

**BEFORE THE
WEST VIRGINIA BOARD OF PROFESSIONAL SURVEYORS**

**West Virginia Board of
Professional Surveyors,**
Complainant,

vs.

COMPLAINT NO.: C16-10

Bryan Alan Payne
WV Professional Surveyor License No. 977,
Respondent.

CONSENT DECREE

The Respondent, Bryan Alan Payne, and the West Virginia Board of Professional Surveyors execute the following Consent Decree for the purpose of resolving Complaint No. C16-10, filed against the Respondent on May 24, 2016. The parties have reached an agreement, in lieu of a hearing, which the Respondent hereby agrees and stipulates to the Findings of Fact, Conclusions of Law, Consent, and Order set forth in this Consent Decree concerning the disposition of this matter.

FINDINGS OF FACT

The Board adopts the following findings in this matter:

1. That Bryan Alan Payne is a licensee of the Board with license number 977 and is subject to the license requirements of said Board.
2. The Board is a regulatory board created for the purpose of regulating the practice of land surveying. *W. Va. Code § 30-13A et seq.*
3. In order to carry out its regulatory duties, the Board is empowered to suspend, revoke or otherwise discipline an individual's professional surveyor license because of authority granted to it by *W. Va. Code §§ 30-13A-5 and 30-13A-22.*
4. That in April 2016, the Respondent was contracted to perform a boundary survey of Lot No. 42, conveyed to Donna J. Hall ("Client") by Deed dated January 15, 2013 and recorded in

Book 852 at Page 520, located in the City of Wheeling, Triadelphia District of Ohio County, West Virginia.

5. That on April 21, 2016, the Respondent signed and sealed his final plat and delivered it to his Client on April 25, 2016.

6. That on May 20, 2016, Paul Hicks ("Complainant"), emailed a complaint form to the Board alleging incompetence because Bryan A. Payne, P.S. #977 ("Respondent"), moved an existing corner pin and did not notify the adjoiners that he was performing a survey.

7. That on June 8, 2016, the Respondent's response to Complaint C16-10 was received by the Board.

8. That on July 21, 2016, the Board's Complaint Review Committee ("CRC") reviewed the complaint.

9. That on July 26, 2016, the Board approved an Informal Investigative Conference ("IIC") with the Board's Complaint Review Committee.

10. That on September 22, 2016, the IIC was cancelled as both the Complainant and Respondent failed to appear.

11. That in the Respondent's response received by the Board, the Respondent admitted that he moved a survey monument in that he "[f]ound an existing pipe to be off of the record measurement by about 0.08 feet. It was adjusted to fit the lot as shown upon the said referenced plat."

CONCLUSIONS OF LAW

1. Pursuant to *W. Va. Code* §30-1-8(a), the Board is authorized to enter into consent decrees for the informal disposition of complaints in lieu of a formal hearing.
2. Pursuant to *W. Va. Code* §30-1-8(a), the Board is also authorized to assess administrative costs against the licensee for reimbursement of costs of the investigation, hearings and other expenses relative to the complaint, when the Board finds grounds for disciplinary action.

3. Pursuant to *W. Va. Code* §30-13A-22(g), “[t]he Board may, after notice and opportunity for hearing, deny or refuse to renew, suspend, restrict or revoke the license or certificate of authorization of, or impose probationary conditions upon or take disciplinary action against, any licensee or certificate holder...” (2010).
4. The Respondent failed to properly describe a corner or reference monument, and moved a set property corner to match his exact measurement in violation of *W. Va. Code R.* §23-5-7.3.6.

CONSENT

By signing below, the Respondent agrees to the following:

1. Respondent has had the opportunity to consult with counsel and executes this Consent Decree voluntarily, freely, without compulsion or duress and mindful that it has legal consequences. No person or entity has made any promise or given any inducement whatsoever to encourage Respondent to make this settlement other than as set forth herein.
2. Respondent acknowledges that he is aware that he may pursue this matter through appropriate administrative and/or court proceedings, and is aware of his legal rights regarding this matter, but intelligently and voluntarily waives such rights.
3. Respondent acknowledges that this document is a public Record as defined in *W. Va. Code* §29B-1-2(4), and as such, the Board is legally bound to allow any person to review this Consent Decree. Moreover, the results of the Board’s action may be reported to other authorities and agencies.
4. Respondent consents to the entry of the following Order affecting his conduct as a professional surveyor.

ORDER

On the basis of the foregoing, the Board hereby ORDERS as follows:

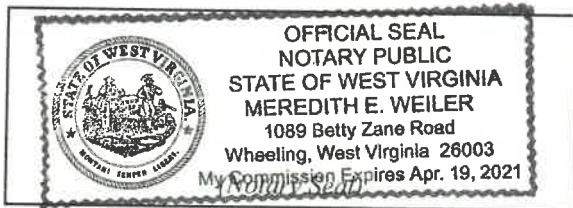
1. Respondent is hereby REPRIMANDED for his actions in the instant matter as outlined above in the Findings of Fact and Conclusions of Law. The Board finds that the Respondent violated *W. Va. Code R. §23-5-7.3.6*.
2. Respondent shall revise his plat and prepare a legal description in accordance with the current minimum standards for boundary surveys. Revised plat will be provided to his Client and submitted to the Board within ninety (90) days of the entry of this Order into the records of the Board.
3. Respondent shall pay to the West Virginia Board of Professional Surveyors a fine in the amount of \$100.00, for moving an established property corner, (*Reference Complaint C16-10*), to be deposited in the general revenue fund of the State of West Virginia. Respondent shall pay the fine within ninety (90) days of entry of this Order into the records of the Board.
4. Respondent shall pay to the West Virginia Board of Professional Surveyors, by separate check, the administrative costs and legal fees associated with the Board's investigation of this complaint, which totals \$475.00. (*Reference Complaint C16-10*). Respondent shall pay the administrative costs and legal fees within ninety (90) days of entry of this Order into the records of the Board.
5. Any deviation from the requirements of this Consent Decree, without the prior written consent of the Board, shall constitute a violation of this Order.
6. Respondent shall immediately advise the Board of any changes in his status and advise the Board of his current address at all times during the term of this Consent Decree.

AGREED TO BY:

Bryan A. Payne 1/17/2017
BRYAN ALAN PAYNE, P.S. DATE

Subscribed and sworn to before me this 17 day of January, 2017.

My commission expires: April 19, 2021.



Meredith E. Weiler
Signature of Notary Public

ENTERED into the Records of the West Virginia Board of Professional Surveyors this:

4th day of February, 2017.

R. Michael Shepp
R. MICHAEL SHEPP, P.S.
Chairman

