

FILED January 8, 2015 (Date)

BEFORE THE IOWA ENGINEERING AND LAND SURVEYING EXAMINING BOARD

Jeff S. Evans
Board/Commission
Jeff S. Evans
Signature, Executive Officer

IN THE MATTER OF:

MARK LINDSAY LEE, PE/PLS
#11582,
Respondent.

) Case No. 14-18
) DIA No. 14ELS002
)
) **FINDINGS OF FACT,**
) **CONCLUSIONS OF LAW,**
) **DECISION AND ORDER**

The Iowa Engineering and Land Surveying Examining Board filed a Notice of Hearing and Statement of Charges in a Disciplinary Case and Amended Notice of Hearing and Statement of Charges in a Disciplinary Case charging Mark Lindsay Lee with failure to comply with an order imposing discipline in violation of Iowa Code section 272C.3(2)(a).

On November 20, 2014, a contested case hearing was held before the following Board members: Jerry Shellberg, P.E., P.L.S., Chair; Marlee Walton, P.E., P.L.S., Vice-Chair; Marlon Vogt, P.E., Howard Stewart, P.L.S., Christy VanBuskirk, P.E., and Rita Perea, public member. The hearing was reported by a certified court reporter. Administrative Law Judge Heather Palmer assisted the Board in conducting the hearing. Assistant Attorney General Pamela Griebel and Student Intern Andrew Magner represented the State. Lee appeared and testified. The Board's Executive Officer, Robert Lampe, appeared and testified on behalf of the State. Jeff Evans, the Executive Officer for the Real Estate Commission, also attended the hearing. The following documents were admitted into the record: (1) Amended Notice of Hearing; (2) Consent Order, Case No. 12-12; (3) Iowa Code section 272.3(2)(a); (4) 193 IAC 9.4 and 9.5; (5) e-mail correspondence between Lampe, Lee, and Paul Herold; and (6) Exhibit A.

FINDINGS OF FACT

The Board issued Lee a professional engineer license on July 19, 1989, and a professional land surveyor license on January 21, 1998. This case concerns Lee's professional land surveyor license only.

On March 15, 2002, Lee and the Board entered in a Settlement Agreement and Consent Order ("Consent Order 1") in Case No. 01-04, to resolve a complaint concerning his land surveying practices. The Board reprimanded Lee for failing to adhere to minimum land surveying standards, and ordered Lee to pay a \$250 civil penalty, to correct plats and associated corner certificates and affidavits, and submit the corrections to a peer reviewer. The Board further ordered Lee to complete a 40-hour ethics course and placed him on desk review. The Board released Lee from desk review in March 2003.

The Board received a complaint in August 2012, alleging Lee failed to adhere to minimum land surveying standards. The Board assigned a peer reviewer for an expert opinion. Based on the peer review report, the Board concluded Lee violated minimum

land surveying standards. The Board charged Lee in Case No. 12-12, with failure to adhere to minimum land surveying standards. Lee and the Board entered into a Combined Statement of Charges and Consent Order in a Disciplinary Case ("Consent Order 2") on March 13, 2014. The Board reprimanded Lee for failing to adhere to minimum land surveying standards and placed him on probation and desk review. The Consent Order required Lee to submit a corrected plat of survey to the Board's peer reviewer, Paul Herold, by April 1, 2014. Lee did not submit the corrected plat of survey to Herold by April 1, 2014. The Board also approved Mike Geier to perform the desk review. The Board did not approve Geier to perform a peer review of the corrected plat of survey.

On May 12, 2014, Lampe contacted Herold to inquire whether Herold had received the corrected plat of survey. Herold responded he had not received the corrected plat of survey or any other documents or correspondence from Lee. Lampe contacted Lee on May 12, 2014, and asked him to respond with a status updated on the corrected plat of survey.

Lee responded to Lampe on July 14, 2014, as follows:

The preliminary field work has been completed. The following two items needed to be addressed in the field:

1. More points for a better definition of creek location.
2. Section corner location based on Matt Thomas land Survey.

New information was used to revise drawing. Sent information to Mike Geier, Peer Reviewer, for revised plat review.

(E-mail Correspondence at P-17).

Lampe contacted Lee on July 21, 2014, and informed Lee the Discipline Committee was requesting a copy of what he sent to Geier by July 31, 2014. Lee responded on August 4, 2014 that he was out of town and would not return until August 7, 2014, and he would deliver copies to the Board on August 8, 2014. Lee did not deliver the copies to the Board.

On September 14, 2014, the Board charged Lee with failure to comply with an order imposing discipline in violation of Iowa Code section 272C.3(2)(a).

During the hearing Lee testified he had assigned the survey that led to the Notice of Hearing and Statement of Charges in Case No. 12-12, to his employee, Matt Thomas. Thomas was working as an intern for Lee. Lee reported he was unable to oversee every detail of Thomas' work. Thomas performed the survey and Lee reviewed it and filed it. Lee testified he later terminated Thomas' employment based on performance issues.

Lee informed the Board he did not complete the corrected plat of survey because he had been attending to an ill family member in Texas for the past several years. During the hearing Lee submitted the corrected plat of survey to the Board, which is dated

November 18, 2014, Exhibit A. Lee reported he had not completed any other surveys under his professional land surveyor license. The corrected plat of survey has not been submitted to the peer reviewer.

CONCLUSIONS OF LAW

The Board may revoke or suspend a licensee's license for failure to comply with a decision of the Board imposing discipline.¹ Lee entered into Consent Order 2 with the Board on March 13, 2014. The Consent Order required Lee to submit a corrected plat of survey to the Board's peer reviewer by April 1, 2014. Lee did not submit the corrected plat of survey to the peer reviewer by April 1, 2014. When the Board's Executive Officer contacted Lee, Lee represented he had provided information to Geier. The Board requested the information from Lee. He did not provide the information to the Board. Lee has failed to comply with Consent Order 2.

The Board has reprimanded Lee twice, most recently on March 13, 2014. Lee has not complied with Consent Order 2. His professional land surveyor license should be suspended indefinitely until he complies with the terms of Consent Order 2.

DECISION AND ORDER

IT IS THEREFORE ORDERED that Iowa Professional Land Surveyor License No. 11582, issued to Lee, is hereby INDEFINITELY SUPENDED, effective upon service of this Decision and Order.

IT IS FURTHER ORDERED that the suspension will remain in effect until Lee has fully complied with the March 13, 2014 Consent Order by:

1. Submitting a corrected plat of survey with associate corner certificates to the peer reviewer;
2. Receiving approval of the corrected plat of survey from the peer reviewer;
3. Filing a written report with the Board attesting to his compliance with the Consent Order; and
4. Providing verification to the Board of his continuing education requirements for his professional land surveyor license for 2014 and each year until his license is reinstated.

¹ Iowa Code § 272C.3(2)a (2014).

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Dated this 8th day of January, 2015

A handwritten signature in cursive script, reading "Jerry Shellberg", is written over a horizontal line.

Jerry Shellberg, P.E., P.L.S.

Chairperson

cc: Pam Griebel (electronic mail)
Mark Lindsay (first class mail)

NOTICE

Pursuant to Iowa Code section 17A.19 and 193 IAC 7.37, any appeal must be filed with the district court within 30 days after the issuance of the Board's decision.