

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

Board/Commission
Signature. Executive Officer

IN THE MATTER OF:

**MARK LINDSAY LEE
PE/LS 11582
3031 NW 86th Street
Urbandale, IA 50322**

RESPONDENT

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CASE NO. 01-04

Statement of Charges

COMES NOW the Complainant, Glean 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 (2001).
3. On July 19, 1989, the Board issued the Respondent, Iowa professional engineering license 11582 and on January 21, 1998, the Board issued the Respondent an Iowa professional land surveying license with the same number.
4. Respondent's professional land surveying license is currently in active status.
5. On April 16, 2001, the Board received a complaint alleging numerous Iowa Code and Iowa Administrative Code violations made by the Respondent when he prepared, signed and filed an affidavit with the City of West Des Moines on January 29, 2001.
6. On May 22, 2001, the Board notified the Respondent that a complaint had been filed with the Board; the Board had begun an inquiry into the matter; and a Peer Review Committee had been established to investigate the allegations.

7. On June 12, 2001, the complaint and supporting documentation were transmitted to the Peer Review Committee.

8. On July 26, 2001, the Board received from the complainant an addendum to the April 16th complaint providing additional plats and corner certificates prepared by the Respondent and alleging gross negligence or incompetence on the part of the Respondent with regards to his land surveying work.

9. The Board received an initial Peer Review Committee report via fax on July 25, 2001.

10. The Board transmitted the addendum from the complainant to the Peer Review Committee on August 9, 2001 and requested that the PRC review the additional documents for compliance with applicable minimum standard required by Iowa Code Chapters 354 and 355 and 193 IAC Chapter 2. The Board requested an additional, plat-specific report from the PRC with citation of any Iowa Code and Iowa Administrative Code sections and rules that had been violated.

11. The Board received the final report from the Peer Review Committee on October 15, 2001.

Count I

Respondent is charged with unethical conduct and practices harmful to the public in violation of Iowa Code sections 272C.10(3) and 542B.21(3)(2001), 193C IAC 4.8 (3) and 1.30(4) when he filed an inappropriately certified and sealed affidavit with the City of West Des Moines in which he made statements that were incomplete, misleading and deceptive and were not objective and not based on fact.

Circumstances

1. On January 29, 2001, the Respondent signed an affidavit stating that legal descriptions prepared by William M. Austin, LS, were incomplete, vague and in violation of Iowa Code §355.9 (1999) and filed the affidavit with the City of West Des Moines.
2. On April 16, 2001, the Board received a complaint alleging that the Respondent demonstrated profession incompetence or knowingly made misleading, deceptive and untrue statements relating to the practice of land surveying when he prepared and signed the above-mentioned affidavit.
3. The Peer Review Committee established by the Board reviewed the affidavit in question and the legal descriptions prepared by the complainant. The PRC concluded that there was no justification for the Respondent's statements concerning the annexation legal descriptions furnished by the complainant. The Respondent's statements were determined to be in direct violation of 193C IAC 4.8(3). In addition the affidavit was not properly certified and sealed as required by 193C IAC 1.30(4) and Iowa Code §542B.16

Count II

Respondent is charged with unethical conduct and practices harmful to the public in violation of Iowa Code sections 272C.10(3) and 542B.21(3)(2001), and 193C IAC 4.7 when his firm offered land surveying services to the public prior to his licensure as a land surveyor and without regularly employing one or more licensed land surveyors who directly controlled and personally supervised all land surveying work performed by the firm.

Circumstances

1. On April 16, 2001, the Board received a complaint alleging that plats prepared by Lee Engineering and Surveying and signed by a licensed land surveyor were in violation of Iowa Code sections 542B.1 and 542B.27 and 193C IAC 4.7.
2. The Peer Review Committee interviewed the Respondent on July 19, 2001, regarding plats prepared by Lee Engineers and Surveyors and signed by a licensed land surveyor.
3. The PRC discovered that;
 - a. Lee Engineers and Surveyors was founded in 1996;
 - b. the Respondent was not a licensed land surveyor until 1998; and
 - c. the Respondent hired a licensed land surveyor on an as-needed basis by verbal contract.
4. The PRC concluded that the name of the Respondent's firm, Lee Engineers and Surveyors, implies that land surveying services are offered to the public and that the Respondent was in violation of 193C IAC 4.7 paragraph two which states that "A firm shall not directly or by implication offer land surveying services to the public unless it is owned or managed by, or regularly employs, one or more licensed land surveyors who directly control and personally supervise all land surveying work performed by the firm."

Count III

Respondent is charged with careless acts and omissions and practice harmful or detrimental to the public in the practice of land surveying in violation of Iowa Code sections 272C.3(2)(b), 272C.4(6), 272C.10(2), 272C.10(3), 542B.21(2) & (3), and 193C IAC 4.3, when he prepared plats of survey without complying with the minimum land surveying standards set forth in Iowa Code chapters 354 and 355 (1999) and 193C IAC Chapter 2.

Circumstances

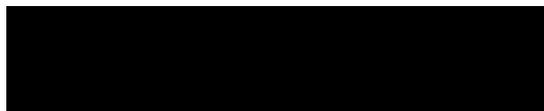
1. On April 16, 2001, the Board received a complaint alleging that a plat prepared by the Respondent, Springwood Plat No. 8 in Ankeny, Iowa, contained a number of violations of land surveying standards as required by Iowa Code Chapters 354 and 355 and 193C IAC Chapter 2.
2. On July 26, 2001, the Board received an addendum to the April 16th complaint providing corner certificates and plats prepared by the Respondent and alleging additional land surveying standards violations.
3. The Peer Review Committee established by the Board reviewed the plats and corner certificates submitted by the complainant and an additional 18 plats (selected at random by the Peer Review Committee) that were prepared by Lee Engineers and Surveyors and were recorded at the Polk County Recorder's Office. 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. A copy of the Peer Review Committee final 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) Corner certificate makes no reference to the existing ties of record. 355.11 and 193C-2.8
 - (b) Corner certificates were not filed within 30 days after completion of the survey. 355.11 and 193C-2.8(4)
 - (c) Corner certificates did not contain a narrative explaining the reason for preparing the certificate, the evidence and detailed procedures used in

establishing the corner position, and the monumentation found or placed perpetuating the corner position including reference monumentation. 355.11

- (d) Surveyor failed to file the necessary corner certificates. 355.11 and 193C --2.8
- (e) Surveyor failed to acquire the necessary data to retrace section lines and research section corners and existing surveys of record. 355.4 and 193C-- 2.3
- (f) Plat does not contain the appropriate statement regarding placement of additional monumentation when the minimum number of two survey control monuments were placed prior to recording the subdivision. 355.6(4) and 355.8(11)

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 3rd day of December 2001

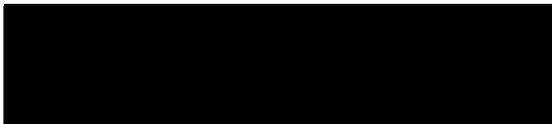
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Gleean M. Coates, Executive Secretary

Iowa Engineering and Land Surveying Examining Board

FINDING OF PROBABLE CAUSE

On October 18, 2001, 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.



Randall R. Beavers/Chair

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

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 December 3, 2001.



FILED 3/15/02 (Date)

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

Signature, Executive

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|--------------------------------|---|---------------------------------|
| IN THE MATTER OF: |) | |
| |) | CASE NO. 01-04 |
| MARK LINDSAY LEE, PE/LS |) | |
| #11582 |) | SETTLEMENT AGREEMENT AND |
| |) | CONSENT ORDER |
| RESPONDENT |) | |

The Iowa Engineering and Land Surveying Examining Board (Board) and Mark Lindsay Lee (Respondent) enter into this Settlement Agreement and Consent Order (Order), pursuant to Iowa Code section 17A.10 (2001) and 193C IAC 4.10:

1. The Board has jurisdiction of this matter pursuant to Iowa Code chapters 17A, 542B, and 272C (2001).
2. Respondent is a licensed land surveyor and a licensed professional engineer in Iowa.
3. On December 3, 2001, the Board issued a Notice of Hearing and Statement of Charges alleging that Respondent:
 - a. engaged in unethical conduct and practices harmful to the public when he inappropriately certified and sealed an affidavit with the City of West Des Moines in which he made statements that were incomplete, misleading and deceptive, were not objective and not based on fact, in violation of Iowa Code sections 272C.10(3) and 542B.21(3) (2001), and 193C IAC 4.8(3).
 - b. engaged in unethical conduct and practices harmful to the public when his firm offered land surveying services to the public prior to his licensure as a land surveyor and without regularly employing one or more licensed land surveyors who directly controlled and personally supervised all land surveying work performed by the firm, in violation of Iowa Code sections 272C.10(3) and 542B.21(3) (2001), and 193C IAC 4.7.
 - c. engaged in careless acts and omissions and a practice harmful or detrimental to the public when he prepared plats of survey without complying with minimum land surveying standards set forth in Iowa Code chapters 354 and 355 (1999) and 193C IAC Chapter 2, in violation of Iowa Code sections 272C.3(2)(b), 272C.4(6), 272C.10(3), 542B.21(2) & (3), and 193C IAC Chapter 2.
4. Respondent does not admit the allegations of the Statement of Charges,

but he does agree to the entry of this Consent Order. 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 (2001).

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) (2001) and 193C IAC 4.2, and shall be grounds for disciplinary action pursuant to Iowa Code section 272C.3(2)(a) (2001). 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

The Respondent is reprimanded for (a) failure to adhere to the minimum land surveying standards in Iowa Code chapters 354 and 355, (b) offering land surveying services to the public prior to his individual licensure as a land surveyor and without properly documenting a relationship with a licensed land surveyor who acted in

responsible charge of all land surveying performed by his firm, (c) not properly certifying and sealing a land surveying document, and (d) critiquing the work product of another land surveyor without proper justification.

B. Civil Penalty

Respondent shall pay a civil penalty of two hundred and fifty dollars (\$250.00) to the Board within thirty (30) days of the Board's approval of this Order.

C. Remedial Action

By April 15, 2002, Respondent shall submit to the Peer Review Committee corrected plats of survey with associated corner certificates and affidavits, as more fully described in the Statement of Charges and the October 11, 2001, Peer Review Report.

(1) The Peer Review Committee shall determine whether the corrections identified in the Peer Review Report have been addressed in conformance with Iowa Code chapters 354, 355 and 542B (2001). Respondent shall make any changes needed to make the corrections.

(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.

D. Costs

Respondent shall be responsible for the costs incurred by the Peer Review Committee solely for the review described in Section C 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.

E. Desk Review

Respondent shall develop a desk review consultation agreement with an Iowa licensed land surveyor in good standing and pre-approved by the Board on the

following terms and conditions:

(1) Respondent shall submit for pre-release review all surveys and corner certificates he prepares after the date this agreement is accepted by the Board for the time period described below. Desk review shall continue until expressly released by the Board.

(2) An executed copy of the agreement shall be submitted to the Board prior to implementation of the agreement. The desk review agreement may be in letter form, but shall attach a copy of this Consent Order.

(3) The reviewing land surveyor shall perform a desk review of each plat of survey and corner certificate before the final documents are signed, submitted to the client, and recorded. The review shall be for facial compliance with minimum land surveying standards. The reviewer will not perform field work or warrant the accuracy of Respondent's work product, but will review field notes, calculations and any other documents reasonably needed. The reviewer shall prepare written comments on each survey's compliance with the minimum land surveying standards set forth in Iowa Code chapters 354 and 355.

(4) The reviewer's recommended revisions or corrections, if any, shall be incorporated into each plat of survey and corner certificate prior to releasing the survey to the client or recording the survey with county officials. A copy of the reviewer's comments shall be submitted directly to the Board from the reviewer. The comments do not need to be received by the Board prior to the completion of the survey. Respondent shall submit to the Board within ten days of written request copies of draft and final surveys and certificates which were issued subject to desk review.

(5) Once fifteen plats of survey with associated corner certificates have been reviewed which qualify as division surveys under Iowa Code section 354.4, and which are not retracement surveys, Respondent may petition the Board for release from this requirement. The Board shall release Respondent from desk review of surveys if the draft surveys (i.e., those prepared prior to receiving the reviewer's comments) and review comments do not reveal serious deviations from minimum surveying standards. If the draft surveys or review comments do reveal serious deviations from minimum surveying standards, the review process shall continue until further order of the Board. Respondent may petition the Board for release from the desk review process after an additional ten surveys have been reviewed.

(6) This settlement shall not preclude the Board from filing additional charges if one or more of the surveys or corner certificates subject to desk review demonstrate probable cause to take such an action. Respondent agrees Board review of desk review reports or surveys subject to desk review shall not constitute "personal investigation" or

otherwise disqualify a Board member from acting as a presiding officer in any subsequent contested case.

(7) Given Respondent's need to secure an approved reviewer to stay in business once this agreement is accepted by the Board, the effective date of the desk review portion of the agreement shall be twenty (20) days following the date this Order is signed by 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]

Mark Lindsay Lee

2-22-02

Date

**The Iowa Engineering and Land
Surveying Examining Board**

[Redacted Signature]

By: Randall R. Beavers, Chair

3/14/02

Date

FILED 3/15/02 (Dad)

IELSEB

**Addendum to Settlement Agreement and Consent Order
Concerning Mark Lee, Case No. 01-04**

Signature, Executive Officer

As an additional condition for release from desk review, Respondent must satisfactorily complete the 40-hour ethics in land surveying course created by New Mexico State University and the University of Maine, and offered in correspondence and Internet formats.

Agreed:

The Respondent

**The Iowa Engineering and Land Surveying
Examining Board**



Mark Lindsay Lee

By: Randall R. Beavers, Chair

3-14-02
Date

3/14/02
Date