

STATE BOARD FOR PROFESSIONAL LAND SURVEYORS

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v.

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Case No. 04-LS-05

WILBUR L. FORD, Jr.

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* * * * *

FINAL ORDER

This case came for argument before the State Board for Professional Land Surveyors (the "Board") on July 5th, 2006, as a result of exceptions filed on behalf of Wilbur L. Ford, Jr., to a Proposed Order of the Board issued on March 1, 2006, ADOPTING a Recommended Decision of an Administrative Law Judge dated February 10, 2006.

The Respondent Wilbur L. Ford, Jr., appeared at the argument hearing and was represented by Jack L. B. Gohn, Esq., of Gohn, Hankey & Stichel, LLP. Peter Martin, Assistant Attorney General, appeared on behalf of the Board. The proceeding were electronically recorded.

The arguments having been received and considered, and the testimony and the exhibits having been reviewed, it is, by the State Board for Professional Land Surveyors, this 2nd day of August, 2006,

ORDERED,

A. That the exceptions to the Proposed Order filed on behalf of Wilbur L. Ford, Jr., be, and hereby are, **DENIED**;

B. That the Proposed Order of the Board issued on March 1, 2006, be, and hereby is, **ADOPTED**;

C. That the records, files and documents of the Board reflect this decision.

STATE BOARD FOR PROFESSIONAL
LAND SURVEYORS

By: Charles E. Maloy, Esq.
Dr. Charles E. Maloy, Chairman

MARYLAND DEPARTMENT OF
LABOR, LICENSING AND
REGULATION, STATE BOARD
FOR PROFESSIONAL LAND
SURVEYORS

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BEFORE A. MICHAEL NOLAN,
AN ADMINISTRATIVE LAW JUDGE
OF THE MARYLAND OFFICE OF
OF ADMINISTRATIVE HEARINGS

vs.

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WILBUR LEONARD FORD, JR.
t/a FORD SURVEYS
LICENSE No. 9008

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CASE NO. DLR- SUR-67-05-34399
COMPLAINT NO. 04-LS-05

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PROPOSED ORDER

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge dated February 10, 2006, having been received, read and considered, it is, by the Maryland State Board for Professional Land Surveyors, this 1st day of March, 2006,

ORDERED,

- A. That the Findings of Fact in the Recommended Decision be, and hereby are, AFFIRMED;
- B. That the Conclusions of Law in the Recommended Decision be, and hereby are, APPROVED;
- C. That the Recommended Order in the Recommended Decision be, and hereby is, ADOPTED; and
- D. That the records, files and documents of the Maryland State Board for Professional Land Surveyors reflect this decision.

STATE BOARD FOR PROFESSIONAL
LAND SURVEYORS

Date: March 1, 2006


Dr. Charles E. Maloy, Ed.D.
Chairman

MARYLAND DEPARTMENT OF
LABOR, LICENSING AND
REGULATION, STATE BOARD FOR
PROFESSIONAL LAND SURVEYORS

v.

WILBUR LEONARD FORD JR. t/a
FORD SURVEYS, LICENSE # 9008

RESPONDENT

* * * * *

* BEFORE A. MICHAEL NOLAN,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS

* CASE NO: DLR-SUR-67-05-34399

* COMPLAINT # 04-LS-05

RECOMMENDED DECISION

RECEIVED

FEB 10 2006

**PROFESSIONAL
LICENSING BOARDS**

Statement of the Case
Issues
Summary of the Evidence
Findings of Fact
Discussion
Conclusions of Law
Recommended Order

STATEMENT OF THE CASE

On July 1, 2005, the Maryland Department of Labor, Licensing and Regulation ("DLLR") State Board for Professional Land Surveyors ("the Board") ordered Wilbur Leonard Ford, Jr., ("Respondent") to appear for an administrative hearing. The hearing was ordered to permit the Respondent to answer charges that he violated the Board's Code of Ethics and failed to comply with the Minimum Standards of Practice requirements.

On September 15, 2005, and September 16, 2005, A. Michael Nolan, Administrative Law Judge, conducted a hearing¹ to consider the allegations. The hearing was held at the Office of Administrative Hearings, 11101 Gilroy Road, Hunt Valley, Maryland, pursuant to Md. Code Ann.,

¹ The record in this matter was closed on October 14, 2005, to allow the parties to submit written closing arguments.

Bus. Occ. & Prof. § 15-319 (2004). Peter Martin, Assistant Attorney General, represented DLLR. The Respondent appeared and was represented by Jack L. B. Gohn, Esquire, of Gohn, Hankey and Stichel, LLP, 201 N. Charles Street, Suite 2101, Baltimore, Maryland 21201.

Procedure in this case is governed by the provisions of the Administrative Procedure Act, Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2004 & Supp. 2005), Code of Maryland Regulations ("COMAR") 09.01.02 and 09.01.03, and the Rules of Procedure of the Office of Administrative Hearings, COMAR 28.02.01.

ISSUES

The issues are:

- I. Whether the Respondent's actions in preparing the February 11, 2002, Plat of Survey violated the Board for Professional Land Surveyors Minimum Standards of Practice (COMAR 09.13.06.03);
- II. Whether the Respondent's actions in preparing the Addition Plat and the Plat of Survey violated the Board for Professional Land Surveyors Code of Ethics (COMAR 09.13.01.02) and the;
- III. Whether the Respondent's actions in preparing the February 11, 2002, Plat of Survey demonstrated gross negligence, incompetence, and misconduct in the practice of land surveying, in violation of Md. Code Ann., Bus. Occ. & Prof. § 15-318(a)(4) (Supp. 2002); and, if so
- IV. Whether the Respondent is subject to sanctions under Md. Code Ann., Bus. Occ. & Prof. § 15-318(a) and a monetary penalty under Md. Code Ann., Bus. Occ. § 15-318(b) (Supp. 2002), because of these violations

SUMMARY OF THE EVIDENCE

I. Exhibits

The Board submitted the following exhibits, which were admitted into evidence:

- DLLR # 1 : The Notice of Charges and Order for Hearing issued by the Board on July 1, 2005, appended to which is the Notice of Hearing dated July 11, 2005

- DLLR # 2 : A letter dated September 9, 2005, from Deborah L. Evans, Administrative Secretary for the Board, certifying that the Respondent is currently licensed as a Professional Land Surveyor under license number 9008, with an expiration date of September 30, 2005
- DLLR # 3 : The original Complaint form received on September 5, 2003, appended to which are a letter from David R. Brinkley (the Complainant) and ten exhibits marked exhibits "A" through "J"
- DLLR # 4 : A Plat of Survey dated February 11, 2002 identified as depicting the Property of George Savage, prepared by the Respondent
- DLLR # 5 : A final Judgment issued in Case # 10-C-02-0422-CV in the Circuit Court for Frederick County, ordering that the Complainant and his spouse had "good and marketable fee simple title to the Subject Property," to the exclusion of any other alleged ownership interests
- DLLR # 6 : An Addition Plat entitled "Savage Addition to Winer" dated February 8, 2002, and signed by the Respondent and all parties on that date
- DLLR # 7 : A plat of Doris Savage's property prepared by Thomas Moore and Associates, Inc. in March 1989
- DLLR # 9 : A collection of documents consisting of a summary by Carl F. Thomas and a copy of the deeds of the Brinkley, Winer, Savage and McIntyre properties
- DLLR # 10 : A final Plat of Lots 11-14, Section II, Plat 2 of the Barnett Subdivision, prepared by Harris, Smariga and Associates on March 14, 1989
- DLLR # 11 : An Addition Plat of the Savage Addition to Winer, prepared by the Respondent and signed by all Parties in January 1996
- DLLR # 12 : A Correction Plat to an Addition Plat for Lot 13, Section III, Plat 2 of the Barnett Subdivision prepared in January 1999 by Carl F. Thomas, Property Line Surveyor
- DLLR # 13 : A Deed Composite Sketch of an area adjoining lands of Brinkley, Savage, Winer, and Kurdziolek, prepared by Thomas, Moore and Associates, Inc. in August 2002
- DLLR # 14 : A sketch plan dated August 2002, prepared by Carl Thomas, showing the lands claimed by the Complainant, part of the property of Wiles
- DLLR # 15 : An Affidavit of Carl Thomas, appended to which is a Deed Composite Sketch of the lands of Brinkley, Savage, Winer, and Wiles, prepared by Thomas, Moore and Associates in June 2003
- DLLR # 16 : A Boundary Survey dated June 2004, prepared by Carl F. Thomas for Charles P. Johnson and Associates, Inc.

- DLLR # 17 : A report prepared by Draper K. Sutcliffe, appended to which are 7 exhibits containing Plat maps and other documents supporting the information contained in that report
- DLLR # 18 : The February 10, 2004 report prepared by Fred Willig, MHIC Investigator, with attachments
- DLLR # 19 : A letter dated October 21, 2003, from Pamela J. Edwards, Assistant Executive Director of the Board, to the Respondent, advising him of the complaint, and requesting his response within 10 days
- DLLR # 20: Certification of Pamela J. Edwards dated June 10, 2005, and a copy of the final decision of the Board in case 97-LS-11
- DLLR # 21: Certification of Pamela J. Edwards dated June 10, 2005, and a copy of the final decision of the Board in case 98-LS-05
- DLLR # 22 : A Plat of Survey for Mortgage Purposes prepared by the Respondent and dated June 1, 1998, appended to which is a metes and bounds description of the property depicted

The Respondent submitted the following exhibits that were admitted into evidence:

- RESP # 1 : A Plat of the property owned by Nellie deBruyn, prepared by W. Jarboe Grove, and dated May 2, 1936
- RESP # 2 : An undated, unsigned plat of the entire area surrounding and including the subject parcel
- RESP # 3 : The February 08, 2002, Addition Plat depicting the Savage Additions to Winer and Volen, prepared by the Respondent
- RESP # 4 : An Addition Plat – Savage to Winer, prepared by the Respondent and dated January 10, 1996
- RESP # 5 : A deed dated July 22, 1998 from and to Doris, George, and Michael Savage, along with supporting documentation, as recorded in the land records of Frederick County on September 2, 1998, in Book 2465 on Pages 0568 through 0573
- RESP # 6 : A deed dated July 22, 1998 from and to Doris, George, and Michael Savage, along with supporting documentation, as recorded in the land records of Frederick County on September 2, 1998, in Book 2465 on Pages 0574 through 0579
- RESP # 7 : A copy of page one of a deed dated November 8, 1971 by and between Nellie Elizabeth deBruyn and Doris L. Savage, as recorded in the land records of Frederick County on November 12, 1971, in Book 862 on Page 619

- RESP # 8 : A "No Consideration Deed" dated April 3, 1991 by and between George A. Savage and Doris L. Savage, and George A. Savage, Doris L. Savage and G. Michael Savage, as recorded in the land records of Frederick County in Book 1700, Page 317
- RESP # 9 : Field Notes from a sight survey prepared by the Respondent and dated February 4, 2002
- RESP # 10 : Field Notes from a sight survey prepared by the Respondent and dated June 10, 2002
- RESP # 11 : An Addition Plat: Savage Addition to Winer, prepared by the Respondent, and dated February 5, 2001
- RESP # 12 : A letter dated September 8, 2003 from the Board to the Complainant, advising him that the complaint had been received and was being investigated
- RESP # 13 : Field notes in the form of a sketch drawn by Thomas, Moore and Associates in March 1989

No further documents were offered by either party.

II. Testimony

The Board presented testimony from the following individuals:

David Ross Brinkley	Complainant
Carl Frederick Thomas	Licensed Property Line Surveyor <i>Qualified as an Expert in Property Line Surveying without objection</i>
Draper Krum Sutcliffe	Licensed Professional Land Surveyor <i>Qualified as an expert in Land Surveying over objection by Respondent</i>
Fred Charles Willig	Investigator, DLLR

The Respondent presented testimony from the following individuals:

George Michael Savage	Property Owner
Wilbur Leonard Ford, Jr.	Respondent
David Michael Green	Licensed Property Land Surveyor <i>Qualified as an Expert in Maryland Land Surveying and the Standards of Care as related to Boundary Identification over an objection by the Board to the standards certification</i>

FINDINGS OF FACT

Having considered all of the evidence presented and having observed the witnesses and evaluated them as to their credibility, I find, by a preponderance of the evidence, the following to be fact:

1. At all times relevant to these proceedings, the Respondent was licensed by the Board as a professional land surveyor under license number 9008. He has been licensed since prior to 1983, and his most recent license expires on September 30, 2005.
2. In 1936, W. Jarboe Grove ("Grove"), surveyor, prepared a plat of the properties owned by Nellie Elizabeth deBruyn ("deBruyn"), the mother of Doris L. Savage and grandmother of George M. Savage.
3. The Grove plat showed a small parcel of land adjacent to the southeast corner of the deBruyn property which was closed off from the deBruyn property by a solid line; therefore, the parcel was not included in that property.
4. Although the plat contains no dimensions for the closed-off parcel, it includes the 1.6 acre parcel that is the subject of this action (the "wooded parcel").
5. In 1971, deBruyn conveyed all of her interest in the property to her daughter Doris L. Savage.
6. The deBruyn property subsequently was conveyed several times between the members of the Savage family in the 1980s and 1990s. The most recent deeds were dated July 22, 1998, vesting ½ ownership in George A. Savage and Doris L. Savage and vesting the remaining ½ ownership in G. Michael Savage (collectively referred to as "the Savages").

7. None of the property descriptions in these deeds either identified or included the wooded parcel.
8. The Respondent has been retained on several occasions by the Savage family to perform surveys of their property.
9. In January 1996, the Respondent prepared an *Addition Plat: Savage Addition to Winer*. In addition to the named parcel, the plat showed the wooded parcel, and indicated that the wooded parcel was part of the Brinkley's ("the Complainant") property.
10. G. Michael Savage ("Savage") elected to sell a portion of his land. The Complainant offered \$120,000.00, but Eric Winer ("Winer"), a neighboring landowner, offered \$150,000.00, and Savage and Winer entered into an agreement to sell the property.
11. On February 8, 2002, at the request of Savage, the Respondent prepared, signed and certified a plat identified as *Addition Plat: Savage Addition to Winer*.
12. The February 8, 2002, plat was prepared in anticipation of the agreed-upon sale of property from Savage to Winer and Volens, another neighboring landowner, and depicted the property to be conveyed in that transaction. The Plat showed the conveyance of 6.76505 acres to Volens, and 36.0640 acres to Winer. The Plat did not include the wooded parcel, or identify the owner of the wooded parcel.
13. The February 8, 2002 *Addition Plat* inaccurately depicted the relative location of the properties of Winer and Brinkley, showing that the Winer Lot 7 actually adjoined the Brinkley property.

14. On or about February 14, 2002, the Respondent submitted the February 8, 2002 plat to the Frederick County Planning Commission ("Commission") for approval of the proposed conveyances.
15. The Commission rejected the plat citing zoning and density requirements, and returned it for an adjustment regarding acreage of the lands to be conveyed.
16. In December 2002, the Respondent prepared another version of the Plat, showing no conveyance to Volens² and conveyance of 31.767 acres to Winer.
17. After making these modifications to the Addition Plat to significantly reduce the acreage to be transferred, the Respondent did not have the revised Plat signed by the Property owners, indicating their approval of the changes in the property to be conveyed, nor did he re-sign the Plat certifying its accuracy.
18. Savage attempted to withdraw from his agreement to sell the property to Winer, but was compelled by the courts to follow through as the result of an action for specific performance of the contract.
19. On or about February 11, 2002, at the request of Savage, the Respondent prepared and certified as accurate a Plat of Survey, depicting a 3.3± acre parcel of land as belonging to Savage and demonstrating its location, relative to the properties owned by Winer and Brinkley.
20. The 3.3 acre parcel identified in the February 11, 2002 survey includes the wooded parcel that the Respondent had identified as belonging to Brinkley in the 1996 survey.

² At some point between February 2002 and December 2002, the Volens family withdrew from the transaction.

21. The Respondent signed and certified the February 11, 2002, Plat of Survey, which identified Doris L. Savage as deceased, and he failed to have Doris Savage, or anyone authorized to sign on her behalf, sign and certify her acceptance and approval of the information contained in the Plat.
22. As of the date of the surveys, and the date of the instant hearing, Doris L. Savage was still living.
23. The February 11, 2002, Plat of Survey certified that the wooded parcel was referenced in the land records of Frederick County at Liber 1700, Folio 317.
24. The property referenced in Liber 1700, Folio 317 in the land records of Frederick County is actually located to the west of the wooded parcel.
25. The correct reference for the wooded parcel is Liber 2456, Folio 568 of the land records of Frederick County.
26. The February 11, 2002 Plat of Survey fails to identify any markers that the Respondent used in creating the plat, or to indicate whether these markers were found in place at the location or were placed there by the Respondent at the time of his survey..
27. The Plat of Survey does not indicate the methods employed by the Respondent to determine the applicable bearings.
28. The Respondent was aware of his 1996 plat identifying and describing the ownership of the wooded parcel as a part of the Brinkley property.
29. In addition to the Respondent's own earlier plat, the land records of Frederick County, Maryland, included several other recorded plats that referenced all or part of the wooded parcel.

30. On November 19, 1979, Draper K. Sutcliffe, licensed professional land surveyor, prepared a plat entitled Addition Plat: McIntyre's Addition to McIntyre, which noted the location of the wooded parcel, adjacent to the McIntyre property, but showed no owner. The Plat was recorded on November 20, 1979.
31. On March 13, 1989, Richard Lee Stup, licensed property line surveyor, certified a Final Plat: Lots 11-14, Section III, Plat 2, Barnett Subdivision, which listed "no reference" regarding ownership of the wooded parcel. The Plat was recorded on March 30, 1989.
32. On January 13, 2001, Carl F. Thomas, Licensed property line surveyor, prepared and certified an Addition Plat: Part of Lot 13, Addition to Lot 12, Section III, Plat 2, Barnett Subdivision and a Plat of Correction, Lot 13, Section III, Plat 2, Barnett Subdivision. These plats stated "Owner Unknown, No Reference" regarding the wooded parcel. The Plat was recorded on January 25, 2001.
33. On February 19, 2002, Brinkley filed an Action to Quiet Title, case 10-C-0422-CV in the Circuit Court for Frederick County. In this action Brinkley claimed exclusive ownership of the wooded parcel.
34. In preparation for this litigation, Brinkley retained the services of Carl F. Thomas to determine the ownership of the wooded parcel, and to perform a boundary survey of that parcel.
35. Mr. Thomas walked the wooded parcel, and researched the property history, including a review of his own prior plat and the other recorded plats which were prepared by others. Mr. Thomas also checked the chain of title for the wooded parcel going back at least 150 years.

36. While walking the wooded parcel, Mr. Thomas saw no evidence of wire on the boundaries.
37. Based on the information obtained when he walked the wooded parcel, Thomas prepared a Deed Composite Sketch dated June 2003.
38. Savage was initially a party to the Brinkley litigation, but then notified the Court that he no longer wished to pursue his position in the case and that he was withdrawing from participation in same.
39. Because no one opposed, or presented any defense to the claims contained in the litigation that the wooded parcel was Brinkley's property, the Circuit Court ultimately entered a default judgment in Brinkley's favor. That judgment became final on July 26, 2004, declaring that the wooded parcel belonged solely to Brinkley.
40. The Court adopted the June 2003 Deed Composite Sketch as accurately defining the boundaries of the wooded parcel
41. On September 5, 2003, Brinkley filed a Complaint with the Board regarding the Respondent's actions in preparing the February 8, 2002 and February 11, 2002 plats.
42. On February 8, 2003, the Board acknowledged receipt of the complaint in a letter to the Complainant. The Board also sent a copy of the letter and the complaint to the Respondent.
43. On October 21, 2003, the Board sent a letter to the Respondent at his address of record, requesting that he respond to the allegations contained in the complaint.
44. The Respondent did not reply to the October 21, 2003 letter.

45. In January 2004, the Board sent Fred Willig, a DLLR investigator, to speak with the Respondent regarding the allegations contained in the complaint.
46. Mr. Willig met with the Respondent and asked him a list of questions prepared by the Board. Mr. Willig asked the list of questions prepared by the Board because he was essentially unfamiliar with the land surveying profession.
47. The Respondent answered Mr. Willig's questions and also supplied some documentation to Mr. Willig, including a computer generated document containing field measurements and additional plats and information upon which he had relied in preparation of the Plats in question.
48. The Respondent also provided Mr. Willig with a letter, alleging that the entire complaint was politically motivated.
49. The Respondent did not provide Mr. Willig with his field notes or worksheets prepared at the time of the survey.
50. In early 2005, the Board retained the services of Draper K. Sutcliffe to serve as the Board's expert witness and to evaluate the Respondent's performance in the preparation of the February 11, 2002 Plat of Survey and the February 8, 2002, Addition Plat.
51. In particular, the Board instructed Mr. Sutcliffe to determine whether the Respondent's actions in preparing the Plats were performed within the standards of the land surveying industry.
52. Mr. Sutcliffe is self-employed as a professional land surveyor in Frederick County, Maryland, and has been so employed for many years. He is not an investigator and is not employed by DLLR or the Board.

53. Mr. Sutcliffe contacted the Respondent and scheduled an appointment to meet with the Respondent on May 18, 2005.

54. The Respondent refused to cooperate with Mr. Sutcliffe's investigation or answer any of his inquiries.

DISCUSSION

This case presents a question of whether the Respondent's actions in the preparation of an Addition Plat dated February 8, 2002, and a Plat of Survey dated February 11, 2002, were sufficiently egregious to justify the Board's disciplinary action regarding his license. For the reasons that follow, I find that the Respondent performed land surveyor activity in a manner which did not comply with the minimum standards of practice. I further find that he did violate provisions of the Board's code of ethics and that he was guilty of gross negligence, incompetence and misconduct while practicing land surveying

The wooded parcel that is the subject property in this case is defined in the Deed Composite Sketch (DLLR # 15) dated June 2003, prepared by Carl F. Thomas, which was incorporated by the Circuit Court of Frederick County in its Order granting the Complainant quiet title to the property. The parcel is triangular in shape, and consists of 1.6421 acres (\pm), with a southern boundary of S40°41'30"E (488.71') and a northern boundary of N 89°11'06"W (535.17'). The property is described as part of the remaining lands of G.A and M. Wiles, recorded in Liber 462, Folio 550.

In its July 5, 2005, charging document, the Board specifically alleged that the Respondent engaged in gross negligence, misconduct and incompetence in the preparation of the Plat of Survey dated February 11, 2002. In addition, the Board charged the Respondent with violation

of the Minimum Standards of Practice and the Code of Ethics. The specific allegations are as follows:

That the Respondent provided no justification or basis for the Plat of Survey signed on February 11, 2002, which shows the wooded parcel as part of the Savage property, despite requests by the Board to do so.

That in preparing the Plat of Survey, the Respondent failed to research the existing plats that had been prepared by other surveyors at the time of the Plat of Survey and which did not include the wooded parcel. It is alleged that two of the prior plats had been prepared by [the Respondent] for the Savage property, but did not contain the wooded parcel.

That the Respondent made substantial errors in the preparation of the Plat of Survey, regarding the deed references for the wooded parcel and failed to explain the references given.

That the certification on the February 11, 2002, Plat of Survey incorrectly listed Doris Savage, one of the property owners, as being deceased, and that she did not sign or certify her approval of the Plat of Survey.

DLLR #1.

In addition to the allegations regarding the Plat of Survey dated February 11, 2002, the Board alleged that the Respondent prepared an Addition Plat dated February 8, 2002 (RESP # 3), and noted that this Addition Plat did not include the wooded parcel as part of the Savage property. The Addition Plat showed the conveyance of 36 acres from the Savages to Winer. The Board noted that in that Addition Plat, the Respondent incorrectly showed Winer Lot # 7 as adjoining the Complainant's property. The Board alleged that the Frederick County Planning Commission rejected the Addition Plat as not meeting county restrictions. In December 2002 the Respondent resubmitted the Addition Plat with a reduction in the amount of acreage to be conveyed from 36 acres to 31 acres to meet County requirements (RESP # 3). The Board alleged that the Respondent simply changed the acreage on the February 8, 2002 Addition Plat and submitted it to the County with the signatures and certification contained on the February 8,

2002 version of the document, without submitting the revised Plat to the property owners for their approval, and without recertifying the accuracy of the Plat.

The February 11, 2002 Plat of Survey, Property of George M. Savage, Woodville Election District-18 Frederick County, Maryland (DLLR #4), depicts the wooded parcel as a 3.3190 acre parcel of land consisting of 144,577 square feet (\pm) with a southern boundary beginning at S40°41'30" E (433.71'), a Northern boundary at S51°29'36"E (595.42'), an Eastern Boundary at S11°45'00"W (275.00') and a Western boundary at S46°26'50"W (330.00'). The parcel is bordered by the Brinkley Property on the North and Lot 7 of the Winer Property on the South. The Plat identifies the scale as 1" = 200'. The Plat notes that the parcel was recorded in Liber 1700, Folio 317. It bears the Respondent's professional land surveyor's seal, his company name and address, his license number, and it is certified by the Respondent's signature. The certification reads as follows:

I hereby certify that this is an accurate survey, to the best of my professional knowledge and belief, and that it is part of the lands conveyed by Doris L. Savage and George A. Savage unto George A. Savage (deceased), Doris L. Savage (deceased) and George M. Savage, by deed dated 04/03/91, and recorded in the land records of Fred. Co. in Liber 1700, Folio 317.

I will separately discuss each of the issues presented separately.

I. Whether the Respondent violated the Board for Professional Land Surveyors Minimum Standards of Practice (COMAR 09.13.06.03);

In June 1995, the Board repealed the then-existing regulation and promulgated new regulations at COMAR 09.13.06 setting forth the minimum standards of practice for professional land surveyors COMAR 09.13.06.01. Violation of the Minimum Standards of Practice by a professional land surveyor justifies disciplinary action under Title 15 of the Business Occupations and Professions article. COMAR 09.13.06.13.

In the instant case, the Board alleged that the Respondent failed to comply with the minimum standards of practice under COMAR 09.13.06.03 regarding the preparation of the Plat of Survey dated February 11, 2002. That regulation establishes the requirements for creating a boundary survey, and defines that survey as "a means of marking boundaries for sufficient definition and identification to uniquely locate each lot, parcel, or tract." COMAR 09.13.06.03(1). The purpose of a boundary survey is to establish, reestablish, or describe, or all of these, the physical position and extent of the boundaries of real property. COMAR 09.13.06.03(2).

The regulation provides a list of requirements for the preparation of Boundary Surveys. Specifically, COMAR 09.13.06.03F addresses the requirements for plats prepared as the result of a Boundary Survey. The regulation provides, in pertinent part, as follows:

F. Plats.

- (1) An original plat of a boundary survey shall be a reproducible drawing at a suitable scale, clearly indicating the results of the field work, computations, research, and record information, as compiled, checked, and analyzed.
- (2) A plat shall be prepared in conformity with the following procedures:
 - (a) A reasonably stable and durable drawing paper, linen, or film of reproducible quality, is considered suitable material for boundary survey plats;
 - (b) Plats may not be smaller than 8-1/2 X 11 inches;
 - (c) Dimensions, bearings, or angles, including sufficient data to define curves, shall be neatly and legibly shown with respect to each property boundary line;
 - (d) Markers shall be labeled as "found" or "set", with a brief description of the marker and relevant reference markers, if any, along with their spatial relationship to the subject corner;
 - (e) Relevant natural or artificial visible features shall be labeled, dimensioned, and referenced to the nearest property boundary line or represented by a symbol on the plat in its proper location, and each symbol shall clearly indicate what is represented or shall be labeled for identification either individually or in a separate key to symbols;

- (f) Plats shall show a north arrow;
 - (g) A statement indicating the origin and method of determination of the bearings or coordinate system shall be made on a plat, and shall include one of the following:
 - (i) A reference to true north, as determined by astronomic observation,
 - (ii) A reference to the Maryland Coordinate System with the controlling stations and a combination factor comprised of an elevation factor and a scale factor noted,
 - (iii) A reference to a local coordinate system with the controlling stations listed,
 - (iv) A reference to the record bearing of a well-established line found monumented on the ground, as called for in a relevant deed or plat, or
 - (v) If the above alternatives in this paragraph are not practical, a dated magnetic bearing may be used;
 - (h) If separate intricate details or inserts are required for clarity, they shall be properly referenced to the portion of the plat where they apply, particularly in areas where:
 - (i) Lines of occupation do not conform to the deed lines, and
 - (ii) A comparison of adjoining properties' deed descriptions indicates the existence of a gap or an overlap;
 - (i) Cemeteries and burial grounds found by the surveyor within the premises being surveyed shall be noted on the plat;
 - (j) All relevant evidence of monuments found beyond the subject tract, on which establishment of the corners of the subject tract are dependent, and their application related to the survey shall be indicated;
 - (k) Different line weights or delineating letters or numbers shall be used to clearly show the limits of the survey; and
 - (l) Each plat shall show the following:
 - (i) Caption or title and general location of the property or a vicinity map,
 - (ii) Scale,
 - (iii) Date,
 - (iv) Land area,
 - (v) Name and address of the surveyor or firm, and
 - (vi) A statement to the effect that a licensee either personally prepared a boundary survey or was in responsible charge over its preparation and the surveying work reflected in it, all in compliance with requirements set forth in Regulation .12 of this chapter.
- (3) The surveyor shall make a reasonable effort to maintain records, including names or initials of all personnel, dates of service, references to field data, such as book number, loose-leaf pages, and other relevant data.

The Respondent argues that the Board's reliance on this regulation is not appropriate in the instant case, as this Plat of Survey does not represent a Boundary Survey, but was created as the result of a Special Purpose Survey. A Special Purpose Survey is permissible under the Minimum Standards of Practice and is identified as a survey which is not otherwise defined in the regulations. COMAR 09.13.06.10. The regulation requires that the special purpose for the survey and any conditions relevant to that survey must be clearly shown on the face of any plat prepared as the result of a special purpose survey. COMAR 09.13.06.10A. If special conditions exist that effectively prevent a special purpose survey from meeting the minimum standards set forth in the regulation, the special conditions and any necessary deviation from the standards must also be noted on the plat. The Regulation provides that it is a violation of regulations to use special conditions to circumvent the intent and purpose of the minimum standards set forth in that chapter. COMAR 09.13.06.10B. The only stated exception to the regulatory requirements provides that when a plat is identified as being prepared for informational purposes, the plat may be issued without the signature or seal, or both, of the surveyor in responsible charge when it is clearly shown that the plat is invalid without the signature or seal. COMAR 09.13.06.10C.

The Plat of Survey in the instant case neither states any special purpose for the survey, nor that it was prepared for informational purposes. There are no special conditions noted on the face of the plat which would prevent the plat of survey from complying with the regulatory requirements. In an attempt to support the Respondent's position, the Respondent's expert, Mr. Green, testified that the Plat of Survey does not comply with the requirements of a boundary survey, and therefore it must be assumed to be a special purpose survey, a category he opined was created to relieve the rigid requirements of a boundary survey. He noted that the plat was prepared for information purposes only, and was created for a special purpose which he defined

as its use in future litigation, specifically that filed by the Complainant seeking clear title to the wooded parcel. A careful review of the plat itself fails to support this contention. In a seeming contradiction, Mr. Green also testified that he believed that the Plat of Survey was intended to set the boundaries of the wooded parcel. Similarly, Michael Savage testified that he retained the Respondent to prepare the plat of the wooded parcel to set the boundaries of that parcel. He further stated that he did not know what information the Respondent used to set those boundaries.

There is no mention of the purpose of any survey other than the title Plat of Survey, and a definition of the property it purports to depict. If the plat was prepared for informational purposes, as suggested, there would be no need for the surveyor's seal and certification signature. Even casting Mr. Green's and Mr. Savage's testimony on this point in the light most favorable to the Respondent's position, if there was a special purpose for the survey, that purpose was to set the boundaries of the parcel, and therefore, by definition as provided in COMAR 09.13.06.03(1) and (2), is a boundary survey. Considering the regulations and documentary evidence, I find no support for the Respondent's interpretation of the classification of the plat as arising from a special purpose survey.

There are many requirements of COMAR 09.13.06.03 that were not met. While the Plat shows markers and their relation to the property corners as required, it does not indicate whether those markers were found on the property, or were set by the Respondent, nor does it describe the markers. There is no reference to the residue of a wire fence supposedly placed by the Savages in the parcel for cattle use. There were no notes provided to show his field work in preparing the Plat of Survey, nor were there any important records identified upon which he based his conclusions. In addition, there is no indication of the origin and method of determination of the

bearings or coordinate system used in creating the plat. I find that, although not fully compliant with all of the requirements, the February 11, 2002, Plat of Survey was most consistent with the provisions regarding a boundary survey, and was intended to be a boundary survey. It is subject to the requirements thereof, and failed to comply with those requirements.

There are also deficiencies demonstrated in the Respondent's research. A surveyor must make a reasonable effort to identify, locate, and review private survey records which are cited in the provided public records and which may be material in locating the property's boundaries, have the potential for disclosing conflicting descriptions of the property's boundaries, or affect the location of the property's boundaries. COMAR 09.13.06.03C(2). In the instant case DLLR has established that there were several documents contained in the public land records of Frederick County which directly related to the boundaries and ownership of the wooded parcel.

The first of these documents was actually prepared by the Respondent. The document is titled: Addition Plat – Savage to Winer (DLLR # 11), and is dated January 10, 1996. The plat depicts the Savage property, and the portion of that property being transferred from Savage to Winer. It defines a northern boundary at $40^{\circ}41'30''E$, the point where the documentary evidence demonstrates that the wooded parcel begins. The area above this line, including the wooded parcel, is identified as the property of Brinkley, as recorded in Liber 705, Folio 729.

A Correction to the Addition Plat of Lot 13, Section III, Plat 2 of the Barnett Subdivision, (DLLR # 12) dated January 1999, prepared by Carl Thomas, describes the wooded parcel, identified by its northern boundary as $89^{\circ}11'06''W$ (535.17 ft) as "No reference, Owner Unknown." Similarly, The Final Plat of Lots 11-14, Section III, Plat 2 of the Barnett Subdivision (DLLR # 10), prepared by Harris, Smariga & Associates, recorded March 30, 1989 in Plat Book

40, Page 115, shows the wooded parcel as adjoining that subdivision, noting that there was "No Reference" for the parcel.

Finally, the Addition Plat – Savage to Winer (DLLR # 6), certified for accuracy by the Respondent on February 8, 2002, just four days before the Plat of Survey in question, defines the boundaries of the Savage and Winer Properties, and does not include the wooded parcel as part of the Savage property.

In his testimony at the hearing, the Respondent stated that when he was preparing the February 11, 2002, Plat of Survey, he had considered his 1996 Addition Plat, and the 1989 Final plat, but stated he had not considered the 1999 Correction/Addition Plat. He did not explain why he did not consider this plat which had been recorded on January 25, 2001. He also testified that he believed that Mr. Savage was going to do most of the research on the parcel, but that he (the Respondent) checked the public records and did enough research to make sure that the wooded parcel was "still part of the farm" based on the 1936 plat showing the properties that were transferred to Doris Savage from Nellie deBruyn. (RESP # 1).

The wooded parcel is not within the land specifically included in the property descriptions contained in the deeds from Nellie deBruyn to Doris Savage, and then the inter-family "straw" deeds to Doris Savage and her husband, George, and then to Doris, her husband, and Michael Savage. The most recent of these is dated 1991, and registered at Liber 1700, Folio 317. The Respondent testified that Michael Savage claimed that the wooded parcel belonged to his family, and that as of approximately 1955, the property became theirs through adverse possession. I find this testimony unconvincing because in 1996, well after the alleged adverse possession, the Respondent identified the parcel as part of the Complainant's property.

Respondent's exhibit # 1 is a Plat of the property of Nellie E. deBruyn, prepared by W. Jarboe Grove on May 2, 1936. At the lower right corner (South East) of the plat there is, what appears to be a four sided parcel, set off by a solid line from the rest of the property. This parcel was referred to in the Respondent's argument as including the wooded parcel, establishing it as part of the property depicted. There appear to be some inconsistencies in this document. The property lines drawn throughout the plat are sharp and precise. The lines defining this small parcel appear to be shaky, and while the circles indicating monumentation throughout the plat are uniform and round, the circles defining this parcel are uneven and erratic. It appears likely that this was drawn and added to the original plat by person or persons unknown, at some time between the plat's preparation and the hearing, and was not part of the original property drawing

In the current transaction, which generated both of the plats in question, Michael Savage and Eric Winer had agreed that Savage would sell a portion of his property to Winer, including the wooded parcel. In his testimony, Michael Savage repeated his allegation that his family acquired title to the wooded parcel through adverse possession, as they had exclusively occupied the property for a period in excess of 20 years, from 1935 through 1955. During this time, Mr. Savage stated that his family erected fences and allowed cattle to run on the property, and the Savage family cut wood on the parcel.³ Mr. Savage testified that his family had paid taxes on the property, and produced a tax map of the area dated November 15, 1969, which appears to show the wooded parcel to be part of the deBruyn property. On cross examination, Mr. Savage stated that he did not know upon what information the tax maps were based, and had no other documentation showing that he was paying taxes on the wooded parcel. He admitted that he was

³ The wood-cutting was confirmed by the Complainant in his testimony, but he noted that he had permitted the Savages to cut wood on the property. He emphasized that the property remained part of his land.

never specifically told that the wooded parcel was part of the 77 acres for which he paid taxes, but that he had always understood through his family that it was included, although he had no definitive proof.

Several of Mr. Savage's actions, or inactions, belie his claims. Mr. Savage testified that at some point in time, he observed the Complainant marking trees on the wooded parcel for cutting and he approached the Complainant to advise him that this was the Savage's property. The Complainant responded that Mr. Savage should check out the property lines. This could have resolved the question of ownership, but Mr. Savage testified that he never followed through with the Complainant's request.

When the property line dispute was not resolved, the Complainant filed a civil action to quiet title to the wooded parcel. Michael Savage and Eric Winer were identified as the other participants in this action. Mr. Savage testified that Mr. Winer hired an attorney to represent them, but that he did not want to pay the legal fees, and Savage was unable to do so. Mr. Savage testified that the Court would not permit him to participate in this action, although Mr. Winer was allowed to do so. He did not have any documentation in support of his contention that the court prevented him from participation in the action. On cross examination, however, Mr. Savage admitted that not only had the court not prevented his participation, but that on January 14, 2003 he had written to the court advising that he no longer wished to pursue his position or be involved in the action.

Mr. Savage testified that when the Complainant began contesting ownership of the wooded parcel, he and Mr. Winer decided to split the property to be added, excluding the wooded parcel, as its ownership was disputed by the Complainant. Mr. Savage further testified that he retained the Respondent to prepare two separate plats of the property, one of all the

property other than the wooded parcel (RESP #3), the February 8, 2002 Addition Plat, and a second plat of the wooded parcel itself (DLLR # 4). Mr. Savage, Mr. Winer, and the Respondent walked the parcel together and indicated the general areas to be involved in the transfer. Savage testified that the purpose for which he retained the Respondent to prepare the February 11, 2002, Plat of Survey was to set the boundaries for the wooded parcel.

Considering Mr. Savage's testimony in total, in particular that involving the claim of adverse possession of the wooded parcel, and his failure to clarify ownership or defend any of these allegations, I find much of it to be questionable at best. Although he appeared to be somewhat nervous while testifying, Mr. Savage was an ardent advocate of his claim to adverse possession of the wooded parcel. Although Mr. Thomas testified that he had found no indication of previously existing fencing on the wooded parcel, Mr. Savage insisted that his family had enclosed the parcel for animal grazing. He also insisted that he and his family had cut wood on the wooded parcel for many years. Mr. Savage stated that when he observed the Complainant marking trees to be cut on the parcel and the Complainant suggested that Mr. Savage check the property lines, Mr. Savage made no attempt to support his contention of ownership. Similarly, When Mr. Brinkley filed the suit to quiet title in the Circuit Court, Mr. Savage had an excellent opportunity to argue his case, and resolve the dispute once and for all. He did not. Further, not only did he elect not to do so, he misrepresented the facts in his testimony, asserting that the court had forbidden his participation, preventing him from answering the allegations. On cross examination, however, he admitted that not only had the court not prevented his participation, but that he had written a letter to the court advising that he did not wish to pursue his claim and wanted nothing to do with the litigation. When asked, he testified that he believed the letter was

merely stating that he did not desire representation, and that he was not aware that he was withdrawing from the case. I am not convinced.

The Respondent testified that he based his boundary determinations on the information provided to him by Michael Savage, and his claim that the land had been adversely possessed, and belonged to the Savage family. While this is a convenient explanation, there is absolutely no supporting evidence. Given the Respondent's own 1996 Plat identifying the Complainant as the owner of the wooded parcel, based, according to the Respondent on information provided by the County, and the other plats acknowledging the existence of the wooded parcel, but finding no reference to the parcel's ownership, I find absolutely no basis for the Respondent's abandonment of his earlier position in favor of reliance on an unsupported statement that that the wooded parcel was included in the Savage property.

I. Whether the Respondent's actions in preparing the Addition Plat and the Plat of Survey violated the Board for Professional Land Surveyors Code of Ethics (COMAR 09.13.01.02)

COMAR 09.13.01.02 provides as follows:

.02 Responsibility to the Public

In the performance of his professional duties, a registrant shall make every reasonable effort to protect the safety, health, property, and welfare of the public. If the registrant's professional judgment is overruled under circumstances in which the safety, health, property, or welfare of the public is endangered, the registrant shall inform his employer or client of the possible consequences.

The February 8, 2002, Addition Plat depicts the Savage property, and specifically defines the portion of that property to be transferred to Winer and Volens. The Addition Plat, as created and signed on February 8, 2002, showed the conveyance of 36.0640 acres from Savage to Winer, and 6.7505 acres from Savage to Volens. The Addition Plat identifies the property owners

involved as Eric and Gail Winer, Michael and Lori Volen, and George A Savage (deceased) Doris L. Savage (deceased) and George M. Savage. The Plat bears the signatures of the Winers, the Volens, and George M. Savage, all dated February 8, 2002. The signatures certified that they, as owners of the properties described in this Addition Plat, consented to and adopted the plan of subdivision contained therein, subject to the County requirements. The Addition Plat also is signed by the Respondent on February 8, 2002, certifying that the plat shown is correct.

When the County rejected the proposed plat due to density requirements, the Respondent changed the plat to completely eliminate the transfer of property to the Volens, and to reduce the amount of property transferred to the Winers from 36.0640 acres to 31.7677 acres. In December 2002, the Respondent resubmitted the plat to the County showing the adjusted areas of land to be transferred. The December version of the plat, while significantly reducing the amount of acreage to be transferred, and eliminating one of the transferees, contains the signatures of the Winers, George M. Savage, and the Respondent that are dated February 8, 2002. There is a blank space where the signatures of Michael and Lori Volen appeared on the February 8, 2002 plat. It appears that the Respondent never provided the participants an opportunity to review the proposed changes or to accept or reject those changes, prior to the plat's submission.

In contrast to his actions when he initially prepared the February 8, 2002, Addition Plat, wherein the Respondent obtained notarized approval of the property to be transferred to the Winers and Volens prior to submitting the plat for approval, the Respondent failed to do so when he prepared the revised plat. Even though he drastically altered the boundaries of the property involved, eliminating the transfer to the Volens, and reducing the size of the property transferred to the Winers by approximately 15%, the Respondent failed to submit the revised plan to the owners for their approval, or to recertify the Plat for accuracy. Instead of attaining approval, the

Respondent copied the signatures and certifications from the February 8, 2002 Addition Plat, simply blocking out the Volens' signatures.

In addition, when the Respondent performed his research, he correctly identified the owners of the Savage property as George A. Savage, Doris L. Savage, and George M. Savage. He identified both George A. Savage and Doris L. Savage as deceased, and had George M. Savage sign the February 8, 2002, plat. Doris L. Savage is not deceased, and therefore she, or someone acting on her behalf, should have signed the plat. Her signature does not appear on any version of the Addition Plats. In his testimony, the Respondent admitted that his identification of Ms. Savage as deceased was erroneous, and attempted to place the blame for this on one of his workers. I find it implausible that the Respondent, a client of the Savages for many years, would simply accept an employee's word without at least checking with the Savage family.

Clearly the Respondent's actions surrounding the preparation of the February 8, 2002, Addition Plat did not protect the property rights of the Winers, Volens, or, perhaps most significantly, those of one of his own clients, Doris Savage.

Regarding the Plat of Survey, the Respondent testified that he believed that the Savages acquired title to the wooded parcel via adverse possession in the 1950s and, therefore, they were the legitimate owners. This sudden belief is puzzling, as it directly conflicts with the Respondent's earlier plat showing the parcel to be the Complainant's property. The Respondent testified that in preparing the 1996 plat, he based the Complainant's identification as the property owner on information provided by the County. Other surveys of the area identify the wooded parcel, but indicate that there is no reference to the owners of that parcel. There is absolutely no significant evidence supporting the Savages' claim to ownership of the wooded parcel, and the Respondent had a responsibility to thoroughly research the ownership before changing same on

the Plat of Survey. This unjustified change in the identified owners clearly disregarded the property rights of the Complainant in the property.

II. Whether the Respondent's actions in preparing the February 11, 2002, Plat of Survey demonstrated gross negligence, incompetence, and misconduct in the practice of land surveying, in violation of Md. Code Ann., Bus. Occ. & Prof. § 15-318(a)(4) (Supp. 2002)

By statute, the Board is permitted to take disciplinary action against licensees.

Disciplinary actions are discussed in Md. Code Ann., Bus. Occ. & Prof. § 15-318⁴ (Supp. 2002)

§ 15-318

(a) *Grounds* – Subject to the hearing provision of Section 15-320 of this subtitle, the Board, on the affirmative vote of a majority of its members then serving, may deny a license to any applicant, reprimand any licensee, suspend or revoke a license if:

...

- (iv) the applicant or licensee is guilty of gross negligence, incompetence, or misconduct while practicing land surveying or property line surveying.
- (v) the applicant or licensee knowingly violates any provision of the code of ethics adopted by the Board

The Board has charged that the Respondent's conduct in this matter, that is the preparation of the Plat of Survey and Addition Plat, demonstrated gross negligence, misconduct, and incompetence. COMAR 09.13.04.01B, entitled "Definitions", defines these terms, in pertinent part, as follows:

(1) **Gross Negligence.**

- (a) "Gross negligence" means a wrongful act or omission, more culpable in nature than simple inadvertence or mistake, characterized by disregard of the property rights of others. It is conduct which constitutes substantial departure from the standard of care required of professional land surveyors or property line surveyors.

⁴ Effective in 2003, this section was renumbered to § 15-317. Subsection a(iv) was carried over verbatim. Subsection a(v) was changed from "knowingly violates any provision of the Code of ethics" to "violates any regulation adopted by the Board" Section 15-318 was the controlling statute at the time of the alleged violations, and shall be used throughout this decision.

- (b) "Gross negligence" includes but is not limited to:
 - (i) Knowingly or recklessly preparing a plat or other survey document which fails to protect the rights of interested parties where the surveyor knew those rights existed;
 - (ii) Knowingly or recklessly failing to provide minimal supervision of employees engaged in surveying work;
 - (iii) Knowingly or recklessly preparing a plat or other survey document which, if properly relied upon, could lead to serious injury to persons or property.

- (2) "Incompetence" means:
 - ...
 - (b) Engaging in conduct which evidences a lack of proficiency, learning, ability, skill, or fitness necessary to perform regular duties, tasks, and functions of a professional land surveyor or property line surveyor in a reasonably effective, professional, and competent manner.

- (3) Misconduct.
 - (a) "Misconduct" means conduct by a professional land surveyor or property line surveyor which violates the standards of integrity of the profession.
 - (b) "Misconduct" includes but is not limited to:
 - (i) Violating the Code of Ethics set out in COMAR 09.13.01;
 - ...
 - (iii) Being untruthful, deceptive, or misleading in any professional report, statement, or testimony whether under oath, or omitting relevant and pertinent information from the report, statement, or testimony when the result of an omission would or reasonably could lead to a fallacious conclusion on the part of the client or the general public;

The Respondent's failure to comply with the requirements for a boundary survey, in this matter were more than simple inadvertence or mistake. In the Plat of Survey, the Respondent mischaracterized the size of parcel as 3.3190 acres when it actually is comprised of 1.6 acres. The Plat of Survey shows markers on the corners, but does not identify those markers as set by the Respondent or found on the property. The Respondent testified that he placed an iron pipe at one of the corners, yet Mr. Thomas was unable to locate such a pipe. The most obvious problem with the Plat of Survey, however, is in its identification of the Savages as the property owners. The Respondent's failure to fully research the parcel's ownership constituted a wrongful act or

omission, more culpable in nature than simple inadvertence or mistake, characterized by disregard of the property rights of others. This was conduct which constituted a substantial departure from the standard of care required of professional land surveyors or property line surveyors. The Respondent's actions in preparing the Plat of Survey failed to protect the Complainant's property necessitating a lengthy and expensive civil action to establish the Complainant's title to the wooded parcel, title of which he was aware and which had been identified by the Respondent on his 1996 plat before he changed his mind. The Respondent's behavior constituted gross negligence.

Similarly, there is evidence of incompetence in the Respondent's actions, in that he demonstrated a lack of familiarity with the Minimum Standards of Practice in the Preparation of the Plat of Survey, and failed to properly research the property for which he was preparing the plat. Instead of performing the proper research, the Respondent apparently relied on a statement from one of the property owners that this was his or her property, and drew the Plat of Survey accordingly. He testified that he expected his client to do the research, although he believes he did enough to support the client's contention.

Finally, the Respondent is guilty of misconduct. The Respondent violated the provisions of the Code of Ethics as noted above. In addition, the Plat of Survey was inaccurate and misleading and missing pertinent information.

IV. Whether the Respondent is subject to sanctions under Md. Code Ann., Bus. Occ. & Prof. § 15-318(a) and a monetary penalty under Md. Code Ann., Bus. Occ. § 15-318(b) (Supp. 2002), because of these violations

Having concluded that the Respondent's behavior constituted misconduct, incompetence, and gross negligence, the remaining issue is what is the appropriate sanction.

Md. Code Ann., Bus. Occ. § 15-318(b) (Supp. 2002) provides as follows:

- (b) Alternative penalties. – (1) Instead of or in addition to suspending or revoking a license, the Board may impose a penalty not exceeding \$1,000 for each violation.
- (2) To determine the amount of the penalty imposed under this subsection, the Board shall consider:
- (i) the seriousness of the violation;
 - (ii) the harm caused by the violation;
 - (iii) the good faith of the licensee; and
 - (iv) any history of previous violations of the licensee.

The violations by the Respondent in this matter are extremely serious. The Respondent failed to meet the minimum requirements for a boundary survey. The Respondent also failed to demonstrate any concern for the property rights of the other owners involved, or even those of Doris Savage, one of his own clients. The February 11, 2002, Plat of Survey directly conflicted with other plats referencing the wooded parcel, yet the Respondent provided no documentation in support of the conclusion that this was part of the Savage property.

The Respondent's actions also resulted in significant harm. The financial impact alone on the Complainant was substantial, as the civil court case to disprove the Respondent's erroneous conclusion cost approximately \$12,000.00.

The Respondent consistently demonstrated bad faith in this matter. When the DLLR investigator, Mr. Willig, interviewed the Respondent, the Respondent provided him with unrelated and irrelevant plats and documents. He also gave Mr. Willig a letter alleging that this entire action was politically motivated, and denied any fault. When DLLR retained the services of Draper Sutcliffe, a respected property land surveyor, to look into this matter and serve as its expert witness in this matter, the Respondent refused to discuss the matter with him. In his closing, the Respondent urged that his refusal was simply based on Mr. Sutcliffe's lack of

credentials establishing that he was investigating on the Board's behalf. I find this incredible – a simple telephone call could have resolved that alleged problem.

Finally, DLLR introduced evidence of two prior disciplinary actions by the Board. The first of these (97-LS-11, DLLR # 20) involved, among other services, the location of a well. The Board concluded that the Respondent had lied to the County, and had failed to do an appropriate amount of necessary research. The Board found the Respondent not guilty of gross negligence, but guilty of misconduct, reprimanded him, and imposed a \$1,000.00 fine.

In the second case (98-LS-05, DLLR # 21), the Respondent failed to comply with the terms of an agreement with his client, in that he failed to perform a boundary survey and a topographical survey as agreed. The surveys performed were inaccurate and incomplete, and failed to properly establish the boundaries. The Respondent's actions resulted in the Complainant's being unable to sell his property and the Board found him to be guilty of gross negligence and misconduct. The Respondent's license was suspended for ninety days, and he was fined \$1,000.00.

The Respondent's disciplinary history shows a pattern of intentional non-compliance with the rules and guidelines imposed upon the professional land surveying profession. In each action, the violations were more egregious, culminating in the instant action. He has repeatedly demonstrated his unwillingness or inability to abide by the rules. In light of the above, it is recommended that a \$1,000.00 penalty be imposed against the Respondent and that the Respondent's Professional Land Surveyor's license #9008 be permanently revoked.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude as a matter of law,

under the provisions of COMAR 09.13.06.03, that the Respondent failed to properly perform a boundary survey in violation of the Minimum Standards of Practice.

I further conclude as a matter of law under COMAR 09.13.01.02, that the Respondent violated the Code of Ethics established for Land Surveyors.

I further conclude as a matter of law under Md. Code Ann., Bus Occ.& Prof. §15-318(a)(4)(Supp 2002) that the Respondent's actions constituted gross negligence and misconduct.

I further conclude that the Respondent's violation of the above-referenced provisions subjects him to the sanctions of Md. Code Ann., Bus.Occ.& Prof. § 15-318(b) (Supp 2002).

RECOMMENDED ORDER

Based upon the foregoing Findings of Fact, Discussion and Conclusions of Law, I hereby **RECOMMEND** that the Board of Professional Land Surveyors, Department of Labor, Licensing and Regulation:

ORDER that the Respondent, Wilbur L. Ford, Jr., is in violation of Md. Code Ann., Bus. Occ. § 15-318(a)(iv) and Md. Code Ann., Bus. Occ. § 15-318(a)(v); and that it further

ORDER that the Respondent, Wilbur L. Ford, Jr., is in violation of The Minimum Standards of Practice, COMAR 09.13.06.03. and the code of ethics Md. Code Ann., Bus. Occ. § 15-318(a)(v); and that it further

ORDER, that the license of the Respondent, Wilbur L. Ford, Jr. be permanently **REVOKED** pursuant to Md. Code Ann., Bus. Occ. § 15-318(a); and that it further,

ORDER, that the Respondent, Wilbur L. Ford be fined \$1,000.00 and that the fine be paid to the Board within 30 days of the final order and that it further,

ORDER, that the records and publications of the Maryland Department of Labor Licensee and Regulation, Board of Professional Land Surveyors, reflect this decision.

February 10, 2006
Date

A. Michael Nolan, esq
A. Michael Nolan,
Administrative Law Judge

Document #78559