

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

IN THE MATTER OF:

**MARVIN MCGAHUEY
406 South Lincoln Street
Corydon, IA 50060**

RESPONDENT

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**CASE NO. 98-14
Statement of Charges**

COMES NOW the Complainant, Gleen Coates, and states:

1. The Complainant is the Executive Secretary of the Iowa Engineering and Land Surveying Examining Board and files these charges solely in her official capacity.
2. The Board has jurisdiction of this matter pursuant to Iowa Code chapters 17A, 272C and 542B (1999).
3. On April 13, 1973, the Board issued the Respondent, Iowa professional land surveying license number 4838.
4. Respondent's professional land surveying license is currently in active status.
5. All remaining code citations are 1997 Code of Iowa.

Count I

Respondent is charged with professional incompetence, careless acts and omissions, and practice harmful or detrimental to the public in the practice of land surveying in violation of Iowa Code sections 272C.3(2)(b), 272C.4(6), 272C.10(2), 272C.10(3), 542B.21(2) & (3), and 193C IAC 4.3, when he prepared plats of survey

without complying with the minimum land surveying standards set forth in Iowa Codes chapters 354 and 355 (1997) and 193C IAC Chapter 2.

Circumstances

1. The Board received a complaint on June 26, 1998, alleging that the Respondent did not comply with the minimum standards for property surveys as established in Chapter 2, IAC 193C when preparing a plat of survey for Tim Cribbs dated on May 15, 1998.
2. The Board had investigated a previous similar complaint filed against the respondent in August, 1995. In that investigation, the Board conducted an informal discussion and then advised the respondent to prepare a checklist for each type of document he prepared and provide the Board with copies of the corner certificates that he prepared and filed for the plat of survey in question at that time.
3. Also during that previous investigation, the Respondent submitted a revised plat and checklists and promised in writing to cap his iron pins and abide by the law for surveying in Iowa.
4. The Board closed the Respondent's previous case with a caution to the Respondent that he avoid recurrence of the problems with his land surveys that were discovered during the investigation.
5. The Board informed the Respondent of the June 26, 1998, complaint in a letter dated August 5, 1998, and requested that he provide a copy of the plat of survey in question.
6. The Board also informed the Respondent in the letter dated August 5, 1999, that the seal he had used to stamp this survey does not meet the current seal and certification requirements and sent a copy of 193C IAC 1.30(542B).

7. The Board invited the Respondent to attend an informal discussion on this matter on September 17, 1998. When contacted by telephone to confirm the Respondent's attendance at this informal discussion, the Respondent declined the opportunity to participate in the informal discussion.
8. The Board received a letter of explanation from the Respondent dated August 25, 1998 and a copy of the plat of survey as requested.
9. The Board established a Peer Review Committee to review the documents submitted by the Respondent. In a letter dated October 13, 1999, the Board transmitted the documents to the Peer Review Committee for review.
10. The Peer Review Committee issued its report on February 11, 1999. The Peer Review Committee report concluded that the plats and corner certificates reviewed contained numerous violations of minimum standards mandated by Iowa Code Chapters 354, 355 and 193C IAC Chapter 2.
11. In a letter dated March 9, 1999, the Board requested that the Peer Review Committee provide an addendum to that report including plat specific itemization of the Iowa Code and Iowa Administrative Code violations found by the Peer Review Committee in their review.
12. The Peer Review submitted the addendum to their report on September 15, 1999. The following summary of the Iowa Code and Administrative Code violations identified by the Peer Review Committee demonstrate professional incompetence and practice harmful to the public. A copy of the Peer Review Committee report containing more detailed information regarding the violations and errors for each plat of survey and corner certificate reviewed will be provided to the Respondent with this Statement of Charges. Violations of

the minimum standards of land surveying identified by the Peer Review Committee include but are not limited to:

- (a) Failed to provide bar graph. **Iowa Code 355.7.3**
- (b) Failed to show roadway area. **Iowa Code 354.4.1.e**
- (c) Failed to provide sufficient information as to why corners were re-established. **Iowa Code 355.11.2.c**
- (d) Dates on corner certificates indicate they were not recorded within 30 days. **Iowa Code 355.11.2**
- (e) Failed to provide sufficient identification of monuments set. **Iowa Code 355.7.7**
- (f) Failed to show evidence sufficient to establish center of section. **Iowa Code 355.7.7**
- (g) Failed to provide sufficient corroborating evidence and detailed description of procedures used in establishing the corner position or center of section. **Iowa Code 355.11.2.c**
- (h) No indication that set pins were capped as required. **Iowa Code 355.6.1**
- (i) No mention of recorded corner certificates. **Iowa Code 355.11.1.a**
- (j) US public land survey system corners not clearly identified on the plat and monuments not described properly. **Iowa Code 355.7.8**
- (k) Dimensions given to the nearest 0.001 foot which is unlikely to be in conformance with the capabilities of the instruments used by the Respondent. **Iowa Code 355.5.2**
- (l) Failure to indicate terminus on lines or dimensions between center of road and pins on the right of way line. **193C IAC 2.5(5)**

- (m) Failed to provide sufficient data to determine acreage or acreage not given in each 40 acre tract. **193C IAC 2.5(5)**
- (n) No accurate dimensions from ROW to centerline paving on boundary lines.
Iowa Code 355.9
- (o) Description does not agree with plat regarding boundary line. **Iowa Code 355.9.1**
- (p) Can't tell how lines were established. Only one found monument identified.
Iowa Code 355.7.5
- (q) No dimensions shown on adjoining lots to determine accurate location of the survey. **Iowa Code 355.7 (5, 9, & 10)**
- (r) Error in dimensions of survey or bearings. No evidence shown to explain differences. **Iowa Code 355.7.6, 193C 2.5(2)**
- (s) Government measure isn't shown to compare recorded and measured dimensions. **Iowa Code 355.7.6**
- (t) No monuments or corroborative evidence shown to accept the post at the center of section or to determine direction of lines. **Iowa Code 355.7.9**
- (u) No bearings to indicate an angle. **Iowa Code 355.7.6**
- (v) Insufficient information shown on ROW to calculate the area. **Iowa Code 354.4.1.e**
- (w) Failed to show name of proprietor. **Iowa Code 354.4.1.b**
- (x) Insufficient data to re-establish a curve. **Iowa Code 355.7.11 and 355.6.2.c**
- (y) Survey plat and corner certificate have no seal as required. **Iowa Code 355.7.15**

(z) Pins capped that were not personally set by respondent. **Iowa Code**
355.6

WHEREFORE, the Complainant prays that a hearing be held in this matter and that the Board take such action as it deems appropriate under the law.

Signed and dated this 1st day of November, 1999.

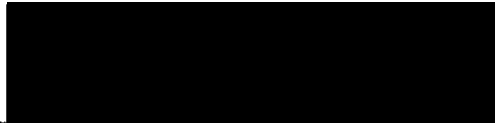
A solid black rectangular redaction box covering the signature of Gleen M. Coates.

Gleen M. Coates, Executive Secretary

Iowa Engineering and Land Surveying Examining Board

FINDING OF PROBABLE CAUSE

On October 21, 1999 the Iowa Engineering and Land Surveying
Examining Board found probable cause to file this Statement of Charges and to
order a hearing be set in this case.



Susan M. Long, Chair

cc: Engineering and Land Surveying Examining Board
Pamela Griebel, Assistant Attorney General
Department of Inspections and Appeals

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

IN THE MATTER OF:)	
)	CASE NO. 98-14
MARVIN F. MCGAHUEY)	
)	SETTLEMENT AGREEMENT AND
)	CONSENT ORDER
RESPONDENT)	

The Iowa Engineering and Land Surveying Examining Board (Board) and Marvin McGahuey (Respondent) enter into this Settlement Agreement and Consent Order (Agreement), pursuant to Iowa Code section 17A.10 (1999) and 193C IAC 4.10:

1. The Board has jurisdiction of this matter pursuant to Iowa Code chapters 17A, 542B, and 272C (1999).
2. Respondent is a licensed land surveyor in Iowa.
3. On November 1, 1999, the Board filed a Notice of Hearing and Statement of Charges, setting hearing for January 21, 2000.
4. Respondent has a right to a hearing on the charges, but waives his right to hearing and all attendant rights by freely and voluntarily entering into this Agreement. The Consent Order is the final agency order in the contested case.
5. Respondent agrees the State's counsel may present this Agreement to the Board and may have ex parte communications with the Board while presenting it.
6. This Agreement shall be part of the permanent record of Respondent and shall be considered by the Board in determining the nature and severity of any disciplinary action to be imposed in the event of any future violations. In addition, the Board shall advise the National Council for Examiners of Engineering and Surveying of the disposition of this matter.
7. This Agreement and the Statement of Charges are public records available for inspection and copying in accordance with the requirements of Iowa Code chapter 22 (1999).

8. Failure to comply with the provisions of this Agreement shall be considered prima facie evidence of a violation of Iowa Code section 542B.21(3) (1999) and 193C IAC 4.2, and shall be grounds for disciplinary action pursuant to Iowa Code section 272C.3(2)(a) (1999). However, no action may be taken against Respondent for violations of these provisions without a hearing as provided in Iowa Code section 542B.22, or waiver of hearing.

9. This Agreement is subject to approval of the Board:

(a) If the Board fails to approve this Agreement, 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 Agreement, 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 the minimum land surveying standards in Iowa Code chapters 354 and 355.

B. Remedial Action

By ~~February 1~~ ^{June 15}, 2000, Respondent shall submit to the Peer Review Committee (comprised of J. Leroy Nugteren, Chair, Barry A. Bishop, and Richard C. Leu) corrected plats of survey with associated corner certificates and affidavits, as more fully described in the attached Peer Review Reports dated February 11, 1999, and September 10, 1999.

(1) These documents shall be in final form, although not signed, when submitted to the Peer Review Committee. The documents shall not be signed or recorded until the Peer Review Committee determines the corrections identified in the attached Report have been addressed in conformance with Iowa Code chapters 354 and 355, and §331.602(1) (1999).

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

(3) The Peer Review Committee 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, corner certificates and affidavits.

C. Costs

Respondent shall be responsible for the costs incurred by the Peer Review Committee solely for the review described in Section B above. These costs shall be determined and assessed upon the Board's receipt of time and expenses by the Peer Review Committee. Peer Review Committee members are entitled to a per diem of \$50.00, plus expenses. Once assessed, Respondent shall pay these costs in full to the Board within 60 days.

D. Desk Review

Respondent shall develop a desk review consultation agreement with an Iowa licensed land surveyor in good standing and pre-approved by the Board on the following terms and conditions:

(1) Respondent shall submit for pre-release review all surveys he prepares after the date this agreement is accepted by the Board for the time period described below.

(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 the Consent Order.

(3) The reviewing land surveyor shall perform a desk review of each plat of survey 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 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 which were issued subject to desk review.

(5) Once ten plats of survey have been reviewed which qualify as division surveys under Iowa Code section 354.4, and which are not retracement surveys, 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 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) The effective date of the desk review portion of the agreement shall be January 3, 2000.

D. Future Compliance

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

AGREED AND ACCEPTED:

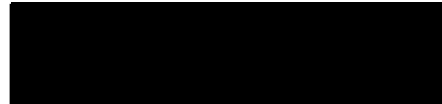
The Respondent

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



Marvin McGahuey

11-17-99
Date



By: Susan M. Long, Chair

12/16/99
Date

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

IN THE MATTER OF:

**MARVIN MCGAHUEY
406 South Lincoln Street
Corydon, IA 50060**

RESPONDENT

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**CASE NO. 98-14
Statement of Charges**

COMES NOW the Complainant, Gleen Coates, and states:

1. The Complainant is the Executive Secretary of the Iowa Engineering and Land Surveying Examining Board and files these charges solely in her official capacity.
2. The Board has jurisdiction of this matter pursuant to Iowa Code chapters 17A, 272C and 542B (2001).
3. On April 13, 1973, the Board issued the Respondent, Iowa professional land surveying license number 4838.
4. Respondent's professional land surveying license lapsed on December 31, 2000.

Count I

Respondent is charged with failure to comply with a Board decision imposing discipline by failing to submit corrected plats of survey and associated corner certificates to Peer Review by June 15, 2000, contrary to the December 16, 1999, Consent Order, in violation of Iowa Code § 272C.3(2)(a) (1999).

Count II

Respondent failed to demonstrate, in the documents he did belatedly submit to the Board, a reasonable ability to perform in the manner necessary to assure the residents of this state a high standard of professional care and adherence to land surveying standards, in violation of Iowa Code sections 272C.3(2)(b), 542B.21(2) and 542B.21(3) (1999).

Circumstances

1. The Board received a complaint on June 26, 1998, alleging that the Respondent did not comply with the minimum standards for property surveys as established in Chapter 2, IAC 193C when preparing a plat of survey for Tim Cribbs dated on May 15, 1998.
2. The Board established a Peer Review Committee to review the documents submitted by the Respondent. In a letter dated October 13, 1999, the Board transmitted the documents to the Peer Review Committee for review.
3. The Peer Review Committee issued its report on February 11, 1999. The Peer Review Committee report concluded that the plats and corner certificates reviewed contained numerous violations of minimum standards mandated by Iowa Code Chapters 354, 355 and 193C IAC Chapter 2.
4. In a letter dated March 9, 1999, the Board requested that the Peer Review Committee provide an addendum to that report including plat specific itemization of the Iowa Code and Iowa Administrative Code violations found by the Peer Review Committee in their review.
5. The Peer Review Committee submitted the addendum to their report on September 15, 1999. The Iowa Code and Administrative Code violations identified by the Peer Review Committee demonstrate professional incompetence and practice harmful to the public. A copy of the Peer Review Committee report containing more detailed information regarding the violations and errors for each plat of survey and corner certificate reviewed was provided to the Respondent along with a Statement of Charges summarizing the violations of the minimum standards of land surveying identified by the Peer Review Committee.
6. The Respondent signed a Settlement Agreement and Consent Order on November 17, 1999 in which he was reprimanded for failure to adhere to the minimum land surveying standards in Iowa Code chapters 354 and 355. The Respondent by signing the Settlement Agreement and Consent Order agreed to the following remedial action:
 - a. By June 15, 2000, Respondent would submit, to the Peer Review Committee, corrected plats of survey with associated corner certificates and affidavits as more fully described in the Peer Review Reports dated February 11, 1999 and September 10, 1999. Copies of these reports were provided to the Respondent. These corrected plats and corner certificates

were to be in final form, although not signed when submitted to the Peer Review Committee.

b. The Respondent further agreed to develop a desk review consultation agreement with an Iowa licensed land surveyor in good standing and pre-approved by the Board. The terms and conditions of that desk review consultation agreement were described in the Consent Order. The desk review effective date was January 3, 2000.

7. In December 1999, the Respondent informed the Board that he had contacted Donald Wall, LS, and he had agreed to be the desk reviewer for his plats.

8. On July 20, 2000, the Board sent a letter to the Respondent reminding him that he was not in compliance with the Consent Order that he had signed and asked for an explanation.

9. The Board received an explanatory letter and worksheets from the Respondent on August 9, 2000.

10. On December 6, 2000, the Board requested a review by the Peer Review Committee of the correspondences and work sheets provided to the Board by the Respondent on August 5 and October 18, 2000. The Board requested that the Peer Review Committee provide the Board with an opinion as to the Respondent's ability to complete the Consent Order that he had signed in November 1999.

11. The Board reviewed the response from the Peer Review Committee on January 10, 2001, concluding that the Respondent has not successfully addressed the violations of land surveying standards outline in the initial peer review reports and that he lacks sufficient understanding of applicable land surveying standards to adequately comply with the Consent Order.

WHEREFORE, the Complainant prays that a hearing be held in this matter and that the Board take such action as it deems appropriate under the law.

Signed and dated this 15th day of February 2001.



Glean M. Coates, Executive Secretary
Iowa Engineering and Land Surveying Examining Board

FINDING OF PROBABLE CAUSE

On January 11, 2001, the Iowa Engineering and Land Surveying Examining Board found probable cause to file this Statement of Charges and to order a hearing be set in this case.



Dwayne C. Garber, Chair

cc: Engineering and Land Surveying Examining Board
Pamela Griebel, Assistant Attorney General
Department of Inspections and Appeals

PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause by depositing a copy thereof in the U.S. Mail, postage prepaid, in envelopes addressed to each of the attorneys of record herein at their respective addresses disclosed on the pleadings, on 2/15, 2001.

FILED 4/25/01 (Date)

FELSER

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

Board/Commission [Redacted]
Signature: Executive Officer

IN THE MATTER OF:)	CASE NO. 98-14
)	DIA NO. 01DOCEL001
MARVIN MCGAHUEY)	
406 South Lincoln Street)	FINDINGS OF FACT,
Corydon, IA 50060)	CONCLUSIONS OF LAW,
)	DECISION AND ORDER
)	
RESPONDENT)	

On January 11, 2001, the Iowa Engineering and Land Surveying Examining Board (Board) filed a Statement of Charges against Marvin McGahuey, L.S. (Respondent). The Statement of Charges alleged that the Respondent had violated Iowa Code section 272C.3(2)(a)(1999) by his failure to comply with a Board decision imposing discipline [Count I]; and Iowa Code sections 272C.3(2)(b), 542B.21(2), and 542B.21(3) by his failure to demonstrate a reasonable ability to perform in the manner necessary to assure the residents of this state a high standard of professional care and adherence to land surveying standards [Count II].

A Notice of Hearing was issued setting the hearing for April 4, 2001. A prehearing conference was scheduled and was held on March 16, 2001 at 1:30 p.m. by telephone conference call. The state submitted a Prehearing Conference Report and its exhibits 1-11.

The hearing was held on April 4, 2001 at 2:00 p.m. in the conference room at the Iowa Department of Commerce, 1918 S.E. Hulsizer, Ankeny, Iowa. The hearing was open to the public at the Respondent's request, pursuant to Iowa Code section 272C.6(1)(1999). The Respondent appeared and was not represented by counsel. The state was represented by Pamela Griebel, Assistant Attorney General. Margaret LaMarche, Administrative Law Judge from the Iowa Department of Inspections and Appeals, assisted the Board in conducting the hearing. The following Board members were present for the hearing: Dwayne Garber, P.E./L.S., Board Chairperson; Nicholas Konrady, P.E./ L.S.; Susan Long, P.E.; Randall Beavers, P.E.; Forrest M. Holly, Jr., P.E. and Susan Albright, public member. The testimony was recorded by a certified court reporter.

At the close of the presentation of its case, the state moved to amend the Statement of Charges to enlarge the factual circumstances under Count I to include the preparation of additional surveys after January 3, 2000 without the required desk review. The

Respondent did not object to the proposed amendment, and it was granted.

After hearing the testimony and examining the exhibits, the Board convened in closed executive session to deliberate its decision, pursuant to Iowa Code section 21.5(1)(f) (1999). The Administrative Law Judge was instructed to prepare the Board's order, in conformance with their deliberations.

THE RECORD

The record includes the Statement of Charges, Notice of Hearing, State's Prehearing Conference Report, Order Following Prehearing Conference, State's Letter dated 3/30/01 and attached exhibit 11, the testimony of the witnesses, and the following exhibits:

- State Exhibit 1: Proof of Service
- State Exhibit 2: Peer Review Report, 2/11/99
- State Exhibit 3: Peer Review Report, 9/10/99
- State Exhibit 4: Statement of Charges, 11/1/99
- State Exhibit 5: Settlement Agreement and Consent Order, 12/16/99
- State Exhibit 6: Letter dated 7/20/00 (Board to Respondent)
- State Exhibit 7: Letter dated 8/5/00 (Respondent to Board)
- State Exhibit 8: Letter received 10/18/00 (Respondent to Board)
- State Exhibit 9: Letter dated 12/6/00 (Board to Peer Review Committee)
- State Exhibit 10: Peer Review Report, 1/5/01
- State Exhibit 11: Surveys Listed in the 9/10/99 Peer Review Report

FINDINGS OF FACT

1. On April 13, 1973, the Respondent was issued Iowa professional land surveying registration number 4838 by the Board. Registration number 4838 lapsed on December 31, 2000. The Respondent has been

licensed as a professional engineer in the state of Iowa, and served as a county engineer until his retirement in 1989. The Respondent did not begin performing land surveys until 1995. (Testimony of Respondent; State Exhibit 4)

Prior Disciplinary History

2. On June 26, 1998, the Board received a complaint which alleged that the Respondent did not comply with the minimum standards for property surveys when preparing a plat of survey for Tim Cribbs on May 15, 1998. The Board established a Peer Review Committee (PRC) to review sixteen surveys submitted by the Respondent. The Respondent agrees that this is nearly the total number of land surveys that he has ever performed.

On February 11, 1999, the PRC issued its report concluding that the Respondent's plats and corner certificates contained numerous violations of minimum standards mandated by Iowa Code chapters 354 and 355 and 193C IAC chapter 2. The PRC was asked to prepare a report addendum with specific itemization of the violations.

On September 15, 1999, the PRC submitted an addendum to their report which identified numerous violations of the Iowa Code and Iowa Administrative Code which demonstrate professional incompetence and practice detrimental to the public. The Board filed a Statement of Charges against the Respondent on November 1, 1999. (Testimony of J. Leroy Nugteren; Respondent; State Exhibits 2-4)

3. On November 17, 1999, the Respondent signed a Settlement Agreement and Consent Order, in resolution of the Statement of Charges. The Settlement Agreement and Consent Order was approved by the Board on December 16, 1999. The terms of the Settlement Agreement and Consent Order included a reprimand for failure to adhere to the minimum land surveying standards and the following remedial requirements:

a. By June 15, 2000, the Respondent was required to submit corrected plats of survey with associated corner certificates and affidavits to the Peer Review Committee. The corrected plats of survey were to be in final form, but not signed, when submitted to the PRC.

b. The Respondent was required to develop a desk review consultation agreement with a licensed Iowa land surveyor in good standing and pre-approved by the Board. The terms and conditions of the desk review consultation agreement were

described in the Consent Order. The desk review effective date was January 3, 2000.

(Testimony of J. Leroy Nugteren; Respondent; State Exhibit 5)

Respondent's Failure To Comply

4. In December 1999, the Respondent notified the Board that he had contacted Donald Wall, LS, who had agreed to be the desk reviewer for his plats. However, the Respondent did not execute a desk review consultation agreement with Mr. Wall. They did agree to an hourly fee. (Testimony of Respondent)

5. The Respondent did not submit corrected plats of surveys with associated corner certificates and affidavits to the PRC by June 15, 2000. On July 20, 2000, the Board sent a letter to the Respondent requesting an explanation. The Respondent replied in a letter received August 9, 2000. His reply, which included his worksheets from the Cribbs survey, demonstrates that the Respondent does not understand fundamental principles of land surveying and had not complied with the terms of the Settlement Agreement and Consent Order.

In a subsequent letter to the Board received on October 18, 2000, the Respondent submitted additional comments on the surveys in question and submitted additional worksheets for some of the surveys. In this letter, the Respondent states "I...will comply with the Consent Order if I have no other choice." (Testimony of J. Leroy Nugteren; Respondent; State Exhibit 7)

6. As of the date of the hearing, the Respondent had not submitted corrected plats of surveys with associated corner certificates and affidavits to the PRC, as required by the Settlement Agreement and Consent Order. In his testimony, the Respondent suggested that he had performed four additional surveys after the effective date of the Settlement Agreement and Consent Order, which had not been submitted for desk review in accordance with the terms of the Consent Order. However, the Respondent's testimony concerning exactly when he performed these surveys was contradictory and confusing. (Testimony of J. Leroy Nugteren; Respondent)

Respondent's Inability to Comply With Consent Order

7. The Respondent described some personal problems he has experienced in the past year which have contributed to his failure to comply. While it appears that the Respondent does not intend to

continue practicing land surveying, it is important to him that he correct the deficient surveys. The Respondent is asking the Board to allow him additional time to comply with the requirements of the Consent Order and to correct the deficiencies in the 16 surveys reviewed by the PRC. He estimates that he would be able to perform the necessary field work and research and correct the surveys by the fall of 2001. However, the Respondent has allowed his license to lapse and he would also need to complete additional continuing education and renew his lapsed land surveyor's license before performing any land surveying work. (Testimony of Respondent)

8. The Board submitted the correspondence and work sheets received from the Respondent on August 9 and October 18, 2000 to the PRC for their review. The PRC was asked for its opinion as to the Respondent's ability to comply with the Consent Order. The PRC prepared a report, dated January 5, 2001, based on its review of the additional information. The Respondent's own submissions and testimony, the latest PRC report, and the testimony of its chairperson, J. Leroy Nugteren, established the following:

a. Although the terms of the Settlement Agreement and Consent Order were discussed with the Respondent and he reviewed and signed the document, the Respondent does not understand what actions are required of him as a result of the Order.

b. The Respondent does not understand the rules of evidence in re-establishing a section corner, ignores significant field evidence as to the location of the corners, and appears unable to supply a proper corner certificate which will meet the requirements of the Iowa Code.

The Respondent does not have sufficient understanding of the current statutes and administrative rules governing the practice of land surveying to be able to comply with them. (Testimony of J. Leroy Nugteren; Respondent; State Exhibits 5-10)

CONCLUSIONS OF LAW

COUNT I

Count I charged the Respondent with failure to comply with a Board decision imposing discipline by failing to submit corrected plats of survey and associated corner certificates to Peer Review by June 15, 2000, contrary to the December 16, 1999 Consent Order, in violation of Iowa Code section 272C.3(2) (a) (1999).

Iowa Code section 272C.3(2)(a)(1999) provides, in relevant part:

2. Each licensing board may impose one or more of the following as licensee discipline:

a. Revoke a license, or suspend a license either until further order of the board or for a specified period, ...upon failure of the licensee to comply with a decision of the board imposing licensee discipline.

The preponderance of the evidence established that the Respondent has failed to comply with the Settlement Agreement and Consent Order of the Board, approved on December 16, 1999. The Respondent has not submitted corrected plats of survey and associated corner certificates to the Peer Review Committee, which he was required to do by June 15, 2000.

While the Respondent's testimony certainly raised questions as to whether he has also performed additional surveys without the required desk review, this violation was not proven by a preponderance of the evidence. Given the Respondent's apparent confusion about dates, the Board was unable to conclude that surveys were performed after the effective date of the desk review requirement.

COUNT II

Count II charged the Respondent with failure to demonstrate, in the documents he did belatedly submit to the Board, a reasonable ability to perform in the manner necessary to assure the residents of this state a high standard of professional care and adherence to land surveying standards, in violation of Iowa Code sections 272C.3(2)(b), 542B.21(2) and 542B.21(3) (1999).

Iowa Code section 272C.3(2)(b) provides:

2. Each licensing board may impose one or more of the following as licensee discipline:

b. Revoke, or suspend either until further order of the board or for a specified period, the privilege of a licensee to engage in one or more specified procedures, methods, or acts incident to the practice of a profession, if pursuant to a hearing...the board finds that because of a lack of education or experience, ...the licensee has demonstrated a lack of qualifications which are necessary to assure the residents of this state a high standard of professional and occupational care.

Iowa Code section 542B.21(2) and (3) provides, in relevant part:

542B.21 Suspension, revocation or reprimand.

The board shall have the power by a five-sevenths vote of the entire board to suspend for a period not exceeding two years, or to revoke the certificate of licensure of, or to reprimand any licensee who is found guilty of the following acts or offenses:

...

2. Professional incompetency.
3. ...engaging in...practice harmful to the public.
Proof of actual injury need not be established.

The preponderance of evidence established that the Respondent lacks the qualifications, either through education and/or experience, to assure the residents of this state a high standard of professional and occupational care in the practice of land surveying, in violation of Iowa Code section 272C.3(2)(b)(1999). The preponderance of the evidence also established that the Respondent is professionally incompetent to perform as a licensed land surveyor and has engaged in practices which are potentially harmful to the public interest, in violation of Iowa Code section 542B.21(2) and (3)(1999).

The Respondent has had more than nine months beyond the deadline stated in the Settlement Agreement and Consent Order to correct the deficiencies noted by the Peer Review Committee in his plats of survey. His attempts to correct the deficiencies were insufficient, and his own testimony has convinced the Board that the Respondent does not know or understand the applicable land surveying standards. The Respondent is currently incapable of complying with the Settlement Agreement and Consent Order and lacks the knowledge and experience necessary to correct his plats of survey so that they comply with all of the requirements of the Iowa Code and Iowa Administrative Code. Given the Respondent's lack of knowledge and experience in the fundamentals of land surveying, it is not in the public interest, nor is it in the Respondent's interest, for the Respondent to renew his lapsed license for the limited purpose of correcting the surveys.

ORDER

IT IS THEREFORE ORDERED, that Iowa professional land surveying license number 4838, issued to Marvin McGahuey, is hereby REVOKED for a minimum period of three (3) years.

IT IS FURTHER ORDERED, that the Board will not consider a request for reinstatement of license by the Respondent until he has successfully completed the six hour Principles and Practice of Land Surveying examination and the Iowa Specific Land Surveying examination.

IT IS FURTHER ORDERED, pursuant to Iowa Code section 272C.6(6) and 193C IAC 4.51, that the Respondent shall pay a hearing fee of \$75.00, within thirty (30) days of the service of this order. Payment shall be made in the form of a check or money order made payable to the state of Iowa and delivered to the professional licensing and regulation division.

Dated this 25th day of April, 2001.

[REDACTED]
Dwayne Q. Garber, P.E./L.S.V Chairperson
Iowa Engineering and Land Surveying Examining Board

cc: Marvin McGahuey
406 South Lincoln St.
Corydon, IA 50060
(CERTIFIED)

Pamela Griebel
Assistant Attorney General
Department of Justice
Hoover State Office Building
(LOCAL)

PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause by depositing a copy thereof in the U.S. Mail, postage prepaid, in envelopes addressed to each of the attorneys of record herein at their respective addresses disclosed on the pleadings, on April 25, 2001.

Any party to a contested case proceeding may file an application for rehearing from a final order. The application shall be filed with the board within 20 days after issuance of the final decision, and a copy shall be timely mailed to all parties of record not joining therein. The application for rehearing shall state on whose behalf it is filed, the specific grounds for rehearing, and the relief sought. In addition, the applicant shall state whether the applicant desires reconsideration of all or a part of the board decision on the existing record and whether, on the basis of grounds enumerated in subrule 4.41(4), the applicant requests an opportunity to submit additional evidence. 193C IAC 4.42.

Judicial review of the Board's action may be sought in accordance with the terms of the Iowa administrative procedure Act, from and after the date of this final order. 193C IAC 4.46.