

BEFORE THE IDAHO BOARD OF LICENSURE OF PROFESSIONAL  
ENGINEERS AND PROFESSIONAL LAND SURVEYORS

IN THE MATTER OF

CHAD ERICKSON, P.L.S.

Respondent.

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) Docket No.: FY 11.11  
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) FINDINGS OF FACT,  
) CONCLUSIONS OF LAW,  
) AND ORDER  
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The above-entitled matter came on for hearing on June 20, 2016, and continued through mid-day of June 22, 2016, before five (5) members of the Idaho Board of Licensure of Professional Engineers and Professional Land Surveyors (“Board”). The hearing occurred at a room set aside in the Ada County Courthouse. The Board members acting as hearing officers were George Murgel (Chairman), George Wagner, Dusty Obermayer, Ray Watkins, and David Bennion. Michael Kane appeared as Board counsel. The Complainant, Keith Simila, was represented by Kirt Naylor. Chad Erickson appeared without counsel.

**I.**

**INTRODUCTION**

On the morning of the third day of the hearing, Mr. Erickson moved for a mistrial and a continuance and announced that he was leaving the proceedings. The Board conferred and denied the motion for mistrial. As to the motion for continuance, the Board had not ruled on the

motion but asked Mr. Erickson to confer with Mr. Naylor. Before the conference, the Board advised Mr. Erickson that if he left the proceedings, the Board would have no choice but to continue with the hearing, and advised Mr. Erickson that he would be waiving his right to cross-examine the witness then being examined, Mr. Simila, and would waive presentation of his defense. During the conference between Mr. Erickson and Mr. Naylor, Mr. Erickson left the building and did not return. He made no record as to his reasons for leaving beyond his original reasons for the continuance motion. He has since moved for another continuance, which motion is dealt with in a separate order.

The primary witness for the Complainant was John Elle, PE, PLS. Mr. Elle testified at length as an expert to the various counts of the Complaint. Mr. Erickson cross-examined Mr. Elle for several hours. Mr. Simila testified as the Executive Director of the Board. Mr. Erickson did not cross-examine Mr. Simila, but as it happens those matters testified to by Mr. Simila appear to be matters that do not demonstrate a violation of the statutes or rules. Hence, it appears that Mr. Erickson's failure to cross-examine Mr. Simila was harmless.

Because of Mr. Erickson's refusal to put on a defense, the Board is left to infer his defenses from his cross-examination of the Board expert, from the various exhibits entered into evidence on Mr. Erickson's behalf, and from his arguments made during his various objections or responses to objections. While this is certainly not a preferable way of determining a respondent's position on the facts and the law, it is all the Board is left with due to the intentional decisions of Mr. Erickson.

The Complaint in this matter is broken into six (6) counts, most of which contain subparts. Some counts rely upon more than one statute or rule. For ease of reference, the Board will refer to each subpart by count number and paragraph number.

Upon review of the evidence presented, the Board determines that several of the allegations made against Mr. Erickson are not violations of the statutes or rules. As a preliminary matter, the Board will discuss those allegations and briefly describe the reasons for dismissing the portions of the Complaint dealing with those allegations.

## **II.**

### **MATTERS DISMISSED OR WITHDRAWN**

#### **A. Count One, Paragraph 3.**

The allegation contained in this paragraph is that a letter was sent to Mr. Erickson by staff counsel requesting all evidence supporting his conclusions in a record of survey. In response to this letter, Mr. Erickson apparently did not provide to counsel a survey report he had authored. There was virtually no evidence presented as to this allegation. However, the code section cited by the Complainant, Idaho Code § 54-1208, pertains to the issuance of subpoenas, not letters, and further gives jurisdiction to the district court to enforce the statute. Because the law does not support the allegation, this allegation is dismissed.

#### **B. Count One, Paragraph 5.b.**

This allegation stems from a letter of complaint written against Mr. Erickson in 2011. The allegation contained in the paragraph recites the various accusations brought by Dorothy Walker and recites her opinions of Mr. Erickson. Ms. Walker's complaint letter – long on accusations and short on specifics – was one of the precursors to the Complaint brought by the Board staff in this matter. Her allegations and opinions have been noted, but it does not appear that she was interviewed by the Board expert, and it appears that some of her claims have been subsumed into the opinion of the Board expert in regard to his standard of care analysis. Based on the limited information presented at the hearing, it appears that Ms. Walker's letter of

complaint, standing alone, does not meet the test for clear and convincing evidence of a violation of the statute or rule. Hence, this allegation will be dismissed. However, many of the allegations contained in the Walker letter will be dealt with in the context of the standard of care allegation discussed below.

**C. Count One, Paragraph 6.**

This allegation deals with the failure to set monuments. The statute cited in the paragraph post-dates the activities of Mr. Erickson. A suggestion was made that a 22-year-old Board opinion could be used to rescue the allegation, but the Board is unable to find that opinion. In any event, the statute at the time spoke for itself and a Board opinion cannot be used to rewrite the statute to fit the facts. The allegation in this paragraph is dismissed.

**D. Count Two, Paragraph 9.b.**

This allegation deals with the primary obligation of all licensees to protect the safety, health and welfare of the public. The allegation asserts that because Mr. Erickson failed to show the property of the Grangeville Highway District in a survey he completed and appeared to indicate that Dorothy Walker was the owner of the land in question, the primary obligation was violated. While the Board will take up the issue in the context of standard of care, as discussed below, the Board does not feel there was clear and convincing evidence that the welfare of the public was affected by Mr. Erickson's error. Put another way, it does not appear that the highway district or anyone else suffered or could have suffered any injury as a result of the error. The allegation in this paragraph is dismissed.

**E. Count Three.**

The allegations in this count are complex and voluminous, running to a full seven (7) pages in the Complaint. The allegations seem to be premised on the notion that Idaho Code §

31-2709 (stating that no survey not made in accordance with the United States manual of surveying instructions or the circular on restoration of lost or obliterated corners shall be considered legal evidence in any court) may be the subject of an independent disciplinary action. In other words, the allegation seems to suggest that not following one or more of the principles found within the manual and circular, standing alone, can lead to disciplinary sanctions, as opposed to discipline for violation of the standard of care. The main premises of the allegations are not that Mr. Erickson ignored the manual and circular, or deliberately refused to follow the instructions therein, but rather that he used the manual in an incompetent manner. In other words, no one has suggested that Mr. Erickson failed to use the manual. Rather, it is alleged that he reached the wrong conclusions in his survey.

The Board notes that Idaho Code § 31-2709 does not purport to set penalties for using the manual or circular in an incompetent or negligent manner. While potentially a standard of care issue, it cannot be said that a surveyor can or should be disciplined simply because he interpreted the manual or circular in a way that other surveyors would disagree with. Put another way, it is clear that Mr. Erickson rejected a monument. It appears he did so as a matter of opinion. As long as the manual and circular were taken into consideration, it cannot be said that the opinion is *ipso facto* a violation. Mr. Erickson reached conclusions using the manual or circular that are contrary to the conclusions of the expert, and indeed appear to be unfounded. Nevertheless, he did not “violate” the manual or circular.

Had Count Three been charged in the context of standard of care, the discussion would be different. Because it was not, the Board is constrained to dismiss the count.

**F. Count Four, Paragraph 24.c.**

The allegations in this paragraph are that Mr. Erickson made some comments in a “sworn declaration” of 2013 to the effect that another surveyor, Ron Brown, had cancer and that his work may have been affected by medication he was taking for that cancer. The rule cited pertains to public statements, and makes it clear that a licensee may not commit fraud, violate the standard of care, or engage in deceit or misconduct when making a public statement in a report. The Complainant has provided evidence that Mr. Erickson’s statements were completely wrong. Apparently Mr. Erickson misunderstood what years Mr. Brown suffered from cancer. While the allegations in this paragraph are troubling, missing from the evidence is the actual declaration written by Mr. Erickson containing these statements. While there seems to be no issue that the statements were made, the context and circumstances are unclear to the Board. It is unknown whether Mr. Erickson engaged in willful lying to bolster his position, was relying on bad information, or simply confused dates. Based on the clear and convincing evidentiary standard the Board must comply with, the Board does not feel it can reach a conclusion as to this allegation on the information provided to it at the hearing. The allegations in this paragraph are dismissed.

**G. Count Five.**

This count will be dismissed in its entirety. The count is based upon the rule that a licensee should not attempt to injure the professional reputation of another licensee or indiscriminately criticize another licensee. Paragraphs 26.a, 26.b and 26.c were not addressed at the hearing. Moreover the quotations in paragraphs a and b do not conform to what was actually written in the exhibits given to the Board, and appear to be paraphrases of the actual language in the exhibits. None of the statements in 26.a, 26.b or 26.c appear to come within the rule.

Paragraph 26.d refers to the phrase “two paladins,” used by Mr. Erickson in a published article in a magazine. These two words, standing alone, can be interpreted as laudatory. Given the context, it appears that Mr. Erickson was engaging in sarcasm. The law is clear under the First Amendment that a person may publish sarcastic comments without fear of losing a license. Moreover, one of the surveyors cited in paragraph 26.d was not even mentioned by name in the article.

Paragraph 26.e pertains to an email by Mr. Erickson to another surveyor, who had been hired by the Board to investigate a series of allegations, some of which pertained to Mr. Erickson. The email string in question was redacted, but enough information was provided to indicate that Mr. Erickson indeed made the statement. The law under the First Amendment is that statements about another person may be actionable when the person making the statements suggests that he is the possessor of information that is damaging to the individual of whom he is speaking. However, the only way the statements would be actionable is when there is proof that the statements were false. In this matter, there was no evidence of the falsity of the statement.

Paragraph 26.f appears to be a statement about the engineering profession in general, and does not apply to the rule in question.

Paragraph 26.g was withdrawn by the Complainant at the hearing.

**H. Count Six.**

This count pertains to an allegation of breach by Mr. Erickson of confidential communications or information received from his client, Dorothy Walker. The evidence is beyond dispute that Mr. Erickson published an article that contained disparaging remarks about his former client. The client took offense, and suggested that she had been defamed. The problem with this count is that defamation and breach of confidential communication are not the

same thing. The Complainant provided no evidence of a specific confidential communications, confidential data, or confidential information that was published in the article without consent of Ms. Walker. A close review of the article reveals a single paragraph that any reasonable person would believe to be inappropriate. This paragraph refers to Mr. Erickson's client as always wanting more than he could give, and implies that the client was pressuring Mr. Erickson to provide a survey giving her more land than she was entitled. While this may or may not be a conclusion that Mr. Erickson actually drew, he did not purport to disclose information of a confidential nature. Indeed, by claiming defamation, the client suggests such discussions never even occurred. By definition, this cannot be a breach of a confidential communication.

The Board understands the frustration of the client, and rejects the idea that a licensee may on any occasion openly criticize a client or the client's motivations without foundation. More of this will be discussed below. For the purposes of this allegation, however, the Board cannot find that confidentiality was breached. Therefore this count must be dismissed.

### **III.**

#### **FINDINGS OF FACT**

The controversy in this matter began with the preparation and stamping of a record of survey and report of a survey made by Mr. Erickson on behalf of his clients Sydney and Dorothy Walker. The record of survey was stamped and signed by Mr. Erickson on July 27, 2010. The record of survey demonstrates that Mr. Erickson rejected an original stone monument, found and re-monumented by surveyor Carl Edwards in 1977 at the southwest corner of section 24. There is significant evidence in the record demonstrating that the location of the Carl Edwards monument had been honored for a period of over 100 years. Mr. Erickson established a corner over 270 feet south of the Carl Edwards monument, purporting to place the corner on property

owned by other landowners in favor of the Walkers. In doing so, he either failed to note or otherwise rejected compelling previous surveys, surveyor notes, maps and other information indicating the location of the corner. Mr. Erickson authored a survey report dated the same day as his record of survey, explaining his reasoning, some of which has proven to be significantly faulty.

For reasons known only to Mr. Erickson, the record of survey failed to show a significant parcel of land owned by the Grangeville Highway District, while implying ownership of the parcel by the Walkers. He also engaged in speculation that ultimately turned out to be incorrect, primarily pertaining to a fence bordering the property of the Badertscher family.

To say that this survey created controversy with the landowners in the vicinity would be an understatement. The matter has now degenerated into a court action. Multiple parties are involved in the action.

It appears that at first the Walkers supported the survey completed by Mr. Erickson. Although what occurred later is not entirely clear, something happened that began to unravel the relationship. On December 29, 2011, Mr. Erickson sent the Walkers a document titled "Report on the Southwest Corner of Section 24." This document was unstamped and unsigned. The report indicates that Mr. Erickson determined that his original survey was erroneous as to his relocation of the southwest corner. However, he continued to reject the Carl Edwards monument of the original stone, referring to that stone and his newly monumented corner as "bogus." Based on the various filings and admissions by Mr. Erickson in the matter, it appears that Mr. Erickson was willing to relocate the corner to a third location, but only after he was paid for his work. In other words, Mr. Erickson took no action to memorialize his mistake by filing an amended corner record or amended record of survey, apparently because the Walkers refused to

pay him. Although it is somewhat unclear, based upon the state of the testimony by the time Mr. Erickson left the proceedings, it appears that Mr. Erickson has recanted his 2011 survey report and is now back to claiming that his original record of survey and survey report were correct as to the southwest corner.

In March 2015, Mr. Erickson published an article in the American Surveyor magazine, ostensibly as an instructive device, justifying his rejection of the Carl Edwards corner, but citing information not mentioned in his original survey report to the Walkers – wet drum scanning and schoolhouse location. The previous month, he had recorded in the Idaho County Courthouse a nearly identical document, entitled “Survey Report.” This was stamped and dated February 13, 2015. Much of the filing was a justification of the rejection of the Carl Edwards stone. The last sentence, however, challenged a survey of “Pete Ketchem” [sic]. Mr. Ketcham had been hired by the Walkers to perform yet another survey of the land in question in this matter, and it appears Mr. Erickson challenged Mr. Ketcham’s conclusions, stating that his findings “disprove” the corner set by Pete Ketcham.

Pouring gasoline on the fire, Mr. Erickson was critical of his former client, Walker, in both the article and the survey report. He stated:

Our client thought that we were workers of miracles. But the client wanted more. She always wanted more and she came to think that a surveyor could do anything the client asked. Inevitably we parted company over this issue. Since then she has, in sequence, found two paladins who have moved the SW corner of Section 24 further west into what appears to be her neighbor’s property. They and their “opinions” are now 80’ further south and 270 feet west and still going, apparent next stop Pismo Beach, California.

Exhibit 26d.1, p.6.

From the context of the survey report filed in the courthouse, it appears that the purpose of the filing was to discredit Mr. Ketcham as one of the paladins.

By the end of March, 2015, the relationship with the Walkers had deteriorated to the extent that Ms. Walker was demanding that criminal charges be filed against Mr. Erickson.

**A. Count One, Paragraph 4.**

This count alleges a violation of Idaho Code § 54-1215 (a seal, signature and date shall be placed on all final specifications, land surveys, reports, record of surveys, drawings, plans, design information and calculations, whenever presented to a client). There is no question whatever that the December 29, 2011, report sent to Dorothy Walker by Mr. Erickson was not signed or stamped. Neither was it marked “preliminary” or “draft” or any other similar mark indicating that the report was not to be relied upon. In fact, the document is a complete repudiation of Mr. Erickson’s prior work, and it is based on numerous calculations and opinions. Any reasonable person would view the report as final. The only defense raised by Mr. Erickson, albeit in questioning of the expert, was to suggest that Ms. Walker was not a client. This is a specious argument. There was no question that Ms. Walker had paid Mr. Erickson to do the original survey, his record of survey lists the Walkers as clients, and this report was designed to amend his previous conclusions and was sent to the Walkers. It also appears that Mr. Erickson was hoping that his clients would re-engage him. The allegations in this paragraph are sustained.

**B. Count One, Paragraph 5.**

This count alleges a violation of Idaho Code § 54-1220, in that Mr. Erickson allegedly committed fraud, deceit, gross negligence, incompetence and misconduct by failing to show the property of the Grangeville Highway District on his record of survey. Added to this failure is an overstatement of the acreage belonging to the Walkers. In short, it is clear and convincing that the Highway District property is not shown on the record of survey. This information would have been readily available to Mr. Erickson. While it may not be fraud or deceit, there is no

question it is gross negligence, incompetence (as defined as failing to comply with the standard of care) or misconduct. Misconduct, defined by Board rule, includes violating the standard of care. Not showing the highway district parcel on the record of survey violates the standard of care. This was the opinion of the Complainant's expert and it was unrebutted. The allegations of gross negligence, incompetence and misconduct are sustained, and this paragraph are sustained and allegations of fraud and deceit are dismissed.

**C. Count One, Paragraph 5.a.**

This count alleges a violation of Idaho Code § 54-1220 in regard to Mr. Erickson's survey report of 2010. This report stated in part:

In 1996 the Walkers retained, and paid, Carl Edwards to re-survey the exterior and subdivision lines of Section 24, T30N, R3E. During the performance of this work Mr. Edwards apparently failed to respect the fundamental law of original corners and placed five of his sectional corners in the wrong locations, to a considerable degree. The errors are in the magnitude of 272', 96.94', 157.19', 34.59' and 121.2'. Mr. Edwards' survey was recorded as R.O.S. #S-1177.

The Walkers report that they objected to the accuracy of Mr. Edwards survey at the time. Never-the-less, the Edwards monuments were an invitation for neighbors to encroach upon the Walker's property from the South, West and North. At the West boundary of the NW1/4 of Section 24 the neighbors have accepted that invitation by building fences upon the Edwards lines (see stippled area on Record of Survey). At no other location have the neighbors taken advantage of the situation.

The recording of this survey exposes the errors in Mr. Edwards monuments and thus terminates the invitation to encroach. My survey regards the encroachments where fences were built to Edward's monuments and lines but disregards any claims by neighbors who have not built fences to these lines.

Exhibit 1.3, p.11.

The Board views these paragraphs as statements of fact, accusing the neighbors of capitalizing on an erroneous survey to encroach on the Walker's land, as represented by the building of a fence. The record is clear that the fence on the west side of the Walker property

had quite a different history. As described by the landowner, who complained directly to the Board in 2011:

Mr. Erickson came in creating chaos, disruption, threats, and litigation in his wake, along with a total disregard for the neighboring property owners who's land has been worked, improved, occupied, and possessed with agreeing title deeds for **34 -100 years.**

On Mr. Erickson's Survey # S-2958 and on page 11 of his coinciding Survey Report, he **falsely** accuses us of taking advantage of a 1996 survey of Section 24 done by Mr. Carl Edwards, (a survey we knew nothing about) by building fences along Mr. Edward's erroneous, according to Mr. Erickson, survey lines on the western boundary of the NW1/4 of Section 24, and encroaching on his clients, the Walker's, property. We also find it very interesting that he only accuses two neighboring property owners at the "West boundary of the NW1/4 of Section 24" ..... And then goes on to state that "At no other location have the neighbors taken advantage of the situation", when there are "three" neighbors that share that boundary fence line.

**Well, nothing could be further from the truth!** The facts are, which Mr. Erickson so conveniently neglected to find out, is that when we purchased our 20 acre property from the Wiltzes in April of 1982, Mr. Edward's survey monuments of 77, 79, and 82, were already in place and established. We, along with the Walkers, who had purchased the NW1/4 of Section 24 as well as the NE1/4 of Section 23 in 1977, and the Wiltzes, who had then purchased the NE1/4 of Section 23 from the Walkers in 1979, all agreed and acquiesced to the description of our individual properties as per the established Edward's survey monuments. Shortly after purchasing our property, **Mr. Sydney Walker Sr.** had Mr. Edwards shoot a line for him between the two common corners of our three properties at that time.

From the NW1/4 corner of Section 24, to the NW corner of Section 24, which divided the entire NW1/4 of Section 24 from the NE1/4 of Section 23. Mr. Walker, now deceased, then built a fence between the two monuments, called it our boundary fence, and it has remained the same to this date. **The fact** is, the fence that Mr. Erickson accuses us of building in 1996, **was in fact** built 27-28 years ago by Mr. Sydney Walker Sr. \and has remained the same unaltered, unchanged, and until now, the unchallenged acceptable line of occupation and possession for close to 30 years. However, Mr. Erickson conveniently neglected to find out the true facts of this situation, and instead, made false accusations which he then made public record, and of which we never found out about until this past October. We also find objectionable the fact that anyone with eyes, and especially a surveyor, can see that this fence line is very old and runs in a continuous line between the corner and the quarter corner monuments without any deviations whatsoever. So why was this not considered and/or noted in his survey and report? Or why were only two property owners in the "NW1/4 of Section 24" accused of encroachment, when there are three property owners that share that

same fence line as the eastern boundary line of their properties? Mr. Erickson made no such accusations of the neighbors to our north who share the very same fence line, and considerably more of it. Again, why was there a false accusation of encroachment, when anyone could plainly see that the fence very clearly goes from survey monument to survey monument without deviation? This makes no sense to us, unless he was doing what his clients, the Walkers, asked him to do.

Exhibit 1.4, pp.2-3 (emphasis in original).

This information was un rebutted by Mr. Erickson. There is no evidence he interviewed Ms. Badertscher. The Board finds this is a clear and convincing violation, in that Mr. Erickson was grossly negligent, incompetent (which is defined in the rules as failure to comply with the standard of care), and engaged in misconduct for a violation of the standard of care. The allegations of gross negligence, incompetence and misconduct in this paragraph are sustained.

**D. Count One, Paragraphs 7.a, 7.b and 7.c.**

This count pertains to Idaho Code § 55-1604, which requires a land surveyor to complete a corner record in each case a corner is established, reestablished, monumented, re-monumented, restored, rehabilitated, perpetuated or used as a control in any survey. The evidence is undisputed that Mr. Erickson did not file corner records as to three (3) separate corners shown in his record of survey. The evidence is un rebutted, and no excuse of any kind was offered by Mr. Erickson. The allegations in these paragraphs are sustained.

**E. Count One, Paragraph 8.a.**

This count pertains to Idaho Code § 55-1906(2). The section requires evidence of compliance with the law of corner perpetuation as set forth in Title 55, Chapter 16, Idaho Code, to be included in records of survey. Mr. Erickson did not comply with this statute since he did not evidence prior corner records as to the northwest corner, north quarter corner, and west quarter corner of section 24, and the northeast corner of section 25. The evidence is undisputed,

and Mr. Erickson offered no explanation or excuse. The allegations in this paragraph are sustained.

**F. Count Two, Paragraph 9.a.**

This count pertains to the primary obligation of all land surveyors as set forth in the Board rules. The primary obligation is to protect the health, safety and welfare of the public in the performance of professional duties. The specifics of this count deal with the same matter described in Count One, paragraph 5.a. The Board finds that Mr. Erickson's failure to properly inquire about the history of the fence in question, and his accusations of encroachment have created significant legal difficulty to the adjoining neighbor, and because he failed to properly investigate his accusations he has adversely affected the welfare of the public. The allegations in this paragraph are sustained.

**G. Count Two, Paragraphs 9.c and 10.a.**

The counts in these two paragraphs pertain to the same issue although the first is couched in terms of failure to honor the primary obligation to protect the welfare of the public and the second is couched in terms of failure to exercise such care, skill and diligence as others in the profession ordinarily exercise under like circumstances.

These two counts deal with the central issue in the case – was it or was it not appropriate to the welfare of the public and within the standard of care to reject the Carl Edwards monument and relocate and monument a corner some 272 feet south of the Carl Edwards monument? Given that much flowed from this action as to the Walkers and other landowners, and given that Mr. Erickson later sought to repudiate his opinion, and then apparently later recanted his repudiation, the issue is worthy of close scrutiny.

The Board begins by noting that the credentials of the Complainant's expert were unchallenged, and that the expert's opinions on the subject were virtually unrebutted by Mr. Erickson. The expert opined that Mr. Erickson had failed in his primary obligation to protect the welfare of the public, and violated the standard of care. His reasons for his opinion are set forth below.

When speaking of the standard of care, one begins with the BLM manual and circular on the restoration of lost or obliterated corners. The guiding principal for land surveyors is that an original corner must be honored, despite the potential ability to use modern technology or find evidence that the original corner was not placed in a precisely accurate location to a level of mathematical certainty. Given the equipment of the late nineteenth century, and given that the terrain being surveyed was in some cases difficult to negotiate, it is not surprising that original corners sometimes do not mathematically agree with what GPS technology now might show. The aforementioned principal gives landowners repose, and they may develop their land without fear that surveyors could come along ten years, or fifty years, later and "prove" that the original corner should have been placed elsewhere. Needless to say, such an action would jeopardize the rights of innocent individuals, cause expensive controversies, and potentially put landowners in a situation where they could never be sure of the boundaries of their lands.

Sometimes original corner stones are lost or can be shown to have been moved. In those cases, a surveyor is charged by the BLM manual and circular to use all evidence available before resetting the corner. In this respect, surveyors become detectives, who must review many different kinds of information, from interviews to fences, from previous surveys to deeds, from remains of buildings to road locations. It is well below the standard of care to reject locations of original stone monuments by engaging in speculation, or incomplete and inadequate

investigation. As will be seen, it is clear and convincing that Mr. Erickson engaged in insufficient investigation upon unreasonably rejecting an original stone in the southwest corner of the Walker land and a later monument placed at that location, caused discord among the landowners in the area, and then admitted that his findings were “bogus.”

The evidence is clear that the location of the southwest corner in question had been undisturbed for approximately 140 years. The location is in accord with the notes of the original General Land Office (“GLO”) survey made in 1873 by surveyor Thompson, another survey in 1897 by surveyor Shannon and confirmed by GLO Special Agent George W. Ball in an examination of surveyor Shannon’s work, a 1922 Bureau of Public Roads plan, a deed pertaining to the Grangeville Highway District dating to the 1960s, and the finding of the stone and remonumenting of it by surveyor Carl Edwards in 1977. Further, there was testimony of Ms. Hoiland, an elderly woman who has lived on the property all of her life. She told the Board expert that she was shown a stone at the south 1/4 corner of section 24 by her father when she was a child. Ms. Hoiland pointed out that position on the ground in the field to the Board expert, Mr. Elle. The position Ms. Hoiland pointed out fits a calculated position by Hunter Edwards using the found stone by Carl Edwards at the southwest corner of section 24 within 6 feet.

To further support the stone found by Carl Edwards at the southwest corner of section 24, an original stone set by Shannon was found at the 1/4 corner common to sections 25 and 26 by Hunter Edwards, which is approximately 184 feet north of a stone set by county surveyor Spedden for the same 1/4 corner in 1909. In this case both the original GLO stone set by Shannon and the stone set by Spedden have both been found. The original GLO stone is the correct corner and proves county surveyor Spedden was incorrect. This is significant because it appears Mr. Erickson is heavily deriving his opinion of where the section lines are located based

on county surveyor Spedden's survey. It seems reasonable to the Board to believe that if county surveyor Spedden's stone at the 1/4 corner common to sections 25 and 26 is out of place by 184 feet then a similar margin of error could be expected at other locations in the area including at the southwest corner of section 24.

Based on this evidence, it was the unrebutted testimony of the expert that Mr. Erickson fell below the standard of care. First, he engaged in unfounded speculation by claiming that the stone monumented by Carl Edwards was not the original stone. Mr. Erickson arrived at this conclusion by, among other things, claiming that the stone's markings were not made by the original surveyor but by a farm implement. There is not the slightest evidence in the record to support this claim. Indeed, the marks on the stone appear to be intentionally set chisel marks in the locations described in the original surveyor's notes, in three locations. The stone is made of basalt and is unlikely to have been marked by an implement running over it in such a way as to mimic the originally described chisel marks.

Mr. Erickson either did not review or otherwise ignored the field notes of the examining surveyor (Ball) who reviewed the 1897 survey, which were available through the BLM office in Idaho.

Mr. Erickson failed to interview Ms. Hoiland, even though she was directly affected by the interpretations he was making.

Mr. Erickson failed to look for, let alone consider, the 1920 Public Roads map. In addition, he did not appear to even know about the highway district deed, let alone use it. This deed not only provided evidence of the proper location of the southwest corner, but also demonstrated that the Walkers owned less acreage than was noted in Mr. Erickson's record of survey.

In his survey report Mr. Erickson also opined that the 1897 surveyor was inexperienced, intimating that his notes could not be trusted. This appears to be nothing short of speculation. The special instructions to the surveyor, found in the state BLM office, demonstrate that the surveyor was instructed in the use of the 1894 BLM manual. It does not appear Mr. Erickson took this information into account or for that matter even checked into the matter. The 1897 survey was audited by Mr. Ball, and no errors were found in regard to this monument.

For these and other reasons, it was the opinion of the expert that Mr. Erickson should have followed the BLM manual and the standard of care, and honored the original stone monument and the monument set by Carl Edwards in 1977. Even if, as Mr. Erickson opined, the original monument was placed in the wrong location, it should have been honored under the BLM manual. There is no credible information demonstrating that the following surveyors were in error when confirming the original stone monument.

In addition to all this, Mr. Erickson admitted to his client that his opinion was erroneous. Although, he still claimed that the Carl Edwards monument was incorrect, he asserted that his survey report was “bogus.” Yet he made no effort to correct the record in any way. So in the end, what the client was left with was a useless record of survey and survey report that assigned to her significant additional acreage at the expense of the neighboring landowners. The Board finds that it is clear and convincing that Mr. Erickson fell below the standard of care, and that his actions were adverse to the welfare of the public, in particular the neighboring landowners. The allegations in these paragraphs are sustained.

One final point needs clarification for the record. The Complainant devoted time at the hearing demonstrating that it was a standard of care violation for Mr. Erickson to fail to amend his monumentation and recording of his “bogus” corner. This is in direct violation of BLM

manual principles, and state law. However, no allegation in the Complaint covers this portion of the testimony, so the Board must not attempt to discipline Mr. Erickson for this perceived action.

**H. Count Four, Paragraphs 24.a and 24.b.**

As explained elsewhere in these findings, IDAPA 10.01.02.007.01 states that licensees must not violate the standard of care or engage in deceit or misconduct in professional reports statements or testimony. In this context, it is alleged that Mr. Erickson violated the rule in two ways; first, by stating that the neighbors of the Walkers engaged in encroachment by building a fence on Walker land, and second by failing to show the lands of the Grangeville Highway District in his record of survey.

As explained in the discussion regarding Count One, Paragraph 5, and Count One, Paragraph 5.a, the Board has found that Mr. Erickson did not comply with the standard of care. Indeed, the testimony from the expert on these two issues was unrebutted. Hence, the Board finds it is clear and convincing that the allegations in Count Four, paragraphs 24.a and 24.b are sustained.

**IV.**

**CONCLUSIONS OF LAW**

The Board, having concluded that Mr. Erickson violated Idaho Code §§ 54-1215, 54-1220, 55-1604 and 55-1906, the primary obligation of all land surveyors and the standard of care for land surveyors, as set forth in IDAPA 10.01.02.004 and 005, must determine what level of discipline should be imposed.

The Board begins by noting that the violations were not minor, either as a matter of law or as a matter of fact. Putting at least two families – the Hoilands and Badertschers – in legal jeopardy without interviewing them to get the facts is bad enough, but doing so while ignoring

many years of compelling information and finding reasons to ignore a corner monument that had been in place for well over a century, based upon significant speculation, is deeply troubling. To then repudiate the work in writing, without offering to fix the error, compounds the problem. To then openly malign the client, and file an unrequested report designed to discredit a following survey made at the client's expense compounds the matter further. In short, Mr. Erickson went from a hired surveyor relied upon by the client and with a responsibility to the public, to a surveyor apparently pandering for additional work at the client's expense, to a spiteful officious intermeddler. He appears to have created great turmoil among the neighbors of the Walkers. The Walkers, to this very day, have nothing to show for the money they paid Mr. Erickson. Now, some five years after his first work for the Walkers, the matter still is very much in dispute.

What is striking to the Board is Mr. Erickson's inability or refusal to recognize the problems he has created, or recognize the flimsy underpinnings upon which he led his client, the neighbors and the public to the predicament they are now in. Nor does he seem repentant that he accused the Badertschers of encroaching on land based upon a complete misunderstanding of the facts. Rather than check out his belief, something he could have done easily by talking to his own client, he published what in fact turned out to be a total fiction that the neighbors intentionally encroached on the Walker land.

Instead of approaching the matter with contrition and humility, Mr. Erickson has attempted to brazen it out, trying at every turn to obstruct, delay or otherwise backhand the matter. Indeed, Mr. Erickson has gone so far as to assert that the Board's dealing with the chaos he has created is "juvenile" or illegal.

If all this was not enough, Mr. Erickson abandoned the hearing. Whether the depth of his failings and the problems he created finally hit him, or whether he was engaging in yet another

maneuver to obstruct a fair finding of fact, may not ever be known. Suffice it to say that he waived the presentation of his defense while simultaneously trying to make himself out as a victim.

Given that there appears to be a complete lack of remorse, and given that Mr. Erickson appears unwilling to even acknowledge the depth of his violations, let alone rectify them, the Board can think of no way to rehabilitate him. Moreover, while rehabilitation is a laudable goal, the primary duty of the Board is to protect the public. Fining Mr. Erickson, or putting him on a probationary plan, will not accomplish that goal. Anything short of firm action will enable Mr. Erickson to place other clients and the public at risk.

## **V.**

### **ORDER**

For these reasons, the Board determines that Mr. Erickson's license must be, and hereby is, revoked.

IT IS SO ORDERED.

## **VI.**

### **APPEAL RIGHTS**

This is the Final Order of the Board.

A. Any party may file a Petition for Reconsideration of this Final Order within fourteen (14) days of the service date of this Final Order. The Board will dispose of the Petition for Reconsideration within twenty-one (21) days of its receipt, or the Petition will be considered denied by the operation of law. Idaho Code § 67-5247(4).

B. Pursuant to Idaho Code §§ 67-5270 and 57-5272, any party aggrieved by this Final Order, or orders previously issued in this case, may appeal this Final Order and all

previously issued orders in this case to an Idaho district court by filing a petition in the district court of the county in which: (1) a hearing was held; (2) the final agency action was taken; or (3) the party seeking review of this Final Order resides.

C. An appeal must be taken within twenty-eight (28) days: (1) of the service date of this Final Order; (2) of any order denying petition for reconsideration; or (3) of the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. Idaho Code § 67-5273. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.

DATED this 17<sup>th</sup> day of August, 2016.

IDAHO BOARD OF LICENSURE OF  
PROFESSIONAL ENGINEERS AND  
PROFESSIONAL LAND SURVEYORS

BY: George A. Murgel  
GEORGE MURGEL, P. E. - Acting Chairman

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 17<sup>th</sup> day of August, 2016, I caused to be served a true and correct copy of the foregoing document by the method indicated below and addressed to the following:

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