

FILED July 29, 2015 (Date)

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

IN THE MATTER OF:

KIRK ESCHLIMAN, P.L.S.,
#09961,

Respondent.

) Case No. 15-09
) DIA No. 15ELSO01
)
) **FINDINGS OF FACT,**
) **CONCLUSIONS OF LAW,**
) **DECISION AND ORDER**

[Signature]
Signature, Executive Officer

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

On July 9, 2015, a contested case hearing was held before the following Board members: Howard Stewart, P.L.S., Chair; Rita Perea, public member and Vice Chair; Marlon Vogt, P.E., Jerry Shellberg, P.E., P.L.S., Laura Sievers, P.E., and Robert Fairfax, 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 Pam Griebel represented the State. Eschliman 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. Exhibits 1 through 8, and A through D were admitted into the record.

FINDINGS OF FACT

The Board issued Eschliman a professional land surveyor license on June 17, 1982. Eschliman's license is current and will expire on December 31, 2015.

In February 2013, the Board received a complaint alleging Eschliman 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 peer reviewer found the 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. The peer reviewer also found Eschliman failed to record all required corner certificates. The Board asked Eschliman to correct the plats and resubmit the corrected plats and the associated corner certificates to the Board.

On April 22, 2014, Eschliman contacted Lampe, the Executive Officer for the Board, and requested a 14 day extension of the submission time due to health issues, the loss of a survey truck, and weather issues. Lampe granted Eschliman and extension to May 7, 2014.

On May 2, 2014, Eschliman contacted Lampe and informed him he had been unable to complete the field work because of wet conditions.

Eschliman contacted Lampe on May 6, 2014 and reported “[g]ot part of the field work started over the weekend, trying to re-establish the control network we had, some of it appears to have been destroyed by one or more of the neighbors that got stirred up by the party that did not like my work in the first place.” (Exhibit 4). Eschliman noted he hoped to “get it wrapped up in the next few days.” (Exhibit 4).

Lampe sent Eschliman an e-mail on May 12, 2014, informing him the Board had granted him an extension to May 31, 2014 to submit the corrected plats to the Board. Eschliman did not submit the corrected plats to the Board by May 31, 2014.

On June 30, 2014, Lampe contacted Eschliman and informed him the Board had not received the corrected plats. Lampe asked Eschliman to provide an update. Eschliman responded on July 16, 2015, stating he was experiencing health issues, and noted he had hired a student to assist him.

Lampe contacted Eschliman on July 21, 2014 and informed him the Board had granted him an extension to August 22, 2014 to submit the corrected plats. Eschliman did not submit the corrected plats by August 22, 2014.

On September 16, 2014, Lampe sent Eschliman an e-mail informing him the Board had not received the corrected plats. Lampe requested an immediate response.

On October 21, 2014, Eschliman contacted Lampe and informed him “I would be able to set the last corner, Center of Section, and tie it out” this week. (Exhibit 4). Eschliman did not submit the corrected plats to the Board.

On January 8, 2015, Eschliman entered into a Combined Statement of Charges and Consent Order in a Disciplinary Case (“Consent Order”). The Board reprimanded Eschliman and ordered:

(1) By February 1, 201[5], 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 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.

(Exhibit 2). Eschliman also agreed after the peer reviewer concurred with the corrections, he would record the corrected plats of survey and associated corner certificates, and he would be subject to probation and desk review.

Eschliman did not submit the corrected plats of survey to the Board by February 1, 2015.

On March 16, 2015, Lampe contacted Eschliman and informed him the Board had not received the corrected plats of survey from him, and requested an update.

On May 15, 2015, the Board filed a Notice of Hearing and Statement of Charges in a Disciplinary Case. The Board charged Eschliman with failure to comply with an order imposing discipline in violation of Iowa Code section 272C.3(2)(a).

Eschliman testified his work was late due to his own fault. Eschliman reported he tries to do quality work and he is embarrassed by the situation. Eschliman has been dealing with a contentious boundary dispute.

Eschliman presented Exhibits A through D at the hearing. Eschliman has not completed all of the corrected plats of survey and the associated corner certificates. At the time of the hearing his work was not ready to be 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 Eschliman entered into a Consent Order with the Board on January 8, 2015. The Consent Order required Eschliman to submit three corrected plats of survey and associated corner certificates to the Board for resubmission to peer review by February 1, 2015. Eschliman did not submit the corrected plats of survey and associated corner certificates to the Board for peer review by February 1, 2015. At the time of the hearing he had not completed all of the corrections. Eschliman has not complied with the Consent Order. Eschliman's failure to comply with the Consent Order raises concerns for protection of the public.

The Board reprimanded Eschliman in January 2015. He has not complied with the Consent Order. His professional land surveyor license should be suspended indefinitely until he complies with the remedial action provisions of Consent Order.

DECISION AND ORDER

IT IS THEREFORE ORDERED that Iowa Professional Land Surveyor License No. 09961, issued to Eschliman, is hereby INDEFINITELY SUPENDED, effective upon service of this Decision and Order.

IT IS FURTHER ORDERED that the suspension will remain in effect until Eschliman has fully complied with the Remedial Action provisions of the Consent Order by:

1. Submitting corrected plats of survey with associated corner certificates to the Board for resubmission to peer review; and
2. Receiving approval from the peer reviewer of the corrections.

¹ Iowa Code § 272C.3(2)a (2015).

IT IS FURTHER ORDERED that pursuant to Iowa Code section 272C.6 and 193 IAC 7.41, Eschliman shall pay \$75 for fees associated with conducting the disciplinary hearing, within 30 days of receipt of this Decision and Order.

Dated this 29th day of July, 2015



Howard Stewart, P.L.S.
Chairperson

cc: Pam Griebel (electronic mail)
Kirk Eschliman (electronic and 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.