

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

IN THE MATTER OF:

**GREGG MILLER
LAND SURVEYS LTD.
101 N. Shuman Street
Verona, WI 53593**

RESPONDENT

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**CASE NO. 98-20
Statement of Charges**

COMES NOW the Complainant, Gleen Coates, and states:

1. The Complainant is the Executive Secretary of the Iowa Engineering and Land Surveying Examining Board and files these charges solely in her official capacity.
2. The Board has jurisdiction of this matter pursuant to Iowa Code chapters 17A, 272C and 542B (1999).
3. On June 6, 1986, the Board issued the Respondent, Iowa professional land surveying license number 10901.
4. Respondent's professional land surveying license expired December 31, 1999 and has not been renewed at the time of this notice.
5. All remaining code citations are 1997 Code of Iowa.

Count I

Respondent is charged with repeated failure to comply with minimum standards of land surveying in violation of Iowa Code sections 542B.21(3) & (9), and 193C IAC 4.3, when he prepared plats of survey without complying with the land surveying requirements set forth in Iowa Codes chapters 354 and 355 (1997) and 193C IAC Chapter 2.

COUNT II

Respondent is charged with failure to timely respond to Board communications in violation of Iowa Code section 542B.21(3) (1997) and 193C IAC 4.2(4).

Circumstances

1. The Board received a complaint on October 22, 1998, alleging that the Respondent did not comply with the minimum standards for property surveys as established in Chapter 2, IAC 193C when preparing plats of survey for Robert Gerndt dated on August 10 and 25, 1998 and September 15 and 22, 1998.
2. The Board established a Peer Review Committee to review the documents submitted by the Complainant. In a letter dated February 4, 1999, the Board transmitted the documents to the Peer Review Committee for review.
3. The Board notified the Respondent via letter on June 2, 1999, that a complaint was being investigated. The Respondent was informed that a Peer Review Committee had been established and he would be notified of the results of the Peer Review and what, if any, further action would be taken.
4. The Peer Review Committee submitted its report on June 5, 1999. The Peer Review Committee report concluded that the plats reviewed contained numerous violations of minimum standards mandated by Iowa Code Chapters 354, 355 and 193C IAC Chapter 2.
5. In a letter dated June 30, 1999, the Board attempted to notify the Respondent of the Iowa Code and Iowa Administrative Code violations found by the Peer Review Committee in their review. The letter was sent by certified mail. The letter was unclaimed and was returned to the Board office unopened.

6. The Executive Secretary of the Board attempted to contact the Respondent by telephone to obtain an address where the letter could be delivered to the Respondent. A message was left on the Respondent's answering machine on September 29, 1999. The Board received no response.

7. On October 5, 1999, a fax message was transmitted to the Respondent to obtain an address where the letter from the Board could be sent. The fax message requested a response. The Board received no response.

8. On October 28, 1999, another letter was mailed via regular mail to the Respondent enclosing the original letter outlining the corrections to the plats of survey that the Board was requesting the Respondent to make. The Board received no response.

9. The Complainant was contacted on December 3, 1999, to see if the plats had been corrected. The complainant provided the Board with a copy of the last instruments recorded by the Respondent. The minimum standards violations had not been corrected.

10. The following summary of the Iowa Code and Administrative Code violations identified by the Peer Review Committee demonstrate repeated failure to comply with minimum standards of land surveying requirements. This summary was included in the letter dated June 30, 1999, which the Board has attempted to transmit to the Respondent. A copy of that letter and a copy of the Peer Review Committee report will be provided to the Respondent with this Statement of Charges. Violations of the minimum standards of land surveying identified by the Peer Review Committee include but are not limited to:

(a) Deficiencies noted by the Peer Review Committee on the Plat of Survey re-recorded on March 26, 1999, are as follows:

1. The plat has no graphic scale. Section 355.7(3)

2. All lines are shown measured to the nearest 0.01 foot and bearings of those lines to the nearest second, and no mention has been made regarding any difference from existing recorded measurements. Section 355.7(6)
3. No indication was made of whether the United States public land survey corners were found or placed. Section 355.7(8)
4. Description of the monuments did not include the color of the cap affixed with the Iowa license number of the surveyor. Section 355.6(1) and 193C IAC 2.5(3)
5. No indication was made in the legend that control corners placed with $\frac{3}{4}$ " x 24" rebar were capped with the Iowa license number of the surveyor. Section 355.7(9), Section 355.6(1), and 193C IAC 2.7
6. No date of survey was shown on the plat. Section 355.7(14)
7. The plat does not show record title boundaries were retraced. 193C IAC 2.5(5)
8. The Plat of Survey recorded in Book 19, Page 42 on March 26, 1999, should have been titled CORRECTED Plat of Survey for plat recorded in Book 18, Page 109. It corrects Lots 4 through 11 for a deed acquired by the Iowa DOT for right-of-way for Business US Highway 18, notes an Interstate Power Company easement, shows the surveyor's seal, but all the other above mentioned deficiencies remain unchanged.

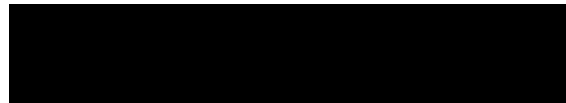
(b) The second Plat of Survey reviewed by the Peer Review Committee was recorded as the Subdivision Plat of Gerndt's Subdivision in Book 19, Page 2 on

December 14, 1998. Deficiencies noted by the Peer Review Committee on the subdivision plat are:

1. No indication was made in the legend of any control corners placed regarding a cap affixed with the Iowa license number of the surveyor.
Section 355.6(1)
2. The plat fails to differentiate the symbol of the found control corners and the placed control corners. Section 355.8(11)
3. No name for the Subdivision was designated inside the top margin in bold letters. Section 355.8(18)
4. The adjoining parcels were not identified. Section 355.8(18)

WHEREFORE, the Complainant prays that a hearing be held in this matter and that the Board take such action as it deems appropriate under the law.

Signed and dated this 16th day of February, 2000.

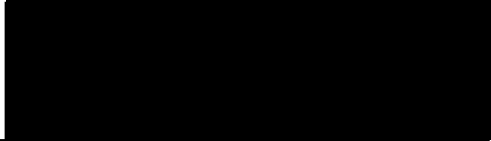


Glean M. Coates, Executive Secretary

Iowa Engineering and Land Surveying Examining Board

FINDING OF PROBABLE CAUSE

On February 3, 2000, the Iowa Engineering and Land Surveying
Examining Board found probable cause to file this Statement of Charges and to
order a hearing be set in this case.



Susan M. Long, Chair

cc: Engineering and Land Surveying Examining Board
Pamela Griebel, Assistant Attorney General
Department of Inspections and Appeals

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

| | | |
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| IN THE MATTER OF: |) | |
| |) | CASE NO. 98-20 |
| GREGG MILLER |) | |
| |) | SETTLEMENT AGREEMENT AND |
| |) | CONSENT ORDER |
| RESPONDENT |) | |

The Iowa Engineering and Land Surveying Examining Board (Board) and Gregg Miller (Respondent) enter into this Settlement Agreement and Consent Order (Agreement), pursuant to Iowa Code section 17A.10 (1999) and 193C IAC 4.10:

1. The Board has jurisdiction of this matter pursuant to Iowa Code chapters 17A, 542B, and 272C (1999).
2. Respondent is a licensed land surveyor in Iowa.
3. On February 16, 2000, the Board filed a Statement of Charges alleging Respondent failed to timely respond to the Board and failed to comply with minimum land surveying standards when preparing two plats of survey, based on a Peer Review Report dated June 1, 1999.
4. Respondent has a right to a hearing on the charges, but waives his right to hearing and all attendant rights by freely and voluntarily entering into this Agreement. The Consent Order is the final agency order in the contested case.
5. Respondent agrees the State's counsel may present this Agreement to the Board and may have ex parte communications with the Board while presenting it.
6. This Agreement shall be part of the permanent record of Respondent and shall be considered by the Board in determining the nature and severity of any disciplinary action to be imposed in the event of any future violations. In addition, the Board shall advise the National Council for Examiners of Engineering and Surveying of the disposition of this matter.

7. This Agreement and the Statement of Charges are public records available for inspection and copying in accordance with the requirements of Iowa Code chapter 22 (1999).

8. Failure to comply with the provisions of this Agreement shall be considered prima facie evidence of a violation of Iowa Code section 542B.21(3) (1999) and 193C IAC 4.2, and shall be grounds for disciplinary action pursuant to Iowa Code section 272C.3(2)(a) (1999). However, no action may be taken against Respondent for violations of these provisions without a hearing as provided in Iowa Code section 542B.22, or waiver of hearing.

9. This Agreement is subject to approval of the Board:

(a) If the Board fails to approve this Agreement, 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 Agreement, it shall fully dispose of all issues in this case.

IT IS THEREFORE ORDERED:

A. Reprimand

Respondent is reprimanded for failure to timely respond to the Board and failure to adhere to the minimum land surveying standards in Iowa Code chapters 354 and 355.

B. Remedial Action

By June 1, 2000, Respondent shall submit to the Peer Review Committee corrected plats of survey with associated corner certificates and affidavits, as more fully described in the attached Peer Review Report, dated June 1, 1999, identifying the particular respects in which corrections are required for each affected plat of survey. In order to comply with this provision Respondent may either reinstate his license or retain an Iowa licensed land surveyor to make the corrections on his behalf.

(1) These documents shall be in final form, although not signed, when submitted to the Peer Review Committee. The documents shall not be signed or recorded until the Peer Review Committee determines the corrections identified in the attached Report have been addressed in conformance with Iowa Code chapters 354 and 355 (1999).

(2) Respondent shall provide the Peer Review Committee field notes, calculations, and such other documents as the Committee may reasonably request.

(3) The Peer Review Committee will not duplicate field work or determine the accuracy of Respondent's work product, but will review the documents for facial compliance with relevant surveying standards. 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, corner certificates and affidavits.

C. Costs

Respondent shall be responsible for the costs incurred by the Peer Review Committee solely for the review described in Section B above. These costs shall be determined and assessed upon the Board's receipt of time and expenses by the Peer Review Committee. Peer Review Committee members are entitled to a per diem of \$50.00, plus expenses. Once assessed, Respondent shall pay these costs in full to the Board within 60 days.

D. Civil Penalty

Respondent shall pay to the Board within thirty calendar days of the Board's acceptance of this Consent Order a civil penalty of \$250.00 based on his failure to timely respond to the Board.

E. Future Compliance

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

AGREED AND ACCEPTED:

The Respondent

[Redacted Signature]

Gregg Miller

4-6-00

Date

The Iowa Engineering and Land
Surveying Examining Board

[Redacted Signature]

By Susan M. Loug, Chair

4/27/00

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

IN THE MATTER OF:

**GREGG MILLER
LAND SURVEYS LTD.
101 N. Shuman Street
Verona, WI 53593**

RESPONDENT

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**CASE NO. 98-20
Statement of Charges**

COMES NOW the Complainant, Gleen Coates, and states:

1. The Complainant is the Executive Secretary of the Iowa Engineering and Land Surveying Examining Board and files these charges solely in her official capacity.
2. The Board has jurisdiction of this matter pursuant to Iowa Code chapters 17A, 272C and 542B (1999).
3. On June 6, 1986, the Board issued the Respondent, Iowa professional land surveying license number 10901.
4. Respondent's professional land surveying license expired December 31, 1999 and has not been renewed at the time of this notice.

Count I

Respondent is charged with failure to comply with a Board order in violation of Iowa Code section 272C.3(2)(a)(1999).

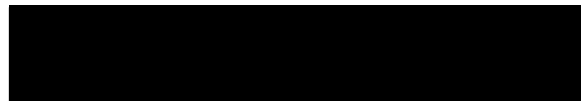
Circumstances

1. On April 27, 2000, the Board signed a Settlement Agreement and Consent Order that had been signed by the Respondent on April 6, 2000.

2. That Consent Order reprimanded the Respondent for failure to timely respond to the Board and failure to adhere to the minimum land surveying standards in Iowa Code chapters 354 and 355.
3. In that Consent Order the Respondent agreed to submit corrected plats of survey with associated corner certificates and affidavits as described in the Peer Review Report dated June 1, 1999. In order to comply with this provision the Respondent needed to reinstate his license or retain an Iowa Licensed land surveyor to make the corrections on his behalf.
4. The Consent Order also required the Respondent to pay to the Board within thirty calendar days of the Board's acceptance of the Consent Order a civil penalty of \$250.00 based on his failure to timely respond to the Board.
5. The Respondent has not reinstated his land surveyor license nor has he submitted corrected plats prepared by an Iowa licensed land surveyor.
6. The Respondent has not paid the civil penalty.

WHEREFORE, the Complainant prays that a hearing be held in this matter and that the Board take such action as it deems appropriate under the law.

Signed and dated this 27th day of July, 2000.



Gleean M. Coates, Executive Secretary

Iowa Engineering and Land Surveying Examining Board

FINDING OF PROBABLE CAUSE

On July 13, 2000, the Iowa Engineering and Land Surveying Examining Board found probable cause to file this Statement of Charges and to order a hearing be set in this case.



Dwayne C. Garber, Chair

cc: Engineering and Land Surveying Examining Board
Pamela Griebel, Assistant Attorney General
Department of Inspections and Appeals

BEFORE THE ENGINEERING AND LAND SURVEYING BOARD OF IOWA

IN THE MATTER OF

GREGG MILLER

Respondent,

CASE NO. 98-20

DIA # 00DOCEL004

FINAL DECISION AND ORDER

Pursuant to the Engineering and Land Surveying Board of Iowa's Notice of Hearing, dated July 27, 2000, this matter came on for hearing before the Board on October 26, 2000, at 1916 SE Hulsizer Road, Ankeny, Iowa. The following members of the Board were present throughout the hearing and heard all of the evidence: Nicholas R. Konrady, Susan M. Long, Susan Albright, Randall R. Beavers, Dwayne C. Garber, and Diana E. Hoogestraat. The Respondent, Gregg Miller, did not appear and was not represented by counsel. The state was represented by Pamela Griebel, Assistant Attorney General. The Honorable Donald W. Bohlken, Administrative Law Judge, presided.

The allegations submitted to the Board for consideration by the Notice of Hearing and Statement of Charges were that the Respondent Gregg Miller failed to comply with a Board order in violation of Iowa Code section 272C.3(2)(a)(1999).

The Board, having heard the testimony and examined the exhibits and after convening in closed executive session pursuant to Iowa Code section 21.5(1)(f)(1995) to deliberate, now renders its Findings of Fact, Conclusions of Law, Decision and Order as follows:

FINDINGS OF FACT:

1. Gregg Miller (hereinafter referred to as the Respondent) was licensed as a surveyor under the laws of the State of Iowa. His license expired on December 31, 1999.
2. Notice of hearing and statement of charges in the instant case were served on the Respondent by the Sheriff of Dane County, Wisconsin on August 8, 2000. The notice of hearing and statement of charges alleged that the Respondent failed to comply with a Board order by failing (a) to comply with requirements for submitting corrected plats of survey and (b) failing to pay a penalty required by the order, as more fully set forth below.
3. A Notice of Rescheduling of Prehearing Conference in the instant case, dated October 5, 2000, was served by regular mail on the Respondent. The Respondent did not provide a telephone number for the conference or otherwise participate in the conference. An attempt made by the undersigned to reach the Respondent, at a number provided by the Assistant Attorney General representing the Board, was unsuccessful.
4. A settlement agreement and consent order was issued against the Respondent on or about April 27, 2000. This agreement and order was signed by the Respondent on April 6, 2000.

5. The agreement and consent order reprimanded the Respondent for failure to timely respond to the Board and failure to adhere to the minimum land surveying standards in Iowa Code chapters 354 and 355 with respect to the preparation of two plats of survey.

6. By that order the Respondent agreed to submit to the Peer Review Committee, by June 1, 2000, corrected plats of survey with associated corner certificates and affidavits as described in the Peer Review Report dated June 1, 1999. In order to comply with this provision the Respondent needed to reinstate his license and submit the corrections or retain an Iowa licensed land surveyor to make the corrections on his behalf.

7. The agreement and order also required the Respondent to pay to the Board, within thirty calendar days of the Board's acceptance of the Consent Order, a civil penalty of \$250.00 based on his failure to timely respond to the Board.

8. The agreement and order also provided that failure to comply with its terms "shall be considered prima facie evidence of a violation of Iowa Code section 542B.21(3)(1999) and 193C IAC 4.2 and shall be grounds for disciplinary action pursuant to Iowa Code section 272C.3(2)(a)(1999)." [This statement was intended to refer to "193C IAC 4.3" instead of "193C IAC 4.2".]

9. The greater weight of the evidence in the record shows that the Respondent has failed to fulfill the terms of the agreement and order as:

a. The Respondent has not reinstated his land surveyor license nor has he submitted corrected plats prepared by an Iowa licensed land surveyor to the Peer Review Committee.

b. The Respondent has not paid the civil penalty.

10. In light of the Respondent's failure to fulfill the terms of the agreement and order, the Respondent should be required to undertake the actions set forth in the Decision and Order below.

CONCLUSIONS OF LAW:

1. The Engineering and Land Surveying Board of Iowa has jurisdiction to consider the charges set forth in the Notice of Hearing and Statement of Charges. See Iowa Code sections 272C.1, .3, 542B.21-.22, .26-.27; 193C IAC Chapter 4.

2. "Notwithstanding any other provision of this chapter, each licensing board shall have the powers to: . . . f. Impose licensee discipline." Iowa Code section 272C.3(1)"f" (1999).

3. Iowa Code section 272C.3, subsections 2 and 3, states, in part:

Each licensing board may impose one or more of the following as licensee discipline:

a. Revoke a license, or suspend a license either until further order of the board or for a specified period, upon any of the grounds specified in section . . . 542B.21 . . . as applicable, or upon any other grounds specifically provided for in this chapter for revocation of the license of a licensee subject to the jurisdiction of that board, or upon failure of the licensee to comply with a decision of the board invoking licensee discipline;

d. Require additional professional education . . . as a condition precedent to the reinstatement of a license or of any privilege incident thereto, or as a condition precedent to the termination of any suspension;

e. Impose civil penalties by rule, if the rule specifies which offenses or acts are subject to civil penalties. The amount of the civil penalty shall be at the discretion of the board, but shall not exceed one thousand dollars. Failure to comply with the imposition of a civil penalty may be grounds for further licensee discipline;

3. The powers conferred by this section upon a licensing board shall be in addition to powers specified elsewhere by the Code.

Iowa Code section 272C.3(2),(3) (1999).

4. The Board's rules state, at 193C IAC 4.36(4):

4.36(4) The decision may include one or more of the following:

- a. Exoneration of respondent.
- b. Revocation of license.
- c. Suspension of license until further order of the board or for a specified period.
- d. Nonrenewal of license.
- e. Prohibition, until further order of the board or for a specific period, of engaging in specified procedures, methods or acts.
- f. Probation.
- g. Requirement of additional education or training.
- h. Requirement of reexamination.
- i. Issuance of a reprimand.
- j. Imposition of civil penalties.
- k. Issuance of citation and warning.
- l. Other sanctions allowed by law as may be appropriate.

This rule is intended to implement Iowa Code sections 542B.21, 542B.22 and 272C.6.

193C IAC 4.36(4).

DECISION AND ORDER:

THEREFORE, IT IS HEREBY ORDERED that:

1. A penalty of one thousand dollars (\$1000.00) is assessed against the Respondent. This penalty shall be paid in thirty (30) days. This penalty is in addition to the previous penalty of two hundred fifty dollars (\$250.00).
2. The Respondent shall be required to complete Professionalism and Ethics in Surveying - an interactive Internet course available from the Department of Surveying at New Mexico State University.
3. A copy of this decision and the consent order shall be forwarded to the Examining Board of Architects, Landscape Architects, Geologists, Professional Engineers, Designers, and Land Surveyors in Wisconsin.
4. A copy of this decision and the consent order shall be forwarded to the National Council of Examiners for Engineering and Surveying.
5. Reinstatement of the Respondent's license shall be contingent on his full compliance with both the consent order and with the present order.

Dated this the 11 day of JANUARY, 2001



DWAYNE C. GARBER, CHAIRPERSON
ENGINEERING AND LAND SURVEYING BOARD OF IOWA

Copy to:

Gregg Miller
Land Surveys LTD
101 N. Shuman Street
Verona, WI 53593

Gleean Coates
Executive Director
Engineering and Land Surveying Board of Iowa
1918 SE Hulsizer Road
Ankeny, Iowa 50021

Pamela Griebel
Assistant Attorney General
Hoover Bldg., 2nd Floor
Des Moines, IA 50319

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 January 16, 2001.


REHEARING AND APPEAL PROCEDURES

Any party to a contested case proceeding may file an application for rehearing from a final order. The application for rehearing shall state on whose behalf it is filed, the specific grounds for rehearing, and the relief sought. In addition, the application shall state whether the applicant desires reconsideration of all or part of the board decision on the existing record and whether, on the basis of the grounds enumerated in subrule 4.41(4), the applicant requests an opportunity to submit additional evidence. The application shall be filed with the board within 20 days after issuance of the final decision.

A copy of the application shall be timely mailed by the applicant to all parties of record not joining therein. If the application does not contain a certificate of service, the board shall serve copies of the certificate of service on all parties. Any application for a rehearing shall be deemed denied unless the board grants the application within 20 days after its filing. These procedures are also set forth in the Board's rules at 193C IAC 4.42.

A party may file a petition for judicial review of this final decision pursuant to the procedures set forth in Iowa Code section 17A.19 (1999).