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IN THE MATTER OF  MELVIN L. MITCHELL,  Respondent	* * * * *	BEFORE THE MARYLAND STATE STATE BOARD FOR LAND SURVEYORS Agency Case Nos.: 16-LS-05, 16-LS-07, and 17-LS-06
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**AGREEMENT AND CONSENT ORDER**

This Agreement and Consent Order ("Consent Order") is entered into by the Maryland State Board for Professional Land Surveyors ("the Board") and Melvin Mitchell ("the Respondent"), collectively ("the parties), to resolve Agency Case Nos.: 16-LS-05, 16-LS-07 and 17-LS-06. The cases are based on written complaints received by the Board and filed against the Respondent. After an investigation of the allegations of the complaints, a decision was made by the Board to pursue administrative action against the Respondent, including the issuance of charges and the scheduling of a hearing on the charges. The parties however have decided to resolve these cases through the execution of this Consent Order which will serve as the final resolution of these matters.

***The Parties agree and stipulate to the following:***

1. The Respondent is licensed by the Board as a property line surveyor, License No. 525. The license is current through February 16, 2019. At all times relevant to these matters, the Respondent was licensed and under the jurisdiction of the Board.
2. Pursuant to the Maryland Professional Land Surveyors Act, Maryland Annotated Code, Business Occ. & Prof. Art., Title 15, §§ 15-101 *et seq.*, the Board is responsible for licensing and regulating professional land surveyors and those who offer to provide professional land surveying services in the State of Maryland.

3. On or about March 16, 2016, a complaint was filed with the Board by George Hazen ("Complainant Hazen") in connection with location drawings (for Lots 13 and 14 of Cape Saint Claire) that the Respondent signed and sealed. Complainant Hazen alleged that the location drawings were inaccurate and that they did not meet the requirements set out in the Board's Minimum Standards of Practice for location drawings.

4. On or about April 26, 2016, a complaint was filed with the Board by John Grant ("Complainant Grant") in connection with a revised plat that was prepared by the Respondent. Complainant Grant alleged that the plat was inaccurate and that it had been submitted to the Anne Arundel County Office of Planning and Zoning for the purpose of extinguishing a 40' access easement to the property. The plat purported to alter their property rights in relation to other lot owners denoted on the plat but was signed and sealed without containing Mr. Grant's or his wife's signatures or any evidence that they had knowledge of or approved the revised plat affecting their property rights. Respondent denies that he submitted a signed and sealed record for the purpose of extinguishing any rights of Complainant Grant and maintains that the initial amended plat was submitted to initiate the review process by Anne Arundel County, per County requirements. The amended plat was later recorded, independent of these proceedings, and contained all required signatures and a separate recorded deed to formally extinguish the easement.

5. The Board's Minimum Standards of Practice are contained in the Code of Maryland Regulations ("COMAR"), at 09.13.06.06, and set out the requirements for the development and content of location drawings for licensees. COMAR 09.13.06.06A provides that the purpose of a location drawing "is to locate, describe, and represent the positions of buildings or other visible improvements affecting the subject property." The regulations further provide that a location drawing cannot be relied upon to establish property boundaries, and that a licensee is required to

disclose a prohibition on the location drawing that it cannot be used for the purpose of delineating or setting the property lines. In addition, if a licensee concludes that circumstances require a boundary survey, the licensee is notify the consumer that a boundary survey is necessary.

6. The complaint filed by Mr. Hazen alleged that the Respondent provided testimony on behalf of neighboring lot owners, before the Anne Arundel County Board of Appeals and in support of the location drawings that he had prepared. It is alleged by the Board that, during his testimony, the Respondent failed to distinguish between the purpose and scope of a location drawing and that of a boundary survey, which would be used to establish the boundaries lines for the properties in question before the County Board. It is further alleged by the Board that the Respondent failed to adequately inform the Board of the restrictions of the location drawings and instead, in contravention of the Board's regulations, testified that his location drawings, supported by the notes he maintained of his surveys, could be relied upon to establish the boundary lines for the properties. The Respondent denies that he misrepresented the locations drawings as boundary surveys in his testimony.

7. On or about February 28, 2017, Complainant Hazen filed a second complaint with the Board against the Respondent. In the February complaint, Mr. Hazen alleged that the Respondent completed a boundary survey on January 16, 2017 for Lot 13 of Cape Saint Claire, and that the boundary survey did not comply with the Board's requirements for boundary surveys.

8. The requirements for boundary surveys are contained in the Minimum Standards of Practice at COMAR 09.13.06.03. COMAR 09.13.06.03(f)(2)(j) provides: "[a]ll 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."

9. Complainant Hazen alleged that the boundary survey provided by the Respondent did not incorporate the markers that the Respondent said that he placed at the front and back corners of the property line that separates Lot 13 and Lot 14 in his testimony before the Anne Arundel County Board of Appeals, and that the boundary survey did not show the existing corner pipes that had been found along the boundary of Lot 12 and Lot 13, or the existing monument that had been set previously by McCrone in 1949.

10. The Respondent admits that his actions with regard to the location drawings, plat, and boundary survey he provided in these matters were in apparent violation of the requirements established in the Board in the Minimum Standards of Practice, and specifically, under COMAR 09.13.06.06C(7) and 09.13.06.03F(2)(j), and that he has an obligation to make every reasonable effort to protect the property of the public under CO MAR 09.13.01.02.

11. In the spirit of cooperation and an effort to resolve these matters before the Board, the Respondent consents to the entry of an Order by the Board of the violation of COMAR 09.13.06.06C(7), 09.13.06.03F(2)(j) and 09.13.01.02, and agrees to a three (3) month suspension of his license, which shall be held in abeyance for an eighteen (18) month probationary period. For the first twelve (12) months of the Respondent's 18 month probation, the Respondent will participate in a peer review conducted by the Board's complaint committee. The purpose of the peer review is to provide constructive review of the Respondent's work product and make suggestions for complying with the Board's Minimum Standards of Practice. Although the failure to provide the documents requested for peer review may be a basis for suspension of the Respondent's license, the documents or information provided by the Respondent for purpose of the peer review will not be used as a basis to initiate disciplinary action against the Respondent. The Respondent agrees to pay a fine of \$2,250.00 in connection with the violations, payable over

a six (6) month period, beginning with the first payment due at the time the Respondent signs this Consent Order and continuing with the payment of equal monthly payments until the fine is fully paid. The Respondent agrees to take an ethics course and a course on the Minimum Standards of Practice within sixty (60) days of the date of this Consent Order, and to provide the Board, within thirty (30) days thereafter, documentation of his completion of the courses.

12. The Respondent agrees that by entering into this Consent Order, he expressly waives the right to have the Board issue charges and hold a hearing on the charges and potential sanctions against him, to have written Findings of Fact and Conclusions of Law determined by an independent Administrative Law Judge, and to any and all further proceedings before the Board to which the Respondent may be entitled in these matters, and any rights to take an appeal from this Consent Order.

13. The Respondent agrees that should he fail to comply with the terms of the Consent Order by failing either to pay the civil penalty, or take the required ethics courses as described in the Order, or to provide documentation to the Board of the courses taken within 30 days of having completed them, or to submit to peer review and provide to the Board's complaint committee a list of the land surveying documents, per month, that he has signed and sealed during each month, for the first twelve (12) months of his probationary period by the 10<sup>th</sup> of each successive month, and to provide copies of the two land surveying documents the Board selects for purposes of the peer review the he Board will notify the Respondent of the intent to suspend his license, if it is determined he has not complied with the terms of the Consent Order, and allow him a period of ten (10) days to provide evidence that he has complied with the terms of the Consent Order.

14. The Respondent enters into this Consent Order freely, knowingly, and voluntarily, and having consulted with independent legal counsel.

15. The Board accepts this Consent Order as the full and final resolution of Agency Case Nos.: 16-LSOS, 16-LS-07, and 17-LS-06, and any administrative actions that could be taken by the Board pursuant to §15-317, Business Occupations and Professions Article, Maryland Annotated Code based on the complaints.

**BASED ON THESE STIPULATIONS, IT IS THIS 6<sup>th</sup> DAY OF Dec, 2017, BY THE STATE BOARD FOR PROFESSIONAL LAND SURVEYORS,**

**ORDERED**, that a violation of § 15-317(a)(1)(v), Business Occupations and Professions Article, Maryland Annotated Code, for failure to comply with the Board's regulations contained in COMAR 09.13.06.06(c)(7), 09.13.06.03F(2)(j), and 09.13.01.02 be entered against the Respondent by agreement and consent of the parties;

**ORDERED**, that the Respondent's license is suspended by the Board for a period of three (3) months but that the suspension will be held in abeyance for a period of eighteen (18) months, beginning from the date of this Consent Order;

**ORDERED** that the Respondent will serve an eighteen (18) month probationary period during which, for the first twelve (12) months, he will be subject to peer review by the Board's complaint committee, the purpose of which is to provide constructive review and suggestions to the Respondent for compliance with the Minimum Standards of Practice;

**ORDERED** that for purposes of the peer review, the Respondent shall provide the complaint committee each month with a list of the land surveying documents that he has signed and sealed during the preceding month by the 10<sup>th</sup> of each successive month, and that he will provide to the committee a copy of the two documents selected by the Board for purposes of the peer review

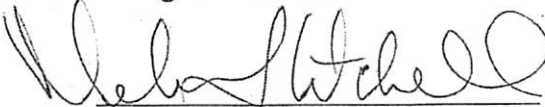
**ORDERED**, that the Respondent pay a civil penalty of \$2,250.00, payable over a six (6) month period with the first payment of made at the time the Respondent signs this Consent Order, and then with equal monthly payments until the balance of the penalty is paid;

**ORDERED**, that the Respondent take an ethics course and a course on the Minimum Standards of Practice and that the courses be taken within sixty (60) days of the date of this Consent Order, that the course hours cannot be used by the Respondent to meet the continuing education requirements for the renewal of his license; and,

**ORDERED**, that the Respondent shall provide the Board, within thirty (30) days of taking the courses, documentation that the Respondent has completed the courses;

**ORDERED**, that should the Respondent fail to comply with the terms of this Consent Order, by failing either to pay the civil penalty, or take the required ethics courses as described in the Order, or by failing to provide documentation to the Board of the courses taken within 30 days of having completed them, or by failing to provide to the Board's complaint committee a copy of two land surveying documents that he has signed and sealed each month during the first twelve (12) months of his probationary period, the Board will notify the Respondent of their intent to suspend his license if it is determined he has not complied with the terms of the Consent Order and the Respondent will have ten (10) days from the date the notice is sent by the Board to provide evidence that he has complied with the terms of the Consent Order prior to any suspension being imposed; and further,

**ORDERED**, that the Board's records and publications reflect that these matters were resolved through the execution of this Consent Order.

  
Melvin L. Mitchell  
Respondent

  
Chair  
State Board for Professional Land Surveyors