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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 MICHAEL C. MC MILLIN, 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 Proposed Decision annexed hereto, filed by the Hearing Examiner, shall be and hereby is made and ordered the Final Decision of the State of Wisconsin, Examining Board of Architects, Professional Engineers, Designers and Land Surveyors. Let a copy of this order be served on the respondent by certified mail.

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 Michael C. McMillin.

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 Surveyors.

Dated this 13th day of September, 1984.

Bernard Lustenhouer

pc017-552

STATE OF WISCONSIN
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PROFESSIONAL ENGINEERS, DESIGNERS AND LAND SURVEYORS

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST MICHAEL C. MC MILLIN, R.L.S., RESPONDENT.	:	PROPOSED DECISION

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

Michael C. McMillin, R.L.S.
583 North Main Street
Richland Center, Wisconsin 53581

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

The above-captioned matter was commenced by the filing of a Notice of Hearing and Complaint dated April 12, 1984. These documents were served upon the respondent, Michael C. McMillin, along with various written requests for discovery pursuant to Wis. Stats. ch. 804, including Requests for Admissions. The respondent failed to file an Answer to the Complaint, failed to respond to the Requests for Admissions, and failed to appear at the evidentiary hearing held on July 26, 1984.

Appearing at the hearing on behalf of the complainant was Steven M. Gloe, an attorney with the Department of Regulation and Licensing, Division of Enforcement. At the commencement of the hearing Mr. Gloe moved for default judgment against respondent, pursuant to Wis. Adm. Code sec. RL 2.14, due to respondent's failure to file an Answer to the Complaint or appear at the hearing. The examiner granted complainant's motion for default judgment. Mr. Gloe also moved that the Requests for Admissions be deemed admitted by respondent due to his failure to respond or deny them. Pursuant to Wis. Stats. sec. 804.11(1)(b), Mr. Gloe's request was granted. Mr. Gloe then proceeded to introduce testimony and documentary evidence in support of the allegations contained within the Complaint.

Based upon the evidence presented at hearing, as well as the admissions deemed made by respondent to complainant's Requests for Admissions, the 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. Michael C. McMillin (hereinafter referred to as respondent) was at all times relevant to this proceeding duly licensed as a land surveyor (license #S-1179). This license was issued on June 24, 1976.

CUMMINGS SURVEY

2. On or about January 4, 1979, respondent completed the performance of a land survey and a preparation of a survey map for Dorothy Cummings; the parcel surveyed was located in Section 19, Township 10 North, Range 4 West, Crawford County, Wisconsin.

3. Respondent obtained no written waiver from Ms. Cummings excluding the survey referred to in paragraph 2, above, from the requirements of Wis. Adm. Code A-E Ch. 5.

4. In performing the land 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 A-E Ch. 5 in the following respects:

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

B. 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).

C. The map failed to show and 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 describe the parcels surveyed as required by Wis. Adm. Code sec. A-E 5.01(5)(e).

F. The map failed to show the exact bearings of the boundaries of the parcel surveyed as required by Wis. Adm. Code sec. A-E 5.01(5)(c). More specifically, there is no bearing shown for the north line of the parcel.

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

H. 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).

I. 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).

5. Respondent failed to timely file the survey map referred to in paragraph 2, above with the Crawford County Surveyor's Office. Respondent paid a $50 civil forfeiture to Crawford County for his failure to file this map.

O'CONNOR SURVEY

6. On or about May 8, 1981, respondent completed the performance of a land survey and the preparation of a survey map for Ed O'Connor; the parcel surveyed was located in the Northwest ¼ of the Northwest ¼ and the Northeast ¼ of the Northwest ¼, all in Section 10, Township 9 North, Range 2 West, Richland County, Wisconsin.

7. Respondent obtained no written waiver from Mr. O'Connor excluding the survey referred to in paragraph 6, above, and requirements of Wis. Adm. Code A-E Ch. 5.

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

A. Respondent failed to make a careful determination of the position of the boundaries of the parcel surveyed as required by Wis. Adm. Code sec. A-E 5.01(3) and Wis. Stats. sec. 59.62. More specifically, respondent failed to properly establish the position of the boundaries of parcel B on the map.

B. Respondent failed to set monuments marking the corners of the parcel surveyed as required by Wis. Adm. Code sec. A-E 5.01(3).

C. 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).

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

BINDER SURVEY

9. On or about May 14, 1981, respondent completed the performance of a land survey in the preparation of a survey map for "Attorney Richard Binder/Leo Johnson (sic)"; the parcel surveyed was located in Section 19, Township 11 North, Range 2 West, Richland County, Wisconsin.

10. Respondent obtained no written waiver for the survey referred to in paragraph 9, above, from the requirements of Wis. Adm. Code A-E Ch. 5.

11. In performing the land survey and preparing the survey map described in paragraph 9, above, respondent failed to meet the minimum standards as set forth in Wis. Adm. Code A-E Ch. 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 show and describe all monuments necessary for the location of the range line surveyed, as required by Wis. Adm. Code sec. A-E 5.0(5)(d).

C. The map failed to describe the range line surveyed as required by sec. A-E 5.01(5)(e).

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

E. 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).

KEPLER SURVEY

12. On or about April 13, 1982, respondent completed the performance of a land survey in the preparation of a land survey map for Downing Kepler (Mott) (sic); the parcel surveyed was located in the Northeast ¼ of the Southwest ¼ and in the Northwest ¼ of the Southwest ¼, all in Section 27, Township 11 North, Range 1 West, Richland County, Wisconsin.

13. Respondent obtained no written waiver from Mr. Kepler excluding the survey referred to in paragraph 12, above, from the requirements of Wis. Adm. Code A-E Ch. 5.

14. In performing the land survey and preparing the survey map described in paragraph 12, above, respondent failed to meet the minimum standards as set forth in Wis. Adm. Code A-E Ch. 5 in the following respects:

A. The description did not commence with a government corner as required by Wis. Adm. Code sec. A-E 5.01(4).

B. 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).

C. The map failed to show the exact length and bearing of the boundaries of the parcel surveyed as required by Wis. Adm. Code sec. A-E 5.01(5)(c). More specifically, the map failed to show the distances between the monuments near the Northwest and Southwest corners of the parcel and the center line of Highway Z.

D. The map failed to show and describe all monuments necessary for the location of the parcel as required by Wis. Adm. Code sec. A-E 5.01(5)(d). More specifically, the solid square symbols on the map are not identified in the legend.

E. 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).

BRAUNGIN SURVEY

15. On or about April 20, 1982, respondent completed the performance of a land survey in the preparation of a survey map for "Steve Braungin (Anderson) (sic)"; this property was located in the Northwest ¼ of the Northeast ¼ of Section 6, Township 9 North, Range 2 East, Richland County, Wisconsin.

16. The respondent obtained no written waiver excluding the survey referred to in paragraph 15, above, from the requirements of Wis. Adm. Code A-E Ch. 5.

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

A. The description did not commence with a government corner as required by Wis. Adm. Code sec. A-E 5.01(4).

B. 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 sec. A-E 5.01(5)(b).

C. The map failed to show and describe all monuments necessary for the location of the parcel and failed to indicate whether such monuments were found or placed as required by Wis. Adm. Code sec. A-E 5.01(5)(d). More specifically, the map showed no monument at the Northwest corner of this parcel.

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

GROH SURVEY

18. On or about April 22, 1982 respondent completed the performance of a land survey in the preparation of a survey map for Arthur Groh; the parcel survey was located in Block 4, Haseltine Heirs Addition, City of Richland Center, Richland County, Wisconsin.

19. Respondent obtained no written waiver from Mr. Groh excluding the survey referred to in paragraph 18, above, from the requirements of Wis. Adm. Code A-E Ch. 5.

20. 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 A-E Ch. 5 in the following respects:

A. Respondent failed to make a careful determination of the position of the boundaries of the parcel surveyed, as required by Wis. Adm. Code sec. A-E 5.01(3) and Wis. Stats. sec. 59.62. More specifically, the map does not match the written description provided for the parcel surveyed.

B. 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).

C. The map failed to show the exact length and bearing of the boundaries of the parcel surveyed as required by Wis. Adm. Code sec. A-E 5.01(5)(c).

D. The map failed to show and describe all monuments necessary for the location of the parcel as required by Wis. Adm. Code sec. A-E 5.01(5)(d). More specifically, the map shows no found monument to serve as a tie for the setting of the monuments shown.

E. The closed traverse depicted on the property survey map failed to have a latitude and departure closure ratio of less than 1 in 3000 as required by Wis. Adm. Code sec. A-E 5.01(6)(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).

GOPLIN AGENCY SURVEY

21. On or about May 14, 1982, respondent completed the performance of a land survey and the preparation of a survey map for "Goplin Agency/Drake (sic)"; the parcel surveyed was located in the Northeast ¼ of the Northwest ¼, in the Northwest ¼ of the Northwest ¼ and in the Northeast ¼ of the Northwest ¼, all in Section 30, Township 10 North, Range 2 West, Richland County, Wisconsin.

22. Respondent obtained no written waiver excluding the survey referred to in paragraph 21, above, from the requirements of Wis. Adm. Code A-E Ch. 5.

23. In performing the land survey and preparing the survey map described in paragraph 21 above, respondent failed to meet the minimum standards as set forth in Wis. Adm. Code A-E Ch. 5 in the following respects:

A. The map failed to show the exact length and bearing of the boundaries of the parcel surveyed as required by Wis. Adm. Code sec. A-E 5.01(5)(c). More specifically, the map failed to indicate the set back between the monuments bordering the center line of the town road and county Highway E.

B. The description did not commence with a government corner as required by Wis. Adm. Code sec. A-E 5.01(4).

C. 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).

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

DAVIS SURVEY

24. On or about May 14, 1982, respondent completed the performance of a land survey and the preparation of a survey map for Norman Davis; the parcel surveyed was located in the Southeast ¼ of the Southeast ¼ of Section 7, Township 10 North, Range 1 East, Richland County, Wisconsin.

25. Respondent obtained no written waiver from Mr. Davis excluding the survey referred to in paragraph 24 above from the requirements of Wis. Adm. Code A-E Ch. 5.

26. In performing the land survey and preparing the survey map described in paragraph 24, above, respondent failed to meet the minimum standards as set forth in Wis. Adm. Code A-E Ch. 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 show distances to the nearest 1/100th foot as required by Wis. Adm. Code sec. A-E 5.01(6)(e).

GOPLIN REALTY SURVEY

27. On or about June 8, 1982 respondent completed the performance of a land survey and the preparation of a survey map for "Goplin Realty/Goplen (sic)"; the parcel surveyed was located in the Northwest ¼ of the Northeast ¼, in the Southwest ¼ of the Northeast ¼, and in the Northeast ¼ of the Northwest ¼, all in Section 21, Township 10 North, Range 2 West, Richland County, Wisconsin.

28. Respondent obtained no written waiver excluding the survey referred to in paragraph 27, above, from the requirements of Wis. Adm. Code A-E Ch. 5.

29. In performing the land survey and preparing the survey map described in paragraph 27, above, respondent failed to meet the minimum standards as set forth in Wis. Adm. Code A-E Ch. 5 in the following respects:

A. Respondent failed to set monuments marking the corners of the parcel surveyed as required by Wis. Adm. Code sec. A-E 5.01(3). More specifically, the map failed to indicate the set back between the monuments bordering Highway 171 and the centerline of Highway 171.

B. The description did not commence with a government corner as required by Wis. Adm. Code sec. A-E 5.01(4).

C. That 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).

D. 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).

ZWICKER SURVEY

30. On or about June 11, 1982, respondent completed the performance of a land survey and the preparation of a survey map for John Zwicker; the parcel surveyed was located in the Northwest ¼ of the Northwest ¼ of Section 28, Township 10 North, Range 1 East, City of Richland Center, Richland County, Wisconsin.

31. Respondent obtained no written waiver from Mr. Zwicker excluding the survey referred to in paragraph 30, above, from the requirements of Wis. Adm. Code A-E Ch. 5.

32. In performing the land survey and preparing the survey map described in paragraph 30 above, respondent failed to meet the minimum standards as set forth in Wis. Adm. Code A-E Ch. 5 in the following respects:

A. The bearings were not referenced to a magnetic, true or other identifiable meridian or line of a 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 show and describe all monuments necessary for the location of the parcel as required by Wis. Adm. Code sec. A-E 5.01(5)(d). More specifically, the map shows no found monument to serve as a tie for the setting of the monuments shown.

C. The map failed to show bearings of angles to the nearest minute as required by Wis. Adm. Code sec. A-E 5.01(6)(e).

D. 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).

E. The description did not commence at a government corner as required by Wis. Adm. Code sec. A-E 5.01(4).

SUMWALT SURVEY

33. On or about June 21, 1982, respondent completed the performance of a land survey and the preparation of a survey map for Dennis Sumwalt; the parcel surveyed was located in the Southwest ¼ of the Southeast ¼ of Section 21, Township 10 North, Range 1 East, City of Richland Center, Richland County, Wisconsin.

34. Respondent obtained no written waiver from Mr. Sumwalt excluding the survey referred to in paragraph 33, above, from the requirements of Wis. Adm. Code A-E Ch. 5.

35. In performing the land survey and preparing the survey map described in paragraph 33, above, respondent failed to meet the minimum standards as set forth in Wis. Adm. Code A-E Ch. 5 in the following respects:

A. The description did not commence at a government corner as required by Wis. Adm. Code sec. A-E 5.01(4).

B. 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).

C. The map failed to show bearings and angles to the nearest minute as required by Wis. Adm. Code sec. A-E 5.01(6)(e).

D. 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).

REWARD SURVEY

36. On or about June 21, 1982, respondent completed the performance of a land survey and the preparation of a survey map for Joel Reward; this parcel was located in the Southwest ¼ of the Southeast ¼ of Section 21, Township 10 North, Range 1 East, City of Richland Center, Richland County, Wisconsin.

37. Respondent obtained no written waiver from Mr. Reward excluding the survey referred to in paragraph 36, above, from the requirements of Wis. Adm. Code A-E Ch. 5.

38. In performing the land survey and preparing the survey map described in paragraph 36, above, respondent failed to meet the minimum standards as set forth in Wis. Adm. Code A-E Ch. 5 in the following respects:

A. The description did not commence with a government corner as required by Wis. Adm. Code sec. A-E 5.01(4).

B. 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).

C. The map failed to show bearings and angles to the nearest minute as required by Wis. Adm. Code sec. A-E 5.01(6)(e).

D. 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).

BENDER SURVEY

39. On or about May 12, 1983 Respondent completed the performance of a land survey and the preparation of a survey map for Dale Bender; the parcel surveyed was located in the Southwest ¼ of the Southwest ¼ of Section 25, Township 9 North, Range 1 East, Richland County, Wisconsin.

40. Respondent obtained no written waiver from Mr. Bender excluding the survey referred to paragraph 39, above, from the requirements of Wis. Adm. Code A-E Chapter 5.

41. In performing the land surveying and preparing the survey map described in paragraph 39, above, Respondent failed to meet the minimum standards as set forth in Wis. Adm. Code A-E Chapter 5 in the following respects:

A. The map failed to show and describe all monuments necessary for the location of the parcel as required by Wis. Adm. Code sec. A-E 5.01(5)(d). More specifically, the map showed no monument at the northwest corner of the parcel.

B. The bearings were not referenced to a magnetic, true or other identifiable meridan 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).

C. The map failed to show bearings and angles to the nearest minute as required by Wis. Adm. Code sec. A-E 5.01(6)(e).

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

E. The Respondent filed no U.S. Public Land Survey monument record in conjunction with this map for the southwest corner of Section 25, as required by Wis. Adm. Code sec. A-E 5.02.

BALDWIN SURVEY

42. On or about June 22, 1983, Respondent completed the performance of a land survey and the preparation of a survey map for Vic Baldwin; the parcel surveyed was located in the Northwest ¼ of the Northwest ¼ and in the Southwest ¼ of the Northwest ¼, all in Section 27, Township 10 North, Range 1 East, Richland County, Wisconsin.

43. Respondent obtained no written waiver from Mr. Baldwin excluding the survey referred to in paragraph 42, above, from the requirements of Wis. Adm. Code A-E Chapter 5.

44. In performing the land survey and preparing the survey map described in paragraph 42, above, Respondent failed to meet the minimum standards as set forth in Wis. Adm. Code A-E Chapter 5 in the following respects:

A. The description did not commence with a government corner as required by Wis. Adm. Code sec. A-E 5.01(4).

B. The bearings were not referenced to a magnetic, true or other identifiable meridan 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).

C. The map failed to show and 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. Respondent filed no U.S. Public Land Survey monument record with this map for the southwest corner of Section 25 as required by Wis. Adm. Code sec. A-E 5.02.

DNR SURVEY

45. On or about April 7, 1983, Respondent completed the performance of a land survey and the preparation of a survey map for the State of Wisconsin Department of Natural Resources; the parcel surveyed was located in the Southeast ¼ of the Southeast ¼ of Section 22, the Southwest ¼ of the Southwest ¼ and the Southeast ¼ of the Southwest ¼ of Section 23, all in Township 11 North, Range 2 East, Richland County, Wisconsin.

46. Respondent obtained no written waiver excluding the survey referred to in paragraph 45, above, from the requirements of Wis. Adm. Code A-E Chapter 5.

47. In performing the land survey and preparing the survey map described in paragraph 45, above, Respondent failed to meet the minimum standards as set forth in Wis. Adm. Code A-E Chapter 5 in the following respects:

A. Respondent failed to set monuments marking the corners of the parcel surveyed as required by Wis. Adm. Code sec. A-E 5.01(3). More specifically, at the corners on Exhibit N marked with the letters a, b, c, d, e, f, and g, no pipes were set. The pipes that were set by Respondent in conjunction with the survey were 1½ inches and not 1 inch in diameter, as was indicated in the legend of the map.

B. The map failed to meet the statutory standards for certified survey maps as required by Wis. Adm. Code sec. A-E 5.01(1)(b). More specifically, the parcel failed to show the width of streets and area in square feet of the parcel, as required by Wis. Stats. secs. 236.34(1)(c) and 236.20(2)(f) and (j).

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. Respondent failed to prepare a U.S. Public monument record in conjunction with this map as required by Wis. Adm. Code sec. A-E 5.02.

BALDWIN (II) SURVEY

48. On or about August 23, 1983, Respondent completed the performance of a land survey and the preparation of a survey map for Vic Baldwin.

49. Respondent obtained no written waiver from Mr. Baldwin excluding the survey referred to in paragraph 48, above, from the requirements of Wis. Adm. Code A-E Chapter 5.

50. In performing the land survey and preparing the survey map described in paragraph 48, above, Respondent failed to meet the minimum standards as set forth in Wis. Adm. Code A-E Chapter 5 in the following respects:

A. The map did not contain a description as required by Wis. Adm. Code sec. A-E 5.01(5)(e).

B. The bearings were not referenced to a magnetic, true or other identifiable meridan 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).

C. The map failed to show and describe all monuments necessary for the location of the parcel as required by Wis. Adm. Code sec. A-E 5.01(5)(d). More specifically, monuments were not shown to establish the various segments of the southern boundary of the parcel.

D. The map failed to contain the certifying statement that is required by Wis. Adm. Code sec. A-E 5.01(5)(f).

E. The closed traverse depicted on the property survey map failed to have the latitude and departure closure ratio of less than 1/3,000 as required by Wis. Adm. Code sec. A-E 5.01(6)(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).

BALDWIN (III) SURVEY

51. On or about July 21, 1982, Respondent completed the performance of a land survey and the preparation of a survey map for Vic Baldwin; the parcel surveyed was located in the Southeast ¼ of the Northwest ¼ and the Southwest ¼ of the Northwest ¼, all in Section 27, Township 10 North, Range 1 East, Richland County, Wisconsin.

52. Respondent obtained no written waiver from Mr. Baldwin excluding the survey referred to in paragraph 51, above, from the requirements of Wis. Adm. Code A-E Chapter 5.

53. In performing the land survey and preparing the survey map described in paragraph 51, above, Respondent failed to meet the minimum standards as set forth in Wis. Adm. Code A-E Chapter 5 in the following respects:

A. The description did not commence at a government corner as required by Wis. Adm. Code sec. A-E 5.01(4).

B. 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).

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

E. 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).

TENNEY SURVEY

54. On or about February 9, 1981, Respondent completed the performance of a land survey and the preparation of a survey map for Helen Tenney and Jim Bennett; the parcel surveyed was located in the Northeast ¼ of the Northeast ¼ of Section 35; in the Northwest ¼ of the Northwest ¼, in the Northeast ¼ of the Northwest ¼, in the Southwest ¼ of the Northwest ¼, and in the Southeast ¼ of the Northwest ¼ of Section 36; and in the Southwest ¼ of the Southwest ¼, and the Southeast ¼ of the Southwest ¼ of Section 25; all in Township 9 North, Range 1 East, Richland County, Wisconsin.

55. Respondent obtained no written waiver excluding the survey referred to in paragraph 54, above, from the requirements of Wis. Adm. Code A-E Chapter 5.

56. In performing the land survey and preparing the survey map described in paragraph 54, above, Respondent failed to meet the minimum standards as set forth in Wis. Adm. Code A-E Chapter 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 describe the parcel surveyed as required by Wis. Adm. Code sec. A-E 5.01(5)(e). More specifically, the map failed to contain a description of a third parcel shown on the map to the southeast of the parcels described and consisting of 7.4 acres.

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 Respondent filed no U.S. Public Land Survey monument record in conjunction with this map for the northwest corner of Section 36, as required by Wis. Adm. Code sec. A-E 5.02.

ROBB SURVEY

57. On or about November 8, 1982, Respondent completed the performance of a land survey and the preparation of a survey map for Attorney Robb; the parcel surveyed was located in the West ½ of the Southwest ¼ of Section 1, in the Northwest ¼ of the Northwest ¼ of Section 12, in the Northeast ¼ of the Northeast ¼ of Section 11, in the Southeast ¼ of the Southeast ¼, the Southwest ¼ of the Southeast ¼ and the Northwest ¼ of the Southeast ¼ of Section 2, all in Township 10 North, Range 1 East, Richland County, Wisconsin.

58. Respondent obtained no written waiver from Attorney Robb excluding the survey referred to in paragraph 57, above, from the requirements of Wis. Adm. Code A-E Chapter 5.

59. In performing the land survey and preparing the survey map described in paragraph 57, above, Respondent failed to meet the minimum standards as set forth in Wis. Adm. Code A-E Chapter 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 show and describe all monuments necessary for the location of the parcel as required by Wis. Adm. Code sec. A-E 5.01(5)(d). More specifically, the map failed to show and describe monuments at the points where the boundary of the parcel surveyed intersects with the center line of the road designated as "Town Road" on the map.

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

D. The closed traverse depicted on the property survey map failed to have a latitude and departure closure ratio of less than 1/3,000 as required by Wis. Adm. Code sec. A-E 5.01(6)(d).

E. The map failed to show bearings and angles to the nearest minute as required by Wis. Adm. Code sec. A-E 5.01(6)(e).

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).

G. The Respondent filed no U.S. Public Land Survey monument record in conjunction with this map, as required by Wis. Adm. Code sec. A-E 5.02.

HULS SURVEY

60. On or about May 28, 1983, Respondent completed the performance of a land survey and the preparation of a survey map for "Century 21-Ron Huls;" the parcel surveyed was located in Government Lot 5 and Government Lot 6, Section 14, Township 8 North, Range 3 West, Crawford County, Wisconsin.

61. Respondent obtained no written waiver excluding the survey referred to in paragraph 60, above, from the requirements of Wis. Adm. Code A-E Chapter 5.

62. In performing the land survey and preparing the survey map described in paragraph 60, above, Respondent failed to meet the minimum standards as set forth in Wis. Adm. Code A-E Chapter 5 in the following respects:

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

B. Respondent failed to prepare a U.S. Public Land Survey monument record in conjunction with this map, as required by Wis. Adm. Code sec. A-E 5.02.

C. The map failed to accurately describe monuments indicated in the legend as "placed" as required by Wis. Adm. Code sec. A-E 5.01(5)(d). More specifically, the Respondent set spike nails, and not iron pipes as indicated on the map. No iron pipes were set, only spike nails, in these locations.

D. 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).

WALL SURVEY

63. On or about March 6, 1978, Respondent completed the performance of a land survey and the preparation of a survey map for Mike Wall; the parcel surveyed was located in Sections 11 and 14, Township 8 North, Range 6 West, Crawford County, Wisconsin.

64. Respondent obtained no written waiver from Mr. Wall excluding the survey referred to in paragraph 63, above, from the requirements of Wis. Adm. Code A-E Chapter 5.

65. In performing the land survey and preparing the survey map described in paragraph 63, above, Respondent failed to meet the minimum standards as set forth in Wis. Adm. Code A-E Chapter 5 in the following respects:

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

B. 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).

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

D. The closed traverse depicted on the property survey map failed to have the latitude and departure closure ratio of less than 1/3,000 as required by Wis. Adm. Code sec. A-E 5.01(6)(d).

E. 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).

HILLWOOD HEIGHTS SURVEY

66. On or about December 18, 1978, Respondent completed the performance of a land survey and the preparation of a survey plat of the Subdivision of Hillwood Heights to the Village of Gays Mills, Crawford County, Wisconsin.

67. In performing the land survey and preparing the plat described in paragraph 66, above, Respondent failed to meet the minimum standards for subdivision plats as set forth in Wis. Stats. Chapter 236 in the following respects:

A. Respondent failed to show the correct exterior boundary of the land survey as required by Wis. Stats. sec. 236.20(2)(a). More specifically, Respondent failed to show the curve in WST 131. This curve is depicted in the Wisconsin Department of Transportation Right of Way plans for Division Job #9571 (Sheet No. 4) and in the 1/17/78 Plat of Survey by Robert Lampman for Mrs. Glen Hoyan.

B. Respondent failed to show all monuments established in the field in their proper places, as required by Wis. Stats. sec. 236.20(2)(b). More specifically, Respondent failed to show a 1 inch iron pipe at the intersection between the section line and the easterly right-of-way of Highway 131.

C. Respondent failed to show exact length and bearings previously recorded of the southline of Section 22, as required by Wis. Stats. Section 236.20(2)(c).

D. Respondent failed to show the exact width of Highway 131, as required by Wis. Stats. Section 236.20(2)(f).

E. Respondent failed to show the curve data required by Wis. Stats. Section 236.20(2)(k) for the Highway 131 curve.

68. Beginning in 1980, the Crawford County Surveyor contacted Respondent with repeated requests to correct the errors referred to in paragraph 67, above. Respondent has failed to make the requested corrections.

CALDWELL'S SURVEY

69. On or about August 22, 1977, Respondent completed the performance of a land survey and the preparation of survey plat of the Subdivision of Caldwell's First Addition to the Village of Wauzeka, Crawford County, Wisconsin.

70. In performing the land survey and preparing the plat described in paragraph 69, above, Respondent failed to meet the minimum standards for subdivision plats as set forth in Wis. Stats. Chapter 236 in the following respect:

Respondent failed to correctly reference the subdivision to a U.S. Public Land Survey corner, as required by Wis. Stats. sec. 236.27(3)(b). More specifically, Respondent's reference to the U.S. Public Land Survey Corner falls approximately 135 feet north of the existing government corner.

71. Respondent was notified of this error but has not corrected the plat.

TENNEY LAND DESCRIPTION

72. On or about July 21, 1983, as a part of his land surveying practice, Respondent completed a description of land for Helen Tenney. The parcel described was located in the Southeast ¼ of the Southwest ¼ of Section 25; in the Northwest ¼ of the Northwest ¼, in the Southeast ¼ of the Northwest ¼, and in the Southwest ¼ of the Northeast ¼ of Section 36, all in Township 9 North, Range 1 East, Richland County, Wisconsin.

73. The description referred to in paragraph 72, above, does not close with a minimum latitude and departure closure ratio of less than 1/3,000, as required by Wis. Adm. Code Sections A-E 5.01(4) and (6)(d).

FAILURE TO TIMELY FILE SURVEYS

74. Respondent failed to timely file the surveys referred to in paragraphs 6, 9, 12, 15, 18, 21, 24, 27, 30, 33, 36, 39, 42, 45, 48, 51, 54, 57, 60, 63, and 72, above, as required by Wis. Stats. sec. 59.60.

MISREPRESENTATION

75. Respondent served as Richland County Surveyor from January, 1976 to the end of 1979.

76. From the beginning of 1980 and continuing to at least June of 1983, Respondent incorrectly referred to himself as "County Surveyor" on the heading of his stationery and maps.

CONCLUSIONS OF LAW

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

2. By the conduct described in the Findings of Fact in paragraphs 4, 8, 11, 14, 17, 20, 23, 26, 29, 32, 35, 38, 41, 44, 47, 50, 53, 56, 59, 62, 65, 67, 68, 70, 71, and 72, Respondent is guilty of gross negligence, incompetence and misconduct within the meaning of Wis. Stats. sec. 443.12(1), and Wis. Adm. Code secs. A-E 4.003(1), (2) and (3)(b).

3. By the conduct described in the Findings of Fact in paragraphs 5 and 74, Respondent is guilty of misconduct within the meaning of Wis. Stats. sec. 443.12(1), and Wis. Adm. Code sec. A-E 4.003(3)(a).

4. By the conduct described in the Findings of Fact in paragraph 76, Respondent is guilty of misconduct within the meaning of Wis. Stats. sec. 443.12(1), and Wis. Adm. Code sec. A-E 4.003(3)(d).

ORDER

NOW, THEREFORE, IT IS ORDERED that the license of Michael C. McMillin to practice as a land surveyor in the State of Wisconsin shall be, and hereby is, revoked.

OPINION

The respondent, Michael C. McMillin, is charged with numerous counts of gross negligence, incompetence and misconduct within the meaning of the statutes and administrative rules of the Board. Mr. McMillin did not file an Answer to the Complaint or appear at the evidentiary hearing. Accordingly, complainant was granted a default judgment. Complainant's attorney submitted evidence at the hearing in the form of survey maps, letters, other documents and oral testimony, which established the allegations within the Complaint.

There is no necessity of setting forth in detail here the unprofessional conduct found to exist in this case. It is sufficient to state that the Findings of Fact, as supported by the evidence in the record, establish a clear pattern of continuous and egregious unprofessional conduct as a land surveyor on behalf of Mr. McMillin.

The only issue remaining in this matter is the appropriate discipline, if any, to be imposed upon respondent. The interrelated purposes for applying disciplinary measures 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).

In this case it should also be noted that respondent's license has previously been suspended for a period of one year for conduct similar to that found in this case. The prior suspension was imposed by order of the Board dated August 29, 1979. See, Exhibit 2. As stated by the Wisconsin Supreme Court:

> "The fact that the defendant was once before disciplined for unprofessional conduct...is clearly a fact not to be disregarded in determining the appropriate disposition of the proceeding... (T)he apprehension as to protecting the public interest is heightened by the repeater aspect of this proceeding. This is a factor that may, in fact must, be taken into consideration." MacIntyre, supra, at 484.

The seriousness of the misconduct present in this proceeding, alone, is sufficient to necessitate that the license of respondent be revoked in order to safeguard the public interest, pursuant to the functions disciplinary measures are to serve as stated above in Aldrich. The fact that respondent has previously been suspended from practice for a period of one year for substantially similar violations, only places beyond question the appropriateness and necessity of the revocation of Mr. McMillin's license to practice as a land surveyor in this state.

Dated: August 2, 1984.

Respectfully submitted,

Donald R. Rittel

Donald R. Rittel
Hearing Examiner

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