

**STATE OF VERMONT  
SECRETARY OF STATE  
OFFICE OF PROFESSIONAL REGULATION  
BOARD OF LAND SURVEYORS**

In re: Richard H. Joyce  
License no. 024.0000058

Docket no. 2014-777

**DECISION AND ORDER  
UNPROFESSIONAL CONDUCT**

**Participating Members of the Board:**

Charles E. Rockwell, Land Surveyor, Chair  
John Diebold, Land Surveyor  
Joseph Flynn, Land Surveyor  
Keith Robinson, public member

**Appearances:**

Rachel Allen, Esq., State Prosecuting Attorney  
Richard H. Joyce, *pro se*

**Administrative Law Officer:**

Michael S. Kupersmith

**Findings of Fact, Conclusion of Law and Order**

A hearing in above-entitled matter was conducted by the Board of Land Surveyors on June 20, 2017. Based upon the credible evidence presented, the Board finds that the following facts have been proven by a preponderance of the evidence.

**Findings of Fact**

1. Richard H. Joyce ("Respondent") of Wilmington, Vermont is licensed by the State of Vermont as a Land Surveyor under license no. 024.0000058. The license was originally issued on or about February 26, 1969 and is scheduled to expire on September 30, 2018.
2. At all times relevant, Respondent was self-employed as a land surveyor in Vermont.
3. On or about May 29, 2014, Respondent completed a survey for the property of Denise Carrier located at 147 Tunnel Street, Readsboro, Vermont. The survey was conducted to address a boundary dispute regarding the south property line of Ms. Carrier's residential property and the north property line of Robert and Kristy Dimezza's residential property.

4. Upon completing the survey, Respondent created a survey plat. A copy of the plat was admitted into evidence as exhibit 1. (A copy of the plat was also admitted as part of exhibit A.)
5. The plat indicated that an area of property along the property line is an area of "apparent encroachment." Respondent rendered a professional opinion about the location of the property line.
6. The lot immediately to the south of the Dimezza lot was referenced at hearing as the DeBloise property. The lot immediately to the south of the DeBloise lot was referenced at hearing as the Crawford property. The lot immediately to the north of the Carrier lot was referenced as the Peterson property. (The five lots are adjacent to each other along the easterly side of Tunnel Street.)
7. Respondent was told verbally about a monument, an iron pin, in the ground between the DeBloise lot and the Crawford lot.
8. There was testimony that the distance along the westerly sideline of the DeBloise lot as described in the deed of record when added to the distance of the westerly sideline of the Dimezza lot as described in the deed of record equals the distance from the DeBloise/Crawford monument (described in paragraph 7) to the point marked "B" on exhibit 1. On exhibit 1, Respondent stated the following under "Surveyor's Conclusions."

I started this survey at an iron pipe labeled "B." I found no evidence to the origin of the pin marked "B." . . .

9. When Respondent did his original field work, he did not find the monument which marked the southeast corner of the Carrier lot as described in the deed of record.
10. Respondent returned to the property in July 2016 to conduct further field investigation. He searched further for the rock which was described as marking the southeast corner of the Carrier lot. He testified that someone had cleared brush away from the area since the time of his previous visit. On this occasion, he found a large rock on the bank of the river several feet north of the point which he had determined to be the southeast corner of the lot on his survey. The rock had a hole approximately 1.25 to 1.5 inches in diameter on the top surface of the rock. Respondent testified that he could not determine if the rock was the monument marking the southeast corner.
11. In connection with the survey, Respondent failed to set appropriate monuments at the corners of the lot.

12. When Respondent produced the survey, he failed to include sufficient survey data to provide a closed geometric figure. At hearing, Respondent was unable to describe the difference between a closed geometric figure and a closed graphic figure.

### CONCLUSIONS

The State has charged that Respondent has committed unprofessional conduct in four ways.

- I. Violation One: 3 V.S.A. § 129a(b)(2), Respondent failed to practice competently by reason of any cause on a single occasion or on multiple occasions, whether actual injury to a client, patient or customer has occurred. Failure to practice competently includes: . . . (2) failure to conform to the essential standards of acceptable and prevailing practice.

The Board concludes that the State proved that Respondent failed to follow evidentiary leads. Respondent failed to follow an evidentiary lead when he ignored information about the monument set in the mutual corners of the DeBloise and Crawford properties on the easterly sideline of Tunnel Street.

Respondent also failed to engage in appropriate field work when conducting the survey. The deed description of the Carrier lot commences “on the southeast corner of a large rock with an iron pin driven in the ground for a corner . . .” When Respondent conducted his initial field work in May, 2014, he did not discover the rock. When he re-examined the property in July, 2016, enough brush had been cleared to reveal a rock with a round hole which is between 1.25 and 1.5 inches in diameter. Since the rock is in the approximate location of the northeast corner of the disputed portion of the property, the possibility that it was the monument describing the southeast corner of the Carrier lot should have been noted on the survey.

The Board concludes that Respondent failed to practice competently by failing to conform to the essential standards of acceptable and prevailing practice by failing to follow the evidentiary lead regarding the pin on the DeBloise/Crawford line and by failing to locate the rock which he later found in July, 2016.

The Board also concludes that the State did not prove that Respondent failed to adequately research more than the deeds of the two subject properties and failed to prove that Respondent “did not look at the deeds of the immediately abutting properties.” (See paragraph 5 of the Specification of Charges.)

The Board further concludes that the State did not prove that the Respondent “highly relied” upon a plan provided by the Vermont Agency of Transportation (the so-called VTrans Map). (See paragraph 7 of the Specification of Charges.)

- II. Violation Two: RBLs, Rule 5.4(b)(3). Whenever a land surveyor conducts a survey of property, the surveyor shall, at a minimum, perform the following computations, conclusion, and perpetuation: . . . (3) when necessary, make additional computations

and analyses to develop and formalize opinions on the location of corners and boundaries of the property under survey. Professional opinions shall be based on the best available evidence and in accordance with applicable Vermont boundary law and the established hierarchy of evidence.

The Board concludes that Respondent failed to use all available evidence as the basis for his professional opinion. As noted under section I, Respondent did not locate the called-for rock with the iron pin that marked the southeast corner of the Carrier lot.

- III. Violation Three. RBLs, Rule 5.4(b)(4). Whenever a land surveyor conducts a survey of property, the surveyor shall, at a minimum, perform the following computations, conclusions and perpetuation: . . . (4) a land surveyor who conducts a survey shall set monuments and marks to adequately perpetuate the location of unmarked corners and boundaries of the property under survey.

Respondent did not dispute the allegation that he failed to set monuments and marks to perpetuate a corner on the survey. Respondent admitted that he did not set any monuments and exhibit 1 does not show any monuments set by Respondent.

Respondent testified that he did not set any monuments because of the uncertainty of the location of the corners. Nevertheless, the acceptable and prevailing practice is to set a monument even when there is uncertainty and to note the uncertainty on the survey.

- IV. Violation Four: RBLs, Rule 5.5(c)(6). A land surveyor who conducts a survey shall, when contracted for by the client, prepare a plat showing the results of the survey and shall furnish a copy to the client. The plat shall be prepared in accordance with the latest adopted version of 27 V.S.A. §1403, Filing of Survey Plats, and 26 V.S.A. § 2596(a), Use of Seal, Certification, and shall also include the following information: . . . (6) Sufficient boundary survey data to provide a closed geometric figure of a perimeter survey. A survey of a boundary line adjustment shall have sufficient information to tie into the client's adjoining boundary lines.

Respondent's survey plat, exhibit 1, fails to provide sufficient boundary survey data to provide a closed geometric figure of a perimeter survey. A closed geometric figure provides the vector data to recreate the figure mathematically so that the vector lines return to the starting point. Each course, therefore, must contain a direction and a distance. If either, or both, are missing, then a person could not recreate the figure.

## ORDER

In connection with its supervisory and disciplinary duties, the Board of Land Surveyors may, "Issue warnings or reprimands, suspend, revoke, limit, condition, deny, or prevent renewal of licenses, after disciplinary hearings . . ." See 3. V.S.A. § 129(a)(3).

- A. Accordingly, the Board of Land Surveyors hereby **CONDITIONS** the license of Respondent Richard H. Joyce for a period of at least two years.

- B. It is a condition of this Order that within one hundred eighty (180) days of the Date of Entry of this Order, Respondent must take and successfully complete a surveying course or courses that must include the following content:
1. Legal aspects of boundary location;
  2. Rules of construction and procedures for boundary retracement;
  3. Interpretation of property descriptions;
  4. Professional responsibility.
- C. The surveying course(s) must be pre-approved by the Board of Land Surveyors. Respondent must submit a list of at least three appropriate courses to the Board; the Board will then select the course or courses to be completed by Respondent. Any course listed by Respondent must include a final examination. Respondent shall transmit to the Board satisfactory evidence that he has successfully completed the approved course(s).
- D. After a period of two years and upon completion of the above-described course(s), Respondent may submit a petition to the Board to remove any and all conditions on Respondent's license. The State may assent to or oppose Respondent's petition. The Board will conduct a hearing if appropriate. Respondent bears the burden and must present proof that he has complied with the terms of this Order.
- E. If Respondent fails to complete the approved course(s) within 180 days of the Date of Entry, Respondent's license will be **SUSPENDED** without further notice and will remain under suspension until he complies with the course requirements.
- F. A **Civil Penalty of seven hundred fifty dollars (\$750.00)** is assessed against Respondent. Respondent shall remit payment within ninety days of the Date of Entry of this Order.
- G. Notwithstanding any provision above, the Respondent must continue to meet all Board of Land Surveyors requirements for maintaining a license, license renewal, and license reinstatement.
- H. This Decision and Order is a matter of public record and may be reported to other licensing agencies as provided in 3 V.S.A. § 129(a).
- I. This Decision and Order will remain part of Respondent's licensing file and may be used for purposes of determining sanctions in any future disciplinary matter.

Dated at Montpelier, Vt., this 28 day of July, 2017,



Board of Land Surveyors  
By: Charles E. Rockwell, Chair

Date of Entry: 8/2/17

#### **APPEAL RIGHTS**

This is a final administrative determination by the Vermont Board of Land Surveyors. A party aggrieved by a final decision of a board may appeal this decision by filing a written Notice of Appeal with the Director of the Office of Professional Regulation, Vermont Secretary of State, Office of Professional Regulation, 89 Main Street, Fl. 3, Montpelier, Vermont 05620-3402 within 30 days of the entry of this Order. If an appeal is filed, the Director of the Office of Professional Regulation shall assign the case to an appellate officer. The review shall be conducted on the basis of the record created before the board. In cases of alleged irregularities in procedure before the board, not shown in the record, proof on that issue may be taken by the appellate officer. 3 V.S.A. §§ 129(d) and 130a.