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STATE OF WISCONSIN
BEFORE THE EXAMINING BOARD OF ARCHITECTS,
PROFESSIONAL ENGINEERS, DESIGNERS AND LAND SURVEYORS

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST ROBERT D. BAKER, RESPONDENT	:	FINAL DECISION AND ORDER

The parties to this proceeding for the purposes of Wis. Stats. sec. 227.16 are:

Robert D. Baker
P.O. Box 68
Danbury, Wisconsin 54830

Examining Board of Architects, Professional
Engineers, Designers and Land Surveyors
1400 East Washington Avenue, Room 288
P.O. Box 8936
Madison, Wisconsin 53708

Department of Regulation and Licensing
Division of Enforcement
1400 East Washington Avenue, Room 183
P. O. Box 8936
Madison, Wisconsin 53708

A hearing was held in the above-captioned matter on March 19, 1981 in Room 180 at 1400 East Washington Avenue, Madison, Wisconsin. The respondent, Robert D. Baker, appeared personally and by his attorney Robert J. Kay, Geisler & Kay, S.C., Suite 50, 433 West Washington Avenue, Madison, Wisconsin 53703. The complainant appeared by attorney Wayne R. Austin, Department of Regulation and Licensing, P.O. Box 8936, Madison, Wisconsin 53708.

A proposed decision was filed by the hearing examiner Donald R. Rittel, dated June 30, 1982 with an "Order Denying Respondent's Motion to Dismiss". Both parties filed objections to the proposed decision of the examiner.

The State of Wisconsin, Examining Board of Architects, Professional Engineers, Designers and Land Surveyors, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Hearing Examiner, makes the following final decision and order.

FINDINGS OF FACT

1. Robert D. Baker, hereinafter referred to as Respondent, was at all times relevant to this proceeding duly licensed under the provisions of Ch. 443, Wis. Stats., to practice as a land surveyor in the State of Wisconsin (License No. S1010, issued August 4, 1970).

2. Respondent is 70 years old and retired from the practice of land surveying in 1979. Since October of 1980, respondent has resided in Mountain View, California.

ELSIE GOLDEN

3. In December, 1976, and as a part of his land surveying practice, Respondent was retained by Mrs. Elsie Golden, residing at Route 1, Danbury, Wisconsin, hereinafter referred to as Golden, to perform a land survey and to prepare a survey map of the Northeast Quarter of the Northeast Quarter and Government Lot #1, Section 17, T40N, R15W, Town of Jackson, Burnett County, Wisconsin.

4. Respondent performed or supervised the performance of a survey and prepared or supervised the preparation of a survey map as described in paragraph 3 above. Respondent filed a copy of the survey map with the Burnett County Surveyor's Office.

5. On or about December 9, 1976, Respondent submitted to Golden a statement in the amount of $950.00 for his services in connection with the survey and map described in paragraph 3 above. Respondent accepted Golden's personal note in that amount, which note was secured by a mortgage upon the property surveyed. Respondent received, from time to time, partial payments from Golden upon the note.

6. In performing the survey and in preparing the survey map described in paragraph 3 above, Respondent was required to meet the standards set forth in the Minimum Standards for Property Surveys, Ch. A-E 5, Wis. Adm. Code. The survey and map did not meet the required standards in the following respects:

(a) Respondent failed to set monuments marking the corners of the parcels surveyed as required by s. A-E 5.01(3), Wis. Adm. Code.

(b) Respondent failed to show the exact length and bearing of all boundaries of the parcels surveyed as described by s. A-E 5.01(5)(c), Wis. Adm. Code.

(c) The map prepared by Respondent fails to show and describe all monuments necessary for the location of the parcels and fails to indicate whether such monuments were found or placed, as required by s. A-E 5.01(5)(d).

(d) The map prepared by Respondent does not bear his signature and stamp or seal, and does not include a statement certifying that the survey is correct to the best of Respondent's knowledge or belief, as required by s. A-E 5.01(5)(f), Wis. Adm. Code.

(e) The map prepared by Respondent fails to describe the parcels surveyed as provided by s. A-E 5.01(4), Wis. Adm. Code and as required by s. A-E 5.01(5)(e), Wis. Adm. Code.

(f) Respondent failed to make a careful determination of the position of the boundaries of the parcels being surveyed, as required by s. A-E 5.01(3), Wis. Adm. Code.

JOHN STONE

7. In 1978, and as a part of his land surveying practice, Respondent was retained by Mr. John Stone, residing in Webster, Wisconsin, to perform surveys and to prepare certified survey maps of parcels of land located in Government Lots 2 and 3, Section 3, Township 39 North, Range 16 West, Town of Meenon, County of Burnett, State of Wisconsin.

8. Respondent performed or supervised the performance of surveys and prepared or supervised the preparation of certified survey maps, as described in paragraph 7 above. Respondent was paid a professional fee for the surveys and maps.

9. In the performance of the surveys described in paragraph 7 above, Respondent failed to discover the existence of a deeded right of way for Burnett County Highway "A" affecting the parcels of land surveyed (Burnett County Warranty Deed #15490, Vol. 213, p. 388). The certified survey maps prepared by Respondent, therefore, incorrectly depict the parcels surveyed.

10. Respondent failed to discover the existence of a deed right of way for Burnett County "A" affecting the concerned parcels because he failed to adequately research the records of the register of deeds office or the county highway office.

11. Respondent recorded the certified survey maps described in paragraph 7 above (C.S.M. Vol. 6, p. 42, recorded August 9, 1978). The certified survey maps contained a statement certifying that the surveys were correct to the best of Respondent's knowledge and belief.

EDWIN LINDBLOM

12. In 1976, and as a part of his land surveying practice, Respondent was retained on behalf of Mr. Edwin Lindblom, residing in Grantsburg, Wisconsin, to locate the south boundary of a parcel of land owned by Lindblom and located in the Northeast Quarter of the Southwest Quarter, Section 28, Township 37 North, Range 19 West, Town of Anderson, Burnett County, Wisconsin.

13. Respondent performed or supervised the performance of a survey and prepared or supervised the preparation of a map as described in paragraph 12 above. Respondent was paid a professional fee for the survey and map.

14. The survey and map described in paragraph 12 above did not meet the standards set forth for "property surveys" in ss. A-E 5.01(5)(d), (e), (f), and (6)(a), Wis. Adm. Code, nor was the map filed with the county surveyor's office.

CONCLUSIONS OF LAW

1. The Examining Board of Architects, Professional Engineers, Designers and Land Surveyors has jurisdiction to take disciplinary action in this proceeding pursuant to sec. 443.02(8), Wis. Stats. (1977), [now, sec. 443.12(1)].

2. Respondent's failure to meet the Minimum Standards for Property Surveys set forth in Wis. Adm Code chapter A-E 5, as detailed in paragraph 6 of the Findings of Fact, constitutes gross negligence and misconduct in the practice of land surveying within the meaning of sec. 443.02(8)(a), Wis. Stats. (1977), [now, sec. 443.12(1)].

3. Respondent's recording of certified survey maps containing a statement certifying that they were correct to the best of respondent's knowledge and belief, but which he should have known to incorrectly depict the parcels surveyed, as described in paragraphs 9, 10 and 11 of the Findings of Fact, demonstrated misconduct in the practice of land surveying within the meaning of sec. 443.02(8)(a), Wis. Stats. (1977), [now, sec. 443.12(1)].

4. Respondent's failure to meet the Minimum Standards for Property Surveys set forth in Wis. Adm. Code chapter A-E 5, as detailed in paragraph 14 of the Findings of Fact, constitutes misconduct in the practice of land surveying within the meaning of sec. 443.02(8)(a), Wis. Stats. (1977), [now, sec. 443.12(1)].

ORDER

NOW, THEREFORE, IT IS ORDERED that the license of Robert D. Baker to practice as a land surveyor in the State of Wisconsin shall be, and hereby is suspended for a period of thirty (30) days, commencing thirty days following the date of the final decision of the Examining Board of Architects, Professional Engineers, Designers and Land Surveyors.

PORTION OF EXAMINER'S OPINION ADOPTED BY BOARD

Chapter 443 of the Wisconsin Statutes provides that discipline may be imposed against a land surveyor who engages in gross negligence or misconduct. A failure to meet the Minimum Standards for Property Surveys, as set forth in Chapter A-E 5 of the Wisconsin Administrative Code, is grounds for a finding of gross negligence and misconduct. The evidence submitted at hearing in this case is sufficient to establish that Robert D. Baker failed to meet the Minimum Standards for Property Surveys in respect to a survey performed in 1976, and that he engaged in misconduct by recording a certified survey map in 1978 which he should have known to incorrectly depict the parcels surveyed by failing to show a deeded right of way for a highway.

ELSIE GOLDEN SURVEY

In late 1975, Baker contracted to perform a survey for Mrs. Elsie Golden to consist of a property line survey and a division of the parcel in half. (Exhibit P). Baker surveyed the property, prepared a map of survey and filed the map with the county surveyor's office in 1976. The survey map failed to meet the Minimum Standards for Property Surveys in several respects, as described in paragraph 6 of the Findings of Fact. Baker contends that this map was not intended to be the final map of the parcel; but rather, was a "preliminary map", or sketch, which eventually led to the preparation of a survey map properly prepared and filed in 1979. (Exhibit A). However, there is nothing on the face of the survey map prepared in 1976 to

indicate that it was intended to be merely a "preliminary map", nor was Mrs. Golden or others informed that the map was intended as a preliminary map. Furthermore, the survey map remained in the county surveyor's files for approximately two and one-half years prior to Baker's preparing and filing an accurate map of the parcel in 1979. Finally, it is instructive to note that on December 9, 1976, Baker sent Mrs. Golden a billing for $950.00, only $50.00 less than the maximum cost estimate given Mrs. Golden by Baker for all his surveying services. Thereafter, Baker accepted payments from Mrs. Golden on the bill, as well as her mortgage and note for the amount of the billing.

Under the foregoing circumstances, as well as others more fully developed in "Complainant's Closing Argument", pp. 2-5, the examiner is of the opinion that the 1976 property survey of Mrs. Golden was not a "preliminary" survey; but rather, a poorly prepared map which failed to meet the standards set forth in Wis. Adm. Code sec. A-E 5.

JOHN STONE SURVEY

Baker was retained by Mr. John Stone to perform a survey of parcels of land, which included property previously deeded to another individual. In performing his survey and preparing his maps, Baker failed to discover a deeded right of way for a county highway. Accordingly, Baker's maps incorrectly established the boundaries of the parcels because of his incorrect determination of the location of the highway right of way. Baker testified that he failed to find the deeded right of way at the register of deeds office, and did not check the records of the county highway office. However, testimony was introduced that a deed for such right of way was available at both the register of deeds and highway office. Clearly, Baker should have known of the deeded right of way.

After the survey was recorded, Baker received written notification from Gilbert T. Richey, the Deputy County Surveyor for Burnett County, of the problem with Baker's surveys in regard to the right of way. (Exhibit K). Baker did not respond to such notification, and accordingly Mr. Richey wrote a letter to Baker, dated September 15, 1978, in which he again called the problem to Baker's attention, and indicated that the surveys should be corrected. (Exhibit L). Baker subsequently made the corrections.

EDWIN LINDBLOM SURVEY

In 1976 Baker was retained on behalf of Mr. and Mrs. Edwin Lindblom by their attorney, Robert L. Grindell, to locate the southern boundary of their property. Attorney Grindell testified that Baker was instructed to find the south line of the property in order to determine whether or not there was trespass upon the Lindblom land by their southern neighbors. Grindell requested a sketch of the situation, which he received for use in consulting with his clients. This sketch did not meet the requirements for property surveys imposed by Wis. Adm. Code sec. A-E 5, nor was it filed with the county surveyor's office pursuant to Wis. Stats. sec. 59.60(6).

DISCIPLINE

Having found that Baker violated statutes and rules enforced by the board, the next issue is the appropriate discipline, if any, to be rendered in this case. In making a disciplinary determination, it must be recognized that the purposes for applying such sanctions are 1) to promote the rehabilitation of the licensee, 2) to protect the public, and 3) to deter other licensees from engaging in similar conduct. State v. Aldrich, 71 Wis. 2d 206 (1976). Punishment of the licensee is not a proper consideration. State v. MacIntyre, 41 Wis. 2d 481 (1969).

A one month suspension is an appropriate sanction in this case. This recommendation takes into account the nature of Baker's conduct, from which other licensees must be deterred, as well as the fact that Baker has been retired from practice since late 1980 and no longer practices in this state.

EXPLANATION OF VARIANCE

The final decision of the Board varies from that of the examiner in that the examiner found that the survey performed by Baker for Mr. and Mrs. Edwin Lindblom did not constitute a "property survey" within the meaning of Wis. Adm. Code s. A-E 5.01(2).

Under the facts described in paragraphs 12 and 13 in the Findings of Fact, Respondent Baker performed a "property survey" for Edwin Lindblom. The work for Lindblom included preparation of a map showing the location of the southern boundary of the Lindblom property.

Section A-E 5.01(2), Wis. Adm. Code defines "property survey" as

> "...any land surveying performed for the principal purpose of describing, monumenting or mapping one or more parcels of land."

The field work by Baker and preparation of a map of survey by Balser showing the Lindblom southern boundary constitutes "any land surveying". The purpose of the survey was to locate the southern boundary in order to resolve a trespass question. Baker's general assignment necessarily included "describing" the Lindblom parcel in relation to other parcels in the immediate area, "mapping" the boundary and showing on the map relevant monumentation. No agreement was made between Lindblom or Attorney Grindell and Baker to exclude Baker's survey from the requirement of Chapter A-E 5 as permitted under s. A-E 5.01(1)(b).

The Board therefore has modified that part of the proposed decision of the examiner relating to the issue of whether the Lindblom survey was required to meet minimum standards. All other parts of the proposed decision of the examiner were adopted by the Board in this final decision.

A party aggrieved by this decision may petition the board for rehearing within twenty (20) days after service of this decision pursuant to Wis. Stats. sec. 227.12. The party to be named as respondent in the petition is Robert D. Baker.

A party aggrieved by this decision may also petition for judicial review by filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings will be held and serving the board and other parties with a copy of the petition for judicial review within thirty (30) days after service of this decision pursuant to Wis. Stats. sec. 227.16. The party to be named as respondent in the petition is the State of Wisconsin, Examining Board of Architects, Professional Engineers, Designers and Land Surveyors.

Dated this 18th day of SEPTEMBER, 1982.

Percival T. Sprague

Land Surveyors Section
Examining Board of Architects,
Professional Engineers, Designers
and Land Surveyors
By: Percival T. Sprague, Chairman

WD:kh
019-748

BEFORE THE STATE OF WISCONSIN
EXAMINING BOARD OF ARCHITECTS, PROFESSIONAL
ENGINEERS, DESIGNERS AND LAND SURVEYORS

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST ROBERT D. BAKER, RESPONDENT	:	COMPLAINANT'S OBJECTIONS TO PROPOSED DECISION

Wayne R. Austin, on behalf of the Division of Enforcement, Department of Regulation and Licensing, hereby objects to the proposed decision filed in the above-captioned matter in the following respects:

Claim III of the complaint filed in this matter concerns a survey performed by Mr. Baker for Mr. and Mrs. Edwin Lindblom. The gravamen of the complaint as to the services provided to the Lindbloms is that Mr. Baker failed to meet the standards set forth in the Minimum Standards For Property Surveys, Chapter A-E 5, Wis. Adm. Code, in locating the south boundary of the Lindblom property. Respondent maintained throughout the course of the proceedings that location of a single boundary does not constitute a "property survey" and that those standards therefore do not apply.

The hearing examiner found (at Findings of Fact 13 and 14) that Baker "performed or supervised the performance of a survey and prepared or supervised the preparation of a map" and that the survey and map "did not meet the standards set forth for 'property surveys' in sections A-E 5.01(5)(d), (e), (f), and (6)(a), Wis. Adm. Code, nor was the map filed with the county surveyor's office". Nonetheless, the examiner ultimately agreed with the respondent, concluding (at Conclusion of Law #4) that:

> "Since respondent was retained...to locate only the southern boundary of a parcel of land, respondent was not required to meet the minimum standards for property surveys set forth in Wis. Adm. Code section A-E 5, as such services do not constitute a 'property survey' within the meaning of Wis. Adm. Code section A-E 5.01(2)."

While the cited findings are without question correct, the cited conclusion is just as clearly in error.

In his opinion, the examiner, after iterating that the minimum standards set forth in A-E 5 had not been met in the Lindblom survey, correctly observes:

> "Whether or not violations have occurred in this instance depends upon whether or not the map prepared for the Lindbloms constituted a 'property survey' within the meaning of Wis. Adm. Code section A-E 5.01(2), so as to require Baker to following the minimum standards...."

In concluding that the Lindblom survey does not constitute such a "property survey", the examiner constructed a five part analysis as follows: (1) a property survey, as defined by A-E 5.01(2) means "any land surveying performed for the principal purpose of describing, monumenting or mapping one or more parcels of land; (2) a "parcel of land" must be interpreted to mean an enclosed area of property; (3) a parcel of land may consist of several boundaries; however, one boundary does not make a "parcel"; (4) Baker was retained to locate only one boundary of the Lindblom property; and, (5) Baker therefore did not perform a property survey. The examiner's analysis has a kind of surface attractiveness, though his logic is by no means unassailable. The weak link in the examiner's chain of reasoning is the unstated premise that to "survey a parcel of land" means to survey the entire parcel of land. The examiner's conclusion would be correct if the definition of "property survey" stated that the term means "any land surveying performed for the principal purpose of describing, monumenting or mapping one or more entire parcels of land". That, of course, is not what the definition says, and to read the underscored modifying adjective into the definition makes no particular logical sense. It is as possible to survey a part of a parcel as it is to survey the entire parcel.

But whether or not we can find fault with the examiner's reasoning, he has, in taking this kind of syllogistic approach to the problem, to some extent lost sight of the intent and purpose of the code provisions he's attempted to interpret.

The rules relating to minimum standards for property surveys are for the benefit and protection of the public. They establish specific standards and requirements for the purpose of helping to ensure that surveying services provided by licensed surveyors are accurate, complete and reproducible. To concur in the examiner's reasoning is to conclude that these desirable qualities and the public benefit derived from their attainment is important only if the survey constitutes a closed traverse. It is to conclude that the surveying client contracting to have some but fewer than all of his property boundaries surveyed has no right to expect the same accuracy and completeness as does the client who contracts for a closed traverse.

Such a proposition is completely untenable. A surveying client in seeking the services of a licensed surveyor has every right to expect that the quality of those services will be consonant with the standards established by the examining board; and there is no logical nor even any practical reason why that expectation should be any different simply because he does not require a closed traverse survey. In the latter regard, respondent argues in his brief that to require that all survey work be performed in accordance with the requirements of A-E 5 is "ludicrous". That such a requirement "would require all of us to pay large sums of money to surveyors to perform work far more detailed and demanding than we need or desire". Just the opposite is true. Under A-E 5, the surveyor and the client may agree in writing to exclude any land surveying work. Under the examiner's analysis, however, any surveying client who seeks the protection of the rule will be required to contract for a closed traverse survey even though such a survey exceeds his requirements.

If the examiner is correct and the Board's minimum standards for surveys apply only to closed traverses, then it is submitted that the public would be better served by eliminating these rules altogether. By so doing, the Board would obviate the problem of creating false expectations as to the uniform quality of surveying services required to be provided by licensed surveyors in the State of Wisconsin.

The Board is urged to find that the survey performed for the Lindbloms was a property survey as defined by A-E 5.01(2) and that Baker was therefore required to adhere to the minimum standards established for property surveys.

Respectfully submitted,

Wayne R. Austin, Attorney
Department of Regulation & Licensing

891-810

STATE OF WISCONSIN
BEFORE THE EXAMINING BOARD OF ARCHITECTS, PROFESSIONAL ENGINEERS, DESIGNERS AND LAND SURVEYORS

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST	:	
ROBERT D. BAKER, RESPONDENT	:	NOTICE OF FILING PROPOSED DECISION

To: Robert J. Kay
Attorney at Law
Geisler & Kay, S.C.
Suite 50
433 West Washington Avenue
Madison, Wisconsin 53703

Wayne R. Austin
Attorney at Law
Department of Regulation and Licensing
P. O. Box 8936
Madison, Wisconsin 53708

PLEASE TAKE NOTICE that a Proposed Decision in the above-captioned matter has been filed with the Examining Board of Architects, Professional Engineers, Designers and Land Surveyors by the Hearing Examiner, Donald R. Rittel. A copy of the Proposed Decision is attached hereto.

If you are adversely affected by, and have objections to, the Proposed Decision, you may file your objections, briefly stating the reasons and authorities for each objection, and argue with respect to those objections in writing. Your objections and argument must be submitted and received at the office of the Examining Board of Architects, Professional Engineers, Designers and Land Surveyors, Room 288, Department of Regulation and Licensing, 1400 East Washington Avenue, P. O. Box 8936, Madison, Wisconsin 53708, on or before July 20, 1982.

Dated at Madison, Wisconsin, this 30th day of June, 1982.

Donald R. Rittel
Hearing Examiner

pc955-530

BEFORE THE STATE OF WISCONSIN
EXAMINING BOARD OF ARCHITECTS, PROFESSIONAL
ENGINEERS, DESIGNERS AND LAND SURVEYORS

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST ROBERT D. BAKER, RESPONDENT	PROPOSED DECISION

The parties to this proceeding for the purposes of Wis. Stats. sec. 227.16 are:

Robert D. Baker
P.O. Box 68
Danbury, Wisconsin 54830

Examining Board of Architects, Professional
Engineers, Designers and Land Surveyors
1400 East Washington Avenue, Room 288
P.O. Box 8936
Madison, Wisconsin 53708

Department of Regulation and Licensing
Division of Enforcement
1400 East Washington Avenue, Room 183
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Madison, Wisconsin 53708

A hearing was held in the above-captioned matter on March 19, 1981 in Room 180 at 1400 East Washington Avenue, Madison, Wisconsin. The respondent, Robert D. Baker, appeared personally and by his attorney Robert J. Kay, Geisler & Kay, S.C., Suite 50, 433 West Washington Avenue, Madison, Wisconsin 53703. The complainant appeared by attorney Wayne R. Austin, Department of Regulation and Licensing, P.O. Box 8936, Madison, Wisconsin 53708.

At the commencement of the hearing, respondent filed a "Notice of Motion and Motion to Dismiss." The parties agreed to file written briefs concerning both the merits of the case and respondent's motion to dismiss. All briefs were to be filed by June 3, 1981. Attached hereto is the examiner's ruling denying respondent's motion to dismiss.

Based upon the evidence in the record, the Hearing Examiner recommends that the Examining Board of Architects, Professional Engineers, Designers and Land Surveyors adopt as its final decision the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. Robert D. Baker, hereinafter referred to as Respondent, was at all times relevant to this proceeding duly licensed under the provisions of Ch. 443, Wis. Stats., to practice as a land surveyor in the State of Wisconsin (License No. S1010, issued August 4, 1970).

2. Respondent is 70 years old and retired from the practice of land surveying in 1979. Since October of 1980, respondent has resided in Mountain View, California.

ELSIE GOLDEN

3. In December, 1976, and as a part of his land surveying practice, Respondent was retained by Mrs. Elsie Golden, residing at Route 1, Danbury, Wisconsin, hereinafter referred to as Golden, to perform a land survey and to prepare a survey map of the Northeast Quarter of the Northeast Quarter and Government Lot #1, Section 17, T40N, R15W, Town of Jackson, Burnett County, Wisconsin.

4. Respondent performed or supervised the performance of a survey and prepared or supervised the preparation of a survey map as described in paragraph 3 above. Respondent filed a copy of the survey map with the Burnett County Surveyor's Office.

5. On or about December 9, 1976, Respondent submitted to Golden a statement in the amount of $950.00 for his services in connection with the survey and map described in paragraph 3 above. Respondent accepted Golden's personal note in that amount, which note was secured by a mortgage upon the property surveyed. Respondent received, from time to time, partial payments from Golden upon the note.

6. In performing the survey and in preparing the survey map described in paragraph 3 above, Respondent was required to meet the standards set forth in the Minimum Standards for Property Surveys, Ch. A-E 5, Wis. Adm. Code. The survey and map did not meet the required standards in the following respects:

(a) Respondent failed to set monuments marking the corners of the parcels surveyed as required by s. A-E 5.01(3), Wis. Adm. Code.

(b) Respondent failed to show the exact length and bearing of all boundaries of the parcels surveyed as described by s. A-E 5.01(5)(c), Wis. Adm. Code.

(c) The map prepared by Respondent fails to show and describe all monuments necessary for the location of the parcels and fails to indicate whether such monuments were found or placed, as required by s. A-E 5.01(5)(d).

(d) The map prepared by Respondent does not bear his signature and stamp or seal, and does not include a statement certifying that the survey is correct to the best of Respondent's knowledge or belief, as required by s. A-E 5.01(5)(f), Wis. Adm. Code.

(e) The map prepared by Respondent fails to describe the parcels surveyed as provided by s. A-E 5.01(4), Wis. Adm. Code and as required by s. A-E 5.01(5)(e), Wis. Adm. Code.

(f) Respondent failed to make a careful determination of the position of the boundaries of the parcels being surveyed, as required by s. A-E 5.01(3), Wis. Adm. Code.

JOHN STONE

7. In 1978, and as a part of his land surveying practice, Respondent was retained by Mr. John Stone, residing in Webster, Wisconsin, to perform surveys and to prepare certified survey maps of parcels of land located in Government Lots 2 and 3, Section 3, Township 39 North, Range 16 West, Town of Meenon, County of Burnett, State of Wisconsin.

8. Respondent performed or supervised the performance of surveys and prepared or supervised the preparation of certified survey maps, as described in paragraph 7 above. Respondent was paid a professional fee for the surveys and maps.

9. In the performance of the surveys described in paragraph 7 above, Respondent failed to discover the existence of a deeded right of way for Burnett County Highway "A" affecting the parcels of land surveyed (Burnett County Warranty Deed #15490, Vol. 213, p. 388). The certified survey maps prepared by Respondent, therefore, incorrectly depict the parcels surveyed.

10. Respondent failed to discover the existence of a deed right of way for Burnett County "A" affecting the concerned parcels because he failed to adequately research the records of the register of deeds office or the county highway office.

11. Respondent recorded the certified survey maps described in paragraph 7 above (C.S.M. Vol. 6, p. 42, recorded August 9, 1978). The certified survey maps contained a statement certifying that the surveys were correct to the best of Respondent's knowledge and belief.

EDWIN LINDBLOM

12. In 1976, and as a part of his land surveying practice, Respondent was retained on behalf of Mr. Edwin Lindblom, residing in Grantsburg, Wisconsin, to locate the south boundary of a parcel of land owned by Lindblom and located in the Northeast Quarter of the Southwest Quarter, Section 28, Township 37 North, Range 19 West, Town of Anderson, Burnett County, Wisconsin.

13. Respondent performed or supervised the performance of a survey and prepared or supervised the preparation of a map as described in paragraph 12 above. Respondent was paid a professional fee for the survey and map.

14. The survey and map described in paragraph 12 above did not meet the standards set forth for "property surveys" in ss. A-E 5.01(5)(d), (e), (f), and (6)(a), Wis. Adm. Code, nor was the map filed with the county surveyor's office.

CONCLUSIONS OF LAW

1. The Examining Board of Architects, Professional Engineers, Designers and Land Surveyors has jurisdiction to take disciplinary action in this proceeding pursuant to sec. 443.02(8), Wis. Stats. (1977), [now, sec. 443.12(1)].

2. Respondent's failure to meet the Minimum Standards for Property Surveys set forth in Wis. Adm. Code sec. A-E 5, as detailed in paragraph 6 of the Findings of Fact, constitutes gross negligence and misconduct in the practice of land surveying within the meaning of sec. 443.02(8)(a), Wis. Stats. (1977), [now, sec. 443.12(1)].

3. Respondent's recording of certified survey maps containing a statement certifying that they were correct to the best of respondent's knowledge and belief, but which he should have known to incorrectly depict the parcels surveyed, as described in paragraphs 9, 10 and 11 of the Findings of Fact, demonstrated misconduct in the practice of land surveying within the meaning of sec. 443.02(8)(a), Wis. Stats. (1977), [now, sec. 443.12(1)].

4. Since respondent was retained, as described in paragraph 12 of the Findings of Fact, to locate only the southern boundary of a parcel of land, respondent was not required to meet the Minimum Standards for Property Surveys set forth in Wis. Adm. Code sec. A-E 5, as such services do not constitute a "property survey" within the meaning of Wis. Adm. Code sec. A-E 5.01(2).

ORDER

NOW, THEREFORE, IT IS ORDERED that the license of Robert D. Baker to practice as a land surveyor in the State of Wisconsin shall be, and hereby is suspended for a period of thirty (30) days, commencing thirty days following the date of the final decision of the Examining Board of Architects, Professional Engineers, Designers and Land Surveyors.

OPINION

Chapter 443 of the Wisconsin Statutes provides that discipline may be imposed against a land surveyor who engages in gross negligence or

misconduct. A failure to meet the Minimum Standards for Property Surveys, as set forth in Chapter A-E 5 of the Wisconsin Administrative Code, is grounds for a finding of gross negligence and misconduct. The evidence submitted at hearing in this case is sufficient to establish that Robert D. Baker failed to meet the Minimum Standards for Property Surveys in respect to a survey performed in 1976, and that he engaged in misconduct by recording a certified survey map in 1978 which he should have known to incorrectly depict the parcels surveyed by failing to show a deeded right of way for a highway.

ELSIE GOLDEN SURVEY

In late 1975, Baker contracted to perform a survey for Mrs. Elsie Golden to consist of a property line survey and a division of the parcel in half. (Exhibit P). Baker surveyed the property, prepared a map of survey and filed the map with the county surveyor's office in 1976. The survey map failed to meet the Minimum Standards for Property Surveys in several respects, as described in paragraph 6 of the Findings of Fact. Baker contends that this map was not intended to be the final map of the parcel; but rather, was a "preliminary map", or sketch, which eventually led to the preparation of a survey map properly prepared and filed in 1979. (Exhibit A). However, there is nothing on the face of the survey map prepared in 1976 to indicate that it was intended to be merely a "preliminary map", nor was Mrs. Golden or others informed that the map was intended as a preliminary map. Furthermore, the survey map remained in the county surveyor's files for approximately two and one-half years prior to Baker's preparing and filing an accurate map of the parcel in 1979. Finally, it is instructive to note that on December 9, 1976, Baker sent Mrs. Golden a billing for $950.00, only $50.00 less than the maximum cost estimate given Mrs. Golden by Baker for all his surveying services. Thereafter, Baker accepted payments from Mrs. Golden on the bill, as well as her mortgage and note for the amount of the billing.

Under the foregoing circumstances, as well as others more fully developed in "Complainant's Closing Argument", pp. 2-5, the examiner is of the opinion that the 1976 property survey of Mrs. Golden was not a "preliminary" survey; but rather, a poorly prepared map which failed to meet the standards set forth in Wis. Adm. Code sec. A-E 5.

JOHN STONE SURVEY

Baker was retained by Mr. John Stone to perform a survey of parcels of land, which included property previously deeded to another individual. In performing his survey and preparing his maps, Baker failed to discover a deeded right of way for a county highway. Accordingly, Baker's maps incorrectly established the boundaries of the parcels because of his incorrect determination of the location of the highway right of way. Baker testified that he failed to find the deeded right of way at the register of deeds office, and did not check the records of the county highway office. However, testimony was introduced that a deed for such

right of way was available at both the register of deeds and highway office. Clearly, Baker should have known of the deeded right of way.

After the survey was recorded, Baker received written notification from Gilbert T. Richey, the Deputy County Surveyor for Burnett County, of the problem with Baker's surveys in regard to the right of way. (Exhibit K). Baker did not respond to such notification, and accordingly Mr. Richey wrote a letter to Baker, dated September 15, 1978, in which he again called the problem to Baker's attention, and indicated that the surveys should be corrected. (Exhibit L). Baker subsequently made the corrections.

EDWIN LINDBLOM SURVEY

In 1976 Baker was retained on behalf of Mr. and Mrs. Edwin Lindblom by their attorney, Robert L. Grindell, to locate the southern boundary of their property. Attorney Grindell testified that Baker was instructed to find the south line of the property in order to determine whether or not there was trespass upon the Lindblom land by their southern neighbors. Grindell requested a sketch of the situation, which he received for use in consulting with his clients. This sketch did not meet the requirements for property surveys imposed by Wis. Adm. Code sec. A-E 5, nor was it filed with the county surveyor's office pursuant to Wis. Stats. sec. 59.60(6).

Whether or not violations have occurred in this instance depends upon whether or not the map prepared for the Lindblom's constituted a "property survey" within the meaning of Wis. Adm. Code sec. A-E 5.01(2), so as to require Baker to follow the minimum standards for such surveys as detailed in the rule. Sec. A-E 5.01(2) provides as follows:

> "(2) PROPERTY SURVEY, DEFINITION. A 'property survey' as used in this section means any land surveying performed for the principal purpose of describing, monumenting or mapping one or more parcels of land." (Emphasis added).

The record indicates that the principal purpose of Baker's retainer was to locate the position of one boundary line, and not to describe, monument or map a parcel of land. A "parcel of land", within the foregoing rule must be interpreted to mean an enclosed area of property. Baker was retained to locate one boundary, not all boundaries pertaining to a parcel of land. The rules of the board make it clear that a "parcel" of land, within the meaning of s. A-E 5.01(2), relates to an area of property in which all boundaries are established. For example,

A-E 5.01(3) provides:

> "BOUNDARY LOCATION....The surveyor shall analyze the data and make a careful determination of the position of the boundaries of the parcel...." (Emphasis added).

A-E 5.01(5) provides:

> "(c) The map shall show the exact length and bearing of the boundaries of the parcels surveyed."

The unambiguous language of the concerned rules indicate that the term "parcel" is not synonymous with "boundary". A parcel of land may consist of several boundaries; however, one boundary does not make a "parcel". Accordingly, the fact that Baker was instructed to find only one boundary to a parcel of land leads to the conclusion, consistent with the expectation of Attorney Grindell, that Baker was not hired to perform a property survey within the meaning of s. A-E 5.01(2), which would have required an establishment of all boundaries. Since Attorney Grindell did not desire Baker to establish all boundaries to the parcel, a property survey was not performed, mapped, nor filed. Since Baker was not retained to describe, monument or map a parcel of land, he was not required to adhere to the requirements of A-E 5 in locating the southern boundary.

DISCIPLINE

Having found that Baker violated statutes and rules enforced by the board, the next issue is the appropriate discipline, if any, to be rendered in this case. In making a disciplinary determination, it must be recognized that the purposes for applying such sanctions are 1) to promote the rehabilitation of the licensee, 2) to protect the public, and 3) to deter other licensees from engaging in similar conduct. State v. Aldrich, 71 Wis. 2d 206 (1976). Punishment of the licensee is not a proper consideration. State v. MacIntyre, 41 Wis. 2d 481 (1969).

It is the examiner's opinion that a one month suspension is an appropriate sanction in this case. This recommendation takes into account the nature of Baker's conduct, from which other licensees must be deterred, as well as the fact that Baker has been retired from practice since late 1980 and no longer practices in this state.

Dated at Madison, Wisconsin this 30th day of June, 1982.

Respectfully submitted,

Donald R. Rittel

Donald R. Rittel
Hearing Examiner

DRR:kcb
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BEFORE THE STATE OF WISCONSIN
EXAMINING BOARD OF ARCHITECTS, PROFESSIONAL ENGINEERS,
DESIGNERS AND LAND SURVEYORS

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST ROBERT D. BAKER, RESPONDENT	: : : : :	ORDER DENYING RESPONDENT'S MOTION TO DISMISS

At the hearing in the above-captioned matter respondent filed a Notice of Motion and Motion to Dismiss. Respondent filed a written brief in support of his motion on May 5, 1981. Complainant filed a written brief in opposition to respondent's motion on May 19, 1981. Respondent filed a written reply brief in support of his motion on June 3, 1981.

Two major issues are presented by respondent's motion which were argued in the parties' briefs. First, whether or not the proceeding was not commenced by the board as required by Wis.Stats. sec. 440.20 and Wis. Adm. Code sec. A-E 4.002(3); and, second, whether or not the hearing examiner who presided over the hearing was properly designated to so preside under Wis. Adm. Code sec. RL 2.10.

Based upon the arguments of counsel, the Hearing Examiner makes the following:

ORDER

Respondent's Motion to Dismiss is hereby DENIED.

OPINION

1. This Disciplinary Proceeding Was Properly Commenced.

This proceeding was commenced by a filing of the Notice of Hearing with the examiner. See, Wis. Adm. Code sec. RL 2.04. The Notice of Hearing was signed by attorney Wayne R. Austin, and was attached to the Complaint signed by John F. Miller, an investigator with the Department of Regulation and Licensing.

Respondent claims that Wis. Stats. sec. 440.20 and Wis. Adm. Code sec. A-E 4.002(3) provide that only the board may commence disciplinary proceedings. The provisions cited by respondent provide as follows:

> 440.20 Disciplinary proceedings. Any person may file a complaint before any examining board and request any examining board to commence disciplinary proceedings against any permittee, registrant or license or certificate holder.

A-E 4.002(3) The examining board shall determine what acts constitute violation of the rules and shall institute appropriate disciplinary action which may lead to the revocation of the registration, permit, or certificate of the architect, professional engineer, designer, land surveyor, or corporation, in accordance with sections 443.01(13), 443.01(16), and 443.02(8), Wis. Stats.

The foregoing provisons are seen by respondent as requiring that only the board may commence disciplinary proceedings. However, these provisions must be read in light of Wis. Stats. sec. 440.03(1) , which states:

440.03 General duties and powers of the department. (1) The department may adopt rules defining uniform procedures to be used by the department and all examining boards attached to the department for receiving, filing and investigating complaints, for commencing disciplinary proceedings and for conducting hearings.

In response to its statutory mandate the department has adopted rules stating who may commence disciplinary proceedings. Wis. Adm. Code sec. RL 2.07(2) provides:

RL 2.07 Notice of hearing....(2) A notice of hearing to the respondent shall be substantially in the following form and signed by a board member or attorney in the division. (Emphasis added).

The foregoing rule clearly provides that the Notice of Hearing may be signed by either a board member or an attorney within the Division of Enforcement. Again, once the Notice of Hearing is filed with the examiner, or board, the disciplinary proceedings are deemed to be "commenced" properly under RL 2.04. In view of the statutory authority of the department to adopt rules regarding the commencement of disciplinary proceedings, along with the department's adoption of RL 2.07(2), it cannot be said that the exclusive manner for commencing proceedings is set forth in A-E 4.002(3).

Finally, although Wis. Stats. sec. 440.20 states that "any board" may be requested to "commence disciplinary proceedings", again, in light of s. 440.03(1), it cannot be said that s. 440.20 sets forth the exclusive manner in which disciplinary cases may be commenced. Sec. 440.03(1) clearly permits the department to determine, by rule, who may actually commence the proceeding.

2. The Board is Not Required to Designate the Hearing Examiner.

Respondent argues that Wis. Adm. Code sec. RL 2.10 requires that the board formally designate who shall preside over disciplinary proceedings as hearing examiner. As such designation was not made by the board, respondent contends this proceeding must be dismissed.

The rule at issue provides as follows:

RL 2.10 Hearing Examiner. (1) DESIGNATION. In any disciplinary proceeding a board may, and in proceedings commenced as the result of a decision made by one or more officials of a board, a board must, designate that the proceeding be presided over by a hearing examiner. Unless the board designates a board member as examiner, the examiner shall be the general counsel for the department unless unavailable in which case the examiner shall be an attorney in the department designated by the department secretary, an employee borrowed from another agency pursuant to s. 16.24 or 20.001 (20.901), Stats., or a person employed as a special project or limited term employe by the department, but the examiner shall not be an employe in the division. (Emphasis added).

Respondent argues that the first sentence in the foregoing rule requires the board to designate who shall preside over disciplinary proceedings as hearing examiner. However, the first sentence cannot be read in a vacuum, or without recourse to the second sentence. It is clear that the second sentence is intended to provide who shall preside over a disciplinary case, if the board has not designated the presiding examiner.

Again, the foregoing rule was adopted by the department pursuant to the statutory authority granted by the legislature in Wis. Stats. sec. 440.03 to develop uniform procedures for disciplinary cases. The second sentence clearly provides a procedure by which an examiner shall be designated in the event a board does not do so. In light of the unambiguous intent of the rule, as well as its language, respondent's contention must be rejected.

Dated at Madison, Wisconsin this 30th day of June, 1982.

Donald R. Rittel

Donald R. Rittel
Hearing Examiner