

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

<p>IN THE MATTER OF:</p> <p>Kirk D. Eschliman, PLS #09961</p> <p style="text-align: center;">Respondent.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>CASE NO. 13-04</p> <p>COMBINED STATEMENT OF CHARGES AND CONSENT ORDER IN A DISCIPLINARY CASE</p>
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A. STATEMENT OF CHARGES

1. The Iowa Engineering and Land Surveying Examining Board ("Board") has jurisdiction of this matter pursuant to Iowa Code chapters 17A, 542B, and 272C (2013).

2. Respondent is a licensed professional land surveyor in Iowa. The Board issued Respondent his license as a professional land surveyor on June 17, 1982, license number 09961. His license is current and set to expire December 31, 2015.

3. The Board received a complaint in February 2013 alleging that Respondent failed to comply with minimum land surveying standards when performing surveying services in 2011. The Board submitted the plats of survey to peer review and received a report outlining violations of minimum land surveying standards. The Board asked Respondent to correct his plats and resubmit the corrected plats to the Board. Respondent has not yet corrected the plats.

4. The peer review report provides the detailed violations. In sum, Respondent failed to comply with minimum land surveying standards, including, but not limited to those set forth in Iowa Code sections 354.4(1)(a), (4), 355.7(8), 355.9(2), 355.11. By way of summary, one or more of the plats did not identify section corners or parcel numbers, failed to contain a complete legal description, failed to show an area breakdown per 40 acre aliquot tract, and failed to note all required monuments. Respondent also did not record all required corner certificates. See, also, Iowa Code section 543B.21(2), and 193C IAC sections 8.2(1), 11.3, 11.4, 11.5, and 11.7, and chapter 12.

5. The Board charges Respondent with failure to adhere to minimum land surveying standards as provided in paragraph 4, and as more fully set forth in the peer review reports.

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

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

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

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

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

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

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

13. Respondent was the subject of prior discipline in Case No. 10-44. He was reprimanded and paid a civil penalty for practicing professional engineering without proper licensure and outside his technical competence.

IT IS THEREFORE ORDERED:

A. Reprimand

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

B. Remedial Action

(1) By February 1, 2014, Respondent shall make the corrections noted by peer review in the February 15, 2014 report and shall resubmit corrected plats of survey to the Board for resubmission to peer review. If for any reason Respondent is unable to personally complete this remedial action, he agrees he shall notify the Board and shall retain, at his expense, a professional land surveyor to make the necessary corrections.

(2) Respondent agrees to record corrected plats of survey and associated corner certificates once peer review concurs with the corrections.

(3) Respondent understands peer reviewers only review for facial compliance with land surveying standards and will not duplicate field work. Respondent will supply, if requested, field notes, calculations, and such other documents as peer review may reasonably request. Respondent shall be solely responsible for his work product and shall take such steps as are necessary to correct and finish field work, locate and set monuments, prepare corrected documents, and record the corrected plats of survey, and corner certificates. He shall not record these documents until they have been approved by the Peer Reviewer.

C. Probation and Desk Review

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

(1) Respondent shall submit for pre-release desk review all surveys and corner certificates he prepares after the date this Consent Order is fully signed until expressly released by the Board. Respondent understands that his selected desk reviewer is different from the peer reviewer retained by the Board who will review the corrected plats and corner certificates arising from the complaint upon which this case is based.

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

(3) The reviewing professional land surveyor shall perform a desk review of each plat of survey and corner certificate before the final documents are signed, submitted to the client, and recorded. The review shall be for facial compliance with

minimum land surveying standards. The reviewer will not perform field work or warrant the accuracy of Respondent's work product, but will review field notes, calculations and any other documents reasonably needed. The reviewer shall prepare written comments on each survey's compliance with the minimum land surveying standards set forth in Iowa Code chapters 354 and 355.

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

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

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

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

D. Future Compliance

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

Case No. 13-04

AGREED AND ACCEPTED:

The Respondent

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



Kirk D. Eschliman, PLS



By: Jerry Shellberg, PE/PLS, Chair

JANUARY ^{7th} 15, 2015
Date

1/8/15
Date

DATE OF ISSUANCE 1/8/15