

FILED 9/11/2003 (Date)

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BEFORE THE ENGINEERING AND LAND SURVEYING BOARD/Commission BOARD  
OF THE STATE OF IOWA  
Signature. Executive Officer

IN THE MATTER OF:	)	
	)	DIA NO. 03DOCEL003
HARLAN K. SCHUCK	)	
903 Wemple	)	FINDINGS OF FACT,
Parkersburg, IA 50655	)	CONCLUSIONS OF LAW,
	)	DECISION AND ORDER
	)	
RESPONDENT	)	

On May 23, 2003, the Iowa Engineering and Land Surveying Examining Board (Board) filed a Statement of Charges against Harlan K. Schuck, L.S. (Respondent). The Statement of Charges alleged that the Respondent violated Iowa Code sections 272C.3(2)(b); 272C.4(6); 272C.10(2)&(3); 542B.21(2)&(3); and 193C IAC 4.3, when he prepared plats of survey and corner certificates without complying with the minimum land surveying standards set forth in Iowa Code chapters 354 and 355(2001) and 193C IAC chapter 2.

A Notice of Hearing was issued setting the hearing for July 10, 2003. A telephone prehearing conference was held on July 1, 2003 at 1:30 p.m. The state submitted a Prehearing Conference Report, Amended Prehearing Conference Report, and Second Amended Prehearing Conference Report and exhibits 1-15. The Respondent later provided notice to the state that he intended to offer exhibits A-C.

The hearing was held on July 10, 2003 at 2:00 p.m. in the conference room at the Iowa Department of Commerce, 1920 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)(2003). The following Board members were present for the hearing: Forrest M. Holly, Jr., P.E., Chairperson; Dennis E. Osipowicz, P.E./L.S.; Susan Long, P.E.; Randall Beavers, P.E.; Diana E. Hoogestraat and Susan Albright, public members. 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 testimony was recorded by a certified court reporter.

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)(2003). 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, Amended Prehearing Conference Report, Second Amended Prehearing Conference Report, the testimony of the witnesses, and the following exhibits:

- State Exhibit 1: Notice of Hearing, Statement of Charges, Proof of Service
- State Exhibit 2: Complaint #1, 1/18/02
- State Exhibit 3: Letter to Peer Review, 5/9/02
- State Exhibit 4: Complaint #2, 12/22/02
- State Exhibit 5: Letter to Peer Review, 3/13/03
- State Exhibit 6: Peer Review Report, 5/4/03
- State Exhibit 7: Cautionary Letter to Respondent, 2/28/95
- State Exhibit 8: Statement of Charges, 2/18/99
- State Exhibit 9: Settlement Agreement and Consent Order
- State Exhibit 10: Iowa Code Chapters 354 and 355(2003)
- State Exhibit 11: 193C IAC chapter 2 (prior to 11/14/01)
- State Exhibit 12: 193C IAC chapters 11 and 12 (as of 11/14/01)
- State Exhibit 13: Sealing/certification rules
- State Exhibit 14: 193C IAC 4.3 (prior to 11/14/01)

State Exhibit 15: Letter dated 6/25/03 (Sindelar, P.E. to Griebel); Letter dated 6/27/03 (Gallentine, L.S. to Griebel); Letter dated 6/30/03 (Sindelar, P.E. to Griebel)

Respondent Exhibit A: Plat of Survey, 5/9/99

Respondent Exhibit B: Plat of Survey, 9/4/99

Respondent Exhibit C: Plat of Survey, 11/21/99

#### FINDINGS OF FACT

1. The Respondent has worked as a land surveyor since 1973. On June 17, 1982, the Respondent was issued Iowa professional land surveying license number 9962 by the Board. Registration number 9962 is currently in active status. The Respondent is employed by Ryken Engineering. (Testimony of Respondent; State Exhibit 1)

#### *Prior Disciplinary History*

2. On February 28, 1995, the Board sent the Respondent a cautionary letter, which informed him that a pending complaint against him would be closed but which warned him that the complaint could be reconsidered if the Board received additional information. The cautionary letter urged the Respondent to use his Board approved checklist when preparing survey documents. The letter also cautioned the Respondent to pay close attention to all of the requirements in the Iowa Code, particularly chapters 354 and 355 and 193C IAC chapter 2. (State Exhibit 7)

3. On February 18, 1999, the Board filed a Statement of Charges charging the Respondent with professional incompetency and careless acts and omissions. The Board alleged that the Respondent prepared plats of survey that were noncompliant with the minimum land surveying standards set forth in Iowa Code chapters 354 and 355(1997). (State Exhibit 8)

On June 14, 1999, the Respondent signed a Settlement Agreement and Consent Order, which was approved by the Board on June 17, 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. The Respondent was required to submit corrected plats of survey with associated corner certificates and affidavits to the Peer Review Committee by September 30, 1999.

b. The Respondent was required to develop a desk review consultation agreement with a licensed Iowa land surveyor, effective July 16, 1999. The Respondent was permitted to petition for release from desk review after ten plats of survey were reviewed.

(State Exhibit 9)

*The Current Violations*

4. On January 23, 2002, the Board received a complaint from a licensed land surveyor asserting that the Respondent had not complied with the minimum standards for property surveys and corner certificates when preparing plats of survey in Chickasaw County. The Complainant attached two plats of survey, which were signed and sealed by the Respondent in August 2001. (State Exhibit 2). On May 10, 2002, the Board notified the Respondent that this complaint was being assigned to a peer review committee. (State Exhibit 3)

5. On December 22, 2002, the Board received a second complaint concerning the Respondent. The second complaint was submitted by Lee Gallentine, L.S., a 25% owner of the Respondent's employer, Ryken Engineering. Mr. Gallentine attached more than 25 plats of survey that had been filed by the Respondent in Butler and Grundy Counties between March 2000 and November 2002. Mr. Gallentine asserted that all of the plats of survey failed to meet the minimum standards for plats of survey and corner certificates. Mr. Gallentine provided a summary of the deficiencies that he identified for each plat. (State Exhibit 4)

On March 13, 2003, the Board sent the second complaint and attached plats of survey to the peer review committee. (State Exhibit 5)

6. On May 4, 2003, the three members of the Peer Review Committee issued their Final Report. Lawrence Boyer, L.S., the chairman of the Peer Review Committee, testified and explained the basis for the committee's opinions. The Peer Review Committee reviewed the two plats of survey submitted with the first complaint (marking them Exhibits A and B) and also obtained two additional plats of survey filed by the Respondent in Grundy County in June 2002 (marked as Exhibits C and D).

The Peer Review Committee Report listed numerous serious deficiencies in all four plats of survey. The most serious deficiencies included:

- a. Lines and centerlines that were not retraced, located, and connected by monuments, in violation of 193C IAC 2.3, and 2.5(5) and Iowa Code sections 355.4, 355.7(5), and 355.7(8);
- b. Incomplete descriptions. Plat and description do not identify boundary lines, centerlines, right of way lines, and/or points of beginning, in violation of 193C IAC 2.4 and Iowa Code section 355.9;
- c. Failure to show monuments on the plats, in violation of 193C IAC 2.5(3) and Iowa Code sections 355.6 and 355.7(7);
- d. Failure to show monumented land lines identified by two corners, in violation of 193C IAC 2.5(6) and Iowa Code sections 355.5, 355.7(5), and 355.7(8);
- e. Failure to show bearings, in violation of 193C IAC 2.6(7) and Iowa Code section 355.7(6).
- f. Failure to file U.S. Public Land Corner Certificates, in violation of 193C IAC 2.8 and Iowa Code section 355.11.

In addition, numerous less serious deficiencies were also noted by the committee:

- a. Information block not shown, in violation of 193C IAC 1.30;

- b. Plat is not drawn to a convenient scale, in violation of 193C IAC 2.5(1);
- c. Abbreviation of D.O.S. is not sufficient to define date of survey without notation in legend, in violation of 193C IAC 2.5(4);
- d. Distances not shown to the nearest one-tenth foot, in violation of 193C IAC 2.6(7).

The Peer Review Committee also reviewed the numerous plats of survey attached to Mr. Gallentine's complaint. The Peer Review Committee agreed fully with Mr. Gallentine's assessment of the deficiencies in the 25+ plats of survey attached to his complaint and noted that additional deficiencies could also be identified.

The Peer Review Committee concluded that the Respondent's violations of the requirements of the Iowa Code and Iowa Administrative Code are very serious and are harmful to the landowners and to the public in general because poorly surveyed and described land results in gaps, overlaps, and uncertainties. The Peer Review Committee further concluded that the Respondent is not competent to perform land surveys or to correct the plats of surveys at issue in this hearing without perpetuating the same or similar errors. (State Exhibit 6; Testimony of Lawrence Boyer)

7. The numerous plats of survey submitted by Lee Gallentine with his complaint had the same types of serious deficiencies as the plats included with the first complaint. The deficiencies included, in part: failure to file corner certificates, failure to retrace lines to any monumentation at the logical termini, failure to indicate the extent of the search made before remonumenting a corner, and failure to show distances to right of way monuments to the nearest 1/10<sup>th</sup> of a foot.

In Mr. Gallentine's opinion, the Respondent is not currently competent to perform the work of a licensed land surveyor, though it is unclear whether this is due to a lack of knowledge, a lack of due care, or intentional violations of the minimum standards. Although one of the owners of Ryken Engineering originally suggested that Mr. Gallentine could review the Respondent's plats of survey as a condition of probation, Mr.

Gallentine is unwilling to serve in this capacity. (Testimony of Lee Gallentine; State Exhibits 4, 15)

CONCLUSIONS OF LAW

I. Applicable Law and Rules

Iowa Code section 272C.3(2)(b)(2001) provides, in relevant part:

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 the profession, if pursuant to hearing...the board finds that because of a lack of education or experience, or because of negligence, careless acts or omissions, or because of one or more intentional acts or omissions, 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 272C.4(6)(2001) provides, in relevant part:

Each licensing board shall have the following duties in addition to other duties specified by this chapter or elsewhere in the Code:

...

6. Define by rule acts or omissions which are grounds for revocation or suspension of the license under section ...542B.21..and to define by rule acts or omissions which constitute negligence, careless acts or omissions within the meaning of section 272C.3, subsection 2, paragraph "b", which licensees are required to report to the board pursuant to section 272C.9, subsection 2;

Iowa Code section 272C.10(2) and (3)(2001) provide in relevant part:

A licensing board established after January 1, 1978 and pursuant to the provisions of this chapter shall by rule include provisions for the revocation or suspension of a license which shall include but is not limited to the following:

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

...

Iowa Code section 542B.21 (2) and (3) (2001) provide, 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.

193C IAC 4.3 was in effect prior to November 14, 2001. It provided that any acts or offenses defined in Iowa Code section 542B.21 constitute grounds for reprimand, period of probation, license suspension or license revocation. (State Exhibit 14).

The standards for platting and for land surveying are set out in Iowa Code chapters 354 and 355. Prior to November 14, 2001, the Board promulgated Minimum Standards for Property Surveys at 193C IAC chapter 2. (State Exhibit 11). After November 14, 2001, the Minimum Standards for Property Surveys are found at 193C IAC chapters 11 and 12. (State Exhibit 12).

## II. The Violations

The preponderance of evidence established that due to either negligence or careless acts or omissions the Respondent has demonstrated a lack of qualifications which are necessary to assure the residents of this state a high standard of



professional and occupational care, in violation of Iowa Code section 272C.3(2)(b)(2001). 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 harmful to the public interest, in violation of Iowa Code sections 272C.10(2) and (3) and 542B.21(2) and (3)(2001).

More than thirty plats of survey prepared by the Respondent contain numerous and repeated violations of the minimum standards of land surveying including, but not limited to:

- a. Failure to retrace lines, located and connected by monuments, as required by 193C IAC 2.3, 2.5(5) and Iowa Code sections 355.4, 355.7(5), and 355.7(8);
- b. Incomplete descriptions and plats that do not identify boundary lines, centerlines, right of way lines, and point of beginning, as required by 193C IAC 2.4 and Iowa Code section 355.9;
- c. Failure to show monuments at all appropriate locations, as required by 193C IAC 2.5(3) and Iowa Code sections 355.6 and 355.7(7);
- d. Plats that do not show a monumented land line identified by two corners, as required by 193C IAC 2.5(6) and Iowa Code section 355.5, 355.7(5), and 355.7(8);
- e. Failure to show bearings, as required by 193C IAC 2.6(7) and Iowa Code section 355.7(6); and
- f. Failure to file all required U.S. Public Land Corner Certificates, as required by 193C IAC 2.8 and Iowa Code section 355.11.

### III. Sanction

In determining the appropriate sanction, the Board considered a number of factors, including the number and severity of the violations, the risk of harm to the public, and the Respondent's disciplinary history. The Respondent has previously been cautioned and then formally disciplined for the same types of violations. The previous sanctions were clearly ineffective to

bring the Respondent into compliance with minimum standards and prevent future violations.

The Board was dismayed that the Respondent defended or explained his own serious and pervasive failures to conform to minimum standards of land surveying by pointing to deficient plats of survey prepared by other land surveyors. The Respondent failed to demonstrate any appreciation for his professional obligations as a licensed land surveyor. The public expects plats of survey prepared by licensed land surveyors to be accurate. It is obvious that the Respondent's plats of surveys are not accurate and that they are misleading to the public.

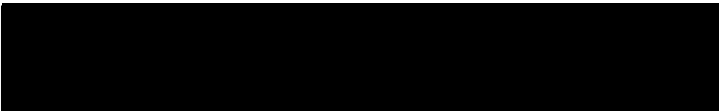
ORDER

IT IS THEREFORE ORDERED, that Iowa professional land surveying license number 9962, issued to Harlan K. Schuck, is hereby REVOKED.

IT IS FURTHER ORDERED that before the Respondent's license will be reinstated, he must meet the requirements of 193 IAC 7.38 by establishing that the basis for the revocation no longer exists and that it is in the public interest for his license to be reinstated.

IT IS FURTHER ORDERED, pursuant to Iowa Code section 272C.6(6) and 193 IAC 7.41, 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. The Respondent will also be responsible for paying all applicable costs of the transcript and services of the court reporter and all witness fees and expenses. The amount of the additional fees and expenses, if any, is itemized and attached to this Order.

Dated this 11<sup>th</sup> day of September, 2003.

  
Dennis Osipowicz, P.E./L.S., Chairperson  
Iowa Engineering and Land Surveying Examining Board

DIA No. 03DOCEL003

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cc: Harlan K. Schuck  
903 Wemple  
Parkersburg, IA 50655  
(CERTIFIED)

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

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. Consistent with Iowa Code section 17A.19(3), if a party does not file a timely application for rehearing, a judicial review petition must be filed with the district court within 30 days after issuance of the board's final decision. 193 IAC 7.37.