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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 PAUL A. BEKKELA, R.L.S., RESPONDENT.	: : : : :	FINAL DECISION AND ORDER

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:

ORDER

NOW, THEREFORE, it is hereby ordered that the Findings of Fact and Conclusions of Law set forth in Proposed Decision annexed hereto, filed by the Hearing Examiner, shall be and hereby are made and ordered as the Findings of Fact and Conclusions of Law in the above entitled matter by the State of Wisconsin, Examining Board of Architects, Professional Engineers, Designers and Land Surveyors.

IT IS FURTHER ORDERED that the license of Paul A. Bekkela to practice as a land surveryor be, and hereby is, suspended for an indefinite period until Paul A. Bekkela takes and successfully passes the Wisconsin portion of the Land Surveyors Principles and Practice examination. The effective date of this suspension is 10 days following the date of this order.

EXPLANATION OF VARIANCE

This order differs from the proposed decison in that the effective date of suspension is 10 days following the signing of the order rather than the date on which October, 1984 Principles and Practice examination grades are known.

The board makes this change for the reasons that the number frequency and degree of errors made by respondent indicate the public needs protection from respondent's practice between now and the grading of the exam.

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 Paul A. Bekkela, R.L.S.

A party aggrieved by this decision who is a resident of this state 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 party aggrieved resides within thirty (30) days after service of this decision. A party

aggrieved by this decision who is not a resident of this state must file the petition for judicial review in the office of the clerk of circuit court for Dane County. A party aggrieved must also serve 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 Surveryors.

Dated this 4th day of May, 1984.

Bernard L Weltmeier

WD:dms
767-281

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

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST	:	
	:	PROPOSED DECISION
PAUL A. BEKKELA, R.L.S., RESPONDENT.	:	

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

Paul A. Bekkela, R.L.S.
Rural Route #1, Box 41
Pembine, WI 54156

State of Wisconsin
Examining Board of Architects, Professional Engineers, Designers and Land Surveyors
P.O. Box 8936
Madison, WI 53708

State of Wisconsin
Department of Regulation and Licensing
Division of Enforcement
P.O. Box 8936
Madison, WI 53708

A prehearing conference was conducted in the above captioned matter on January 25, 1984. Participating in that conference were Francis D. Brouillette, attorney for the respondent; Steven M. Gloe, attorney for the complainant; and the hearing examiner. At the conference, the parties agreed to a partial stipulated disposition of the matter by which respondent admitted the allegations of the complaint and the parties stipulated to submission of written arguments on discipline, if any, to be imposed. A memorandum of the prehearing conference, filed with the parties on February 3, 1984, is annexed hereto.

Complainant's brief on disposition was filed on February 14, 1984; respondent's brief was filed on February 27, 1984; and complainant's response was received on March 6, 1984.

Based upon the evidence in the record, the pleadings, the stipulation of the parties, the arguments submitted by the parties, and other documents filed in this matter, the hearing examiner recommends that the Examining Board adopt as its final decision in the matter the following Findings of Fact, Conclusions of Law and Order. The recommended Findings of Fact and Conclusions of Law are those stipulated to by the parties except Findings of Fact numbered 21 through 24. The latter findings, while not appearing in the Complaint filed in the matter, merely describe documents appearing in the record of this case.

1. Paul A. Bekkela (hereinafter Respondent) was at all times relevant to the Complaint filed herein duly licensed as a land surveyor in the State of Wisconsin (license number S-106, issued December 30, 1955).

2. On or about June 14, 1982, Respondent completed the performance of a land survey and the preparation of a map of survey for Jack Zenko; the property was located in the SE ¼ of section 7, T 36 N, R 20 E, in the Town of Pembine, Marinette County, Wisconsin. A true and correct copy of this map is attached to the Complaint as Exhibit A.

3. In performing this survey and preparing the survey map described in paragraph 2, above, Respondent failed to meet the minimum standards as set forth in Wis. Adm. Code Chapter A-E 5 in the following respects:

(a) The bearings were not referenced to a magnetic, true or other identifiable meridian or line of the public land survey, recorded subdivision or the Wisconsin Coordinate System, as required by section A-E 5.01(5)(b), Wis. Adm. Code and Wis. Stats. sec. 59.61.

(b) The map failed to contain a certifying statement as required by Wis. Adm. Code sec. A-E 5.01(5)(f).

(c) The map failed to show distances to the nearest 1/100th foot as required by Wis. Adm. Code sec. A-E 5.01(6)(e).

(d) The map failed to show and describe all monuments necessary for the location of the parcel or whether those monuments were found or placed, all as required by Wis. Adm. Code sec. A-E 5.01(5)(d).

(e) The latitude and departure closure ratio of the map exceeded the maximum ratio permissible of 1 in 3000 as required by Wis. Adm. Code A-E 5.01(6)(d).

(f) Respondent failed to adequately research the boundary records containing the parcel in question as required by Wis. Adm. Code sec. A-E 5.01(3); more specifically, Respondent's research failed to disclose, and the map failed to indicate, the 1913 survey of this parcel by James Murphy which set the south line of the SE ¼ of the SE ¼ of section 7, T 36 N, R 20 E to be 1,334.52 feet.

4. On or about August 18, 1982, Respondent completed the performance of a land survey and the preparation of a map of survey for Gerald W. Robertson, owner of the property surveyed; the property was located in the SW ¼ of the NW ¼ of section 7, T 36 N, R 20 E. A true and correct copy of this map is attached to the Complaint as Exhibit B.

5. In performing a land survey and preparing the survey map described in paragraph 4, above, Respondent failed to meet the minimum standards as set forth in Wis. Adm. Code Chapter A-E 5 in the following respects:

(a) The bearings were not referenced to a magnetic, true or other identifiable meridian or line of the public land survey, recorded

subdivision or the Wisconsin Coordinate System, as required by Wis. Adm. Code sec. A-E 5.01(5)(b).

(b) The map did not bear the stamp or seal of Respondent as required by Wis. Adm. Code sec. A-E 5.01(5)(f).

(c) The map failed to show distances to the nearest 1/100th foot as required by Wis. Adm. Code sec. A-E 5.01(6)(e).

6. On an exact date unknown to Complainant, but known to Respondent, Respondent completed the performance of a land survey and the preparation of a map of survey for Gerald W. Robertson; the property was located in the S ½ of the W ½ of the NW ¼ of section 7, T 36 N, R 20 E, in the Township of Pembine, Marinette County, Wisconsin. A true and correct copy of this map is attached to the Complaint as Exhibit C.

7. In performing the land survey and preparing the survey map described in paragraph 6, above, Respondent failed to meet the minimum standards as set forth in Wis. Adm. Code Chapter A-E 5 in the following respects:

(a) The bearings were not referenced to a magnetic, true or other identifiable meridian or line of the public land survey, recorded subdivision or the Wisconsin Coordinate System, as required by Wis. Adm. Code sec. A-E 5.01(5)(b).

(b) The map failed to contain a certified statement bearing the signature of the land surveyor under whose direction and control this survey was made, as required by Wis. Adm. Code sec. A-E 5.01(5)(f).

(c) The map failed to describe all monuments necessary for the location of the parcel as required by Wis. Adm. Code sec. A-E 5.01(5)(d).

(d) The map failed to show whether the monuments necessary for the location of the parcel were found or placed as required by Wis. Adm. Code sec. A-E 5.01(5)(d).

(e) The map failed to show distances to the nearest 1/100th of a foot as required by Wis. Adm. Code sec. A-E 5.01(6)(e).

8. On an exact date unknown to Complainant, Respondent completed the performance of a land survey and the preparation of map of survey for Marvin Marquardt, owner of the property surveyed; the property was located in the SE ¼ of the NW ¼ of section 7, T 36 N, R 20 E, in the Township of Pembine, Marinette County, Wisconsin. A true and correct copy of this map is attached to the Complaint as Exhibit D.

9. In performing the land survey and preparing the survey map described in paragraph 8, above, Respondent failed to meet the minimum standards as set forth in Wis. Adm. Code Chapter A-E 5 in the following respects:

(a) The bearings were not referenced to a magnetic, true or other identifiable meridian or line of the public land survey, recorded

subdivision or the Wisconsin Coordinate System, as required by Wis. Adm. Code sec. A-E 5.01(5)(b).

(b) The map failed to bear the stamp or seal of the land suveyor under whose direction and control the survey was made as required by Wis. Adm. Code sec. A-E 5.01(5)(f).

(c) The map failed to show distances to the nearest 1/100th foot as required by Wis. Adm. Code A-E 5.01(6)(e).

10. On or about April 17, 1982, Respondent completed the performance of a land survey and the preparation of a map of survey; the property was located in the SE ¼ of the SE 40 of section 7, T 36 N, R 20 E, in the Town of Pembine, Marinette County, Wisconsin. A true and correct copy of this map is attached to the Complaint as Exhibit E.

11. In performing the land survey and in preparing the survey map described in paragraph 10, above, Respondent failed to meet the minimum standards as set forth in Wis. Adm. Code Chapter A-E 5, in the following respects:

(a) The bearings were not referenced to a magnetic, true or other identifiable meridian or line of the public land survey, recorded subdivision or the Wisconsin Coordinate System, as required by Wis. Adm. Code sec. A-E 5.01(5)(b).

(b) The map failed to contain a certifying statement as required by Wis. Adm. Code sec. A-E 5.01(5)(f).

(c) The map failed to bear the signature of the land surveyor under whose direction and control the survey was made as required by Wis. Adm. Code sec. A-E 5.01(5)(f).

(d) The map failed to describe all monuments necessary for the location of the parcel as required by Wis. Adm. Code sec. A-E 5.01(5)(d).

(e) The map failed to show whether the monuments necessary for the location of the parcel were found or placed as required by Wis. Adm. Code sec. A-E 5.01(5)(d).

(f) The map failed to show distances to the nearest 1/100th foot as required by Wis. Adm. Code sec. A-E 5.01(6)(e).

12. On or about April 4, 1981, Respondent completed the performance of a land survey and the preparation of a map of survey; the property was located in the NW ¼ of the SW ¼ of section 5, T 36 N, R 20 E, Marinette County, Wisconsin. A true and correct copy of this survey is attached to the Complaint as Exhibit F.

13. In performing the land survey and in preparing the survey map described in paragraph 12, above, Respondent failed to meet the minimum

standards as set forth in Wis. Adm. Code Chapter A-E 5 in the following respects:

(a) The bearings were not referenced to a magnetic, true or other identifiable meridian or line of the public land survey, recorded subdivision or the Wisconsin Coordinate System, as required by Wis. Adm. Code sec. A-E 5.01(5)(b).

(b) The map failed to identify the person for whom the survey was made, as required by Wis. Adm. Code sec. A-E 5.01(5)(e).

(c) The map failed to show distances to the nearest 1/100th foot as required by Wis. Adm. Code sec. A-E 5.01(6)(e).

(d) The angles shown between the north and south boundaries of the parcel and the road did not agree with the bearings shown on the map by one degree in violation of Wis. Adm. Code sec. A-E 5.01(5)(c).

(e) The map failed to describe the parcel surveyed as required by Wis. Adm. Code sec. A-E 5.01(5)(e). More specifically, the map failed to describe the land surveyed by Government lot, recorded private claim, quarter-quarter section, section, township, range, and county. In addition, the map failed to describe the parcel by metes and bounds commencing with some corner marked and established by the U.S. Public Land Survey, all as required by sec. A-E 5.01(4).

14. On an exact date unknown, Respondent completed the performance of a land survey and the preparation of a map of survey; a true and correct copy of this survey is attached to the Complaint as Exhibit G.

15. In performing the land survey and preparing the survey map described in paragraph 14, above, Respondent failed to meet the minimum standards as set forth in Wis. Adm. Code Chapter A-E 5, in the following respects:

(a) The bearings were not referenced to a magnetic, true or other identifiable meridian or line of the public land survey, recorded subdivision or the Wisconsin Coordinate System, as required by Wis. Adm. Code sec. A-E 5.01(5)(b).

(b) The map failed to identify the person for whom the survey was made, as required by Wis. Adm. Code sec. A-E 5.01(5)(d).

(c) The map failed to show distances to the nearest 1/100th foot as required by Wis. Adm. Code sec. A-E 5.01(6)(e).

(d) The angles shown on the map between lines do not agree by one degree with the bearings shown, in violation of Wis. Adm. Code sec. 5.01(5)(c).

(e) The description did not commence at a corner established and marked by the U.S. Public Land Survey as required by Wis. Adm. Code sec. A-E 5.01(4).

16. On an exact date unknown, but sometime during the year 1982, Respondent completed the performance of a land survey and the preparation of a map of survey of a parcel of land located in the NW ¼ of the SW ¼ of section 5, T 36 N, R 20 E. A true and correct copy of this survey is attached to the Complaint as Exhibit H.

17. In performing the land survey and preparing the map described in paragraph 16, above, Respondent failed to meet the minimum standards as set forth in Wis. Adm. Code Chapter A-E 5 in the following respects:

(a) The bearings were not referenced to a magnetic, true or other identifiable meridian or line in the public land survey, recorded subdivision or the Wisconsin Coordinate System, as required by Wis. Adm. Code sec. A-E 5.01(5)(b).

(b) The map failed to identify the person for whom the survey was made, as required by Wis. Adm. Code sec. A-E 5.01(5)(e).

(c) The map failed to show distances to the nearest 1/100th foot as required by Wis. Adm. Code sec. A-E 5.01(6)(e).

(d) The angles shown between the lines on the map did not agree by one degree with the bearings shown, in violation of Wis. Adm. Code sec. 5.01(5)(c).

(e) The description did not commence with a corner established and marked by the U.S. Public Land Survey as required by Wis. Adm. Code sec. A-E 5.01(4).

18. On an exact date unknown but sometime during the year 1982, Respondent completed the performance of a land survey and the preparation of a map of survey of a parcel of land located in the NW ¼ of the SW ¼ of section 5, T 36 N, R 20 E, Town of Pembine, Marinette County, Wisconsin. A true and correct copy of this map is attached to the Complaint as Exhibit I.

19. In performing the land survey and preparing the survey map described in paragraph 18, above, Respondent failed to meet the minimum standards as set forth in Wis. Adm. Code Chapter A-E 5 in the following respects:

(a) The bearings were not referenced to a magnetic, true or other identifiable meridian or line of the public land survey, recorded subdivision or the Wisconsin Coordinate System, as required by Wis. Adm. Code sec. A-E 5.01(5)(b).

(b) The map failed to identify the person for whom the survey was made, as required by Wis. Adm. Code sec. A-E 5.01(5)(e).

(c) The map failed to show distances to the nearest 1/100th foot as required by Wis. Adm. Code sec. A-E 5.01(6)(e).

(d) The angle shown between the lines on the map did not agree by one degree with the bearings shown, in violation of Wis. Adm. Code sec. 5.01(5)(c).

(e) The description of the parcel did not commence with a corner established and marked by the U.S. Public Land Survey as required by Wis. Adm. Code sec. A-E 5.01(4).

20. Respondent failed to file the surveys referred to in paragraphs 12, 14, 16 and 18, above, within 60 days after completion of those surveys as required by Wis. Stats. sec. 59.60(6).

21. The formal Complaint setting forth the matters described in paragraphs 1 through 20, above, was filed on November 3, 1983.

22. On November 17, 1983, Respondent, by letter, filed his Answer to the Complaint. Attached to the Answer were copies of eight survey maps purporting to correct deficiencies alleged to exist in maps marked as Exhibits A, B, C, D, F, G, H and I attached to the Complaint herein.

23. On January 13, 1984, Steven M. Gloe, attorney for Complainant, filed with the examiner a copy of his letter to Respondent setting forth what are purported to be errors still remaining in those maps marked as Exhibits A, C, G, H and I attached to the Complaint herein.

24. On February 27, 1984, Respondent submitted, as an attachment to his brief on discipline, copies of maps purporting to effect corrections to residual errors in the survey maps in question.

CONCLUSIONS OF LAW

1. The Examining Board of Architects, Professional Engineers, Designers and Land Surveyors has jurisdiction in this matter pursuant to Wis. Stats. sec. 443.12.

2. Respondent, by the conduct described in Findings of Fact 1 through 20, above, is subject to disciplinary action against his license pursuant to Wis. Stats. sec. 443.12(1) and Wis. Adm. Code sections A-E 4.003(1) and A-E 4.003(3)(b).

ORDER

NOW, THEREFORE, IT IS ORDERED that the license of Paul A. Bekkela to practice as a land surveyor in the State of Wisconsin be, and hereby is, suspended for an indefinite period until Paul A. Bekkela takes and successfully passes the Wisconsin portion of the Land Surveyors Principles and Practices Examination. The effective date of the suspension shall be October 31, 1984, or the date upon which the results of the Wisconsin portion of the Principles and Practices Examination administered on October 26, 1984 are known, whichever date is later.

OPINION

Because Respondent stipulated to the allegations of the Complaint, the only question for resolution is what discipline, if any, should be imposed. It has been said that the purposes for imposition of discipline include rehabilitation of the licensee, protection of the public and deterring

other licensees from engaging in other similar misconduct. State v. Aldrich, 71 Wis 2d 206 (1976). Punishment of the licensee is not an appropriate consideration. State v. McIntyre, 41 Wis 2d 481 (1969). The cited considerations are those addressed by attorney for Complainant in his brief on disposition, where he said:

> "The cost of repeated examples of substandard work should be more than requiring corrections when errors are detected. A license should stand for something. It should mean the licensee can completely fulfill the function of his licensure. The best protection for the public in this case will be afforded by suspension of Mr. Bekkala's (sic) license until he demonstrates his rehabilitation via examination."

In light of the nature of the admitted violations in this case, the approach urged by Complainant seems reasonable. The nature of those violations would certainly lead one to the conclusion that Respondent has failed to maintain competency in the current practices and methods applicable to his profession (Wis. Adm. Code A-E 4.003(1)(c)). If so, then what better way to ensure that Respondent has rehabilitated himself in this regard than to ask him to successfully complete the four hour Wisconsin Principles and Practice examination.

On the other hand, while the examiner agrees that Mr. Bekkela should be required to demonstrate his current competence in the manner suggested, it does not appear that public safety imperatively requires that Respondent suffer loss of his license during the period until October 26, 1984, when he will next have the opportunity to make that demonstration. There are two bases for that conclusion. First, as pointed out in Respondent's brief, the violations cited manifest a lack of understanding of the more recent land surveying regulations rather than a lack of knowledge of the fundamental principles of the profession or an inability to apply fundamental principles of the profession (Wis. Adm. Code sec. 4.003(1)(b)).

Second, and just as important, it appears that Mr. Bekkela has already undertaken to correct the deficiencies in his practice. Mr. Gloe is correct in his position that merely correcting the surveys in question does not adequately address the problem. In this case, however, Mr. Bekkela has demonstrated a genuine concern and interest in bringing himself up to date as to current requirements of the profession. Documents in the record reflect that Respondent set out to correct the deficiencies in these maps a number of months prior to filing of the Complaint in this matter, and he has cooperated fully with the board's agents and, apparently, with the Society of Land Surveyors in that effort. There is every indication that Respondent will continue, as Mrs. Bekkela stated in her letter of January 9, 1984, to take "advantage of the available avenues of education and continued cooperation with the Ethics and Practices Committee". If so, then there is also every indication that public safety will not be jeopardized for that period until Respondent is able to demonstrate his current competence by taking and passing the Wisconsin Principles and Practices examination.

Should Mr. Bekkela choose not to sit for the Principles and Practices examination to be held on October 26, 1984, or should he take but fail to pass that examination, then it is appropriate that the recommended order of

suspension take effect. It is also appropriate, however, that he not be deprived of the license he has held for thirty years during the intervening period.

(In the event the Examining Board of Architects, Professional Engineers, Designers and Land Surveyors does not accept the Findings of Fact and Conclusions of Law as stipulated by the parties and set forth herein, then pursuant to Wis. Adm. Code sec. RL 2.12, this case shall be returned to the hearing examiner for further proceedings with a statement from the board as to why the Findings and Conclusions were not approved. The board may, in its discretion, change or modify the recommended order.)

Dated at Madison, Wisconsin this 2nd day of April, 1984.

Respectfully submitted,

Wayne R. Austin
Hearing Examiner

WRA:kr
2506