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STATE OF MINNESOTA
BOARD OF ARCHITECTURE, ENGINEERING,
LAND SURVEYING, LANDSCAPE ARCHITECTURE, GEOSCIENCE
AND INTERIOR DESIGN

In the matter of Michael Eastling
PROFESSIONAL ENGINEER
License Number 15066

STIPULATION AND ORDER

Board File No. 2005-0094

TO: Michael Eastling, P.E.
Public Works Department – City of Richfield
6700 Portland Avenue
Richfield, MN 55423

The Minnesota Board of Architecture, Engineering, Land Surveying, Landscape Architecture, Geoscience and Interior Design ("Board") is authorized pursuant to Minnesota Statutes §§ 214.10 and 326.111 (2004) to review complaints against architects, professional engineers, land surveyors, landscape architects, geoscientists, and certified interior designers, and to take disciplinary action whenever appropriate.

The Board received information concerning Michael Eastling ("Respondent"). The Board's Complaint Committee ("Committee") reviewed the information. The parties have agreed that the matter may now be resolved by this Stipulation and Order.

STIPULATION

IT IS HEREBY AGREED by and between Respondent and the Committee as follows:

1. Jurisdiction. The Respondent has held a license to practice professional engineering from the Board since August 4, 1981. Respondent is subject to the jurisdiction of the Board with respect to the matters referred to in this Stipulation.
2. Facts. This Stipulation is based upon the following facts:

a. Respondent was first licensed to practice professional engineering in the State of Minnesota on August 4, 1981.

b. On June 30, 1982, Respondent's license to practice professional engineering in the State of Minnesota expired.

c. Respondent admits that his professional engineering license lapsed. In a letter dated October 7, 2005, Respondent states:

"I want to start by stating that in March of this year I was startled to discover that my professional engineering license had lapsed, and that it had been over twenty years since it had lapsed."

A true and correct copy of the October 7, 2005 letter is attached hereto as Exhibit A.

d. Respondent admits in his letter dated October 7, 2005, to signing plans for the following projects:

1. "The City of Richfield undertook an alley paving project beginning in 1982. At the beginning of this project, my license was valid and in effect. Approximately 100 alleys were paved between 1982 and 1987. In connection with that work, I signed CP 786 on May 26, 1983; CP 793 on March 12, 1984; CP 821 on May 9, 1985; CP 822 on May 7, 1986; and CP 832 on February 9, 1987. Each of these designs were signed by me, but was based upon a design originally performed by OSM and their licensed engineers or myself while I was licensed."
2. "The City of Richfield also undertook a sidewalk construction project from 1982 to 1984. In connection with this project, I

signed a sidewalk plan in May of 1982 when I was validly licensed. I also signed sidewalk plans on May 23, 1983 and July 19, 1984 after my license had lapsed.”

3. “On March 24, 1998 I signed a plan for a “replacement-in-kind” project which involved no new design. This is mentioned simply in the interest of full disclosure although I do not believe it constitutes the practice of professional engineering.”

A true and correct copy of the October 7, 2005 letter is attached hereto as Exhibit A.

e. On March 25, 2005, Respondent contacted the Board to inquire about the status of his professional engineering license. Upon learning that his license had expired in 1982, Respondent took steps to reinstate his license, and the reinstatement was effective on May 9, 2005.

3. Violations. Respondent admits that the facts specified above constitute violations of Minn. Stat. §§ 326.02, subds. 1 and 3 and 326.03, subd. 1 (2004) and are sufficient grounds for the action specified below.

4. Enforcement Action. Respondent and the Committee agree that the Board should issue an Order in accordance with the following terms:

- a. Reprimand. Respondent is reprimanded for the foregoing conduct.
- b. Civil Penalty. Respondent shall pay to the Board a civil penalty of Ten Thousand Dollars (\$10,000.00). Respondent shall submit a civil penalty of Five Thousand Dollars (\$5,000.00) by cashier’s check or money order to the Board, payable to the ‘Board of Architecture, Engineering, Land Surveying, Landscape Architecture, Geoscience, and Interior Design,’ within sixty (60) days of the Board’s approval of this

Stipulation and Order. Respondent shall pay the remaining civil penalty of Five Thousand Dollars (\$5,000.00) to the Board by making two (2) equal payments of Two Thousand Five Hundred Dollars (\$2,500.00) by cashier's check or money order, payable to the "Board of Architecture, Engineering, Land Surveying, Landscape Architecture, Geoscience, and Interior Design," which must be received by the Board office on or before: April 13, 2007 and October 13, 2007.

5. Additional Discipline for Violations of Order. If Respondent violates this Stipulation and Order, Minn. Stat. ch. 326, or Minn. Rule ch. 1800 or 1805, the Board may impose additional discipline pursuant to the following procedure:

a. The Committee shall schedule a hearing before the Board. At least thirty days prior to the hearing, the Committee shall mail Respondent a notice of the violation alleged by the Committee and of the time and place of the hearing. Within fourteen days after the notice is mailed, Respondent shall submit a response to the allegations. If Respondent does not submit a timely response to the Board, the allegations may be deemed admitted.

b. At the hearing before the Board, the Complaint Committee and Respondent may submit affidavits made on personal knowledge and argument based on the record in support of their positions. The evidentiary record before the Board shall be limited to such affidavits and this Stipulation and Order. Respondent waives a hearing before an administrative law judge and waives discovery, cross-examination of adverse witnesses, and other procedures governing administrative hearings or civil trials.

c. At the hearing, the Board will determine whether to impose additional

disciplinary action, including additional conditions or limitations on Respondent's practice or suspension or revocation of Respondent's license.

6. Waiver of Respondent's Rights. For the purpose of this Stipulation, Respondent waives all procedures and proceedings before the Board to which Respondent may be entitled under the Minnesota and United States constitutions, statutes, or the rules of the Board, including the right to dispute the allegations against Respondent, to dispute the appropriateness of discipline in a contested case proceeding pursuant to Minn. Stat. ch. 14, and to dispute the civil penalty imposed by this Agreement. Respondent agrees that upon the application of the Committee without notice to or an appearance by Respondent, the Board may issue an Order containing the enforcement action specified in paragraph 4 herein. Respondent waives the right to any judicial review of the Order by appeal, writ of certiorari, or otherwise.

7. Collection. In accordance with Minn. Stat. § 16D.17 (2004), in the event this order becomes final and Respondent does not comply with paragraph 4(b) above, Respondent agrees that the Board may file and enforce the unpaid portion of the civil penalty as a judgment without further notice or additional proceedings.

8. Board Rejection of Stipulation and Order. In the event the Board in its discretion does not approve this Stipulation and Order or a lesser remedy than specified herein, this Stipulation and Order shall be null and void and shall not be used for any purpose by either party hereto. If this Stipulation is not approved and a contested case proceeding is initiated pursuant to Minn. Stat. ch. 14, Respondent agrees not to object to the Board's initiation of the proceedings and hearing the case on the basis that the Board has become disqualified due to its review and consideration of this Stipulation

and the record.

9. Unrelated Violations. This settlement shall not in any way or manner limit or affect the authority of the Board to proceed against Respondent by initiating a contested case hearing or by other appropriate means on the basis of any act, conduct, or admission of Respondent justifying disciplinary action which occurred before or after the date of this Stipulation and Order and which is not directly related to the specific facts and circumstances set forth herein.

10. Record. The Stipulation, related investigative reports and other documents shall constitute the entire record of the proceedings herein upon which the Order is based. The investigative reports, other documents, or summaries thereof may be filed with the Board with this Stipulation.

11. Data Classification. Under the Minnesota Government Data Practices Act, this Stipulation and Order is classified as public data upon its issuance by the Board. Minn. Stat. § 13.41, subd. 4 (2004). All documents in the record shall maintain the data classification to which they are entitled under the Minnesota Government Data Practices Act, Minn. Stat. ch. 13. They shall not, to the extent they are not already public documents, become public merely because they are referenced herein.

12. Entire Agreement. Respondent has read, understood, and agreed to this Stipulation and is freely and voluntarily signing it. The Stipulation contains the entire agreement between the parties hereto relating to the allegations referenced herein. Respondent is not relying on any other agreement or representations of any kind, verbal or otherwise.

13. Counsel. Respondent is aware that he may choose to be represented by

legal counsel in this matter. Respondent knowingly waived legal representation.

14. Service. If approved by the Board, a copy of this Stipulation and Order shall be served personally or by first class mail on Respondent. The order shall be effective and deemed issued when it is signed by the Chair of the Board.

RESPONDENT

Michael Eastling
Michael Eastling

Dated: 10-16, 2006

COMPLAINT COMMITTEE

By: Billie Lawton Public Member
Billie Lawton, Public Member
Committee Chair

Dated: 11-16, 2006

ORDER

Upon consideration of the foregoing Stipulation and based upon all the files, records and proceedings herein, all terms of the Stipulation are approved and hereby issued as an Order of this Board on this the 8TH day of DECEMBER, 2006.

MINNESOTA BOARD OF
ARCHITECTURE, ENGINEERING,
LAND SURVEYING, LANDSCAPE
ARCHITECTURE, GEOSCIENCE AND
INTERIOR DESIGN

By: Harvey H. Harvala
Harvey H. Harvala, PE
Board Chair

RECEIVED
2005

October 7, 2005

Complaint Committee
Board of Architecture, Engineering, Land Surveying,
Landscape Architecture, Geoscience, and Interior Design
85 East 7th Place, Suite 160
St. Paul, MN 55101

Attn: Ms. Doreen B. Frost, Executive Director

Re: Mike Eastling
License No: 15066
File No.: 2005-0094

Dear Ms. Frost:

I submit this letter in response to the letter from the Board of Architecture, Engineering, Land Surveying, Landscape Architecture, Geoscience, and Interior Design (the "Board") notifying me of a formal complaint regarding my licensure. The complaint committee graciously agreed to provide me with an extension of time to respond and I respectfully submit this letter in support of my position.

I want to start by stating that in March of this year I was startled to discover that my professional engineering license had lapsed, and that it had been over twenty years since it had lapsed. I assure the committee that this lapse was in no way intentional and that until March of this year I fully and truly believed that I was complying with all of the rules and regulations of the Board with regard to my licensure. Upon making the discovery that my engineering license had lapsed, I reported the situation to the Board staff, I applied for reinstatement, and I informed my employer, the City of Richfield. I have now paid the past due licensing fees and have been reinstated.

The intent of my letter is to help the Board understand what happened and why I was unaware that my license had lapsed for a period of twenty years. My hope is that the Board will understand that the lapsing of my license was not intentional, and that due to the nature of my position, I performed minimal functions which would be considered the practice of professional engineering in the last twenty years.

The following is a brief overview of my explanation of how this oversight occurred and why it took me so long to discover the lapse of my license.

EXHIBIT A

Nature of my work for the City of Richfield

I was hired in March of 1980 as the "Acting" City Engineer for the City of Richfield. I became licensed as a professional engineer in October of 1981. I was promoted to Utility and Engineering Coordinator in 1983 and subsequently to Director of Public Works in 1997. Due to my promotions in 1983, and again in 1997, my role as the City Engineer for the City of Richfield has been administrative as opposed to design related. I have responsibility for over 50 maintenance, operations, engineering, administrative, supervisory and management employees in the Richfield Public Works Department. The Public Works Department includes Water/Wastewater/Stormwater Utility, Streets/Parks/Building Maintenance and Engineering with Engineering comprising less than 5% of the Department General Fund expenditures.

As I am sure the Committee is aware, the City Engineer has a dual role in most cities. The City Engineer may perform limited design functions of various roads and sidewalks. The other job function is as a fiduciary for the City as an administrator. The City Engineer is the individual checking and questioning proposals from outside consultants, on behalf of the City, as well as providing signatures as a representative of the City on state funding forms. Following my promotions and as a result of Richfield being primarily developed by 1980, my work was primarily as an administrator and a fiduciary for the City of Richfield. However, I did participate in the following projects where I stamped plans:

1. The City of Richfield undertook an alley paving project beginning in 1982. At the beginning of this project, my license was valid and in effect. Approximately 100 alleys were paved between 1982 and 1987. In connection with that work, I signed CP 786 on May 26, 1983; CP 793 on March 12, 1984; CP 821 on May 9, 1985; CP 822 on May 7, 1986; and CP 832 on February 9, 1987. Each of these designs were signed by me, but was based upon a design originally performed by OSM and their licensed engineers or myself while I was licensed.
2. The City of Richfield also undertook a sidewalk construction project from 1982 to 1984. In connection with this project, I signed a sidewalk plan in May of 1982 when I was validly licensed. I also signed sidewalk plans on May 23, 1983 and July 19, 1984 after my license had lapsed.
3. On March 24, 1998 I signed a plan for a "replacement-in-kind" project which involved no new design. This is mentioned simply in the interest of full disclosure although I do not believe it constitutes the practice of professional engineering.

Other than the three projects noted above, I did not perform any design work as the City Engineer for the City of Richfield. My role was primarily as an administrative fiduciary on behalf of the City. Once I discovered that I was no longer licensed, I contacted Bob Brown who served as a Minnesota Department of Transportation Metro District State Aid Engineer during much of my career with the City of Richfield. As I

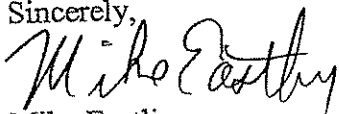
discussed above, Mr. Brown also makes a distinction between the City Engineer signing a plan with his registration number as a designer and the City Engineer who signs documents in its administrative and fiduciary capacity. Where the state aid form is signed by a city engineer on behalf of the city as a fiduciary and administrator, no requirement that the individual be a professional engineer is required. As a result, although I assigned a number of municipal state aid expenditure forms, those were signed in my role as an administrator for the City and not as a professional engineer. In fact, Mr. Brown tells me that it is common practice for non-engineers to sign these administrative forms. I was signing these kinds of forms in 1980, 1981 and 1982 prior to obtaining my license per instructions from MnDOT's State Aid office.

In short, while I was acting as the City Engineer for the City of Richfield during the lapse in my license, my job was primarily that of an administrator acting as a fiduciary on behalf of the City. My job was not, except in the limited cases as listed above, as a designer.

I fully intend to cooperate with the Complaint Committee in the investigation of this matter. A lapse in my license was not intentional, and upon learning of that lapse, I immediately brought my license current and self-reported the fault. I look forward to working with the Complaint committee to bring about a resolution which is consistent with the charge of the Board and fair given the circumstances.

Finally, I apologize for the time and expense being incurred by the Board as a result of my mistake. I am truly sorry.

Sincerely,



Mike Eastling