

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

IN THE MATTER OF:

**JAMES LEE WHEAT
PO Box 454
401 Park Avenue
Red Oak, IA 51566**

RESPONDENT

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**CASE NO. 99-01
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 May 18, 1995, the Board issued the Respondent, Iowa professional land surveying license number 13289.
4. Respondent's professional land surveying license lapsed December 31, 1998.
5. All remaining code citations are 1997 Code of Iowa.

Count I

Respondent is charged with professional incompetence, careless acts and omissions, deception or fraudulent practices, 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 4.2(2) and 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.

COUNT II

Respondent is charged with practicing land surveying, including the certification of plats of survey, after his license had expired in violation of 542B.1, 542B.16, 542B.18, 542B.21(3), 542B.27(f), 272C.10(3), and 193C IAC 1.30 and 4.8(5).

Circumstances

1. The Board received a complaint regarding Respondent's land surveying practices in February 1999.
2. In a letter dated April 27, 1999, the Board informed the respondent that a complaint had been received alleging noncompliance with the minimum standards for land surveying, that his seal and certificate of responsibility are not in compliance with 193C IAC 1.30(542B), and that the Board had established a Peer Review Committee to investigate the complaint and prepare a report to the Board.
3. The Peer Review Committee issued its report on June 16, 1999.
4. The Peer Review Committee report concluded that all plats reviewed contained numerous violations of minimum standards mandated by 193C IAC Chapter 2 and Iowa Code Chapter 355.
5. Respondent's land surveying practice has demonstrated such consistent and pervasive careless acts and omissions as to indicate his inability to practice in a manner protective of the public interest.
6. The following plats of survey for Sections 13, 15 & 22, Township 71N, Range 42 West in Mill County demonstrate carelessness and omissions including, but not limited to:
 - (a) Sections 15 & 22, Sheet 1 of 9
 - (1) Certification statement not current, seal with "registered" is obsolete. 193C IAC 1.30
 - (2) Carelessness in spelling and use of words. 193C IAC 4.3
 - (3) Fraudulent representation that section corners exist. Iowa Code § 272C.10(3) and 542B.21(3)
 - (4) Fraudulent representation that license is current and renewable 12/31/99 when lapsed 12/31/98. See Count II above.

(b) Sections 15 & 22-71-42, Sheets 2 & 2a of 9

- (1) No control monument on ROW line near SW corner of SE ¼ SW ¼ of Section 15. Iowa Code § 355.6(2)(b)
- (2) Some U.S. Public Land Survey System (USPLSS) corners not identified. Iowa Code § 355.7(8).
- (3) Monumentation found or set not properly described. 193C IAC 2.5(3)
- (4) Retracement of record title boundaries not shown. 193C IAC 2.5(5)
- (5) Carelessness with errors in description and wrong acreage reported. 193C IAC 4.3
- (6) Description not unequivocal. 193C IAC 2.4
- (7) – (10) Same as (1) – (4) in (a) above.

(c) Section 15-41-72, Sheet 3 of 9

- (1) Several control corners not found or set. Iowa Code § 355.6(1)&(2)(b).
- (2) Some USPLSS corners not identified. Iowa Code § 355.7(8).
- (3) No bearing shown on south line Parcel B. Iowa Code § 355.7(6).
- (4) Signature not dated. Iowa Code § 355.7(15).
- (5) Does not provide accurate description of each parcel. Iowa Code § 354.4(1)(c)
- (6) Description is not unequivocal. 193C IAC 2.4
- (7) Monumentation found or set not properly described. 193C IAC 2.5(3)
- (8) Retracement or record title boundaries not shown. 193C IAC 2.5(5)
- (9) Carelessness with errors in description, plat does not close by 15 feet, road ROW not shown, and unnecessary information. 193C IAC 4.3
- (10) - (13) Same as (1) – (4) in (a) above.

(d) Section 15-71-42, Sheet 4 of 9

- (1) Control monuments and USPLSS corners not identified. Iowa Code § 355.7(8) and (9)
- (2) Description not unequivocal. 193C IAC 2.4
- (3) Monumentation found or set not properly described. 193C IAC 2.5(3)
- (4) Retracement of record title boundaries not shown. 193C IAC 2.5(5)
- (5) – (8) Same as (1) – (4) in (a) above.

(e) Section 15-71-42, Sheet 5 of 9

- (1) Control monuments and USPLSS corners not identified. Iowa Code § 355.7(8) & (9).

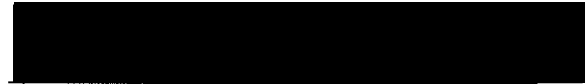
- (2) Monumentation found or set not properly described. 193C IAC 2.5(3)
 - (3) Retracement of record title boundaries not shown. 193C IAC 2.5(5)
 - (4) Carelessness with unnecessary information being misleading. 193C IAC 4.3
 - (5) – (8) Same as (1) – (4) in (a) above.
- (f) Section 22-71-42, Sheet 6 of 9
- (1) Control monuments and USPLSS corners not identified. Iowa Code § 355.7 (8) & (9)
 - (2) Monumentation found or set not properly described. 193C IAC 2.5(3)
 - (3) Retracement of record title boundaries not shown. 193C IAC 2.5(5)
 - (4) Carelessness with error in description, correlation of information with other plats, and plat does not close by 2 feet. 193C IAC 4.3
 - (5) – (8) Same as (1) – (4) in (a) above.
- (g) Section 22-71-42, Sheet 7 of 9.
- (1) Some control monuments not shown. Iowa Code §§ 355.6(1)
 - (2) Control monuments and USPLSS corners not identified. Iowa Code § 355.7 (8) & (9)
 - (3) Description not unequivocal. 193C IAC 2.4
 - (4) Monumentation found or set not properly described. 193C IAC 2.5(3)
 - (5) Retracement of record title boundaries not shown. 193C IAC 2.5(5)
 - (6) Carelessness with errors in description and misleading information. 193C IAC 4.3
 - (7) – (10) Same (1) – (4) in (a) above.
- (h) Section 22-71-42, Sheet 8 of 9
- (1) Control monuments and USPLSS corners not identified. Iowa Code § 355.7(8) & (9)
 - (2) Bearing on 100 feet course on north line not shown. Iowa Code § 355.7(6)
 - (3) Description not unequivocal. 193C IAC 2.4
 - (4) Monumentation found or set not properly described. 193C IAC 2.5(3)
 - (5) Retracement of record title boundaries not shown. 193C IAC 2.5(5)
 - (6) Carelessness with errors in description and no road ROW data. 193C IAC 4.3
 - (7) – (10) Same as (1) – (4) in (a) above.
- (i) Section 22-71-42, Sheet 9 of 9

- (1) Some control monuments set by surveyor not capped. Iowa Code § 355.61 (1)
 - (2) Control monuments and USPLSS corners not identified. Iowa Code § 355.7 (8) & (9)
 - (3) Monumentation found or set not properly described. 193C IAC 2.5(3)
 - (4) Retracement of record title boundaries not shown. 193C IAC 2.5(5)
 - (5) Carelessness with errors in description and information on plat. 193C IAC 4.3
 - (6) – (9) Same as (1) – (4) in (a) above
- (j) Sections 15 & 22-71-42
- (1) Failed to file US public land survey corner certificates. Iowa Code § 355.11(1)
 - (2) Professional incompetence in general land surveying procedures and specifically in resetting the N ¼ of Section 22. Iowa Code § 272C.10(2)
- (k) Section 13-71-42, Sheet 2 of 4
- (1) Control monuments and USPLSS corners not identified. Iowa Code § 355.7(8) & (9)
 - (2) Date of field survey not shown Iowa Code § 355.7 (14)
 - (3) No Control monuments on ROW line near east line of Section 13. Iowa Code § 355.6(2)(b)
 - (4) Description not unequivocal. 193C IAC 2.4
 - (5) Carelessness with errors in description and plat does not close by 2.7 feet. 193C IAC 4.3
 - (6) Same as (4) in (a).
- (l) Section 13-71-42, Sheet 3 of 4
- (1) Same as (1) in (k).
 - (2) Same as (2) in (k).
 - (3) Same as (4) in (k)
 - (4) Same as (4) in (a)
- (m) Section 13-71-42, Sheet 4 of 4
- (1) Same as (1) in (k).
 - (2) Same as (2) in (k)
 - (3) Retracement of record title boundaries not shown. 193C IAC 2.5(5)
 - (4) Same as (4) in (k)
 - (5) Same as (4) in (a).
- (n) Failed to file US public land survey corner certificates. Iowa Code § 355.11(1)

7. Respondent repeatedly failed to show retracement of record title boundaries in violation of Iowa Code § 355.4 and provide unequivocal descriptions in violation of Iowa Code § 355.9.

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 2nd day of August, 1999.

A solid black rectangular box used to redact the signature of Gleeen M. Coates.

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

FINDING OF PROBABLE CAUSE

On July 15, 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:

**JAMES LEE WHEAT
P.O. Box 454
401 Park Avenue
Red Oak, Iowa 51566**

RESPONDENT

CASE NO. 99-01

**SETTLEMENT AGREEMENT AND
CONSENT ORDER**

The Iowa Engineering and Land Surveying Examining Board (Board) and James Lee Wheat (Respondent) enter into this Settlement Agreement and Consent Order, 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 was a licensed land surveyor in Iowa until his license lapsed effective December 31, 1998.

3. On August 2, 1999, the Board filed a Notice of Hearing and Statement of Charges, setting hearing for September 17, 1999.

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. Reinstatement

Respondent shall take all steps necessary to reinstate his land surveying license no later than October 1, 1999.

B. Restricted License

Respondent's reinstated license shall not entitle him to generally practice land surveying in the state of Iowa. The sole purpose of reinstating Respondent's license is to provide him an opportunity to address the concerns raised by the Peer Review Committee on the plats which form the basis of the charges. Respondent may take such steps as are reasonably necessary to fulfill the remedial steps outlined below, but he agrees not to otherwise practice land surveying in the state of Iowa.

C. Remedial Action

After Respondent has reinstated his land surveying license, he shall take such steps as are necessary to assure the plats which formed the basis of the charges comply with minimum land surveying standards. By November 15, 1999, Respondent shall submit to the Peer Review Committee (comprised of David L. Wilberding, Chair, Leon Cornelis, and David Hiller) corrected plats of survey with associated corner certificates and affidavits, as more fully described in the Peer Review Report dated June 16, 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 Peer Review Report have been addressed in conformance with Iowa Code chapters 354, 355, and 542B, 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.

D. Costs

Respondent shall be responsible for the costs incurred by the Peer Review Committee solely for the review described in Section D 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.

E. Voluntary Surrender

Immediately after Respondent has fulfilled the remedial steps outlined above, he will voluntarily surrender his land surveying license and will return his certificate to the Board office.

F. Future Reinstatement

Following the surrender of his land surveying license, Respondent shall not file an application for reinstatement pursuant to 193C IAC 4.49 for at least one year. If Respondent files an application for reinstatement the Board may consider the nature and seriousness of the charges, Respondent's compliance with the remedial provisions outlined above, and any land surveying courses completed in determining whether and upon what terms reinstatement should be allowed. If reinstatement is allowed at any point in the future, Respondent understands that at a minimum he will be required to 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 be required to submit for pre-release review all surveys he prepares after the date his license is reinstated for the time period described below.
- (2) An executed copy of the agreement must be submitted to the Board prior to implementation of the agreement. The desk review agreement may be in letter form, but must attach a copy of this Consent Order and the order reinstating Respondent's license.
- (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 be required to generally perform field work, but the reviewer must at least spot check the accuracy of Respondent's field work. The reviewer will not, however, warrant the accuracy of Respondent's work product. The reviewer shall 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, and shall describe any field work reviewed.
- (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 twenty plats of survey have been reviewed which qualify as division surveys under Iowa Code section 354.4, and which are not retracement surveys, Respondent

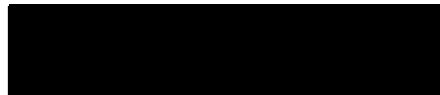
may petition the Board for release from this requirement. The Board shall release Respondent from desk review of surveys if the draft surveys (i.e., those prepared prior to receiving the reviewer's comments) and review comments do not reveal serious deviations from minimum surveying standards, and Respondent is otherwise in compliance with all terms of the order reinstating his license. 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, although the Board will give appropriate weight to Respondent's progression in the mentoring, educational process. 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.

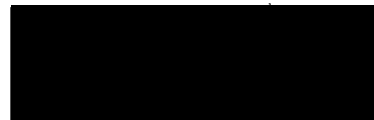
AGREED AND ACCEPTED:

The Respondent

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



James Lee Wheat



By: Susan M. Long, Chair

Sept. 2, 1999
Date

10/29/99
Date

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

IN THE MATTER OF:

JAMES LEE WHEAT
P.O. Box 454
401 Park Avenue
Red Oak, IA 51566

Respondent

CASE NO. 99-01

SETTLEMENT AGREEMENT
AND CONSENT ORDER
ADDENDUM

The Iowa Engineering and Land Surveying Examining Board and James Lee Wheat (Respondent) have agreed to this addendum to the Settlement Agreement and Consent Order attached hereto.

Respondent agrees that as a condition of reinstatement following the surrender of his land surveying license, Respondent shall complete the Professionalism and Ethics in Surveying correspondence course through New Mexico State University or the University of Maine.

Agreed and accepted:

The Respondent

The Iowa Engineering and Land
Surveying Examining Board

James Lee Wheat

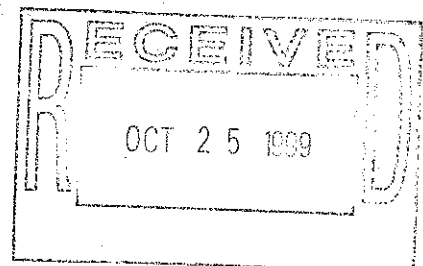
Date

10-20-99

By: Susan M. Long, Chair

Date

10/29/99



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

| | | |
|-------------------|---|--------------------------|
| IN THE MATTER OF: |) | CASE NO. 99-01 |
| |) | |
| JAMES LEE WHEAT |) | |
| P.O. Box 454 |) | |
| 401 Park Avenue |) | VOLUNTARY LICENSE |
| Red Oak, IA 51566 |) | SURRENDER AND |
| |) | CONSENT ORDER |
| RESPONDENT |) | |

NOW on this 16th day of December, 1999, the Iowa Engineering and Land Surveying Examining Board (Board), upon the request of James Lee Wheat (Wheat) that he be allowed to voluntarily surrender his land surveying license, FINDS as follows:

1. On August 2, 1999, the Board charged Wheat with violations of laws and rules administered by the Board involving Wheat's practice of land surveying in Iowa.
2. On October 29, 1999, the Board entered an Order with Wheat's consent which required Wheat to reinstate his land surveying license and take such steps as are necessary to assure that the plats which form the basis of the charges comply with minimum land surveying standards. Wheat was required to submit corrected plats of survey with associated corner certificates and affidavits to the Peer Review Committee by November 15, 1999.
3. By letter dated November 15, 1999, Wheat advised the Board that he is unable to comply with the terms of the Consent Order.
4. Wheat offered, in the alternative, to arrange at his expense for new surveys by a licensed land surveyor.
5. Under the circumstances described in Wheat's letter the Board believes the suggested alternative will satisfy the public interest if:
 - a. Wheat verifies that a licensed land surveyor has been retained to correct the plats described in the Peer Review Report dated June 16, 1999;

- b. The surveyor retained files written acknowledgment with the Board that new surveys will be completed and filed of record;
- c. Wheat surrenders his land surveying license and returns his certificate to the Board office; and
- d. Wheat agrees not to seek reinstatement of his land surveying license in Iowa at any point in the future.

6. If the four steps outlined above are completed by January 14, 2000, the Board will accept Wheat's proposal and consider this matter closed. If the four steps are not completed by January 14, 2000, the Board reserves the right to file new charges alleging noncompliance with the October 29, 1999, Consent Order.

7. By signing this revised Order Wheat waives all rights to a hearing and all attendant rights on his noncompliance with the October 29, 1999, Consent Order and agrees this revised Order shall be treated for all purposes as final agency action in a contested case on Wheat's noncompliance with the October 29, 1999, Consent Order.

IT IS THEREFORE ORDERED that Wheat shall comply with all four steps outlined in paragraph 5 above on or before January 14, 2000. If timely completed, this Order shall resolve all issues concerning Wheat's noncompliance with the October 29, 1999, Consent Order and this case shall be closed. If the above steps are not satisfactorily completed by January 14, 2000, the Board may declare this Order void and set hearing on Wheat's noncompliance with the October 29, 1999, Consent Order.

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

By: Susan M. Long, Chair
December 16th, 1999

Approved as to Form and Content:

James Lee Wheat

Date: 12-13-99