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

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST	:	
ROBERT P. BRAUER, 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 Robert P. Brauer.

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 26th day of April, 1984.

Bernard F. Waterman

pc017-552

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

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST ROBERT P. BRAUER, R.L.S., RESPONDENT.	PROPOSED DECISION

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

Robert P. Brauer, R.L.S.
Route #3, Box 64-A
Fontana, WI 53125

State of Wisconsin Examining Board of Architects, Professional Engineers, Designers & Land Surveyors
1400 East Washington Avenue
P. O. Box 8936
Madison, WI 53708

State of Wisconsin Department of Regulation & Licensing
Division of Enforcement
1400 East Washington Avenue
P. O. Box 8936
Madison, WI 53708

A hearing was held in the above-captioned matter on August 25, 1983 and October 13, 1983, in Room 177 at 1400 East Washington Avenue, Madison, Wisconsin. Appearing for complainant was Attorney Steven M. Gloe. Respondent appeared in person and without legal counsel.

Based upon the evidence in the record and the pleadings and other documents filed in this matter, the hearing examiner recommends that the Examining Board of Architects, Professional Engineers, Designers & Land Surveyors adopt as its final decision the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. Robert P. Brauer (Respondent), Route #3, Box 64-A, Fontana, Wisconsin, was at all times relevant to the complaint filed herein duly licensed as a land surveyor in the State of Wisconsin by license #S-1578, issued July 31, 1980.

2. On or about March 14, 1981, respondent completed the performance of a land survey and the preparation of a map of survey identified as CSM #680, volume 10, page 241, Rock County, for Walter and Genevieve Goehl, owners of the property surveyed. The property is located in the Southeast quarter of the Northeast quarter and the Southeast quarter of the Northeast quarter, Section 4, Township 4 North, Range 14 East, Rock County, Wisconsin.

3. In performing this survey and in preparing the survey map described in Finding of Fact #2, respondent committed the following errors:

a. The interior angle at the east quarter corner is shown as 87 degrees 29 minutes 40 seconds. To agree with the bearings of the lines of the angle, the angle should read 87 degrees 14 minutes 50 seconds.

b. The north point of the map is not referenced in accordance with Wis. Stats. sec. 236.20(2)(i).

c. The lot on the map is not numbered as required by Wis. Stats. sec. 236.20(2)(e).

d. The legend of the map fails to indicate the length and weight per lineal foot of the monuments, as required by Wis. Stats. sec. 236.20(1)(b).

e. The owners signatures are not notarized, as required by Wis. Stats. sec. 236.21(2)(a).

f. Respondent failed to make a careful determination of the position of the boundaries of the parcel surveyed. The northern boundary of the survey map rests approximately 7 feet north of the true boundary line of the property involved.

4. On or about March 14, 1981 respondent completed the performance of a land survey and the preparation of a map of survey identified as CSM #682, volume 10, page 243, Rock County, for Walter and Genevieve Goehl, owners of the property surveyed. The property is located in the Southeast quarter of the Southeast quarter of Section 4, Township 4 North, Range 14 East, Rock County, Wisconsin.

5. In performing the survey and preparing the survey map described in paragraph 4, above, respondent committed the following errors:

a. The latitude and departure closure ratio of the map is 1 in 1708. This error is greater than generally accepted tolerances within the land surveying profession.

b. The owners' signatures are not notarized as required by Wis. Stats. sec. 236.21(2)(a).

c. The lot on the map is not numbered, as required by Wis. Stats. sec. 236.20(2)(e).

d. The distance shown on the map from the section line to the southwest corner of the lot (65.03 feet) does not agree with the distance in the legal description (66.05 feet).

6. On or about August 28, 1981 and April 2, 1982, respondent was notified by Rock County Surveyor Donald Barnes that errors existed in the surveys referred to in Findings of Fact 2 through 5, above.

7. In response to inquiries by the Department of Regulation & Licensing, Division of Enforcement, respondent indicated that the errors on these surveys would be corrected by the beginning of May, 1982.

8. Respondent revised CSM #680 and CSM #682 on April 8, 1982 and June 7, 1983, respectively.

9. There is not clear and convincing evidence that the revisions to CSM #680 and CSM #682 effected by respondent did not constitute adequate corrections to those surveys and maps of survey.

10. On or about August 6, 1981, respondent completed the performance of a land survey and the preparation of a map of survey identified as CSM #1204, volume 5, page 253, Walworth County, for Augustus K. Maxwell, owner of the property surveyed. The property is located in the Northeast quarter of Section 5, Township 1 North, Range 17 East, Walworth County, Wisconsin.

11. In performing the survey and preparing the survey map described in paragraph 10, above, respondent committed the following errors:

a. The interior angle at the southeast side of Lot #1 is shown as 227 degrees 40 minutes 50 seconds. To agree with the bearings of the lines of the angle, the angle should be 257 degrees 40 minutes 50 seconds.

b. The exterior bearing of a segment located on the southeasterly side of Lot #1 is drafted as south 80 degrees 19 minutes 0 seconds west. On the survey certification it appears as south 50 degrees 19 minutes 0 seconds west.

c. The exterior bearing of one of the segments on the southeasterly side of Lot #1 is drafted as south 89 degrees 33 minutes 0 seconds west. This bearing appears in the certificate page as south 59 degrees 33 minutes 0 seconds west.

d. On sheet #1, the distance along the western line of the map is shown as 1,857.31 feet. This distance appears in the certificate page as 1,851.37 feet.

e. The acreage of the lots as shown on the drawings totals 33.4303 acres. In the certificate page, the total is presented as 34.7672 acres.

f. The map fails to give a total distance along the meander line, as required by Wis. Stats. Section 236.20(2)(g).

g. The latitude and departure closure ratio on the map is one in 267.65 feet, and it calculates out on the certificate page to one in 290.6 feet. Both of these are less than generally accepted tolerances in the land surveying profession.

h. In the performance of this survey, respondent failed to locate the east quarter corner of Section 5, and failed to show the location of this quarter corner on the map as required by Wis. Stats. Sections 236.34(1)(c) and 236.20(2)(b).

12. Respondent revised CSM #1204 on June 20, 1982, and recorded the revised map, identified as CSM #1293, with the Walworth County Register of Deeds on August 24, 1983. Failure to earlier record the revised map occurred when respondent's employee mistakenly confused the original map dated August 6, 1981 for the revised map.

13. In making corrections to CSM #1204 respondent failed to properly correct the distance along the Western line on sheet 1, which appears on the map as 185.31 feet and in the description as 1,851.37 feet.

14. In making the corrections to CSM #1204 respondent failed to locate the east quarter corner of Section 5 and failed to show the location of this quarter corner on the map.

15. With the exception of the errors set forth at paragraphs 13 and 14, above, there is not clear and convincing evidence that the revisions to CSM #1204 effected by respondent did not constitute adequate corrections to those surveys and maps of survey.

CONCLUSIONS OF LAW

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

2. Respondent's conduct, as described by Findings of Fact numbered 2 through 15, above, demonstrates gross negligence, incompetence and misconduct in the practice of land surveying within the meaning of Wis. Stats. Section 443.12(1), and as defined by Wis. Adm. Code Sections A-E 4.003(1)(a), (b) and (c); A-E 4.003(2); and A-E 4.003(3)(a) and (b).

ORDER

NOW, THEREFORE, IT IS ORDERED that the license of Robert P. Brauer to practice as a land surveyor in the State of Wisconsin be, and hereby is, suspended for a period of 60 days commencing ten days from the date of the board's Final Decision and Order herein.

OPINION

On the initial date of hearing, it was established that the respondent admitted most of the factual allegations set forth in the Complaint. Not admitted were Complaint paragraphs 8 and 12, which alleged failure to correct the affected survey maps, and subparagraphs 10(a) and (h), which

alleged certain errors in the Maxwell Survey (Exhibits 3, 4, 5, 6 and 8). By letter dated September 21, 1983, Attorney Gloe notified the examiner and respondent that subparagraphs 10(a) and 10(h) should be dismissed and the examiner did so at the continuation of the hearing on October 13, 1983. Consequently, the only factual issues to be resolved at hearing were the adequacy and correctness of revisions made by respondent to the surveys and maps of survey in question. Assuming appropriate corrections were made, such corrections may be considered in mitigation of the admitted violations. Assuming the revisions effected by respondent were incorrect or incomplete, however, that factor must be considered in aggravation of the underlying violations.

While the factual issues in this case are thus limited to the question of the adequacy of the corrected surveys and maps, these issues constitute a most difficult aspect of the matter. In the case of all three surveys, the inference suggested by complainant is that no real corrections were in fact made, but rather that the survey maps were simply manipulated to accommodate the apparent deficiencies. Respondent, on the other hand, contends that all necessary steps were taken, including necessary field work, to ensure that correction of the admitted errors was accomplished. It therefore becomes necessary to evaluate the documentary and testimonial evidence presented at hearing in an attempt to determine whether the revisions to the maps in question constitute a good faith (and successful) effort to correct the acknowledged deficiencies, or whether the revised maps pay only lip service to those deficiencies.

The nature of the problem is clearly demonstrated by the survey which is the subject of Count I of the Complaint. This is the Goehl Survey identified in the Complaint as CSM #680 and admitted into evidence in original and revised forms as Exhibits 1 and 7, respectively. The complainant alleges a number of errors in the map, including that the interior angles of parcels do not close by 5 degrees 0 minutes 50 seconds, that the interior angle at the east quarter corner does not agree with the bearings of the boundaries forming the angle, and that the northern boundary shown on the map is depicted as 7 feet north of the true boundary line of the property.

First, it appears to the examiner that the allegation that the interior angles shown do not close is incorrect. The plat of survey done by Rock County surveyor Donald Barnes (Exhibit #1)[1]. Indicates that the original map shows a proper geometric total of 720 degrees. The examiner's figures confirm that the sum of the angles shown on the original CSM #680 in fact total 720 degrees. Accordingly, no finding in terms of this allegation has been made.

Second, the Complaint states that "the interior angle of the east quarter corner is shown as 87 degrees 29 minutes 40 seconds; to agree with the bearings of the lines of the angle, the angle should read 87 degrees 14 minutes 50 seconds". Complainant is correct and, in revising CSM #680, respondent reconciled that angle with the bearings as suggested. He then

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1. The Barnes plat, constituting a survey check of CSMs #680 and 682, involved going into the field, locating respondent's monuments, traversing those monuments, and doing the map from the resulting data.

proceeded to adjust each of the other interior angles by 14 minutes 50 seconds in order to reach the proper geometric total of 720 degrees. It would appear that such adjustment is consistent with the bearings of the legs of the affected angles, which in turn suggests that the original (incorrect) angles may have constituted some kind of arithmetic error in computing them.

Third, the revised survey map changes the distance of the east boundary and of the west boundary of the right of way. Respondent contends that he adjusted the monuments to reflect the revisions made. Barnes testified that his assistant searched for a corrected marker at the northeast corner and did not find it. He also conceded, however, that this is the only adjusted monument he searched for. Failure by Barnes' assistant to find the revised northeast corner marker does not, in light of respondent's testimony to the contrary, constitute clear and convincing evidence that necessary field corrections were not made. And a change in such conclusion is not compelled by the fact that the original monument may have been found in place, for respondent had earlier testified that his crew had been unable to remove all of the old monuments.

Finally, it should probably be noted that the ratio of error of the original CSM #680, as described, is .000035 in 3,000--not bad for an admittedly erroneous survey. Not bad either is the .10 in 3,000 ratio of error of the revised map. One may be tempted to draw inferences from such seemingly phenomenal accuracy. But to arrive at any legal conclusions as to the procedure by which the description may have been developed is to engage in speculation not clearly supported by the evidence at hand. On balance, and without recourse to the field notes upon which these maps are based, there is not clear and convincing evidence that the respondent did not make appropriate corrections to CSM #680.

To say there is not clear and convincing evidence of failure to make necessary corrections is not, however, to conclude that appropriate corrections were made. If correction of this survey map had been properly accomplished, this would be a factor to be considered in mitigation of violations arising from the original surveys and maps. In this case, however, the issue whether the revised map in fact corrects the deficiencies of the original survey remains in question. Respondent was aware that the accuracy of the revised map was in question and there was certainly evidence in the record casting doubt in this regard. If the veracity of respondent's representations regarding corrective action taken was supported by his field data, it seems likely that he would have produced it. Nonetheless, he failed to produce that data despite a request by the Division of Enforcement to do so. Thus, while it would be inappropriate to place upon respondent an affirmative burden of establishing the accuracy of the revised surveys, respondent's failure in this regard does preclude considering the amended map as a mitigating factor in evaluating the underlying violations.

Analysis of the revisions to CSM #682 renders a similar result. The Complaint correctly alleges a ratio of error of one in 1708 and further alleges that the distance shown on the map from the section corner to the southwest corner of the parcel does not agree with the written description.

Respondent changed the legal description to agree with the (correct) distance shown on the map. He also changed the bearing length of the westerly portion of the south boundary and of two interior angles. Respondent testified that he had not done any field work in making the revisions because the error was a computational one. The nature of the revisions would seem to bear this out to some extent. First, if the bearing and angles were calculated using the (incorrect) 66.05 foot dimension from the section line to the southwest corner of the parcel, and if those bearings and angles were recalculated using the correct 65.03 foot dimension, this would largely account for the revisions to the bearing and interior angles. Additionally, while the revision to the interior angle on the south boundary (176 degrees 41 minutes 42 seconds) increases the disparity between respondent's map and Barnes' plat of survey, the revisions to the dimension of the westerly portion of the south boundary and to the interior angle at the southwest corner of the parcel bring these into close agreement with those shown on Barnes' plat. Again, without examining the actual field notes, it's difficult to reach any firm conclusion whether the errors in the original map are entirely attributable to calculating errors. For the same reason, it is no less difficult to state with any certainty whether variance between respondent's revised map and the Barnes plat are entirely attributable to residual errors in respondent's work. In any event, however, there seems not to be clear and convincing evidence that respondent failed to appropriately correct this CSM.

As with CSM #680, respondent failed to submit the documentary evidence in the form of field notes which might support his contention that the errors in the original survey occurred through errors in transcription and calculation of field data. Again, failure to demonstrate the accuracy of the revised survey may not be considered in aggravation of the violation found, but such failure just as clearly prohibits consideration of the corrected survey as a mitigating factor.

As to CSM #1204, the complainant alleges and respondent admits a number of errors in interior angles, bearings, dimensions and area. Complainant also alleges an unacceptable closure ratio and violations of the requirements of Wis. Stats. Chapter 236, including failure to locate or show the east quarter corner of the section in question. Respondent revised CSM #1204 in June, 1982. However through an inadvertent employee error, the revised map was not recorded with the Walworth County Register of Deeds until August, 1983.

In evaluating the adequacy of the corrections made, there were four issues raised at hearing: (1) Failure to locate or show the east quarter corner; (2) Failure to show the proper distance on the west line of the parcel; (3) Failure to verify in the field changes made to the survey map; (4) The possibility that revisions made to the map were not based upon recalculation of the actual field data.

Complainant presented the testimony of an expert witness, Mr. William T. Wambach, Jr., RLS, PE on these issues. His testimony was as follows:

Q. (By Mr. Gloe) I show you what's been marked Exhibits No. 6 and No. 8. Have you reviewed these exhibits previous to today?

A. (By Mr. Wambach) Yes, I have.

Q. Can you tell me what the circumstances are of your becoming involved in review of these maps?

A. Yes. I was requested by a member of your staff at the department here to examine the two certified survey maps to determine if the corrections had been made that were called for in an earlier complaint.

Q. And what were your findings regarding your review of whether corrections were performed?

A. Yes. The corrections that were called for were performed except for two, which I believe earlier in this case were dismissed because they were found to be correct.

Q. On Exhibit 8, there was a question in the original complaint about the distance along the western line of the map not agreeing with the first page of that survey and the certificate page. Was that correction made in your review?

A. No. It apparently was partially made. One number of the distance originally shown is 1,857.31 feet. The 7 was erased and no insertion was made so that it now reads 185.31 feet.

Q. Also in the original complaint there was a question raised on whether or not the east quarter corner of section 5 was set in conjunction with this survey. From your review of the map, can you tell me whether that correction was made?

A. The map does not indicate the location of the east quarter corner.

Q. Would there be any requirement that that east quarter corner be located to establish anything on the map?

A. Yes, sir. The map says that the east line of this certified survey is the east line of the northeast one-quarter. And the monument at the south end of that line is necessary in order to establish the line.

Q. Other than these two items we've discussed and the other two items you previously mentioned that were subsequently stricken from the complaint, is it correct that your testimony is that the corrections were made that were called for?

A. The corrections that were called for were made. Yes, sir.

Q. Did you calculate the latitude and departure closure ratio for this survey map?

A. Yes, I did.

(Exhibit No. 10 marked for
(identification purposes.

Q. (By Mr. Gloe) I show you what's been marked as Exhibit No. 10. Can you tell me what that is, please?

A. (By Mr. Wambach) Yes. This is a computer printout of the latitudes and departures closure of the original certified survey map and of the corrected certified survey map that I was presented by your department.

Q. Can you tell me what the latitude and departure closure ratio is for the corrected survey map?

A. The corrected survey map, it is .169 feet in three thousand.

Q. Does that fall within the accepted standards of the industry for accuracy?

A. Yes, sir, it does.

Q. I'd move for the--

A. Excuse me, sir. I'm sorry I read incorrectly. I was looking at the closure for Lot 3. Give me a moment. I must correct myself. The precision ratio for the corrected survey map is .031 feet in three thousand.

Q. And, again, the question, does that fall within the accepted standards of the industry?

A. Yes, it does.

MR. GLOE: I'd move for the admission of Exhibit No. 10.

THE EXAMINER: Any objection, Mr. Brauer?

MR. BRAUER: (Nods head indicating no.)

Q. (By Mr. Gloe) I'm going to ask you several questions concerning your opinion as a professional land surveyor. I'd ask you to respond to these questions to a reasonable degree of professional certainty. If you cannot respond with that degree of certainty, I'd ask that you please clarify your answer. Do you understand what I'm asking you?

A. (By Mr. Wambach) I do.

Q. Following a mathematical recomputation of your calculations which would lead to a change in survey map, what in your opinion would consist of standard practice in the surveying industry concerning changing the map?

A. The standard practice, if there was any substance to the changes, would be to go out and verify by field measurements that the adjusted computations were in fact correct.

Q. What do you mean by any substance?

A. The required accuracy by law in Wisconsin is one foot in three thousand. If any change in an angle or a distance, one individual angle or a distance, had to be outside of those boundaries, it certainly would be normal practice to go out and verify that that angle or that distance is actually measured in the field to be what the new calculations says it is.

Q. Referring specifically to the maps before you, certified survey maps 1204 and 1293, would it be in your opinion consistent with standard practice to verify the changes that appear between those two maps in the field?

A. The ones I have here, Exhibit 6, is a corrected copy that was presented to you. I believe I need Exhibit 3 which was the first submission. Now in response to your question, Mr. Gloe, yes, I find the dimension along the meander line of Lake Geneva for Lot 1 presented on the first certified survey map as 445.15 feet, a difference of ninety-two hundredths of a foot. Then another dimension on the line between Lots 1 and 2 is shown on the first survey as 209.00 feet and on the corrected survey as 209.75 feet. There are similar differences in the bearings given on those two lines. The bearing on the meander line on the first survey, 82 degrees, 4 minutes and 10 seconds west and on the second one 82 degrees, 9 minutes and 39 seconds west. On the line between Lots 1 and 2, North 5 degrees, 36 minutes, 30 seconds east and on the corrected copy North 5 degrees, 38 minutes, 25 seconds east. All of those four dimensions I've just referred to that were changed are well beyond one part in three thousand in and of themselves.

Q. What is your opinion of making the changes that you've just discussed without subsequent field verification?

A. My opinion is that would be gross negligence.

MR. GLOE: I have no further questions.

THE EXAMINER: Mr. Brauer, do you have any questions for Mr. Wambach?

MR. BRAUER: No, I don't.

THE EXAMINER: No questions? I have a couple.

Q. (By the Examiner) Granting that a survey has to commence with a government corner, if in performing the survey one of the boundaries crosses over an unmonumented government corner, is it your testimony that it's necessary that that government corner be remonumented in that process?

A. (By Mr. Wambach) Absolutely.

Q. Okay. You've testified as to the necessity to go into the field to verify dimensions and angles after a miscalculation. Is it not possible that the field notes could accurately reflect the survey as performed, but that in the process of transferring that data into the finished map that miscalculation could occur that, when corrected, would not raise doubts as to the field work that was done?

A. I suppose that is possible. However, it is difficult for me in my professional opinion to find that alterations that are irregular such as ninety-two hundredths of a foot, seventy-five hundredths of a foot, two minutes and five seconds. When I say irregular as against a one minute even error or a reversal of two numbers in recording them, or an even one foot error made, those irregular changes certainly raise the doubt that the error could have been made simply in the calculations and the transfer of the information to the map.

Q. Do I hear you saying that you surmise that the corrections were made with a calculator rather than with correct interpretation of the underlying data?

A. That's correct. Since the error of closure is almost perfect, it does not seem to reflect field conditions but an adjustment made and when I find that adjustments were made in just two of the lines, it certainly raises a high doubt in my mind that the corrections are legitimate.

THE EXAMINER: Mr. Brauer, in light of my questions, do you have any questions?

MR. BRAUER: No.

The examiner credits Mr. Wambach's testimony and accepts his conclusions as to the issues concerning locating and showing the east quarter corner, and failure to properly correct the distance shown along the northerly leg of the west boundary. The remaining two issues are somewhat more troublesome. Respondent testified that in revising this survey map he had verified only the east and west boundaries commencing at the meander line. He did not therefore verify the distance or bearing of the meander line or of the east boundary of the pedestrian easement. This was not necessary, according to respondent's testimony, because the revisions made to these boundaries depended only upon correct interpretation of the field data. As we've seen, complainant's expert testified that it would be gross negligence to fail to make such a field verification. But that opinion was based upon Wambach's supporting opinion that the revisions were not based upon reevaluation of the field data, but rather upon manipulation of distances and bearings in order to arrive at a satisfactory ratio of closing error. The basis for that opinion is the irregularity of the substituted data along with what was perceived as unrealistic accuracy of the resulting precision ratio. Certainly it seems something less than likely that in

transferring data from the field notes to the map, an error of .92 feet and five minutes 29 seconds on the meander line, and .75 feet and one minute 55 seconds on the meander line bearing could result from mere transcription error. Also, one's incredulity in this regard is certainly not eased when it is discovered these changes resulted a change in the precision ratio from 11.251 in three thousand to .031 in three thousand. Again, were the field notes available, these questions could probably be resolved. Absent that field data one is left to conclude that while it is more likely than not that the revisions to CSM #1204 were contrived, there is probably something less than clear and convincing evidence of that fact; and the latter level of proof is necessary to make such a finding. Finally, if it is not possible to find that the revisions resulted from anything other than transcription errors, it is also not possible to find that it was gross negligence for respondent to have failed to verify the underlying data in the field.

In conclusion, as with the CSMs #680 and 682, it is not possible to conclude that CSM #1204, as revised, either is or is not correct as to the ostensible corrections effected. Unlike the other two surveys, however, it is possible to conclude that at least one important correction was not made: locating and showing of the east quarter corner.

The purposes of discipline have been said to include rehabilitation of the licensee, protection of the public and deterring other licensees from engaging in 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). It is the examiner's opinion that in light of the relative seriousness of the violation, and giving consideration to conclusions reached as to respondent's revised maps, the recommended 60 day suspension of respondent's license is both adequate and appropriate to fulfill the cited purposes. Respondent admitted the errors and deficiencies in the three surveys in question and, as stated previously, the issue whether he corrected those surveys goes not to the underlying violations but rather to aggravation or mitigation of those violations. Had it been clearly established that the revised maps and the surveys upon which they were based had been fully and satisfactorily emended, then some lesser discipline might be appropriate. Such is not the case, however. Rather, there was evidence presented raising questions as to the veracity of all three revised maps, and clear evidence that the Maxwell Survey had not been fully corrected. Consequently, the corrected maps may not be considered as

mitigating and, at least as to the Maxwell Survey, the finding of failure to fully and completely correct the survey map must be considered an aggravating factor. On balance, the recommended 60 day suspension seems not overly harsh.

Dated at Madison, Wisconsin this 17th day of January, 1984.

Respectfully submitted,

Wayne R. Austin
Hearing Examiner

WRA:cls
269-141