

BEFORE THE IOWA ENGINEERING AND LAND SURVEYING EXAMINING BOARD

In the Matter of:) Case No. 08-29
)
John Winkel)
d/b/a Winkel Design Forum) CONSENT ORDER
3810 River Ridge Dr. NE)
Cedar Rapids, IA 52402)
Respondent.)

The Iowa Engineering and Land Surveying Examining Board (Board) and John Winkel d/b/a Winkel Design Forum (Winkel) agree to the following Consent Order:

1. The Board has jurisdiction over this matter pursuant to Iowa Code section 542B.27, which grants the Board administrative authority to impose civil penalties on persons engaging in the practice of professional engineering without proper licensure.
2. Winkel designed the Blessed Hope Church in Vinton, Iowa, a church structure that is more than two thousand square feet in gross floor area. As a result of the architectural services Winkel performed that must under Iowa law be performed by a registered architect or licensed professional engineer, he entered into a Consent Order with the Iowa Architectural Examining Board on March 9, 2010.
3. As part of the Consent Order with the Architectural Examining Board, Winkel agreed to retain a registered architect to perform review services in addressing matters related to health, life, safety and welfare, including compliance with applicable Code requirements; structural compliance on matters not covered by plans certified by a professional engineer; mechanical, ventilation, plumbing, and electrical compliance; fire resistivity; handicap accessibility; and proper ingress and egress patterns.
4. The Architectural Examining Board also referred this matter to the Board, given concerns raised in its investigation with structural engineering aspects of the church design.
5. The Board recently received an investigative report from its retained expert. The expert identified several concerns about matters constituting the practice of professional engineering that were not designed by a professional engineer.
6. Specifically, no information was brought to the expert's attention indicating that anyone had completed a lateral load design or analysis for the building, including

lower level interior load-bearing walls, exterior walls, wood headers, and steeple. Nor was the expert presented with any record of mechanical, electrical, or plumbing design by a professional engineer. No documents were submitted to the City of Vinton with design loads pertinent to the structural design on the construction documents. The building did not comply with the limitations of IBC 2006, Section 2308 (Conventional Light-Frame Construction) which may have prescribed certain requirements.

7. It appears there was no professional engineer in responsible charge of the design of the church. Professional engineers provided only limited scope services including the foundation, wood floor and roof trusses, and canopy.

8. In the expert's opinion, the structural design required the services of a professional engineer and the lack of such services raises concerns about the safety of the building's structure.

9. The State Fire Marshall has identified a number of Code violations relating to fire safety. The State Fire Marshall's office did not examine load calculations or other aspects of structural engineering.

10. While the existing Consent Order between Winkel and the Iowa Architectural Examining Board refers to structural design, the matters described in this Consent Order constitute the practice of professional engineering and would not be addressed by a registered architect who was not also a professional engineer. The architect identified by Winkel to the Architect Board is not a professional engineer.

11. While Winkel does not admit that he violated the law, he does agree to retain within 30 days of the date this Consent Order is signed by both parties, an Iowa licensed professional engineer (PE) pre-approved by the Board, for the purpose of examining the church as constructed along with associated design and construction records to prepare a report on the structural integrity of the building.

a. Winkel shall provide the PE all records necessary for the analysis and completion of the report.

b. Winkel shall also provide the PE a copy of the investigative report prepared by architect Kevin J. Godwin for the Architect Board, the investigative report prepared by professional engineer Thomas E. Bosch for the Engineering Board, the Fire Marshall's report, the Consent Order with the Architect Board, and this Consent Order.

c. The report shall be submitted to the Board, the Church, and the City of Vinton within 90 days of the date the PE is retained.

d. The report shall address the compliance of the structural design with applicable Code and professional standards, particularly relating to the lateral stability of the structure, the capacities of the posts used at the ends of the beams and LVL headers, and the capacity of the wood-framed structural walls. Lateral load design would include consideration of seismic and wind load generation, lateral earth pressure loads resulting from unbalanced soil conditions from opposing sides of the building, diaphragm load determination, design of floor and roof materials and fastening to transfer diaphragm loads to vertical lateral load resisting elements, selection of type, size and location of vertical lateral load resisting elements to safely transfer the diaphragm loads to the foundations, and design and detailing of complete load path to transfer forces from diaphragms to shear walls and shear walls to foundation, including nailing patterns and fastener requirements at each component interface. The report shall also review for Code and professional standards compliance the mechanical, electrical, and plumbing components of this building.

e. If the report identifies any Code violations or deficiencies that could impact the structural integrity of the building, suggested resolutions must also be listed.

f. Reasonable extensions of time can be sought by the retained PE as needed.

12. The practice of professional engineering by unlicensed persons is a violation of Iowa Code sections 542B.1 and 542B.27(1)(a).

13. The Board has grounds to commence an action under Iowa Code section 542B.27 through issuance of a Notice of Intent to Impose Civil Penalty. The Board has concluded that life, health, and property can be better safeguarded under the terms of this Consent Order.

14. Winkle understands he has a right to hearing on the Board's charges, but waives the right to hearing and all attendant rights, including the right to seek judicial review, by freely and voluntarily agreeing to this Consent Order. Once entered, this Consent Order shall have the force and effect of a final order entered following contested case hearing. If the Consent Order is not complied with, the Board may immediately set for hearing the imposition of a civil penalty in an amount not to exceed \$1,000 per offense, with each day of a continuing offense constituting a separate offense, pursuant to Iowa Code section 542B.27(2).

15. This Consent Order is a public record under Iowa Code chapter 22 and is open for public examination.

attn: Robert Lampe

16. This Consent Order is subject to approval by the Board. If the Board fails to approve the Consent Order, it shall be of no force and effect on either party and shall not be admissible for any purpose in further proceedings in the matter. If the Board approves the Consent Order, it shall fully dispose of all issues in this case, subject to paragraph 17.

17. The Board shall consider this matter fully resolved if (a) the PE's report concludes the design of the building as constructed satisfies applicable Codes and professional standards relating to the structures described herein, and to the mechanical, electrical, and plumbing components; or (b) the Respondent takes all steps necessary to assure the recommendations of the PE's report are satisfied within 30 days of the issuance of the report. The retained PE shall, within 60 days of the completion of any needed work, provide a follow-up report to the Board verifying the completion of such work.

Reasonable extensions shall be granted as long as documented steps are taken in good faith to satisfy the terms of this Consent Order. If Winkel does not demonstrate adequate good faith compliance, the Board may proceed to hearing, with notice, for the purpose of imposing civil penalties.

IT IS THEREFORE ORDERED:

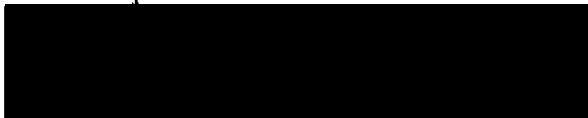
A. Respondent shall comply with the provisions of this Consent Order. If compliance is satisfactory, no civil penalty will be assessed against Respondent.

B. Respondent and his employees, agents, contractors, and others working with him in the future design of structures in Iowa shall refrain from engaging in the unlicensed practice of professional engineering or representing a capacity to do so.

Agreed:

Respondent

Iowa Engineering and Land Surveying
Examining Board



John Winkel d/b/a Winkel Design Forum Jerry Shellberg, P.E., L.S., Chair

11-12-10
Date

1-6-11
Date

FILED 6/8/11 (Date)

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

~~ELSEB~~
Board / Commissioner

Signature, Executive Officer

IN THE MATTER OF:)
)
JOHN WINKEL,)
)
RESPONDENT.)

CASE NO. 08-29
DIA NO. 11ELS001

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
DECISION AND ORDER

On March 25, 2011, the Iowa Engineering and Land Surveying Examining Board (Board) found probable cause to file a Statement of Charges against John Winkel (Respondent). The Statement of Charges alleged that the Respondent provided engineering services without being duly licensed, in violation of Iowa Code section 544A.18(6)(2009). A Notice of Hearing was issued scheduling the hearing for May 12, 2011.

The Respondent appeared for the hearing. The state of Iowa was represented by Pamela Griebel, Assistant Attorney General. The following Board members were present for the hearing: Marlee Walton, Chairperson; Christy VanBuskirk, Vice Chairperson; Jerry Shellberg; Craig Johnstone; Marlon Vogt; Bryan Myers; and Judy Davidson. John M. Priester, Administrative Law Judge from the Iowa Department of Inspections and Appeals, assisted the Board in conducting the hearing. A certified court reporter recorded the proceedings.

After hearing the testimony and examining the exhibits, the Board convened in closed executive session, pursuant to Iowa Code section 21.5(1)(f)(2009), to deliberate its decision. The members of the Board instructed the administrative law judge to prepare the Findings of Fact, Conclusions of Law, Decision and Order, in conformance with their deliberations.

THE RECORD

The record includes the Notice of Hearing, the State's Prehearing Conference Report, the testimony of the witnesses, and the following exhibits:

State Exhibit 1:

Notice of Hearing-Architect Board;

State Exhibit 2:	Notice of Hearing-Engineering Board;
State Exhibit 3:	Iowa Code § 544A (selected provisions) and 193B IAC chapter 7;
State Exhibit 4:	Iowa Code § 542B (selected provisions) and 193C IAC chapter 13;
State Exhibit 5:	Complaint, August 2008;
State Exhibit 6:	Letters: Between Architect Board and Winkel (8/08) Between Engineering Board and Gary Spratt, PE (10/08) Between Engineering Board and James Jacob, PE (11/08)
State Exhibit 7:	Kevin Goodwin Report (12/09);
State Exhibit 8:	Fire Marshall Report (2/10);
State Exhibit 9:	Thomas Bosch, PE Report (6/10);
State Exhibit 10:	Todd McNall Report (12/10);
State Exhibit 11:	Letter to G. Loving re: Peer Review;
State Exhibit 12:	Six drawings from Respondent for Peer Review;
Respondent Ex. A:	VJ Engineering Drawings for Blessed Hope Church;
Respondent Ex. B:	Letter from Gary Spratt re: Rough In Inspection.

STATEMENT OF ISSUES

- 1) Whether the Respondent performed professional engineering services without a valid Iowa license? and if so,
- 2) What sanctions, if any, are appropriate to address the violation?

FINDINGS OF FACT

The Respondent runs Winkel Design Forum in Cedar Rapids, Iowa. He mostly designs single family homes. He is not a licensed engineer.

The Respondent assisted with the design of the Blessed Hope Church in Vinton, Iowa. After a complaint was filed with the Board an investigation was conducted. The Respondent signed a consent order which acknowledged that he designed and built a

building that exceeds the size limit of Iowa Code section 544A.18 to qualify for an exemption from the practice of engineering.

Pursuant to the November 12, 2010, Consent Order the Respondent was required to retain a licensed professional engineer to complete a written report to the Board with respect to the structural integrity of the building. The Board agreed to defer the imposition of civil penalties pending the Respondent's satisfying the terms of the Consent Order.

The Respondent gave the Board a name of a professional engineer, but the professional engineer informed the Board that the Respondent never had contacted the professional. The Board determined that the Respondent was in default of the Consent Order for failing to retain a pre-approved professional engineer within 30 days of the Consent Order.

The Respondent appeared before the Board and was very contrite. He became involved with the Vinton church because he had designed houses for some of the members of the church. He testified that the church was going to be small, and he thought he could help the church board out by doing some sketches. He believed the project was so small no engineer or architect would be interested in working with the church. The pastor told the Respondent that if the church was under 6000 square feet an architect or engineer was not needed. The size of the church ended up being about 12000 total square feet with 6000 on the first floor and 6000 on the lower level.

The Respondent was paid a very minimal amount for this work on the Church.

The Respondent and member of the church board went to Andy at the City of Vinton. Andy indicated that the church could be built without an architect or an engineer.

The church board hired engineer Jesse Peterson to do the footings for the building. When Mr. Peterson completed his task he inquired as to who was the engineer in charge of the project. When he was told there was none, he filed a complaint with both the Engineering and Land Surveying Examining Board and the Architectural Examining Board.

Thomas Bosch, Professional Engineer, performed a Peer Review Report on the Vinton church. Mr. Bosch found the following violations:

- There was no Structural Engineer of Record for the building. According to Administrative Rule 193C-1.5(5) this building should require the services of a professional engineer;

- Lumber Specialties provided truss layout based upon the direction of the Respondent;
- It was unclear who provided structural design for the lower level interior load-bearing walls, exterior walls, and wood headers, but the reviewer believes the design was provided without the services of a professional engineer;
- No evidence was found of any lateral load design or analysis of the building;
- No evidence was found of design or construction details for the steeple including its attachment to the building or that adequate loading was included in the roof structure to support the steeple;
- There is no record of mechanical, electrical, or plumbing design either via professional engineer design services or design build contractors.

CONCLUSIONS OF LAW

I. Violation

Iowa law provides that:

A person shall not engage in the practice of engineering or land surveying in the state unless the person is a licensed professional engineer or a licensed land surveyor as provided in this chapter, except as permitted by section 542B.26.

Iowa Code § 542B.1.

Iowa law defines the practice of engineering as including the "consultation, investigation, evaluation, planning, design and design coordination of engineering works and systems, ..." Iowa Code § 542B.2(8).

The preponderance of the evidence established that the Respondent acted as an engineer in the state of Iowa without the required license in violation of Iowa Code sections 542B.1 and 542B.2(8). The Board finds that when the Respondent designed the church and then consulted, planned and coordinated the engineering work he was acting as a professional engineer in violation of Iowa Code sections 542B.1 and 542B.2(8).

The Respondent was following the advice and direction of the Vinton City Official. However the Respondent should have been aware that his actions did require a professional engineer regardless of the advice of the Vinton official.

Based upon these violations the Respondent entered into a Consent Order with the Board. The Respondent did not comply with the terms of the Consent Order.

II. Sanction

The Board can impose a civil penalty, not to exceed \$1,000, for each violation. Iowa Code § 542B.27(2). Iowa Code section 542B.27(3) lists the factors to be considered by the Board in determining whether and in what amount to assess civil penalties. These factors include:

- (1) Whether the amount imposed will be a substantial economic deterrent to the violation.
- (2) The circumstances leading to the violation.
- (3) The severity of the violation and the risk of harm to the public.
- (4) The economic benefits gained by the violator as a result of noncompliance.
- (5) The interest of the public.

Iowa Code § 542B.27(3).

Based on his testimony and presentation at hearing, the Board finds that the Respondent should have been aware that his actions constituted the practice of engineering.

Based upon that violation the Board finds that the following actions must be completed by the Respondent:

1. Within 30 days of the date of this Order, the Respondent shall provide a structural engineer to the Board for its approval;
2. Failure to provide a structural engineer within 30 days shall result in a \$1000 civil penalty;
3. The structural engineer shall submit a report to the Board within 90 days of the structural engineer's approval by the Board. The report shall document any structural deficiencies found in the Blessed Hope Church in Vinton, Iowa.
4. Failure by the structural engineer to provide the report within 90 days shall result in a \$5000 civil penalty assessed against the Respondent.
5. The Respondent shall provide proof of payment to the structural engineer before the structural engineer's report will be deemed received by the Board.

DECISION AND ORDER

IT IS THEREFORE ORDERED that the Respondent shall complete the above requirements in a timely manner or face the imposition of the civil penalties.

Dated this day of July 7, 2011.


Marlee Walton, P.E., P.L.S.

Chairperson

Iowa Engineering and Land Surveying Examining Board

cc: Pamela Griebel, Assistant Attorney General

John Winkel

Winkel Design Forum

3801 River Ridge Dr. NE

Cedar Rapids IA 52402

Judicial review of the board's decision may be sought in accordance with the terms of Iowa Code chapter 17A.

DATE OF ISSUANCE 6/8/11

FILED 7/15/13 (Date)

BEFORE THE ENGINEERING AND LAND SURVEYING EXAMINING BOARD TELSEA
OF THE STATE OF IOWA
Board / Commission

[Redacted Signature]

Signature, Executive Officer

IN THE MATTER:)

John Winkel)

Winkel Design Forum)

4444 1st Avenue NE, Ste. 226)

Cedar Rapids IA 52402)

Respondent.)

CASE NO. 08-29

Order Imposing \$6,000 Civil Penalty

The Iowa Engineering and Land Surveying Examining Board issued its final order on June 8, 2011. The Board imposes the \$6,000 civil penalty as follows:

1. Respondent was required to provide the name of a structural engineer within 30 days or face a \$1,000 civil penalty. While Respondent provided a name the Board approved, the request was untimely and the retained engineer has not been paid. The Board has questions about the report submitted by the engineer and the engineer will not consider the report final based on lack of payment. Respondent was also subject to a \$5,000 penalty if the retained engineer did not timely submit a report. Payment of the engineer was required before the Board would consider the report submitted.

2. Pursuant to the June 8, 2011 order, the Board imposes a civil penalty of \$6,000.

3. This Order shall be final if Respondent does not file written objection with the Board within 30 days of the date this Order is mailed to him by certified mail, return receipt requested. If a written objection is filed, Respondent shall identify the grounds upon which he objects and the Board shall issue a separate order for further proceedings, if warranted.

4. If no written objection is timely filed, the Order shall be final and the sums due shall be immediately collectable through all legal means, including inclusion in the State's set off program for set off against any sums the State of Iowa may owe Respondent or referral to the Attorney General for civil collection after 30 days as provided in Iowa Code section 542B.27(7).

IT IS ORDERED on July 10, 2013 that Respondent shall pay a civil penalty of \$6,000.

[Redacted Signature]

Robert Lampe, Executive Officer

Order mailed to Respondent by certified mail, return receipt requested on July 15, 2013.

DATE OF ISSUANCE 7/15/13