

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

FILED SURVEYING 1/5/12 (Date)

I E L S E B

Board / Commission

Robert E. Lampe
Signature, Executive Officer

IN THE MATTER OF:)

Wendell Folkerts, PE, LS)
LS# 06366)

Respondent.)

CASE NO. 11-09

CONSENT ORDER

A. Statement of Charges

1. The Iowa Engineering and Land Surveying Examining Board ("Board") has jurisdiction of this disciplinary matter pursuant to Iowa Code chapters 17A, 272C, and 542B (2011).

2. Respondent is a licensed professional land surveyor in Iowa. He was issued LS License No. 06366 in 1974. Respondent's license is in active status and is scheduled to expire on December 31, 2011.

3. The Board received a complaint in March 2011 alleging that Respondent failed to properly locate concrete monuments when completing plats of survey in 1990 and 1992. The error was apparently discovered in 2002 in the course of completing a plat of survey. The error impacted the accuracy of the 1990 and 1992 plats of survey, and actions taken in reliance on the earlier surveys.

4. The Board submitted the 1990, 1992, and 2002 plats of survey and related documents to a peer review committee. The committee concluded that a land surveyor following the appropriate standard of care would have readily located the monumentation in 1990 and 1992, and that a follow up plat of survey in 2002 included land that was not owned by the client as a result of the manner in which Respondent attempted to correct his earlier error. The committee acknowledged that legal disputes have arisen over this chain of events, but offered no opinion on such matters as beyond the scope of the committee's function.

5. The Board is cognizant of the length of time that has passed from the time of the initial error. The nature of land surveying and the reliance of so many people upon a land surveyor's recorded work product, however, can raise substantial issues well beyond the time of an error, which may not be discovered for many years. Some errors are more significant than others. Failing to locate well-documented monuments that had been in place decades prior to the 1990 and 1992 surveys is significant, especially where the evidence used at the time of the surveys led the surveyor to incorrect boundaries. Additionally, once the error was discovered and Respondent used the correct monuments in a 2002 plat of survey, he labeled land as being in one section when it was from two sections rather than address the gap caused by his earlier error.

6. The Board charges Respondent with failing to comply with the due diligence expected of a land surveyor in the location of monumentation under the standards applicable in the years at issue (1990, 1992, 2002) in violation of Iowa Code section 542B.21(2) and (3) (practice harmful and detrimental to the public) (2001) and 114.21(2) and (3) (practice harmful and detrimental to the public) (1989, 1991).

B. Settlement Agreement and Consent Order

7. 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.

8. Respondent does not admit the allegations, but does agree to this Consent Order to resolve a disputed matter.

9. 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.

10. 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.

11. 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.

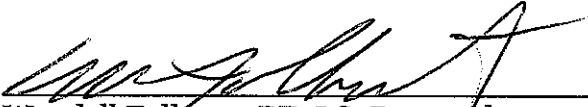
12. This Combined Statement of Charges and Consent Order is a public record available for inspection and copying in accordance with the requirements of Iowa Code chapter 22 (2011).

13. 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) (2011). However, no action may be taken against Respondent for violations of these provisions without a hearing, or waiver of hearing.

14. 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.

IT IS THEREFORE ORDERED that Respondent shall pay a civil penalty of \$500 to the Board within 30 days of the date this Consent Order is signed by all parties.

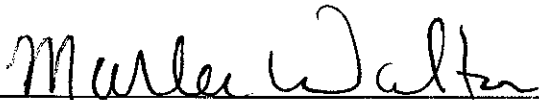
AGREED AND ACCEPTED:



Wendell Folkerts, PE, LS, Respondent

Date 11-22-11

The Iowa Engineering and Land Surveying Examining Board



By: Marlee Walton, PE, PLS, Chair

Date 1/05/12

ISSUANCE 1/6/12