

**STATE OF ALABAMA
BOARD OF LICENSURE FOR
PROFESSIONAL ENGINEERS AND
LAND SURVEYORS**

IN RE THE MATTER OF:

JOHN PEACOCK

Case No. 05-34-B

ORDER

On February 28, 2008 the State of Alabama Board of Licensure for Professional Engineers and Land Surveyors (hereinafter referred to as "Board") convened for an Administrative Hearing concerning the allegations filed against Mr. John Peacock (hereinafter referred to as "Respondent"). The Board Members in attendance at the Hearing were: Mr. Don T. Arkle, Mr. Al I. Reisz, and Mr. Preston L. Jackson. Board Member Mr. Veston W. Bush was recused from the hearing and as the Board Member assigned to the investigation, Mr. William C. Ulrich, Jr., was excluded from the Hearing. The Honorable Walter Turner, Administrative Law Judge for the Administrative Hearings Division of the Attorney General's Office, presided over the Hearing. Also present at the Board Meeting were Ms. Regina Dinger, Executive Director of the Board, and Mr. William R. Huett, Assistant Executive Director and Investigator for the Board. Mr. Benjamin Albritton, Assistant Attorney General, represented the Board at the hearing. Mr. Peacock was represented by Mr. Allen K. Mitchell at the hearing.

FINDINGS OF FACT

On or about February 12, 1971 the Respondent was issued a certificate of licensure by the Board authorizing him to engage in the business, occupation, or calling of professional land surveying in the State of Alabama. Respondent's mailing address is P. O. Box 5981, Dothan, AL 36302.

On March 2, 2005 the Board received a complaint from Mr. David Lawrence alleging the Respondent provided a survey titled Dosewell Estate dated December 15, 2004 and indicating it was updated January 20, 2005 that contained violations of the Standards of Practice for Land Surveying in the State of Alabama.

The violations of the Standards of Practice for Land Surveying in the State of Alabama on the survey titled Dosewell Estate dated December 15, 2004 and updated January 20, 2005 include:

1. The certification is not correct. The certification references the Minimum Technical Standards (MTS) which is a violation of Rule 1.03(1) The following certification (statement) shall be included on each survey plat or drawing: "I hereby certify (or state) that all parts of this survey and drawing have been completed in accordance with the current requirements of the Standards of Practice for Surveying in the State of Alabama to the best of my knowledge, information, and belief."
2. The plat is not legible to identify the type of monumentation at most of the property corners. There is a legend on the plat which is legible, however there are several lines which cross numbers on the plat that are not legible which is a violation of Rule 1.03 3a - The plat shall be legibly drawn on any reasonably stable and durable drawing paper, vellum, linen, or film of reproducible quality.

3. No reference is shown to the source of information used such as record deed, record plat etc. No discrepancies between the survey map and such sources of information are shown which are violations of Rule 1.03 (6a) - The survey shall be referenced to the source of information used in making that survey such as the recorded deed description, a recorded plat, an unrecorded plat with the deed references shown on the lots referenced, or any other instrument that describes the property surveyed. Any discrepancies between the survey map and such sources of information shall be shown.

4. No reference on the plat is made to a public land survey corner. The property description for Parcel No.1 (line five) identifies the southwest corner of a quarter-quarter section but it is not shown on the plat. The northeast corner of section 15 is not shown on the plat however it is identified in the description on Parcel No.3 (line eight) which is a violation of Rule 1.03 (6b) - When a new parcel is being created, reference shall be made on the survey drawing and in the property description to the U.S. Public Land Survey corner(s) or other corner(s) shown on a recorded plat. An unrecorded plat is acceptable if deed references are shown on the lots in reference.

5. The survey indicates fencing, however no note or dimensions are shown to indicate the relationship of the fence to the boundary line which is a violation of Rule 1.03 (10) - Open and notorious evidence of boundary lines, such as fences, walls, buildings, or monuments shall be shown upon the drawing together with dimensions sufficient to show their relationship to the boundary line (s).

6. The survey does provide a legend for monumentation but does not indicate the type and size of monument found or set. The point of beginning(s) are shown but the P.O.C. (s) are not indicated on the plat which are violations of Rule 1.03 (15) - The surveyor shall make a determination of

the position of the boundary of the property and shall set monuments as defined herein, unless monuments already exist at such corners. All monuments, found or placed, shall be described on the survey drawing with data given to show their location upon the ground in relation to the boundary lines. When the property corner cannot be set, a witness monument shall be placed with data given to show its location upon the ground in relation to the boundary lines or corner. The monument descriptions shall state the size, material, and cap identification of the monument, as well as whether the monument was found or set. When a parcel has a natural and/or artificial feature such as a bluff, river, lake, beach, marsh, stream, or other irregular boundary as one or more of its boundaries, then a monumented meander or survey line shall be established either directly along or near the feature. Dimensions shall be shown between the meander or survey line and the boundary line sufficient to show the relationship between the two.

7. The plat identifies the centerline of a transmission line but does not state the bearing for that line which is a violation of Rule 1.03.4 which states a reference to all bearings shown shall be clearly stated on the drawing, (e.g., whether to "True North"; to "Grid North" as established by the National Ocean Survey; or to "Assumed North" based on a bearing as documented by a referenced deed or plat.) Such documentation could include, but is not limited to, a boundary line shown on a subdivision plat, a bearing shown on a road right-of-way plat, a bearing for a certain property line as called for in a deed, a bearing shown for a section line on a recorded survey plat, etc. References to "Magnetic North" should be avoided except in cases where a comparison is necessitated by a deed call. Where bearings are recited in the deed description or on an original plat of the land being surveyed, any difference in the deed or plat bearings with the bearing used shall be shown. In all cases, the bearings used shall be referenced to a well-established line.

8. The right of way width of Henry County Road No. 47 is not shown on the plat or description which is a violation of Rule 1.03.12 which states visible evidence of easements or right-of-ways on/or across the lands surveyed shall be located or noted and shown upon the drawing. For other easements or right-of-ways to be shown, the surveyor must be furnished a copy of the instrument that describes the easement or right-of-way. If streets or street right-of-ways abutting the land surveyed are not physically open, a note to this effect shall be shown upon the drawing.

9. The description of Parcel No. 1 does not contain a point of commencement referencing a BLM corner, the point of beginning does not identify a monument, two monuments are not identified in the description and a BLM corner is identified in the description but is not shown on the survey plat. A distance is missing after the bearing of N39 45'51 and the description will not close. These are violations of Rule 1.03 (15) - The surveyor shall make a determination of the position of the boundary of the property and shall set monuments as defined herein, unless monuments already exist at such corners. All monuments, found or placed, shall be described on the survey drawing with data given to show their location upon the ground in relation to the boundary lines. When the property corner cannot be set, a witness monument shall be placed with data given to show its location upon the ground in relation to the boundary lines or corner. The monument descriptions shall state the size, material, and cap identification of the monument, as well as whether the monument was found or set. When a parcel has a natural and/or artificial feature such as a bluff, river, lake, beach, marsh, stream, or other irregular boundary as one or more of its boundaries, then a monumented meander or survey line shall be established either directly along or near the feature. Dimensions shall be shown between the meander or survey line and the boundary line sufficient to show the relationship between the two.

10. In the description of Parcel No. 2 the point of commencement does not identify the type monument, the description does not identify type of monumentation at the corners, the P.O.C. monument is not identified (type) and there are additional property corners not identified in the description. These are violations of Rule 1.03 (15) - The surveyor shall make a determination of the position of the boundary of the property and shall set monuments as defined herein, unless monuments already exist at such corners. All monuments, found or placed, shall be described on the survey drawing with data given to show their location upon the ground in relation to the boundary lines. When the property corner cannot be set, a witness monument shall be placed with data given to show its location upon the ground in relation to the boundary lines or corner. The monument descriptions shall state the size, material, and cap identification of the monument, as well as whether the monument was found or set. When a parcel has a natural and/or artificial feature such as a bluff, river, lake, beach, marsh, stream, or other irregular boundary as one or more of its boundaries, then a monumented meander or survey line shall be established either directly along or near the feature. Dimensions shall be shown between the meander or survey line and the boundary line sufficient to show the relationship between the two.

11. The plat identifies four (4) parcels which are contiguous, but are not part of the survey, without providing the deed reference for the parcels. The property description identifies the Jerry Cook line and the Mikie Walding lot but no reference to the deeds is shown on the plat. These are violations of Rule 1.03 (6a) - The survey shall be referenced to the source of information used in making that survey such as the recorded deed description, a recorded plat, an unrecorded plat with the deed references shown on the lots referenced, or any other instrument that describes the property surveyed. Any discrepancies between the survey map and such sources of information shall be shown.

12. On Parcel No. 4 the bearing on the line with a distance of 428.52 is not correct. The bearing shown (South 35 24 West) results in the parcel not closing mathematically which is a violation of Rule 1.03 (17) which states the bearings and distances shown on the drawing or plat of survey shall be substantiated by field measurements. The accuracy of the field measurements shall be premised upon the type of survey and the current or expected use of the land. The accuracy of the measurements shall be statistically verified by the results of a closed traverse.

13. The plat for Parcel No. 5 shows the acreage as 204.42 acres. The acreage should calculate to 205.20 acres (a difference of 0.78 acres) which is a violation of Rule 1. 03 (17), which states the bearings and distances shown on the drawing or plat of survey shall be substantiated by field measurements. The accuracy of the field measurements shall be premised upon the type of survey and the current or expected use of the land. The accuracy of the measurements shall be statistically verified by the results of a closed traverse.

14. The property corners are not visually identified and the property lines are not clearly marked which are violations of Rule 1.03 (15) - The surveyor shall make a determination of the position of the boundary of the property and shall set monuments as defined herein, unless monuments already exist at such corners. All monuments, found or placed, shall be described on the survey drawing with data given to show their location upon the ground in relation to the boundary lines. When the property corner cannot be set, a witness monument shall be placed with data given to show its location upon the ground in relation to the boundary lines or corner. The monument descriptions shall state the size, material, and cap identification of the monument, as well as whether the monument was found or set. When a parcel has a natural and/or artificial feature such as a bluff, river, lake, beach, marsh, stream, or other irregular boundary as one or more of its boundaries, then a monumented meander or survey line shall be established either directly

along or near the feature. Dimensions shall be shown between the meander or survey line and the boundary line sufficient to show the relationship between the two.

This is a violation of the Rules and Regulations of the Board's *Administrative Code*, § 330-X-14-.05(g) and the Code of Alabama 1975 § 34-11-11(a)2.

CONCLUSIONS OF LAW

The Board hereby stated Respondent is subject to the provisions of Title 34, Chapter 11, Code of Alabama 1975, §34-11-11(a)2 and the Board's *Administrative Code* § 330-X-14-.05(g).

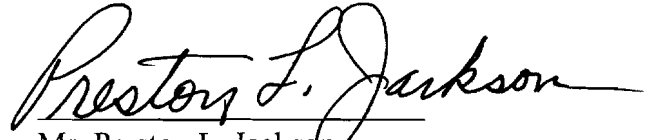
CONCLUSION

After hearing the testimony of all the witnesses presented by the Respondent and the Claimant and after considering all the evidence presented in the above-referenced case, the Board finds that the Respondent is ***Guilty*** of the allegations made against him. The Board hereby ***Orders*** as follows:

1. Respondent shall pay hearing costs of \$2,325.72 (two thousand three hundred twenty-five dollars and seventy-two cents) to the Board no later than thirty days from the date of this Order.
2. Respondent shall pay a fine of \$2,500.00 (two thousand five hundred dollars) to the Board no later than thirty days from the date of this Order.
3. Respondent's license to practice or to offer to practice land surveying in the State of Alabama shall be ***Suspended*** for six months effective the date of this Order.
4. Respondent shall serve 2 (two) years ***Probation*** commencing the date the suspension period of his license ends. Any violation of the standards of practice for land surveying during the two year probationary period shall cause Respondent's license to practice land surveying in the State of Alabama to be revoked.

5. Respondent shall complete a Board approved course on the Standards of Practice for Land Surveying in the State of Alabama prior to his license being re-issued after the suspension period has ended.
6. Respondent understands this Order will become a matter of public record.

Done this the 12th day of MAY 2008.


Mr. Preston L. Jackson


Mr. Al L. Reisz


Mr. Don T. Arkle



AlaFile E-Notice

03-CV-2008-000837.00

Judge: TRACY S MCCOOEY

To: ALBRITTON BENJAMIN H
balbritton@ago.state.al.us

NOTICE OF ELECTRONIC FILING

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

**JOHN C PEACOCK VS STATE OF ALABAMA BOARD OF LICENSURE FOR PROFESSIONAL
03-CV-2008-000837.00**

The following matter was FILED on 3/6/2009 4:43:41 PM

Notice Date: 3/6/2009 4:43:41 PM

**MELISSA RITTENOUR
CIRCUIT COURT CLERK
MONTGOMERY COUNTY, ALABAMA
251 S. LAWRENCE STREET
MONTGOMERY, AL 36102**

334-832-4950



IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

PEACOCK JOHN C,)	
)	
Plaintiff,)	
)	
v.)	Case No.: CV-2008-000837.00
)	
LICENSURE BOARD FOR PROFESSIONAL)	
ENGINEERS & LAND,)	
Defendant.)	

ORDER

THE ABOVE STYLED CASE INVOLVES A PETITION FOR AN APPEAL FROM AN ORDER ENTERED BY THE STATE OF ALABAMA BOARD OF LICENSURE FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS "BOARD" THAT STATED THAT THE PETITIONER'S LICENSE WOULD BE SUSPENDED AND HE WOULD SERVE A 2 YEAR PROBATIONARY PERIOD. THE COURT SET UP A BRIEFING SCHEDULE FOR BOTH SIDES TO PROVIDE THIS COURT A BRIEF AND SET A DATE FOR ORAL ARGUMENTS. THE PETITIONER FILED A MOTION WITHDRAWING ANY REQUEST FOR ORAL ARGUMENTS. THE COURT RECEIVED BRIEFS FROM BOTH SIDES AND AFTER HAVING CONSIDERED THE PETITION, AS WELL AS THE BRIEFS, FINDS AS FOLLOWS:

THE BOARD CONDUCTED A HEARING, AFTER GIVING THE PETITIONER NOTICE, CONCERNING ALLEGATIONS ABOUT AN IMPROPER SURVEY HANDLED BY THE PETITIONER. AFTER HEARING EVIDENCE IN THIS CASE, INCLUDING TESTIMONY FROM MR. RAY, THE EXPERT WITNESS, IT WAS DETERMINED THAT THE PETITIONER HAD IN FACT VIOLATED THE STANDARDS OF PRACTICE FOR LAND SURVEYING. THE PETITIONER'S LICENSE WAS SUSPENDED AND A 2 YEAR PROBATIONARY PERIOD WAS GIVEN TO BE SERVED AFTER THE SUSPICION. THE PETITIONER CORRECTLY RECEIVED NOTICE OF THE HEARING AND HAD AN OPPORTUNITY TO CALL WITNESSES, CROSS EXAMINE WITNESSES AND PRESENT EVIDENCE. THIS COURT CANNOT SUBSTITUTE ITS JUDGMENT FOR THAT OF THE BOARD'S. THERE MUST BE A SHOWING THAT THE DECISION OF THE BOARD WAS ARBITRARY OR CAPRICIOUS. SEESULLIVAN V. STATE PERSONNEL BOARD, 679 SO.2D 1116 (ALA. CIV. APP. 1996).

THE PETITIONER CLAIMS THAT THE MAKE-UP OF THE BOARD DENIED HIM DUE PROCESS BECAUSE THE BOARD WAS MADE UP OF ENGINEERS AND NOT LAND SURVEYORS. THIS ARGUMENT, HOWEVER, HAS NO MERIT. A BOARD IS NOT REQUIRED TO CONSIST OF ONLY THE MEMBERS "PEERS." THE PETITIONER ALSO CLAIMED THAT MR. RAY'S TESTIMONY SHOULD NOT HAVE BEEN

ALLOWED BECAUSE HE WAS THE EXPERT WITNESS AND HE DID NOT HAVE PROPER SURVEYOR CREDENTIALS. THIS ARGUMENT, HOWEVER, WAS COMPLETELY UNSUBSTANTIATED. THE PETITIONER MAKES MANY ALLEGATIONS IN HIS PETITION AND ARGUMENTS IN HIS BRIEF, HOWEVER, HE FAILS TO PROVIDE ANY EVIDENTIARY OR LEGAL AUTHORITY TO SUPPORT THEM.

WHEREFORE IT IS ORDERED THAT THE PETITION IS DENIED AND THE ORDER OF THE BOARD IS UPHELD. THIS DISPOSES OF ALL ISSUES IN THIS CASE AND THE CASE IS DISMISSED.`

DONE this 6th day of March, 2009

/s TRACY S MCCOOEY

CIRCUIT JUDGE

The Court of Civil Appeals



JOHN H. WILKERSON, JR.
CLERK
REBECCA C. OATES
ASSISTANT CLERK

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November 20, 2009

2080618

John C. Peacock v. State Board of Licensure for Professional Engineers and Land Surveyors (Appeal from Montgomery Circuit Court: CV-08-837)

You are hereby notified that the following action was taken in the above cause, by the Court of Civil Appeals:

Application for Rehearing Overruled. No opinion written on rehearing.


John H. Wilkerson, Jr.
Clerk, Court of Civil Appeals

IN THE SUPREME COURT OF ALABAMA



January 15, 2010

1090323

Ex parte John C. Peacock. PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CIVIL APPEALS (In re: John C. Peacock v. State Board of Licensure for Professional Engineers and Land Surveyors) (Montgomery Circuit Court: CV-08-837; Civil Appeals : 2080618).

CERTIFICATE OF JUDGMENT

WHEREAS, the petition for writ of certiorari in the above referenced cause has been duly submitted and considered by the Supreme Court of Alabama and the judgment indicated below was entered in this cause on January 15, 2010:

Writ Denied. No Opinion. Stuart, J. - Cobb, C.J., and Lyons, Bolin, and Murdock, JJ., concur.

NOW, THEREFORE, pursuant to Rule 41, Ala. R. App. P., IT IS HEREBY ORDERED that this Court's judgment in this cause is certified on this date. IT IS FURTHER ORDERED that, unless otherwise ordered by this Court or agreed upon by the parties, the costs of this cause are hereby taxed as provided by Rule 35, Ala. R. App. P.

I, Robert G. Esdale, Sr., as Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true, and correct copy of the instrument(s) herewith set out as same appear(s) of record in said Court.

Witness my hand this 15th day of January, 2010.

A handwritten signature in black ink, appearing to read "Robert G. Esdale, Sr.".

Clerk, Supreme Court of Alabama