

# WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN  
BEFORE THE EXAMINING BOARD OF ARCHITECTS,  
PROFESSIONAL ENGINEERS, DESIGNERS, AND  
LAND SURVEYORS, LAND SURVEYORS SECTION

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IN THE MATTER OF DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	FINAL DECISION
	:	AND ORDER
HAROLD E. DILLON, R.L.S.,	:	LS9107112LSR
RESPONDENT.	:	

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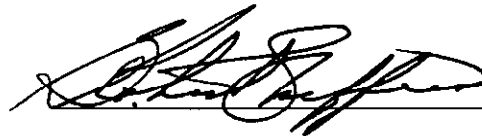
The State of Wisconsin, Examining Board of Architects, Professional Engineers, Designers, and Land Surveyors, Land Surveyors Section, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, makes the following:

ORDER

NOW, THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto, filed by the Administrative Law Judge, shall be and hereby is made and ordered the Final Decision of the State of Wisconsin, Examining Board of Architects, Professional Engineers, Designers, and Land Surveyors, Land Surveyors Section.

The rights of a party aggrieved by this Decision to petition the Board for rehearing and the petition for judicial review are set forth on the attached "Notice of Appeal Information."

Dated this 17<sup>TH</sup> day of OCTOBER, 1991.



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### FINDINGS OF FACT

1. Harold E. Dillon (hereinafter, Dillon), 2012 9th Street, Coralville, Iowa 52241, is a registered land surveyor duly licensed and currently registered to practice land surveying in the State of Wisconsin. The license bears number 1071 and was granted on April 28, 1982.

2. At all times relevant hereto, Dillon was a registered land surveyor duly licensed to practice land surveying in the State of Iowa.

3. On November 15, 1990, the Iowa Engineering and Land Surveying Examining Board indefinitely suspended Dillon's license to practice land surveying in that state based upon findings of violations of the Iowa Codes relating to the standards for the practice of land surveying. A copy of the Iowa decision is attached hereto and incorporated herein.

4. At approximately 12:55 p.m. on August 5, 1991, the Department of Regulation and Licensing received correspondence dated July 29, 1991 from Dillon in which he stated:

"As of this date I do hereby resign and surrender my license to practice land surveying in the State of Wisconsin."

A copy of this letter is attached hereto and incorporated herein.

### CONCLUSIONS OF LAW

1. The Examining Board of Architects, Professional Engineers, Designers and Land Surveyors, Land Surveyors Section has jurisdiction in this proceeding pursuant to Wis. Stats. sec. 443.12.

2. In violating laws relating to the practice of land surveying in the State of Iowa, Dillon has engaged in misconduct in the practice of land surveying within the meaning of Wis. Stats. sec. 443.12(1), as those terms are defined in Wis. Adm. Code sec. A-E 8.03(3)(a).

### ORDER

NOW, THEREFORE, IT IS ORDERED that the voluntary surrender by Harold E. Dillon of his license to practice as a land surveyor in the State of Wisconsin shall be, and hereby is, accepted.

FURTHERMORE, IT IS ORDERED that in the event Harold E. Dillon should request reinstatement of his right to practice land surveying in this state at any time in the future, the board in acting upon such request may require that Harold E. Dillon submit proof sufficient that he has met all of the requirements for reinstatement of his professional registration as a land surveyor in the State of Iowa and that he also take and successfully pass the Wisconsin Land Surveying examination.

BEFORE THE IOWA  
ENGINEERING AND LAND SURVEYING  
EXAMINING BOARD

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IN THE MATTER OF	)	
	)	CASE NO. 87-05
HAROLD E. DILLON,	)	DIA NO. 90DOCPL-3
Respondent	)	
	)	FINDINGS OF FACT,
Professional Registration	)	CONCLUSIONS OF LAW,
Number 6581	)	AND ORDER

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On April 25, 1990 the Iowa Engineering and Land Surveying Examining Board (Board) issued a Formal Complaint/Charges and Notice of Hearing to Harold E. Dillon (Respondent). The Complaint and Notice of Hearing alleged that the Respondent had violated Iowa Code sections 114.21(2), (3), (8), 114.16, 258A.10(2), (3), and (8), 355.4, 355.7 and 409.31(9) and 193C Iowa Administrative Code sections 2.3 - 2.7 (formerly Ch. 390).

An Answer to Formal Complaint/Charges was filed on May 15, 1990. On May 31, 1990 a Proposed Pre-Hearing Stipulation and List of Exhibits was filed by the State. A second Notice of Hearing rescheduled the hearing to September 5, 1990. A joint List of Exhibits was filed by Respondent and the State prior to the hearing.

The hearing was held on September 5, 1990 at 9:00 a.m. in the conference room at the Iowa Department of Commerce, 1918 S.E. Hulsizer, Ankeny, Iowa. The hearing was open to the public. The Respondent appeared and was represented by his counsel, Patrick C. Peters. The State was represented by John W. Baty, Assistant Attorney General. The Board members present for the hearing were: Jolee L. Belzung, P.E., Board Chair; James VanderWoude, P.E., Registered Land Surveyor; Richard Marr, P.E.; Gary D. Darland, P.E.; Harold D. Wight, P.E., Registered Land Surveyor; and Cheryl Richardson, public member. Margaret LaMarche, Administrative Law Judge from the Iowa Department of Inspections and Appeals, presided.

On October 25, 1990 the Board met to deliberate its decision. Ms. Richardson was not present for deliberations and did not participate in the decision. The Administrative Law Judge was instructed to prepare the Board's Findings of Fact, Conclusions of Law, and Order.

THE RECORD

Exhibit A: Deed, Estate of Fisher to Niehaus Long View Farms

Exhibit B: Deed, Estate of Fisher to James Barber

registered land surveyor, was appointed chairman of the Peer Review Committee. (Testimony of Lawrence Boyer, Michael Albers; Exhibits A, B, and C)

2. The Peer Review Committee examined the three deeds. The first was a Court Officer Deed, Estate of Fisher to Niehaus (Exhibit A). The second was a Warranty Deed, Estate of Fisher to Barber (Exhibit B). The third was also a Warranty Deed, Estate of Fisher to Niehaus (Exhibit C). The descriptions in the three deeds show that the second two warranty deeds (B and C) caused a subdivision of the property described in the Court Officer Deed (A). Exhibit B was recorded in February 1987. Exhibit C was recorded in March 1987. (Testimony of Lawrence Boyer; Exhibits A, B, and C)

3. The Peer Review Committee studied the description writing style in Exhibits A, B, and C and studied other plats on record in Jones County in an attempt to determine the identity of the surveyor who prepared the subdivision of A into B and C. The Committee discovered that the writing style of one particular surveyor matched the writing style in A, B, and C. The Committee selected 13 plats which displayed the same writing style (Exhibits D - P). All of the plats were prepared by the Respondent. The Respondent is a registered land surveyor in the state of Iowa. (Testimony of Lawrence Boyer)

4. The Peer Review Committee searched the records at the Jones County Courthouse for a plat for the subdivision of A into B and C but could not find one. (Testimony of Lawrence Boyer)

5. A plat, which describes the property in Exhibits B and C as one contiguous parcel, was recorded in Jones County in January 1987. The plat bears Respondent's signature and seal. The description contained in the plat is the same as the description in B and C, but in B and C additional language has been added to the description. (Testimony of Lawrence Boyer; Exhibit R)

6. Mr. Boyer also performed a field exam with respect to Exhibits A, B, and C. Boyer contacted Mr. Niehaus, the owner, and asked who his surveyor was. At first Mr. Niehaus could not remember the surveyor's name, but he went to his pickup truck and returned with Respondent's business card. Boyer walked the newly constructed fence line on the property and found five or six survey monuments with flagging. The monuments were not capped, nor did they bear the surveyor's registration number. Based upon his field exam and the documents, Boyer concluded that the property had been subdivided. (Testimony of Boyer)

7. A surveyor's cap is fitted on top of a surveying monument and should bear the surveyor's registration number. This informs other surveyors who set the monument and that it is a bona fide monument. (Testimony of Boyer)

14. Exhibits J, K, and L do not identify who requested the survey. (Testimony of Boyer)

15. On all of the Exhibits D - P, Respondent's certification uses the word "state," instead of "certify" and "direct supervision" instead of "direct personal supervision." On Exhibits D, E, F, and J - P the dates on the certifications are incomplete. They do not state the day of the month. (Testimony of Boyer)

#### CONCLUSIONS OF LAW

1. Iowa Code sections 114.21(2), (3) and (8) (1989) provide:

**114.21 Suspension, revocation, or reprimand.**

The board shall have the power by a five-sevenths vote of the entire board to suspend for a period not exceeding two years, or to revoke the certificate of registration of, or to reprimand any registrant who is found guilty of the following acts or offenses:

. . .

2. Professional incompetency.

3. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of the registrant's profession or engaging in unethical conduct or practice harmful to the public. Proof of actual injury need not be established.

. . .

8. Willful or repeated violations of the provisions of this Act.

These provisions correspond to the provisions of Iowa Code section 258A.10(2), (3) and (8) (1989).

2. 193C Iowa Administrative Code section 2.2 defines "property survey" as any land survey performed for the purpose of describing, monumenting, establishing boundary lines, subdivisions, or platting one or more parcels of land.

In closing argument, Respondent contended that if clients did not want a full survey, but only wanted an acreage determination, no plat was required to be filed and therefore Respondent was not bound by the statutes and rules governing resurveys and plats.

This argument ignores the fact that Respondent certified all of the plats in Exhibits D - P and they were filed. Once filed, those plats will be relied upon by the landowner and others. Clearly, all certified filed plats must comply with the statutes and rules governing resurveys, subdivisions, and plats.

193C(390) Iowa Administrative Code 2.5 provides:

193C--2.5(114) Plats. A plat shall be drawn for every property survey performed for the purpose of correcting boundaries and descriptions of surveyed land, or for the purpose of subdividing the land; showing information developed by the survey and including the following elements:

2.5(1) The plat shall be drawn to a convenient scale;

2.5(2) The plat shall show the length and bearing of the boundaries of the parcels surveyed. Where the boundary lines show bearing, lengths or locations which vary from those recorded in deeds, abutting plats or other instruments there shall be the following note placed along such lines, "recorded as (show recorded bearing, length or location)";

2.5(3) The plat shall show and identify all monuments necessary for the location of the parcel and shall indicate whether such monuments were found or placed;

2.5(4) The plat shall be captioned to identify the person for whom the survey was made, the date of the survey, and shall describe the parcel as provided in rule 2.4(114) above;

2.5(5) The plat shall bear the signature of the land surveyor, a statement certifying that the work was done by the surveyor or under the surveyor's direct personal supervision, and the surveyor's Iowa registration number or legible seal.

The preponderance of the evidence established that Respondent failed to prepare or file a plat of the survey work of the land described in Exhibit B, page 2, and Exhibit C, page 2, subdividing the land describe in Exhibit A, page 3. The plat contained in Exhibit R is a plat of the land prior to subdivision. Therefore, the Respondent has violated Iowa Code sections 355.4 and 355.7 (1989) and 193C (formerly 390) Iowa Administrative Code 2.5.

4. Iowa Code section 114.16 (1989) provides in relevant part:

. . . All engineering documents and land surveying documents shall be dated and shall contain the following: (1) The signature of the registrant in responsible charge; (2) a certificate that the work was done by such registrant or under the registrant's direct personal supervision; and (3) the Iowa registration number or legible seal of such registrant.

. . .

The preponderance of the evidence established that Respondent violated 193C Iowa Administrative Code 2.6(3) and (5) and 409.31(9) (1989) in his preparation of the plats contained in Exhibits D and I. Exhibit D contains measurements to the nearest foot. Exhibits D and I fail to meet closure requirements.

7. 193C Iowa Administrative Code 2.4 provides:

193C--2.4(114) Descriptions. Descriptions defining land boundaries written for conveyance or other purposes shall be complete, providing definite and unequivocal identification of lines or boundaries. The description must contain dimensions sufficient to enable the description to be platted and retraced and shall describe the land surveyed either by government lot or by quarter-quarter section or by quarter section and shall identify the section, township, range and county; and by metes and bounds commencing with some corner marked and established in the U.S. Public Land Survey System; or if such land is located in a recorded subdivision or recorded addition thereto, then by the number or other description of the lot, block or subdivision thereof which has been previously tied to a corner marked and established by the U.S. Public Land Survey System. If the parcel is described by metes and bounds it may be referenced to known lot or block corners in recorded subdivision or additions.

The preponderance of the evidence established that Respondent violated 193C Iowa Administrative Code 2.4 and Iowa Code section 355.4 (1989) in his preparation of the plats in Exhibits D, E, F, and P when he failed to provide descriptions. In E and F, Respondent failed to state what county the parcel was in. In Exhibits E and P, Respondent failed to state what quarters the parcel was in. In Exhibits E, F, G, H, I, L, O, and P, Respondent did not identify the necessary government corner. In Exhibits H, L, M, N, and P the point of beginning was either not shown or not identified.

8. The preponderance of the evidence established that Respondent violated 193C Iowa Administrative Code 2.3, 2.5 and 2.7 when he failed to monument and identify survey points in Exhibits D, E, F, H, J, K, and L.

9. The preponderance of the evidence established that Respondent violated 193C Iowa Administrative Code 2.5(2) when he failed to make notations of variances from previously recorded plats when he filed Exhibits N and I.

10. The preponderance of the evidence established that Respondent violated 193C Iowa Administrative Code 2.5(4) when he failed to disclose who requested the surveys contained in Exhibits J, K, and L.



29 July 91

State of Wisconsin  
Department of Regulation & Licensing  
1400 E. Washington Av.  
Madison, Wisc. 53706

Dear Sir or Madam:

As of this date I do hereby resign and surrender my license  
to practice land surveying in the State of Wisconsin.

Sincerely,

*Harold E. Dillon*  
Harold E. Dillon

DEPARTMENT OF REGULATION & LICENSING  
JUL 30 1991  
MADISON, WISCONSIN

## NOTICE OF APPEAL INFORMATION

(Notice of Rights for Rehearing or Judicial Review,  
the times allowed for each, and the identification  
of the party to be named as respondent)

The following notice is served on you as part of the final decision:

### 1. Rehearing.

Any person aggrieved by this order may petition for a rehearing within 20 days of the service of this decision, as provided in section 227.49 of the Wisconsin Statutes, a copy of which is attached. The 20 day period commences the day after personal service or mailing of this decision. (The date of mailing of this decision is shown below.) The petition for rehearing should be filed with the State of Wisconsin Examining Board of Architects, Professional Engineers, Designers and Land Surveyors.

A petition for rehearing is not a prerequisite for appeal directly to circuit court through a petition for judicial review.

### 2. Judicial Review.

Any person aggrieved by this decision has a right to petition for judicial review of this decision as provided in section 227.53 of the Wisconsin Statutes, a copy of which is attached. The petition should be filed in circuit court and served upon the State of Wisconsin Examining Board of Architects, Professional Engineers, Designers and Land Surveyors

within 30 days of service of this decision if there has been no petition for rehearing, or within 30 days of service of the order finally disposing of the petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.

The 30 day period commences the day after personal service or mailing of the decision or order, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing of this decision is shown below.) A petition for judicial review should be served upon, and name as the respondent, the following: the State of Wisconsin Examining Board of Architects, Professional Engineers, Designers and Land Surveyors.

The date of mailing of this decision is October 22, 1991.