa Engineering and Land Surveying Examining Board, Attention: Robert Lampe, Executive Officer, 200 E. Grand, Ste. 350, Des Moines, IA 50309. Phone: 515-725-9024; E-mail: robert.lampe@iowa.gov. Board rules on prehearing conferences may be found at 193 Iowa Administrative Code 7.21.
- Presiding Officer.** The full Board shall serve as presiding officer at hearing, pursuant to Iowa Code section 272C.6(1) and 193 Iowa Administrative Code 7.10(1). The Board may request that an ALJ make initial rulings on prehearing matters, and be present to assist and advise the Board at hearing, as described in 193 Iowa Administrative Code 7.10(4).
- Hearing Procedures.** Board rules on hearing procedures may be found at 193 Iowa Administrative Code chapter 7. You have the right to respond to the charges, produce

evidence on your behalf, cross-examine witnesses, and examine any documents introduced at hearing. Consult rule 193 Iowa Administrative Code 7.22 if you need to request an alternative time or date. The hearing may be open to the public or closed to the public at the discretion of the Respondent.

6. **Default.** If you fail to appear at the hearing, the Board may enter a default decision or proceed with the hearing and render a decision in your absence, in accordance with Iowa Code section 17A.12(3) and 193 Iowa Administrative Code 7.27.

7. **Prosecution.** Licensee disciplinary cases are prosecuted by an Assistant Attorney General acting on behalf of the public interest (the State). Copies of all pleadings shall be filed with the Board, with copies mailed to: Assistant Attorney General Pamela Griebel, Iowa Department of Justice, Hoover Building, 2nd Fl., Des Moines, Iowa, 50319. Phone: 515-281-6403; E-mail: pgriebe@ag.state.ia.us.

8. **Respondent's Counsel.** Copies of all pleadings filed with the Board shall be provided to: [Counsel unknown]

9. **Settlement.** The procedural rules governing the Board's settlement process are found at 193 Iowa Administrative Code 7.42. If you are interested in pursuing settlement of this matter, please contact Assistant Attorney General Pamela Griebel.

10. **Communications.** You may not contact Board members by phone, letter, facsimile, e-mail, or in person about this Notice of Hearing and Statement of Charges. Board members may only receive information about the case when all parties have notice and an opportunity to participate, such as at the hearing or in pleadings you file with the Board office and serve upon all parties in the case. You should direct any questions to Assistant Attorney General Pamela Griebel, or Robert Lampe.

B. CIRCUMSTANCES

11. On December 3, 2001, the Board issued a Notice of Hearing and Statement of Charges in Case No. 01-04 alleging that Respondent:

a. engaged in unethical conduct and practices harmful to the public when he inappropriately certified and sealed an affidavit with the City of West Des Moines in which he made statements that were incomplete, misleading and deceptive, were not objective and not based on fact, in violation of Iowa Code sections 272C.10(3) and 542B.21(3) (2001), and 193C IAC 4.8(3).

b. engaged in unethical conduct and practices harmful to the public when his firm offered land surveying services to the public prior to his licensure as a land surveyor and without regularly employing one or more licensed land surveyors who directly controlled and personally supervised all land surveying work performed by the firm, in violation of Iowa Code sections 272C.10(3) and 542B.21(3) (2001), and 193C IAC 4.7.

c. engaged in careless acts and omissions and a practice harmful or detrimental to the public when he prepared plats of survey without complying with minimum land surveying standards set forth in Iowa Code chapters 354 and 355 (1999) and 193C IAC Chapter 2, in violation of Iowa Code sections 272C.3(2)(b), 272C.4(6), 272C.10(3), 542B.21(2) & (3), and 193C IAC Chapter 2.

12. Respondent did not admit the allegations, but did agree to a Consent Order filed March 15, 2002 in which Respondent was reprimanded for failure to adhere to minimum land surveying standards. Respondent was also assessed a civil penalty of \$250 and was ordered to correct the plats and associated corner certificates, and affidavits and submit the corrections to the peer review committee. Respondent was further ordered to complete a 40-hour ethics course created by New Mexico State University and the University of Maine. Finally, Respondent was placed under a mandatory desk review process in which he had 20 days to secure a preapproved desk reviewer. Until released from desk review, all plats of survey and associated corner certificates were required to be reviewed and corrected as needed. Respondent was released from the desk review process in March 2003.

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C. STATEMENT OF CHARGES

14. The Board charges Respondent with failure to adhere to minimum land surveying standards, as provided in paragraph 13, and as more fully set forth in the peer review report, in violation of Iowa Code sections 542B.21(2), 542B.21(9), 355.4, 355.7(6), and 355.7(13), and 193C chapter 11, including 11.1, 11.2, and 11.3.

15. The Board found probable cause to file charges on November 7, 2013, and ordered that hearing be set on January 10, 2014.

This Notice of Hearing and Statement of Charges is filed and issued on the 13
day of January, 2014.


Robert Lampe, Executive Officer

Iowa Engineering and Land Surveying Examining Board
200 E. Grand, Ste. 350
Des Moines, IA 50309.
Phone: 515-725-9024
E-mail: robert.lampe@iowa.gov.

Copies to:

Assistant Attorney General Pamela Griebel
Respondent (restricted certified mail, return receipt requested or personal service)
Department of Inspections and Appeals, assigned Administrative Law Judge