

**STATE OF FLORIDA
DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES
BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS**

**DEPARTMENT OF AGRICULTURE
AND CONSUMER SERVICES,**
Petitioner,

vs.

Case No. 2008043158

SIMMONS & BEALL, INC.
Respondent,

FINAL ORDER APPROVING SETTLEMENT STIPULATION

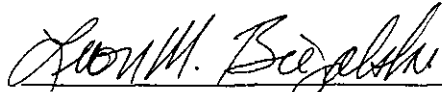
THIS CAUSE came before the Board of Professional Surveyors and Mappers (“Board”) pursuant to Sections 120.569 and 120.57(4), Florida Statutes, at a meeting held on February 17, 2010, in Tallahassee, Leon County, State of Florida, for determination of whether to accept the proposed Settlement Stipulation (“Stipulation”) entered into by the parties in the above styled cause. Respondent was not present at the hearing. Petitioner was represented by Mr. Eric H. Miller, Esquire.

Upon consideration of the Administrative Complaint, the proposed Stipulation, and the presentation of the parties, and being otherwise fully advised of the premises, **IT IS HEREBY ORDERED AND ADJUDGED:**

1. The proposed Stipulation is hereby approved and adopted. A copy of the Stipulation is attached hereto as Exhibit “A” and incorporated herein.
2. The parties shall adhere to and abide by all the terms and conditions of the Stipulation.

3. Failure to comply with the terms of the Stipulation, including timely payment of any fines and/or costs assessed, shall cause the Respondent to be subjected to further discipline.
4. This Final Order shall be placed in and become a part of the Respondent's official records and shall take effect upon being filed with the Agency Clerk of the Department of Agriculture and Consumer Services, whose seal is affixed hereon.

DONE AND ORDERED this 4th day of March, 2010.



Leon M. Biegalski, Executive Director,
Board of Professional Surveyors and Mappers
For JEFFERY COONER, Chair

NOTICE OF RIGHT JUDICIAL REVIEW

A party who is adversely affected by this Final Order is entitled to judicial review, pursuant to Section 120.68, Florida Statutes. Review proceedings are governed by the Florida Rules of Appellate Procedure. Such proceedings are commenced by filing one copy of a notice of appeal with the Agency Clerk of the Department of Agriculture and Consumer Services and a second copy, accompanied by filing fees prescribed by law, with the District Court of Appeal, First District, or with the District Court of Appeal in the appellate district where the party resides. The Notice of Appeal must be filed within thirty (30) days of rendition of the Order to be reviewed.

Filed with the Clerk, this 30th day of March, 2010.



Agency Clerk

Copies by Certified U.S. Mail, RRR# 7009 2250 0003, 5751 3304
Simmons & Beall, 12222 Highway 301, Dade City, FL 33525

By hand delivery:
Bennett M. Miller, Board Counsel

STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS

DEPARTMENT OF BUSINESS AND
PROFESSIONAL REGULATION,

Petitioner,

v. .

DBPR Case No. 2008-043158

SIMMONS AND BEALL, INC.,

Respondent.

SETTLEMENT STIPULATION

SIMMONS AND BEALL, INC., hereinafter referred to as "Respondent," and the Department of Business and Professional Regulation, hereinafter referred to as "Department," hereby stipulate and agree to the following joint Stipulation and Final Order of the Board of Professional Surveyors and Mappers, hereinafter referred to as "Board," incorporating this Stipulation and agreement in the above-styled matter.

STIPULATED FACTS

1. For all times pertinent hereto, Respondent was a licensed surveying and mapping business in the State of Florida, license number LB 6382. Respondent's address of record is 12222 Highway 301, Dade City, FL 33525.

2. Respondent is charged by an Administrative Complaint with eight (8) violations of chapter 472, *Florida Statutes*, and/or the rules enacted pursuant thereto. A true and correct

copy of the Administrative Complaint is attached hereto and incorporated by reference as Exhibit "A."

3. Respondent neither admits nor denies the matters of fact alleged in the Administrative Complaint attached hereto as Exhibit "A."

STIPULATED CONCLUSIONS OF LAW

4. Respondent in its capacity as a licensed surveying and mapping business admits that in such capacity it is subject to the provisions of chapters 455 and 472, *Florida Statutes*, and the jurisdiction of the Department and the Board.

5. Respondent admits that the facts set forth in the foregoing stipulated facts, if proven, would constitute a violation of chapter 472, *Florida Statutes*, as alleged in the Administrative Complaint.

6. Respondent agrees that the Board's acceptance of the Stipulation constitutes disciplinary action within the meaning of sections 472.033(1) and 455.227(1)(f), *Florida Statutes*.

STIPULATED DISPOSITION

7. Respondent shall not, in the future, violate chapters 455 and 472, *Florida Statutes*, or the rules promulgated pursuant thereto.

8. FINE & COSTS: Pursuant to Rule 61G17-9.0025(3) and (18), Florida Administrative Code, the Board shall impose an administrative fine in the amount of two thousand dollars

(\$2,000.00). Respondent shall also pay administrative costs, excluding attorney's fees, of ~~five~~ ^{two} hundred ~~thirty one~~ ^{eight} dollars and ~~ninety one~~ ^{thirty eight} cents (\$208.38), for a total of two thousand two hundred eight dollars and thirty eight cents (\$2,208.38). Said fine and costs shall be paid by the Respondent to the Executive Director of the Board of Professional Surveyors and Mappers, 1940 North Monroe Street, Tallahassee, Florida 32399-0750, in six (6) equal monthly installments due on the 15th of each month following the entry of the Final Order by the Board of Professional Land Surveyors and Mappers, which Final Order incorporates this Stipulation. Respondent's failure to pay the fine by the time it is due may result in further disciplinary action by the Board.

C/M/ma
3/8/2010

9. COSTS: Respondent shall pay administrative costs, excluding attorney's fees, of ~~five~~ ^{two} hundred ~~thirty one~~ ^{eight} dollars and ~~ninety one~~ ^{thirty eight} cents (\$208.38). Said costs shall be paid by the Respondent to the Executive Director of the Board of Professional Surveyors and Mappers, 1940 North Monroe Street, Tallahassee, Florida 32399-0750, within thirty (30) days of the entry of the Final Order by the Board of Professional Surveyors and Mappers, which Final Order incorporates this Stipulation. Respondent's failure to pay the costs by the time due may result in further disciplinary action by the Board.

C/M/ma
3/8/2010

10. It is expressly understood that a violation of the

terms of this Stipulation shall be considered a violation of chapter 472, *Florida Statutes*, for which disciplinary actions may be taken.

11. It is expressly understood that this Stipulation is subject to the approval of the Board and has no force and effect until the Board enters a Final Order adopting same.

12. This Stipulation is executed by Respondent for the purpose of avoiding further administrative action in this matter. In the event that the Stipulation is not approved by the Board, then neither party may use this Stipulation against the other, and the Stipulation shall be deemed null and void.

13. Respondent and the Department fully understand that this Stipulation, and the subsequent Final Order incorporating same, will not in any way preclude additional proceedings by the Board and/or Department against the Respondent for acts or omissions not specifically detailed in the investigative findings of probable cause.

14. Respondent and the Department expressly waive all further procedural steps, and Respondent expressly waives all rights to seek judicial review of, or to otherwise challenge or contest the validity of, this Stipulation and the Final Order of the Board, if said Stipulation is accepted by the Board and incorporated in the Final Order.

15. Respondent waives the right to seek any attorney's


fees or costs from the Department in connection with this disciplinary proceeding.

WHEREFORE, the parties hereto request the Board of Professional Surveyors and Mappers to enter a Final Order accepting and implementing the terms contained herein.

Signed this 1st day of SEPTEMBER 2009.


SIMMONS AND BEALL, INC.
Respondent

Approved this 9th day of September 2009.


Eric R. Hurst
Assistant General Counsel

Counsel for the Department:

Eric R. Hurst
Assistant General Counsel
Florida Bar Number 0879673
Department of Business and
Professional Regulation
Office of the General Counsel
Northwood Centre
1940 North Monroe Street, Suite 42
Tallahassee, Florida 32399-2202

ERH/kem
Case Number: 2008-043158

FILED	
Department of Business and Professional Regulation	
Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	8/7/2009
File #	

STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS

DEPARTMENT OF BUSINESS AND
PROFESSIONAL REGULATION,

Petitioner,

v.

Case No. 2008-043158

SIMMONS AND BEALL, INC.,

Respondent.

_____ /

ADMINISTRATIVE COMPLAINT

Petitioner, Department Of Business and Professional Regulation, files this Administrative Complaint before the Board of Professional Surveyors and Mappers, against Respondent, Simmons and Beall, Inc., and alleges:

1. Petitioner is the state agency charged with regulating the practice of land surveying and mapping, pursuant to Section 20.165, Florida Statutes, and Chapters 455 and 472, Florida Statutes.

2. At all times material to this complaint, Respondent was licensed professional surveying and mapping business in the State of Florida, having been issued license number LB 6382.

3. Respondent's address of record is 12222 Highway 301, Dade City, FL 33525.

4. A complaint was filed by Robert W. Sickler alleging that Respondent's survey of Lot # 132, 12428 Woodlands Circle, Dade City, FL contained several errors.

5. A review of Respondent's surveys using the Minimum Technical Standards (MTS) pursuant to Chapter 61G17-6, Florida Administrative Code, revealed the following:

- a. 61G17-6.003(2)(b)2- Computation data provided was insufficient to confirm if records of the survey have been maintained.
- b. 61G17-6.003(3)(b)8- The bearings and distance along the property lines are not supported by measurements.
- c. 61G17-6.004(2)(a)3- No data was provided to confirm there were no discrepancies between the field measured distances and the records distances along the lot lines.
- d. 61G17-6.004(2)(b)7- The data supplied showing angles and distances to corners and improvements does not show a redundancy of measurements.
- e. 61G17-6.004(2)(c)2- The survey shows a wall straddling the south property line which is indicated as an encroachment but it is not labeled as such.

f. 61G17-6.004(2)(d)2- A 10 foot utility easement is shown on the plat of Lake Jovita Golf & Country Club Phase One, Plat Book 37, page 70 and included as page 26 of the investigative report. This easement is not shown on the maps of the survey submitted on pages 15, 28, and 29. It is shown only on the vacant lot survey on pages 14 and 27.

g. 61G17-6.004(2)(e)1- The wall on the south property line is not dimensioned to the side lot line or to a front or rear lot line. The wall is dimensioned to the south lot line on the revised survey but not to the front or rear lot line to sufficiently indicate the location of the wall.

6. Section 472.033(1)(h), Florida Statutes, states in pertinent part:

Failing to perform any statutory or legal obligation placed upon a licensed surveyor and mapper constitutes grounds for which the disciplinary action in subsection (2) may be taken.

7. Section 472.033(1)(g), Florida Statutes, states in pertinent part:

Proof that the licensee is guilty of fraud or deceit, or of negligence, incompetency, or misconduct, in the practice of surveying and mapping constitutes grounds for which the disciplinary action in subsection (2) may be taken.

COUNT I

8. Based on the foregoing, Respondent has violated Section 472.033(1)(h), Florida Statutes, through a violation of 61G17-6.003(2)(b)2, Florida Administrative Code, by failing provide sufficient computation data to confirm the records of the survey have been maintained.

COUNT II

9. Based on the foregoing, Respondent has violated Section 472.033(1)(h), Florida Statutes, through a violation of 61G17-6.003(3)(b)8, Florida Administrative Code, by failing to support the bearings and distance along the property lines with measurements.

COUNT III

10. Based on the foregoing, Respondent has violated Section 472.033(1)(h), Florida Statutes, through a violation of 61G17-6.004(2)(a)3, Florida Administrative Code, by failing to provide data to confirm there were no discrepancies between the field measured distances and the record distances along the lot lines.

COUNT IV

11. Based on the foregoing, Respondent has violated Section 472.033(1)(h), Florida Statutes, through a violation of 61G17-6.004(2)(b)7, Florida Administrative Code, by failing to

show a redundancy of measurements in the data showing angles and distances to corners and improvements.

COUNT V

12. Based on the foregoing, Respondent has violated Section 472.033(1)(h), Florida Statutes, through a violation of 61G17-6.004(2)(a)8.d, Florida Administrative Code, by failing label the wall straddling the south property line as an encroachment.

COUNT VI

13. Based on the foregoing, Respondent has violated Section 472.033(1)(h), Florida Statutes, through a violation of 61G17-6.004(2)(d)2, Florida Administrative Code, by failing to show the ten (10) foot utility easement on the maps of the survey.

COUNT VII

14. Based on the foregoing, Respondent has violated Section 472.033(1)(h), Florida Statutes, through a violation of 61G17-6.004(2)(c)2.c, Florida Administrative Code, by failing to dimension the wall on the south property line to the front or rear lot line.

COUNT VIII

15. Based on the foregoing, Respondent has violated Section 472.033(1)(g), Florida Statutes, by negligently

preparing the survey of Lot # 132, 12428 Woodlands Circle, Dade City, FL.

WHEREFORE, Petitioner respectfully requests an order from the Board imposing one or more of the following penalties: imposition of an administrative fine not to exceed one thousand dollars (\$1,000.00) for each count or separate offense, issuance of a reprimand, assessment of costs associated with investigation and prosecution, imposition of any or all penalties delineated within Section 455.227(2), Florida Statutes, and/or any other relief that the Board or the Department is authorized to impose pursuant to Chapters 455 and/or 472, Florida Statutes, and/or the rules promulgated thereunder.

Signed this 30th day of July, 2009.

CHARLES W. DRAGO, Secretary
Department of Business and
Professional Regulation

By: 

Eric R. Hurst
Assistant General Counsel
Florida Bar No. 0879673
Department of Business and
Professional Regulation
Office of the General Counsel
1940 N. Monroe Street, Ste. 42
Tallahassee, FL 32399-2202
(850) 921-8656 Telephone
(850) 414-6749 Facsimile

PCP Date: 7-28-09
PCP Members: Mastromicola, Pappeller, Bush

ERH/kem

NOTICE OF RIGHTS

Respondent has the right to request a hearing to be conducted in accordance with Sections 120.569 and 120.57, Florida Statutes, to be represented by counsel or other qualified representative, to present evidence and argument, to call and cross-examine witnesses and to have subpoenas and subpoenas duces tecum issued on his or her behalf if a hearing is requested. Rule 28-106.111, Florida Administrative Code, provides in part that if Respondent fails to request a hearing within twenty-one (21) days of receipt of an agency pleading, Respondent waives the right to request a hearing on the facts alleged.

NOTICE REGARDING ASSESSMENT OF COSTS

Respondent is placed on notice that Petitioner has incurred costs related to the investigation and prosecution of this matter. Pursuant to Section 455.227(3)(a), Florida Statutes, the Board, or the Department when there is no Board, may assess costs related to the investigation and prosecution of the case excluding costs associated with an attorney's time, against the Respondent in addition to any other discipline imposed.