

1
2
3
4
5
6
7
8
9
10
11

**BEFORE THE ARIZONA STATE
BOARD OF TECHNICAL REGISTRATION**

<p>In the Matter of:</p> <p>Robert Atherton Land Surveyor Registration No. 16490</p> <p style="text-align: center;">Respondent</p>	<p style="text-align: center;">Case No. P19-052</p> <p style="text-align: center;">CONSENT AGREEMENT and ORDER OF DISCIPLINE</p>
---	--

12 In the interest of a prompt and judicious resolution of the above-captioned matter before
13 the Arizona State Board of Technical Registration ("Board") and consistent with the public
14 interest, statutory requirements, and the responsibilities of the Board, and pursuant to A.R.S. §
15 32-101 et seq. and A.A.C. R4-30-120(G), the undersigned party, Robert Atherton
16 ("Respondent"), holder of Registration No. 16490, and the Board enter into the following
17 Recitals, Findings of Fact, Conclusions of Law and Order ("Consent Agreement") as a final
18 disposition of this matter.

19

RECITALS

20 1. Respondent has read and understands this Consent Agreement and has had the
21 opportunity to discuss this Consent Agreement with an attorney, or has waived the opportunity to
22 discuss this Consent Agreement with an attorney.

23 2. Respondent understands that he has a right to a public administrative hearing
24 concerning this case. He further acknowledges that at such formal hearing he could present
25 evidence and cross-examine witnesses. By entering into this Consent Agreement, Respondent
26 knowingly, voluntarily, and irrevocably waives his right to such an administrative hearing, as
27 well as rights of rehearing, review, reconsideration, appeal, judicial review or any other
28 administrative and/or judicial action concerning the matters set forth herein.

1 3. Respondent affirmatively agrees that this Consent Agreement shall be irrevocable.

2 4. Respondent understands that this Consent Agreement or any part of the agreement
3 may be considered in any future disciplinary action by the Board against him.

4 5. The Consent Agreement, any record prepared in this matter, all investigative
5 materials prepared or received by the Board and all related exhibits and materials, are public
6 records (as defined in A.R.S. § 41-158.18) upon acceptance by the Board of this Consent
7 Agreement and may be retained in the Board's files pertaining to this matter.

8 6. Respondent understands this Consent Agreement deals with Board case number
9 P19-052 involving allegations that Respondent engaged in conduct that would subject him to
10 discipline under the Board's statutes and rules. The investigation into these allegations against
11 Respondent shall be concluded upon the Board's adoption of this Consent Agreement.

12 7. Respondent understands that this Consent Agreement does not constitute a
13 dismissal or resolution of any other matters currently pending before the Board, if any, and does
14 not constitute any waiver, express or implied, of the Board's statutory authority or jurisdiction
15 regarding any other pending or future investigation, action or proceeding.

16 8. Respondent also understands that acceptance of this Consent Agreement does not
17 preclude any other agency, subdivision, or officer of this State from instituting any other civil or
18 criminal proceedings with respect to the conduct that is the subject of this Consent Agreement.

19 9. Respondent acknowledges and agrees that, upon signing this Consent Agreement
20 and returning this document to the Board's Executive Director, he may not revoke his acceptance
21 of the Consent Agreement or make any modifications to the document regardless of whether the
22 Consent Agreement has been signed on behalf of the Board. Any modification to this original
23 document is ineffective and void unless mutually agreed by the parties in writing.

24 10. This Consent Agreement is subject to the approval of the Board and is effective
25 only when accepted by the Board and signed on behalf of the Board. If the Board does not accept
26 this Consent Agreement, the Board retains its authority to hold a formal administrative hearing
27 pursuant to A.R.S. § 32-128(E). In the event that the Board does not approve this Consent
28 Agreement, it is withdrawn and shall be of no evidentiary value and shall not be relied upon nor

1 introduced in any action by any party, except that the parties agree that should the Board reject
2 this Consent Agreement and this case proceeds to hearing, Respondent shall assert no claim that
3 the Board was prejudiced by its review and discussion of this document or any records relating
4 thereto.

5 11. If a court of competent jurisdiction rules that any part of this Consent Agreement is
6 void or otherwise unenforceable, the remainder of the Consent Agreement shall remain in full
7 force and effect.

8 12. Respondent understands that any violation of this Consent Agreement may result in
9 disciplinary action, including suspension or revocation of the registration under A.R.S. § 32-150.

10 13. Respondent agrees that the Board will adopt the following Findings of Fact,
11 Conclusions of Law and Order.

12 **FINDINGS OF FACT**

13 1. The Board is the duly constituted authority for the regulation and control of the
14 practice of Land Surveying in the State of Arizona.

15 2. Respondent is the holder of Arizona Land Surveying Registration No. 16490.

16 3. On or about July 2, 2012, Respondent completed a ALTA/ACSM Land Title
17 Survey of the Agua Fria High School property located at 530 E. Riley Dr. in Avondale, Arizona.

18 4. On or about April 7, 2019, the Board received a complaint alleging that after
19 conducting an ALTA/ACSM Land Title Survey of the Agua Fria High School property located at
20 530 E. Riley Dr. in Avondale, Arizona, Respondent failed to record the survey after setting
21 surveying monuments as required in Arizona Boundary Survey Minimum Standards ("ABSMS")
22 #13(C) and Respondent failed to set the northwest corner without an explanation as to why
23 ABSMS #10 was not complied with.

24 5. Two members of the Board's Enforcement Advisory Committee concluded that
25 Respondent failed to monument, witness, or reference the northwest corner of the property and
26 failed to record his survey as alleged in the complaint.

27 6. Respondent admitted that he failed to comply with the requirements of ABSMS
28 #13(C) and ABSMS #10 after he was unable to set the northwest corner due to the large debris

1 pile left by the school district. Respondent indicated his willingness to set the monument and file
2 the record of survey.

3 **CONCLUSIONS OF LAW**

- 4 1. The Board has jurisdiction in this matter pursuant to A.R.S. § 32-101, et seq.
5 2. The conduct alleged in the Findings of Fact constitutes grounds for discipline
6 pursuant to A.R.S. § 32-128(C)(4) as it relates to A.A.C. R4-30-301(13), in that Respondent
7 failed to conduct a land boundary survey in accordance with the Arizona Survey Minimum
8 Standards.

9 **ORDER**

10 Based on the foregoing Findings of Fact and Conclusions of Law, the Board issues the following
11 Order:

- 12 1. LETTER OF REPRIMAND. Respondent is hereby issued a Letter of Reprimand.
13 2. STAYED SUSPENSION AND PROBATION. Respondent's registration as a
14 Registered Land Surveyor, No.16490, shall be suspended for Three (3) months; however, the
15 suspension is stayed for as long as Respondent remains in compliance with this Order. During the
16 stay of suspension, Respondent's registration as a Registered Land Surveyor is placed on
17 probation for Three (3) months. If Respondent is non-compliant with any terms of this Order
18 during the Three (3) months stayed suspension and probation period, the stay of the suspension
19 shall be lifted and Respondent's registration as a Registered Land Surveyor shall be automatically
20 suspended without a formal hearing, and remain suspended until Respondent is compliant with all
21 terms of this Order.
22 3. COMPLETE AND RECORD SURVEY. Within Thirty (30) days of the effective
23 date of this Consent Agreement, Respondent shall provide proof to the Board that Respondent
24 has prepared and recorded a survey for the Agua Fria High School property located at 530 E.
25 Riley Dr. in Avondale, Arizona which proves that Respondent set the missing monument and
26 filed the record of survey.
27 4. ADMINISTRATIVE PENALTY. Within Three (3) months from the effective
28 date of this Consent Agreement, Respondent shall pay an administrative penalty of Five Hundred

1 Dollars (\$500.00) by certified check or money order made payable to the State of Arizona Board
2 of Technical Registration.

3 5. COST OF INVESTIGATION. Within Thirty (30) days from the effective date of
4 this Consent Agreement, Respondent shall pay the cost of investigation of this case to the Board
5 in the amount of One Hundred Sixty-Eight Dollars (\$168.00) by certified check or money order
6 made payable to the State of Arizona Board of Technical Registration, according to the
7 provisions of A.R.S. § 32-128(H).

8 6. OBEY ALL LAWS. During the probationary period, Respondent shall obey all
9 federal, state and local laws, as well as, all rules governing the practice of Land Surveying in the
10 State of Arizona. The Board shall consider any violation of this paragraph to be a separate
11 violation of the rules and statutes governing the Arizona Board of Technical Registration. The
12 Board may also consider Respondent's non-compliance with this Order as a separate violation of
13 A.R.S. § 32-150.

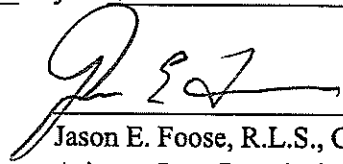
14 7. RENEWAL OF REGISTRATION. Respondent shall timely renew his Arizona
15 registration as a Registered Land Surveyor, and timely pay all required registration fees.

16 8. EFFECTIVE DATE. The effective date of this Consent Agreement is the date the
17 Respondent and Board sign the Consent Agreement. If the dates are different, the effective date is
18 the later of the two dates.

19 9. COSTS OF COMPLIANCE. Respondent shall pay all costs associated with
20 complying with this Consent Agreement.

21 10. NONCOMPLIANCE. If Respondent violates this Order in any way or fails to
22 fulfill the requirements of this Order, the Board, after giving notice and the opportunity to be
23 heard, may revoke, suspend or take other disciplinary actions against the registration. The issue
24 at such a hearing will be limited solely to whether this Order has been violated.

25 ACCEPTED and ORDERED this 27TH day of AUGUST, 2019.

26
27
28


Jason E. Foose, R.L.S., Chairman
Arizona State Board of
Technical Registration

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Consent Agreement and Order, No. P19-052 accepted this 1st day of August, 2019.


Robert Atherton, Respondent

ORIGINAL filed this 28th day of August, 2019, with:

Arizona State Board of Technical Registration
1110 W. Washington, Suite 240
Phoenix, AZ 85007

COPY of the foregoing mailed via Certified Mail
No. 9214 8901 9434 4600 0604 53 and
First Class mail this 28th day of August, 2019, to:

Robert Atherton
1295 W. Washington St. #108
Tempe, AZ 85281

By: 