

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

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IN THE MATTER OF:	)	CASE NO. 97-10
	)	DIA NO. 99DOCEL-4
JAMES L. EGGER,	)	
LS 7983	)	AMENDED
EGGER ENGINEERING AND	)	FINDINGS OF FACT,
LAND SURVEYING	)	CONCLUSIONS OF LAW,
1829 20TH STREET	)	DECISION AND ORDER
BETTENDORF IA 52722	)	
	)	
RESPONDENT	)	

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TO: JAMES L. EGGER

On April 15, 1999, the Iowa Engineering and Land Surveying Examining Board (Board) issued a Statement of Charges to James L. Egger, P.E./L.S. (Respondent). The Statement of Charges alleged that the Respondent had violated Iowa Code §§ 355.4 and 355.9.

A Notice of Hearing was issued setting the hearing for June 16, 1999 at 9:00 a.m. The hearing was reset to 1:00 p.m. on that date.

A prehearing conference was held on June 10, 1999 by telephone conference call. The state submitted the Prehearing Conference Report and its exhibits A-Y. The Respondent stipulated to the admissibility of the state's exhibits.

The hearing was held as scheduled on June 16, 1999 at 1:00 p.m. in the conference room at the Iowa Department of Commerce, 1918 S.E. Hulsizer, Ankeny, Iowa. The hearing was open to the public with the Respondent's agreement, pursuant to Iowa Code section 272C.6(1)(1997). The Respondent appeared and was represented by his counsel, Marc R. Engelmann. The state was represented by Pamela Griebel, Assistant Attorney General. John M. Priester, Administrative Law Judge from the Iowa Department of Inspections and Appeals, presided. The following Board members were present for the hearing: Susan M. Long, P.E., Board Chair; Nicholas Konrady, P.E., L.S.; Randall Beavers, P.E.; Terry Martin, P.E.; and Diana Hoogestraat, public member. 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)(1997). The Administrative Law Judge was instructed to prepare the Board's order, in conformance with their deliberations.

The Board issued a decision on July 15, 1999. On July 27, 1999 the

State filed a State's Petition for Rehearing. The Board met on August 10, 1999, and convened in closed executive session to deliberate the Petition for Rehearing. Again the Administrative Law Judge was instructed to prepare the Board's order in conformance with the deliberations.

#### THE RECORD

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

- State's Exhibit A: Proof of Service-restricted, certified mail (May 1, 1999);
- State's Exhibit B: Complaint (March 27, 1997);
- State's Exhibit C: Peer Review Report (August 22, 1997);
- State's Exhibit D: Board Letter to Peer Review Committee (October 28, 1997);
- State's Exhibit E: James Tallett Letter to Board (November 4, 1997);
- State's Exhibit F: Clarence C. Perry Letter to Board (November 6, 1997);
- State's Exhibit G: Jerry L. Miller Letter to Board (November 18, 1997);
- State's Exhibit H: Egger Letter to Board (February 4, 1998);
- State's Exhibit I: Letter from Board to Peer Review Committee (March 4, 1998);
- State's Exhibit J: James Tallett Letter to Board (March 9, 1998);
- State's Exhibit K: Clarence C. Perry Letter to Board (March 11, 1998);
- State's Exhibit L: Jerry L. Miller Letter to Board (March 16, 1998);
- State's Exhibit M: Board Letter to James Egger (March 31, 1998);
- State's Exhibit N: Egger Letter to Board (April 6, 1998);
- State's Exhibit O: Egger Letter to Board with Recorded Bound Boundary Line Agreement (July 30, 1998);
- State's Exhibit P: Egger Letter to Board with Unsigned Boundary Line Agreement (August 26, 1998);
- State's Exhibit Q: Letter from Board to Peer Review Committee (October 2, 1998);
- State's Exhibit R: James Tallett Letter to Board (October 9, 1998);
- State's Exhibit S: Clarence C. Perry Letter to Board (October 14, 1998);
- State's Exhibit T: Jerry L. Miller Letter to Board (October 28, 1998);

State's Exhibit U: Letter from Board to Egger (January 18, 1999);  
State's Exhibit V: Egger Letter to Board (February 2, 1999);  
State's Exhibit W: Egger Letter to Board (February 16, 1999);  
State's Exhibit X: Board Letter to Egger (March 2, 1999);  
State's Exhibit Y: Egger Letter to Board (March 8, 1999).

Respondent's Exhibit A: Partial Map of Jackson County;  
Respondent's Exhibit B: Partial Map of Cedar County;  
Respondent's Exhibit C: Plat of Survey and Land Description, dated December 6, 1996;  
Respondent's Exhibit D: United States Public Land Survey Corner Certificate;  
Respondent's Exhibit E1: Aerial photograph of area;  
Respondent's Exhibit E2: Closer Aerial photograph of area;  
Respondent's Exhibit F: Letter to Egger from John Mason, May 28, 1999;  
Respondent's Exhibit G: Boundary Line Agreement;  
Respondent's Exhibit H: Surveyor's Affidavit, February 9, 1999;  
Respondent's Exhibit I: Letter from William D. Upmeyer, L.S.;  
Respondent's Exhibit J: Letter from Ronald J. Turner, L.S. May 26, 1999;  
Respondent's Exhibit A1: Revised Survey dated April 22, 1999;  
Respondent's Exhibit B1: Surveyor's Affidavit signed July 23, 1998;  
Respondent's Exhibit AA: Typical Regular Section.

#### SYNOPSIS

The Respondent, a licensed land surveyor, filed one plat which contained errors and omissions in violation of Iowa statutes.

#### FINDINGS OF FACT

1. On November 5, 1976 the Respondent was issued Iowa professional land surveying registration number 7983 by the Board. Registration number 7983 is currently in good standing until December 31, 1999. The Respondent has been continuously involved in the practice of land surveying since 1976. (Testimony of Respondent)

2. The Respondent surveyed a parcel of property in Jackson County, Iowa, on December 6, 1996, certified the plat of survey on December 10, 1996, and recorded the survey on March 3, 1997, concerning parts of the Southeast Quarter of Section 7, the Southwest Quarter of Section 8, the Northwest Quarter of Section 17, and the Northeast Quarter of Section 18, all in Township 84 North, Range 3 East of the Fifth Principal Meridian. (Testimony of Respondent; State's Exhibit B)

3. The peer review committee was comprised of three members: James F. Tallett, Jr., L.S.; Clarence C. Perry, P.E. and L.S.; and Jerry L. Miller, L.S. The peer review committee concluded that the plat failed to comply with the requirements of Iowa Code §§ 355.4 and 355.9. (Testimony of Perry; Statement of Charges)

4. The peer review committee determined that the plat failed to provide sufficient evidence that the record title boundaries were retraced as required by Iowa Code § 355.4. The committee also found that the description is sufficient to allow the corners of the parcel to be retraced, but it is not unequivocal in order to permit identification of the record title boundaries, as required by Iowa Code § 355.9. (Statement of Charges)

5. The Respondent testified that the fence on the north edge of the parcel was the boundary title line, but he was not willing to label it as the 1/4 1/4 section line. (Respondent's testimony). The west edge of the parcel was also in question, but a boundary agreement signed by the property owners cleared that issue. The Respondent was unable to obtain a signed boundary agreement by the property owners to the north.

#### CONCLUSIONS OF LAW

1. Iowa Code § 272C.3(2) (1997) provides in relevant part:

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 . . . the practice of the profession, if pursuant to hearing or stipulated or agreed settlement the board finds that because of a lack of education or experience, or because of negligence, or 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 or professional and occupational care.

2. Iowa law further provides that "each licensing board shall have the following duties in addition to other duties specified by this chapter or elsewhere in the Code: . . . Define by rule acts or omissions which are grounds for revocation or suspension of a license . . . and to define by rule acts or omissions which constitute negligence, careless acts or omissions . . ." Iowa Code § 272C.4(6) (1997)

3. Iowa Code § 355.4 provides:

The surveyor shall acquire data necessary to retrace record title boundaries, center lines, and other boundary lines locations in accordance with the legal descriptions including applicable provisions of chapter 650. The surveyor shall analyze the data and make a careful determination of the position of the boundaries of the parcel or tract of land being surveyed. The surveyor shall make a field survey, locating and connecting monuments necessary for location of the parcel or tract and coordinate the facts of the survey with the analysis and legal description. The surveyor shall place monuments marking the corners of the parcel or tract unless monuments already exist at the corners.

4. The Iowa Administrative Code provides that "Acts or omissions on the part of a licensee that are grounds for a reprimand, period of probation, license suspension or license revocation are as follows: . . . (2) Acts or omissions which constitute negligence or carelessness that licensees must report to the board as defined in rule 4.4." 193C IAC 4.3(2).

5. The administrative code then provides that:

Licensees shall report acts or omissions by a licensee which constitute negligence or carelessness. For the purpose of this rule, negligence or carelessness shall mean demonstrated unreasonable lack of skill in the performance of engineering or land surveying services by failure of a licensee to maintain a reasonable standard of care in the licensee's practice of engineering or land surveying. In the evaluation of reported acts or omissions, the board shall determine if the engineer or land surveyor has applied learning, skill and ability in a manner consistent with the standards of the professions ordinarily possessed and practiced in the same profession at the same time. Standards referred to in the immediately preceding sentence shall include any minimum standards adopted by this board and any standards adopted by recognized national or state engineering or land surveying organizations.

193C IAC 4.4

6. Iowa Code § 650.6 (1997) provides in relevant part:

Either the plaintiff or defendant may, by proper plea, put in issue the fact that certain alleged boundaries or corners are the true ones, or that such have been recognized and acquiesced in by the parties or their

grantors for a period of ten consecutive years . . .

7. Iowa Code § 355.9 states in part:

A description defining land boundaries written for conveyance or other purposes shall be complete, providing definite and unequivocal identification of the property lines or boundaries. The description shall be sufficient to enable the description to be platted and retraced. The description shall commence at or relate to a physically monumented corner or land boundary line of record.

2. If the land is not located in a recorded subdivision, the description shall identify the section, township, range, and county, and shall describe the land by reference to government lot, by quarter-quarter section, by quarter section, or by metes and bounds commencing with a corner marked and established in the United States public land survey system.

8. The Iowa Code further provides that "a plat of survey shall be made, showing information developed by the survey, for each land survey performed for the purpose of correcting boundaries, correcting descriptions of surveyed land, or for the division of the land. Each plat of survey shall conform to the following provisions . . . 8. If the United States public land survey system corners control the land description, the corners shall be clearly identified on the plat including a description of the monumentation and shall indicate whether the monuments were found or placed." Iowa Code § 355.7(8).

9. Iowa Code § 355.11(1) states:

A United States public land survey corner certificate shall be prepared as part of any land surveying which includes the use of the United States public land survey system corner, having the status of a corner of a quarter-quarter section or larger aliquot part of a section, if one or more of the following conditions exist:

a. There is no certificate for the corner on file with the recorder of the county in which the corner is located.

b. The surveyor in responsible charge of the land surveying accepts a corner position which differs from that shown in the public records of the county in which the corner is located.

c. The corner monumentation is replaced or modified in any way.

d. The reference ties referred to in an existing public

land record are not correct.

10. The preponderance of the evidence established that the Respondent violated Iowa Code sections 355.4 and 355.9 (1997) when he prepared, certified, and filed the plat of survey which failed to label the north boundary line of Parcel "B" as the quarter-quarter line between the SE 1/4 SE 1/4 and the NE 1/4 SE 1/4 of Section 7. Consequently, the Respondent also violated Iowa Code §§ 355.7(8) and 355.11 by not identifying the NW and NE corners of the said SE 1/4 SE 1/4 and filing the appropriate U.S. public land survey corner certificates.

Record title boundaries are those boundaries called for in the description of a conveyance. The north record title boundary of the SE 1/4 SE 1/4 of Section 7 is the quarter-quarter section line. When the Respondent says that the fence he retraced is the title boundary but not the quarter-quarter line is a contradiction in terms. The Respondent has demonstrated negligence by not understanding the record title boundary concept or has not applied the learning, skills or ability in a manner consistent with the standards of the profession.

The Respondent stated that the fence along the north side of Parcel "B" is the best evidence of the title boundary of the said SE 1/4 SE 1/4. Correspondingly, it is the opinion of the peer review committee (State's Exhibit C) that the said fence is also the best evidence of the quarter-quarter section line. It is also the peer review committee's opinion that the monuments set on the west and east ends of the fence are the 1/16th corners. (States exhibits R and S).

The Board does not believe that the Respondent is incompetent to perform the work of a land surveyor. The Respondent substantially complied with the minimum platting standards. The record demonstrates that the Respondent has both the education and experience to perform his duties competently. Rather, it appears that the Respondent's strict adherence to a principle of surveying he believes is correct has resulted in substandard work in this case.

#### DECISION AND ORDER

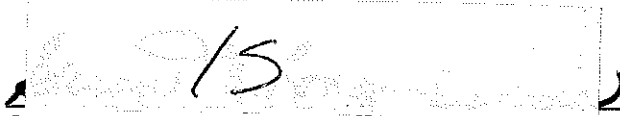
The Board is confident that the Respondent is capable of producing competent and accurate plats of survey, and that he will do so in the future if he follows this decision.

IT IS THEREFORE THE ORDER of the Iowa Engineering and Land Surveying Examining Board, that the issuance of this decision of the Board shall serve as a reprimand to the Respondent for his violations of the Iowa Code. Due to the remedial actions taken by the Respondent, the Board concludes that further discipline is

unwarranted.

IT IS FURTHER ORDERED by the Board that the Respondent shall amend this plat of survey to comply with Iowa Code §§ 355.7(8), 355.9 and 355.4 and shall prepare a U.S. public land survey corner certificate for the two corners identified to comply with Iowa Code § 355.11 as the Peer Review Committee recommended. A copy of the filed documents shall be provided to the Board within 90 days of the date of this order. Failure to comply with this shall result in further disciplinary action.

Dated this 12th day of August, 1999.

  
Susan M. Long, P.E.  
Chair  
Iowa Engineering and Land Surveying Examining Board

cc: Pamela Griebel  
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**PROOF OF SERVICE**

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause by depositing a copy thereof in the U. S. Mail, postage prepaid, in envelopes addressed to each of the attorneys of record herein at their respective addresses disclosed on the pleadings, on August 12, 1999.

